INSURANCE AND PENSION FUNDS

Community measures adopted or proposed

Situation as at June 1993

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Document

NUMERICAL LIST OF ACTS ADOPTED OR PROPOSED

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CHAPTER 2

RIGHT OF ESTABLISHMENT

Article 52

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 53

Member States shall not introduce any new restrictions on the right of establishment in their territories of nationals of other Member States, save as otherwise provided in this Treaty.

Article 54

1. Before the end of the first stage, the Council shall, acting unanimously from the Commission and after consulting the Economic and Social Committee and the European Parliament, draw up a general programme for the abolition of the existing restrictions on freedom of establishment within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

The programme shall set out the general conditions under which freedom of establishment is to be attained in the case of each type of activity and in particular the stages by which it is to be attained.

2. In order to implement this general programme of, in the absence of such programme, in order to achieve a stage in attaining freedom of establishment as regards a particular activity, the Council shall, acting on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee, issue directives, acting unanimously until the end of the first stage and by a qualified majority thereafter.

3. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular :

(a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;

(b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;

(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;

(d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;

(e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39(2);

(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community;

(h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 55

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this Chapter shall not apply to certain activities.

Article 56

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. Before the end of the transitional period, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, issue directives for the coordination of the aforementioned provisions laid down by law, regulation or administrative action. After the end of the seond stage, however, the Council shall, acting by a qualified marjority on a proposal from the Commission and in cooperation with the European Parliament, issue directives for the coordination of such provisions as, in each Member State, are a matter for regulation or administrative action.

Article 57

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and in cooperation with the European Parliament, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

2. For the same purpose, the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the European Parliament, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Unanimity shall be required for directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by a qualified majority, in cooperation with the European Parliament.

3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 58

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purpose of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

CHAPTER 3
SERVICES

Article 59

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the persons for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

Article 60

Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include :

(a) activities of an industrial character;
(b) activities of a commercial character;
(c) activities of craftsmen;
(d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 61

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.

2. The liberalization of banking an insurance services connected with movements of capital shall be effected in step with the progressive liberalization of movement of capital.

Article 62

Save as otherwise provided in this Treaty, Member States shall not introduce any new restrictions on the freedom to provide services which have in fact been attained at the date of the entry into force of this Treaty.

Article 63

1. Before the end of the first stage, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, draw up a general programme for the abolition of existing restrictions on freedom to provide services within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

   The programme shall set out the general conditions under which and the stages by which each type of service is to be liberalized.

2. In order to implement this general programme or, in the absence of such programme, in order to achieve a stage in the liberalization of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting unanimously until the end of the first stage and by a qualified majority thereafter.

3. As regards the proposals and decisions referred to in paragraphs 1 and 2, priority shall as a general rule be given to those services which directly affect production costs or the liberalization of which helps to promote trade in goods.

Article 64

The Member States declare their readiness to undertake the liberalization of services beyond the extent required by the directives issued pursuant to Article 63(2), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article 65

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 59.

Article 66

The provisions of Articles 55 to 58 shall apply to the matters covered by this Chapter.

CHAPTER 4

CAPITAL

Article 67

1. During the transitional period and to the extent necessary to ensure the proper functioning of the common market, Member States shall progessively abolish between themselves all restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.

2. Current payments connected with the movement of capital between Member States shall be freed from all restrictions by the end of the first stage at the latest.

Article 68

1. Member States shall, as regards the matters dealt with in this Chapter, be as liberal as possible in granting such exchange authorizations as are still necessary after the entry into force of this Treaty.

2. Where a Member State applies to the movements of capital liberalized in accordance with the provisions of this Chapter the domestic rules governing the capital market and the credit system, it shall do so in a non-dsicriminatory manner.

3. Loans for the direct or indirect financing of a Member State or its regional or local authorities shall not be issued or placed in other Member States unless the States concerned have reached agreement thereon. This provision shall not preclude the application of Article 22 of the Protocol on the Statute of the European Investment Bank.

Article 69

The Council shall, on a proposal from the Commission, which for this purpose shall consult the Monetary Committee provided for in Article 105, issue the necessary directives for the progressive implementation of the provisions of Article 67, acting unanimously during the first two stages and by a qualified majority thereafter.

Article 70

1. The Commission shall propose to the Council measures for the progressive coordination of the exchange policies of Member States in respect of the movement of capital between those States and third countries. For this purpose the Council shall issue directives, acting by a qualified majority. It shall endeavour to attain the highest possible degree of liberalization. Unanimity shall be required for measures which constitute a step back as regards the liberalization of capital movements.

2. Where the measures taken in accordance with paragraph 1 do not permit the elimination of differences between the exchange rules of Member States and where such differences could lead persons resident in one of the Member States to use the freer transfer facilities within the Community which are provided for in Article 67 in order to evade the rules of one of the Member States concerning the movement of capital to or from third countries, that State may, after consulting the other Member States and the Commission, take appropriate measures to overcome these difficulties.

   Should the Council find that these measures are restricting the free movement of capital within the Community to a greater extent than is required for the purpose of overcoming the difficulties, it may, acting by a qualified majority on a proposal from the Commission, decide that the State concerned shall amend or abolish these measures.

Article 71

Member States shall endeavour to avoid introducing within the Community any new exchange restrictions on the movement of capital and current payments connected with such movements, and shall endeavour not to make existing rules more restrictive.

They declare their readiness to go beyond the degree of liberalization of capital movements provided for in the preceding Articles in so far as their economic situation, in particular the situation of their balance of payments, so permits.

The Commission may, after consulting the Monetary Committee, make recommendations to Member States on this subject.

Article 72

Member States shall keep the Commission informed of any movements of capital to and from third countries which come to their knowledge. The Commission may deliver to Member States any opinions which it considers appropriate on this subject.

Article 73

1. If movements of capital lead to disturbances in the functioning of the capital market in any Member State, the Commission shall, after consulting the Monetary Committee, authorize that State to take protective measures in the field of capital movements, the conditions and details of which the Commission shall determine.

   The Council may, acting by a qualified majority, revoke this authorization or amend the conditions or details thereof.

2. A Member State which is in difficulties may, however, on grounds of secrecy or urgency, take the measures mentioned above, where this proves necessary, on its own initiative. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. In this event the Commission may, after consulting the Monetary Committee, decide that the State concerned shall amend or abolish the measures.

II. Adopted measures

1. Reinsurance

64/225/EEC 23
Council Directive of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession
(OJ L 56 04.04.1964 p. 878)

COUNCIL DIRECTIVE

of 25 February 1964

on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession

(64/225/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54 (2) and (3) and 63 (2) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment,[1] and in particular Title IV A thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services,[2] and in particular Title V C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[3];

Having regard to the Opinion of the Economic and Social Committee[4];

Whereas the General Programmes provide that all branches of reinsurance must, without distinction, be liberalised before the end of 1963 as regards both right of establishment and provision of services;

Whereas reinsurance is effected not only by undertakings specialising in reinsurance but also by so-called 'mixed' undertakings, which deal both in direct insurance and in reinsurance and which should therefore be covered by measures taken in implementation of this Directive in respect of that part of their business which is concerned with reinsurance and retrocession;

Whereas, for the purposes of applying measures concerning right of establishment and freedom to provide services, companies and firms are to be treated in the same way as natural persons who are nationals of Member States, subject only to the conditions laid down in Article 58 and, where necessary, to the condition that there should exist a real and continuous link with the economy of a Member State; whereas therefore no company or firm may be required, in order to obtain the benefit of such measures, to fulfil any additional condition, and in particular no company or firm may be required to obtain any special authorisation not required of a domestic company or firm wishing to pursue a particular economic activity; whereas, however, such uniformity of treatment should not prevent Member States from requiring that a company having a share capital should operate in their countries under the description by which it is known in the law of the Member State under which it is constituted, and that it should indicate the amount of its subscribed capital on the business papers which it uses in the host Member State;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the natural persons and companies or firms covered by Title I of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services the restrictions referred to in Title III of those General Programmes affecting the right to take up and pursue the activities specified in Article 2 of this Directive.

Article 2

The provisions of this Directive shall apply:

1. to activities of self-employed persons in reinsurance and retrocession falling within Group ex 630

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 2, 15.1.1962, p. 32/62.
[3] OJ No 33, 4.3.1963, p. 482/63.
[4] OJ No 56, 4.4.1963, p. 882/64.

in Annex I to the General Programme for the abolition of restrictions on freedom of establishment;

2. in the special case of natural persons, companies or firms referred to in Article 1 which deal both in direct insurance and in reinsurance and retrocession, to that part of their activities which is concerned with reinsurance and retrocession.

Article 3

Article 1 shall apply in particular to restrictions arising out of the following provisions:

(a) with regard to freedom of establishment:

— *in the Federal Republic of Germany*

(1) *Versicherungsaufsichtsgesetz* of 6 June 1931, last sentence of Article 106 (2), and Article 111 (2), whereby the Federal Minister of Economic Affairs is given discretionary powers to impose on foreign nationals conditions for taking up activities in insurance and to prohibit such nationals from pursuing such activities in the territory of the Federal Republic;

(2) *Gewerbeordnung*, paragraph 12, and Law of 30 January 1937, Article 292, whereby foreign companies and firms are required to obtain prior authorisation;

— *in the Kingdom of Belgium*

Arrêté royal No 62 of 16 November 1939 and *Arrêté ministériel* of 17 December 1945, which require the possession of a *carte professionelle*;

— *in the French Republic*

(1) *Décret-loi* of 12 November 1938 and *Décret* of 2 February 1939, both as amended by the Law of 8 October 1940, which require the possession of a *carte d'identité de commerçant*;

(2) Second paragraph of Article 2 of the Law of 15 February 1917, as amended and supplemented by *Décret-loi* of 30 October 1935, which requires that special authorisation be obtained;

— *in the Grand Duchy of Luxembourg*

Law of 2 June 1962, Articles 19 and 21 (*Mémorial A* No 31 of 19 June 1962).

(b) with regard to freedom to provide services:

— *in the French Republic*

Law of 15 February 1917, as amended by *Décret-loi* of 30 October 1935, namely:

(1) The second paragraph of Article 1, which empowers the Minister of Finance to draw up a list of specified undertakings, or of undertakings of a specified country, with which no contract for reinsurance or retrocession of any risk in respect of any person, property or liability in France may be concluded;

(2) the last paragraph of Article 1, which prohibits the acceptance of reinsurance or of retrocession risks insured by the undertakings referred to in (b) (1) above;

(3) the first paragraph of Article 2, which requires that the name of the person referred to in that Article must be submitted to the Minister of Finance for approval;

— *in the Republic of Italy*

The second paragraph of Article 73 of the consolidated text approved by *Decreto* No 449 of 13 February 1959, which empowers the Minister of Industry and Commerce to prohibit the transfer of reinsurance or retrocession risks to specified foreign undertakings which have not established legal representation in Italian territory.

Article 4

Member States shall adopt the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 25 February 1964.

For the Council

The President

H. FAYAT

2. Non-life insurance (general insurance)

No L 228/20 Official Journal of the European Communities 16. 8. 73

COUNCIL DIRECTIVE

of 24 July 1973

abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance

(73/240/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (2) and (3) thereof;

Having regard to the General Programme (1) for the abolition of restrictions on freedom of establishment, and in particular Title IV C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (2);

Having regard to the Opinion of the Economic and Social Committee (3);

Whereas the General Programme referred to above provides for the abolition of all discriminatory treatment of the nationals of the other Member States as regards establishment in the business of direct insurance other than life assurance;

Whereas, in accordance with this General Programme, the lifting of restrictions on the setting-up of agencies and branches is, as regards direct insurance undertakings, dependent upon the coordination of conditions of taking up and pursuit of the business; whereas this coordination has been achieved for direct insurance other than life assurance, by the first Council Directive of 24 July 1973;

Whereas the scope of this Directive is in all respects the same as that defined in item A of the Annex to the first Directive on coordination; whereas it appeared reasonable in the circumstances to exclude, for purposes of coordination, credit-insurance for exports;

Whereas, in accordance with the General Programme referred to above, the restrictions on the right to join professional organizations must be abolished where the professional activities of the persons concerned involve the exercise of this right;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the natural persons and undertakings covered by Title I of the General Programme for the abolition of restrictions on freedom of establishment, hereinafter called 'beneficiaries', the restrictions referred to in Title III of this programme affecting the right to take up and pursue self-employed activities in the classes of insurance specified in Article 1 of the first Coordination Directive.

By 'First Coordination Directive' is meant the first Council Directive of 24 July 1973 on coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.

However, as regards credit-insurance for exports, these restrictions shall be maintained until the coordination programme laid down in Article 2 (2) (d), of the first Coordination Directive has been carried out.

Article 2

1. Member States shall in particular abolish the following restrictions:

(a) those which prevent beneficiaries from establishing themselves in the host country under the same conditions and with the same rights as nationals of that country;

(b) those existing by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals.

2. The restrictions to be abolished shall include in particular those arising out of measures which

(1) OJ No 2, 15. 1. 1962, p. 36/62.
(2) OJ No C 27, 28. 3. 1968, p. 15.
(3) OJ No 118, 20. 6. 1967, p. 2323/67.

prevent or limit the establishment of beneficiaries by the following means:

(a) In Germany:

the provisions granting the Federal Ministry of Economic Affairs the discretionary right to impose its own conditions of access to this business on foreign nationals and to prevent them from pursuing this business within the Federal Republic (Law of 6 June 1931 (VAG), Article 106 (2), No 1, in conjunction with Article 8 (1), No 3, Article 106 (2), last sentence, and Article 111 (2));

(b) In Belgium:

the obligation to hold a 'carte professionelle' (Article 1 of the Law of 19 February 1965);

(c) In France:

— the need to obtain special consent (Law of 15 February 1917, as amended and supplemented by the 'décret-loi' of 30 October 1935, Article 2 (2) — 'décret' of 19 August 1941, as amended, Articles 1 and 2 — 'décret' of 13 August 1947, as amended, Articles 2 and 10);

— the obligation to provide a surety-bond or special guarantees as a reciprocal requirement (Law of 15 February 1917, amended and supplemented by the 'décret-loi' of 30 October 1935, Article 2 (2) — 'décret-loi' of 14 June 1938, Article 42 — 'décret' of 30 December 1938, as amended, Article 143 — 'décret' of 14 December 1966, Articles 9, 10 and 11);

— the obligation to deposit technical reserves ('décret' of 30 December 1938, amended Article 179 — 'décret' of 13 August 1947, as amended, Articles 8 and 13 — 'décret' of 14 December 1966, Title I).

(d) In Ireland:

the provision that, to be eligible for an insurance licence, a company must be registered under the Irish Companies Acts, two-thirds of its shares must be owned by Irish citizens and the majority of the directors (other than a full-time managing director) must be Irish citizens (Insurance Act, 1936, Section 12; Insurance Act, 1964, Section 7).

3. The laws, regulations or administrative provisions that involve beneficiaries in the obligation to provide a deposit or special surety-bond shall not be abolished, as long as the undertakings do not fulfil the financial conditions under Articles 16 and 17 of the first Coordination Directive in accordance with the provisions of Article 30 (1) and (2) of the same Directive.

Article 3

1. Where a host Member State requires of its own nationals wishing to take up any activity referred to in Article 1 proof of good repute and proof of no previous bankruptcy, or proof of either of these, that State shall accept as sufficient evidence, in respect of nationals of other Member States, the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence the foreign national comes, showing that these requirements have been met.

2. Where the country of origin or the country whence the foreign national comes does not issue such documentary proof of good repute or documentary proof of no previous bankruptcy, such proof may be replaced by a declaration on oath — or in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or where appropriate a notary, in the country of origin or in the country whence that person comes; such authority or notary will issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. A declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

3. Documents issued in accordance with paragraph 1 or with paragraph 2 may not be produced more than three months after their date of issue.

4. Member States shall, within the time limit laid down in Article 6, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 4

1. Member States shall ensure that beneficiaries have the right to join professional or trade organizations under the same conditions and with the same rights and obligations as their own nationals.

2. The right to join professional or trade organizations shall, in the case of establishment, entail eligibility for election or appointment to high office in such organizations. However, such posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organization concerned is involved in the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the 'Chambre de commerce' shall not give beneficiaries the right to take part in the election of the administrative organs of that Chamber.

Article 5

No Member State shall grant to any of its nationals who go to another Member State for the purpose of pursuing any activity referred to in Article 1 any aid liable to distort the conditions of establishment.

Article 6

Member States shall amend their national regulations in accordance with this Directive and within 18 months of the notification of the first Coordination Directive and shall forthwith inform the Commission thereof. The regulations thus amended shall be implemented at the same time as the laws, regulations and administrative provisions set up in pursuance of the first Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

FIRST COUNCIL DIRECTIVE

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

(73/239/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the General Programme (1) for the abolition of restrictions on freedom of establishment, and in particular Title IV C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (2);

Having regard to the Opinion of the Economic and Social Committee (3);

Whereas by virtue of the General Programme the removal of restrictions on the establishment of agencies and branches is, in the case of the direct insurance business, dependent on the coordination of the conditions for the taking-up and pursuit of this business; whereas such coodination should be effected in the first place in respect of direct insurance other than life assurance;

Whereas in order to facilitate the taking-up and pursuit of the business of insurance, it is essential to eliminate certain divergencies which exist between national supervisory legislation; whereas in order to achieve this objective, and at the same time ensure adequate protection for insured and third parties in all the Member States, it is desirable to coordinate, in particular, the provisions relating to the financial guarantees required of insurance undertakings;

Whereas a classification of risks in the different classes of insurance is necessary in order to determine, in particular, the activities subject to a compulsory authorization and the amount of the minimum guarantee fund fixed for the class of insurance concerned;

Whereas it is desirable to exclude from the application of this Directive mutual associations which, by virtue of their legal status, fulfil appropriate conditions as to security and financial guarantees; whereas it is further desirable to exclude certain institutions in several Member States whose business covers a very limited sector only and is restricted by law to a specified territory or to specified persons;

Whereas the various laws contain different rules as to the simultaneous undertaking of health insurance, credit and suretyship insurance and insurance in respect of recourse against third parties and legal defence, whether with one another or with other classes of insurance; whereas continuance of this divergence after the abolition of restrictions on the right of establishment in classes other than life assurance would mean that obstacles to establishment would continue to exist; whereas a solution to this problem must be provided in subsequent coordination to be effected within a relatively short period of time;

Whereas it is necessary to extend supervision in each Member State to all the classes of insurance to which this Directive applies; whereas such supervision is not possible unless the undertaking of such classes of insurance is subject to an official authorization; whereas it is therefore necessary to define the conditions for the granting or withdrawal of such authorization; whereas provision must be made for a right to apply to the courts should an authorization be refused or withdrawn;

Whereas it is desirable to bring the classes of insurance known as transport classes bearing Nos 4, 5, 6, 7 and 12 in Paragraph A of the Annex, and the credit insurance classes bearing Nos 14 and 15 in paragraph A of the Annex, under more flexible rules in view of the continual fluctuations in conditions affecting goods and credit;

Whereas the search for a common method of calculating technical reserves is at present the subject of studies at Community level; whereas it therefore appears to be desirable to reserve the attainment of coordination in this matter, as well as questions relating to the determination of categories of investments and the valuation of assets, for subsequent Directives;

(1) OJ No 2, 15. 1. 1962, p. 36/62.
(2) OJ No C 27, 28. 3. 1968, p. 15.
(3) OJ No 158, 18. 7. 1967, p. 1.

Whereas it is necessary that insurance undertakings should possess, over and above technical reserves of sufficient amount to meet their underwriting liabilities, a supplementary reserve, to be known as the solvency margin, and represented by free assets, in order to provide against business fluctuations; whereas in order to ensure that the requirements imposed for such purposes are determined according to objective criteria, whereby undertakings of the same size are placed on an equal footing as regards competition, it is desirable to provide that such margin shall be related to the overall volume of business of the undertaking and be determined by reference to two indices of security, one based on premiums and the other on claims;

Whereas it is desirable to require a minimum guarantee fund related to the size of the risk in the classes undertaken, in order to ensure that undertakings possess adequate resources when they are set up and that in the subsequent course of business the solvency margin shall in no event fall below a minimum of security;

Whereas it is necessary to make provision for the case where the financial condition of the undertaking becomes such that it is difficult for it to meet its underwriting liabilities;

Whereas the coordinated rules concerning the taking-up and pursuit of the business or direct insurance within the Community should, in principle, apply to all undertakings entering the market and, consequently, also to agencies and branches where the head office of the undertaking is situated outside the Community; whereas it is, nevertheless, desirable as regards the methods of supervision to make special provision with respect to such agencies or branches in view of the fact that the assets of the undertakings to which they belong are situated outside the Community;

Whereas it is, however, desirable to permit the relaxation of such special conditions, while observing the principle that such agencies and branches should not obtain more favourable treatment than undertakings within the Community;

Whereas certain transitional provisions are required in order, in particular, to permit small and medium-sized undertakings already in existence to adapt themselves to the requirements which must be imposed by the Member States in pursuance of this Directive, subject to the application of Article 53 of the Treaty;

Whereas it is important to guarantee the uniform application of coordinating rules and to provide, in this respect, for close collaboration between the Commission and the Member States in this field:

HAS ADOPTED THIS DIRECTIVE:

Title I — General provisions

Article 1

This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance carried on by insurance undertakings which are established in a Member State or which wish to become established there in the classes of insurance defined in the Annex to this Directive.

Article 2

This Directive does not apply to:

1. The following kinds of insurance:

   (a) Life assurance, that is to say, the branch of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or an earlier death, life assurance with return of premiums, tontines, marriage assurance, and birth assurance;

   (b) Annuities;

   (c) Supplementary insurance carried on by life-assurance undertakings, that is to say, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;

   (d) Insurance forming part of a statutory system of social security;

   (e) The type of insurance existing in Ireland and the United Kingdom known as 'permanent health insurance not subject to cancellation'.

2. The following operations:

   (a) Capital redemption operations, as defined by the law in each Member State;

   (b) Operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

   (c) Operations carried out by organizations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

(d) Pending further coordination, which shall be implemented within four years of notification of this Directive, export credit insurance operations for the account of or with the support of the State.

Article 3

1. This Directive does not apply to mutual associations in so far as they fulfil all the following conditions:

— the articles of association must contain provisions for calling up additional contributions or reducing their benefits,

— their business does not cover liability risks — unless the latter constitute ancillary cover within the meaning of subparagraph (c) of the Annex — or credit and suretyship risks,

— the annual contribution income for the activities covered by this Directive must not exceed one million units of account,

and

— at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association.

2. This Directive shall not, moreover, apply to mutual associations which have concluded with other associations of this nature an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the concessionary undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

In such a case the concessionary undertaking shall be subject to the rules of this Directive.

Article 4

This Directive shall not apply to the following institutions unless their statutes or the law are amended as regards capacity:

(a) *In Germany*

The following institutions under public law enjoying a monopoly (Monopolanstalten):

1. Badische Gebäudeversicherungsanstalt, Karlsruhe,
2. Bayerische Landesbrandversicherungsanstalt, Munich,
3. Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, Munich,
4. Braunschweigische Landesbrandversicherungsanstalt, Brunswick,
5. Hamburger Feuerkasse, Hamburg,
6. Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt,
7. Hessische Brandversicherungsanstalt, Kassel,
8. Hohenzollernsche Feuerversicherungsanstalt, Sigmaringen,
9. Lippische Landesbrandversicherungsanstalt, Detmold,
10. Nassauische Brandversicherungsanstalt, Wiesbaden,
11. Oldenburgische Landesbrandkasse, Oldenburg,
12. Ostfriesische Landschaftliche Brandkasse, Aurich,
13. Feuersozietät Berlin, Berlin,
14. Württembergische Gebäudebrandversicherungsanstalt, Stuttgart.

However, territorial capacity shall not be regarded as modified in the case of a merger between such institutions which has the effect of maintaining for the benefit of the new institution the territorial capacity of the institutions which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these institutions takes over in respect of the same territory one or more of the classes of another such institution.

The following semi-public institutions:

1. Postbeamtenkrankenkasse,
2. Krankenversorgung der Bundesbahnbeamten;

(b) *In France*

The following institutions:

1. Caisse départementale des incendiés des Ardennes,
2. Caisse départementale des incendiés de la Côte-d'Or,
3. Caisse départementale des incendiés de la Marne,
4. Caisse départementale des incendiés de la Meuse,

5. Caisse départementale des incendiés de la Somme,

6. Caisse départementale grêle du Gers,

7. Caisse départementale grêle de l'Hérault;

(c) *In Ireland*

Voluntary Health Insurance Board;

(d) *In Italy*

The Cassa di Previdenza per l'assicurazione degli sportivi (Sportass);

(e) *In the United Kingdom*

The Crown Agents.

Article 5

For the purposes of this Directive:

(a) 'Unit of account' means that unit which is defined in Article 4 of the Statute of the European Investment Bank;

(b) 'Matching assets' means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency;

(c) 'Localization of assets' means the existence of assets, whether movable of immovable, within a Member State but shall not be construed as involving a requirement that movable property be deposited or that immovable property be subjected to restrictive measures such as the registration of mortgages. Assets represented by claims against debtors shall be regarded as situated in the Member State where they are to be liquidated.

Title II — Rules applicable to undertakings whose head offices are situated within the Community

Section A: Conditions of admission

Article 6

1. Each Member State shall make the taking-up of the business of direct insurance in its territory subject to an official authorization.

2. Such authorization shall be sought from the competent authority of the Member State in question by:

(a) Any undertaking which establishes its head office in the territory of such state;

(b) Any undertaking whose head office is situated in another Member State and which opens a branch or agency in the territory of the Member State in question;

(c) Any undertaking which, having received the authorization required under (a) or (b) above, extends its business in the territory of such State to other classes;

(d) Any undertaking which, having obtained in accordance with Article 7 (1) an authorization for a part of the national territory, extends its business beyond such part.

3. Member States shall not make an authorization subject to the lodging of a deposit or the provision of security.

Article 7

1. An authorization shall be valid for the entire national territory unless, and in so far as the national legislation permits, the applicant seeks permission to carry out his business only in a part of the national territory.

2. An authorization shall be given for a particular class of insurance. It shall cover the entire class, unless the applicant desires to cover only part of the risks pertaining to such class, as listed in point A of the Annex.

However:

(a) It shall be open to any Member State to grant an authorization for any group of classes indicated in point B of the Annex, provided that it attaches to such authorization the appropriate denomination specified therein;

(b) An authorization given for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified in point C of the Annex are fulfilled;

(c) Pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes.

Article 8

1. Each Member State shall require that any undertaking set up in its territory for which an authorization is sought shall:

(a) Adopt one of the following forms:

— in the case of the Kingdom of Belgium:

'société anonyme/naamloze vennootschap', 'société en commandite par actions/vennootschap bij wijze van geldschieting op aandelen', 'association d'assurance mutuelle/onderlinge verzekeringsmaatschappij', 'société coopérative/cooperative vennootschap',

— in the case of Denmark:

'Aktieselskaber' (joint stock companies), 'gensidige selskaber' (mutuals),

— in the case of the Federal Republic of Germany:

'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit', 'Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen',

— in the case of the French Republic:

'société anonyme', 'société à forme mutuelle', 'mutuelle', 'union de mutuelles',

— in the case of the Republic of Ireland:

'incorporated companies limited by shares or by guarantee or unlimited',

— in the case of the Italian Republic:

'società per azioni', 'società cooperativa', 'mutua di assicurazione',

— in the case of the Grand Duchy of Luxembourg:

'société anonyme', 'société en commandite par actions', 'association d'assurances mutuelles', 'société coopérative',

— in the case of the Kingdom of the Netherlands:

'naamloze vennootschap', 'onderlinge waarborgmaatschappij', 'coöperative vereniging',

— in the case of the United Kingdom:

'incorporated companies limited by shares or by guarantee or unlimited', 'societies registered under the Industrial and Provident Societies Acts', 'societies registered under the Friendly Societies Act' Lloyd's underwriters.

Furthermore, Member States may set up, where appropriate, undertakings under any form of known public law provided that such institutions have as their object insurance operations in conditions equivalent to those undertakings under private law;

(b) Limit its business activities to the business of insurance and operations directly arising therefrom to the exclusion of all other commercial business;

(c) Submit a scheme of operations in accordance with the provisions of Article 9;

(d) Possess the minimum guarantee fund provided for in Article 17 (2).

2. An undertaking seeking an authorization to extend its business to other classes or, in the case referred to in Article 6 (2) (d), to another part of the territory, shall be required to submit a scheme of operations in accordance with the provisions of Article 9 as regards such other classes or other part of the territory.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 16 and, if, with regard to such other classes, the provisions of Article 17 (2) require a higher minimum guarantee fund than previously, that it possesses such minimum.

3. These coordinating measures do not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the memorandum or articles of association, general and special policy conditions, tariffs and any other documents necessary for the normal exercise of supervision to be approved.

4. The abovementioned provisions may not require that any application for an authorization shall be dealt with in the light of the economic requirements of the market.

Article 9

The scheme of operations referred to in Article 8 (1) (c) shall contain the following particulars or proof concerning:

(a) The nature of the risks which the undertaking proposes to cover; the general and special policy conditions which it proposes to use;

(b) The tariffs which it is proposed to apply for each category of business;

(c) The guiding principles as to reinsurance;

(d) The items constituting the minimum guarantee fund;

(e) Estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them;

and in addition, for the first three financial years:

(f) Estimates relating to expenses of management other than costs of installation, and in particular current general expenses and commissions;

(g) Estimates relating to premiums or contributions and to claims;

(h) A forecast balance sheet;

(i) Estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

However, the particulars referred to in (a) and (b) above shall not be required with regard to the risks classified under Nos 4, 5, 6, 7 and 12 of point A of the Annex, nor shall those referred to in (b) above be required with regard to risks classified under Nos 14 and 15 of point A of the Annex. The particulars referred to in (a) and (b) need not be required in the case of risks classified under No 11 of the same point.

Article 10

1. Each Member State shall require that an undertaking having its head office in the territory of another Member State and seeking an authorization to open an agency or branch shall:

(a) Submit its statutes and a list of its directors and managers;

(b) Produce a certificate issued by the competent authorities of the head office country, attesting the classes of insurance which the undertaking is entitled to carry on and that it possesses the minimum guarantee fund or, if higher, the minimum solvency margin calculated in accordance with Article 16 (3), and stating the risks which it actually covers and the financial resources referred to in Article 11 (1) (e);

(c) Submit a scheme of operations in accordance with Article 11;

(d) Designate an authorized agent having his permanent residence and abode in the host country, and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the host country; if the agent has a legal personality, it must have its head office in the host country and it must in its turn designate an individual to represent it who complies with the above conditions. The designated agent shall not be refused by the Member State except on grounds relating to repute or technical qualifications such as apply to directors of undertakings whose head offices are situated in the territory of the State in question.

With regard to Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, assured persons must not be more unfavourably treated than if the litigation had been brought against businesses of a more conventional type. The authorized agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

2. Each Member State shall require that for the purpose of extending the business of the agency or branch, either to other classes or to other parts of the national territory in the case provided for in Article 6 (2) (d), the applicant for the authorization shall submit a scheme of operations in accordance with Article 11 and comply with the conditions contained in (1) (b) above.

3. These coordinating measures do not prevent Member States from enforcing provisions requiring, for all insurance undertakings, approval of the general and special policy conditions, tariffs and any other document necessary for the normal exercise of supervision.

4. The abovementioned provisions may not require that any application for an authorization shall be examined in the light of the economic requirements of the market.

Article 11

1. The scheme of operations of the agency or branch referred to in Article 10 (1) (c) shall contain the following particulars or proofs concerning:

(a) The nature of the risks which the undertaking proposes to cover in the host country; the general and special policy conditions which it proposes to use;

(b) The tariffs which the undertaking proposes to apply for each category of business;

(c) The guiding principles as to reinsurance;

(d) The state of the solvency margin of the undertaking, referred to in Articles 16 and 17;

(e) Estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them;

and in addition, for the first three financial years:

(f) Estimates relating to expenses of management;

(g) Estimates relating to premiums or contributions and to claims in respect of the new business;

(h) A forecast balance sheet for the agency or branch.

However, the particulars referred to in (a) and (b) above shall not be required with regard to the risks classified under Nos 4, 5, 6, 7 and 12 of point A of the Annex, nor shall those referred to in (b) above be required with regard to the risks classified under Nos 14 and 15 of point A of the Annex. The particulars referred to in (a) and (b) need not be required in the case of risks classified under No 11 of the same point.

2. The scheme of operations shall be accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years. If, however, it has not yet been in business for three financial years it shall be required to furnish them only for the financial years completed.

With regard to Lloyd's, the publication of the balance sheet and the profit and loss account shall be replaced by the compulsory presentation of annual trading accounts covering the insurance operations, and accompanied by an affidavit certifying that auditors' certificates have been supplied in respect of each insurer and showing that the responsibilities incurred as a result of these operations are wholly covered by the assets. These documents must allow authorities to form a view of the state of solvency of the Association.

3. The scheme of operations, together with the observations of the authorities competent to issue authorizations, shall be forwarded to the competent authorities of the head office country. The latter authorities shall communicate their Opinion to the former within three months from the receipt of the documents; if their Opinion has not been communicated upon the expiry of this time, it shall be deemed to be favourable.

Article 12

Any decision to refuse an authorization shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts should there be any refusal.

Such provision shall also be made with regard to cases where to competent authorities have not dealt with an application for an authorization upon the expiry of a period of six months from the date of its receipt.

Section B: Conditions for exercise of business

Article 13

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings.

Article 14

The supervisory authority of the Member State in whose territory the head office of the undertaking is situated must verify the state of solvency of the undertaking with respect to its entire business. The supervisory authorities of the other Member States shall provide the former with all the information necessary to enable such verification to be effected.

Article 15

1. Each Member State in whose territory business is carried on shall require the undertaking to establish sufficient technical reserves.

The amount of such reserves shall be determined according to the rules fixed by the State, or, in the absence of such rules, according to the established practices in such State.

2. Technical reserves shall be required to be covered by equivalent and matching assets localized in each country where business is carried on. Member States may, however, permit relaxations in the rules as to matching assets and the localization of assets.

Having regard to its special position, the Grand Duchy of Luxembourg may, pending coordination of legislation on the winding-up of undertakings, retain the system of guarantees for technical reserves existing at the time of entry into force of this Directive.

The regulations of the country where the business is is carried on shall determine the nature of such assets and, where appropriate, the extent to which they may be used for the purpose of covering the technical reserves and shall also determine the rules for valuing such assets.

3. If a Member State allows any technical reserves to be covered by claims against reinsurers, it shall fix the percentage so allowed. In such case, it may not require the assets representing such claims to be localized in its territory, notwithstanding the provisions of paragraph 2.

4. The supervisory authority of the Member State in whose territory the head office of an undertaking is situated shall verify that its balance sheet shows in respect of the technical reserves assets equivalent to the underwriting liabilities assumed in all the countries where it undertakes business.

Article 16

1. Each Member State shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.

The solvency margin shall correspond to the assets of the undertaking, free of all foreseeable liabilities, less any intangible items. In particular the following shall be considered:

— the paid up share capital or, in the case of a mutual concern, the effective initial fund,

— one-half of the share capital or the initial fund which is not yet paid up, once the paid-up part reaches 25 % of this capital or fund,

— reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities,

— any carry-forward of profits,

— in the case of a mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one-half of the difference between the maximum contributions and the contributions actually called in, and subject to an over-riding limit of 50 % of the margin,

— at the request of, and upon proof being shown by the undertaking, and with the agreement of the supervisory authorities of each other Member State where it carries on its business, any hidden reserves resulting from under-estimation of assets or over-estimation of liabilities in the balance sheet, in so far as such hidden reserves are not of an exceptional nature.

Over-estimation of technical reserves shall be determined in relation to their amount calculated by the undertaking in conformity to national regulations; however, pending further coordination of technical reserves, an amount equivalent to 75 % of the difference between the amount of the reserve for outstanding risks calculated at a flat rate by the undertaking by application of a minimum percentage in relation to premiums and the amount that would have been obtained by calculating the reserve contract by contract where the national law gives an option between the two methods, can be taken into account in the solvency margin up to 20 %.

2. The solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years. In the case, however, of undertakings which essentially underwrite only one or more of the risks of storm, hail, frost, the last seven years shall be taken as the period of reference for the average burden of claims.

3. Subject to the provisions of Article 17, the amount of the solvency margin shall be equal to the higher of the following two results:

first result (premium basis):

— the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of all direct business in the last financial year for all financial years, shall be aggregated,

— to this aggregate there shall be added the amount of premiums accepted for all reinsurance in the last financial year,

— from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to 10 million units of account, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The first result shall be obtained by multiplying the sum so calculated by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the undertaking after deduction of transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

Second result (claims basis):

— the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in (2) shall be aggregated,

— to this aggregate there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods,

— to this sum there shall be added the amount of provisions or reserves for outstanding claims established at the end of the last financial year both for direct business and for reinsurance acceptances,

— from this sum there shall be deducted the amount of claims paid during the periods specified in (2),

— from the sum then remaining, there shall be deducted the amount of provisions or reserves for outstanding claims established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in (2), shall be divided into two portions, the first extending up to seven million units of account and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The second result shall be obtained by multiplying the sum so obtained by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the business after transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

4. The fractions applicable to the portions referred to in (3) shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if

— the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance,

— a reserve is set up for increasing age,

— an additional premium is collected in order to set up a safety margin of an appropriate amount,

— the insurer may only cancel the contract before the end of the third year of insurance at the latest,

— the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

5. In the case of Lloyd's, the calculation of the first result in respect of premiums, referred to in paragraph 3, shall be made on the basis of net premiums, which shall be multiplied by a flat-rate percentage fixed annually by the internal auditor. This flat-rate percentage must be calculated on the basis of the most recent statistical data on commissions paid.

The details, together with the relevant calculations shall be sent to the authorities of the countries where Lloyd's is established.

Article 17

1. One-third of the solvency margin shall constitute the guarantee fund.

2. (a) The guarantee fund may not, however, be less than:

— 400 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 10, 11, 12, 13, 14 and 15 are covered,

— 300 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 1, 2, 3, 4, 5, 6, 7, 8, and 16 are covered,

— 200 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 9 and 17 are covered;

(b) If the business carried on by the undertaking covers several classes or several risks, only that class or risk for which the highest amount is required shall be taken into account;

(c) Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations.

Article 18

1. Member States shall not prescribe any rules as to the choice of the assets in excess of those representing the technical reserves referred to in Article 15.

2. Subject to the provisions of Article 15 (2), Article 20 (1) and (3) and Article 22 (1) last subparagraph, Member States shall not restrain the free disposal of the assets, whether movable or immovable property, forming part of the assets of authorized businesses.

The Federal Republic of Germany may, however, pending further coordination of the conditions for the taking up and pursuit of the business of life assurance maintain, with respect to health insurance within the meaning of Article 16 (4), the restrictions imposed on the free disposal of assets in so far as the free disposal of assets which cover mathematical reserves is subject to the agreement of a 'Treuhänder'.

Until further measures of coordination have been taken, the Kingdom of Denmark may however retain in force its legislation restricting the free disposal of assets built up by insurance undertakings to cover pensions payable under compulsory insurance against industrial accidents.

3. These provisions shall not preclude any measures which Member States, while observing the rules prevailing in the country where the business is carried on, as required under Article 15 (2), and while safeguarding the interests of the insured, are entitled to take as owners or members or associates of the undertakings in question.

Article 19

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account covering all types of operation, of its financial situation and solvency.

2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.

Article 20

1. If an undertaking does not comply with the provisions of Article 15, the supervisory authority of the country where it carries on its business may prohibit the free disposal of assets in that country after having informed the supervisory authorities of the country where the head office is situated of its intention.

2. For the purposes of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under Article 16 (3), the supervisory authority of the head-office country shall require a plan for the restoration of a sound financial position to be submitted for its approval.

3. If the solvency margin falls below the guarantee fund as defined in Article 17, the supervisory authority of the head-office country shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the authorities of other Member States in whose territories the undertaking is authorized of any measures and the latter shall, at the request of the former, take the same measures.

4. The competent supervisory authorities may further take all measures necessary to safeguard the interests of the insured in the cases provided for in (1) and (3).

5. The supervisory authorities of other Member States in whose territory the undertaking in question has also been authorized shall collaborate for the purpose of implementing the provisions referred to in (1) to (4).

Article 21

1. Each Member State shall make it possible for an undertaking to assign all or part of its portfolio of policies if the assignees possess the necessary solvency margin, due account being taken of the assignment.

The supervisory authorities concerned shall consult each other before approving such assignment.

2. Once approved by the competent supervisory authority, such assignment shall affect directly the policy-holders or insured concerned.

Section C: Withdrawal of authorization

Article 22

1. The authorization granted by the competent authority of the Member State in whose territory the head office is situated may be withdrawn by such authority if the undertaking:

(a) No longer fulfils the conditions of admission;

(b) Has been unable, within the time allowed, to take the measures contained in the restoration plan or finance scheme referred to in Article 20;

(c) Fails seriously in its obligations under the national regulations.

In the event of the withdrawal of the authorization, the supervisory authority of the head-office country shall notify such withdrawal to the supervisory authorities of other Member States which have issued an authorization to the undertaking; they shall, thereupon, also withdraw their authorizations. The supervisory authority of the head-office country shall, in conjunction with such other authorities, take all necessary measures to safeguard the interests of the insured and, in particular, shall restrict the free disposal of the assets of the undertaking if such restriction has not been already imposed in accordance with the provisions of Article 20 (1) and (3), subparagraph 2.

2. An authorization granted to an agency or branch of an undertaking whose head office is situated in another Member State may be withdrawn if the agency or branch:

(a) No longer fulfils the conditions for admission;

(b) Fails seriously in its obligations under the regulations of the country where it carries on its business, with respect in particular to the establishment of technical reserves as defined in Article 15.

Before withdrawing the authorization the supervisory authorities of the country where business is carried on shall consult the supervisory authority of the country where the head office is situated. If they deem it necessary to suspend the business of such agency or branch before consultation is concluded, they shall immediately advise the supervisory authority of the country where the head office is situated.

3. Any decision to withdraw an authorization or suspend business shall be supported by precise reasons and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts against such a decision.

Title III — Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community

Article 23

1. Each Member State shall make access to the business referred to in Article 1 by any undertaking whose head office is outside the Community subject to an official authorization.

2. A Member State may grant an authorization if the undertaking fulfils at least the following conditions:

(a) It is entitled to undertake insurance business under its national law;

(b) It establishes an agency or branch in the territory of such Member State;

(c) It undertakes to establish at the place of management of the agency or branch accounts specific to the business which it undertakes there, and to keep there all the records relating to the business transacted;

(d) It designates an authorized agent, to be approved by the competent authorities;

(e) It possesses in the country where it carries on its business assets of an amount equal to at least one-half of the minimum amount prescribed in Article 17 (2), in respect of the guarantee fund, and deposits one-fourth of the minimum amount as security;

(f) It undertakes to keep a margin of solvency in accordance with the requirements referred to in Article 25;

(g) It submits a scheme of operations in accordance with the provisions of Article 11 (1) and (2).

Article 24

Member States shall require undertakings to establish adequate technical reserves to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such technical reserves by means of assets which are equivalent to such reserves and are, to the extent fixed by the State in question, matching assets.

The law of the Member States shall be applicable to the calculation of technical reserves, the determination of categories of investments, and the valuation of assets.

The Member State in question shall require that the assets representing the technical reserves shall be localized in its territory. Article 15 (3) shall, however, be applicable.

Article 25

1. Each Member State shall require for agencies or branches established in its territory a solvency margin consisting of assets free of all foreseeable liabilities, less any intangible items. The solvency margin shall be calculated in accordance with the provisions of Article 16 (3). However, for the purpose of calculating this margin, account shall be taken only

of the premiums or contributions and claims pertaining to the business effected by the agency or branch concerned.

2. One-third of the solvency margin shall constitute the guarantee fund. The guarantee fund may not be less than one-half of the minimum required under Article 17 (2). The initial deposit lodged in accordance with Article 23 (2) (e) shall be counted towards such guarantee fund.

3. The assets representing the solvency margin must be kept within the country where the business is carried on up to the amount of the guarantee fund and the excess, within the Community.

Article 26

1. Any undertaking which, having obtained an authorization from one Member State, obtains an authorization from one or more other Member States to establish other agencies or branches therein may apply for one or more of the following advantages:

(a) That the solvency margin referred to in Article 25 be calculated in relation to the entire business which it undertakes within the Community; in such case, account shall be taken of the premiums or contributions and claims pertaining to the business effected by all the agencies or branches established within the Community;

(b) That it be dispensed from lodging the deposit required under Article 23 (2) (e), in such States also;

(c) That the assets representing the guarantee fund be kept in any one of the Member States in which it carries out business.

2. Should at least two of the Member States in question approve the application in whole or in part, the competent authority of the Member State in whose territory the oldest establishment of the applicant is situated shall verify the state of solvency of the undertaking with respect to the entire business carried on by it within the Member States which approve the application. However, at the request of the undertaking and with the unanimous approval of the Member States concerned, such verification may be carried out by the competent authority of another Member State. The authority carrying out the verification shall obtain from the other Member States the necessary information regarding the agencies or branches established in their territories.

3. The advantages conferred by this Article may be withdrawn upon the initiative of one or more of the Member States concerned.

Article 27

The provisions of Articles 19 and 20 shall also apply in relation to agencies and branches of undertakings to which this Title applies.

As regards the application of Article 20, the supervisory authority of the oldest establishment or the one that carries out in its place the verification of the overall solvency of branches or agencies shall be assimilated to the authority of the State in which the head office of a Community undertaking is situated.

Article 28

In the case of a withdrawal of authorization by the authority referred to in Article 26 (2), this authority shall notify the authorities of the other Member States where the undertaking operates and the latter supervisory authorities shall take the appropriate measures. If the reason for the withdrawal of the authorization is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 26, the Member States which gave their approval shall also withdraw their authorizations.

Article 29

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different to those provided for in this Title, for the purpose of ensuring, under conditions of reciprocity, adequate protection for insured persons in the Member States.

Title IV — Transitional and other provisions

Article 30

1. Member States shall allow undertakings referred to in Title II which at the entry into force of the implementing measures to this Directive provide insurance in their territories in one or more of the classes referred to in Article 1 a period of five years, commencing with the date of notification of this Directive, in order to comply with the requirements of Articles 16 and 17.

2. Furthermore, Member States may:

(a) allow any undertakings referred to in (1), which upon the expiry of the five-year period have not fully established the margin of solvency, a further period not exceeding two years in which to do so

provided that such undertakings have, in accordance with Article 20, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose;

(b) exempt undertakings referred to in (1) whose annual premium or contribution income upon the expiry of the period of five years falls short of six times the amount of the minimum guarantee fund required under Article 17 (2) from the requirement to establish such minimum guarantee fund before the end of the financial year in respect of which the premium or contribution income is as much as six times such minimum guarantee fund. After considering the results of the examination provided for under Article 33, the Council shall unanimously decide, on a proposal from the Commission, when this exemption is to be abolished by Member States.

3. Undertakings desiring to extend their operations within the meaning of Article 8 (2) or Article 10 may not do so unless they comply immediately with the rules of this Directive. However, the undertakings referred to in paragraph (2) (b) which within the national territory extend their business to other classes of insurance or to other parts of such territory may be exempted for a period of ten years from the date of notification of the Directive from the requirement to constitute the minimum guarantee fund referred to in Article 17 (2).

4. An undertaking having a structure different from any of those listed in Article 8 may continue, for a period of three years from the notification of the Directive, to carry on their present business in the legal form in which they are constituted at the time of such notification. Undertakings set up in the United Kingdom 'by Royal Charter' or 'by private Act' or 'by special public Act' may continue to carry on their business in their present form for an unlimited period.

Undertakings in Belgium which, in accordance with their objects, carry on the business of intervention mortgage loans or savings operations in accordance with No 4 of Article 15 of the provisions relating to the supervision of private savings banks, coordinated by the 'arrêté royal' of 23 June 1967, may continue to undertake such business for a period of three years from the date of notification of this Directive.

The Member States in question shall draw up a list of such undertakings and communicate it to the other Member States and the Commission.

5. At the request of undertakings which comply with the requirements of Articles 15, 16 and 17, Member States shall cease to apply restrictive measures such as those relating to mortgages, deposits and securities established under present regulations.

Article 31

Member States shall allow agencies or branches referred to in Title III which, at the entry into force of the implementing measures to this Directive, are undertaking one or more classes referred to in Article 1 and do not extend their business within the meaning of Article 10 (2) a maximum period of five years, from the date of notification of this Directive, in order to comply with the conditions of Article 25.

Article 32

During a period which terminates at the time of the entry into force of an agreement concluded with a third country pursuant to Article 29 and at the latest upon the expiry of a period of four years after the notification of the Directive, each Member State may retain in favour of undertakings of that country established in its territory the rules applied to them on 1 January 1973 in respect of matching assets and the localization of technical reserves, provided that notification is given to the other Member States and the Commission and that the limits of relaxations granted pursuant to Article 15 (2) in favour of the undertakings of Member States established in its territory are not exceeded.

Title V — Final provisions

Article 33

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community and of examining any difficulties which may arise in the application of this Directive.

Article 34

1. The Commission shall submit to the Council, within six years from the date of notification of this Directive, a report on the effects of the financial requirements imposed by this Directive on the situation on the insurance markets of the Member States.

2. The Commission shall, as and when necessary, submit interim reports to the Council before the end of the transitional period provided for in Article 30 (1).

Article 35

Member States shall amend their national provisions to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

The provisions thus amended shall, subject to Articles 30, 31 and 32, be applied within 30 months from the date of notification.

Article 36

Upon notification of this Directive, Member States shall ensure that the texts of the main provisions of a legislative, regulatory or administrative nature which they adopt in the field covered by this Directive are communicated to the Commission.

Article 37

The Annex shall form an integral part of this Directive.

Article 38

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

ANNEX

A. Classification of risks according to classes of insurance

1. *Accident* (including industrial injury and occupational diseases)
   - — fixed pecuniary benefits
   - — benefits in the nature of indemnity
   - — combinations of the two
   - — injury to passengers

2. *Sickness*
   - — fixed pecuniary benefits
   - — benefits in the nature of indemnity
   - — combinations of the two

3. *Land vehicles* (other than railway rolling stock)

   All damage to or loss of
   - — land motor vehicles
   - — land vehicles other than motor vehicles

4. *Railway rolling stock*

   All damage to or loss of railway rolling stock

5. *Aircraft*

   All damage to or loss of aircraft

6. *Ships (sea, lake and river and canal vessels)*

   All damage to or loss of
   - — river and canal vessels
   - — lake vessels
   - — sea vessels

7. *Goods in transit* (including merchandise, baggage, and all other goods)

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport

8. *Fire and natural forces*

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to
   - — fire
   - — explosion
   - — storm
   - — natural forces other than storm
   - — nuclear energy
   - — land subsidence

9. *Other damage to property*

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8

10. *Motor vehicle liability*

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability)

11. *Aircraft liability*

All liability arising out of the use of aircraft (including carrier's liability)

12. *Liability for ships (sea, lake and river and canal vessels)*

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)

13. *General liability*

All liability other than those forms mentioned under Nos 10, 11 and 12

14. *Credit*

— insolvency (general)

— export credit

— instalment credit

— mortgages

— agricultural credit

15. *Suretyship*

— suretyship (direct)

— suretyship (indirect)

16. *Miscellaneous financial loss*

— employment risks

— insufficiency of income (general)

— bad weather

— loss of benefits

— continuing general expenses

— unforeseen trading expenses

— loss of market value

— loss of rent or revenue

— indirect trading losses other than those mentioned above

— other financial loss (non-trading)

— other forms of financial loss

17. *Legal expenses*

Legal expenses and costs of litigation

The risks included in a class may not be included in any other class except in the cases referred to in point C.

B. Description of authorizations granted for more than one class of insurance

Where the authorization simultaneously covers:

(a) Classes Nos 1 and 2, it shall be named 'Accident and Health Insurance';

(b) Classes Nos 1 (fourth indent), 3, 7 and 10, it shall be named 'Motor Insurance';

(c) Classes Nos 1 (fourth indent), 4, 6, 7 and 12, it shall be named 'Marine and Transport Insurance';

(d) Classes Nos 1 (fourth indent), 5, 7 and 11, it shall be named 'Aviation Insurance';

(e) Classes Nos 8 and 9, it shall be named 'Insurance against Fire and other Damage to Property';

(f) Classes Nos 10, 11, 12 and 13, it shall be named 'Liability Insurance';

(g) Classes Nos 14 and 15, it shall be named 'Credit and Suretyship Insurance';

(h) All classes, it shall be named at the choice of the Member State in question, which shall notifiy the other Member States and the Commission of its choice.

C. Ancillary risks

An undertaking obtaining an authorization for a principal risk belonging to one class or a group of classes may also insure risks included in another class without an authorization being necessary for them if they:

— are connected with the principal risk,

— concern the object which is covered against the principal risk, and

— are covered by the contract insuring the principal risk.

However, the risks included in classes 14 and 15 in point A of this Annex may not be regarded as risks ancillary to other classes.

13. 7. 76 Official Journal of the European Communities No L 189/13

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 29 June 1976

amending Directive 73/239/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance

(76/580/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

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

Whereas Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (3), to facilitate the taking up and pursuit of the said business, has eliminated certain divergencies between national legislations; whereas it has ensured adequate protection for insured and third parties in all the Member States and, at the same time, co-ordinated in particular the provisions relating to the financial guarantees required of insurance undertakings;

Whereas, pursuant to that Directive, the minimum guarantee fund which each Member State requires of all insurance undertakings with head offices in its territory may not be less than certain amounts which are expressed in units of account in the Directive;

Whereas the unit of account is also referred to in order to determine the amount of the contribution revenue of certain mutual associations below which the Directive does not apply;

Whereas, for the purposes of the said Directive 'unit of account' means that unit which is defined in Article 4 of the Protocol on the Statute of the European Investment Bank; whereas on the basis of this definition the conversion of the amounts mentioned in the Directive into national currencies would lead to distortions of competition between undertakings whose head offices are situated in the various Member States;

Whereas by Decision 75/250/EEC (4) the Council defined on 21 April 1975 a European unit of account representing the average of any changes in the value of the currencies of the Member States; whereas the conversion rate for each currency against this unit of account is fixed automatically by reference to daily quotations on the exchange markets; whereas the use of this European unit of account places insurance undertakings on the same competitive footing;

(1) OJ No C 28, 9. 2. 1976, p. 16.
(2) OJ No C 35, 16. 2. 1976, p. 17.
(3) OJ No L 228, 16. 8. 1973, p. 3.
(4) OJ No L 104, 24. 4. 1975, p. 35.

Whereas Article 4 of the aforesaid Protocol is undergoing revision ; whereas, pursuant to the Decision of 18 March 1975 of the Board of Governors of the EIB, the Bank uses the European unit of account defined by Council Decision 75/250/EEC ;

Whereas more recently, on 18 December 1975, the Commission, by Decision No 3289/75/ECSC (1), adopted, with the unanimous assent of the Council, this European unit of account in applying the Treaty establishing the European Coal and Steel Community ;

Whereas the value of the European unit of account in each of the Member States' currencies is fixed daily and whereas a reference day must also be fixed for its use when applying this Directive ;

Whereas, however, in certain Member States the introduction of the European unit of account would lead to a reduction in terms of national currency of the amounts expressed in units of account in the Directive ; whereas such a reduction would lead to a corresponding reduction in the protection now given to insured parties by the mimimum gurarantee fund ; whereas the said amounts should be reviewed every two years ; whereas as a result of this review, the amounts in question are likely to be amended ; whereas in certain Member States the reduction in the amounts expressed in national currency could, under these conditions, be swiftly followed by a further adjustment in those States ; whereas the implementation of these successive measures would raise difficulties for undertakings and supervisory authorities ; whereas, therefore, these amounts should be kept at the level which they would have reached on the basis of the conversion rate applicable before the introduction of the European unit of account, if this level is higher than that of the European unit of account, until the amounts fixed in Directive 73/239/EEC are reviewed ;

Whereas changes in the economic and monetary situation of the Community justify the examination at regular intervals of the latter amounts,

HAS ADOPTED THIS DIRECTIVE

Article 1

1. The following shall be substituted for the text of Article 5 (a) of Directive 73/239/EEC :

'(a) Unit of account means the European unit of account (EUA) as defined by Commission Decision 3289/75/ECSC (1). Wherever this Directive refers to the unit of account, the conversion value in national currency to be adopted shall, as from 31 December of each year, be that of the last day of the preceding month of October for which EUA conversion values are available in all the Community currencies ;'.

2. The following note is added as a footnote to the page where Article 5 of Directive 73/239/EEC appears :

'(1) OJ No L 327, 19. 12. 1975, p. 4.'.

Article 2

As an transitional measure and until the amounts expressed in units of account in Directive 73/239/EEC have been amended for the first time, the amounts expressed in national currency for conversion of the unit of account, as defined in Article 5 (a), shall not be less than those derived according to the rate of conversion applicable to the unit of account before the adoption of this Directive.

Article 3

Every two years, the Council, acting on a proposal from the Commission, shall review and if necessary amend the amounts expressed in Directive 73/239/EEC in units of account, taking into account changes in the economic and monetary situation of the Community.

Article 4

The national provisions amended in accordance with this Directive shall be applicable as from 31 December 1976.

Article 5

This Directive is addressed to the Member States.

Done at Luxembourg, 29 June 1976.

For the Council

The President

G. THORN

(1) OJ No L 327, 19. 12. 1975, p. 4

17. 12. 84 Official Journal of the European Communities No L 339/21

COUNCIL DIRECTIVE

of 10 December 1984

amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) 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

(84/641/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the First Council Directive (73/239/EEC) of 4 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 (4), hereinafter referred to as the 'First Directive', as amended by Directive 76/580/EEC (5), eliminated certain differences between the laws of Member States in order to facilitate the taking-up and pursuit of the above business;

Whereas considerable progress has been achieved in that area of business involving the provision of benefits in kind; whereas such benefits are governed by provisions which differ from one Member State to another; whereas those differences constitute a barrier to the exercise of the right of establishment;

Whereas, in order to eliminate that barrier to the right of establishment, it should be specified that an activity is not excluded from the application of the First Directive for the simple reason that it constitutes a benefit solely in kind or one for which the person providing it uses his own staff or equipment only; whereas, therefore such provision of assistance consisting in the promise of aid on the occurrence of a chance event should be covered by the above Directive, taking into account the special characteristics of such assistance;

Whereas the purpose of the inclusion, for reasons of supervision, of assistance operations in the scope of the First Directive, which does not involve the definition of these operations, is not to affect the fiscal rules applicable to them;

Whereas the sole fact of providing certain forms of assistance on the occasion of an accident or breakdown involving a road vehicle normally occurring in the territory of the Member State of the undertaking providing cover is not a reason for any person or undertaking that is not an insurance undertaking to be subject to the arrangements of the First Directive;

Whereas provision should be made for certain relaxations to the condition that the accident or breakdown must occur in the territory of the Member State of the undertaking providing cover in order to take into account either the existence of reciprocal agreements or of certain specific circumstances relating to the geographical situation or to the structure of the organizations concerned, or to the very limited economic importance of the operations referred to;

Whereas an organization of a Member State whose main activity is to provide services on behalf of the public authorities should be excluded from the scope of the First Directive;

Whereas an undertaking offering assistance contracts must possess the means necessary for it to provide the benefits in kind which it offers within an appropriate period of time; whereas special provisions should be laid down for calculating the solvency margin and the minimum amount of the guarantee fund which such undertaking must possess;

Whereas certain transitional provisions are necessary in order to permit undertakings providing only assistance to adapt themselves to the application of the First Directive;

Whereas, having regard to special structural and geographical difficulties, it is necessary to allow a transitional period to the automobile club of a Member State for bringing itself into line with the said Directive concerning repatriation of the vehicle, possibly accompanied by the driver and passengers;

(1) OJ No C 51, 10. 3. 1981, p. 5; OJ No C 30, 4. 2. 1983, p. 6.
(2) OJ No C 149, 14. 6. 1982, p. 129.
(3) OJ No C 343, 31. 12. 1981, p. 9.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 189, 13. 7. 1976, p. 13.

Whereas it is necessary to keep up-to-date the provisions of the First Directive concerning the legal forms which insurance undertakings may assume; whereas certain provisions of the said Directive concerning the rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are situated outside the Community should be amended in order to make them consistent with the provisions of Directive 79/267/EEC (1),

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 1 of the First Directive is hereby replaced by the following:

'*Article 1*

1. This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance, including the provision of assistance referred to in paragraph 2, carried on by undertakings which are established in the territory of a Member State or which wish to become established there.

2. The assistance activity shall be the assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence. It shall consist in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

The aid may consist in the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

The assistance activity does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

3. The classification by classes of the activity referred to in this Article appears in the Annex.'

Article 2

Article 2 of the First Directive is hereby supplemented by the following point:

3. The assistance activity in which liability is limited to the following operations provided in the event of an accident or breakdown involving a road vehicle which normally occurs in the territory of the Member State of the undertaking providing cover:

— an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment,

— the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means,

— if provided for by the Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State,

unless such operations are carried out by an undertaking subject to this Directive.

In the cases referred to in the first two indents, the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover

(a) shall not apply where the latter is a body of which the beneficiary is a member and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement;

(b) shall not preclude the provision of such assistance in Ireland and the United Kingdom by a single body operating in both States.

In the circumstances referred to in the third indent, where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland, the vehicle, possibly accompanied by the driver and passengers, may be conveyed to their home, point of departure or original destination within either territory.

Moreover, the Directive does not concern assistance operations carried out on the occasion of an accident to or the breakdown of a road vehicle and consisting in conveying the vehicle which has been involved in an accident or has

(1) OJ No L 63, 13. 3. 1979, p. 1.

broken down outside the territory of the Grand Duchy of Luxembourg, possibly accompanied by the driver and passengers, to their home, where such operations are carried out by the Automobile Club of the Grand Duchy of Luxembourg.

Undertakings subject to this Directive may engage in the activity referred to under this point only if they have received authorization for class 18 in point A of the Annex without prejudice to point C of the said Annex. In that event this Directive shall apply to the operations in question.'

Article 3

Article 3 (1) of the First Directive is hereby supplemented by the following subparagraph:

'This Directive shall not apply to undertakings which fulfil the following conditions:

— the undertaking does not pursue any activity falling within the scope of this Directive other than the one described in class 18 in point A of the Annex,

— this activity is carried out exclusively on a local basis and consists only of benefits in kind, and

— the total annual income collected in respect of the activity of assistance to persons who get into difficulties does not exceed 200 000 ECU.'

Article 4

Article 4 of the First Directive is hereby supplemented by the following point:

'(f) *in Denmark*

Falcks Redningskorps A/S, Kobenhavn.'

Article 5

In the penultimate indent of Article 8 (1) (a) of the First Directive 'coöperatieve vereniging' is deleted.

Article 6

Articles 8 (3) and 10 (3) of the First Directive are herby supplemented by the following subparagraph:

'Nor do they prevent Member States from subjecting undertakings requesting or having obtained authorization for class 18 in point A of the Annex to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.'

Article 7

In Articles 9, first paragraph, and 11 (1) first subparagraph of the First Directive, point (e) is hereby replaced by the following:

'(e) estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them, and, where the risks to be covered are listed under No 18 in point A of the Annex, the resources available to the undertaking for providing the promised assistance;'

Article 8

Article 13 of the First Directive is hereby replaced by the following:

'*Article 13*

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings. Should the undertakings in question be authorized to cover the risks listed under No 18 in point A of the Annex, Member States shall also collaborate in supervising the resources available to those undertakings for carrying out the assistance operations they have undertaken to perform, where their laws provide for supervision of such resources.'

Article 9

Article 16 (3) of the First Directive is hereby supplemented by the following subparagraph:

'In the case of the risks listed under No 18 in point A of the Annex, the amount of claims paid used to calculate the second result (claims basis) shall be the costs borne by the undertaking in respect of assistance given. Such costs shall be calculated in accordance with the national provisions of the Member State in whose territory the head office of the undertaking is situated.'

Article 10

In Article 17 of the First Directive, the second indent of paragraph 2 (a) is hereby replaced by the following:

'— 300 000 ECU in the case where call or some of the risks included in one of the classes listed in point A of the Annex under Nos 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 are covered.'

Article 11

Article 19 of the First Directive is hereby replaced by the following:

Article 19

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation, solvency and, as regards cover for risks listed under No 18 in point A of the Annex, other resources available to them for meeting their liabilities, where its laws provide for supervision of such resources.

2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision and, as regards cover for risks listed under No 18 in point A of the Annex, to indicate the resources available to them for meeting their liabilities, where their laws provide for supervision of such resources. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.'

Article 12

Article 26 of the First Directive is hereby replaced by the following:

Article 26

1. Any undertaking which has requested or obtained authorization from more than one Member State may apply for the following advantages which may be granted only jointly:

(a) the solvency margin referred to in Article 25 shall be calculated in relation to the entire business which it carries on within the Community; in such case, account shall be taken only of the operations effected by all the agencies or branches established within the Community for the purposes of this calculation;

(b) the deposit required under Article 23 (2) (e) shall be lodged in only one of those Member States;

(c) the assets representing the guarantee fund shall be localized in any one of the Member States in which it carries on its activities.

2. Application to benefit from the advantages provided for in paragraph 1 shall be made to the competent authorities of the Member States concerned. The application must state the authority of the Member State which in future is to supervise the solvency of the entire business of the agencies or branches established within the Community. Reasons must be given for the choice of authority made by the undertaking. The deposit shall be lodged with that Member State.

3. The advantages provided for in paragraph 1 may only be granted if the competent authorities of all Member States in which an application has been made agree to them. They shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the agencies or branches within the Community.

The supervisory authority selected shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the agencies and branches established in their territory.

4. At the request of one or more of the Member States concerned, the advantages granted under this Article shall be withdrawn simultaneously by all Member States concerned.'

Article 13

The second paragraph of Article 27 of the First Directive is hereby replaced by the following:

'As regards the application of Article 20, where an undertaking qualifies for the advantages provided for in Article 26 (1), the authority responsible for verifying the solvency of agencies or branches established within the Community with respect to their entire business shall be treated in the same way as the authority of the State in the territory of which the head office of a Community undertaking is situated.'

Article 14

In point A of the Annex to the First Directive the following class is hereby added before the last sentence:

'18. *Assistance*

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence.'

Article 15

Any Member State may, in its territory, make the provision of assistance to persons who get into difficulties in circumstances other than those referred to in Article 1 subject to the arrangements introduced by the First Directive. If a Member State makes use of this possibility it shall, for the purposes of applying these arrangements,

treat such activity as if it were listed in class 18 in point A of the Annex to the First Directive without prejudice to point C thereof.

The preceding paragraph shall in no way affect the possibilities for classification laid down in the Annex to the First Directive for activities which obviously come under other classes.

It shall not be possible to refuse authorization to an agency or branch solely on the grounds that the activity covered by this Article is classified differently in the Member State in the territory of which the head office of the undertaking is situated.

Transitional provisions

Article 16

1. Member States may allow undertakings which, on the date of notification of this Directive, provide only assistance in their territories, a period of five years from that date in order to comply with the requirements set out in Articles 16 and 17 of the First Directive.

2. Member States may allow any undertakings referred to in paragraph 1 which, upon expiry of the five-year period, have not fully established the solvency margin, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 20 of the First Directive, submitted for the approval of the supervisory authority the measures which they propose to take for that purpose.

3. Any undertaking referred to in paragraph 1 which wishes to extend its business within the meaning of Article 8 (2) or Article 10 of the First Directive may do so only on condition that it complies forthwith with that Directive.

4. Any undertaking referred to in paragraph 1 which has a form different to those referred to in Article 8 of the First Directive may continue for a period of three years from the date of notification of this Directive to carry on its existing business in the form in which it exists on that date.

5. This Article shall apply *mutatis mutandis* to undertakings formed after the date of notification of this Directive which take over business already conducted on that date by a legally distinct body.

Article 17

Member States may allow agencies and branches referred to in Title III of the First Directive which provide only assistance in the territories of those Member States a maximum period of five years commencing on the date of notification of this Directive in order to comply with Article 25 of the First Directive, provided such agencies or branches do not extend their business within the meaning of Article 10 (2) of the First Directive.

Article 18

During a period of eight years from the date of notification of this Directive, the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover shall not apply to the operations referred to in the third indent of the first subparagraph of Article 2 (3) of the First Directive where these operations are carried out by the ELPA (Automobile and Touring Club of Greece).

Final provisions

Article 19

1. Member States shall amend their national provisions in order to comply with this Directive not later than 30 June 1987. They shall forthwith inform the Commission thereof. The provisions thus amended shall, subject to Articles 16, 17 and 18 of this Directive apply at the latest beginning on 1 January 1988.

2. Member States shall communicate to the Commission the texts of the main provisions laid down by law, regulation or administrative action which they adopt in the field governed by this Directive.

Article 20

The Commission shall report to the Council, within six years of notification of this Directive, on the difficulties arising from the application thereof, and in particular Article 15 thereof. It shall, if appropriate, submit proposals to put an end to them.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, 10 December 1984.

For the Council

The President

A. DUKES

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 22 June 1987

amending, as regards credit insurance and suretyship insurance, First Directive 73/239/EEC 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

(87/343/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas 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 (4), as amended by Directive 76/580/EEC (5), eliminated a number of divergencies in the laws of the Member States in order to facilitate the taking-up and pursuit of that business;

Whereas, however, Article 2 (2) (d) of the said Directive states that it does not apply, 'pending further coordination, which shall be implemented within four years of notification of this Directive', to 'export credit insurance operations for the account of or with the support of the State'; whereas, since the protection of insured persons normally provided by the Directive is provided by the State itself where export credit insurance operations are carried out for the account of or with the guarantee of the State, such operations should continue to be excluded from the scope of the said Directive pending further coordination;

Whereas Article 7 (2) (c) of the said Directive states that 'pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes'; whereas it follows from this that there are barriers to the establishment of agencies and branches; whereas the present Directive is intended to remedy this situation;

Whereas the interests of insured persons are sufficiently safeguarded, as regards suretyship insurance, by the said Directive; whereas the prohibition in the Federal Republic of Germany on the simultaneous undertaking of suretyship insurance and other classes should be lifted;

Whereas insurance undertakings whose credit insurance business amounts to more than a small proportion of their total business require an equalization reserve which does not form part of the solvency margin; whereas that reserve should be calculated according to the methods laid down in this Directive, which are recognized as equivalent;

(1) OJ No C 245, 29. 9. 1979, p. 7 and OJ No C 5, 7. 1. 1983, p. 2.
(2) OJ No C 291, 10. 11. 1980, p. 70.
(3) OJ No C 146, 16. 6. 1980, p. 6.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 189, 13. 7. 1976, p. 13.

Whereas in view of the cyclical nature of claims in credit insurance, the latter should, for the purposes of calculating the average burden of claims within the meaning of Article 16 (2) of Directive 73/239/EEC, be treated on the same basis as insurance against storm, hail and frost risks;

Whereas the nature of the risk in credit insurance is such that undertakings which transact such business ought to form a higher guarantee fund than is at present provided for in the said Directive;

Whereas a sufficient period of time should be granted to undertakings which are required to meet that obligation;

Whereas it is unnccessary to impose this obligation on undertakings whose operations in this class of insurance do not exceed a certain volume;

Whereas, in view of the provisions of this Directive in respect of credit insurance, the maintenance by the Federal Republic of Germany of the prohibition of the simultaneous undertaking of credit insurance and other classes is no longer justified, and such prohibition should therefore be removed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 73/239/EEC is hereby amended as follows:

1. Article 2 (2) (d) shall be replaced by the following:

'(d) pending further coordination, export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.'

2. In the second subparagraph of Article 7 (2) (c), the words 'credit and suretyship insurance' shall be deleted.

3. The following Article shall be inserted:

'Article 15a

1. Each Member State shall require undertakings established on its territory and underwriting risks included under class 14 in point A of the Annex (hereinafter referred to as "credit insurance") to set up an equalization reserve for the purpose of offsetting any technical deficit or above-average claims ratio arising in that class for a financial year.

2. The equalization reserve must be calculated, under the rules laid down by each Member State, in accordance with one of the four methods set out in point D of the Annex which shall be regarded as being equivalent.

3. Up to the amount calculated in accordance with the methods set out in point D of the Annex, the equalization reserve shall be disregarded for purposes of calculating the solvency margin.

4. Member States may exempt establishments from the obligation to set up an equalization reserve for credit insurance business where the premiums or contributions receivable in respect of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than 2 500 000 ECU.'

4. In Article 16 (2), the second sentence shall be replaced by the following text:

'In the case, however, of undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.'

5. The first indent of Article 17 (2) (a) shall be replaced by the following indents:

'— 1 400 000 ECU in the case where all or some of the risks included in the class listed in point A of the Annex under No 14 are covered. This provision shall apply to every undertaking for which the annual amount of premiums or contributions due in this class for each of the last three financial years exceeded 2 500 000 ECU or 4 % of the total amount of premiums or contributions receivable by the undertaking concerned;

— 400 000 ECU in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 10, 11, 12, 13 and 15 and, insofar as the first indent does not apply, No 14.'

6. The following subparagraph shall be added to Article 17 (2):

'(d) Where an undertaking carrying on credit insurance is required to increase the fund referred to in subparagraph (a), first indent, to 1 400 000 ECU, the Member State concerned shall allow such undertaking:

— a period of three years in which to bring the fund up to 1 000 000 ECU,

— a period of five years to bring the fund up to 1 200 000 ECU,

— a period of seven years to bring the fund up to 1 400 000 ECU.

These periods shall run from the date from which the conditions referred to in the first indent of subparagraph (a) are fulfilled.'

7. The following shall be inserted in Article 19:

'1a. In respect of credit insurance, the undertaking shall make available to the supervisory authority accounts showing both the technical results and the technical reserves relating to that business.'

8. Point D in the Annex to this Directive shall be added to the Annex.

Article 2

Member States shall take the measures necessary to comply with this Directive by 1 January 1990. They shall forthwith inform the Commission thereof.

They shall apply these measures from 1 July 1990 at the latest.

Article 3

Following notification (1) of this Directive, Member States shall communicate to the Commission the texts of the main provisions of national legislation which they adopt in the field governed by this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1987.

For the Council

The President

L. TINDEMANS

(1) This Directive was notified to the Member States on 25 June 1987.

ANNEX

'D. Methods of calculating the equalization reserve for the credit insurance class

Method No 1

1. In respect of the risks included in the class of insurance in point A No 14 (hereinafter referred to as 'credit insurance'), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

2. Such reserve shall in each financial year receive 75 % of any technical surplus arising on credit insurance business, subject to a limit of 12 % of the net premiums or contributions until the reserve has reached 150 % of the highest annual amount of net premiums or contributions received during the previous five financial years.

Method No 2

1. In respect of the risks included in the class of insurance listed in point A No 14 (hereinafter referred to as 'credit insurance') the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

2. The minimum amount of the equilization reserve shall be 134 % of the average of the premiums or contributions received annually during the previous five financial years after subtraction of the cessions and addition of the reinsurance acceptances.

3. Such reserve shall in each of the successive financial years receive 75 % of any technical surplus arising in that class until the reserve is at least equal to the minimum calculated in accordance with paragraph 2.

4. Member States may lay down special rules for the calculation of the amount of the reserve and/or the amount of the annual levy in excess of the minimum amounts laid down in this Directive.

Method No 3

1. An equalization reserve shall be formed for class 14 in point A (hereinafter referred to as 'credit insurance') for the purpose of offsetting any above-average claims ratio for a financial year in that class of insurance.

2. The equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached, or is restored to, the required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The required amount shall be equal to six times the standard devition of the claims ratios in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

Irrespective of claims experience, 3,5 % of the required amount of the equalization reserve shall be first placed to that reserve each financial year until its required amount has been reached or restored.

The lenght of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

The required amount of the equalization reserve and the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin.

Method No 4

1. An equalization reserve shall be formed for class 14 in point A (hereinafter referred to as 'credit insurance') for the purpose of offsetting any above-average claims ratio for a financial year in that class of insurance.

2. The equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached the maximum required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The maximum required amount shall be equal to six times the standard deviation of the claims ratio in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve until it has reached the minimum required amount. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The minimum required amount shall be equal to three times the standard deviation of the claims ratio in the reference from the average claims ratio multiplied by the earned premiums for the financial year.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

Both required amounts of the equalization reserve and the amount to be placed to it or the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin and that safety margin is more than one-and-a-half times the standard deviation of the claims ratio in the reference period. In such a case the amounts in question shall be multiplied by the quotient or one-and-a-half times the standard deviation and the safety margin.

The following is added at the end of Article 1:

'— in Greece:
ἡ ἀνώνυμη ἑταιρία
ἡ ἑταιρία περιωρισμένης εὐθύνης
ἡ ἑτερόρρυθμη κατὰ μετοχὲς ἑταιρία'.

(d) **Public works contracts**

Council Directive 71/305/EEC of 26 July 1971 (OJ No L 185, 16. 8. 1971, p. 5).

At the end of Article 24, the full stop is replaced by semi-colon and the following is added:

'In Greece:

a certificate delivered under oath by a notary regarding the exercise of the profession of public works contractor may be requested'.

In Annex I, the following is added:

'VIII. In Greece:

other legal persons governed by public law whose public works contracts are subject to control by the State'.

(e) **Banks and other financial establishments**

1. First Council Directive 73/239/EEC of 24 July 1973 (OJ No L 228, 16. 8. 1973, p. 3).

In Article 8 (1) (a), the following is added:

'in the case of the Hellenic Republic:
— ἀνώνυμη ἑταιρία
— ἀλληλασφαλιστικὸς συνεταιρισμός'.

2. Council Directive 77/92/EEC of 13 December 1976 (OJ No L 26, 31. 1. 1977, p. 14).

In Article 2 (2) (b), the following is added:

'— in Greece:
Γενικὸς πράκτωρ
Πράκτωρ'.

3. First Council Directive 77/780/EEC of 12 December 1977 (OJ No L 322, 17. 12. 1977, p. 30).

In Article 2 (2), an additional indent is added (between the indents concerning Germany and France respectively) as follows:

'— in Greece:
τῆς Ἑλληνικῆς Τραπέζης Βιομηχανικῆς Ἀναπτύξεως, τοῦ Ταμείου Παρακαταθηκῶν καὶ Δανείων, τῆς Τραπέζης Ὑποθηκῶν, τοῦ Ταχυδρομικοῦ Ταμιευτηρίου καὶ τῆς "Ἑλληνικαὶ Ἐξαγωγαὶ Α.Ε."'.

4. First Council Directive 79/267/EEC of 5 March 1979 (OJ No L 63, 13. 3. 1979, p. 1).

The following indent is added after the third indent of Article 8 (1) (a):

'— in the case of the Hellenic Republic:
ἀνώνυμη ἑταιρία'.

5. Council Directive 79/279/EEC of 5 March 1979 (OJ No L 66, 16. 3. 1979, p. 1).

In Article 21 (1), 'forty-one' is replaced by 'forty-five'.

(f) **Doctors**

Council Directive 75/362/EEC of 16 June 1975 (OJ No L 167, 30. 6. 1975, p. 1).

(a) The following is added to the end of Article 3:

'(j) in Greece:
πτυχίο ἰατρικῆς Σχολῆς (degree awarded by the Faculty of Medicine) awarded by a University Faculty of Medicine, and πιστοποιητικὸ πρακτικῆς ἀσκήσεως (certificate of practical training) issued by the Ministry for Social Services.'

(b) Article 5 (2).

An additional subparagraph is added to paragraph 2:

'in Greece:
τίτλος ἰατρικῆς εἰδικότητος (certificate of specialization in medicine) issued by the Minitry for Social Services'.

(c) Article 5 (3).

The following references are added to each of the subparagraphs of paragraph 3:

— anaesthetics:
'Greece: ἀναισθησιολογία',
— general surgery:
'Greece: χειρουργική',
— neurological surgery:
'Greece: νευροχειρουργική',
— obstetrics and gynaecology:
'Greece: μαιευτική—γυναικολογία',
— general (internal) medicine:
'Greece: παθολογία',

In Portugal: Agente comercial
Corretor
Commissario
Vendedor em leiloes
Caixeiro viajante
Caixeiro de praça
Representantes comerciais'

(b) Service undertakings

1. Council Directive 67/43/EEC of 12 January 1967 (OJ No 10, 19. 1. 1967, p. 140/67), as amended by:
   — the 1972 Act of Accession (OJ No L 73, 27. 3. 1972, p. 14),
   — the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

   The following is added to Article 2 (3):

   'In Spain:
   — agentes de la propiedad inmobiliaria
   — administradores de fincas urbanas
   — agencias inmobiliarias y de alquiler
   — promotoras inmobiliarias
   — sociedades y empresas inmobiliarias
   — expertos inmobiliarios

   In Portugal:
   — agências imobiliárias
   — sociedades imobiliárias
   — administradores de imóveis
   — peritos imobiliários
   — loteadores'.

2. Council Directive 82/470/EEC of 29 June 1982 (OJ No L 213, 21. 7. 1982, p. 1).

   In Article 3, the following is inserted after the entries for Denmark:

'*Spain*

A. Agente de transportes
   Agente de servicios complementarios del transporte ferroviario
   Consignatario de buques
   Consignatario
   Agente de aduanas
   Transitario

B. Agente de viajes

C. Depositario
   Almacenista

D. Pesador y medidor oficial
   Pesador y medidor público',

and the following after the entries for the Netherlands:

'*Portugal*

A. Transitario
   Agente de navegaçao
   Corretor de navios

B. Agente de viagens
   Agente de transporte aéreo

C. Depositário

D. (none)'.

(c) Banks and other financial establishments, insurance

1. First Council Directive 73/239/EEC of 24 July 1973 (OJ No L 228, 16. 8. 1973, p. 3), as amended by:
   — Council Directive 76/580/EEC of 29 June 1976 (OJ No L 189, 13. 7. 1976, p. 13),
   — the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),
   — Council Directive 84/641/EEC of 10 December 1984 (OJ No L 339, 27. 12. 1984, p. 21).

   (a) The following is added to Article 4:

   '(g) *In Spain*

   The following institutions:

   1. Comisaría de Seguro Obligatorio de Viajeros,
   2. Consorcio de Compensación de Seguros,
   3. Fondo Nacional de Garantía de Riesgos de la Circulación.'

   (b) The following is added to Article 8 (1) (a):

   '— in the case of the Kingdom of Spain:

   "sociedad anónima", "sociedad mutua", "sociedad cooperativa",

   — in the case of the Portuguese Republic:

   "sociedade anónima de responsibilidade limitada", "mútua de seguros".'

2. Council Directive 77/92/EEC of 13 December 1976 (OJ No L 26, 31. 1. 1977, p. 14), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

   The following is added to Article 2 (2):

   (a) '— *in Spain:*
   — Agentes libres de seguros,
   — Corredores de reaseguro;
   — *in Portugal:*
   — Corretor de seguros,
   — Corretor de resseguros.'

   (b) '— *in Spain:*
   — Agentes afectos de seguros (representantes y no representantes);

— *in Portugal:*

— Agente de seguros.'

(c) '— *in Spain:*

— Subagentes de seguros;

— *in Portugal:*

— Submediador.'

3. First Council Directive 77/780/EEC of 12 December 1977 (OJ No L 322, 17. 12. 1977, p. 30), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 2 (2):

'— in Spain, the Instituto de Crédito Oficial, with the exception of its subsidiaries,

— in Portugal, Caixas Económicas existing on 1 January 1986 and which are not incorporated as limited companies.'

4. First Council Directive 79/267/EEC of 5 March 1979 (OJ No L 63, 13. 3. 1979, p. 1), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 8 (1) (a):

'— in the case of the Kingdom of Spain:

sociedad anónima, sociedad mutua,

— in the case of the Portuguese Republic:

sociedade anónima.

5. Council Directive 79/279/EEC of 5 March 1979 (OJ No L 66, 16. 3. 1979, p. 21), as amended by:

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),

— Council Directive 82/148/EEC of 3 March 1982 (OJ No L 62, 5. 3. 1982, p. 22).

In Article 21 (1), 'forty-five' is replaced by 'fifty-four'.

(d) Company law

1. First Council Directive 68/151/EEC of 9 March 1968 (OJ No L 65, 14. 3. 1968, p. 8), as amended by:

— the 1972 Act of Accession (OJ No L 73, 27. 3. 1972, p. 14),

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

(a) The following is added to Article 1:

'— *in Spain:*

la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;.

— *in Portugal:*

a sociedade anónima de responsabilidade limitada, a sociedade em comandita por acçoes, a sociedade por quotas de responsabilidade limitada.'

(b) Article 2 (1) (f) is replaced by the following:

'(f) The balance sheet and the profit and loss account for each financial year. The document containing the balance sheet must give details of the persons who are required by law to certify it. However, in respect of the Gesellschaft mit beschränkter Haftung, société de personnes à responsabilité limitée, personenvennootschap met beperkte aansprakelijkheid, société à responsabilité limitée, εταιρία περιορισμένης ευθύνης, società a responsabilità limitata and sociedade em comandita por acçoes under German, Belgian, French, Greek, Italian, Luxembourg or Portuguese law referred to in Article 1, the besloten naamloze vennootschap under Netherlands law, the private company under the law of Ireland and the private company under the law of Northern Ireland, the compulsory application of this provision shall be postponed until the date of implementation of a Directive concerning coordination of the contents of balance sheets and of profit and loss accounts and concerning exemption of such of those companies whose balance sheet total is less than that specified in the Directive from the obligation to make disclosure in full or in part of the said documents. The Council will adopt such a Directive within two years following adoption of the present Directive.'

2. Second Council Directive 77/91/EEC of 13 December 1976 (OJ No L 26, 31. 1. 1977, p. 1), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 1 (1):

'— *in Spain:*

la sociedad anónima;

— *in Portugal:*

a sociedade anónima de responsabilidade limitada.'

3. Third Council Directive 78/885/EEC of 9 October 1978 (OJ No L 295, 20. 10. 1978, p. 36), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 1 (1):

'— *in Spain:*

la sociedad anónima;

— *in Portugal:*

a sociedade anónima de responsabilidade limitada.'

4. Fourth Council Directive 78/660/EEC of 25 July 1978 (OJ No L 222, 14. 8. 1978, p. 11), as amended by:

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),

II

(Acts whose publication is not obligatory)

COUNCIL

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

(88/357/EEC)

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 (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is necessary to develop the internal insurance market and, to achieve this objective, it is desirable to make it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policy-holders to have recourse not only to insurers established in their own country, but also to insurers which have their head office in the Community and are established in other Member States;

Whereas, pursuant to the Treaty, any discrimination with regard to freedom to provide services based on the fact that an undertaking is not established in the Member State in which the services are provided has been prohibited since the end of the transitional period; whereas this prohibition applies to services provided from any establishment in the Community, whether it is the head office of an undertaking or an agency or branch;

Whereas, for practical reasons, it is desirable to define the provision of services taking into account both the insurer's establishment and the place where the risk is situated; whereas therefore a definition of the situation of the risk should also be adopted; whereas, moreover, it is desirable to distinguish between the activity pursued by way of establishment and the activity pursued by way of freedom to provide services;

Whereas it is desirable to supplement 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 (4), hereinafter referred to as the 'first Directive', as last amended by Directive 87/343/EEC (5), in order particularly to clarify the powers and means of supervision vested in the supervisory authorities; whereas it is also desirable to lay down specific provisions regarding the taking-up, pursuit and supervision of activity by way of freedom to provide services;

Whereas policy-holders who, by virtue of their status, their size or the nature of the risk to be insured, do not require special protection in the State in which the risk is situated should be granted complete freedom to avail themselves of the widest possible insurance market; whereas, moreover, it is desirable to guarantee other policy-holders adequate protection;

Whereas the concern to protect policy-holders and to avoid any disturbance of competition justifies coordinating the relaxation of the matching assets rules, provided for by the first Directive;

(1) OJ No C 32, 12. 2. 1976, p. 2.
(2) OJ No C 36, 13. 2. 1978, p. 14, OJ No C 167, 27. 6. 1988 and Decision of 15 June 1988 (not yet published in the Official Journal).
(3) OJ No C 204, 30. 8. 1976, p. 13.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 185, 4. 7. 1987, p. 72.

Whereas the provisions in force in the Member States regarding insurance contract law continue to differ; whereas the freedom to choose, as the law applicable to the contract, a law other than that of the State in which the risk is situated may be granted in certain cases, in accordance with rules taking into account specific circumstances;

Whereas the scope of this Directive should include compulsory insurance but should require the contract covering such insurance to be in conformity with the specific provisions relating to such insurance, as provided by the Member State imposing the insurance obligation;

Whereas the provisions of the first Directive on the transfer of portfolio should be reinforced and supplemented by provisions specifically covering the transfer of the portfolio of contracts concluded for the provision of services to another undertaking;

Whereas the scope of the provisions specifically concerning freedom to provide services should exclude certain risks, the application to which of the said provisions is rendered inappropriate at this stage by the specific rules adopted by the Member States' authorities, owing to the nature and social implications of such provisions; whereas, therefore, these exclusions should be re-examined after this Directive has been in force for a certain period;

Whereas, in the interests of protecting policy-holders, Member States should, at the present stage in coordination, be allowed the option of limiting the simultaneous pursuit of activity by way of freedom to provide services and activity by way of establishment; whereas no such limitation can be provided for where policy-holders do not require this protection;

Whereas the taking-up and pursuit of freedom to provide services should be subject to procedures guaranteeing the insurance undertaking's compliance with the provisions regarding both financial guarantees and conditions of insurance; whereas these procedures may be relaxed in cases where the activity by way of provision of services covers policy-holders who, by virtue of their status, their size or the nature of the risk to be insured, do not require special protection in the State in which the risk is situated;

Whereas it is necessary to initiate special cooperation with regard to freedom to provide services between the competent supervisory authorities of the Member States and between these authorities and the Commission; whereas provision should also be made for a system of penalties to apply where the undertaking providing the service fails to comply with the provisions of the Member State of provision of service;

Whereas, pending future coordination, the technical reserves should be subject to the rules and supervision of the Member State of provision of services where such provision of services involves risks in respect of which the State receiving the service wishes to provide special protection for policy-holders; whereas, however, if such concern to protect the policy-holders is unjustified, the technical reserves continue to be subject to the rules and supervision of the Member State in which the insurer is established;

Whereas some Member States do not subject insurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution, including surcharges intended for compensation bodies; whereas the structure and rate of these taxes and contributions vary considerably between the Member States in which they are applied; whereas it is desirable to avoid a situation where existing differences lead to disturbances of competition in insurance services between Member States; whereas, pending future harmonization, the application of the tax system and of other forms of contributions provided for by the Member State in which the risk is situated is likely to remedy such mischief and whereas it is for the Member States to establish a method of ensuring that such taxes and contributions are collected;

Whereas it is desirable to prevent the uncoordinated application of this Directive and of Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance [1] from leading to the existence of three different systems in every Member State; whereas, therefore, the criteria defining 'large risks' in this Directive should also define risks likely to be covered under Community co-insurance arrangements;

Whereas it is desirable to take into account, within the meaning of Article 8C of the Treaty, the extent of the effort which needs to be made by certain economies showing differences in development; whereas, therefore, it is desirable to grant certain Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to freedom to provide services,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

The object of this Directive is:

(a) to supplement the first Directive 73/239/EEC;

(b) to lay down special provisions relating to freedom to provide services for the undertakings and in respect of the classes of insurance covered by that first Directive.

[1] OJ No L 151, 7. 6. 1978, p. 25.

Article 2

For the purposes of this Directive:

(a) 'first Directive' means:

Directive 73/239/EEC;

(b) 'undertaking':

— for the purposes of applying Titles I and II, means:

any undertaking which has received official authorization under Article 6 or 23 of the first Directive,

— for the purposes of applying Title III and Title V, means:

any undertaking which has received official authorization under Article 6 of the first Directive;

(c) 'establishment':

means the head office, agency or branch of an undertaking, account being taken of Article 3;

(d) 'Member State where the risk is situated' means:

— the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy,

— the Member State of registration, where the insurance relates to vehicles of any type,

— the Member State where the policy-holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned,

— the Member State where the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State where the latter's establishment, to which the contract relates, is situated, in all cases not explicitly covered by the foregoing indents;

(e) 'Member State of establishment' means:

the Member State in which the establishment covering the risk is situated;

(f) 'Member State of provision of services' means:

the Member State in which the risk is situated when it is covered by an establishment situated in another Member State.

Article 3

For the purposes of the first Directive and of this Directive, any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

Article 4

For the purposes of this Directive and the first Directive, general and special policy conditions shall not include specific conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

TITLE II

Provisions supplementary to the first Directive

Article 5

The following is added to Article 5 of the first Directive:

'(d) "large risks" means:

(i) risks classified under classes 4, 5, 6, 7, 11 and 12 of point A of the Annex;

(ii) risks classified under classes 14 and 15 of point A of the Annex, where the policy-holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;

(iii) risks classified under classes 8, 9, 13 and 16 of point A of the Annex in so far as the policy-holder exceeds the limits of at least two of the following three criteria:

first stage: until 31 December 1992:

— balance-sheet total: 12,4 million ECU,

— net turnover: 24 million ECU,

— average number of employees during the financial year: 500.

second stage: from 1 January 1993:

— balance-sheet total: 6,2 million ECU,

— net turnover: 12,8 million ECU,

— average number of employees during the financial year: 250.

If the policy-holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC [1] are drawn up, the criteria mentioned above shall be applied on the basis of the consolidated accounts.

Each Member State may add to the category mentioned under (iii) risks insured by professional associations, joint ventures or temporary groupings.'

[1] OJ No L 193, 18. 7. 1983, p. 1.

Article 6

For the purposes of applying the first subparagraph of Article 15 (2) and Article 24 of the first Directive, the Member States shall comply with Annex 1 to this Directive as regards the matching rules.

Article 7

1. The law applicable to contracts of insurance referred to by this Directive and covering risks situated within the Member States is determined in accordance with the following provisions:

(a) Where a policy-holder has his habitual residence or central administration within the territory of the Member State in which the risk is situated, the law applicable to the insurance contract shall be the law of that Member State. However, where the law of that Member State so allows, the parties may choose the law of another country.

(b) Where a policy-holder does not have his habitual residence or central administration in the Member State in which the risk is situated, the parties to the contract of insurance may choose to apply either the law of the Member State in which the risk is situated or the law of the country in which the policy-holder has his habitual residence or central administration.

(c) Where a policy-holder pursues a commercial or industrial activity or a liberal profession and where the contract covers two or more risks relating to these activities and situated in different Member States, the freedom of choice of the law applicable to the contract shall extend to the laws of those Member States and of the country in which the policy-holder has his habitual residence or central administration.

(d) Notwithstanding subparagraphs (b) and (c), where the Member States referred to in those subparagraphs grant greater freedom of choice of the law applicable to the contract, the parties may take advantage of this freedom.

(e) Notwithstanding subparagraphs (a), (b) and (c), when the risks covered by the contract are limited to events occurring in one Member State other than the Member State where the risk is situated, as defined in Article 2 (d), the parties may always choose the law of the former State.

(f) For the risks referred to in Article 5 (d) (i) of the first Directive, the parties to the contract may choose any law.

(g) The fact that, in the cases referred to in subparagraph (a) or (f), the parties have chosen a law shall not, where all the other elements relevant to the situation at the time of the choice are connected with one Member State only, prejudice the application of the mandatory rules of the law of that Member State, which means the rules from which the law of that Member State allows no derogation by means of a contract.

(h) The choice referred to in the preceding subparagraphs must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. If this is not so, or if no choice has been made, the contract shall be governed by the law of the country, from amongst those considered in the relevant subparagraphs above, with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country, from amongst those considered in the relevant subparagraphs, may by way of exception be governed by the law of that other country. The contract shall be rebuttably presumed to be most closely connected with the Member State in which the risk is situated.

(i) Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the law applicable under this Directive.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

2. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State in which the risk is situated or of the Member State imposing the obligation to take out insurance may be applied if and in so far as, under the law of those States, those rules must be applied whatever the law applicable to the contract.

Where the contract covers risks situated in more than one Member State, the contract is considered for the purposes of applying this paragraph as constituting several contracts each relating to only one Member State.

3. Subject to the preceding paragraphs, the Member States shall apply to the insurance contracts referred to by this Directive their general rules of private international law concerning contractual obligations.

Article 8

1. Under the conditions set out in this Article, insurance undertakings may offer and conclude compulsory insurance contracts in accordance with the rules of this Directive and of the first Directive.

2. When a Member State imposes an obligation to take out insurance, the contract shall not satisfy that obligation unless it is in accordance with the specific provisions relating to that insurance laid down by that Member State.

3. When, in the case of compulsory insurance, the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail.

4. (a) Subject to subparagraphs (b) and (c) of this paragraph, the third subparagraph of Article 7 (2) shall apply where the insurance contract provides cover in several Member States of which at least one imposes an obligation to take out insurance.

(b) A Member State which, on the date of notification of this Directive, requires that any undertaking established within its territory must obtain approval for the general and special conditions of its compulsory insurance, may also, by way of derogation from Articles 9 and 18, require such conditions to be approved in the case of any insurance undertaking offering such cover, within its territory, under the conditions provided for in Article 12 (1).

(c) A Member State may, by way of derogation from Article 7, lay down that the law applicable to a compulsory insurance contract is the law of the State which imposes the obligation to take out insurance.

(d) Where a Member State imposes compulsory insurance and the insurer must notify the competent authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down in the legislation of that State.

5. (a) Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating:

— the specific legal provisions relating to that insurance,

— the particulars which must be given in the certificate which an insurer must issue to an insured person where that State requires proof that the obligation to take out insurance has been complied with. A Member State may require that those particulars include a declaration by the insurer to the effect that the contract complies with the specific provisions relating to that insurance.

(b) The Commission shall publish the particulars referred to in subparagraph (a) in the *Official Journal of the European Communities*.

(c) A Member State shall accept, as proof that the insurance obligation has been fulfilled, a certificate, the content of which is in conformity with the second indent of subparagraph (a).

Article 9

1. The last subparagraph of Article 9 and the last subparagraph of Article 11 (1) of the first Directive are replaced by the following:

'However, the information referred to in (a) and (b) concerning the general and special conditions and the scales of premiums shall not be required in the case of risks referred to in Article 5 (d).'

2. Article 8 (3) and Article 10 (3) of the first Directive are replaced by the following:

'3. This coordination shall not prevent the Member States from maintaining or introducing laws, regulations or administrative provisions concerning, in particular, the necessity for managers and directors to be technically qualified and the approval of articles of association, the general and special conditions of insurance policies, the scales of premiums and any other document necessary for the normal exercise of supervision.

However, with regard to the risks referrred to in Article 5 (d), Member States shall not lay down provisions requiring the approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which the undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks, and this requirement may not constitute a prior condition for an undertaking to be able to carry on its activities.

With regard to the risks referred to in Article 5 (d), Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of a general price control system.

This coordination shall also not prevent Member States from subjecting undertakings requesting or having obtained authorization for class 18 in point A of the Annex to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.'

Article 10

The following paragraph is added to Article 19 of the first Directive:

'3. Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising

insurance undertakings have the powers and means necessary for supervision of the activities of insurance undertakings established within their territory, including activities engaged in outside that territory, in accordance with the Council Directives governing those activities and for the purpose of seeing that they are implemented.

Those powers and means must, in particular, enable the supervisory authorities to:

— make detailed inquiries about the undertaking's situation and the whole of its business, *inter alia* by:

  — gathering information or requiring the submission of documents concerning insurance business,

  — carrying out on-the-spot investigations at the undertaking's premises,

— take any measures with regard to the undertaking which are appropriate and necessary to ensure that the activities of the undertaking remain in conformity with the laws, regulations and administrative provisions with which the undertaking has to comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent, or remove any irregularities prejudicial to the interests of policy-holders,

— ensure that measures required by the supervisory authorities are carried out, if need be by enforcement, where appropriate through judicial channels.

Member States may also make provision for the supervisory authorities to obtain any information regarding contracts which are held by intermediaries.'

Article 11

1. Article 21 of the first Directive is hereby deleted.

2. Each Member State shall, on the conditions laid down by national law, authorize undertakings which are established within its territory to transfer all or part of their portfolios of contracts for which that State is the State where the risk is situated to an accepting office established in that same Member State, if the supervisory authorities of the Member State in which the head office of the accepting office is located certify that the latter possesses the necessary margin of solvency after taking the transfer into account.

3. Each Member State shall, on the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 12 (1) to an accepting office established in the Member State of provision of services if the supervisory authorities of the Member State in which the head office of the accepting office is located certify that the latter possesses the necessary margin of solvency after taking the transfer into account.

4. Each Member State shall, on the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 12 (1) to an accepting office established in the same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is located certify that the accepting office possesses the necessary margin of solvency after taking the transfer into account and if it fulfils the conditions in Articles 13 to 16 in the Member State of provision of services.

5. In the cases referred to in paragraphs 3 and 4, the supervisory authorities of the Member State in which the transferring undertaking is established shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member State of provision of services.

6. If a Member State, on the conditions laid down by national law, authorizes undertakings established within its territory to transfer all or part of their portfolios of contracts to an accepting office established in another Member State which is not the Member State of provision of services, it shall ensure that the following conditions are fulfilled:

— the supervisory authorities of the Member State in which the head office of the accepting office is located shall certify that the latter possesses the necessary margin of solvency after taking the transfer into account,

— the Member State in which the accepting office is established agrees,

— the accepting office fulfils the conditions in Articles 13 to 16 in the Member State of provision of services, the law of that Member State provides for the possibility of such a transfer and that Member State agrees to the transfer.

7. A transfer authorized in accordance with this Article shall be published, under the conditions laid down by national law, in the Member State in which the risk is situated. Such transfer shall be automatically valid against the policy-holders, the insured persons and any other person having rights and obligations arising out of the contracts transferred.

This provision shall not affect the right of Member States to provide policy-holders with the option of cancelling the contract within a given period after the transfer.

TITLE III

Provisions peculiar to the freedom to provide services

Article 12

1. This Title shall apply where an undertaking, through an establishment situated in a Member State, covers a risk situated, within the meaning of Article 2 (d), in another Member State; the latter shall be the Member State of provision of services for the purposes of this Title.

2. This Title shall not apply to the transactions, undertakings and institutions to which the first Directive does not apply, nor to the risks to be covered by the institutions under public law referred to in Article 4 of that Directive.

This Title shall not apply to insurance contracts covering risks classified under the following numbers of point A of the Annex to the first Directive:

— No 1:

as regards accidents at work,

— No 10:

not including carrier's liability,

— No 12:

as regards motorboats and boats which the Member State concerned makes subject to the same arrangements as land motor vehicles at the time of notification of this Directive,

— No 13:

as regards nuclear civil liability and pharmaceutical products liability,

— Nos 9 and 13:

as regards compulsory insurance of building works.

These exclusions will be examined by the Council not later than 1 July 1998.

3. Pending the coordination referred to in Article 7 (2) (c) of the first Directive, the Federal Republic of Germany may retain the prohibition on the simultaneous undertaking in its territory, under the arrangements for the provision of services, of health insurance with other classes.

Article 13

Member States' legislation shall provide that an undertaking established in a Member State may cover within that State, by way of provision of services, at least:

— large risks as defined in Article 5 (d) of the first Directive,

— risks other than those defined in Article 5 (d) of the first Directive coming within classes for which its establishment there has no authorization.

Article 14

Any undertaking which intends to provide services shall first inform the competent authorities of the head office Member State, and, where appropriate, of the Member State of the establishment concerned, indicating the Member State or Member States within the territory of which it contemplates providing services and the nature of the risks which it proposes to cover.

Those authorities may require provision of the information or proof referred to in Article 9 or 11 of the first Directive.

Article 15

1. Subject to the provisions of Article 16, each Member State within the territory of which an undertaking intends to provide services may make access to such activity subject to administrative authorization; to that end, it may require that the undertaking:

(a) produce a certificate issued by the competent authorities of the head office Member State attesting that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Articles 16 and 17 of the first Directive and that the authorization, in accordance with Article 7 (1) of the said Directive, enables the undertaking to operate outside the Member State of establishment;

(b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes which the undertaking has been authorized to practise and attesting that those authorities do not object to the undertaking providing services;

(c) submit a scheme of operations containing the following particulars

— the nature of the risks which the undertaking proposes to cover in the Member States of provision of services,

— the general and special conditions of the insurance policies which it proposes to use there,

— the premium rates which the undertaking envisages applying for each class of business,

— the forms and other printed documents which it intends to use in its dealings with policy-holders, in so far as these are also required of established undertakings.

2. The competent authorities of the Member State of provision of services may require that the particulars referred to in paragraph 1 (c) be supplied to them in the official language of that State.

3. The competent authorities of the Member State of provision of services shall have a period of six months from receipt of the documents referred to in paragraph 1 in which to grant or refuse authorization on the basis of the compliance or non-compliance of the particulars in the scheme of operations submitted by the undertaking with the laws, regulations and administrative provisions applicable in that State.

4. If the competent authorities of the Member State of provision of services have not given a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be refused.

5. Any decision to refuse authorization or to refuse a certificate as referred to in paragraph 1 (a) or (b) must be accompanied by the precise grounds and communicated to the undertaking in question.

6. Each Member State shall institute the right to take legal action in the courts against a refusal of authorization or refusal to issue the certificate referred to in paragraph 1 (a) or (b).

Article 16

1. Each Member State within the territory of which an undertaking intends to provide services covering the risks referred to in Article 5 (d) of the first Directive shall require that the undertaking:

(a) produce a certificate issued by the competent authorities of the head office Member State attesting that it possesses for its activites as a whole the minimum solvency margin calculated in accordance with Articles 16 and 17 of the first Directive and that the authorization, in accordance with Article 7 (1) of the said Directive, enables the undertaking to operate outside the Member State of establishment;

(b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes which the undertaking has been authorized to practice and attesting that those authorities do not object to the undertaking providing services;

(c) state the nature of the risks which it proposes to cover in the Member State of provision of services.

2. Each Member State shall institute the right to apply to the courts in the event of a refusal to issue the certificate referred to in paragraph 1 (a) or 1 (b).

3. The undertaking may commence activities as from the certified date on which the authorities of the Member State of provision of services are in possession of the documents referred to in paragraph 1.

4. This Article shall also apply where the Member State, in the territory of which an undertaking intends to provide services covering risks other than those referred to in Article 5 (d) of the first Directive, does not make access to such activity conditional on administrative authorization.

Article 17

1. Where an undertaking referred to in Article 14 intends to amend the information referred to in Article 15 (1) (c) or Article 16 (1) (c), it shall submit the amendments to the competent authorities of the Member State of provision of services. These amendments shall enter info force in accordance with the rules in Articles 15 (3) and 16 (3) respectively.

2. Where an undertaking referred to in Article 14 intends to extend its activities to risks other than those referred to in Article 5 (d) of the first Directive, it shall follow the procedure described in Articles 14 and 15.

3. Where an undertaking referred to in Article 14 intends to extend its activities to risks referred to in Article 5 (d) of the first Directive or Article 16 (4) of this Directive, it shall follow the procedure described in Articles 14 and 16.

Article 18

1. This coordination shall not prevent the Member States from maintaining or introducing laws, regulations or administrative provisions concerning, in particular, approval of general and special policy conditions, of forms and other printed documents for use in dealing with policy-holders, of scales of premiums and of any other document necessary for the normal exercise of supervision provided that the rules of the Member State of establishment are not sufficient to achieve the necessary level of protection and the requirements of the Member State of provision of services do not go beyond what is necessary in that respect.

2. However, with regard to the risks referred to in Article 5 (d) of the first Directive, Member States shall not lay down provisions requiring approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks, although this requirement may not constitute a prior condition in order for an undertaking to carry on its activities.

3. With regard to the risks referred to in Article 5 (d) of the first Directive, Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of a general price control system.

Article 19

1. Any undertaking providing services shall submit to the competent authorities of the Member State of provision of

services all documents requested of it for the purposes of implementing this Article, in so far as undertakings established there are also obliged to do so.

2. If the competent authorities of a Member State ascertain that an undertaking providing services within its territory does not comply with the legal rules in force in that State which are applicable to it, such authorities shall request the undertaking concerned to put an end to the irregular situation.

3. If the undertaking in question fails to comply with the request referred to in paragraph 2, the competent authorities of the Member State of provision of services shall inform the competent authorities of the Member State of establishment accordingly. The authorities of the Member State of establishment shall take all appropriate measures to ensure that the undertaking concerned puts an end to the irregular situation. The nature of those measures shall be communicated to the authorities of the Member State of provision of services.

The competent authorities of the Member State of provision of services may also apply to the competent authorities for the head office of the insurance undertaking if the services are being provided by agencies or branches.

4. If, despite the measures thus taken by the Member State of establishment, or because such measures prove inadequate or are lacking in the Member State in question, the undertaking persists in violating the legal rules in force in the Member State of provision of services, the latter Member State may, after informing the supervisory authorities of the Member State of establishment, take appropriate measures to prevent further irregularities, including, in so far as it is strictly necessary, the prevention of the further conclusion of insurance contracts by that undertaking by way of provision of services within its territory. In the case of risks other than those referred to in Article 5 (d) of the first Directive, such measures shall include withdrawal of the authorization referred to in Article 15. The Member States shall ensure that within their territory it is possible to make the notifications necessary for these measures.

5. These provisions shall not affect the right of Member States to punish irregularities committed within their territory.

6. If the undertaking which has committed the offence has an establishment or possesses property in the Member State of provision of services, the supervisory authorities of the latter may, in accordance with national legislation, apply the administrative penalties prescribed for that offence by way of enforcement against that establishment or property.

7. Any measure adopted pursuant to paragraphs 2 to 6 involving penalties or restrictions on the provision of services must be properly justified and communicated to the undertaking concerned. Every such measure shall be subject to the right to apply to the courts in the Member State in which the authorities adopted it.

8. Where measures have been taken pursuant to Article 20 of the first Directive, the competent authorities of the Member State of provision of services shall be informed of them by the authority which has taken them and shall, where the measures have been taken under the terms of paragraphs 1 and 3 of the said Article, take any steps necessary to safeguard the interests of insured persons.

In the event of withdrawal of authorization on the basis of Article 22 of the first Directive, the competent authorities of the Member State of provision of services shall be informed of such action and shall take appropriate measures to prevent the establishment concerned from continuing to conclude insurance contracts by way of provision of services within the territory of that State.

9. Every two years the Commission shall submit to the Council a report summarizing the number and type of cases in which, in each Member State, decisions refusing authorizations have been communicated under Article 15 or measures have been taken in accordance with paragraph 4. Member States shall cooperate with the Commission by providing it with the information required for this report.

Article 20

In the event of an insurance undertaking being wound up, commitments arising from contracts underwritten in the course of the provision of services shall be met in the same way as those arising under that undertaking's other insurance contracts, without distinction of nationality as far as the insured and the beneficiaries are concerned.

Article 21

1. Where insurance is offered by way of provision of services, the policy-holder shall, before any commitment is entered into, be informed of the Member State in which the head office, agency or branch with which the contract is to be concluded is established.

Any document issued to the policy-holder must contain the information referred to in the preceding subparagraph.

The requirements in the first two subparagraphs shall not apply to the risks referred to in Article 5 (d) of the first Directive.

2. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the proposer, must specify the address of the insurance establishment which is granting the cover and also that of the head office.

Article 22

1. Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without

deduction of reinsurance, receivable by Member State and by group of classes. The groups of classes shall be defined as follows:

— accident and sickness (1 and 2),

— fire and other damage to property (8 and 9),

— aviation, marine and transport (3, 4, 5, 6, 7, 11 and 12),

— general liability (13),

— credit and suretyship (14 and 15),

— other classes (16, 17 and 18).

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services.

2. Where an establishment earns in a Member State, in respect of the operations referred to in the first subparagraph of paragraph 1, a volume of premiums, without deduction of reinsurance, higher than 2 500 000 ECU, it must keep an underwriting account, comprising the items listed in Annex 2A or 2B, broken down by group of classes for that Member State.

However, where an undertaking, with all its establishments taken together, earns in a Member State, in respect of the operations referred to in the first subparagraph of paragraph 1, a volume of premiums, without deduction of reinsurance, higher than 2 500 000 ECU, the supervisory authority of the Member State of provision of services may ask the supervisory authority of the Member State of the head office that an underwriting account be kept, in future, for the operations effected in its country by each of the establishments of that undertaking.

The underwriting account referred to in the first or second subparagraph of this paragraph shall be forwarded by the supervisory authority of the Member State of establishment to the supervisory authority of the Member State of provision of services on the latter's request.

Article 23

1. Where the provision of services is subject to authorization by the Member State of provision of services, the amount of the technical reserves relating to the contracts concerned shall be determined, pending further harmonization, under the supervision of that Member State in accordance with the rules it has laid down or, failing such rules, in accordance with established practice in that Member State. The covering of these reserves by equivalent and matching assets and the localization of those assets shall be under the supervision of that Member State in accordance with its rules or practice.

2. In all other cases, determination of the amount of the technical reserves, and their covering by equivalent and matching assets and the localization of those assets shall be under the supervision of the Member State of establishment, in accordance with its rules or practice.

3. The Member State of establishment shall ensure that the technical reserves relating to all the contracts which the undertaking concludes through the establishment concerned are sufficient, and that they are covered by equivalent and matching assets.

4. In the case referred to in paragraph 1, the Member State of establishment and the Member State of provision of services shall exchange any information necessary for carrying out their respective duties under paragraphs 1 and 3.

Article 24

Notwithstanding this Directive, the Member States shall be entitled to require undertakings operating by way of provision of services in their territories to join and participate in any scheme designed to guarantee the payment of insurance claims to policy-holders and injured third parties, on the same terms as established undertakings.

Article 25

Without prejudice to any subsequent harmonization, every insurance contract concluded by way of provision of services shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated within the meaning of Article 2 (d), and also, with regard to Spain, to the surcharges legally established in favour of the Spanish 'Consorcio de compensación de Seguros' for the fulfilment of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

By way of derogation from the first indent of Article 2 (d), and for application of this Article, the moveable property contained in a building situated in the territory of a Member State, except for goods in commercial transit, shall be a risk situated in that Member State, even though the building and its contents are not covered by the same insurance policy.

The law applicable to the contract pursuant to Article 7 shall not affect the fiscal arrangements applicable.

Each Member State shall, subject to future harmonization, apply to those undertakings which provide services in its territory, its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under the first subparagraph.

Article 26

1. The risks which may be covered by way of Community co-insurance within the meaning of Directive 78/473/EEC

shall be those defined in Article 5 (d) of the first Directive.

2. The provisions of this Directive regarding the risks defined in Article 5 (d) of the first Directive shall apply to the leading insurer.

TITLE IV

Transitional arrangements

Article 27

1. Greece, Ireland, Spain and Portugal may apply the following transitional arrangements:

(i) until 31 December 1992, they may apply, to all risks, the regime other than that for risks referred to in Article 5 (d) of the first Directive,

(ii) from 1 January 1993 to 31 December 1994, the regime for large risks shall apply to risks referred to under (i) and (ii) of Article 5 (d) of the first Directive; for risks referred to under (iii) of the abovementioned Article 5 (d), these Member States shall fix the thresholds to apply therefor;

(iii) *Spain*

— from 1 January 1995 to 31 December 1996, the thresholds of the first stage described in Article 5 (d) (iii) of the first Directive shall apply,

— from 1 January 1997, the thresholds of the second stage shall apply.

Portugal, Ireland and Greece

— from 1 January 1995 to 31 December 1998 the thresholds of the first stage described in Article 5 (d) (iii) of the first Directive shall apply,

— from 1 January 1999 the thresholds of the second stage shall apply.

The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 8, 9, 13 and 16 situated exclusively in one of the four Member States benefiting from the transitional arrangements.

2. Until 31 December 1994, Article 26 (1) of this Directive shall not apply to risks situated in the four Member States listed in this Article. For the transitional period from 1 January 1995, the risks defined under Article 5 (d) (iii) of the first Directive situated in these Member States and capable of being covered by Community co-insurance within the meaning of Directive 78/473/EEC shall be those which exceed the thresholds referred to in paragraph 1 (iii) of this Article.

TITLE V

Final provisions

Article 28

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community.

Every Member State shall inform the Commission of any major difficulties to which application of this Directive gives rise, *inter alia* any arising if a Member State becomes aware of an abnormal transfer of insurance business to the detriment of undertakings established in its territory and to the advantage of branches and agencies located just beyond its borders.

The Commission and the competent authorities of the Member States concerned shall examine these difficulties as quickly as possible in order to find an appropriate solution.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 29

The Commission shall forward to the Council regular reports, the first on 1 July 1993, on the development of the market in insurance transacted under conditions of freedom to provide services.

Article 30

Where this Directive makes reference to the ECU, the exchange value in national currencies to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October for which exchange values for the ECU are available in all Community currencies.

Article 2 of Directive 76/580/EEC (1) shall apply only to Articles 3, 16 and 17 of the first Directive.

Article 31

Every five years, the Council, acting on a proposal from the Commission, shall review and if necessary amend any

(1) OJ No L 189, 13. 9. 1976, p. 13.

amounts expressed in ECU in this Directive, taking into account changes in the economic and monetary situation of the Community.

Article 32

Member States shall amend their national provisions to comply with this Directive within 18 months of the date of its notification (1) and shall forthwith inform the Commission thereof.

The provisions amended in accordance with this Article shall be applied within 24 months of the date of the notification of the Directive.

Article 33

Upon notification of this Directive, Member States shall ensure that the texts of the main laws, regulations or administrative provisions which they adopt in the field covered by this Directive are communicated to the Commission.

Article 34

The Annexes shall form an integral part of this Directive.

Article 35

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1988.

For the Council

The President

M. BANGEMANN

(1) This Directive was notified to Member States on 30 June 1988.

ANNEX 1

MATCHING RULES

The currency in which the insurer's commitments are payable shall be determined in accordance with the following rules:

1. Where the cover provided by a contract is expressed in terms of a particular currency, the insurer's commitments are considered to be payable in that currency.

2. Where the cover provided by a contract is not expressed in terms of any currency, the insurer's commitments are considered to be payable in the currency of the country in which the risk is situated. However, the insurer may choose the currency in which the premium is expressed if there are justifiable grounds for exercising such a choice.

   This could be the case if, from the time the contract is entered into, it appears likely that a claim will be paid in the currency of the premium and not in the currency of the country in which the risk is situated.

3. The Member States may authorize the insurer to consider that the currency in which he must provide cover will be either that which he will use in accordance with experience acquired or, in the absence of such experience, the currency of the country in which he is established:

   — for contracts covering risks classified under classes 4, 5, 6, 7, 11, 12 and 13 (producers' liability only), and

   — for contracts covering the risks classified under other classes where, in accordance with the nature of the risks, the cover is to be provided in a currency other than that which would result from the application of the above procedures.

4. Where a claim has been reported to an insurer and is payable in a specified currency other than the currency resulting from application of the above procedures, the insurer's commitments shall be considered to be payable in that currency, and in particular the currency in which the compensation to be paid by the insurer has been determined by a court judgment or by agreement between the insurer and the insured.

5. Where a claim is assessed in a currency which is known to the insurer in advance but which is different from the currency resulting from application of the above procedures, the insurers may consider their commitments to be payable in that currency.

6. The Member States may authorize undertakings not to cover their technical reserves by matching assets if application of the above procedures would result in the undertaking — whether head office or branch — being obliged, in order to comply with the matching principle, to hold assets in a currency amounting to not more than 7 % of the assets existing in other currencies.

   However:

   (a) in the case of technical reserve assets to be matched in Greek drachmas, Irish pounds and Portuguese escudos, this amount shall not exceed:

      — 1 million ECU during a transitional period ending 31 December 1992,

      — 2 million ECU from 1 January 1993 to 31 December 1998;

   (b) in the case of technical reserve assets to be matched in Belgian francs, Luxembourg francs and Spanish pesetas, this amount shall not exceed 2 million ECU during a transitional period ending 31 December 1996.

   From the end of the transitional periods defined under (a) and (b), the general regime shall apply for these currencies, unless the Council decides otherwise.

7. The Member States may choose not to require undertakings — whether head offices or branches — to apply the matching principle where commitments are payable in a currency other than the currency of one of the Community Member States, if investments in that currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, it is not suitable for covering technical reserves.

8. The Member States may authorize undertakings — whether head offices or branches — not to hold matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.

   However, total assets in all currencies combined must be at least equal to total commitments in all currencies combined.

9. Each Member State may provide that, whenever under the preceding procedures a commitment has to be covered by assets expressed in the currency of a Member State, this requirement shall also be considered to be satisfied when up to 50 % of the assets in expressed in ECU.

ANNEX 2A

Underwriting account

1. Total gross premiums earned
2. Total cost of claims
3. Commission costs
4. Gross underwriting result

ANNEX 2B

Underwriting account

1. Gross premiums for the last underwriting year
2. Gross claims in the last underwriting year (including reserve at the end of underwriting year)
3. Commission costs
4. Gross underwriting result

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 November 1990

amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance

(90/618/EEC)

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 (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas in order to develop the internal insurance market, the Council adopted on 24 July 1973 Directive 73/239/EEC 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 (4) (also referred to as the 'First Directive') and on 22 June 1988 Directive 88/357/EEC 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 (5) (also referred to as the 'Second Directive');

Whereas Directive 88/357/EEC made it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policyholders to have recourse not only to insurers established in their own country, but also to insurers who have their head office in the Community and are established in other Member States;

Whereas the scope of the provisions of Directive 88/357/EEC specifically concerning freedom to provide services excluded certain risks, the application to which of the said provisions was rendered inappropriate at that stage by the specific rules adopted by the Member States' authorities, owing to the nature and social implications of such provisions; whereas those exclusions were to be re-examined after that Directive had been implemented for a certain period;

Whereas one of the exclusions concerned motor vehicle liability insurance, other than carrier's liability;

Whereas, however, when the abovementioned Directive was adopted the Commission gave an undertaking to present to the Council as soon as possible a proposal concerning freedom to provide services in the area of insurance against civil liability in respect of the use of motor vehicles (other than carrier's liability);

Whereas, subject to the provisions of the said Directive concerning compulsory insurance, it is appropriate to provide for the possibility of large risk treatment, within

(1) OJ No C 65, 15. 3. 1989, p. 6, and OJ No C 180, 20. 7. 1990, p. 6.
(2) OJ No C 68, 19. 3. 1990, p. 85, and Decision of 10 October 1990 (not yet published in the Official Journal).
(3) OJ No C 194, 31. 7. 1989, p. 3.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 172, 4. 7. 1988, p. 1.

the meaning of Article 5 of the said Directive, for the said insurance class of motor vehicle liability;

Whereas large risk treatment should also be envisaged for insurance covering damage to or loss of land motor vehicles and land vehicles other than motor vehicles;

Whereas Directive 88/357/EEC laid down that the risks which may be covered by way of Community co-insurance within the meaning of Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (1) were to be large risks as defined in Directive 88/357/EEC whereas the inclusion by the present Directive of the motor insurance classes in the large risks definition of Directive 88/357/EEC will have the effect of including those classes in the list of classes which may be covered by way of Community co-insurance;

Whereas Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (2), as last amended by Directive 90/232/EEC (3), built on the green card system and the agreements between the national motor insurers' bureaux in order to enable green card checks to be abolished;

Whereas it is desirable, however, to grant Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to large risk treatment for the said insurance classes, including where risks are covered by co-insurance;

Whereas to ensure the continued proper functioning of the green card system and the agreements between the national motor insurers' bureaux it is appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the bureau of that Member State;

Whereas Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (4), as last amended by Directive 90/232/EEC, required the Member States to set up or authorize a body (guarantee fund) with the task of providing compensation to victims of accidents caused by uninsured or unidentified vehicles:

Whereas it is also appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the guarantee fund set up in that Member State;

Whereas the rules in force in some Member States concerning the cover of aggravated risks apply to all undertakings covering risks through an establishment situated there; whereas the purpose of those rules is to ensure that the compulsory nature of motor liability insurance is balanced by the possibility for motorists to obtain such insurance; whereas Member States should be permitted to apply those rules to undertakings providing services in their territories to the extent that the rules are justified in the public interest and do not exceed what is necessary to achieve the abovementioned purpose;

Whereas in the field of motor liability insurance the protection of the interests of persons suffering damage who could pursue claims in fact concerns each and everyone and that it is therefore advisable to ensure that these persons are not prejudiced or put to greater inconvenience where the motor liability insurer is operating by way of provision of services rather than by way of establishment; whereas for this purpose, and insofar as the interests of these persons are not sufficiently safeguarded by the rules applying to the supplier of services in the Member State in which it is established, it should be provided that the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory to collect all necessary information in relation to claims and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims;

Whereas this representative may also be required to represent the undertaking before the competent authorities of the Member State of provision of services in relation to the control of the existence and validity of motor vehicle liability insurance policies;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets

(1) OJ No L 151, 7. 6. 1978, p. 25.
(2) OJ No L 103, 2. 5. 1972, p. 1.
(3) OJ No L 129, 19. 5. 1990, p. 33.
(4) OJ No L 8, 11. 1. 1984, p. 17.

in third countries; whereas, to that end, this Directive provided for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

(a) 'vehicle' means a vehicle as defined in Article 1 (1) of Directive 72/166/EEC;

(b) 'bureau' means a national insurers' bureau as defined in Article 1 (3) of Directive 72/166/EEC;

(c) 'guarantee fund' means the body referred to in Article 1 (4) of Directive 84/5/EEC;

(d) 'parent undertaking' means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC (1);

(e) 'subsidiary' means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 2

In Article 5 (d) of Directive 73/239/EEC, 'risks classified under classes 8, 9, 13 and 16 of point A of the Annex' in the first paragraph of point (iii) is hereby replaced by the following:

'risks classified under classes 3, 8, 9, 10, 13 and 16 of point A of the Annex'.

Article 3

1. The heading of Title III of Directive 73/239/EEC is hereby replaced by the following:

'TITLE III A

Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community'.

2. The following heading is placed after Article 29 of Directive 73/239/EEC:

'TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of holdings by such parent undertakings'.

Article 4

The following Articles 29a and 29b shall be added to Title III B of Directive 73/239/EEC.

'Article 29a

The competent authorities of the Member States shall inform the Commission:

(a) of any authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission;

(b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.

Article 29b

1. Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially not later than six months before the application of this Directive, and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate

(1) OJ No L 193, 18. 7. 1983, p. 1.

for negotiation with a view to obtaining comparable competitive opportunities for Community insurance undertakings. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in the Act establishing the Insurance Committee referred to in Article 29a, that the competent authorities of the Member States must limit or suspend their decisions :

— regarding requests pending at the moment of the decision or future requests for authorizations, and

— regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.

The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority that the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request :

(a) of any request for the authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of the third country in question ;

(b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse once an agreement is concluded with the third country referred to in paragraph 3 or 4 or when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of insurance undertakings.'

Article 5

The second and third indents in the second paragraph of Article 12 (2) of Directive 88/357/EEC are hereby deleted.

Article 6

The following Article is hereby inserted in Title III of Directive 88/357/EEC :

'Article 12a

1. This Article shall apply where an undertaking, through an establishment situated in a Member State, covers a risk, other than carrier's liability, classified under class 10 of point A of the Annex to Directive 73/239/EEC which is situated in another Member State.

2. The Member State of provision of services shall require the undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

The undertaking shall not, however, be required to make any payment or contribution to the bureau and fund of the Member State of provision of services in respect of risks covered by way of provision of services other than one calculated on the same basis as for undertakings covering risks, other than carrier's liability, in class 10 through an establishment situated in that Member State, by reference to its premium income from that class in that Member State or the number of risks in that class covered there.

3. This Directive shall not prevent an insurance undertaking providing services from being required to comply with the rules in the Member State of provision of services concerning the cover of aggravated risks, insofar as they apply to established undertakings.

4. The Member State of provision of services shall require the undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, in class 10 by way of provision of services rather than through an establishment situated in that State.

For this purpose, the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to repre-

sent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims.

The representative may also be required to represent the undertaking before the competent authorities of the State of provision of services with regard to checking the existence and validity of motor vehicle liability insurance policies.

The Member State of provision of services may not require that appointee to undertake activities on behalf of the undertaking which appointed him other than those set out in the second and third subparagraphs. The appointee shall not take up the business of direct insurance on behalf of the said undertaking.

The appointment of the representative shall not in itself constitute the opening of a branch or agency for the purpose of Article 6 (2) (b) of Directive 73/239/EEC and the representative shall not be an establishment within the meaning of Article 2 (c) of this Directive.'

Article 7

1. The following subparagraph is hereby added to Article 15 (1) and to Article 16 (1) of Directive 88/357/EEC:

'Each Member State within the territory of which an undertaking intends to provide services covering risks in class 10, other than carrier's liability, may require that the undertaking:

— notify the name and address of the claims representative referred to in Article 12a (4);

— produce a declaration that the undertaking has become a member of the national bureau and the national guarantee fund of the Member State of provision of services.'

Article 8

The following subparagraph is hereby added to Article 21 (2) of Directive 88/357/EEC:

'Each Member State may require that the name and address of the representative of the insurance undertaking also appear in the abovementioned documents.'

Article 9

Article 22 (1) of Directive 88/357/EEC is hereby replaced by the following:

'1. Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without deduction of reinsurance, receivable by Member State and by group of classes. The groups of classes shall be defined as follows:

— accident and sickness (1 and 2),

— motor insurance (3, 7 and 10, the figures relating to class 10, excluding carrier's liability, being specified),

— fire and other damage to property (8 and 9),

— aviation, marine and transport (4, 5, 6, 7, 11 and 12),

— general liability (13),

— credit and suretyship (14 and 15),

— other classes (16, 17 and 18).

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services.'

Article 10

The last subparagraph of Article 27 (1) of Directive 88/357/EEC is hereby replaced by the following:

'The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 3, 8, 9, 10, 13 and 16 situated exclusively in one of the four Member States benefiting from the transitional arrangements.'

Article 11

Notwithstanding Article 23 (2) of Directive 88/357/EEC, in the case of a large risk within the meaning of Article 5 (d) of Directive 73/239/EEC, classified under class 10, other than carrier's liability, the Member State of provision of services may provide that:

— the amount of the technical reserves relating to the contract concerned shall be determined, under the supervision of the authorities of that Member State, in accordance with its rules or, failing such rules, in accordance with established practice in that Member State, until the date by which the Member States must comply with a Directive coordinating the annual accounts of insurance undertakings,

— the covering of these reserves by equivalent and matching assets shall be under the supervision of the authorities of that Member State in accordance with its rules or practice, until the notification of a Third Directive on non-life insurance,

— the localization of the assets referred to in the second indent shall be under the supervision of the authorities of that Member State in accordance with its rules or practice until the date by which the Member States must comply with a Third Directive on non-life insurance.

Article 12

Member States shall amend their national provisions to comply with this Directive within 18 months of the date of its notification (1) and shall forthwith inform the Commission thereof.

The provisions amended pursuant to the first subparagraph shall be applied within 24 months of the date of the notification of this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

(1) This Directive was notified to the Member States on 20 November 1990.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/49/EEC

of 18 June 1992

on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)

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 [1],

In cooperation with the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

(1) Whereas it is necessary to complete the internal market in direct insurance other than life assurance from the point of view both of the right of establishment and of the freedom to provide services, to make it easier for insurance undertakings with head offices in the Community to cover risks situated within the Community;

(2) Whereas the 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 72/239/EEC (88/357/EEC) [4] has already contributed substantially to the achievement of the internal market in direct insurance other than life assurance by granting policyholders who, by virtue of their status, their size or the nature of the risks to be insured, do not require special protection in the Member State in which a risk is situated complete freedom to avail themselves of the widest possible insurance market;

(3) Whereas Directive 88/357/EEC therefore represents an important stage in the merging of national markets into an integrated market and that stage must be supplemented by other Community instruments with a view to enabling all policyholders, irrespective of their status, their size or the nature of the risks to be insured, to have recourse to any insurer with a head office in the Community who carries on business there, under the right of establishment or the freedom to provide services, while guaranteeing them adequate protection;

(4) Whereas this Directive forms part of the body of Community legislation already enacted which includes the First Council Directive of 24 July 1973 on the coordination of laws, regulations and

(1) OJ No C 244, 28. 9. 1990, p. 28 and OJ No C 93, 13. 4. 1992, p. 1.
(2) OJ No C 67, 16. 3. 1992, p. 98 and OJ No C 150, 15. 6. 1992.
(3) OJ No C 102, 18. 4. 1991, p. 7.

(4) OJ No L 172, 4. 7. 1988, p. 1. Last amended by Directive 90/618/EEC (OJ No L 330, 29. 11. 1990, p. 44).

administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (73/239/EEC) [1] and the Council Directive of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (91/674/EEC) [2];

(5) Whereas the approach adopted consists in bringing about such harmonization as is essential, necessary and sufficient to achieve the mutual recognition of authorizations and prudential control systems, thereby making it possible to grant a single authorization valid throughout the Community and apply the principle of supervision by the home Member State;

(6) Whereas, as a result, the taking up and the pursuit of the business of insurance are henceforth to be subject to the grant of a single official authorization issued by the competent authorities of the Member State in which an insurance undertaking has its head office; whereas such authorization enables an undertaking to carry on business throughout the Community, under the right of establishment or the freedom to provide services; whereas the Member State of the branch or of the provision of services may no longer require insurance undertakings which wish to carry on insurance business there and which have already been authorized in their home Member State to seek fresh authorization; whereas Directives 73/239/EEC and 88/357/EEC should therefore be amended along those lines;

(7) Whereas the competent authorities of home Member States will henceforth be responsible for monitoring the financial health of insurance undertakings, including their state of solvency, the establishment of adequate technical provisions and the covering of those provisions by matching assets;

(8) Whereas certain provisions of this Directive define minimum standards; whereas a home Member State may lay down stricter rules for insurance undertakings authorized by its own competent authorities;

(9) Whereas the competent authorities of the Member States must have at their disposal such means of supervision as are necessary to ensure the orderly pursuit of business by insurance undertakings throughout the Community whether carried on under the right of establishment or the freedom to provide services; whereas, in particular, they must be able to introduce appropriate safeguards or impose sanctions aimed at preventing irregularities and infringements of the provisions on insurance supervision;

(10) Whereas the internal market comprises an area without internal frontiers and involves access to all insurance business other than life assurance throughout the Community and, hence, the possibility for any duly authorized insurer to cover any of the risks referred to in the Annex to Directive 73/239/EEC; whereas, to that end, the monopoly enjoyed by certain bodies in certain Member States in respect of the coverage of certain risks must be abolished;

(11) Whereas the provisions on transfers of portfolios must be adapted to bring them into line with the single authorization system introduced by this Directive;

(12) Whereas Directive 91/674/EEC has already effected the necessary harmonization of the Member States' rules on the technical provisions which insurers are required to establish to cover their commitments, and that harmonization makes it possible to grant mutual recognition of those provisions;

(13) Whereas the rules governing the spread, localization and matching of the assets used to cover technical provisions must be coordinated in order to facilitate the mutual recognition of Member States' rules; whereas that coordination must take account of the measures on the liberalization of capital movements provided for in the Council Directive of 24 June 1988 for the implementation of Article 67 of the Treaty (88/361/EEC) [3] and the progress made by the Community towards economic and monetary union;

(14) Whereas, however, the home Member State may not require insurance undertakings to invest the assets covering their technical provisions in particular categories of assets, as such a requirement would be incompatible with the measures on the liberalization of capital movements provided for in Directive 88/361/EEC;

(15) Whereas, pending the adoption of a Directive on investment services harmonizing *inter alia* the

(1) OJ No L 228, 16. 8. 1973, p. 3. Last amended by Directive 88/357/EEC (OJ No L 172, 4. 7. 1988, p. 1).
(2) OJ No L 374, 31. 12. 1991, p. 7.
(3) OJ No L 178, 8.7.1988, p. 5.

definition of the concept of regulated market, for the purposes of this Directive and without prejudice to such future harmonization that concept must be defined provisionally; whereas that definition will be replaced by that harmonized at Community level which will give the home Member State of the market the responsibilities for these matters which this Directive transitionally gives to the insurance undertaking's home Member State;

(16) Whereas the list of items of which the solvency margin required by Directive 73/239/EEC may be made up must be supplemented to take account of new financial instruments and of the facilities granted to other financial institutions for the constitution of their own funds;

(17) Whereas within the framework of an integrated insurance market policyholders who, by virtue of their status, their size or the nature of the risks to be insured, do not require special protection in the Member State in which a risk is situated should be granted complete freedom to choose the law applicable to their insurance contracts;

(18) Whereas the harmonization of insurance contract law is not a prior condition for the achievement of the internal market in insurance; whereas, therefore, the opportunity afforded to the Member States of imposing the application of their law to insurance contracts covering risks situated within their territories is likely to provide adequate safeguards for policyholders who require special protection;

(19) Whereas within the framework of an internal market it is in the policyholder's interest that he should have access to the widest possible range of insurance products available in the Community so that he can choose that which is best suited to his needs; whereas it is for the Member State in which the risk is situated to ensure that there is nothing to prevent the marketing within its territory of all the insurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in the Member State in which the risk is situated, and insofar as the general good is not safeguarded by the rules of the home Member State, provided that such provisions must be applied without discrimination to all undertakings operating in that Member State and be objectively necessary and in proportion to the objective pursued;

(20) Whereas the Member States must be able to ensure that the insurance products and contract documents used, under the right of establishment or the freedom to provide services, to cover risks situated within their territories comply with such specific legal provisions protecting the general good as are applicable; whereas the systems of supervision to be employed must meet the requirements of an integrated market but their employment may not constitute a prior condition for carrying on insurance business; whereas from this standpoint systems for the prior approval of policy conditions do not appear to be justified; whereas it is therefore necessary to provide for other systems better suited to the requirements of an internal market which enable every Member State to guarantee policyholders adequate protection;

(21) Whereas if a policyholder is a natural person, he should be informed by the insurance undertaking of the law which will apply to the contract and of the arrangements for handling policyholders' complaints concerning contracts;

(22) Whereas in some Member States private or voluntary health insurance serves as a partial or complete alternative to health cover provided for by the social security systems;

(23) Whereas the nature and social consequences of health insurance contracts justify the competent authorities of the Member State in which a risk is situated in requiring systematic notification of the general and special policy conditions in order to verify that such contracts are a partial or complete alternative to the health cover provided by the social security system; whereas such verification must not be a prior condition for the marketing of the products; whereas the particular nature of health insurance, serving as a partial or complete alternative to the health cover provided by the social security system, distinguishes it from other classes of indemnity insurance and life assurance insofar as it is necessary to ensure that policyholders have effective access to private health cover or health cover taken out on a voluntary basis regardless of their age or risk profile;

(24) Whereas to this end some Member States have adopted specific legal provisions; whereas, to protect the general good, it is possible to adopt or maintain such legal provisions in so far as they do not unduly restrict the right of establishment or the freedom to provide services, it being understood that such provisions must apply in an identical manner whatever the home Member State of the undertaking

may be; whereas these legal provisions may differ in nature according to the conditions in each Member State; whereas these measures may provide for open enrolment, rating on a uniform basis according to the type of policy and lifetime cover; wheras that objective may also be achieved by requiring undertakings offering private health cover or health cover taken out on a voluntary basis to offer standard policies in line with the cover provided by statutory social security schemes at a premium rate at or below a prescribed maximum and to participate in loss compensation schemes; whereas, as a further possibility, it may be required that the technical basis of private health cover or health cover taken out on a voluntary basis be similar to that of life assurance;

(25) Whereas, because of the coordination effected by Directive 73/239/EEC as amended by this Directive, the possibility, afforded to the Federal Republic of Germany under Article 7 (2) (c) of the same Directive, of prohibiting the simultaneous transaction of health insurance and other classes is no longer justified and must therefore be abolished;

(26) Whereas Member States may require any insurance undertakings offering compulsory insurance against accidents at work at their own risk within their territories to comply with the specific provisions laid down in their national law on such insurance; whereas, however, this requirement may not apply to the provisions concerning financial supervision, which are the exclusive responsibility of the home Member State;

(27) Whereas exercise of the right of establishment requires an undertaking to maintain a permanent presence in the Member State of the branch; whereas responsibility for the specific interests of insured persons and victims in the case of third-party liability motor insurance requires adequate structures in the Member State of the branch for the collection of all the necessary information on compensation claims relating to that risk, with sufficient powers to represent the undertaking *vis-à-vis* injured parties who could claim compensation, including powers to pay such compensation, and to represent the undertaking or, if necessary, to arrange for it to be represented in the courts and before the competent authorities of that Member State in connection with claims for compensation;

(28) Whereas within the framework of the internal market no Member State may continue to prohibit the simultaneous carrying on of insurance business within its territory under the right of establishment and the freedom to provide services; whereas the option granted to Member States in this connection by Directive 88/357/EEC should therefore be abolished;

(29) Whereas provision should be made for a system of penalties to be imposed when, in the Member State in which a risk is situated, an insurance undertaking does not comply with those provisions protecting the general good that are applicable to it;

(30) Whereas some Member States do not subject insurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution, including surcharges intended for compensation bodies; whereas the structures and rates of such taxes and contributions vary considerably between the Member States in which they are applied; whereas it is desirable to prevent existing differences' leading to distortions of competition in insurance services between Member States; whereas, pending subsequent harmonization, application of the tax systems and other forms of contribution provided for by the Member States in which risks are situated is likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected;

(31) Whereas technical adjustments to the detailed rules laid down in this Directive may be necessary from time to time to take account of the future development of the insurance industry; whereas the Commission will make such adjustments as and when necessary, after consulting the Insurance Committee set up by Directive 91/675/EEC [1], in the exercise of the implementing powers conferred on it by the Treaty;

(32) Whereas it is necessary to adopt specific provisions intended to ensure smooth transition from the legal regime in existence when this Directive becomes applicable to the regime that it introduces, taking care not to place an additional workload on Member States' competent authorities;

(33) Whereas under Article 8 c of the Treaty account should be taken of the extent of the effort which must be made by certain economies at different stages of development; whereas, therefore, transitional arrangements should be adopted for the gradual application of this Directive by certain Member States,

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[1] OJ No L 374, 31. 12. 1991, p. 32.

HAS ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS AND SCOPE

Article 1

For the purposes of this Directive:

(a) *insurance undertaking* shall mean an undertaking which has received official authorization in accordance with Article 6 of Directive 73/239/EEC;

(b) *branch* shall mean an agency or branch of an insurance undertaking, having regard to Article 3 of Directive 88/357/EEC;

(c) *home Member State* shall mean the Member State in which the head office of the insurance undertaking covering a risk is situated;

(d) *Member State of the branch* shall mean the Member State in which the branch covering a risk is situated;

(e) *Member State of the provision of services* shall mean the Member State in which a risk is situated, as defined in Article 2 (d) of Directive 88/357/EEC, if it is covered by an insurance undertaking or a branch situated in another Member State;

(f) *control* shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC [1], or a similar relationship between any natural or legal person and an undertaking;

(g) *qualifying holding* shall mean a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which a holding subsists.

For the purposes of this definition, in the context of Articles 8 and 15 and of the other levels of holding referred to in Article 15, the voting rights referred to in Article 7 of Directive 88/627/EEC [2] shall be taken into account;

(h) *parent undertaking* shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(i) *subsidiary* shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the undertaking which is those undertakings' ultimate parent undertaking;

(j) *regulated market* shall mean a financial market regarded by an undertaking's home Member State as a regulated market pending the adoption of a definition in a Directive on investment services and characterized by:

— regular operation, and

— the fact that regulations issued or approved by the appropriate authorities define the conditions for the operation of the market, the conditions for access to the market and, where the Council Directive of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing (79/279/EEC) [3] applies, the conditions for admission to listing imposed in that Directive or, where that Directive does not apply, the conditions to be satisfied by a financial instrument in order to be effectively dealt in on the market.

For the purposes of this Directive, a regulated market may be situated in a Member State or in a third country. In the latter event, the market must be recognized by the home Member State and meet comparable requirements. Any financial instruments dealt in on that market must be of a quality comparable to that of the instruments dealt in on the regulated market or markets of the Member State in question;

(k) *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise insurance undertakings.

Article 2

1. This Directive shall apply to the types of insurance and undertakings referred to in Article 1 of Directive 73/239/EEC.

2. This Directive shall apply neither to the types of insurance or operations, nor to undertakings or institutions to which Directive 73/239/EEC does not apply, nor to the bodies referred to in Article 4 of that Directive.

Article 3

Notwithstanding Article 2 (2), Member States shall take every step to ensure that monopolies in respect of the taking up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in Article 4 of Directive 73/239/EEC, are abolished by 1 July 1994.

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(1) OJ No L 193, 18. 7. 1983, p. 1.
(2) OJ No L 348, 17. 12. 1988, p. 62.
(3) OJ No L 66, 13. 3. 1979, p. 21. Last amended by Directive 82/148/EEC (OJ No L 62, 5. 3. 1982, p. 22).

TITLE II

THE TAKING UP OF THE BUSINESS OF INSURANCE

Article 4

Article 6 of Directive 73/239/EEC shall be replaced by the following:

'*Article 6*

The taking up of the business of direct insurance shall be subject to prior official authorization.

Such authorization shall be sought from the competent authorities of the home Member State by:

(a) any undertaking which establishes its head office within the territory of that State;

(b) any undertaking which, having received the authorization referred to in the first subparagraph, extends its business to an entire class or to other classes'.

Article 5

Article 7 of Directive 73/239/EEC shall be replaced by the following:

'*Article 7*

1. Authorization shall be valid for the entire Community. It shall permit an undertaking to carry on business there, under either the right of establishment or the freedom to provide services.

2. Authorization shall be granted for a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class, as listed in point A of the Annex.

However:

(a) Member States may grant authorization for the groups of classes listed in point B of the Annex, attaching to them the appropriate denominations specified therein;

(b) authorization granted for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions imposed in point C of the Annex are fulfilled'.

Article 6

Article 8 of Directive 72/239/EEC shall be replaced by the following:

'*Article 8*

1. The home Member State shall require every insurance undertaking for which authorization is sought to:

(a) adopt one of the following forms:

— in the case of the Kingdom of Belgium: "société anonyme/naamloze vennootschap", "société en commandite par actions/commanditaire vennootschap op aandelen", "association d'assurance mutuelle/onderlinge verzekeringsvereniging", "société coopérative/coöperatieve vennootschap";

— in the case of the Kingdom of Denmark: "aktieselskaber", "gensidige selskaber";

— in the case of the Federal Republic of Germany: "Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit", "Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen";

— in the case of the French Republic: "société anonyme", "société d'assurance mutuelle", "institution de prévoyance régie par le code de la sécurité sociale", "institution de prévoyance régie par le code rural" and "mutuelles régies par le code de la mutualité";

— in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;

— in the case of the Italian Republic: "società per azioni", "società cooperativa", "mutua di assicurazione";

— in the case of the Grand Duchy of Luxembourg: "société anonyme", "société en commandite par actions", "association d'assurances mutuelles", "société coopérative";

— in the case of the Kingdom of the Netherlands: "naamloze vennootschap", "onderlinge waarborgmaatschappij";

— in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's;

— in the case of the Hellenic Republic: "ανώνυμη εταιρία", "αλληλασφαλιστικός συνεταιρισμός";

— in the case of the Kingdom of Spain: "sociedad anónima", "sociedad mutua", "sociedad cooperativa";

— in the case of the Portuguese Republic: "sociedade anónima", "mútua de seguros".

An insurance undertaking may also adopt the form of a European Company (SE) when that has been established.

Furthermore, Member States may, where appropriate, set up undertakings in any public-law form provided that such bodies have as their objects

insurance operations under conditions equivalent to those under which private-law undertakings operate;

(b) limit its objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;

(c) submit a scheme of operations in accordance with Article 9;

(d) possess the minimum guarantee fund provided for in Article 17 (2);.

(e) be effectively run by persons of good repute with appropriate professional qualifications or experience.

2. An undertaking seeking authorization to extend its business to other classes or to extend an authorization covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 9.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 16 and, if with regard to such other classes Article 17 (2) requires a higher minimum guarantee fund than before, that is possesses that minimum.

3. Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

Member States shall not, however, adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums and forms and other printed documents which an undertaking intends to use in its dealings with policyholders.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Nothing in this Directive shall prevent Member States from subjecting undertakings seeking or having obtained authorization for class 18 in point A of the Annex to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of this class of insurance.

4. The abovementioned provisions may not require that any application for authorization be considered in the light of the economic requirements of the market'.

Article 7

Article 9 of Directive 73/239/EEC shall be replaced by the following:

'Article 9

The scheme of operations referred to in Article 8 (1) (c) shall include particulars or proof concerning:

(a) the nature of the risks which the undertaking proposes to cover;

(b) the guiding principles as to reinsurance;

(c) the items constituting the minimum guarantee fund;

(d) estimates of the costs of setting up the administrative services and the organization for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in point A of the Annex, the resources at the undertaking's disposal for the provision of the assistance promised

and, in addition, for the first three financial years:

(e) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(f) estimates of premiums or contributions and claims;

(g) a forecast balance sheet;

(h) estimates of the financial resources intended to cover underwriting liabilities and the solvency margin.'

Article 8

The competent authorities of the home Member State shall not grant an undertaking authorization to take up the business of insurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The same authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an insurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

TITLE III

HARMONIZATION OF THE CONDITIONS GOVERNING THE BUSINESS OF INSURANCE

Chapter 1

Article 9

Article 13 of Directive 73/239/EEC shall be replaced by the following:

'Article 13

1. The financial supervision of an insurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.

2. That financial supervision shall include verification, with respect to the insurance undertaking's entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Community level.

Where the undertaking in question is authorized to cover the risks classified in class 18 in point A of the Annex, supervision shall extend to monitoring of the technical resources which the undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.

3. The competent authorities of the home Member State shall require every insurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.'

Article 10

Article 14 of Directive 73/239/EEC shall be replaced by the following:

'Article 14

The Member State of the branch shall provide that where an insurance undertaking authorized in another Member State carries on business through a branch the competent authorities of the home Member State may, after having informed the competent authorities of the Member State of the branch, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification of the information necessary to ensure the financial supervision of the undertaking. The authorities of the Member State of the branch may participate in that verification'.

Article 11

Article 19 (2) and (3) of Directive 73/239/EEC shall be replaced by the following:

'2. Member States shall require insurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

3. Every Member State shall take all steps necessary to ensure that the competent authorities have the powers and means necessary for the supervision of the business of insurance undertakings with head offices within their territories, including business carried on outwith those territories, in accordance with the Council Directives governing such business and for the purpose of seeing that they are implemented.

These powers and means must, in particular, enable the competent authorities to:

(a) make detailed enquiries regarding an undertaking's situation and the whole of its business, *inter alia*, by:

— gathering information or requiring the submission of documents concerning its insurance business,

— carrying out on-the-spot investigations at the undertaking's premises;

(b) take any measures with regard to an undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that that undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations insofar as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of insured persons;

(c) ensure that those measures are carried out, if need be by enforcement and where appropriate through judicial channels.

Member States may also make provision for the competent authorities to obtain any information regarding contracts which are held by intermediaries.'

Article 12

1. Article 11 (2) to (7) of Directive 88/357/EEC is hereby repealed.

2. Under the conditions laid down by national law, each Member State shall authorize insurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, concluded either under the right of establishment or the freedom to provide services, to an accepting office established within the Community, if the competent authorities of the home Member State of the accepting office certify that after taking the transfer into account the latter possesses the necessary solvency margin.

3. Where a branch proposes to transfer all or part of its portfolio of contracts, concluded either under the right of establishment or the freedom to provide services, the Member State of the branch shall be consulted.

4. In the circumstances referred to in paragraphs 2 and 3, the competent authorities of the home Member State of the transferring undertaking shall authorize the transfer after obtaining the agreement of the competent authorities of the Member States in which the risks are situated.

5. The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request; the absence of any response within that period from the authorities consulted shall be considered equivalent to a favourable opinion or tacit consent.

6. A transfer authorized in accordance with this Article shall be published as laid down by national law in the Member State in which the risk is situated. Such transfers shall automatically be valid against policy-holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' rights to give policy-holders the option of cancelling contracts within a fixed period after a transfer.

Article 13

1. Article 20 of Directive 73/239/EEC shall be replaced by the following:

'*Article 20*

1. If an undertaking does not comply with Article 15, the competent authority of its home Member State may prohibit the free disposal of its assets after having communicated its intention to the competent authorities of the Member States in which the risks are situated.

2. For the purposes of restoring the financial situation of an undertaking the solvency margin of which has fallen below the minimum required under Article 16 (3), the competent authority of the home Member State shall require that a plan for the restoration of a sound financial situation be submitted for its approval.

In exceptional circumstances, if the competent authority is of the opinion that the financial situation of the undertaking will deteriorate further, it may also restrict or prohibit the free disposal of the undertaking's assets. It shall inform the authorities of other Member States within the territories of which the undertaking carries on business of any measures it has taken and the latter shall, at the request of the former, take the same measures.

3. If the solvency margin falls below the guarantee fund as defined in Article 17, the competent authority of the home Member State shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the undertaking's assets. It shall inform the authorities of other Member States within the territories of which the undertaking carries on business accordingly and the latter shall, at the request of the former, take the same measures.

4. The competent authorities may further take all measures necessary to safeguard the interests of insured persons in the cases provided for in paragraphs 1, 2 and 3.

5. Each Member State shall take the measures necessary to be able, in accordance with its national law, to prohibit the free disposal of assets located within its territory at the request, in the cases provided for in paragraphs 1, 2 and 3, of the undertaking's home Member State, which shall designate the assets to be covered by such measures.'

Article 14

Article 22 of Directive 73/239/EEC shall be replaced by the following:

'*Article 22*

1. Authorization granted to an insurance undertaking by the competent authority of its home Member State may be withdrawn by that authority if that undertaking:

(a) does not make use of that authorization within 12 months, expressly renounces it or ceases to carry on business for more than six months, unless the Member State concerned has made provision for authorization to lapse in such cases;

(b) no longer fulfils the conditions for admission;

(c) has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 20;

(d) fails seriously in its obligation under the regulations to which it is subject.

In the event of the withdrawal or lapse of authorization, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly, and they shall take appropriate measures to prevent the undertaking from commencing new operations within their territories, under either the right of establishment or the freedom to provide services. The home Member State's competent authority shall, in conjunction with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the undertaking's assets in accordance with Article 20 (1), (2), second subparagraph, or (3), second subparagraph.

2. Any decision to withdraw authorization shall be supported by precise reasons and communicated to the undertaking in question.'

Article 15

1. Member States shall require any natural or legal person who proposes to acquire, directly or indirectly, a qualifying holding in an insurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his intended holding. Such a person must likewise inform the competent authorities of the home Member State if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital he holds would reach or exceed 20, 33 or 50 % or so that the insurance undertaking would become his subsidiary.

The competent authorities of the home Member State shall have up to three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the insurance undertaking in question, they are not satisfied as to the qualification of the person referred to in the first subparagraph. If they do not oppose the plan in question, they may fix a maximum period fort its implementation.

2. Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in an insurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his intended holding. Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital he holds would fall below 20, 33 or 50 % or so that the insurance undertaking would cease to be his subsidiary.

3. On becoming aware of them, insurance undertakings shall inform the competent authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below any of the tresholds referred to in paragraphs 1 and 2.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

4. Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to operate against the prudent and sound management of an insurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information imposes in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 16

1. The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors and experts acting on behalf of the competent authorities, shall be bound by the

obligation of professional secrecy. This means that no confidential information which they may receive while performing their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an insurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with the Directives applicable to insurance undertakings. Such information shall be subject to the conditions of professional secrecy laid down in paragraph 1.

3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those provided for in this Article.

4. Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking up of the business of insurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms,

— to impose sanctions,

— in administrative appeals against decisions of the competent authorities, or

— in court proceedings initiated under Article 56 or under special provisions provided for in the Directives adopted in the field of insurance undertakings.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

— authorities responsible for the official supervision of credit institutions and other financial organizations and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation and bankruptcy of insurance undertakings and in other similar procedures, and

— persons responsible for carrying out statutory audits of the accounts of insurance undertakings and other financial institutions,

in the discharge of their supervisory functions, or the disclosure to bodies which administer compulsory winding-up proceedings or guarantee funds of information necessary to the performance of their duties. The information received by those authorities, bodies and persons shall be subject to the conditions of professional secrecy laid down in paragraph 1.

6. In addition, notwithstanding paragraphs 1 and 4, the Member States may, under provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

The Member States shall, however, provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 14 of Directive 73/239/EEC may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Chapter 2

Article 17

Article 15 of Directive 73/239/EEC shall be replaced by the following:

'Article 15

1. The home Member State shall require every insurance undertaking to establish adequate technical provisions in respect of its entire business.

The amount of such technical provisions shall be determined in accordance with the rules laid down in Directive 91/674/EEC.

2. The home Member State shall require every insurance undertaking to cover the technical provisions in respect of its entire business by matching assets in

accordance with Article 6 of Directive 88/357/EEC. In respect of risks situated within the European Community, those assets must be localized within the Communtiy. Member States shall not require insurance undertakings to localize their assets in any particular Member State. The home Member State may, however, permit relaxations in the rules on the localization of assets.

3. If the home Member State allows any technical provisions to be covered by claims against reinsurers, it shall fix the percentage so allowed. In such cases, it may not specify the localization of the assets representing such claims.'

Article 18

Article 15a of Directive 72/239/EEC shall be replaced by the following:

'Article 15a

1. Member States shall require every insurance undertaking with a head office within their territories which underwrites risks included in class 14 in point A of the Annex (hereinafter referred to as "credit insurance") to set up an equalization reserve for the purpose of offsetting any technical deficit or above-average claims ration arising in that class in any financial year.

2. The equalization reserve shall be calculated in accordance with the rules laid down by the home Member State in accordance with one of the four methods set out in point D of the Annex, which shall be regarded as equivalent.

3. Up to the amount calculated in accordance with the methods set out in point D of the Annex, the equalization reserve shall be disregarded for the purpose of calculating the solvency margin.

4. Member States may exempt insurance undertakings with head offices within their territories from the obligation to set up equalization reserves for credit insurance business where the premiums or contributions receivable in respect of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than ECU 2 500 000.'

Article 19

Article 23 of Directive 88/357/EEC is hereby repealed.

Article 20

The assets covering the technical provisions shall take account of the type of business carried on by an undertaking in such a way as to secure the safety, yield and marketability of its investments, which the undertaking shall ensure are diversified and adequately spread.

Article 21

1. The home Member State may not authorize insurance undertakings to cover their technical provisions with any but the following categories of assets:

A. Investments

(a) debt securities, bonds and other money and capital market instruments;

(b) loans;

(c) shares and other variable yield participations;

(d) units in undertakings for collective investment in transferable securities and other investment funds;

(e) land, buildings and immovable property rights;

B. Debts and claims

(f) debts owed by reinsurers, including reinsurers' shares of technical provisions;

(g) deposits with and debts owed by ceding undertakings;

(h) debts owed by policyholders and intermediaries arising out of direct and reinsurance operations;

(i) claims arising out of salvage and subrogation;

(j) tax recoveries;

(k) claims against guarantee funds;

C. Others

(l) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortization;

(m) cash at bank and in hand, deposits with credit institutions and any other bodies authorized to receive deposits;

(n) deferred acquisition costs;

(o) accrued interest and rent, other accrued income and prepayments;

In the case of the association of underwriters know as Lloyd's, asset categories shall also include guarantees and letters of credit issued by credit institutions within the

meaning of Directive 77/780/EEC [1] or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

The inclusion of any asset or category of assets listed in the first subparagraph shall not mean that all categories of assets must automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets; in this connection, it may require valuable security or guarantees, particularly in the case of debts owed by reinsurers.

In the determination and the application of the rules which it lays down, the home Member State shall, in particular, ensure that the following principles are complied with:

(i) assets covering technical provisions shall be valued net of any debts arising out of their acquisition;

(ii) all assets must be valued on a prudent basis, allowing for the risk of any amounts' not being realizable. In particular, tangible fixed assets other than land and buildings may be accepted as cover for technical provisions only if they are valued on the basis of prudent amortization;

(iii) loans, whether to undertakings, to State authorities or international organizations, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by insurance undertakings or other forms of security;

(iv) derivative instruments such as options, futures and swaps in connection with assets covering technical provisions may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;

(v) transferrable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realized in the short term;

(vi) debts owed by and claims against a third party may be accepted as cover for technical provisions only after deduction of all amounts owed to the same third party;

(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realizable. In particular, debts owed by policyholders and intermediaries arising out of insurance and reinsurance operations may be accepted only in so far as they have been outstanding for not more than three months;

(viii) where the assets held include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that that is consistent with the calculation of the technical provision for unearned premiums.

2. Notwithstanding paragraph 1, in exceptional circumstances and at an insurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 20.

Article 22

1. As regard the assets covering technical provisions, the home Member State shall require every insurance undertaking to invest no more than:

(a) 10 % of its total gross technical provisions in any one piece of land or building, or a number of pieces of land or buildings close enough to each other to be considered effectively as one investment;

(b) 5 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money and capital market instruments from the same undertaking, or in loans granted to the same borrower, taken together, the loans being loans other than those granted to a State, regional or local authority or to an international organization of which one or more Member States are members. This

[1] OJ No L 322, 17. 12. 1977, p. 30. Last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

limit may be raised to 10 % if an undertaking does not invest more than 40 % of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 % of its assets;

(c) 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertaking — in so far as Article 8 of Directive 73/239/EEC allows it — and investment undertakings established in a Member State;

(d) 3 % of its total gross technical provisions in the form of cash in hand;

(e) 10 % of its total gross technical provisions in shares, other securities treated as shares and debt securities, which are not dealt in on a regulated market.

2. The absence of a limit in paragraph 1 on investment in any particular category does not imply that assets in that category should be accepted as cover for technical provisions without limit. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets. In particular it shall ensure, in the determination and the application of those rules, that the following principles are complied with:

(i) assets covering technical provisions must be diversified and spread in such a way as to ensure that there is no excessive reliance on any particular category of asset, investment market or investment;

(ii) investment in particular types of asset which show high levels of risk, whether because of the nature of the asset or the quality of the issuer, must be restricted to prudent levels;

(iii) limitations on particular categories of asset must take account of the treatment of reinsurance in the calculation of technical provisions;

(iv) where the assets held include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(v) the percentage of assets covering technical provisions which are the subject of non-liquid investments must be kept to a prudent level;

(vi) where the assets held include loans to or debt securities issued by certain credit institutions, the home Member State may, when applying the rules and principles laid down in this Article, take into account the underlying assets held by such credit institutions. This treatment may be applied only where the credit institution has its head office in a Member State, is entirely owned by that Member State and/or that State's local authorities and its business, according to its memorandum and articles of association, consists of extending, through its intermediary, loans to or guaranteed by the State or local authorities or loans to bodies closely linked to the State or to local authorities.

3. In the context of the detailed rules laying down the conditions for the use of acceptable assets, the Member State shall give more limitative treatment to:

— any loan unaccompanied by a bank guarantee, a guarantee issued by an insurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral,

— Ucits not coordinated within the meaning of Directive 85/611/EEC [1] and other investment funds, as compared with Ucits coordinated within the meaning of that Directive,

— securities which are not dealt in on a regulated market, as compared with those which are,

— bonds, debt securities and other money and capitalmarket instruments not issued by States, local or regional authorities or undertakings belonging to Zone A as defined in Directive 89/647/EEC [2], or the issuers of which are international organizations not numbering at least one Community Member State among their member, as compared with the same financial instruments issued by such bodies.

4. Member States may raise the limit laid down in paragraph 1 (b) to 40 % in the case of certain debt securities when these are issued by a credit institution which has its head office in a Member State and is subject by law to special official supervision designed to protect the holders of those debt securities. In particular, sums deriving from the issue of such debt securities must be invested in accordance with the law in assets which, during the whole period of validity of the debt securities, are capable of covering claims attaching to the debt securities

[1] OJ No L 375, 31. 12. 1985, p. 3. Amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).
[2] OJ No L 386, 30. 12. 1989, p. 14.

and which, in the event of failure of the issues, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

5. Member States shall not require insurance undertakings to invest in particular categories of assets.

6. Notwithstanding paragraph 1, in exceptional circumstances and at an insurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1 (a) to (e), subject to Article 20.

Article 23

Points 8 and 9 of Annex 1 to Directive 88/357/EEC shall be replaced by the following:

'8. Insurance undertakings may hold non-matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.

9. A Member State may provide that when under the preceding procedures a commitment must be covered by assets expressed in a Member State's currency that requirement shall also be considered as satisfied when the assets are expressed in ecus'.

Article 24

Article 16 (1) of Directive 73/239/EEC shall be replaced by the following:

'1. The home Member State shall require every insurance undertaking to establish an adequate solvency margin in respect of its entire business.

The solvency margin shall correspond to the assets of the undertaking free of any foreseeable liabilities less any intangible items. In particular the following shall be included:

— the paid-up share capital or, in the case of a mutual insurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

(a) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only insofar as this does not cause the solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

(b) the memorandum and articles of association must stipulate, with respect to any such payments for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period and

(c) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in (a) and (b);

— one-half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund,

— reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities,

— any profits brought forward,

— in the case of mutual or mutal-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one-half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50 % of the margin,

— at the request of and on the production of proof by the insurance undertaking, any hidden reserves arising out of the undervaluation of assets, insofar as those hidden reserves are not of an exceptional nature,

— cumulative preferential share capital and subordinated loan capital may be included but, if so, only up to 50 % of the margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, if the following minimum criteria are met:

(a) in the event of the bankruptcy or liquidation of the insurance undertaking, binding agreements must exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must fulfil the following additional conditions:

(b) only fully paid-up funds may be taken into account;

(c) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the insurance undertaking must submit to the competent authorities for their approval a plan showing how the solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the

solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorize the early repayment of such loans provided application is made by the issuing insurance undertaking and its solvency margin will not fall below the required level;

(d) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered a component of the solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the insurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the actual and required solvency margins both before and after that repayment. The competent authorities shall authorize repayment only if the insurance undertaking's solvency margin will not fall below the required level;

(e) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the insurance undertaking, the debt will become repayable before the agreed repayment dates;

(f) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

— securities with no specified maturity date and other instruments that fulfil the following conditions, including cumulative preferential shares other than those mentioned in the preceding indent, up to 50 % of the margin for the total of such securities and the subordinated loan capital referred to in the preceding indent:

(a) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(b) the contract of issue must enable the insurance undertaking to defer the payment of interest on the loan;

(c) the lender's claims on the insurance undertaking must rank entirely after those of all non-subordinated creditors;

(d) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurance undertaking to continue its business;

(e) only fully paid-up amounts may be taken into account.'

Article 25

No more than three years after the date of application of this Directive the Commission shall submit a report to the Insurance Committee on the need for further harmonization of the solvency margin.

Article 26

Article 18 of Directive 79/239/EEC shall be replaced by the following:

'Article 18

1. Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 15.

2. Subject to Article 15 (2), Article 20 (1), (2), (3) and (5) and the last subparagraph of Article 22 (1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorized insurance undertakings.

3. Paragraphs 1 and 2 shall not preclude any measures which Member States, while safeguarding the interests of the isured persons, are entitled to take as owners or members of or partners to the undertakings in question.'

Chapter 3

Article 27

Article 7 (1) (f) of Directive 88/357/EEC shall be replaced by the following:

'(f) in the case of the risks referred to in Article 5 (d) of Directive 73/239/EEC, the parties to the contract may choose any law.'

Article 28

The Member State in which a risk is situated shall not prevent a policyholder from concluding a contract with an insurance undertaking authorized under the conditions of Article 6 of Directive 73/239/EEC, as long as that does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated.

Article 29

Member States shall not adopt provisions requiring the prior approval or systematic notification of general and

special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy-holders. They may only require non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 30

1. Article 8 (4) (b) of Directive 88/357/EEC shall be deleted. Article 8 (4) (a) of that Directive shall therefore be amended to read as follows:

'(a) Subject to subparagraph (c), the third subparagraph of Article 7 (2) shall apply where the insurance contract provides cover in two or more Member States, at least one of which makes insurance compulsory.'

2. Notwithstanding any provision to the contrary, a Member State which makes insurance compulsory may require that the general and special conditions of the compulsory insurance be communicated to its competent authority before being circulated.

Article 31

1. Before an insurance contract is concluded the insurance undertaking shall inform the policyholder of:

— the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the insurer proposes to choose,

— the arrangements for handling policyholders' complaints concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the policyholders's right to take legal proceedings.

2. The obligation referred to in paragraph 1 shall apply only where the policyholder is a natural person.

3. The rules for implementing this Article shall be determined in accordance with the law of the Member State in which the risk is situated.

TITLE IV

PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

Article 32

Article 10 of Directive 73/239/EEC shall be replaced by the following:

'Article 10

1. An insurance undertaking that proposes to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. The Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which it proposes to establish a branch;

(b) a scheme of operations setting out, *inter alia*, the types of business envisaged and the structural organization of the branch;

(c) the address in the Member State of the branch from which documents may be obtained and to which they may be delivered, it being understood that that address shall be the one to which all communications to the authorized agent are sent;

(d) the name of the branch's authorized agent, who must possess sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the insured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorized agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

Where the undertaking intends its branch to cover risks in class 10 of point A of the Annex, not including carrier's liability, it must produce a declaration that it has become a member of the national bureau and the national guarantee fund of the Member State of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the

insurance undertaking or the good repute and professional qualifications or experience of the directors or managers or the authorized agent, taking into account the business planned, they shall within three months of receiving all the information referred to in paragraph 2 communicate that information to the competent authorities of the Member State of the branch and shall inform the undertaking concerned accordingly.

The competent authorities of the home Member State shall also attest that the insurance undertaking has the minimum solvency margin calculated in accordance with Articles 16 and 17.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the Member State of the branch they shall give the reasons for their refusal to the undertaking concerned within three months of receiving all the information in question. That refusal or failure to act may be subject to a right to apply to the courts in the home Member State.

4. Before the branch of an insurance undertaking starts business, the competent authorities of the Member State of the branch shall, within two months of receiving the information referred to in paragraph 3, inform the competent authority of the home Member State, if appropriate, of the conditions under which, in the interest of the general good, that business must be carried on in the Member State of the branch.

5. On receiving a communication from the competent authorities of the Member State of the branch or, if no communication is received from them, on expiry of the period provided for in paragraph 4, the branch may be established and start business.

6. In the event of a change in any of the particulars communicated under paragraph 2 (b), (c) or (d), an insurance undertaking shall give written notice of the change to the competent authorities of the home Member State and of the Member State of the branch at least one month before making the change so that the competent authorities of the home Member State and the competent authorities of the Member State of the branch may fulfil their respective roles under paragraphs 3 and 4.'

Article 33

Article 11 of Directive 73/239/EEC is hereby repealed.

Article 34

Article 14 of Directive 88/357/EEC shall be replaced by the following:

'*Article 14*

Any undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first inform the competent authorities of the home Member State, indicating the nature of the risks it proposes to cover.'

Article 35

Article 16 of Directive 88/357/EEC shall be replaced by the following:

'*Article 16*

1. Within one month of the notification provided for in Article 14, the competent authorities of the home Member State shall communicate to the Member State or Member States within the territories of which an undertaking intends to carry on business under the freedom to provide services:

(a) a certificate attesting that the undertaking has the minimum solvency margin calculated in accordance with Articles 16 and 17 of Directive 73/239/EEC;

(b) the classes of insurance which the undertaking has been authorized to offer;

(c) the nature of the risks which the undertaking proposes to cover in the Member State of the provision of services.

At the same time, they shall inform the undertaking concerned accordingly.

Each Member State within the territory of which an undertaking intends, under the freedom to provide services, to cover risks in class 10 of point A of the Annex to Directive 73/239/EEC other than carrier's liability may require that the undertaking:

— communicate the name and address of the representative referred to in Article 12a (4) of this Directive,

— produce a declaration that the undertaking has become a member of the national bureau and national guarantee fund of the Member State of the provision of services.

2. Where the competent authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down, they shall give the reasons for their refusal to the undertaking within that same period. That refusal shall be subject to a right to apply to the courts in the home Member State.

3. The undertaking may start business on the certified date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.'

Article 36

Article 17 of Directive 88/357/EEC shall be replaced by the following:

'*Article 17*

Any change which an undertaking intends in make to the information referred to in Article 14 shall be subject to the procedure provided for in Articles 14 and 16.'

Article 37

Article 12 (2), second and third subparagraphs, Article 12 (3) and Articles 13 and 15 of Directive 88/357/EEC are hereby repealed.

Article 38

The competent authorities of the Member State of the branch or the Member State of the provision of services may require that the information which they are authorized under this Directive to request with regard to the business of insurance undertakings operating in the territory of that State shall be supplied to them in the official language or languages of that State.

Article 39

1. Article 18 of Directive 88/357/EEC is hereby repealed.

2. The Member State of the branch or of the provision of services shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an undertaking intends to use in its dealings with policyholders. It may only require an undertaking that proposes to carry on insurance business within its territory, under the right of establishment or the freedom to provide services, to effect non-systematic notification ot those policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

3. The Member State of the branch or of the provision of services may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 40

1. Article 19 of Directive 88/357/EEC is hereby repealed.

2. Any undertaking carrying on business under the right of establishment or the freedom to provide services shall submit to the competent authorities of the Member State of the branch and/or of the Member State of the provision of services all documents requested of it for the purposes of this Article in so far as undertakings with head offices in those Member States are also obliged to do so.

3. If the competent authorities of a Member State establish that an undertaking with a branch or carrying on business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that State, they shall require the undertaking concerned to remedy that irregular situation.

4. If the undertaking in question fails to take the necessary action, the competent authorities of the Member State concerned shall inform the competent authorities of the home Member State accordingly. The latter authorities shall, at the earliest opportunity, take all appropriate measures to ensure that the undertaking concerned remedies that irregular situation. The nature of those measures shall be communicated to the competent authorities of the Member State concerned.

5. If, despite the measures taken by the home Member State or because those measures prove inadequate or are lacking in that State, the undertaking persists in infringing the legal provisions in force in the Member State concerned, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalize further infringements, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on insurance undertakings.

6. Paragraphs 3, 4 and 5 shall not affect the emergency power of the Member States concerned to take appropriate measures to prevent irregularities within their territories. This shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within their territories.

7. Paragraphs 3, 4 and 5 shall not affect the powers of the Member States to penalize infringements within their territories.

8. If an undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the competent authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

9. Any measure adopted under paragraphs 4 to 8 involving penalties or restrictions on the conduct of

insurance business must be properly reasoned and communicated to the undertaking concerned.

10. Every two years, the Commission shall submit to the Insurance Committee set up by Directive 91/675/EEC a report summarizing the number and types of cases in which, in each Member State, authorization has been refused under Article 10 of Directive 73/239/EEC or Article 16 of Directive 88/357/EEC as amended by this Directive or measures have been taken under paragraph 5. Member States shall cooperate with the Commission by providing it with the information required for that report.

Article 41

Nothing in this Directive shall prevent insurance undertakings with head offices in Member States from advertising their services, through all available means of communication, in the Member State of the branch or the Member State of the provision of services, subject to any rules governing the form and content of such advertising adopted in the interest of the general good.

Article 42

1. Article 20 of Directive 88/357/EEC is hereby repealed.

2. In the event of an insurance undertaking's being wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other insurance contracts, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Article 43

1. Article 21 of Directive 88/357/EEC is hereby repealed.

2. Where insurance is offered unter the right of establishment or the freedom to provide services, the policyholder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents issued to the policyholder must convey the information referred to in the first subparagraph.

The obligations imposed in the first two subparagraghs shall not apply to the risks referred to in Article 5 (d) of Directive 73/239/EEC.

3. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policyholder, must state the address of the head office, or, where appropriate, of the branch of the insurance undertaking which grants the cover.

Each Member State may require that the name and address of the representative of the insurance undertaking referred to in Article 12 a (4) of Directive 88/357/EEC also appear in the documents referred to in the first subparagraph.

Article 44

1. Article 22 of Directive 88/357/EEC is hereby repealed.

2. Every insurance undertaking shall inform the competent authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commisions, without deduction of reinsurance, by Member State and by group of classes, and also as regards class 10 of point A of the Annex to Directive 73/239/EEC, not including carrier's liability, the frequency and average cost of claims.

The groups of classes are hereby defined as follows:

— accident and sickness (classes 1 and 2),

— motor (classes 3, 7 and 10, the figures for class 10, excluding carriers' liability, being given separately),

— fire and other damage to property (classes 8 and 9),

— aviation, marine and transport (classes 4, 5, 6, 7, 11 and 12),

— general liability (class 13),

— credit and suretyship (classes 14 and 15),

— other classes (classes 16, 17 and 18).

The competent authority of the home Member State shall forward that information within a reasonable time and in aggregate form to the competent authorities of each of the Member States concerned which so request.

Article 45

1. Article 24 of Directive 88/357/EEC is hereby repealed.

2. Nothing in this Directive shall affect the Member States' right to require undertakings carrying on business within their territories under the right of establishment or

the freedom to provide services to join and participate, on the same terms as undertakings authorized there, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

Article 46

1. Article 25 of Directive 88/357/EEC is hereby repealed.

2. Without prejudice to any subsequent harmonization, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated as defined in Article 2 (d) of Directive 88/357/EEC, and also, in the case of Spain, to the surcharges legally established in favour of the Spanish 'Consorcio de Compensación de Seguros' for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

In derogation from the first indent of Article 2 (d) of Directive 88/357/EEC, and for the purposes of this paragraph, moveable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be a risk situated in that Member State, even if the building and its contents are not covered by the same insurance policy.

The law applicable to the contract under Article 7 of Directive 88/357/EEC shall not affect the fiscal arrangements applicable.

Pending future harmonization, each Member State shall apply to those undertakings which cover risks situated within its territory its own national provisions to ensure the collection of indirect taxes and parafiscal charges due under the first subparagraph.

TITLE V

TRANSITIONAL PROVISIONS

Article 47

The Federal Republic of Germany may postpone until 1 January 1996 the application of the first sentence of the second subparagraph of Article 54 (2). During that period, the provisions of the following subparagraph shall apply in the situation referred to in Article 54 (2).

When the technical basis for the calculation of premiums has been communicated to the competent authorities of the home Member State in accordance with the third sentence of the second subparagraph of Article 54 (2), those authorities shall without delay forward that information to the competent authorities of the Member State in which the risk is situated so that they may comment. If the competent authorities of the home Member State take no account of those comments, they shall inform the competent authorities of the Member State in which the risk is situated accordingly in detail and state their reasons.

Article 48

Member States may allow insurance undertakings with head offices in their territories, the buildings and land of which that cover their technical provisions exceed, at the time of the notification of this Directive, the percentage laid down in Article 22 (1) (a), a period expiring no later than 31 December 1998 within which to comply with that provision.

Article 49

The Kingdom of Denmark may postpone until 1 January 1999 the application of this Directive to compulsory insurance against accidents at work. During that period the exclusion provided for in Article 12 (2) of Directive 88/357/EEC for accidents at work shall continue to apply in the Kingdom of Denmark.

Article 50

Spain, until 31 December 1996, and Greece and Portugal, until 31 December 1998, may operate the following transitional arrangements for contracts covering risks situated exclusively in one of those Member States other than those defined in Article 5 (d) of Directive 73/239/EEC:

(a) in derogation from Article 8 (3) of Directive 73/239/EEC and from Articles 29 and 39 of this Directive, the competent authorities of the Member States in question may require the communication, before use, of general and special insurance policy conditions;

(b) the amount of the technical provisions relating to the contracts referred to in this Article shall be determined under the supervision of the Member State concerned in accordance with its own rules or, failing that, in accordance with the procedures established within its territory in accordance with this Directive. Cover of those technical provisions by equivalent and matching assets and the localization of those assets shall be effected under the supervision of that Member State in accordance with its rules and practices adopted in accordance with this Directive.

TITLE VI

FINAL PROVISIONS

Article 51

The following technical adjustments to be made to Directives 73/239/EEC and 88/357/EEC and to this Directive shall be adopted in accordance with the procedure laid down in Directive 91/675/EEC:

— extension of the legal forms provided for in Article 8 (1) (a) of Directive 73/239/EEC,

— amendments to the list set out in the Annex to Directive 73/239/EEC, or adaptation of the terminology used in that list to take account of the development of insurance markets,

— clarification of the items constituting the solvency margin listed in Article 16 (1) of Directive 73/239/EEC to take account of the creation of new financial instruments,

— alteration of the minimum guarantee fund provided for in Article 17 (2) of Directive 73/239/EEC to take account of economic and financial developments,

— amendments, to take account of the creation of new financial instruments, to the list of assets acceptable as cover for technical provisions set out in Article 21 of this Directive and to the rules on the spreading of investments laid down in Article 22,

— changes in the relaxations in the matching rules laid down in Annex 1 to Directive 88/357/EEC, to take account of the development of new currency-hedging instruments or progress made towards economic and monetary union,

— clarification of the definitions in order to ensure uniform application of Directives 73/239/EEC and 88/357/EEC and of this Directive throughout the Community.

Article 52

1. Branches which have started business, in accordance with the provisions in force in their Member State of establishment, before the entry into force of the provisions adopted in implementation of this Directive shall be presumed to have been subject to the procedure laid down in Article 10 (1) to (5) of Directive 73/239/EEC. They shall be governed, from the date of that entry into force, by Articles 15, 19, 20 and 22 of Directive 73/239/EEC and by Article 40 of this Directive.

2. Articles 34 and 35 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before the entry into force of the provisions adopted in implementation of this Directive.

Article 53

The following Article shall be inserted in Directive 73/239/EEC:

'Article 28a

1. Under the conditions laid down by national law, each Member State shall authorize agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an accepting office established in the same Member State if the competent authorities of that Member State or, if appropriate, of the Member State referred to in Article 26 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

2. Under the conditions laid down by national law, each Member State shall authorize agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an insurance undertaking with a head office in another Member State if the competent authorities of that Member State certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

3. If under the conditions laid down by national law a Member State authorizes agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an agency or branch covered by this Title and set up within the territory of another Member State it shall ensure that the competent authorities of the Member State of the accepting office or, if appropriate, of the Member State referred to in Article 26 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin, that the law of the Member State of the accepting office permits such a transfer and that that State has agreed to the transfer.

4. In the circumstances referred to in paragraphs 1, 2 and 3 the Member State in which the transferring agency or branch is situated shall authorize the transfer after obtaining the agreement of the competent authorities of the Member State in which the risks are situated, where different from the Member State in which the transferring agency or branch is situated.

5. The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request; the absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

6. A transfer authorized in accordance with this Article shall be published as laid down by national law in the Member State in which the risk is situated. Such transfers shall automatically be valid against policyholders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' right to give policyholders the option of cancelling contracts within a fixed period after a transfer.'

Article 54

1. Notwithstanding any provision to the contrary, a Member State in which contracts covering the risks in class 2 of point A of the Annex to Directive 73/239/EEC may serve as a partial or complete alternative to health cover provided by the statutory social security system may requrie that those contracts comply with the specific legal provisions adopted by that Member State to porotect the general good in that class of insurance, and that the general and special conditions of that insurance be communicated to the competent authorities of that Member State before use.

2. Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life assurance where:

— the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance,

— a reserve is set up for increasing age,

— the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated,

— the contract provides that premiums may be increased or payments reduced, even for current contracts,

— the contract provides that the policyholder may change his existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of his acquired rights. In particular, account must be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

In that event, the competent authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in the first subparagraph and transmit them to the competent authorities of the home Member State. The premiums must be sufficient, on rasonable actuarial assumptions, for undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require that the technical basis for the calculation of premiums be communicated to its competent authorities before the product is circulated. This paragraph shall also apply where existing contracts are modified.

Article 55

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

Article 56

Member States shall ensure that decisions taken in respect of an isurance undertaking under laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts.

Article 57

1. The Member States shall adopt the laws, regulations and administrative provisions necessary for their compliance with this Directive not later than 31 December 1993 and bring them into force no later than 1 July 1994. They shall forthwith inform the Commission thereof.

When they adopt such measures the Member States shall include references to this Directive or shall make such references when they effect official publication. The manner in which such references are to be made 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 58

This Directive is addressed to the Member States.

Done at Luxembourg, 18 June 1992.

For the Council

The President

Vitor MARTINS

COUNCIL DIRECTIVE

of 22 June 1987

on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance

(87/344/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas 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 (4), as last amended by Directive 87/343/EEC (5), eliminated, in order to facilitate the taking-up and pursuit of such activities, certain differences existing between national laws;

Whereas, however, Article 7 (2) (c) of Directive 73/239/EEC provides that 'pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes';

Whereas the present Directive provides for the coordination of legal expenses insurance as envisaged in Article 7 (2) (c) of Directive 73/239/EEC;

Whereas, in order to protect insured persons, steps should be taken to preclude, as far as possible, any conflict of interests between a person with legal expenses cover and his insurer arising out of the fact that the latter is covering him in respect of any other class of insurance referred to in the Annex to Directive 73/239/EEC or is covering another person and, should such a conflict arise, to enable it to be resolved;

Whereas legal expenses insurance in respect of disputes or risks arising out of, or in connection with, the use of sea-going vessels should, in view of its specific nature, be excluded from the scope of this Directive;

Whereas the activity of an insurer who provides services or bears the cost of defending the insured person in connection with a civil liability contract should also be excluded from the scope of this Directive if that activity is at the same time pursued in the insurer's own interest under such cover;

Whereas Member States should be given the option of excluding from the scope of this Directive the activity of legal expenses insurance undertaken by an assistance insurer where this activity is carried out in a Member State other than the one in which the insured person normally resides and where it forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence;

Whereas the system of compulsory specialization at present applied by one Member State, namely the Federal Republic of Germany, precludes the majority of conflicts; whereas, however, it does not appear necessary, in order to obtain this result, to extend that system to the entire Community, which would require the splitting-up of composite undertakings;

Whereas the desired result can also be achieved by requiring undertakings to provide for a separate contract or a separate section of a single policy for legal expenses insurance and by obliging them either to have separate management for legal expenses insurance, or to entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality, or to afford the person having legal expenses cover the right to choose his lawyer from the moment that he has the right to claim from his insurer;

Whereas, whichever solution is adopted, the interest of persons having legal expenses cover shall be protected by equivalent safeguards;

Whereas the interest of persons having legal expenses cover means that the insured person must be able to choose a lawyer or other person appropriately qualified according to national law in any inquiry or proceedings and whenever a conflict of interests arises;

(1) OJ No C 198, 7. 8. 1979, p. 2.
(2) OJ No C 260, 12. 10. 1981, p. 78.
(3) OJ No C 348, 31. 12. 1980, p. 22.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) See page 72 of this Official Journal.

Whereas Member States should be given the option of exempting undertakings from the obligation to give the insured person this free choice of lawyer if the legal expenses insurance is limited to cases arising from the use of road vehicles on their territory and if other restrictive conditions are met;

Whereas, if a conflict arises between insurer and insured, it is important that it be settled in the fairest and speediest manner possible; whereas it is therefore appropriate that provision be made in legal expenses insurance policies for an arbitration procedure or a procedure offering comparable guarantees;

Whereas the second paragraph of point C of the Annex to Directive 73/239/EEC provides that the risks included in classes 14 and 15 in point A may not be regarded as risks ancillary to other classes; whereas an insurance undertaking should not be able to cover legal expenses as a risk ancillary to another risk without having obtained an authorization in respect of the legal expenses risk; whereas, however, Member States should be given the option of regarding class 17 as a risk ancillary to class 18 in specific cases; whereas, therefore, point C of the said Annex should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to coordinate the provisions laid down by law, regulation or administrative action concerning legal expenses insurance as referred to in paragraph 17 of point A of the Annex to Council Directive 73/239/EEC in order to facilitate the effective exercise of freedom of establishment and preclude as far as possible any conflict of interest arising in particular out of the fact that the insurer is covering another person or is covering a person in respect of both legal expenses and any other class in that Annex and, should such a conflict arise, to enable it to be resolved.

Article 2

1. This Directive shall apply to legal expenses insurance. Such consists in undertaking, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to:

— securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings,

— defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against him.

2. This Directive shall not, however, apply to:

— legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels,

— the activity pursued by the insurer providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings if that activity is at the same time pursued in the insurer's own interest under such cover,

— where a Member State so chooses, the activity of legal expenses insurance undertaken by an assistance insurer where this activity is carried out in a Member State other than the one in which the insured person normally resides, where it forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence. In this event the contract must clearly state that the cover in question is limited to the circumstances referred to in the foregoing sentence and is ancillary to the assistance.

Article 3

1. Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

2. Each Member State shall take the necessary measures to ensure that the undertakings established within its territory adopt, in accordance with the option imposed by the Member State, or at their own choice, if the Member State so agrees, at least one of the following solutions, which are alternatives:

(a) the undertaking shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof carries on at the same time a similar activity

— if the undertaking is a composite one, for another class transacted by it,

— irrespective of whether the undertaking is a composite or a specialized one, in another having financial, commercial or administrative links with the first undertaking and carrying on one or more of the other classes of insurance set out in Directive 73/239/EEC;

(b) the undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in paragraph 1. If the undertaking having separate legal personality has links with an undertaking which carries on one or more of the other classes of insurance referred to in point A of the Annex to Directive 73/239/EEC,

members of the staff of the undertaking who are concerned with the processing of claims or with legal advice connected with such processing may not pursue the same or a similar activity in the other undertaking at the same time. In addition, Member States may impose the same requirements on the members of the management body;

(c) the undertaking shall, in the contract, afford the insured person the right to entrust the defence of his interests, from the moment that he has the right to claim from his insurer under the policy, to a lawyer of his choice or, to the extent that national law so permits, any other appropriately qualified person.

3. Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Directive.

Article 4

1. Any contract of legal expenses insurance shall expressly recognize that:

(a) where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;

(b) the insured person shall be free to choose a lawyer or, if he so prefers and to the extent that national law so permits, any other appropriately qualified person, to serve his interests whenever a conflict of interests arises.

2. Lawyer means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (1).

Article 5

1. Each Member State may provide exemption from the application of Article 4 (1) for legal expenses insurance if all the following conditions are fulfilled:

(a) the insurance is limited to cases arising from the use of road vehicles in the territory of the Member State concerned;

(b) the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

(c) neither the legal expenses insurer nor the assistance insurer carries out any class of liability insurance;

(d) measures are taken so that the legal counsel and representation of each of the parties to a dispute is effected by completely independent lawyers when these parties are insured for legal expenses by the same insurer.

2. The exemption granted by a Member State to an undertaking pursuant to paragraph 1 shall not affect the application of Article 3 (2).

Article 6

Member States shall adopt all appropriate measures to ensure that, without prejudice to any right of appeal to a judicial body which might be provided for by national law, an arbitration or other procedure offering comparable garantees of objectivity is provided for whereby, in the event of a difference of opinion between a legal expenses insurer and his insured, a decision can be taken on the attitude to be adopted in order to settle the dispute.

The insurance contract must mention the right of the insured person to have recourse to such a procedure.

Article 7

Whenever a conflict of interests arises or these is disagreement over the settlement of the dispute, the legal expenses insurer or, where appropriate, the claims settlement office shall inform the person insured of

— the right referred to in Article 4,

— the possibility of having recourse to the procedure referred to in Article 6.

Article 8

Member States shall abolish all provisions which prohibit an insurer from carrying out within their territory legal expenses insurance and other classes of insurance at the same time.

Article 9

The second subparagraph of point C of the Annex to Directive 73/239/EEC shall be replaced by the following text:

'However, the risks included in classes 14, 15 and 17 in point A may not be regarded as risks ancillary to other classes.

Nonetheless, the risk included in class 17 (legal expenses insurance) may be regarded as an ancillary risk of class 18 where the conditions laid down in the first subparagraph are fulfilled, where the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence.

Legal expenses insurance may also be regarded as an ancillary risk under the conditions set out in the first subparagraph where it concerns disputes or risks arising out of, or in connection with, the use of seagoing vessels.'

(1) OJ No L 78, 26. 3. 1977, p. 17.

Article 10

Member States shall take the measures necessary to comply with this Directive by 1 January 1990. They shall forthwith inform the Commission thereof.

They shall apply these measures from 1 July 1990 at the latest.

Article 11

Following notification (1) of this Directive, Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 12

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1987.

For the Council

The President

L. TINDEMANS

(1) This Directive was notified to the Member States on 25 June 1987.

7. 6. 78 Official Journal of the European Communities No L 151/25

COUNCIL DIRECTIVE

of 30 May 1978

on the coordination of laws, regulations and administrative provisions relating to Community co-insurance

(78/473/EEC)

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 (1),

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

Whereas the effective pursuit of Community co-insurance business should be facilitated by a minimum of coordination in order to prevent distortion of competition and inequality of treatment, without affecting the freedom existing in several Member States;

Whereas such coordination covers only those co-insurance operations which are economically the most important, i.e. those which by reason of their nature or their size are liable to be covered by international co-insurance;

Whereas this Directive thus constitutes a first step towards the coordination of all operations which may be carried out by virtue of the freedom to provide services; whereas this coordination, in fact, is the object of the proposal for a second Council Directive 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, which the Commission forwarded to the Council on 30 December 1975 (3);

Whereas the leading insurer is better placed than the other co-insurers to assess claims and to fix the minimum amount of reserves for outstanding claims;

Whereas work is in progress on the winding-up of insurance undertakings; whereas provision must be made at this stage to ensure that, in the event of winding-up, beneficiaries under Community co-insurance contracts enjoy equality of treatment with beneficiaries in respect of the other insurance business, irrespective of the nationality of such persons;

Whereas special cooperation should be provided for in the Community co-insurance field both between the competent supervisory authorities of the Member States and between those authorities and the Commission; whereas any practices which might indicate a misuse of the purpose of the Directive are to be examined in the course of such cooperation,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

1. This Directive shall apply to Community co-insurance operations referred to in Article 2 which relate to risks classified under point A. 4, 5, 6, 7, 8, 9, 11, 12, 13 and 16 of the Annex to the First Council Directive 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 (4), hereinafter called the 'first Coordination Directive'.

It shall not apply, however, to Community co-insurance operations covering risks classified under point A. 13 which concern damage arising from nuclear sources or from medicinal products. The exclusion of insurance against damage arising from medicinal products shall be examined by the Council within five years of the notification of this Directive.

2. This Directive shall apply to risks referred to in the first subparagraph of paragraph 1 which by reason of their nature or size call for the participation of several insured for their coverage.

Any difficulties which may arise in implementing this principle shall be examined pursuant to Article 8.

(1) OJ No C 60, 13. 3. 1975, p. 16.
(2) OJ No C 47, 27. 2. 1975, p. 40.
(3) OJ No C 32, 12. 2. 1976, p. 2.

(4) OJ No L 228, 16. 8. 1973, p. 3.

Article 2

1. This Directive shall apply only to those Community co-insurance operations which satisfy the following conditions:

(a) the risk, within the meaning of Article 1 (1), is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings, hereinafter referred to as 'co-insurers', each for its own part; one of these undertakings shall be the leading insurer;

(b) the risk is situated within the Community;

(c) for the purpose of covering this risk, the leading insurer is authorized in accordance with the conditions laid down in the First Coordination Directive, i.e. he is treated as if he were the insurer covering the whole risk;

(d) at least one of the co-insurers participates in the contract by means of a head office, agency or branch established in a Member State other than that of the leading insurer;

(e) the leading insurer fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

2. Those co-insurance operations which do not satisfy the conditions set out in paragraph 1 or which cover risks other than those specified in Article 1 shall remain subject to the national laws operative at the time when this Directive comes into force.

Article 3

The right of undertakings which have their head office in a Member State and which are subject to and satisfy the requirements of the First Coordination Directive to participate in Community co-insurance may not be made subject to any provisions other than those of this Directive.

TITLE II

Conditions and procedures for Community co-insurance

Article 4

1. The amount of the technical reserves shall be determined by the different co-insurers according to the rules fixed by the Member State where they are established or, in the absence of such rules, according to customary practice in that State. However, the reserve for outstanding claims shall be at least equal to that determined by the leading insurer according to the rules or practice of the State where such insurer is established.

2. The technical reserves established by the different co-insurers shall be represented by matching assets. However, relaxation of the matching assets rule may be granted by the Member States in which the co-insurers are established in order to take account of the requirements of sound management of insurance undertakings. Such assets shall be localized either in the Member States in which the co-insurers are established or in the Member State in which the leading insurer is established, whichever the insurer chooses.

Article 5

The Member States shall ensure that co-insurers established in their territory keep statistical data showing the extent of Community co-insurance operations and the countries concerned.

Article 6

The supervisory authorities of the Member States shall cooperate closely in the implementation of this Directive and shall provide each other with all the information necessary to this end.

Article 7

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under that undertaking's other insurance contracts without distinction as to the nationality of the insured and of the beneficiaries.

TITLE III

Final provisions

Article 8

The Commission and the competent authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this Directive.

In the course of this cooperation they shall examine in particular any practices which might indicate that the purpose of the provisions of this Directive and in particular of Article 1 (2) and Article 2 are being misused either in that the leading insurer does not assume the leader's role in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

Article 9

The Commission shall submit to the Council within six years of the notification of this Directive a report on the development of Community co-insurance.

Article 10

Member States shall amend their national provisions so as to comply with this Directive within 18 months of its notification and shall immediately inform the Commission thereof.

The provisions thereby amended shall be applied within 24 months of such notification.

Article 11

Upon notification of this Directive Member States shall ensure that the texts of the main provisions of laws, regulations or administrative measures which they adopt in the field covered by this Directive are communicated to the Commission.

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 30 May 1978.

For the Council

The President

I. NØRGAARD

branch set up in Portugal before accession, or the setting up of which will be authorized after accession, irrespective of the date of such authorization, shall be authorized to set up:

— as from 1 January 1988, one additional branch,

— as from 1 January 1990, two additional branches,

— as from 1 January 1993, as many branches as they wish, on the same footing as Portuguese credit institutions, due regard being paid to the rule of non-discrimination.

— The percentage of the resources taken by the credit institutions referred to above on the domestic Portuguese market outside banking circles, as compared with the assets achieved on the same market, shall be laid down as follows:

— as from accession, 40 %,

— as from 1 January 1990, 70 %

— as from 1 January 1991, 80 %

— as from 1 January 1993, 100 %, to the exclusion of all discrimination between Portuguese credit institutions and the subsidiaries and branches in Portugal of credit institutions having their principal place of business in another Member State.

(d) With a view to the application in Portugal of Article 2 (4) (a) of the Directive concerned, the 'Caixas de Crédito Agrícola Mútuo' may be exempted from the conditions laid down in the said Article to the extent that they are affiliated on a permanent basis, and at the latest by 1 January 1993, to a central body which controls them and that before that date the Portuguese authorities have introduced into their national law the amendments necessary to enable the central body to meet the characteristics set out in Article 2 (4) (a).

(e) For the purposes of applying Article 2 (6) of the Directive concerned, the Portuguese Republic may, within six months of accession, give notification of those credit institutions which may qualify for a temporary derogation from the application of the said Directive. The period of that temporary derogation may not extend beyond 1 January 1993.

2. Council Directive 78/473/EEC of 30 May 1978 (OJ No L 151, 7. 6. 1978, p. 25).

(a) The Kingdom of Spain may reserve, for insurers established in Spain, for a period expiring on 31 December 1991 and for risks situated on its territory, a share of the co-insurance contracts referred to by the Directive concerned, up to the following percentages, which are on a downward sliding scale, and according to the following timetable:

— until 31 December 1988, 100 %,

— as from 1 January 1989, 75 %,

— as from 1 January 1990, 40 %,

— as from 1 January 1991, 20 %.

(b) Throughout the period of the temporary derogations referred to above, the general or special facilities which result from Spanish legislative provisions or Conventions existing before accession between Spain and one or more other Member States will be maintained and applied on a non-discriminatory basis with regard to all the other Member States. The treatment which Spain will grant to insurers of third countries may not be more favourable than that applicable to insurers of the other Member States.

3. Council Directive 78/686/EEC of 25 July 1978 (OJ No L 233, 24. 8. 1978, p. 1).

Until such time as the training of dental practitioners in Spain under the conditions laid down pursuant to Directive 78/687/EEC is completed and until 31 December 1990 at the latest, freedom of establishment and freedom to provide services shall be deferred for qualified dental practitioners from the other Member States in Spain and for qualified Spanish doctors practising dentistry in the other Member States.

During the temporary derogation provided for above, general or special facilities concerning the right of estabilishment and the freedom to provide services which would exist pursuant to Spanish provisions or Conventions governing relations between the Kingdom of Spain and any other Member State will be maintained and applied on a non-discriminatory basis with regard to all other Member States.

III. TRANSPORT

1. Council Regulation No 11 of 27 June 1960 (OJ No 52, 18. 6. 1960, p. 1121/60), as amended by Council Regulation (EEC) No 3626/84 of 19 December 1984. (OJ No L 335, 22. 12. 1984, p. 4).

Within six months of their accession the new Member States shall, after consulting the Commission take the measures stipulated pursuant to the last subparagraph of Article 14 (2).

2. Council Regulation (EEC) No 1017/68 of 19 July 1968 (OJ No L 175, 23. 7. 1968, p. 1), as amended by:

— the 1972 Act of Accession (OJ No L 73, 27. 3. 1972, p. 14),

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

Within six months of their accession, the new Member States shall, after consulting the Commission, take the measures stipulated pursuant to the last sentence of Article 21 (6).

3. Life assurance

13. 3. 79 Official Journal of the European Communities No L 63/1

II

(Acts whose publication is not obligatory)

COUNCIL

FIRST COUNCIL DIRECTIVE

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

(79/267/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49 and 57 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, in order to facilitate the taking up and pursuit of the business of life assurance, it is essential to eliminate certain divergences which exist between national supervisory legislation; whereas, in order to achieve this objective and at the same time ensure adequate protection for policy-holders and beneficiaries in all Member States, the provisions relating to the financial guarantees required of life assurance undertakings should be coordinated;

Whereas a classification by class of insurance is necessary in order to determine, in particular, the activities subject to compulsory authorization;

Whereas certain mutual associations which, by virtue of their legal status, fulfil requirements as to security and other specific financial guarantees should be excluded from the scope of this Directive; whereas certain organizations whose activity covers only a very restricted sector and is limited by their articles of association should also be excluded;

Whereas the Member States have different regulations and practices as to the simultaneous carrying on of life assurance and non-life insurance; whereas newly formed undertakings should no longer be authorized to carry on these two activities simultaneously; whereas Member States should be allowed to permit existing undertakings which carry on these activities simultaneously to continue to do so provided that separate management is adopted for each of their activities, in order that the respective interests of life policy-holders and non-life policy-holders are safeguarded and the minimum financial obligations in respect of one of the activities are not borne by the other activity; whereas, when one of the undertakings wishes to establish itself in a Member State to pursue life assurance in that State, it should set up a subsidiary for that purpose, which may be eligible on a transitional basis for certain facilities; whereas, Member States should be given the option of requiring those existing undertakings established in their territory which carry on life assurance and non-life insurance simultaneously to put an end to this practice; whereas, moreover, specialized undertakings should be subject to special

(1) OJ No C 35, 28. 3. 1974, p. 9.
(2) OJ No C 140, 13. 11. 1974, p. 44.
(3) OJ No C 109, 19. 9. 1974, p. 1.

supervision where a non-life undertaking belongs to the same financial group as a life undertaking;

Whereas life assurance is subject to official authorization and supervision in each Member State; whereas the conditions for the granting or withdrawal of such authorization should be defined; whereas provision must be made for the right to apply to the courts should an authorization be refused or withdrawn;

Whereas, as regards technical reserves, including mathematical reserves, the same rules may be adopted as in the case of non-life insurance, namely, they must be localized in the country where activities are carried on and the rules of that country are to govern the methods of calculation, the determination of investment categories and the valuation of assets; whereas, although it is desirable that these various subjects should be coordinated, this is not essential for the purposes of this Directive and may be carried out subsequently;

Where it is necessary that, over and above technical reserves, including mathematical reserves, of sufficient amount to meet their underwriting liabilites, insurance undertakings should possess a supplementary reserve, known as the solvency margin, represented by free assets and, with the agreement of the supervisory authority, by other implicit assets, in order to provide against business fluctuations; whereas, in order to ensure that the requirements imposed for such purposes are determined according to objective criteria whereby undertakings of the same size will be placed on an equal footing as regards competition, it is desirable to provide that this margin shall be related to all the commitments of the undertaking and to the nature and gravity of the risks presented by the various activities falling within the scope of the Directive; whereas this margin should therefore vary according to whether the risks are of investment, death or management only; whereas it should accordingly be determined in terms of mathematical reserves and capital at risk underwritten by an undertaking, of premiums or contributions received, of reserves only or of the assets of tontines;

Whereas it is necessary to require a guarantee fund, the amount and composition of which are such as to provide an assurance that the undertakings possess adequate resources when they are set up and that in the subsequent course of business the solvency margin in no event falls below a minimum of security; whereas the whole or a specified part of this guarantee fund must consist of explicit asset items;

Whereas it is necessary to provide for measures in cases where the financial position of the undertaking becomes such that it is difficult for it to meet its underwriting liabilities;

Whereas the coordinated rules concerning the pursuit of the business of direct insurance within the Community should, in principle, apply to all undertakings operating on the market and, consequently, also to agencies and branches where the head office of the undertaking is situated outside the Community; whereas it is nevertheless desirable as regards the methods of supervision to lay down special provisions for such agencies or branches, in view of the fact that the assets of the undertakings to which they belong are situated outside the Community;

Whereas it is desirable to provide for the conclusion of reciprocal agreements with one or more third countries in order to permit the relaxation of such special conditions, while observing the principle that such agencies and branches should not obtain more favourable treatment than Community undertakings;

Whereas certain transitional provisions are required in order, in particular, to permit small and medium-sized undertakings already in existence to adapt themselves to the requirements to be introduced by the Member States in pursuance of this Directive, subject to Article 53 of the Treaty applying;

Whereas Article 52 of the EEC Treaty has been directly applicable since the end of the transitional period; whereas since that time there has accordingly been no need for the adoption of Directives abolishing restrictions on the freedom of establishment; whereas, however, the provisions concerning proof of good repute and no previous bankruptcy contained in Council Directive 73/240/EEC of 24 July 1973, abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance [1] do not strictly speaking constitute restrictions and are also required in life assurance; whereas they should accordingly be included in this coordination Directive;

Whereas it is important to guarantee the uniform application of the coordinated rules and to provide accordingly for close collaboration between the Commission and the Member States in this field,

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[1] OJ No L 228, 16. 8. 1973, p. 20.

HAS ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1

This Directive concerns the taking up and pursuit of the self-employed activity of direct insurance carried on by undertakings which are established in a Member State or wish to become established there in the form of the activities defined below:

1. The following kinds of insurance where they are on a contractual basis:

   (a) life assurance, that is to say, the class of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;

   (b) annuities;

   (c) supplementary insurance carried on by life assurance undertakings, that is to say, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;

   (d) the type of insurance existing in Ireland and the United Kingdom known as permanent health insurance not subject to cancellation.

2. The following operations, where they are on a contractual basis, in so far as they are subject to supervision by the administrative authorities responsible for the supervision of private insurance and are authorized in the country concerned:

   (a) tontines whereby associations of subscribers are set up with a view to jointly capitalizing their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased;

   (b) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

   (c) management of group pension funds, i.e. operations consisting, for the undertaking concerned, in managing the investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

   (d) the operations referred to in (c) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

   (e) the operations carried out by insurance companies such as those referred to in Chapter 1, Title 4 of Book IV of the French 'Code des assurances'.

3. Operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, when they are effected or managed at their own risk by assurance undertakings in accordance with the laws of a Member State.

Article 2

This Directive shall not concern:

1. subject to the application of Article 1 (1) (c) of this Directive, the classes designated in the Annex to 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), hereinafter referred to as 'the first coordination Directive (non-life insurance)';

2. operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

3. operations carried out by organizations other than undertakings referred to in Article 1, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical reserves;

(1) OJ No L 228, 16. 8. 1973, p. 3.

4. subject to the application of Article 1 (3), insurance forming part of a statutory system of social security.

Article 3

This Directive shall not concern:

1. organizations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;

2. mutual associations, where:

— the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it, and

— the annual contribution income for the activities covered by this Directive does not exceed 500 000 units of account for three consecutive years. If this amount is exceeded for three consecutive years this Directive shall apply with effect from the fourth year.

Article 4

This Directive shall not concern the 'Versorgungsverband deutscher Wirtschaftsorganisationen' in Germany or the 'Caisse d'épargne de l'État' in Luxembourg unless their statutes are amended as regards the scope of their activities.

Article 5

For the purposes of this Directive:

(a) 'unit of account' means the European unit of account (EUA) as defined by Article 10 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (1); wherever this Directive refers to the unit of account, the conversion value in national currency to be adopted shall as from 31 December of each year be that of the last day of the preceding month of October for which EUA conversion values are available in all the Community currencies;

(b) 'matching assets' means the representation of underwriting liabilities which can be required to be met in a particular currency by assets expressed or realisable in the same currency;

(c) 'localization of assets' means the existence of assets, whether movable or immovable, within a Member State but shall not be construed as involving a requirement that movable assets be deposited or that immovable assets be subjected to restrictive measures such as the registration of mortgages; assets represented by claims against debtors shall be regarded as situated in the Member State where they are realizable;

(d) 'capital at risk' means the amount payable on death less the mathematical reserve for the main risk.

TITLE II

RULES APPLICABLE TO UNDERTAKINGS WHOSE HEAD OFFICES ARE SITUATED WITHIN THE COMMUNITY

Section A

Conditions of admission

Article 6

1. Each Member State shall make the taking up of the activities referred to in this Directive in its territory subject to an official authorization.

2. Such authorization shall be sought from the competent authority of the Member State in question by:

(a) any undertaking which establishes its head office in the territory of such State;

(b) any undertaking whose head office is situated in another Member State and which opens an agency or branch in the territory of the Member State in question;

(c) any undertaking which, having received the authorization required under (a) or (b) above, extends its business in the territory of such State to other classes;

(d) any undertaking which, having obtained, in accordance with Article 7 (1), an authorization for a part of the national territory, extends its activity beyond such part.

3. Member States shall not make authorization subject to the lodging of a deposit or the provision of security.

(1) OJ No L 356, 31. 12. 1977, p. 1.

Article 7

1. An authorization shall be valid for the entire national territory unless, and in so far as national laws permit, the applicant seeks permission to carry on his business only in a part of the national territory.

2. Authorization shall be given for a particular class of insurance. The classification by class appears in the Annex. Authorization shall cover the entire class unless the applicant wishes to cover only part of the risks pertaining to such class.

The supervisory authorities may restrict an authorization requested for one of the classes to the operations set out in the scheme of operations referred to in Articles 9 and 11.

3. Each Member State may grant an authorization for two or more of the classes, where its national laws permit such classes to be carried on simultaneously.

Article 8

1. Each Member State shall require any undertaking setting up in its territory for which an authorization is sought to:

(a) adopt one of the following forms:

— in the case of the Kingdom of Belgium:
'société anonyme'/'naamloze vennootschap', société en commandite par actions'/'vennootschap bij wijze van geldschieting op aandelen', 'association d'assurance mutuelle'/'onderlinge verzekeringsmaatschappij', 'société coopérative'/'coöperatieve vennootschap',

— in the case of the Kingdom of Denmark:
'aktieselskaber',
'gensidige selskaber',

— in the case of the Federal Republic of Germany:
'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit',
'öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen',

— in the case of the French Republic:
'société anonyme', 'société à forme mutuelle à cotisations fixes',,
'société à forme tontinière',

— in the case of Ireland:
incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts and societies registered under the Friendly Societies Acts,

— in the case of the Italian Republic:
'società per azioni', 'società cooperativa', 'mutua di assicurazione' and public-law institutions within the meaning of Article 1883 of the Civil Code.

— in the case of the Grand Duchy of Luxembourg:
'société anonyme', 'société en commandite par actions', 'association d'assurances mutuelles', 'société coopérative',

— in the case of the Kingdom of the Netherlands:
'naamloze vennootschap', 'onderlinge waarborgmaatschappij',

— in the case of the United Kingdom:
incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's;

Furthermore, Member States may set up, where appropriate, undertakings under any form of known public law or its equivalent provided that such institutions have as their object to carry on insurance operations under conditions equivalent to those of undertakings under private law;

(b) limit its business activities to the activities referred to in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business;

(c) submit a scheme of operations in accordance with Article 9;

(d) possess the minimum of the guarantee fund provided for in Article 20 (2).

2. An undertaking seeking an authorization to extend its business to other classes or, in the case referred to in Article 6 (2) (d), to another part of the territory, shall be required to submit a scheme of operations in accordance with the provisions of Article 9 as regards such other classes or other part of the territory.

It shall, in addition, be required to show proof that it possesses the minimum solvency margin provided for in Article 19 and the guarantee fund referred to in Article 20 (1) and (2).

3. The present coordinating measures shall not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the memorandum and articles of association, the general and special policy conditions, the technical bases for calculating in particular premium rates and reserves referred to in Article 17 and any other document necessary for the normal exercise of supervision to be approved.

4. The abovementioned provisions may not require that any application for an authorization shall be dealt with in the light of the economic requirements of the market.

Article 9

The scheme of operations referred to in Article 8 (1) (c) and (2) shall contain the following particulars or evidence of cover:

(a) the nature of the commitments which the undertaking proposes to cover; the general and special policy conditions which it proposes to use;

(b) the technical bases that the undertaking proposes to employ for each class of business, including the data needed to calculate premium rates and reserves referred to in Article 17;

(c) the guiding principles as to reinsurance;

(d) the items constituting the minimum of the guarantee fund;

(e) estimates relating to the expenses of installing the administrative services and the organization for securing business and the financial resources intended to cover them;

and, in addition, shall include for the first three financial years:

(f) a forecast balance sheet;

(g) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(h) estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

Article 10

1. Each Member State shall require that an undertaking having its head office in the territory of another Member State and seeking an authorization to open an agency or branch shall:

(a) submit its memorandum and articles of association and a list of its directors and managers;

(b) produce a certificate issued by the competent authorities of the head office Member State, attesting the classes of insurance which the undertaking is entitled to cover and that it possesses the minimum of the guarantee fund or if higher, the minimum solvency margin calculated in accordance with Article 19 and stating the classes of insurance which it actually underwrites and the financial resources referred to in Article 11 (1) (e);

(c) submit a scheme of operations in accordance with Article 11;

(d) designate a general representative having his permanent residence and abode in the host country and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the host country; if the representative has a legal personality, it must have its head office in the host country and it must in its turn designate an individual to represent it who complies with the above conditions. The designated representative shall not be objected to by the Member State except on grounds relating to repute or technical qualifications such as apply to directors or managers of undertakings whose head offices are situated in the territory of the State in question.

2. Each Member State shall require that for the purpose of extending the business of the agency or branch, either to other classes or to other parts of the national territory in the case provided for in Article 6 (2) (d), the applicant for the authorization shall submit a scheme of operations in accordance with Article 11 and comply with the conditions contained in paragraph 1 (b) of this Article.

3. The present coordinating measures shall not prevent Member States from enforcing provisions requiring, for all insurance undertakings, approval of the general and special policy conditions, of the technical bases for calculating in particular premium rates and reserves referred to in Article 17 and of any other document necessary for the normal exercise of supervision.

4. The abovementioned provisions may not require that any application for authorization shall be examined in the light of the economic requirements of the market.

Article 11

1. The scheme of operations of the agency or branch referred to in Article 10 (1) (c) and (2) shall contain the following particulars or evidence of:

(a) the nature of the commitments which the undertaking proposes to take on in the host country;

the general and special policy conditions which it proposes to use;

(b) the technical bases which the undertaking proposes to employ for each class of business, including the data needed to calculate premium rates and reserves referred to in Article 17;

(c) the guiding principles as to reinsurance;

(d) the state of the undertaking's solvency margin and guarantee fund referred to in Articles 18, 19 and 20;

(e) estimates relating to the expenses of installing the administrative services and the organization for securing business and the financial resources intended to cover them;

and, in addition shall include, for the first three financial years:

(f) a forecast balance sheet for the agency or branch;

(g) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

2. The scheme of operations shall be accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years. If, however, it has not yet been in business for three financial years it shall be required to furnish them only for the financial years completed.

3. The scheme of operations, together with the observations of the authorities competent to issue authorization, shall be forwarded to the competent authorities of the head-office Member State. The latter authorities shall communicate their opinion to the former within three months from the receipt of the documents; if their opinion has not been communicated upon the expiry of this time, it shall be deemed to be favourable.

Article 12

Any decision to refuse an authorization shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts should there be any refusal.

Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorization upon the expiry of a period of six months from the date of its receipt.

Article 13

1. Subject to paragraph 3, no undertaking may simultaneously carry on in a Member State the activities referrred to in the Annex to the first coordination Directive (non-life insurance) and those listed in Article 1 of this Directive.

2. Where an undertaking carrying on the activities referred to in the Annex to the first coordination Directive (non-life insurance) has financial, commercial or administrative links with an undertaking carrying on the activities covered by this Directive, the supervisory authorities of the Member States in whose territory the head offices of those undertakings are situated shall ensure that the accounts of the undertakings in question are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.

3. Subject to paragraph 6, undertakings which at the time of notification of this Directive carry on simultaneously in a Member State both of the activities referred to in paragraph 1 may continue to do so there provided that each activity is separately managed in accordance with Article 14.

4. The undertakings referred to in paragraph 3 may set up agencies or branches in the other Member States only for the classes listed in the Annex to the first coordination Directive (non-life insurance).

5. The undertakings referred to in paragraph 3 may, by setting up subsidiaries in other Member States to carry on the activities referred to in this Directive, avail themselves of the conditions and facilities laid down in Article 35 for a transitional period of 10 years from the date of notification of this Directive, provided they do not already have an agency or branch carrying on in such Member States any activities other than those covered by this Directive.

6. (a) Any Member State may require undertakings whose head offices are established in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged at the time of notification of this Directive.

(b) After consulting the supervisory authority of the head office Member State, particularly in regard to the period within which such action must

take place, any Member State may also impose this requirement on agencies or branches established in its territory which simultaneously carry on both activities there.

(c) Agencies and branches of the undertakings referred to in paragraph 3 which, at the time of notification of this Directive, are engaged in the territory of a Member State solely in the activities covered by this Directive may continue their activities there. If the undertaking wishes to carry on the activities covered by the first coordination Directive (non-life insurance) in that territory it may only carry on the activities mentioned in this Directive through a subsidiary.

Article 14

1. The separate management referred to in Article 13 (3) must be organized in such a way that the activities covered by this Directive are distinct from the activities covered by the first coordination Directive (non-life insurance) in order that:

— the respective interests of life policy-holders and non-life policy-holders are not prejudiced and, in particular, that profits from life assurance benefit life policy-holders as if the undertaking only carried on the activity of life assurance,

— the minimum financial obligations, in particular solvency margins, in respect of one or other of the two activities, namely an activity under this Directive and an activity under the first coordination Directive (non-life insurance) are not borne by the other activity.

However, as long as the minimum financial obligations are fulfilled under the conditions laid down in the second indent of the first subparagraph and, provided the competent authority is informed, the undertaking may use those explicit items of the solvency margin which are still available for one or other activity.

The supervisory authorities shall analyze the results in both activities so as to ensure that the provisions of this paragraph are complied with.

2. (a) Accounts shall be drawn up in such a manner as to show the sources of the results for each of the two activities, life assurance and non-life insurance. To this end all income (in particular premiums, payments by re-insurers and investment income) and expenditure (in particular insurance settlements, additions to technical reserves, reinsurance premiums, operating expenses in respect of insurance business) shall be broken down according to origin. Items common to both activities shall be entered in accordance with methods of apportionment to be accepted by the competent supervisory authority.

(b) Undertakings must, on the basis of the accounts, prepare a statement clearly identifying the items making up each solvency margin, in accordance with Article 18 of this Directive and Article 16 (1) of the first coordination Directive (non-life insurance).

3. If one of the solvency margins is insufficient, the supervisory authorities shall apply to the deficient activity the measures provided for in the relevant Directive, whatever the results in the other activity. By way of derogation from the second indent of the first subparagraph of paragraph 1, these measures may involve the authorization of a transfer from one activity to the other.

Section B

Conditions for carrying on activities

Article 15

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings.

Article 16

The supervisory authority of the Member State in whose territory the head office of the undertaking is situated must verify the state of solvency of the undertaking with respect to its entire business. The supervisory authorities of the other Member States shall provide the former with all the information necessary to enable such verification to be effected.

Article 17

1. Each Member State in whose territory activities are carried on by an undertaking shall require the undertaking to establish sufficient technical reserves, including mathematical reserves.

The amount of the technical reserves, including mathematical reserves, shall be determined according to

the rules fixed by the Member State, or, in the absence of such rules, according to the established practices in such State.

2. Technical reserves, including mathematical reserves, shall be required to be covered by equivalent and matching assets localized in each country where activities are carried on. Member States may, however, permit relaxations in the rules as to matching assets and the localization of assets. Relaxations of the rule on matching assets shall take account of the characteristics of life assurance which is primarily a form of capital and long-term insurance.

Having regard to its special position, Luxembourg may, pending coordination of legislation on the winding-up of undertakings, retain its system of guarantees for technical reserves, including mathematical reserves, existing at the date of notification of this Directive.

The regulations of the country where activities are carried on shall determine the nature of such assets and, where appropriate, the extent to which they may be used for the purpose of covering the technical reserves, including mathematical reserves, and shall also determine the rules for valuing such assets.

Compliance with these regulations may be ensured by the intervention of a person or institution from outside the undertaking with responsibility for verifying on the spot whether the assets representing technical reserves, including mathematical reserves, comply with the regulations. This shall be the function of, in particular, the 'Treuhänder' in Germany and of the 'tillidsmand' in Denmark.

3. If a Member State allows any technical reserves, including mathematical reserves, to be covered by claims against re-insurers, it shall fix the percentage so allowed. In such case, it may not require the assets representing such claims to be localized in its territory, notwithstanding the provisions of paragraph 2.

4. The supervisory authority of the Member State in whose territory the head office of an undertaking is situated shall verify that its balance sheet shows in respect of the technical reserves, including mathematical reserves, assets equivalent to the underwriting liabilities assumed in all the countries where it carries on activities.

Article 18

Each Member State shall require of every undertaking whose head office is situated in its territory an adequate solvency margin in respect of its entire business.

The solvency margin shall consist of:

1. the assets of the undertaking, free of all foreseeable liabilities, less any intangible items; in particular the following shall be included:

   — the paid-up share capital or, in the case of a mutual concern, the paid-up amount of its fund,

   — one half of the unpaid-up share capital or fund once 25% of such capital or fund are paid up,

   — statutory reserves and free reserves not corresponding to underwriting liabilities,

   — any carry-forward of profits;

2. in so far as authorized under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to policy-holders;

3. upon application, with supporting evidence, by the undertaking to the supervisory authority of the Member State in the territory of which its head office is situated and with the agreement of that authority:

   (a) an amount equal to 50% of the undertaking's future profits; the amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies; the factor used may not exceed 10; the estimated annual profit shall be the arithmetical average of the profits made over the last five years in the activities listed in Article 1.

   The bases for calculating the factor by which the estimated annual profit is to be multiplied and the items comprising the profits made shall be defined by common agreement by the competent authorities of the Member States in collaboration with the Commission. Pending such agreement, those items shall be determined in accordance with the laws of the Member State in the territory of which the undertaking (head office, agency or branch) carries on its activities.

   When the competent authorities have defined the concept of profits made, the Commission shall submit proposals for the harmonization of this concept by means of a Directive on the harmonization of the annual accounts of insurance undertakings and providing for the

coordination set out in Article 1 (2) of Directive 78/660/EEC (1);

(b) where Zillmerizing is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerized or partially Zillmerized mathematical reserve and a mathematical reserve Zillmerized at a rate equal to the loading for acquisition costs included in the premium; this figure may not, however, exceed 3·5% of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical reserves for all policies for which Zillmerizing is possible; the difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;

(c) where approval is given by the supervisory authorities of the Member States concerned in which the undertaking is carrying on its activities any hidden reserves resulting from the under-estimation of assets and over-estimation of liabilities other than mathematical reserves in so far as such hidden reserves are not of an exceptional nature.

Article 19

Subject to Article 20, the minimum solvency margin shall be determined as shown below according to the classes of insurance underwritten:

(a) For the kinds of insurance referred to in Article 1 (1) (a) and (b) other than assurances linked to investment funds and for the operations referred to in Article 1 (3), it must be equal to the sum of the following two results:

— first result:

a 4% fraction of the mathematical reserves, relating to direct business gross of re-insurance cessions and to re-insurance acceptances shall be multiplied by the ratio, for the last financial year, of the total mathematical reserves net of re-insurance cessions to the gross total mathematical reserves as specified above; that ratio may in no case be less than 85%;

— second result:

for policies on which the capital at risk is not a negative figure, a 0·3% fraction of such capital underwritten by the undertaking shall be multiplied by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after re-insurance cessions and retrocessions to the total capital at risk gross of re-insurance; that ratio may in no case be less than 50%.

For temporary assurance on death of a maximum term of three years the above fraction shall be 0·1%; for such assurance of a term of more than three years but not more than five years the above fraction shall be 0·15%.

(b) For the supplementary insurance referred to in Article 1 (1) (c), it shall be equal to the result of the following calculation:

— the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the last financial year in respect of all financial years shall be aggregated;

— to this aggregate there shall be added the amount of premiums accepted for all reinsurance in the last financial year;

— from this sum shall then be deducted the total amount of premiums or contributions cancelled in the last financial year as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first extending up to 10 million units of account and the second comprising the excess; 18% and 16% of these portions respectively shall be calculated and added together.

The result shall be obtained by multiplying the sum so calculated by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the undertaking after deduction of transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50%.

In the case of the assocation of underwriters known as Lloyd's, the calculation of the solvency margin shall be made on the basis of net premiums, which shall be multiplied by flat-rate percentage fixed annually by the supervisory authority of the head-office Member State. This flat-rate percentage must be calculated on the basis of the most recent statistical data on commissions paid. The details together with the relevant calculations shall be sent to the supervisory authorities of the countries in whose territory Lloyd's is established.

(1) OJ No L 222, 14. 8. 1978, p. 11.

(c) For permanent health insurance not subject to cancellation referred to in Article 1 (1) (d), and for capital redemption operations referred to in Article 1 (2) (b), it shall be equal to a 4% fraction of the mathematical reserves calculated in compliance with the conditions set out in the first result in (a) of this Article.

(d) For tontines, referred to in Article 1 (2) (a), it shall be equal to 1% of their assets.

(e) For assurances covered by Article 1 (1) (a) and (b) linked to investment funds and for the operations referred to in Article 1 (2) (c), (d) and (e) it shall be equal to:

— a 4% fraction of the mathematical reserves, calculated in compliance with the conditions set out in the first result in (a) of this Article in so far as the undertaking bears an investment risk, and a 1% fraction of the reserves calculated in the fashion, in so far as the undertaking bears no investment risk provided that the term of the contract exceeds five years and the allocation to cover management expenses set out in the contract is fixed for a period exceeding five years

plus

— a 0·3% fraction of the capital at risk calculated in compliance with the conditions set out in the first subparagraph of the second result of (a) of this Article in so far as the undertaking covers a death risk.

Article 20

1. One third of the minimum solvency margin as specified in Article 19 shall constitute the guarantee fund. Subject to paragraph 2, at least 50 % of this fund shall consist of the items listed in Article 18 (1) and (2).

2. (a) The guarantee fund may not, however, be less than a minimum of 800 000 units of account.

(b) Any Member State may provide for the minimum of the guarantee fund to be reduced to 600 000 units of account in the case of mutual associations and mutual-type associations and tontines.

(c) For mutual associations referred to in the second sentence of the second indent of Article 3 (2), as soon as they come within the scope of this Directive, and for tontines, any Member State may permit the establishment of a minimum of the guarantee fund of 100 000 units of account to be increased progressively to the amount fixed in (b) by successive tranches of 100 000 units of account whenever the contributions increase by 500 000 units of account.

(d) The minimum of the guarantee fund referred to in (a), (b) and (c) must consist of the items listed in Article 18 (1) and (2).

3. Mutual associations wishing to extend their business within the meaning of Article 8 (2) or Article 10 may not do so unless they comply immediately with the requirements of paragraph 2 (a) and (b) of this Article.

Article 21

1. Member States shall not prescribe any rules as to the choice of the assets in excess of those representing the reserves referred to in Article 17.

2. Subject to Article 17 (2), Article 24 (1) and (3) and the last subparagraph of Article 26 (1), Member States shall not restrain the free disposal of assets, whether movable or immovable, forming part of the assets of authorized undertakings.

3. This Article shall not preclude any measures which Member States, while observing the rules prevailing in countries where activities are carried on as required under Article 17 (2) and while safeguarding the interests of policy-holders, are entitled to take as owners or members or associates of the undertakings in question.

Article 22

1. Member States may not require undertakings to cede part of their underwriting of activities listed in Article 1 to an organization or organizations designated by national regulations.

2. (a) The Italian Republic may, as an exception, continue to require undertakings established in its territory to cede part of their underwriting to the Istituto Nazionale di Assicurazioni, on condition that:

— the extent of that requirement as at the time of notification of this Directive is in no way enlarged,

— where account is taken, in determining the compulsory cession percentage, of the period during which the agency or branch has been established in Italy, account shall

also be taken of the total number of financial years during which the undertaking has carried on the kinds of insurance referred to in Article 1 in the territory of the Member State in which its head office is situated. In such cases, the competent authority in that State shall issue a certificate in conformity with that referred to in Article 10 (1) (b) in respect of the entire period during which the undertaking has carried on business in those kinds of insurance.

(b) This matter shall be re-examined in connection with a second Directive relating to the coordination of laws on life assurance and laying down provisions intended to facilitate the effective exercise of freedom to provide services.

Article 23

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation and solvency.

2. Member States shall require undertakings carrying on activities in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.

Article 24

1. If an undertaking does not comply with the provisions envisaged in Article 17, the supervisory authority of the Member State in whose territory it carries on its activity may prohibit the free disposal of assets localized in that Member State after having informed the supervisory authorities of the head-office Member State of its intention.

2. For the purposes of restorting the financial situation of an undertaking whose solvency margin has fallen below the minimum required under Article 19, the supervisory authority of the head-office Member State shall require a plan for the restoration of a sound financial position to be submitted for its approval.

3. If the solvency margin falls below the guarantee fund as defined in Article 20, or if the latter is no longer constituted as laid down in that Article, the supervisory authority of the head-office Member State shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the authorities of other Member States in whose territories the undertaking is authorized of any measures and the latter shall, at the request of the former, take the same measures.

4. The competent supervisory authorities may further take all measures necessary to safeguard the policy-holders' interests in the cases provided for in paragraphs 1 and 3.

5. The supervisory authorities of other Member States in whose territory the undertaking in question has also been authorized shall collaborate for the purpose of implementing the provisons referred to in paragraphs 1 to 4.

Article 25

1. Each Member State shall make it possible for an authorized undertaking to assign all or part of its portfolio of policies if the assignees possess the necessary solvency margin, due account being taken of the assignment.

The supervisory authorities concerned shall consult each other before approving such assignment.

2. Once approved by the competent national authority, such assignment shall affect directly the policy-holders concerned.

Section C

Withdrawal of authorization

Article 26

1. The authorization granted by the competent authority of the Member State in whose territory the head office is situated may be withdrawn by such authority if the undertaking:

(a) no longer fulfils the conditions of admission;

(b) has been unable, within the time allowed, to take the measures contained in the restoration plan or finance scheme referred to in Article 24;

(c) fails seriously in its obligations under the national regulations.

In the event of the withdrawal of the authorization, the supervisory authority of the head-office Member State shall notify such withdrawal to the supervisory

authorities of other Member States which have authorized the undertaking; they shall, thereupon, also withdraw their authorization. The supervisory authority of the head-office Member State shall, in conjunction with such other authorities, take all necessary measures to safeguard policy-holders' interests and, in particular, shall restrict the free disposal of the assets of the undertaking if such restriction has not been already imposed in accordance with the provisions of the second subparagraph of Article 24 (1) and (3).

2. An authorization granted to an agency or branch of an undertaking whose head office is situated in another Member State may be withdrawn if the agency or branch:

(a) no longer fulfils the conditions for admission;

(b) fails seriously in its obligations under the regulations of the Member State where it carries on its activity, with respect in particular to the establishment of reserves referred to in Article 17.

Before withdrawing authorization the supervisory authorities of the Member State where the activity is carried on shall consult the supervisory authority of the Member State where the head office is situated. If they deem it necessary to suspend the business of such agency or branch before consultation is concluded, they shall immediately advise the supervisory authority of the country where the head office is situated.

3. Any decision to withdraw authorization or suspend business shall be supported by precise reasons and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts against such a decision.

TITLE III

RULES APPLICABLE TO AGENCIES OR BRANCHES ESTABLISHED WITHIN THE COMMUNITY AND BELONGING TO UNDERTAKINGS WHOSE HEAD OFFICES ARE OUTSIDE THE COMMUNITY

Article 27

1. Each Member State shall make access to the activities referred to in Article 1 by any undertaking whose head office is outside the Community subject to an official authorization.

2. A Member State may grant an authorization if the undertaking fulfils at least the following conditions:

(a) it is entitled to undertake insurance activities covered by Article 1 under its national law;

(b) it establishes an agency or branch in the territory of such Member State;

(c) it undertakes to establish at the place of management of the agency or branch accounts specific to the activity which it carries on there and to keep there all the records relating to the business transacted;

(d) it designates a general representative, to be approved by the competent authorities;

(e) it possesses in the Member State where it carries on an activity assets of an amount equal in value to at least one half of the minimum amount prescribed in Article 20 (2) (a) in respect of the guarantee fund and deposits one fourth of the minimum amount as security;

(f) it undertakes to keep a solvency margin complying with Article 29;

(g) it submits a scheme of operations in accordance with Article 11 (1) and (2).

Article 28

Member States shall require undertakings to establish reserves, referred to in Article 17, adequate to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such reserves by means of assets which are equivalent to such reserves and, to the extent fixed by the Member State in question, matching assets.

The law of the Member States shall be applicable to the calculation of such reserves, the determination of categories of investment and the valuation of assets, and, where appropriate, the determination of the extent to which these assets may be used for the purpose of covering such reserves.

The Member State in question shall require that the assets covering these reserves, shall be localized in its territory. Article 17 (3) shall, however, apply.

Article 29

1. Each Member State shall require of agencies or branches set up in its territory a solvency margin consisting of the items listed in Article 18. The minimum solvency margin shall be calculated in accordance with Article 19. However, for the purpose of calculating this margin, account shall be taken only of the operations effected by the agency or branch concerned.

2. One third of the minimum solvency margin shall constitute the guarantee fund.

However, the amount of this fund may not be less than one half of the minimum required under Article 20 (2) (a). The initial deposit lodged in accordance with Article 27 (2) (e) shall be counted towards such guarantee fund.

The guarantee fund and the minimum of such fund shall be constituted in accordance with Article 20.

3. The assets representing the minimum solvency margin must be kept within the Member State where activities are carried on up to the amount of the guarantee fund and the excess within the Community.

Article 30

1. Any undertaking which has requested or obtained authorization from more than one Member State may apply for the following advantages which may be granted only jointly:

(a) the solvency margin referred to in Article 29 shall be calculated in relation to the entire business which it carries on within the Community; in such case, account shall be taken only of the operations effected by all the agencies or branches established within the Community for the purposes of this calculation;

(b) the deposit required under Article 27 (2) (e) shall be lodged in only one of those Member States;

(c) the assets representing the guarantee fund shall be localized in any one of the Member States in which it carries on its activities.

2. Application to benefit from the advantages provided for in paragraph 1 shall be made to the competent authorities of the Member States concerned. The application must state the authority of the Member State which in future is to supervise the solvency of the entire business of the agencies or branches established within the Community. Reasons must be given for the choice of authority made by the undertaking. The deposit shall be lodged with that Member State.

3. The advantages provided for in paragraph 1 may only be granted if the competent authorities of all Member States in which an application has been made agree to them. They shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the agencies or branches within the Community.

The supervisory authority selected shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the agencies and branches established in their territory.

4. At the request of one or more of the Member States concerned, the advantages granted under this Article shall be withdrawn simultaneously by all Member States concerned.

Article 31

1. (a) Subject to point (b), agencies and branches referred to in this Title may not simultaneously carry on in a Member State the activities referred to in the Annex to the first coordination Directive (non-life insurance) and those covered by this Directive.

(b) Subject to point (c), Member States may provide that agencies and branches referred to in this Title which at the time of notification of this Directive carry on both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 14.

(c) Any Member State which under Article 13 (6) (a) and (b) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they are engaged at the time of notification of this Directive must also impose this requirement on agencies and branches referred to in this Title which are established in its territory and simultaneously carry on both activities there.

(d) Member States may provide that agencies and branches referred to in this Title whose head office simultaneously carries on both activities and which at the time of notification of this Directive carry on in the territory of a Member State solely the activity covered by this Directive may continue their activity there. If the undertaking wishes to carry on the activity referred to in the first coordination Directive (non-life insurance) in that territory it may only carry on the activity covered by this Directive through a subsidiary.

2. Articles 23 and 24 shall apply *mutatis mutandis* to agencies and branches referred to in this Title.

For the purposes of applying Article 24, the supervisory authority which supervises the overall solvency of agencies or branches shall be treated in the same way as the supervisory authority of the head-office Member State.

3. In the case of a withdrawal of authorization by the authority referred to in Article 30 (2), this authority shall notify the supervisory authorities of the other Member States where the undertaking operates and the latter authorities shall take the appropriate measures. If the reason for the withdrawal of authorization is the inadequacy of the solvency margin calculated in accordance with Article 30 (1) (a), the supervisory authorities of the other Member States concerned shall also withdraw their authorizations.

Article 32

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different from those provided for in this Title, for the purpose ensuring, under conditions of reciprocity, adequate protection for policy-holders in the Member States.

TITLE IV

TRANSITIONAL AND OTHER PROVISIONS

Article 33

1. Member States shall allow undertakings referred to in Title II which at the entry into force of the implementing measures to this Directive provide insurance in their territories in one or more of the classes referred to in the Annex, a period of five years from the date of notification of this Directive in order to comply with Articles 18, 19 and 20.

2. Furthermore, Member States may:

(a) allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the solvency margin, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 24, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose;

(b) except for the mutual associations referred to in the second sentence of the second indent of Article 3 (2), exempt undertakings referred to in paragraph 1 of this Article, for which upon the expiry of the five-year period the solvency margin to be established pursuant to Article 19 without deduction for re-insurance does not reach the minimum of the guarantee fund referred to in Article 20 (2) (a) and (b), from the requirement to establish this fund before the end of the financial year in respect of which the solvency margin referred to reaches this minimum amount.

The maximum period thus granted to these undertakings to establish this minimum amount shall in no case exceed 10 years from the date of notification of this Directive.

3. Undertakings desiring to extend their business within the meaning of Article 8 (2) or 10 may not do so unless they comply immediately with the rules of this Directive.

4. Undertakings having a structure different from any of those listed in Article 8 may continue, for a period of three years from the notification of this Directive, to carry on their present business in the legal form in which they are constituted at the time of such notification. Undertakings set up in the United Kingdom by Royal Charter or by private Act or by special Public Act may carry on their activity in their present form for an unlimited period.

The Member States in question shall draw up a list of such undertakings and communicate it to the other Member States and the Commission.

5. Undertakings which, in accordance with their objects, carry on the activities of life assurance and savings operations may continue to carry on such activities, with the exception of savings operations, which must cease within three years from the date of notification of this Directive. As an exception, the 'Caisse générale d'épargne et de retraite (CGER)'/'Algemene Spoor- en Lifrentekas (ASLK)' in Belgium, the societies registered under the Friendly Societies Acts in the United Kingdom and the 'Banca nazionale delle communicazioni' in Italy may continue the activities they were carrying on when the Directive was notified.

6. Undertakings which carry on simultaneously both activities in accordance with the terms of Article 13 shall have a period of five years from the date of notification of this Directive to comply with the provisions of Article 14.

7. At the request of undertakings which comply with the requirements of Articles 17 to 20, Member States shall cease to apply any restrictive measures such as those relating to mortgages, deposits or securities established under their present regulations.

Article 34

Member States shall allow agencies or branches referred to in Title III which, at the entry into force of the implementing measures to this Directive, are carrying on one or more classes referred to in Annex I and which do not extend their business within the meaning of Article 10 (2), a maximum period of five years from the date of notification of this Directive in order to comply with the conditions in Article 29.

Article 35

Where subsidiaries are set up in accordance with Article 13 (5), half the minimum of the guarantee fund may take the form of an irrevocable financial guarantee from the parent company, subject to the following requirements:

(a) at least 95 % of the subsidiary's share capital must be held by the parent company;

(b) unpaid-up share capital may not be used to constitute that half of the minimum of the guarantee fund which is not covered by the irrevocable financial guarantee; and

(c) the financial requirements of both the first coordination Directive (non-life insurance) and this Directive must be met by the parent company, the funds corresponding to the amount of the guarantee not being considered as part of its free assets.

Subsidiaries may benefit from this arrangement for a period of seven years as from the date when it is granted. During this period, and from the third year onwards at the latest, subsidiaries must progressively replace the parent company's guarantee by free assets; subsidiaries shall submit a plan to this effect to the competent supervisory authority for its agreement together with their request for authorization.

Article 36

During a period which terminates at the time of the entry into force of an agreement concluded with a third country pursuant to Article 32, and at the latest upon the expiry of a period of four years after the notification of this Directive, each Member State may retain for undertakings of that country established in its territory the rules applied to them on 1 January 1979 in respect of matching assets and the localization of technical reserves, including mathematical reserves, provided that notification is given to the other Member States and the Commission and that the limits of relaxations granted pursuant to Article 17 (2) in favour of the undertakings of Member States established in its territory are not exceeded.

Article 37

1. Where a Member State requires of its own nationals proof of good repute and proof of no previous bankruptcy, or proof of either of these, that State shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the Member State of origin or the Member State whence the foreign national comes showing that these requirements have been met.

2. Where the Member State of origin or the Member State whence the foreign national concerned comes does not issue the document referred to in paragraph 1, it may be replaced by a declaration on oath — or in States where there is no provision for declaration on oath by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in the Member State of origin or the Member State whence that person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

3. Documents issued in accordance with paragraphs 1 and 2 must not be produced more than three months after their date of issue.

4. Member States shall, within the time limit of 18 months from the date of notification of this Directive, designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 shall forthwith inform the other Member States and the Commission thereof.

Within the same time limit, each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in this Article are to be submitted in support of an application to carry on in the territory of this Member State the activities referred to in Article 1.

TITLE V

FINAL PROVISIONS

Article 38

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating supervision of direct insurance within the Community and of examining any difficulties which might arise in the application of this Directive.

Article 39

1. The Commission shall submit to the Council, within six years from the date of notification of this Directive, a report dealing with the effects of the financial requirements imposed by this Directive on the situation in the insurance markets of the Member States. If necessary, the Commission shall submit interim reports

to the Council before the end of the transitional period provided for in Article 33 (1).

2. Following a period of 10 years from the notification of this Directive, the Commission shall submit to the Council a report dealing with the operations of the two types of undertakings covered by this Directive: that is to say, those undertakings which carry on simultaneously the activity covered by the first coordination Directive (non-life insurance) in addition to the activity covered by this Directive and those undertakings which carry on only the activity covered by this Directive.

3. The Council, acting on a proposal from the Commission, shall every two years examine and, where appropriate, review the amounts expressed in units of account in this Directive, in the light of how the Community's economic and monetary situation has evolved. The Commission shall submit its first proposal in this connection to the Council at the time as a proposal concerning non-life insurance, as laid down in Article 3 of Directive 76/580/EEC [1], and not later than four years after the date of notification of this Directive.

Article 40

Member States shall amend their national provisions to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof. The provisions thus amended shall, subject to Articles 33 to 36, be applied within 30 months from the date of notification.

Article 41

Following notification of this Directive, Member States shall communicate the texts of the main provisions of a legislative, regulatory or administrative nature which they adopt in the field covered by this Directive to the Commission.

Article 42

This Directive is addressed to the Member States.

Done at Brussels, 5 March 1979.

For the Council

The President

J. FRANÇOIS-PONCET

[1] OJ No L 189, 13. 7. 1976, p. 13.

ANNEX

Classes of insurance

I. The assurance referred to in Article 1 (1) (a), (b) and (c) excluding those referred to in II and III

II. Marriage assurance, birth assurance

III. The assurance referred to in Article 1 (1) (a) and (b), which are linked to investment funds

IV. Permanent health insurance, referred to in Article 1 (1) (d)

V. Tontines, referred to in Article 1 (2) (a)

VI. Capital redemption operations, referred to in Article 1 (2) (b)

VII. Management of group pension funds, referred to in Article 1 (2) (c) and (d)

VIII. The operations referred to in Article 1 (2) (e)

IX. The operations referred to in Article 1 (3)

COUNCIL DIRECTIVE

of 8 November 1990

on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC

(90/619/EEC)

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 (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is necessary to develop the internal market in life assurance and in the operations referred to in 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 (4), hereinafter called the 'First Directive' as last amended by the Act of Accession of Spain and Portugal; whereas, in order to achieve that objective, it is desirable to make it easier for assurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policy-holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States;

Whereas, under the Treaty, any discrimination with regard to freedom to provide services based on the fact that an undertaking is not established in the Member State in which the services are provided has been prohibited since the end of the transitional period; whereas that prohibition applies to services provided from any establishment in the Community, whether it be the head office of an undertaking or an agency or branch;

Whereas, for practical reasons, it is desirable to define provision of services taking into account both the assurer's establishment and the place where the commitment is to be covered; whereas, therefore, commitment should also be defined; whereas, moreover, it is desirable to distinguish between activities pursued by way of establishment and activities pursued by way of freedom to provide services;

Whereas it is desirable to supplement the First Council Directive in order in particular to clarify the powers and means of supervision vested in the supervisory authorities; whereas it is also desirable to lay down specific provisions regarding the taking-up, pursuit and supervision of activity by way of freedom to provide services;

Whereas policy-holders who, by virtue of the fact that they take the initiative in entering into a commitment in another State and thus place themselves under the protection of the legal system of that other State, do not require special protection in the State of the commitment, should be granted complete freedom to avail themselves of the widest possible market in life assurance and in the operations referred to in the First Directive; whereas other policy-holders should also be afforded adequate protection;

Whereas in the management of some group pension funds, the multiplicity and complexity of the various schemes and their close connection with social security schemes call for careful study; whereas they should therefore be excluded from the scope of the provisions specific to freedom to provide services contained in this Directive; whereas they will form the subject matter of another Directive;

Whereas the provisions in force in the Member States regarding contract law applicable to the activities referred to in the First Directive continue to differ; whereas the freedom to choose, as the law applicable to the contract, a law other than that of the State of the commitment may be granted in certain cases, in accordance with rules which take into account specific circumstances;

Whereas the First Directive's provisions on transfer of portfolio should be reinforced and supplemented by provisions specifically concerning the transfer to another undertaking of the portfolio of contracts concluded by way of freedom to provide services;

Whereas, in the interests of protecting policy-holders, Member States should, at the present stage of the coordination process, be given the option of limiting the simul-

(1) OJ No C 38 of 15. 2. 1989, p. 7 and OJ No C 72 of 22. 3. 1990, p. 5.
(2) OJ No C 175, 16. 7. 1990, p. 107, and Decision of 24 October 1990 (not yet published in the Official Journal).
(3) OJ No C 298, 27. 11. 1989, p. 2.
(4) OJ No L 63, 13. 3. 1979, p. 1.

taneous pursuit of activity by way of freedom to provide services and activity by way of establishment; whereas no such limitation can be provided for where policy-holders do not require such protection;

Whereas the taking-up and pursuit of activity by way of freedom to provide services should be subject to procedures guaranteeing the assurance undertaking's compliance with provisions regarding financial guarantees, conditions of assurance and premium rates; whereas these procedures may be relaxed where the activity pursued by way of freedom to provide services covers policy-holders who, by virtue of the characteristics of the commitment they propose to enter into, do not require special protection in the State of the commitment;

Whereas for life assurance contracts entered into by way of the free provision of services the policy-holder should be given the opportunity of cancelling the contract within a period of between 14 and 30 days;

Whereas the First Directive adopted the principle of prohibiting the simultaneous pursuit of the activities covered by Directive 73/239/EEC (1) (called the First Directive on the coordination of non-life insurance) as last amended by Directive 88/357/EEC (2) and those covered by the First Directive; whereas, while it authorized the continued existence of existing composite undertakings, it stated that they may not set up agencies or branches for life assurance; whereas the specific nature of the commitments entered into in the insurance field under the freedom of services regime nevertheless justifies, at least on a transitional basis as from notification of this Directive to Member States, the introduction of a degree of flexibility in the application of the above principle;

Whereas nothing in this Directive would prevent a composite undertaking from dividing itself into two undertakings, one active in the field of life assurance, the other in non-life insurance; whereas in order to allow such division to take place under the best possible conditions, it is desirable to permit Member States, in accordance with Community rules of competition law, to provide for appropriate tax arrangements, in particular with regard to the capital gains such division could entail;

Whereas it is necessary to make provision for special cooperation in the sphere of freedom to provide services between the competent supervisory authorities of the Member States and between those authorities and the Commission; whereas provision should also be made for a system of penalties to apply where the undertaking providing the service fails to comply with the provisions of the Member State in which the service is provided;

Whereas the technical reserves, including mathematical reserves, should be subject to the rules of and supervision by the Member State in which the service is provided where the provision of services involves commitments in respect of which the State in which the service is received wishes to provide special protection for policy-holders; whereas, however, if such concern to protect policy-holders is unjustified, the technical reserves, including mathematical reserves, should remain subject to the rules of and supervision by the Member State in which the undertaking is established;

Whereas some Member States do not subject life assurance contracts and the other operations covered by the First Directive to any form of indirect taxation, while others apply special taxes; whereas the structure and rate of those taxes vary considerably between the Member States in which they are applied; whereas it is desirable to avoid a situation where those differences lead to distortions of competition between undertakings in the various Member States; whereas, pending further harmonization, the application of the tax arrangements provided for by the Member State in which the commitment is entered into is a means of remedying such mischief; whereas it is for the Member States to establish a method of ensuring that such taxes are collected;

Whereas the First Directive makes express provision for specific rules concerning the authorization of agencies and branches of undertakings whose head offices are outside the Community;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in other third countries; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations;

Whereas it is desirable to take into account, within the meaning of Article 8c of the Treaty, the extent of the effort which needs to be made by certain economies showing differences in development; whereas, therefore, it is desirable to grant certain Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to freedom to provide services;

(1) OJ No L 228, 16. 8. 1973, p. 3.
(2) OJ No L 172, 4. 7. 1988, p. 1.

Whereas, in view of the differences in the national legislations, it is also appropriate to grant to those Member States which so wish transitional arrangements enabling them to adapt their legislation before applying in their entirety, as regards group insurance contracts linked to a contract of employment or the intervention of a broker, the provisions of this Directive relating to the case where the policy-holder takes the initiative to conclude a contract by way of provision of services;

Whereas it will be particularly important to allow those Member States who so wish a sufficiently long period to be able to adopt the appropriate provisions in order to ensure the professional qualification and independence of insurance brokers; whereas taking into account the growing role such brokers play in advising those buying insurance and facing an increasing range of products as a result of the freedom to provide services, their professional qualification and independence will become essential elements for protection of the consumer,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

The object of this Directive is to:

(a) supplement Directive 79/267/EEC;

(b) lay down specific provisions relating to freedom to provide services in respect of the activities referred to in the said Directive, such provisions being set forth in Title III of this Directive.

Article 2

For the purposes of this Directive:

(a) 'First Directive': means Directive 79/267/EEC;

(b) 'undertaking':

— for the purposes of Titles I and II, means any undertaking which has received official authorization under Article 6 or Article 27 of the First Directive,

— for the purposes of Titles III and IV, means any undertaking which has received official authorization under Article 6 of the First Directive;

(c) 'establishment':

means the head office, an agency or a branch of an undertaking, having regard to Article 3;

(d) 'commitment':

means a commitment represented by one of the kinds of insurance or operation referred to in Article 1 of the First Directive:

(e) 'Member State of the commitment':

means the Member State where the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State where the latter's establishment, to which the contract relates is situated;

(f) 'Member State of establishment':

means the Member State in which the establishment covering the commitment is situated;

(g) 'Member State of provision of services':

means the Member State of the commitment where the commitment is covered by an establishment situated in another Member State;

(h) parent undertaking':

means a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC (1);

(i) 'subsidiary':

means a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 3

For the purposes of the First Directive and of this Directive, any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

TITLE II

Provisions supplementary to the First Directive

Article 4

1. The law applicable to contracts relating to the activities referred to in the First Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.

2. Where the policy-holder is a natural person and has his habitual residence in a Member State other than that of which he is a national, the parties may choose the law of the Member State of which he is a national.

3. Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

(1) OJ No L 193, 18. 7. 1983, p. 1.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

4. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

5. Subject to the preceding paragraphs, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

Article 5

The following paragraph is added to Article 23 of the First Directive:

'3. Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising assurance undertakings have the powers and means necessary for supervision of the activities of assurance undertakings established within their territory, including activities engaged in outside that territory, in accordance with the Council Directives governing those activities and for the purpose of ensuring that they are implemented.

Those powers and meanst must, in particular, enable the supervisory authorities to:

— make detailed inquires about the undertaking's situation and the whole of its business, *inter alia* by:

  — gathering information or requiring the submission of documents concerning assurance business,

  — carrying out on-the-spot investigations at the undertaking's premises,

— take any measures, with regard to the undertaking, which are appropriate and necessary to ensure that the activities of the undertaking remain in conformity with the laws, regulations and administrative provisions with which the undertaking has to comply in each Member State and in particular with the scheme of operations insofar as it remains mandatory, and to prevent or remove any irregularities prejudicial to the interests of policyholders,

— ensure that measures required by the supervisory authorities are carried out, if need be by enforcement, where appropriate through judicial channels.

Member States may also make provision for the supervisory authorities to obtain any information regarding contracts which is held by intermediaries.'

Article 6

1. Article 25 of the First Directive is hereby deleted.

2. Each Member State shall, under the conditions laid down by national law, authorize undertakings which are established within its territory to transfer all or part of their portfolios of contracts for which that State is the State of the commitment, to an accepting office establishing in that same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.

3. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10 (1) to an accepting office established in the Member State of provision of services if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.

4. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts conluded in the circumstances referred to in Article 10 (1) to an accepting office established in the same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the accepting office possesses the necessary margin of solvency after taking the transfer into account and if it fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services.

5. In the cases referred to in paragraphs 3 and 4, the supervisory authorities of the Member State in which the transferring undertaking is established shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member State of provision of services.

6. If a Member State, under the conditions laid down by national law, authorizes undertakings established within its territory to transfer all or part of their portfolios of contracts to an accepting office established in another

Member State which is not the Member State of provision of services, it shall ensure that the following conditions are fulfilled :

— the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of soivency after taking the transfer into account,

— the Member State in which the accepting office is established agrees,

— the accepting office fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services, the law of that Member State provides for the possibility of such a transfer and that Member State agrees to the transfer.

7. A transfer authorized in accordance with this Article shall be published, under the conditions laid down by national law, in the Member State of the commitment. Such transfer shall be automatically valid against policy-holders, assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the right of Member States to provide that policy-holders may cancel the contract within a given period after the transfer.

Article 7

Article 22 (2) of the First Directive is replaced by the following :

'2. The Italian Republic shall take all steps to ensure that the requirement that undertakings established in its territory cede part of their underwriting to the "Istituto Nazionale di Assicurazioni" is abolished no later than 20 November 1994.'

Article 8

1. The heading of Title III of the First Directive is replaced by the following :

'TITLE III A

Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community'

2. The following heading is placed after Article 32 of the First Directive :

'TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of holdings by such parent undertakings'.

Article 9

The following Articles are added to Title III B of the First Directive :

'Article 32a

The competent authorities of the Member States shall inform the Commission :

(a) of any authorization of a direct of indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Committee referred to in Article 32b (6) accordingly ;

(b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Committee referred to in Article 32b (6) accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the groupe shall be specified in the notification which the competent authorities shall address to the Commission.

Article 32b

1. The Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially no later than six months before the date referred to in the second paragraph of Article 30 of Directive 90/619/EEC (1), and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granting Community to insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community insurance undertakings. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not

receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negociations, in accordance with the procedure laid down in Article 32b (6), that the competent authorities of the Member States must limit or suspend their decisions :

— regarding requests pending at the moment of the decision or future requests for authorizations, and

— regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.

The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request :

(a) of any request for the authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question ;

(b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 3 or 4 when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of insurance undertakings.

(1) OJ No L 330, 29. 11. 1990, p. 50.

TITLE III

Provisions relating specifically to the freedom to provide services

Article 10

1. This Title shall apply where an undertaking, through an establishment situated in a Member State, covers a commitment in another Member State.

2. This Title shall apply to :

— the types of insurance referred to in Article 1 (1) of the First Directive,

— the operations referred to in Article 1 (2) (a) and (b) of the First Directive.

1. This Title shall not apply to the operations and bodies referred to in Article 1 (2) (c), (d) and (e), Article 1 (3) and Articles 2, 3 and 4 of the First Directive.

4. An undertaking shall not cover a commitment in another Member State unless it is authorized under Article 6 of the First Directive to cover such a commitment in its Member State of establishment.

Article 11

Any undertaking which intends to provide services shall first inform the competent authorities of the head office Member State, and, where appropriate, of the Member State of the establishment concerned, indicating the Member State or Member States within whose territory it intends to provide services and the nature of the commitments it proposes to cover.

Article 12

1. Subject to Article 13, each Member State within whose territory an undertaking intends, by way of freedom to provide services, to cover commitments within the meaning of Article 10 may make the taking-up of such activity conditional on official authorization insofar as the commitments are not entered into in accordance with the arrangements referred to in Article 13; to that end, it may require that the undertaking:

(a) produce a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the First Directive and that, in accordance with Article 6 (1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment;

(b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services;

(c) submit a scheme of operations concerning the following particulars:

— the nature of the commitments which the undertaking proposes to cover in the Member State of provision of services,

— the general and special conditions of the assurance policies which it proposes to use there,

— the premium rates which the undertaking envisages applying and the technical bases which it proposes to use for each class of business,

— the forms and other printed documents which it intends to use in its dealings with policy-holders, insofar as these are also required of established undertakings.

2. The competent authorities of the Member State of provision of services may require that the particulars referred to in paragraph 1 (c) be supplied to them in the official language of that State.

3. The competent authorities of the Member State of provision of services shall have a period of six months from receipt of the documents referred to in paragraph 1 in which to grant or refuse authorization on the basis of the compliance or non-compliance of the particulars in the scheme of operations submitted by the undertaking with the laws, regulations and administrative provisions applicable in that State.

Such authorization may not be refused on the grounds that some operations in the scheme of operations, which are subject in the Member State of establishment of the undertaking to supervision by the authorities responsible for the supervision of insurance undertakings, are not subject to such supervision in the Member State of provision of services.

4. If the competent authorities of the Member State of provision of services have not taken a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be refused.

5. Any decision to refuse authorization or to refuse a certificate as referred to in paragraph 1 (a) or (b) shall be accompanied by the precise grounds therefor and communicated to the undertaking in question.

6. Each Member State shall make provision for the right to apply to the courts in respect of a refusal of authorization or refusal to issue the certificate referred to in paragraph 1 (a) or (b).

Article 13

1. Commitments covered by way of freedom to provide services shall be subject to Article 14 where the policy-holder takes the initiative in seeking a commitment from the undertaking.

The policy-holder shall be deemed to have taken the initiative:

— where, on the one hand, the contract is entered into by both parties in the Member State in which the undertaking is established or by each of the parties in that party's own State of establishment or of habitual residence, and where, on the other hand, the policy-holder has not been contacted in his State of habitual residence by the undertaking or through an insurance intermediary or any person authorized to act for it or by means of any solicitation of business addressed to him personally,

— where the policy-holder approaches an intermediary established in the Member State in which the policy-holder has his habitual residence and carrying on the professional activities defined in Article 2 (1) (a) of Directive 77/92/EEC (1), in order to obtain information on assurance contracts offered by undertakings established in Member States other than his State of habitual residence or with a view to entering into a commitment through the intermediary with such an undertaking. In that event the policy-holder shall sign a statement, the text of which is set out, under item A in the Annex, expressly so requesting.

2. Before entering into a commitment in the cases referred to in the first and second indents of paragraph 1, the policy-holder shall sign a statement, the text of which is set out under item B in the Annex, to the effect that he notes that the commitment is subject to the rules of supervision of the Member State of establishment which is to cover the commitment.

Article 14

1. Each Member State within whose territory an undertaking intends, by way of freedom to provide services, to cover commitments in accordance with Article 13 shall require that the undertaking abide by the following procedure :

(a) production of a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the First Directive and that, in accordance with Article 6 (1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment ;

(b) production of a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services ;

(c) statement of the nature of the commitments which it proposes to cover in the Member State of provision of services.

The above procedure shall not apply where an activity falling within this Directive is not subject, in the Member State of the commitment, to supervision by the administrative authorities responsible for supervising private insurance.

2. Each Member State shall make provision for the right to apply to the courts in respect of a refusal to issue the certificate referred to in paragraph 1 (a) or (b).

3. The undertaking may commence activities as from the certified date on which the authorities of the Member State of provision of services are in possession of the documents referred to in paragraph 1.

4. This Article shall also apply where the Member State in whose territory an undertaking intends, by way of freedom to provide services, to cover commitments in accordance with arrangements other than those referred to in Article 13 of this Directive does not make the taking-up of such activity conditional on official authorization.

5. Member States may not prevent the policy-holder from entering into any commitment which may be lawfully undertaken in the Member State of establishment unless it is contrary to public policy in the Member State of the commitment.

Article 15

1. Each Member State shall prescribe that a policy-holder who concludes an individual life-assurance contract in one of the cases referred to in Title III shall have a period of between 14 and 30 days from the time when he was informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy-holder shall have the effect of releasing him from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 4, notably as regards the arrangements for informing the policy-holder that the contract has been concluded.

2. The Member States need not apply paragraph 1 to contracts of six months' duration or less.

Article 16

Member States' legislation shall provide that an undertaking established in a Member State may cover within that State by way of freedom to provide services from an establishment in another Member State at least :

— the commitments within the meaning of Article 10, where they are entered into in accordance with the arrangements in Article 13,

— the commitments within the meaning of Article 10 entered into in accordance with arrangements other than those laid down in Article 13, where they fall within classes in respect of which the undertaking established in the first Member State lacks authorization there in accordance with Article 6 of the First Directive.

If, however, in the latter case that undertaking has such authorization, the first Member State may prevent such provision of services.

(1) OJ No L 26, 31. 1. 1977, p. 14.

Article 17

1. Where an undertaking referred to in Article 11 intends to amend the information referred to in Article 12 (1) (c) or 14 (1) (c), it shall submit the amendments to the competent authorities of the Member State of provision of services. Those amendments shall be subject to the provisions of Article 12 (3) and 14 (3), as the case may be.

2. Where the undertaking intends to extend its activities to commitments within the meaning of Article 10 in accordance with arrangements other than those laid down in Article 13 or 14 (4), it shall follow the procedure laid down in Articles 11 and 12.

3. Where the undertaking intends to extend its activities to commitments in accordance with the arrangements laid down in Article 13 or 14 (4), it shall follow the procedure laid down in Articles 11 and 14.

Article 18

1. Undertakings which, by virtue of Article 13 (3) of the First Directive, carry on simultaneously the activities referred to in the Annex to Directive 73/239/EEC and those listed in Article 1 of the First Directive may accept commitments in any of the classes referred to in the First Directive by way of provision of services as referred to in Article 12 of this Directive. They may also accept commitments by way of provision of services as referred to in Article 12 if the law of the Member State of provision of services so allows at the time of notification of this Directive, or thereafter and until 31 December 1995 in the other Member States.

2. This Article will be reviewed in the light of the report to be prepared by the Commission in accordance with Article 39 (2) of the First Directive.

Article 19

1. Member States of provision of services may maintain or introduce laws, regulations or administrative provisions justified on policy-holder protection grounds, concerning, in particular, approval of general and special policy conditions, of forms and other printed documents for use in dealings with policy-holders, of scales of premiums and of any other document necessary for the normal exercise of supervision on condition that the rules of the Member State of establishment are insufficient to achieve the necessary level of protection and the requirements of the Member State of provision of services do not go beyond what is necessary in that respect.

2. However, with regard to commitments entered into in accordance with the arrangements described in Article 13, Member States of provision of services shall not lay down provisions requiring approval or notification of general and special policy conditions, scales of premiums, forms and other printed documents which the undertaking intends to use in its dealings with policy-holders.

3. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such commitments, although this requirement may not constitute a prior condition in order for an undertaking to carry on its activities.

Article 20

1. Any undertaking providing services shall submit to the competent authorities of the Member State of provision of services all documents requested of it for the purposes of implementing this Article, insofar as undertakings established there are also obliged to do so.

2. If the competent authorities of a Member State establish that an undertaking providing services within its territory does not comply with the legal provisions applicable to it in that State, such authorities shall request the undertaking concerned to put an end to the irregular situation.

3. If the undertaking in question fails to comply with the request referred to in paragraph 2, the competent authorities of the Member State of provision of services shall inform the competent authorities of the Member State of establishment accordingly. The latter authorities shall take all appropriate steps to ensure that the undertaking concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the authorities of the Member State of provision of services.

The competent authorities of the Member State of provision of services may also apply to the competent authorities responsible for the head office of the assurance undertaking if the services are being provided by agencies or branches.

4. If, despite the steps thus taken by the Member State of establishment, or because such steps prove inadequate or are lacking in the Member State in question, the undertaking persists in violating the legal provisions in force in the Member State of provision of services, the latter Member State may, after informing the supervisory authorities of the Member State of establishment, take appropriate steps to prevent further irregularities, including, insofar as it is strictly necessary, the prevention of the further covering of commitments by the undertaking by way of freedom to provide services within its territory. In the case of commitments covered by way of freedom to provide services in accordance with arrangements other than those referred to in Article 13 of this Directive, such steps shall include withdrawal of the authorization referred to in Article 12. Member States shall ensure that within their territory it is possible to effect the notifications necessary for such steps.

5. These provisions shall not affect the right of Member States to punish irregularities committed within their territory.

6. If the undertaking which has committed the irregularity has an establishment or owns property in the Member State of provision of services, the supervisory authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for such irregularity by way of enforcement against such establishment or property.

7. Any step taken under paragraphs 2 to 6 involving penalties or restrictions on the provision of services must be properly justified and communicated to the undertaking concerned. Every such measure shall be subject to the right to apply to the courts in the Member State in which the authorities adopted it.

8. Where steps are taken under Article 24 of the First Directive, the competent authorities of the Member State of provision of services shall be informed accordingly by the authority which takes them and, where the steps are taken under paragraphs 1 and 3 of the said Article, take whatever action is necessary to safeguard the interests of assured persons.

In the event of withdrawal of authorization under Article 26 of the First Directive, the competent authorities of the Member State of provision of services shall be informed accordingly and shall take appropriate steps to prevent the establishment concerned from continuing to conclude assurance contracts by way of freedom to provide services within the territory of that Member State.

9. Every two years the Commission shall submit to the Council a report summarizing the number and type of cases in which, in each Member State, decisions refusing authorization have been communicated under Article 12 or measures have been taken under paragraph 4. Member States shall cooperate with the Commission by providing it with the information required for the report.

Article 21

In the event of an assurance undertaking being wound up, commitments arising from contracts underwritten by way of freedom to provide services shall be met in the same way as those arising from that undertaking's other assurance contracts, no distinction being made on grounds of the nationality of assured persons or beneficiaries.

Article 22

1. Where an operation is offered by way of freedom to provide services, the policy-holder shall, before any commitment is entered into, be informed of the Member State in which the head office, agency or branch with which the contract is to be concluded is established.

Any document issued to the policy-holder or to the insured shall contain the information referred to in the preceding subparagraph.

2. The contract or other document granting cover, together with the assurance proposal where it is binding upon the proposer, shall specify the address of the establishment which grants the cover and that of the head office.

Article 23

Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without deduction of reinsurance, receivable by Member State and by each of classes I to VI, as defined in the Annex to the First Directive.

This information shall be provided separately for commitments covered in accordance with the arrangements in Article 12 and for those covered in accordance with the arrangements in Article 14.

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services which so requests.

Article 24

1. Where the provision of services is conditional upon authorization by the Member State of provision of services, the amount of the technical reserves, including mathematical reserves, and the rules on profit sharing and on the surrender and paid-up values of the contracts concerned shall be determined under the supervision of that Member State in accordance with the rules it has laid down or, failing such rules, in accordance with established practice in that Member State. The covering of those reserves by equivalent and matching assets, the location of those assets and the application of the rules on profit sharing and on surrender and paid-up values shall be under the supervision of that Member State in accordance with its rules or practice.

2. In all other cases, those various operations shall be under the supervision of the Member State of establishment, in accordance with its rules or practice.

3. The Member State of establishment shall ensure that the reserves relating to all the contracts which the undertaking concludes through the establishment concerned are sufficient and covered by equivalent and matching assets.

4. In the circumstances referred to in paragraph 1, the Member State of establishment and the Member State of provision of services shall exchange any information necessary for carrying out their respective duties under paragraphs 1 and 3.

Article 25

Without prejudice to any subsequent harmonization, every assurance contract concluded by way of freedom to provide services shall be subject only to the indirect taxes and parafiscal charges on assurance premiums of the

Member State of the commitment within the meaning of Article 2 (e) and, in the case of Spain, to the surcharges legally fixed to assist the Spanish body 'Consorcio de Compensación de Seguros' in its function of compensating for losses resulting form the occurrence of exceptional events in that Member State.

The law applicable to the contract pursuant to Article 4 shall not affect the tax arrangements applicable.

Subject to future harmonization, each Member State shall apply to undertakings which provide services in the territory its own national provisions concerning measures to ensure the collection of indirect taxes and parafiscal charges due under the first paragraph.

TITLE IV

Transitional provisions

Article 26

The following transitional arrangements shall apply for the benefit of Spain until 31 December 1995 and of Greece and Portugal until 31 December 1998 :

— they may limit the commitments for which they are the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 13,

— they may require that the technical reserves, including mathematical reserves, relating to those commitments, should be calculated, covered and located in accordance with their national legislation in force.

Article 27

1. In the case of group assurance contracts entered into by virtue of the insured person's contract of employment or professional activity, any Member State may, until 31 December 1994, limit the commitments for which it is the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 12.

2. Member States may, up to three years at the latest after the date of application laid down in the second paragraph of Article 30, consider that the policy-holder shall be deemed to have taken the initiative only in the case provided for in the first indent of Article 13 (1).

TITLE V

Final provisions

Article 28

The Commission and the competent authorities of the Member States shall collaborate closely with a view to facilitating the supervision of the kinds of insurance and the operations referred to in the First Directive within the Community.

Each Member State shall inform the Commission of any major difficulties to which application of this Directive gives rise, *inter alia* any arising if a Member State becomes aware of an abnormal transfer of business referred to in the first Directive to the detriment of undertakings established in its territory and to the advantage of agencies and branches located just beyond its borders.

The Commission and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 29

The Commission shall forward to the European Parliament and the Council regular reports, the first on 20 November 1995, on the development of the market in assurance and operations transacted under conditions of freedom to provide services.

Article 30

Member States shall amend their national provisions to comply with this Directive within 24 months of the date of its notification (1) and shall forthwith inform the Commission thereof.

The provisions amended in accordance with the first paragraph shall be applied within 30 months of the date of notification of this Directive.

Article 31

Upon notification of this Directive, Member States shall ensure that the texts of the main laws, regulations or administrative provisions which they adopt in the field covered by this Directive are communicated to the Commission.

Article 32

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

(1) This Directive was notified to the Member States on 20 November 1990.

ANNEX

A. *Statement to be signed by the policy-holder under Article 13 (1), second indent*

'I hereby state that I wish (name of intermediary) to provide me with information on assurance contracts offered by undertakings established in Member States other than (Member State of habitual residence of policy-holder). I understand that such undertakings are subject to the supervisory arrangements of the State in which they are established and not to the supervisory arrangements of (Member State of habitual residence of policy-holder).'

B. *Statement to be signed by the policy-holder under Article 13 (2)*

'I hereby take note that (name of assurer) is established in (Member State of establishment of assurer) and I realize that supervision of that assurer is the responsibility of the supervisory authorities in (Member State of establishment of assurer) and not the responsibility of the authorities in (Member State of habitual residence of policy-holder).'

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/96/EEC

of 10 November 1992

on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive)

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 (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

1. Whereas it is necessary to complete the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services, to make it easier for assurance undertakings with head offices in the Community to cover commitments situated within the Community;

2. Whereas the Second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (4) has already contributed substantially to the achievement of the internal market in direct life assurance by granting policy-holders who, by virtue of the fact that they take the initiative in entering into a commitment with an assurance undertaking in another Member State, do not require special protection in the Member State of the commitment complete freedom to avail themselves of the widest possible life assurance market;

3. Whereas Directive 90/619/EEC therefore represents an important stage in the merging of national markets into an integrated market and that stage must be supplemented by other Community instruments with a view to enabling all policy-holders, irrespective of whether they themselves take the initiative, to have recourse to any assurer with a head office in the Community who carries on business there, under the right of establishment or the freedom to provide services, while guaranteeing them adequate protection;

4. Whereas this Directive forms part of the body of Community legislation already enacted which includes 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 of the business of direct life assurance (5) and Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (6);

5. Whereas the approach adopted consists in bringing about such harmonization as is essential, necessary

(1) OJ No C 99, 16. 4. 1991, p. 2.
(2) OJ No C 176, 13. 7. 1992, p. 93; and Decision of 28 October 1992 (not yet published in the Official Journal).
(3) OJ No C 14, 20. 1. 1992, p. 11.
(4) OJ No L 330, 29. 11. 1990, p. 50.
(5) OJ No L 63, 13. 3. 1979, p. 1. Directive as last amended by the Second Directive 90/619/EEC (OJ No L 330, 29. 11. 1990, p. 50).
(6) OJ No L 374, 31. 12. 1991, p. 7.

and sufficient to achieve the mutual recognition of authorizations and prudential control systems, thereby making it possible to grant a single authorization valid throughout the Community and apply the principle of supervision by the home Member State;

6. Whereas, as a result, the taking up and the pursuit of the business of assurance are henceforth to be subject to the grant of a single official authorization issued by the competent authorities of the Member State in which an assurance undertaking has its head office; whereas such authorization enables an undertaking to carry on business throughout the Community, under the right of establishment or the freedom to provide services; whereas the Member State of the branch or of the provision of services may no longer require assurance undertakings which wish to carry on assurance business there and which have already been authorized in their home Member State to seek fresh authorization; whereas Directives 79/267/EEC and 90/619/EEC should therefore be amended along those lines;

7. Whereas the competent authorities of home Member States will henceforth be responsible for monitoring the financial health of assurance undertakings, including their state of solvency, the establishment of adequate technical provisions and the covering of those provisions by matching assets;

8. Whereas the performance of the operations referred to in Article 1 (2) (c) of Directive 79/267/EEC cannot under any circumstances affect the powers conferred on the respective authorities with regard to the entities holding the assets with which that provision is concerned;

9. Whereas certain provisions of this Directive define minimum standards; whereas a home Member State may lay down stricter rules for assurance undertakings authorized by its own competent authorities;

10. Whereas the competent authorities of the Member States must have at their disposal such means of supervision as are necessary to ensure the orderly pursuit of business by assurance undertakings throughout the Community whether carried on under the right of establishment or the freedom to provide services; whereas, in particular, they must be able to introduce appropriate safeguards or impose sanctions aimed at preventing irregularities and infringements of the provisions on assurance supervision;

11. Whereas the provisions on transfers of portfolios must be adapted to bring them into line with the single legal authorization system introduced by this Directive;

12. Whereas provision should be made for the specialization rule laid down by Directive 79/267/EEC to be relaxed so that those Member States which so wish are able to grant the same undertaking authorizations for the classes referred to in the Annex to Directive 79/267/EEC and the insurance business coming under classes 1 and 2 in the Annex to Directive 73/239/EEC [1]; whereas that possibility may, however, be subject to certain conditions as regards compliance with accounting rules and rules on winding-up;

13. Whereas it is necessary from the point of view of the protection of lives assured that every assurance undertaking should establish adequate technical provisions; whereas the calculation of such provisions is based for the most part on actuarial principles; whereas those principles should be coordinated in order to facilitate mutual recognition of the prudential rules applicable in the various Member States;

14. Whereas it is desirable, in the interests of prudence, to establish a minimum of coordination of rules limiting the rate of interest used in calculating the technical provisions; whereas, for the purposes of such limitation, since existing methods are all equally correct, prudential and equivalent, it seems appropriate to leave Member States a free choice as to the method to be used;

15. Whereas the rules governing the spread, localization and matching of the assets used to cover technical provisions must be coordinated in order to facilitate the mutual recognition of Member States' rules; whereas that coordination must take account of the measures on the liberalization of capital movements provided for in Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty [2] and the progress made by the Community towards economic and monetary union;

16. Whereas, however, the home Member State may not require assurance undertakings to invest the assets covering their technical provisions in particular

[1] 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). Directive as last amended by Directive 90/618/EEC (OJ No L 330, 29. 11. 1990, p. 44).

[2] OJ No L 178, 8. 7. 1988, p. 5.

categories of assets, as such a requirement would be incompatible with the measures on the liberalization of capital movements provided for in Directive 88/361/EEC;

17. Whereas, pending the adoption of a directive on investment services harmonizing *inter alia* the definition of the concept of a regulated market, for the purposes of this Directive and without prejudice to such future harmonization that concept must be defined provisionally, to be replaced by the definition harmonized at Community level, which will give the home Member State of the market the responsibilities for these matters which this Directive transitionally gives to the assurance undertaking's home Member State;

18. Whereas the list of items of which the solvency margin required by Directive 79/267/EEC may be made up must be supplemented to take account of new financial instruments and of the facilities granted to other financial institutions for the constitution of their own funds;

19. Whereas the harmonization of assurance contract law is not a prior condition for the achievement of the internal market in assurance; whereas, therefore, the oppportunity afforded to the Member States of imposing the application of their law to assurance contracts covering commitments within their territories is likely to provide adequate safeguards for policy-holders;

20. Whereas within the framework of an internal market it is in the policy-holder's interest that he should have access to the widest possible range of assurance products available in the Community so that he can choose that which is best suited to his needs; whereas it is for the Member State of the commitment to ensure that there is nothing to prevent the marketing within its territory of all the assurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in the Member State of the commitment and in so far as the general good is not safeguarded by the rules of the home Member State, provided that such provisions must be applied without discrimination to all undertakings operating in that Member State and be objectively necessary and in proportion to the objective pursued;

21. Whereas the Member States must be able to ensure that the assurance products and contract documents used, under the right of establishment or the freedom to provide services, to cover commitments within their territories comply with such specific legal provisions protecting the general good as are applicable; whereas the systems of supervision to be employed must meet the requirements of an internal market but their employment may not constitute a prior condition for carrying on assurance business; whereas, from this standpoint, systems for the prior approval of policy conditions do not appear to be justified; whereas it is therefore necessary to provide for other systems better suited to the requirements of an internal market which enable every Member State to guarantee policy-holders adequate protection;

22. Whereas, for the purposes of implementing actuarial principles in conformity with this Directive, the home Member State may nevertheless require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, with such notification of technical bases excluding notification of the general and special policy conditions and the undertaking's commercial rates;

23. Whereas in a single assurance market the consumer will have a wider and more varied choice of contracts; whereas, if he is to profit fully from this diversity and from increased competition, he must be provided with whatever information is necessary to enable him to choose the contract best suited to his needs; whereas this information requirement is all the more important as the duration of commitments can be very long; whereas the minimum provisions must therefore be coordinated in order for the consumer to receive clear and accurate information on the essential characteristics of the products proposed to him as well as the particulars of the bodies to which any complaints of policy-holders, assured persons or beneficiaries of contracts may be addressed;

24. Whereas publicity for assurance products is an essential means of enabling assurance business to be carried on effectively within the Community; whereas it is necessary to leave open to assurance undertakings the use of all normal means of advertising in the Member State of the branch or of provision of services; whereas Member States may nevertheless require compliance with their national rules on the form and content of advertising, whether laid down pursuant to Community legislation on advertising or adopted by Member States for reasons of the general good;

25. Whereas, within the framework of the internal market, no Member State may continue to prohibit the simultaneous carrying on of assurance business within its territory under the right of establishment

and the freedom to provide services; whereas the option granted to Member States in this connection by Directive 90/619/EEC should therefore be abolished;

26. Whereas provision should be made for a system of penalties to be imposed when, in the Member State in which the commitment is entered into, an assurance undertaking does not comply with those provisions protecting the general good that are applicable to it;

27. Whereas some Member States do not subject assurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution; whereas the structures and rates of such taxes and contributions vary considerably between the Member States in which they are applied; whereas it is desirable to prevent existing differences leading to distortions of competition in assurance services between Member States; whereas, pending subsequent harmonization, application of the tax systems and other forms of contribution provided for by the Member States in which commitments entered into are likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected;

28. Whereas it is important to introduce Community coordination on the winding-up of assurance undertakings; whereas it is henceforth essential to provide, in the event of the winding-up of an assurance undertaking, that the system of protection in place in each Member State must guarantee equality of treatment for all assurance creditors, irrespective of nationality and of the method of entering into the commitment;

29. Whereas technical adjustments to the detailed rules laid down in this Directive may be necessary from time to time to take account of the future development of the assurance industry; whereas the Commission will make such adjustments as and when necessary, after consulting the Insurance Committee set up by Directive 91/675/EEC [1], in the exercise of the implementing powers conferred on it by the Treaty;

30. Whereas it is necessary to adopt specific provisions intended to ensure smooth transition from the legal arrangements in existence when this Directive becomes applicable to those that it introduces; whereas care should be taken in such provisions not to place an additional workload on Member States' competent authorities;

[1] OJ No L 374, 31. 12. 1991, p. 32.

31. Whereas, pursuant to Article 8c of the Treaty, account should be taken of the extent of the effort which must be made by certain economies at different stages of development; whereas, therefore, transitional arrangements should be adopted for the gradual application of this Directive by certain Member States,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS AND SCOPE

Article 1

For the purposes of this Directive:

(a) *assurance undertaking* shall mean an undertaking which has received official authorization in accordance with Article 6 of Directive 79/267/EEC;

(b) *branch* shall mean an agency or branch of an assurance undertaking, having regard to Article 3 of Directive 90/619/EEC;

(c) *commitment* shall mean a commitment represented by one of the kinds of insurance or operations referred to in Article 1 of Directive 79/267/EEC;

(d) *home Member State* shall mean the Member State in which the head office of the assurance undertaking covering the commitment is situated;

(e) *Member State of the branch* shall mean the Member State in which the branch covering the commitment is situated;

(f) *Member State of the provision of services* shall mean the Member State of the commitment, as defined in Article 2 (e) of Directive 90/619/EEC, if the commitment is covered by an assurance undertaking or a branch situated in another Member State;

(g) *control* shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC [1], or a similar relationship between any natural or legal person and an undertaking;

[1] Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (OJ No L 193, 18. 7. 1983, p. 1). Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

(h) *qualifying holding* shall mean a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which a holding subsists.

For the purposes of this definition, in the context of Articles 7 and 14 and of the other levels of holding referred to in Article 14, the voting rights referred to in Article 7 of Directive 88/627/EEC (1) shall be taken into consideration;

(i) *parent undertaking* shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(j) *subsidiary* shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the undertaking which is those undertakings' ultimate parent undertaking;

(k) *regulated market* shall mean a financial market regarded by an undertaking's home Member State as a regulated market pending the adoption of a definition in a Directive on investment services and characterized by:

— regular operation, and

— the fact that regulations issued or approved by the appropriate authorities define the conditions for the operation of the market, the conditions for access to the market and, where Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing (2) applies, the conditions for admission to listing imposed in that Directive or, where that Directive does not apply, the conditions to be satisfied by a financial instrument in order to be effectively dealt in on the market.

For the purposes of this Directive, a regulated market may be situated in a Member State or in a third country. In the latter event, the market must be recognized by the undertaking's home Member State and meet comparable requirements. Any financial instruments dealt in must be of a quality comparable to that of the instruments dealt in on the regulated market or markets of the Member State in question;

(l) *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise assurance undertakings.

Article 2

1. This Directive shall apply to the commitments and undertakings referred to in Article 1 of Directive 79/267/EEC.

2. In Article 1 (2) of Directive 79/267/EEC the words 'and are authorized in the country concerned' shall be deleted.

3. This Directive shall apply neither to classes of insurance or operations nor to undertakings or institutions to which Directive 79/267/EEC does not apply, nor shall it apply to the bodies referred to in Article 4 of that Directive.

TITLE II

THE TAKING-UP OF THE BUSINESS OF LIFE ASSURANCE

Article 3

Article 6 of Directive 79/267/EEC shall be replaced by the following:

'*Article 6*

The taking-up of the activities covered by this Directive shall be subject to prior official authorization.

Such authorization shall be sought from the authorities of the home Member State by:

(a) any undertaking which establishes its head office in the territory of that State;

(b) any undertaking which, having received the authorization required in the first subparagraph, extends its business to an entire class or to other classes.'

Article 4

Article 7 of Directive 79/267/EEC shall be replaced by the following:

'*Article 7*

1. Authorization shall be valid for the entire Community. It shall permit an undertaking to carry on business there, under either the right of establishment or freedom to provide services.

(1) Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (OJ No L 348, 17. 12. 1988, p. 62).

(2) OJ No L 66, 13. 3. 1979, p. 21. Directive as last amended by Directive 82/148/EEC (OJ No L 62, 5. 3. 1982, p. 22).

2. Authorization shall be granted for a particular class of assurance as listed in the Annex. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

The competent authorities may restrict authorization requested for one of the classes to the operations set out in the scheme of operations referred to in Article 9.

Each Member State may grant authorization for two or more of the classes, where its national laws permit such classes to be carried on simultaneously.'

Article 5

Article 8 of Directive 79/267/EEC shall be replaced by the following:

'Article 8

1. The home Member State shall require every assurance undertaking for which authorization is sought to:

(a) adopt one of the following forms:

— in the case of the Kingdom of Belgium: "societé anonyme/naamloze vennootschap", "societe en commandite par actions/commanditaire vennootschap op aandelen", "association d'assurance mutuelle/onderlinge verzekeringsvereniging", "société coopérative/coöperatieve vennootschap",

— in the case of the Kingdom of Denmark: "aktieselskaber", "gensidige selskaber", "pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)",

— in the case of the Federal Republic of Germany: "Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit", "öffentlich-rechtliches Wettbewerbsversicherungsunternehmen",

— in the case of the French Republic: "société anonyme", "société d'assurance mutuelle", "institution de prévoyance régie par le code de la sécurité sociale", "institution de prévoyance régie par le code rural" and "mutuelles regies par le code de la mutualité",

— in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts and societies registered under the Friendly Societies Acts,

— in the case of the Italian Republic: "societa per azioni", "societá cooperativa", "mutua di assicurazione",

— in the case of the Grand Duchy of Luxembourg: "société anonyme", "societe en commandite par actions", "association d'assurances mutuelles", "société coopérative",

— in the case of the Kingdom of the Netherlands: "naamloze vennootschap", "onderlinge waarborgmaatschappij",

— in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered or incorporated under the Friendly Societies Acts, the association of underwriters known as Lloyd's,

— in the case of the Hellenic Republic: "ανώνυμη εταιρία",

— in the case of the Kingdom of Spain: "sociedad anonima", "sociedad mutua", "sociedad cooperativa",

— in the case of the Portuguese Republic: "sociedade anónima", "mútua de seguros".

An assurance undertaking may also adopt the form of a European company when that has been established.

Furthermore, Member States may, where appropriate, set up undertakings in any public-law form provided that such bodies have as their object insurance operations under conditions equivalent to those under which private-law undertakings operate;

(b) limit its objects to the business provided for in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business;

(c) submit a scheme of operations in accordance with Article 9;

(d) possess the minimum guarantee fund provided for in Article 20 (2);

(e) be effectively run by persons of good repute with appropriate professional qualifications or experience.

2. An undertaking seeking authorization to extend its business to other classes or to extend an authorization covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 9.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 19 and the guarantee fund referred to in Article 20 (1) and (2).

3. Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions or of forms and other printed documents which an assurance undertaking intends to use in its dealings with policy-holders.

Notwithstanding the first subparagraph, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for an undertaking to carry on its business.

Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and the communication of any other documents necessary for the normal exercise of supervision.

Not later than five years after the date of entry into force of Directive 92/96/EEC (*), the Commission shall submit a report to the Council on the implementation of this paragraph.

4. The abovementioned provisions may not require that any application for authorization be considered in the light of the economic requirements of the market.

(*) OJ No L 360, 9. 12. 1992, p. 1.

Article 6

Article 9 of Directive 79/267/EEC shall be replaced by the following:

'Article 9

The scheme of operations referred to in Article 8 (1) (c) and (2) shall include particulars or proof concerning:

(a) the nature of the commitments which the undertaking proposes to cover;

(b) the guiding principles as to reassurance;

(c) the items constituting the minimum guarantee fund;

(d) estimates relating to the costs of setting up the administrative services and the organization for securing business and the financial resources intended to meet those costs;

in addition, for the first three financial years:

(e) a plan setting out detailed estimates of income and expenditure in respect of direct business, reassurance acceptances and reassurance cessions;

(f) a forecast balance sheet;

(g) estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.'

Article 7

The competent authorities of the home Member State shall not grant an undertaking authorization to take up the business of assurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The same authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an assurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

TITLE III

HARMONIZATION OF CONDITIONS GOVERNING PURSUIT OF BUSINESS

Chapter 1

Article 8

Article 15 of Directive 79/267/EEC shall be replaced by the following:

'Article 15

1. The financial supervision of an assurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State. If the competent authorities of the Member State of the commitment have reason to consider that the activities of an assurance undertaking might affect its financial soundness, they shall inform the competent authorities of the undertaking's home Member State. The latter authorities shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

2. That financial supervision shall include verification, with respect to the assurance undertaking's entire business, of its state of solvency, the establishment of technical provisions, including mathematical provisions, and of the assets covering them, in accordance with the rules laid down or practices followed in the home Member State pursuant to the provisions adopted at Community level.

3. The competent authorities of the home Member State shall require every assurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.'

Article 9

Article 16 of Directive 79/267/EEC shall be replaced by the following:

'Article 16

The Member State of the branch shall provide that, where an assurance undertaking authorized in another

Member State carries on business through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the Member State of the branch, carry out themselves, or through the intermediary of persons they appoint for that purpose, on-the-spot verification of the information necessary to ensure the financial supervision of the undertaking. The authorities of the Member State of the branch may participate in that verification'.

Article 10

Article 23 (2) and (3) of Directive 79/267/EEC shall be replaced by the following:

'2. Member States shall require assurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

3. Every Member State shall take all steps necessary to ensure that the competent authorities have the powers and means necessary for the supervision of the business of assurance undertakings with head offices within their territories, including business carried on outside those territories, in accordance with the Council directives governing those activities and for the purpose of seeing that they are implemented.

These powers and means must, in particular, enable the competent authorities to:

(a) make detailed enquiries regarding the undertaking's situation and the whole of its business, *inter alia* by:

— gathering information or requiring the submission of documents concerning its assurance business,

— carrying out on-the-spot investigations at the undertaking's premises;

(b) take any measures, with regard to the undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that the undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of the assured persons;

(c) ensure that those measures are carried out, if need be by enforcement, where appropriate through judicial channels.

Member States may also make provision for the competent authorities to obtain any information regarding contracts which are held by intermediaries.'

Article 11

1. Article 6 (2) to (7) of Directive 90/619/EEC shall be deleted.

2. Under the conditions laid down by national law, each Member State shall authorize assurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, concluded under either the right of establishment or the freedom to provide services, to an accepting office established within the Community, if the competent authorities of the home Member State of the accepting office certify that after taking the transfer into account the latter possesses the necessary solvency margin.

3. Where a branch proposes to transfer all or part of its portfolio of contracts, concluded under either the right of establishment or the freedom to provide services, the Member State of the branch shall be consulted.

4. In the circumstances referred to in paragraph 2 and 3, the authorities of the home Member State of the transferring undertaking shall authorize the transfer after obtaining the agreement of the competent authorities of the Member States of the commitment.

5. The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring assurance undertaking within three months of receiving a request; the absence of any response within that period from the authorities consulted shall be considered equivalent to a favourable opinion or tacit consent.

6. A transfer authorized in accordance with this Article shall be published as laid down by national law in the Member State of the commitment. Such transfers shall automatically be valid against policy-holders, the assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' rights to give policy-holders the option of cancelling contracts within a fixed period after a transfer.

Article 12

1. Article 24 of Directive 79/267/EEC shall be replaced by the following:

'*Article 24*

1. If an undertaking does not comply with Article 17, the competent authority of its home Member State may prohibit the free disposal of its

assets after having communicated its intention to the competent authorities of the Member States of commitment.

2. For the purposes of restoring the financial situation of an undertaking the solvency margin of which has fallen below the minimum required under Article 19, the competent authority of the home Member State shall require that a plan for the restoration of a sound financial position be submitted for its approval.

In exceptional circumstances, if the competent authority is of the opinion that the financial situation of the undertaking will further deteriorate, it may also restrict or prohibit the free disposal of the undertaking's assets. It shall inform the authorities of other Member States within the territories of which the undertaking carries on business of any measures it has taken and the latter shall, at the request of the former, take the same measures.

3. If the solvency margin falls below the guarantee fund as defined in Article 20, the competent authority of the home Member State shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the undertaking's assets. It shall inform the authorities of other Member States within the territories of which the undertaking carries on business accordingly and the latter shall, at the request of the former, take the same measures.

4. The competent authorities may further take all measures necessary to safeguard the interests of the assured persons in the cases provided for in paragraphs 1, 2 and 3.

5. Each Member State shall take the measures necessary to be able in accordance with its national law to prohibit the free disposal of assets located within its territory at the request, in the cases provided for in paragraphs 1, 2 and 3, of the undertaking's home Member State, which shall designate the assets to be covered by such measures.'

Article 13

Article 26 of Directive 79/267/EEC shall be replaced by the following:

'*Article 26*

1. Authorization granted to an assurance undertaking by the competent authority of its home Member State may be withdrawn by that authority if that undertaking:

(a) does not make use of the authorization within 12 months, expressly renounces it or ceases to carry on business for more than six months, unless the Member State concerned has made provision for authorization to lapse in such cases;

(b) no longer fulfils the conditions for admission;

(c) has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 24;

(d) fails seriously in its obligations under the regulations to which it is subject.

In the event of the withdrawal or lapse of the authorization, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly and they shall take appropriate measures to prevent the undertaking from commencing new operations within their territories, under either the freedom of establishment or the freedom to provide services. The home Member State's competent authority shall, in conjunction with those authorities, take all necessary measures to safeguard the interests of the assured persons and shall restrict, in particular, the free disposal of the assets of the undertaking in accordance with Article 24 (1), (2), second subparagraph, or (3), second subparagraph.

2. Any decision to withdraw an authorization shall be supported by precise reasons and notified to the undertaking in question.'

Article 14

1. Member States shall require any natural or legal person who proposes to acquire, directly or indirectly, a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of the intended holding. Such a person must likewise inform the competent authorities of the home Member State if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital held by him would reach or exceed 20, 33 or 50% or so that the assurance undertaking would become his subsidiary.

The competent authorities of the home Member State shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the assurance undertaking, they are not satisfied as to the qualifications of the person referred to in the first subparagraph. If they do not oppose the plan in question they may fix a maximum period for its implementation.

2. Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in an assurance undertaking first to

inform the competent authorities of the home Member State, indicating the size of his intended holding. Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20, 33 or 50% or so that the assurance undertaking would cease to be his subsidiary.

3. On becoming aware of them, assurance undertakings shall inform the competent authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 2.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

4. Member States shall require that, if the influence exercised by the persons referred to in paragraph 1 is likely to operate to the detriment of the prudent and sound management of the assurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 15

1. The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual assurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an assurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of the different Member States from exchanging information in accordance with the directives applicable to assurance undertakings. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article.

4. Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking-up of the business of assurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms, or

— to impose sanctions, or

— in administrative appeals against decisions of the competent authority, or

— in court proceedings initiated pursuant to Article 50 or under special provisions provided for in the directives adopted in the field of assurance undertakings.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

— authorities responsible for the official supervision of credit institutions and other financial organizations and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation and bankruptcy of assurance undertakings and in other similar procedures, and

— persons responsible for carrying out statutory audits of the accounts of assurance undertakings and other financial institutions,

in the discharge of their supervisory functions, and the disclosure, to bodies which administer (compulsory) winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

6. In addition, notwithstanding paragraphs 1 and 4, Member States may, under provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and assurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

However, Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 16 of Directive 79/267/EEC may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Article 16

Article 13 of Directive 79/267/EEC shall be replaced by the following:

'*Article 13*

1. Without prejudice to paragraphs 3 and 7, no undertaking may be authorized both pursuant to this Directive and pursuant to Directive 73/239/EEC.

2. However, Member States may provide that:

— undertakings authorized pursuant to this Directive may also obtain authorization, in accordance with Article 6 of Directive 73/239/EEC for the risks listed in classes 1 and 2 in the Annex to that Directive,

— undertakings authorized pursuant to Article 6 of Directive 73/239/EEC solely for the risks listed in classes 1 and 2 in the Annex to that Directive may obtain authorization pursuant to this Directive.

3. Subject to paragraph 6, undertakings referred to in paragraph 2 and those which at the time of notification of this Directive carry on simultaneously both of the activities covered by this Directive and by Directive 73/239/EEC may continue to do so, provided that each activity is separately managed in accordance with Article 14.

4. Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing undertakings authorized pursuant to this Directive for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in the Annex to Directive 73/239/EEC carried on by the undertakings referred to in paragraph 2 shall be governed by the rules applicable to life assurance activities.

5. Where an undertaking carrying on the activities referred to in the Annex to Directive 73/239/EEC has financial, commercial or administrative links with an undertaking carrying on the activities covered by this Directive, the supervisory authorities of the Member States within whose territories the head offices of those undertakings are situated shall ensure that the accounts of the undertakings in question are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.

6. Any Member State may require undertakings whose head offices are situated in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged at the time of notification of this Directive.

7. The provisions of this Article shall be reviewed on the basis of a report from the Commission to the Council in the light of future harmonization of the rules on winding-up, and in any case before 31 December 1999.'

Article 17

Article 35 of Directive 79/267/EEC and Article 18 of Directive 90/619/EEC shall be deleted.

Chapter 2

Article 18

Article 17 of Directive 79/267/EEC shall be replaced by the following:

'*Article 17*

1. The home Member State shall require every assurance undertaking to establish sufficient technical

provisions, including mathematical provisions, in respect of its entire business.

The amount of such technical provisions shall be determined according to the following principles:

A. (i) The amount of the technical life-assurance provisions shall be calculated by a sufficiently prudent prospective actuarial valuation, taking account of all future liabilities as determined by the policy conditions for each existing contract, including:

— all guaranteed benefits, including guaranteed surrender values,

— bonuses to which policy-holders are already either collectively or individually entitled, however those bonuses are described — vested, declared or allotted,

— all options available to the policy-holder under the terms of the contract,

— expenses, including commissions;

taking credit for future premiums due;

(ii) the use of a retrospective method is allowed, if it can be shown that the resulting technical provisions are not lower than would be required under a sufficiently prudent prospective calculation or if a prospective method cannot be used for the type of contract involved;

(iii) a prudent valuation is not a "best estimate" valuation, but shall include an appropriate margin for adverse deviation of the relevant factors;

(iv) the method of valuation for the technical provisions must not only be prudent in itself, but must also be so having regard to the method of valuation for the assets covering those provisions;

(v) technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalizations is allowed, however, where they are likely to give approximately the same result as individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualized;

(vi) where the surrender value of a contract is guaranteed, the amount of the mathematical provisions for the contract at any time shall be at least as great as the value guaranteed at that time.

B. The rate of interest used shall be chosen prudently. It shall be determined in accordance with the rules of the competent authority in the home Member State, applying the following principles:

(a) for all contracts, the competent authority of the undertaking's home Member State shall fix one or more maximum rates of interest, in particular in accordance with the following rules:

(i) when contracts contain an interest rate guarantee, the competent authority in the home Member State shall set a single maximum rate of interest. It may differ according to the currency in which the contract is denominated, provided that it is not more than 60 % of the rate on bond issues by the State in whose currency the contract is denominated. In the case of a contract denominated in ecus, this limit shall be set by reference to ecu-denominated issues by the Community institutions.

If a Member State decides, pursuant to the second sentence of the preceding paragraph, to set a maximum rate of interest for contracts denominated in another Member State's currency, it shall first consult the competent authority of the Member State in whose currency the contract is denominated;

(ii) however, when the assets of the undertaking are not valued at their purchase price, a Member State may stipulate that one or more maximum rates may be calculated taking into account the yield on the corresponding assets currently held, minus a prudential margin and, in particular for contracts with periodic premiums, furthermore taking into account the anticipated yield on future assets. The prudential margin and the maximum rate or rates of interest applied to the anticipated yield on future assets shall be fixed by the competent authority of the home Member State;

(b) the establishment of a maximum rate of interest shall not imply that the undertaking is bound to use a rate as high as that;

(c) the home Member State may decide not to apply (a) to the following categories of contracts:

— unit-linked contracts,

— single-premium contracts for a period of up to eight years,

— without-profits contracts, and annuity contracts with no surrender value.

In the cases referred to in the last two indents of the first subparagraph, in choosing a prudent rate of interest, account may be taken of the currency in which the contract is denominated and corresponding assets currently held and where the undertaking's assets are valued at their current value, the anticipated yield on future assets.

Under no circumstances may the rate of interest used be higher than the yield on assets as calculated in accordance with the accounting rules in the home Member State, less an appropriate deduction;

(d) the Member State shall require an undertaking to set aside in its accounts a provision to meet interest-rate commitments *vis-à-vis* policy-holders if the present or foreseeable yield on the undertaking's assets is insufficient to cover those commitments;

(e) the Commission and the competent authorities of the Member States which so request shall be notified of the maximum rates of interest set under (a).

C. The statistical elements of the valuation and the allowance for expenses used shall be chosen prudently, having regard to the State of the commitment, the type of policy and the administrative costs and commissions expected to be incurred.

D. In the case of participating contracts, the method of calculation for technical provisions may take into account, either implicitly or explicitly, future bonuses of all kinds, in a manner consistent with the other assumptions on future experience and with the current method of distribution of bonuses.

E. Allowance for future expenses may be made implicitly, for instance by the use of future premiums net of management charges. However, the overall allowance, implicit or explicit, shall be not less than a prudent estimate of the relevant future expenses.

F. The method of calculation of technical provisions shall not be subject to discontinuities from year to year arising from arbitrary changes to the method or the bases of calculation and shall be such as to recognize the distribution of profits in an appropriate way over the duration of each policy.

2. Assurance undertakings shall make available to the public the bases and methods used in the calculation of the technical provisions, including provisions for bonuses.

3. The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 24 of Directive 92/96/EEC. In respect of business written in the Community, these assets must be localized within the Community. Member States shall not require assurance undertakings to localize their assets in a particular Member State. The home Member State may, however, permit relaxations in the rules on the localization of assets.

4. If the home Member State allows any technical provisions to be covered by claims against reassurers, it shall fix the percentage so allowed. In such case, it may not require the localization of the assets representing such claims.'

Article 19

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable assurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For this purpose, all aspects of the financial situation of an assurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in such a way that it may jeopardize the undertaking's solvency in the long term.

Article 20

The assets covering the technical provisions shall take account of the type of business carried on by an undertaking in such a way as to secure the safety, yield and marketability of its investments, which the undertaking shall ensure are diversified and adequately spread.

Article 21

1. The home Member State may not authorize assurance undertakings to cover their technical provisions with any but the following categories of assets:

A. *Investments*

(a) debt securities, bonds and other money- and capital-market instruments;

(b) loans;

(c) shares and other variable-yield participations;

(d) units in undertakings for collective investment in transferable securities and other investment funds;

(e) land, buildings and immovable property rights;

B. *Debts and claims*

(f) debts owed by reassurers, including reassurers' shares of technical provisions;

(g) deposits with and debts owed by ceding undertakings;

(h) debts owed by policy-holders and intermediaries arising out of direct and reassurance operations;

(i) advances against policies;

(j) tax recoveries;

(k) claims against guarantee funds;

C. *Others*

(l) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortization;

(m) cash at bank and in hand, deposits with credit institutions and any other body authorized to receive deposits;

(n) deferred acquisition costs;

(o) accrued interest and rent, other accrued income and prepayments;

(p) reversionary interests.

In the case of the association of underwriters known as Lloyd's, asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 77/780/EEC (1) or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

(1) First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the 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).

The inclusion of any asset or category of assets listed in the first subparagraph shall not mean that all these assets should automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets; in this connection, it may require valuable security or guarantees, particularly in the case of debts owed by reassurers.

In determining and applying the rules which it lays down, the home Member State shall, in particular, ensure that the following principles are complied with:

(i) assets covering technical provisions shall be valued net of any debts arising out of their acquisition;

(ii) all assets must be valued on a prudent basis, allowing for the risk of any amounts not being realizable. In particular, tangible fixed assets other than land and buildings may be accepted as cover for technical provisions only if they are valued on the basis of prudent amortization;

(iii) loans, whether to undertakings, to a State or international organization, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by assurance undertakings or other forms of security;

(iv) derivative instruments such as options, futures and swaps in connection with assets covering technical provisions may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;

(v) transferrable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realized in the short term or if they are holdings in credits institutions, in assurance undertakings, within the limits permitted by Article 8 of Directive 79/267/EEC, or in investment undertakings established in a Member State;

(vi) debts owed by and claims against a third party may be accepted as cover for the technical provisions only after deduction of all amounts owed to the same third party;

(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realizable. In particular, debts owed by policy-holders and intermediaries arising out of assurance and reassurance operations may be accepted only in so far as they have been outstanding for not more than three months;

(viii) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that this is consistent with the calculation of the mathematical provisions.

2. Notwithstanding paragraph 1, in exceptional circumstances and at an assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 20.

Article 22

1. As regards the assets covering technical provisions, the home Member State shall require every assurance undertaking to invest no more than:

(a) 10 % of its total gross technical provisions in any one piece of land or building, or a number of pieces of land or buildings close enough to each other to be considered effectively as one investment;

(b) 5 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money- and capital-market instruments from the same undertaking, or in loans granted to the same borrower, taken together, the loans being loans other than those granted to a State, regional or local authority or to an international organization of which one or more Member States are members. This limit may be raised to 10 % if an undertaking invests not more than 40 % of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 % of its assets;

(c) 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertakings — in so far as Article 8 of Directive 79/267/EEC allows it — and investment undertakings established in a Member State. The limits may be raised to 8 and 2 % respectively by a decision taken on a case-by-case basis by the competent authority of the home Member State;

(d) 3 % of its total gross technical provisions in the form of cash in hand;

(e) 10 % of its total gross technical provisions in shares, other securities treated as shares and debt securities which are not dealt in on a regulated market.

2. The absence of a limit in paragraph 1 on investment in any particular category does not imply that assets in that category should be accepted as cover for technical provisions without limit. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets. In particular it shall ensure, in the determination and the application of those rules, that the following principles are complied with:

(i) assets covering technical provisions must be diversified and spread in such a way as to ensure that there is no excessive reliance on any particular category of asset, investment market or investment;

(ii) investment in particular types of asset which show high levels of risk, whether because of the nature of the asset or the quality of the issuer, must be restricted to prudent levels;

(iii) limitations on particular categories of asset must take account of the treatment of reassurance in the calculation of technical provisions;

(iv) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(v) the percentage of assets covering technical provisions which are the subject of non-liquid investments must be kept to a prudent level;

(vi) where the assets held include loans to or debt securities issued by certain credit institutions, the home Member State may, when applying the rules and principles contained in this Article, take into account the underlying assets held by such credit institutions. This treatment may be applied only where the credit institution has its head office in a Member State, is entirely owned by that Member State and/or that State's local authorities and its business, according to its memorandum and articles of association, consists of extending, through its intermediaries, loans to, or guaranteed by, States or local authorities or of loans to bodies closely linked to the State or to local authorities.

3. In the context of the detailed rules laying down the conditions for the use of acceptable assets, the Member State shall give more limitative treatment to:

— any loan unaccompanied by a bank guarantee, a guarantee issued by an assurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral,

— UCITS not coordinated within the meaning of Directive 85/611/EEC [1] and other investment funds, as compared with UCITS coordinated within the meaning of that Directive,

— securities which are not dealt in on a regulated market, as compared with those which are,

— bonds, debt securities and other money- and capital-market instruments not issued by States, local or regional authorities or undertakings belonging to Zone A as defined in Directive 89/647/EEC [2], or the issuers of which are international organizations not numbering at least one Community Member State among their members, as compared with the same financial instruments issued by such bodies.

4. Member States may raise the limit laid down in paragraph 1 (b) to 40% in the case of certain debt securities when these are issued by a credit institution which has its head office in a Member State and is subject by law to special official supervision designed to protect the holders of those debt securities. In particular, sums deriving from the issue of such debt securities must be invested in accordance with the law in assets which, during the whole period of validity of the debt securities, are capable of covering claims attaching to debt securities and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

5. Member States shall not require assurance undertakings to invest in particular categories of assets.

6. Notwithstanding paragraph 1, in exceptional circumstances and at the assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1 (a) to (e), subject to Article 20.

Article 23

1. Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurance undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

2. Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in paragraph 1, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

3. Articles 20 and 22 shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in paragraphs 1 and 2. References to the technical provisions in Article 22 shall be to the technical provisions excluding those in respect of such liabilities.

4. Where the benefits referred to in paragraph 1 and 2 include a guarantee of investment performance or some

[1] Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31. 12. 1985, p. 3). Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

[2] Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions (OJ No L 386, 30. 12. 1989, p. 14).

other guaranteed benefit, the corresponding additional technical provisions shall be subject to Articles 20, 21 and 22.

Article 24

1. For the purposes of Articles 17 (3) and 28 of Directive 79/267/EEC, Member States shall comply with Annex I to this Directive as regards the matching rules.

2. This Article shall not apply to the commitments referred to in Article 23 of this Directive.

Article 25

Article 18, second subparagraph, point 1 of Directive 79/267/EEC shall be replaced by the following:

'1. the assets of the undertaking free of any foreseeable liabilities, less any intangible items. In particular the following shall be included:

— the paid-up share capital or, in the case of a mutual assurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

(a) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

(b) the memorandum and articles of association must stipulate, with respect to any such payments for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

(c) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in (a) and (b),

— one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund,

— reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities,

— any profits brought forward,

— cumulative preferential share capital and subordinated loan capital may be included but, if so, only up to 50 % of the margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, if the following minimum criteria are met:

(a) in the event of the bankruptcy or liquidation of the assurance undertaking, binding agreements must exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

(b) only fully paid-up funds may be taken into account;

(c) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the assurance undertaking must submit to the competent authorities for their approval a plan showing how the solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorize the early repayment of such loans provided application is made by the issuing assurance undertaking and its solvency margin will not fall below the required level;

(d) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the assurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the actual and required solvency margin both before and after that repayment. The competent authorities shall authorize repayment only if the assurance undertaking's solvency margin will not fall below the required level;

(e) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;

(f) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment,

— securities with no specified maturity date and other instruments that fulfil the following conditions, including cumulative preferential shares other than those mentioned in the preceding indent, up to 50 % of the margin for the total of such securities and the subordinated loan capital referred to in the preceding indent:

(a) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(b) the contract of issue must enable the assurance undertaking to defer the payment of interest on the loan;

(c) the lender's claims on the assurance undertaking must rank entirely after those of all non-subordinated creditors;

(d) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the assurance undertaking to continue its business;

(e) only fully paid-up amounts may be taken into account.'

Article 26

No more than three years after the date of application of this Directive, the Commission shall submit a report to the Insurance Committee on the need for further harmonization of the solvency margin.

Article 27

Article 21 of Directive 79/267/EEC shall be replaced by the following:

'*Article 21*

1. Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 17.

2. Subject to Article 17 (3), Article 24 (1), (2), (3) and (5) and the second subparagraph of Article 26 (1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorized assurance undertakings.

3. Paragraphs 1 and 2 shall not preclude any measures which Member States, while safeguarding the interests of the lives assured, are entitled to take as owners or members of or partners in the undertakings in question.'

Chapter 3

Article 28

The Member State of the commitment shall not prevent a policy-holder from concluding a contract with an assurance undertaking authorized under the conditions of Article 6 of Directive 79/267/EEC, as long as that does not conflict with legal provisions protecting the general good in the Member State of the commitment.

Article 29

Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which an assurance undertaking intends to use in its dealings with policy-holders.

Notwithstanding the first subparagraph, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the Member State of origin may require systematic communication of the technical Bases used in particular for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for an undertaking to carry on its business.

Not later than five years after the date of application of this Directive, the Commission shall submit a report to the Council on the implementation of those provisions.

Article 30

1. In the first subparagraph of Article 15 (1) of Directive 90/619/EEC the words 'in one of the cases referred to in Title III' shall be deleted.

2. Article 15 (2) of Directive 90/619/EEC shall be replaced by the following:

'2. The Member States need not apply paragraph 1 to contracts of six months' duration or less, nor where, because of the status of the policy-holder or the circumstances in which the contract is concluded, the policy-holder does not need this special protection. Member States shall specify in their rules where paragraph 1 is not applied.'

Article 31

1. Before the assurance contract is concluded, at least the information listed in point A of Annex II shall be communicated to the policy-holder.

2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in point B of Annex II.

3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex II only if it is necessary for a proper understanding by the policy-holder of the essential elements of the commitment.

4. The detailed rules for implementing this Article and Annex II shall be laid down by the Member State of the commitment.

TITLE IV

PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Article 32

Article 10 of Directive 79/267/EEC shall be replaced by the following:

'*Article 10*

1. An assurance undertaking that proposes to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. The Member States shall require every assurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which it proposes to establish a branch;

(b) a scheme of operations setting out *inter alia* the types of business envisaged and the structural organization of the branch;

(c) the address in the Member State of the branch from which documents may be obtained and to which they may be delivered, it being understood that that address shall be the one to which all communications to the authorized agent are sent;

(d) the name of the branch's authorized agent, who must possess sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the assured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorized agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the assurance undertaking or the good repute and professional qualification or experience of the directors or managers or the authorized agent, taking into account the business planned, they shall within three months of receiving all the information referred to in paragraph 2 communicate that information to the competent authorities of the Member State of the branch and shall inform the undertaking concerned accordingly.

The competent authorities of the home Member State shall also attest that the assurance undertaking has the minimum solvency margin calculated in accordance with Articles 19 and 20.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the Member State of the branch they shall give the reasons for their refusal to the undertaking concerned within three months of receiving all the information in question. That refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4. Before the branch of an assurance undertaking starts business, the competent authorities of the Member State of the branch shall, within two months of receiving the information referred to in paragraph 3, inform the competent authority of the home Member State, if appropriate, of the conditions under which, in the interest of the general good, that business must be carried on in the Member State of the branch.

5. On receiving a communication from the competent authorities of the Member State of the branch or, if no communication is received from them, on expiry of the period provided for in paragraph 4, the branch may be established and start business.

6. In the event of a change in any of the particulars communicated under paragraph 2 (b), (c) or (d), an assurance undertaking shall give written notice of the change to the competent authorities of the home Member State and of the Member State of the branch at least one month before making the change so that the competent authorities of the home Member State and the competent authorities of the Member State of the branch may fulfil their respective roles under paragraphs 3 and 4.'

Article 33

Article 11 of Directive 79/267/EEC shall be deleted.

Article 34

Article 11 of Directive 90/619/EEC shall be replaced by the following:

'Article 11

Any undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first inform the competent authorities of the home Member State, indicating the nature of the commitments it proposes to cover.'

Article 35

Article 14 of Directive 90/619/EEC shall be replaced by the following:

'Article 14

1. Within one month of the notification provided for in Article 11, the competent authorities of the home Member State shall communicate to the Member State or Member States within the territory of which the undertaking intends to carry on business by way of the freedom to provide services:

(a) a certificate attesting that the undertaking has the minimum solvency margin calculated in accordance with Articles 19 and 20 of Directive 79/267/EEC;

(b) the classes which the undertaking has been authorized to offer;

(c) the nature of the commitments which the undertaking proposes to cover in the Member State of the provision of services.

At the same time, they shall inform the undertaking concerned accordingly.

2. Where the competent authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down, they shall give the reasons for their refusal to the undertaking within that same period. The refusal shall be subject to a right to apply to the courts in the home Member State.

3. The undertaking may start business on the certified date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.'

Article 36

Article 17 of Directive 90/619/EEC shall be replaced by the following:

'Article 17

Any change which an undertaking intends to make to the information referred to in Article 11 shall be subject to the procedure provided for in Articles 11 and 14.'

Article 37

Articles 10, 12, 13, 16, 22 and 24 of Directive 90/619/EEC shall be deleted.

Article 38

The competent authorities of the Member State of the branch or the Member State of the provision of services may require that the information which they are authorized under this Directive to request with regard to the business of assurance undertakings operating in the territory of that State shall be supplied to them in the official language or languages of that State.

Article 39

1. Article 19 of Directive 90/619/EEC shall be deleted.

2. The Member State of the branch or of provision of services shall not lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions, forms and other printed documents which an undertaking intends to use in its dealings with policy-holders. For the purpose of verifying compliance with national provisions concerning assurance contracts, it may require an undertaking that proposes to carry on assurance business within its territory, under the right of establishment or the freedom to provide services, to effect only non-systematic notification of those policy conditions

and other printed documents without that requirement constituting a prior condition for an undertaking to carry on its business.

Article 40

1. Article 20 of Directive 90/619/EEC shall be deleted.

2. Any undertaking carrying on business under the right of establishment or the freedom to provide services shall submit to the competent authorities of the Member State of the branch and/or of the Member State of the provision of services all documents requested of it for the purposes of this Article in so far as undertakings the head office of which is in those Member States are also obliged to do so.

3. If the competent authorities of a Member State establish that an undertaking with a branch or carrying on business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that State, they shall require the undertaking concerned to remedy that irregular situation.

4. If the undertaking in question fails to take the necessary action, the competent authorities of the Member State concerned shall inform the competent authorities of the home Member State accordingly. The latter authorities shall, at the earliest opportunity, take all appropriate measures to ensure that the undertaking concerned remedies that irregular situation. The nature of those measures shall be communicated to the competent authorities of the Member State concerned.

5. If, despite the measures taken by the home Member State or because those measures prove inadequate or are lacking in that State, the undertaking persists in violating the legal provisions in force in the Member State concerned, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalize further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new assurance contracts within its territory. Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on assurance undertakings.

6. Paragraphs 3, 4 and 5 shall not affect the emergency power of the Member States concerned to take appropriate measures to prevent or penalize irregularities committed within their territories. This shall include the possibility of preventing assurance undertakings from continuing to conclude new assurance contracts within their territories.

7. Paragraph 3, 4 and 5 shall not affect the power of the Member States to penalize infringements within their territories.

8. If an undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the competent authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

9. Any measure adopted under paragraphs 4 to 8 involving penalties or restrictions on the conduct of assurance business must be properly reasoned and communicated to the undertaking concerned.

10. Every two years, the Commission shall submit to the Insurance Committee a report summarizing the number and type of cases in which, in each Member State, authorization has been refused pursuant to Article 10 of Directive 79/267/EEC or Article 14 of Directive 90/619/EEC as amended by this Directive or measures have been taken under paragraph 5. Member States shall cooperate with the Commission by providing it with the information required for that report.

Article 41

Nothing in this Directive shall prevent assurance undertakings with head offices in other Member States from advertising their services through all available means of communication in the Member State of the branch or Member State of the provision of services, subject to any rules governing the form and content of such advertising adopted in the interest of the general good.

Article 42

1. Article 21 of Directive 90/619/EEC shall be deleted.

2. Should an assurance undertaking be wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other assurance contracts, without distinction as to nationality as far as the lives assured and the beneficiaries are concerned.

Article 43

1. Article 23 of Directive 90/619/EEC shall be deleted.

2. Every assurance undertaking shall inform the competent authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to

provide services, of the amount of the premiums, without deduction of reassurance, by Member State and by each of classes I to IX, as defined in the Annex to Directive 79/267/EEC.

The competent authority of the home Member State shall, within a reasonable time and on an aggregate basis forward this information to the competent authorities of each of the Member States concerned which so request.

Article 44

1. Article 25 of Directive 90/619/EEC shall be deleted.

2. Without prejudice to any subsequent harmonization, every assurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment within the meaning of Article 2 (e) of Directive 90/619/EEC and also, with regard to Spain, to the surcharges legally established in favour of the Spanish 'Consorcio de compensación de seguros' for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

The law applicable to the contract pursuant to Article 4 of Directive 90/619/EEC shall not affect the fiscal arrangements applicable.

Pending future harmonization, each Member State shall apply to those undertakings which cover commitments situated within its territory its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under the first subparagraph.

TITLE V

TRANSITIONAL PROVISIONS

Article 45

Member States may allow assurance undertakings with head offices in their territories, and whose buildings and land covering their technical provisions exceed, at the time of the notification of this Directive, the percentage laid down in Article 22 (1) (a) a period expiring no later than 31 December 1998 within which to comply with that provision.

Article 46

1. Article 26 of Directive 90/619/EEC shall be deleted.

2. Spain and Portugal, until 31 December 1995, and Greece, until 31 December 1998, may operate the following transitional arrangements for contracts in respect of which one of those Member States is the Member State of the commitment:

(a) by way of derogation from Article 8 (3) of Directive 79/267/EEC and from Articles 29 and 39 of this Directive, the competent authorities of the Member States in question may require the communication, before use, of general and special insurance policy conditions;

(b) the amount of the technical provisions relating to such contracts shall be determined under the supervision of the Member State concerned in accordance with its own rules or, failing that, in accordance with the procedures established in that State in accordance with this Directive. Cover of those technical provisions by equivalent and matching assets and the localization of those assets shall be effected under the supervision of that Member State in accordance with its rules and practices adopted in accordance with this Directive.

TITLE VI

FINAL PROVISIONS

Article 47

The following technical adjustments to be made to Directives 79/267/EEC and 90/619/EEC and to this Directive shall be adopted in accordance with the procedure laid down in Directive 91/675/EEC:

— extension of the legal forms provided for in Article 8 (1) (a) of Directive 79/267/EEC,

— amendments to the list set out in the Annex to Directive 79/267/EEC, or adaptation of the terminology used in that list to take account of the development of assurance markets,

— clarification of the items constituting the solvency margin listed in Article 18 of Directive 79/267/EEC to take account of the creation of new financial instruments,

— alteration of the minimum guarantee fund provided for in Article 20 (2) of Directive 79/267/EEC to take account of economic and financial developments,

— amendments, to take account of the creation of new financial instruments, to the list of assets acceptable as cover for technical provisions set out in Article 21 of this Directive and to the rules on the spreading of investments laid down in Article 22 of this Directive,

— changes in the relaxations in the matching rules laid down in Annex I to this Directive, to take account of the development of new currency-hedging instruments or progress made in economic and monetary union,

— clarification of the definitions in order to ensure uniform application of Directives 79/267/EEC and 90/619/EEC and of this Directive throughout the Community,

— the technical adjustments necessary to the rules for setting the maxima applicable to interest rates, pursuant to Article 17 of Directive 79/267/EEC, as amended by this Directive, in particular to take account of progress made in economic and monetary union.

Article 48

1. Branches which have started business, in accordance with the provisions in force in their Member State of establishment, before the entry into force of the provisions adopted in implementation of this Directive shall be presumed to have been subject to the procedure laid down in Article 10 (1) to (5) of Directive 79/267/EEC. They shall be governed, from the date of that entry into force, by Articles 17, 23, 24 and 26 of Directive 79/267/EEC and by Article 40 of this Directive.

2. Articles 11 and 14 of Directive 90/619/EEC, as amended by this Directive, shall not affect rights acquired by assurance undertakings carrying on business under the freedom to provide services before the entry into force of the provisions adopted in implementation of this Directive.

Article 49

The following Article 31a shall be inserted in Directive 79/267/EEC:

'Article 31a

1. Under the conditions laid down by national law, each Member State shall authorize agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an accepting office established in the same Member State if the competent authorities of that Member State or, if appropriate, those of the Member State referred to in Article 30 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

2. Under the conditions laid down by national law, each Member State shall authorize agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an assurance undertaking with a head office in another Member State if the competent authorities of that Member State certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

3. If under the conditions laid down by national law a Member State authorizes agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an agency or branch covered by this Title and set up within the territory of another Member State it shall ensure that the competent authorities of the Member State of the accepting office or, if appropriate, of the Member State referred to in Article 30 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin, that the law of the Member State of the accepting office permits such a transfer and that the State has agreed to the transfer.

4. In the circumstances referred to in paragraphs 1, 2 and 3 the Member State in which the transferring agency or branch is situated shall authorize the transfer after obtaining the agreement of the competent authorities of the Member State of the commitment, where different from the Member State in which the transferring agency or branch is situated.

5. The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring assurance undertaking within three months of receiving a request; the absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

6. A transfer authorized in accordance with this Article shall be published as laid down by national law in the Member State of the commitment. Such transfers shall automatically be valid against policy-holders, assured persons and any other persons having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' right to give policy-holders the opinion of cancelling contracts within a fixed period after a transfer.'

Article 50

Member States shall ensure that decisions taken in respect of an assurance undertaking under laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts.

Article 51

1. Member States shall adopt the laws, regulations and administrative provisions necessary for their compliance with this Directive no later than 31 December 1993 and

bring them into force no later than 1 July 1994. They shall forthwith inform the Commission thereof.

When they adopt such measures, the Member States shall include references to this Directive or shall make such references when they effect official publication. The manner in which such references are to be made 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 52

This Directive is addressed to the Member States.

Done at Brussels, 10 November 1992.

For the Council

The President

R. NEEDHAM

ANNEX I

MATCHING RULES

The currency in which the assurer's commitments are payable shall be determined in accordance with the following rules:

1. Where the cover provided by a contract is expressed in terms of a particular currency, the assurer's commitments are considered to be payable in that currency.

2. Member States may authorize undertakings not to cover their technical provisions, including their mathematical provisions, by matching assets if application of the above procedures would result in the undertaking being obliged, in order to comply with the matching principle, to hold assets in a currency amounting to not more than 7 % of the assets existing in other currencies.

3. Member States may choose not to require undertakings to apply the matching principle where commitments are payable in a currency other than the currency of one of the Community Member States, if investments in that currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, it is not suitable for covering technical provisions.

4. Undertakings are authorized not to hold matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.

   However, total assets in all currencies combined must be at least equal to total commitments in all currencies combined.

5. Each Member State may provide that, whenever under the preceding procedures a commitment has to be covered by assets expressed in the currency of a Member State, this requirement shall also be considered to be satisfied when the assets are expressed in ecus.

ANNEX II

INFORMATION FOR POLICY-HOLDERS

The following information, which is to be communicated to the policy-holder before the contract is concluded (A) or during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policy-holder so requests and the law of the Member State so permits or the policy-holder is free to choose the law applicable.

A. **Before concluding the contract**

Information about the assurance undertaking	Information about the commitment
(a) 1. The name of the undertaking and its legal form	(a) 4. Definition of each benefit and each option
(a) 2. The name of the Member State in which the head office and, where appropriate, the agency or branch concluding the contract is situated	(a) 5. Term of the contract
(a) 3. The address of the head office and, where appropriate, of the agency or branch concluding the contract	(a) 6. Means of terminating the contract
	(a) 7. Means of payment of premiums and duration of payments
	(a) 8. Means of calculation and distribution of bonuses
	(a) 9. Indication of surrender and paid-up values and the extent to which they are guaranteed
	(a) 10. Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate
	(a) 11. For unit-linked policies, definition of the units to which the benefits are linked
	(a) 12. Indication of the nature of the underlying assets for unit-linked policies
	(a) 13. Arrangements for application of the cooling-off period
	(a) 14. General information on the tax arrangements applicable to the type of policy
	(a) 15. The arrangements for handling complaints concerning contracts by policy-holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings
	(a) 16. Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose

B. **During the term of the contract**

In addition to the policy conditions, both general and special, the policy-holder must receive the following information throughout the term of the contract.

Information about the assurance undertaking	Information about the commitment
(b) 1. Any change in the name of the undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract	(b) 2. All the information listed in points (a) (4) to (a) (12) of A in the event of a change in the policy conditions or amendment of the law applicable to the contract (b) 3. Every year, information on the state of bonuses

4. Annual Accounts

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 19 December 1991

on the annual accounts and consolidated accounts of insurance undertakings

(91/674/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 54 (3) (g) of the Treaty requires coordination to the necessary extent of the safeguards which, for the protection of the interests of members and others, are required by Member States of companies and firms within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community;

Whereas 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 (4), as last amended by Directive 90/605/EEC (5), need not be applied to insurance companies, hereinafter referred to as 'insurance undertakings', pending further coordination; whereas, in view of the major importance of insurance undertakings in the Community, such coordination cannot be delayed any longer following the implementation of Directive 78/660/EEC;

Whereas Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (6), as last amended by Directive 90/605/EEC, provides for derogations for insurance undertakings only until the expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also include provisions specific to insurance undertakings in respect of consolidated accounts;

Whereas such coordination is also urgently required because insurance undertakings operate across borders; whereas for creditors, debtors, members, policyholders and their advisers and for the general public, improved comparability of the annual accounts and consolidated accounts of such undertakings is of crucial importance;

Whereas in the Member States insurance undertakings of different legal forms are in competition with each other; whereas undertakings engaged in the business of direct insurance customarily engage in the business of reinsurance as well and are therefore in competition with specialist reinsurance undertakings; whereas it is therefore appropriate not to confine coordination to the legal forms covered by Directive 78/660/EEC, but to choose a scope that corresponds to that of 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 (7), as last amended by Directive 90/618/EEC (8), and to that of Council Directive 79/267/EEC of 5 March

(1) OJ No C 131, 18. 4. 1987, p. 1.
(2) OJ No C 96, 17. 4. 1989, p. 93; and OJ No C 326, 16. 12. 1991.
(3) OJ No C 319, 30. 11. 1987, p. 13.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) OJ No L 317, 16. 11. 1990, p. 60.
(6) OJ No L 193, 18. 7. 1983, p. 1.
(7) OJ No L 228, 16. 8. 1973, p. 3.
(8) OJ No L 330, 29. 11. 1990, p. 44.

1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (1), as last amended by Directive 90/619/EEC (2), but which also includes certain undertakings that are excluded from the scope of those Directives and companies and firms which are reinsurance undertakings;

Whereas, although in view of the specific characteristics of insurance undertakings it would appear appropriate to propose a separate Directive on the annual accounts and consolidated accounts of such undertakings, that does not necessarily require the establishment of a set of standards different from those of Directive 78/660/EEC and 83/349/EEC; whereas such separate standards would be neither appropriate nor consistent with the principles underlying the coordination of company law since, given the important position they occupy in the Community economy, insurance undertakings cannot be excluded from a framework of rules devised for undertakings generally; whereas, for this reason, only the particular characteristics of insurance undertakings have been taken into account and this Directive deals only with derogations from the rules laid down in Directives 78/660/EEC and 83/349/EEC;

Whereas there are major differences in the structure and content of the balance sheets of insurance undertakings in different Member States; whereas this Directive must therefore lay down the same structure and the same item designations for the balance sheets of all Community insurance undertakings;

Whereas, if annual accounts and consolidated accounts are to be comparable, a number of basic questions regarding the disclosure of certain transactions in the balance sheet must be settled;

Whereas, in the interests of greater comparability, it is also necessary that the content of the various balance sheet items be determined precisely;

Whereas it may be useful to distinguish between the commitments of the insurer and those of the reinsurer by showing in the assets the reinsurer's share of technical provisions as an asset;

Whereas the structure of the profit and loss account should also be determined and certain items in it should be defined;

Whereas, given the specific nature of the insurance industry, it may be useful for unrealized gains and losses to be dealt with in the profit and loss account;

Whereas the comparability of figures in the balance sheet and profit and loss account also depends basically on the values at which assets and liabilities are shown in the balance sheet; whereas for a proper understanding of the financial situation of an insurance undertaking the current value of investments as well as their value based upon the principle of purchase price or production cost must be disclosed; whereas, however, the compulsory disclosure of the current value of investments, at least in the notes on the accounts, is prescribed solely for purposes of comparability and transparency and is not intended to lead to changes in the tax treatment of insurance undertakings;

Whereas in the calculation of life assurance provisions use may be made of actuarial methods customarily applied on the market or accepted by the insurance-monitoring authorities; whereas those methods may be implemented by any actuary or expert in accordance with the conditions which may be laid down in national law and with due regard for the actuarial principles recognized in the framework of the present and future coordination of the fundamental rules for the prudential and financial monitoring of direct life assurance business;

Whereas, in the calculation of the provision for claims outstanding, on the one hand, any implicit discounting or deduction should be prohibited, and, on the other hand, precise conditions for recourse to explicit discounting or deduction should be defined, for the sake of prudence and transparency;

Whereas, in view of the special nature of insurance undertakings, certain changes are necessary with regard to the notes on annual accounts and on consolidated accounts;

Whereas, in line with the intention of covering all insurance undertakings that come within the scope of Directive 73/239/EEC and 79/267/EEC as well as certain others, derogations such as those for small and medium-sized insurance undertakings in Directive 78/660/EEC are not provided for, but certain small mutual associations which are excluded from the scope of Directives 73/239/EEC and 79/267/EEC should not be covered;

Whereas for the same reasons the scope allowed Member States pursuant to Directive 83/349/EEC to exempt parent undertakings of groups from compulsory consolidation if the undertakings to be consolidated do not together exceed a certain size has not been extended to insurance undertakings;

Whereas in view of its particular nature special provisions are needed for the association of underwriters known as Lloyd's;

Whereas the provisions of this Directive also apply to the consolidated accounts drawn up by a parent undertaking which is a financial holding company where its subsidiary undertakings are eiher exclusively or mainly insurance undertakings;

(1) OJ No L 63, 13. 3. 1979, p. 1.
(2) OJ No L 330, 29. 11. 1990, p. 50.

Whereas the examination of problems which arise in connection with this Directive, in particular regarding its application, requires cooperation by representatives of the Member States and the Commission in a contact committee; whereas, in order to avoid the proliferation of such committees, it is desirable that such cooperation take place in the committee provided for in Article 52 of Directive 78/660/EEC; whereas, however, when examining problems concerning insurance undertakings, the committee must be appropriately constituted;

Whereas, in view of the complexity of the matter, the insurance undertakings covered by this Directive must be allowed an appropriate period to implement its provisions; whereas that period must be extended to allow the necessary adjustments to be made concerning, on the one hand, the association of underwriters known as Lloyd's and, on the other, those undertakings which, when this Directive becomes applicable, show their investments at historical cost;

Whereas provision should be made for the review of certain provisions of this Directive after five years' experience of its application, in the light of the aims of greater transparency and harmonization.

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Preliminary provisions and scope

Article 1

1. Articles 2, 3, 4 (1), (3) to (5), 6, 7, 13, 14, 15 (3) and (4), 16 to 21, 29 to 35, 37 to 42, 43 (1), points 1 to 7 and 9 to 13, 45 (1), 46, 48 to 50, 51 (1), 54, 56 to 59 and 61 of Directive 78/660/EEC shall apply to the undertakings referred to in Article 2 of this Directive, except where this Directive provides otherwise.

2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9 and 10 (balance sheet) or to Articles 23 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Article 5 (balance sheet) or to Article 29 (profit and loss account) of this Directive as appropriate.

3. References in Directives 78/660/EEC and 83/349/EEC to Articles 31 to 42 of Directive 78/660/EEC shall be deemed to be references to those Articles, taking account of Articles 45 to 62 of this Directive.

4. Where the aforementioned provisions of Directive 78/660/EEC relate to balance-sheet items for which this Directive lays down no equivalent, they shall be deemed to be references to the items in Article 6 of this Directive where the corresponding assets and liabilities items are listed.

Article 2

1. The coordination measures prescribed by this Directive shall apply to companies and firms within the meaning of the second paragraph of Article 58 of the Treaty which are:

(a) undertakings within the meaning of Article 1 of Directive 73/239/EEC, excluding those mutual associations which are excluded from the scope of that Directive by virtue of Article 3 thereof but including those bodies referred to in Article 4 (a), (b), (c) and (e) thereof except where their activity does not consist wholly or mainly in carrying on insurance business;

(b) undertakings within the meaning of Article 1 of Directive 79/267/EEC, excluding those bodies and mutual associations referred to in Articles 2 (2) and (3) and 3 of that Directive; or

(c) undertakings carrying on reinsurance business.

In this Directive, such undertakings shall be referred to as insurance undertakings.

2. Funds of a group pension fund within the meaning of Article 1 (2) (c) and (d) of Directive 79/267/EEC which an insurance undertaking administers in its own name but on behalf of third parties must be shown in the balance sheet if the undertaking acquires legal title to the assets concerned. The total amount of such assets and liabilities shall be shown separately or in the notes on the accounts, broken down according to the various assets and liabilities items. However, the Member States may permit the disclosure of such funds as off-balance-sheet items provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding up of an insurance undertaking (or similar proceedings).

Assets acquired in the name of and on behalf of third parties must not be shown in the balance sheet.

Article 3

Those provisions of this Directive which relate to life assurance shall apply *mutatis mutandis* to insurance undertakings which underwrite only health insurance and which do so exclusively or principally according to the technical principles of life assurance.

Member States may apply the first paragraph to health insurance underwritten by joint undertakings according to the technical principles of life assurance where such activity is significant.

Article 4

This Directive shall apply to the association of underwriters known as Lloyd's subject to the adaptations set out in the Annex to take account of the particular nature and structure of Lloyd's.

SECTION 2

General provisions concerning the balance sheet and the profit and loss account

Article 5

The combination of items under the conditions laid down in Article 4 (3) (a) or (b) of Directive 78/660/EEC shall be restricted in the case of insurance undertakings,

— as regards the balance sheet, to items preceded by arabic numerals, except for items concerning technical provisions, and

— as regards the profit and loss account, to items preceded by one or more lower-case letters, except for items I (1) and (4) and II (1), (5) and (6).

Combination shall be authorized only under the rules laid down by the Member States.

SECTION 3

Layout of the balance sheet

Article 6

The Member States shall prescribe the following layout for balance sheets:

Assets

A. *Subscribed capital unpaid*

showing separately called-up capital (unless national law requires called-up capital to be included under liabilities, in which case capital called but not yet paid must be included as an asset either under A or under E (IV)).

B. *Intangible assets*

as described unter items B and C (I) of Article 9 of Directive 78/660/EEC, showing separately:

— formation expenses, as defined by national law and in so far as national law permits their being shown as an asset (unless national law requires their disclosure in the notes on the accounts),

— goodwill, to the extent that it was acquired for valuable consideration (unless national law requires its disclosure in the notes on the accounts).

C. *Investments*

I. Land and buildings:

showing separately land and buildings occupied by an insurance undertaking for its own activities (unless national law requires their disclosure in the notes on the accounts).

II. Investments in affiliated undertakings and participating interests:

1. Shares in affiliated undertakings.
2. Debt securities issued by, and loans to, affiliated undertakings.
3. Participating interests.
4. Debt securities issued by, and loans to, undertakings with which an insurance undertaking is linked by virtue of a participating interest.

III. Other financial investments:

1. Shares and other variable-yield securities and units in unit trusts.
2. Debt securities and other fixed-income securities.
3. Participation in investment pools.
4. Loans guaranteed by mortgages.
5. Other loans.
6. Deposits with credit institutions.
7. Other.

IV. Deposits with ceding undertakings.

D. *Investments for the benefit of life-assurance policyholders who bear the investment risk*

E. *Debtors*

(Amounts owed by:

— affiliated undertakings, and

— undertakings with which an insurance undertaking is linked by virtue of participating interests

shall be shown separately, as sub-items of items I, II and III).

I. Debtors arising out of direct insurance operations

1. policyholders;
2. intermediaries.

II. Debtors arising out of reinsurance operations.

III. Other debtors.

IV. Subscribed capital called but not paid

(unless national law requires that capital called but not paid be shown as an asset under A).

F. *Other assets*

I. Tangible assets and stocks as listed under C (II) and D (I) in Article 9 of Directive 78/660/EEC, other than land and buildings, buildings under construction and deposits paid on land and buildings.

II. Cash at bank and in hand.

III. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

IV. Other.

G. *Prepayments and accrued income*

I. Accrued interest and rent.

II. Deferred acquisition costs (distinguishing those arising in non-life insurance and life-assurance business).

III. Other prepayments and accrued income.

H. *Loss for the financial year*

(unless national law requires it to be shown as a liability under A (VI)).

Liabilities

A. *Capital and reserves*

I. Subscribed capital or equivalent funds

(unless national law requires called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. Share premium account.

III. Revaluation reserve.

IV. Reserve.

V. Profit or loss brought forward.

VI. Profit or loss for the financial year

(unless national law requires it to be shown as an asset under H or as a liability under I).

B. *Subordinated liabilities*

C. *Technical provisions*

1. Provision for unearned premiums:

(a) gross amount .....

(b) reinsurance amount (–) .....

.....

2. Life assurance provision:

(a) gross amount (–) .....

(b) reinsurance amount (–) .....

.....

3. Claims outstanding:

(a) gross amount .....

(b) reinsurance amount (–) .....

.....

4. Provision for bonuses and rebates (unless shown under 2):

(a) gross amount .....

(b) reinsurance amount (–) .....

.....

5. Equalization provision

6. Other technical provisions:

(a) gross amount .....

(b) reinsurance amount (–) .....

.....

D. *Technical provisions for life-assurance policies where the investment risk is borne by the policyholders:*

(a) gross amount .....

(b) reinsurance amount (–) .....

.....

E. *Provisions for other risks and charges*

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

F. *Deposits received from reinsurers*

G. *Creditors*

(Amounts owed to:

— affiliated undertakings, and

— undertakings with which an insurance undertaking is linked by virtue of a participating interest

shall be shown separately, as sub-items.)

I. Creditors arising out of direct insurance operations.

II. Creditors arising out of reinsurance operations.

III. Debenture loans, showing convertible loans separately.

IV. Amounts owed to credit institutions.

V. Other creditors, including tax and social security.

H. *Accruals and deferred income*

I. *Profit for the financial year*

(unless national law requires it to be shown as a liability under A (VI)).

Article 7

Article 14 of Directive 78/660/EEC shall not apply to commitments linked to insurance activities.

SECTION 4

Special provisions relating to certain balance-sheet items

Article 8

Article 15 (3) of Directive 78/660/EEC shall apply only to assets items B and C (I) and (II) as defined in Article 6 of this Directive. Any movements in these items shall be shown on the basis of the balance-sheet value at the beginning of the financial year.

Article 9

Assets: item C (III) (2)

Debt securities and other fixed-income securities

1. This item shall comprise negotiable debt securities and other fixed-income securities issued by credit institutions, by other undertakings or by public bodies, in so far as they are not covered by item C (II) (2) or (4).

2. Securities bearing interest the rate of which varies in line with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities and other fixed-income securities.

Article 10

Assets: item C (III) (3)

Participation in investment pools

This item shall comprise shares held by an undertaking in joint investments constituted by several undertakings or pension funds, the management of which has been entrusted to one of those undertakings or to one of those pension funds.

Article 11

Assets: items C (III) (4) and (5)

Loans guaranteed by mortgages and other loans

Loans to policyholders for which the policy is the main security shall be included under 'Other loans' and their amount shall be disclosed in the notes on the accounts. Loans guaranteed by mortgage shall be shown as such even where they are also secured by insurance policies. Where the amount of 'Other loans' not secured by policies is material, an appropriate breakdown shall be given in the notes on the accounts.

Article 12

Assets: item C (III) (6)

Deposits with credit institutions

This item shall comprise sums the withdrawal of which is subject to a time restriction. Sums deposited with no such restriction shall be shown under F (II) even if they bear interest.

Article 13

Assets: item C (III) (7)

Other

This item shall comprise those investments which are not covered by items C (III) (1) to (6). Where the amount of such investments is significant, they must be disclosed in the notes on the accounts.

Article 14

Assets: item C (IV)

Deposits with ceding undertakings

In the balance sheet of an undertaking which accepts reinsurance this item shall comprise amounts, owed by the ceding undertakings and corresponding to guarantees, which are deposited with those ceding undertakings or with third parties or which are retained by those undertakings.

These amounts may not be combined with other amounts owed by the ceding insurer to the reinsurer or set off against amounts owed by the reinsurer to the ceding insurer.

Securities deposited with ceding undertakings or third parties which remain the property of the undertaking accepting reinsurance shall be entered in the latter's accounts as an investment, under the appropriate item.

Article 15

Assets: item D

Investments for the benefit of life assurance policyholders who bear the investment risk.

In respect of life assurance this item shall comprise, on the one hand, investments the value of which is used to determine the value of or the return on policies relating to an investment fund and, on the other hand, investments serving as cover for liabilities which are determined by reference to an index. This item shall also comprise investments which are held on behalf of the members of a tontine and are intended for distribution among them.

Article 16

Assets: item F (IV)

Other

This item shall comprise those assets which are not covered by items F (I), (II) and (III). Where such assets are material, they must be disclosed in the notes on the accounts.

Article 17

Assets: item G (I)

Accrued interest and rent

This item shall comprise those items that represent interest and rent that have been earned up to the balance-sheet date but have not yet become receivable.

Article 18

Assets: item G (II)

Deferred acquisition costs

1. The costs of acquiring insurance policies shall be deferred in accordance with Article 18 of Directive 78/660/EEC in so far as such deferral is not prohibited by Member States.

2. Member States may, however, permit the deduction of acquisition costs from unearned premiums in non-life-insurance business and their deduction by an actuarial method from mathematical reserves in life-assurance business. Where this method is used, the amounts deducted from the provisions must be indicated in the notes on the accounts.

Article 19

Liabilities: item A (I)

Subscribed capital or equivalent funds

This item shall comprise all amounts, irrespective of their actual designations, which, in accordance with the legal structure of an insurance undertaking, are regarded under the national law of the Member State concerned as equity capital subscribed by the shareholders or other persons.

Article 20

Liabilities: item A (IV)

Reserves

This item shall comprise all the types of reserves listed in Article 9 of Directive 78/660/EEC under liabilities item A (IV), as defined therein. The Member States may also require other types of reserves if necessary for insurance undertakings the legal structures of which are not covered by Directive 78/660/EEC.

Reserves shall be shown separately, as sub-items of liabilities item A (IV), in the balance sheets of the insurance undertakings concerned, except for the revaluation reserve, which shall be shown as a liability under A (III).

Article 21

Liabilities: item B

Subordinated liabilities

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not represented by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be shown under this item.

Article 22

Where a Member States permits an undertaking's balance sheet to include funds the allocation of which either to policyholders or to shareholders has not been determined by the close of the financial year, those amounts shall be shown as liabilities under an item Ba (Fund for future appropriations).

Variations in this item shall derive from an item II (12a) (Transfers to or from the fund for future appropriations) in the profit and loss account.

Article 23

Liabilities: item C

Technical provisions

Article 20 of Directive 78/660/EEC shall apply to technical provisions, subject to Articles 24 to 30 of this Directive.

Article 24

Liabilities: items C (1) (b), (2) (b), (3) (b), (4) (b) and (6) (b) and D (b)

Reinsurance amounts

1. The reinsurance amounts shall comprise the actual or estimated amounts which, under contractual reinsurance arrangements, are deducted from the gross amounts of technical provisions.

2. As regards the provision for unearned premiums, the reinsurance amounts shall be calculated according to the methods referred to in Article 57 or in accordance with the terms of the reinsurance policy.

3. Member States may require or permit the reinsurance amounts to be shown as assets. Where this option is exercised, those amounts shall be shown as assets under an item Da (Reinsurers' share of technical provisions), subdivided as follows:

1. Provision for unearned premiums

2. Life assurance provision

3. Claims outstanding

4. Provisions for bonuses and rebates (unless shown under 2)

5. Other technical provisions

6. Technical provisions for life-assurance policies where the investment risk is borne by the policyholders.

Notwithstanding Article 5, these items shall not be combined.

Article 25

Liabilities: item C (1)

Provision for unearned premiums

The provision for unearned premiums shall comprise the amount representing that part of gross premiums written which is to be allocated to the following financial year or to subsequent financial years. In the case of life assurance Member States may, pending further harmonization, require or permit the provision for unearned premiums to be included in item C (2).

If, pursuant to Article 26, item C (1) also includes the amount of the provision for unexpired risks, the description of the item shall be 'Provision for unearned premiums and unexpired risks'. Where the amount for unexpired risks is material, it shall be disclosed separately either in the balance sheet or in the notes on the accounts.

Article 26

Liabilities: item C (6)

Other technical provisions

This item shall comprise, *inter alia,* the provision for unexpired risks, i.e. the amount set aside in addition to unearned premiums in respect of risks to be borne by the insurance undertaking after the end of the financial year, in order to provide for all claims and expenses in connection with insurance contracts in force in excess of the related unearned premiums and any premiums receivable on those contracts. However, if national legislation so provides, the provision for unexpired risks may be added to the provision for unearned premiums, as defined in Article 25, and included in the amount shown under item C (1).

Where the amount of unexpired risks is significant, it shall be disclosed separately either in the balance sheet or in the notes on the accounts.

Where the option provided for in the second paragraph of Article 3 is not exercised, this item shall also include the ageing reserves.

Article 27

Liabilities: item C (2)

Life assurance provision

The life assurance provision shall comprise the actuarially estimated value of an insurance undertaking's liabilities including bonuses already declared and after deducting the actuarial value of future premiums.

Article 28

Liabilities: item C (3)

Claims outstanding

The provision for claims outstanding shall be the total estimated ultimate cost to an insurance undertaking of settling all claims arising from events which have occured up to the end of the financial year, whether reported or not, less amounts already paid in respect of such claims.

Article 29

Liabilities: item C (4)

Provision for bonuses and rebates

The provision for bonuses and rebates shall comprise amounts intended for policyholders or contract beneficiaries by way of bonuses and rebates as defined in Article 39 to the extent that such amounts have not been credited to policyholders or contract beneficiaries or included in an item Ba (Fund for future appropriations), as provided for in Article 22, first paragraph, or in item C (2).

Article 30

Liabilities: item C (5)

Equalization provision

1. The equalization provision shall comprise any amounts set aside in compliance with legal or administrative requirements to equalize fluctuations in loss ratios in future years or to provide for special risks.

2. Where, in the absence of any such legislative or administrative requirements, reserves within the meaning of Article 20 have been constituted for the same purpose, this shall be disclosed in the notes on the accounts.

Article 31

Liabilities: item D

Technical provisions for life-assurance policies where the investment risk is borne by the policyholders.

This item shall comprise technical provisions constituted to cover liabilities relating to investment in the context of life assurance policies the value of or the return on which is determined by reference to investments for which the policyholder bears the risk, or by reference to an index.

Any additional technical provisions constituted to cover death risks, operating expenses or other risks (such as benefits payable at the maturity date or guaranteed surrender values) shall be shown under item C (2).

Item D shall also comprise technical provisions representing the obligations of a tontine's organizer *vis-à-vis* its members.

Article 32

Liabilities: item F

Deposits received from reinsurers

In the balance sheet of an undertaking ceding reinsurance this item shall comprise amounts deposited by or withheld from other insurance undertakings under reinsurance contracts. These amounts may not be merged with other amounts owed to or by the other undertakings in question.

Where an undertaking ceding reinsurance has received as a deposit securities which have been transferred to its ownership, this item shall comprise the amount owed by the ceding undertaking by virtue of the deposit.

SECTION 5

Layout of the profit and loss account

Article 33

1. The Member States shall prescribe the layout shown in Article 34 for profit and loss accounts.

2. The technical account for non-life-insurance business shall be used for those classes of direct insurance which are within the scope of Directive 73/239/EEC and for the corresponding classes of reinsurance business.

3. The technical account for life-assurance business shall be used for those classes of direct insurance which are within the scope of Directive 79/267/EEC and for the corresponding classes of reinsurance business.

4. Member States may require or permit undertakings the activities of which consist wholly of reinsurance to use the technical account for non-life-insurance business for all their business. This shall also apply to undertakings underwriting direct non-life-insurance and also reinsurance.

Article 34

Profit and loss account

I. *Technical account — Non-life-insurance business*

1. Earned premiums, net of reinsurance:			
(a) gross premiums written	.....		
(b) outward reinsurance premiums (–)	.....	.....	
(c) change in the gross provision for unearned premiums and, in so far as national legislation authorizes the inclusion of this provision in liabilities item C (1), in the provision for unexpired risks (+/–)	.....		
(d) change in the provision for unearned premiums, reinsurers' share (+/–)	.....	.....	.....
2. Allocated investment return transferred from the non-technical account (item III (6))			.....
3. Other technical income, net of reinsurance			.....
4. Claims incurred, net of reinsurance:			
(a) claims paid			
(aa) gross amount	.....		
(bb) reinsurers' share (–)	.....	.....	

(b) change in the provision for claims,

(aa) gross amount .....

(bb) reinsurers' share (–) ....

5. Changes in other technical provisions, net of reinsurance, not shown under other headings (+/–) .....

6. Bonuses and rebates, net of reinsurance .....

7. Net operating expenses:

(a) acquisition costs .....

(b) change in deferred acquisition costs (+/–) .....

(c) administrative expenses .....

(d) reinsurance commissions and profit participation (–) ....

8. Other technical charges, net of reinsurance .....

9. Change in the equalization provision (+/–) .....

10. Sub-total (balance on the technical account for non-life-insurance business (item III 1)). .....

II. *Technical account — Life-assurance business*

1. Earned premiums, net of reinsurance:

(a) gross premiums written .....

(b) outward reinsurance premiums (–) .....

(c) change in the provision for unearned premiums, net of reinsurance (+/–) ....

2. Investment income:

(a) income from participating interests, with a separate indication of that derived from affiliated undertakings ....

(b) income from other investments, with a separate indication of that derived from affiliated undertakings .....

(aa) income from land and buildings .....

(bb) income from other investments ....

(c) value re-adjustments on investments .....

(d) gains on the realization of investments ....

3. Unrealized gains on investments .....

4. Other technical income, net of reinsurance .....

5. Claims incurred, net of reinsurance:

(a) claims paid

(aa) gross amount .....

(bb) reinsurers' share (–) ....

(b) change in the provision for claims

(aa) gross amount .....

(bb) reinsurers' share (–) ....

6. Change in other technical provisions, net of reinsurance, not shown under other headings (+/–):

(a) life assurance provision, net of reinsurance

(aa) gross amount .....

(bb) reinsurers' share (–) ....

(b) other technical provisions, net of reinsurance ....

7. Bonuses and rebates, net of reinsurance .....

8. Net operating expenses:

(a) acquisition costs, ...

(b) change in deferred acquisition costs (+/–) .....

(c) administrative expenses .....

(d) reinsurance commissions and profit participation (–) ....

9. Investment charges:

(a) investment management charges, including interest .....

(b) value adjustments on investments .....

(c) losses on the realization of investments ....

10. Unrealized losses on investments .....

11. Other technical charges, net of reinsurance .....

12. Allocated investment return transferred to the non-technical account (–) (item III 4)) .....

13. Sub-total: (balance on the technical account — life assurance business) (item III 2)) .....

III. *Non-technical account*

1. Balance on the technical account — non-life-insurance business (item I (10)) .....

2. Balance on the technical account — life-assurance business (item II (13)) .....

3. Investment income

(a) income from participating interests, with a separate indication of that derived from affiliated undertakings ....

(b) income from other investments, with a separate indication of that derived from affiliated undertakings .....

(aa) income from land and buildings .....

(bb) income from other investments ....

(c) value re-adjustments on investments .....

(d) gains on the realization of investments ....

4. Allocated investment return transferred from the life-assurance technical account (item II (12)) .....

5. Investment charges:

(a) investment management charges, including interest .....

(b) value adjustments on investments .....

(c) losses on the realization of investments ....

6. Allocated investment return transferred to the non-life-insurance technical account (item I 2)) .....

7. Other income .....

8. Other charges, including value adjustments .....

9. Tax on profit or loss on ordinary activities .....

10. Profit or loss on ordinary activities after tax .....

11. Extraordinary income .....

12. Extraordinary charges .....

13. Extraordinary profit or loss .....

14. Tax on extraordinary profit or loss .....

15. Other taxes not shown under the preceding items .....

16. Profit or loss for the financial year .....

SECTION 6

Special provisions relating to certain profit-and-loss-account items

Article 35

Non-life-insurance technical account: item I (1) (a)

Life-assurance technical account: item II (1) (a)

Gross premiums written

Gross premiums written shall comprise all amounts due during the financial year in respect of insurance contracts regardless of the fact that such amounts may relate in whole or in part to a later financial year, and shall include *inter alia:*

(i) premiums yet to be written, where the premium calculation can be done only at the end of the year:

(ii) — single premiums, including annuity premiums,

— in life assurance, single premiums resulting from bonus and rebate provisions in so far as they must be considered as premiums on the basis of contracts and where national legislation requires or permits their being shown under premiums;

(iii) additional premiums in the case of half-yearly, quarterly or monthly payments and additional payments from policyholders for expenses borne by the insurance undertaking;

(iv) in the case of co-insurance, the undertaking's portion of total premiums;

(v) reinsurance premiums due from ceding and retroceding insurance undertakings, including portfolio entries,

after deduction of:

— portfolio withdrawals credited to ceding and retroceding insurance undertakings, and

— cancellations.

The above amounts shall not include the amounts of taxes or charges levied with premiums.

Article 36

Non-life-insurance technical account: item I (1) (b)

Life-assurance technical account: item II (1) (b)

Outward reinsurance premiums

Outward reinsurance premiums shall comprise all premiums paid or payable in respect of outward reinsurance contracts entered into by an insurance undertaking. Portfolio entries payable on the conclusion or amendment of outward reinsurance contracts shall be added; portfolio withdrawals receivable must be deducted.

Article 37

Non-life-insurance technical account: items I (1) (c) and (d)

Life-assurance technical account: item II (1) (c)

Change in the provision for unearned premiums, net of reinsurance

Pending further coordination, Member States may, in the case of life assurance, require or permit the change in unearned premiums to be included in the change in the life assurance provision.

Article 38

Non-life-insurance technical account: item I (4)

Life-assurance technical account: item II (5)

Claims incurred, net of reinsurance

1. Claims incurred shall comprise all payments made in respect of the financial year plus the provision for claims but minus the provision for claims for the preceding financial year.

These amounts shall include annuities, surrenders, entries and withdrawals of loss provisions to and from ceding insurance undertakings and reinsurers, external and internal claims management costs and charges for claims incurred but not reported such as referred to in Article 60 (1) (b) and (2) (a).

Sums recoverable on the basis of subrogation and salvage within the meaning of Article 60 (1) (d) shall be deducted.

2. Where the difference between:

— the loss provision made at the beginning of the year for outstanding claims incurred in previous years, and

— the payments made during the year on account of claims incurred in previous years and the loss provision shown at the end of the year for such outstanding claims is material,

it shall be disclosed in the notes on the accounts, broken down by category and amount.

Article 39

Non-life-insurance technical account: item I (6)

Life-assurance technical account: item II (7)

Bonuses and rebates, net of reinsurance

Bonuses shall comprise all amounts chargeable for the financial year which are paid or payable to policyholders and other insured parties or provided for their benefit, including amounts used to increase technical provisions or applied to the reduction of future premiums, to the extent that such amounts represent an allocation of surplus or profit arising on business as a whole or a section of business, after deduction of amounts provided in previous years which are no longer required.

Rebates shall comprise such amounts to the extent that they represent a partial refund of premiums resulting from the experience of individual contracts.

Where material, the amount charged for bonuses and that charged for rebates shall be disclosed separately in the notes on the accounts.

Article 40

Non-life-insurance technical account: item I (7) (a)

Life-assurance technical account: item II (8) (a)

Acquisition costs

Acquisition costs shall comprise the costs arising from the conclusion of insurance contracts. They shall cover both direct costs, such as acquisition commissions or the cost of drawing up the insurance document or including the insurance contract in the portfolio, and indirect costs, such as

advertising costs or the administrative expenses connected with the processing of proposals and the issuing of policies.

Member States may require policy renewal commissions to be entered in item I (7) (c) or II (8) (c).

Article 41

Non-life-insurance technical account: item I (7) (c)

Life-assurance technical account: item II (8) (c)

Administrative expenses

Administrative expenses shall include the costs arising from premium collection, portfolio administration, handling of bonuses and rebates, and inward and outward reinsurance. They shall in particular include staff costs and depreciation provisions in respect of office furniture and equipment in so far as these need not be shown under acquisition costs, claims incurred or investment charges.

Article 42

Life-insurance technical account: items II (2) and (9)

Non-technical account: items III (3) and (5)

Investment income and charges

1. All investment income and charges relating to non-life insurance shall be disclosed in the non-technical account.

2. In the case of an undertaking carrying on life-assurance business only, investment income and charges shall be disclosed in the life-assurance technical account.

3. In the case of an undertaking carrying on both life-assurance and non-life-insurance business, investment income and charges shall, to the extent that they are directly connected with the carrying on of the life-assurance business, be disclosed in the life-assurance technical account.

4. Member States may require or permit the disclosure of investment income and charges according to the origin or attribution of the investments, if necessary by providing for further items in the non-life-insurance technical account, by analogy with the corresponding items in the life-assurance technical account.

Article 43

Non-life-insurance technical account: item I (2)

Life-assurance technical account: item II (2)

Non-technical account: items III (4) and (6)

Allocated investment return

1. Where part of the investment return is transferred to the non-life-insurance technical account, the transfer from the non-technical account shall be deducted from item III (6) and added to item I (2).

2. Where part of the investment return disclosed in the life-assurance technical account is transferred to the non-technical account, the amount transferred shall be deducted from item II (12) and added to item III (4).

3. Member States may lay down the procedures for and the amounts of transfers of allocated return from one part of the profit and loss account to another. The reasons for such transfers and the bases on which they are made shall be disclosed in the notes on the accounts in either event; where appropriate, a reference to the text of the relevant regulation shall suffice.

Article 44

Life-assurance technical account: items II (3) and (10)

Unrealized gains and losses on investments

1. In life-assurance business Member States may permit the disclosure in full or in part in items II (3) and (10) in the profit and loss account of variations in the difference between:

— the valuation of investments at their current value or by means of one of the methods referred to in Article 33 (1) of Directive 78/660/EEC, and

— their valuation at purchase price.

In any event, Member States shall require that the amounts referred to in the first paragraph be disclosed in the aforementioned items where they relate to investments shown as assets under D.

2. Member States which require or permit the valuation of the investments shown as assets under C at their current value may, in respect of non-life-insurance, permit the disclosure in full or in part in an item III (3a) and in an item III (5a) in the profit and loss account of the variation in the difference between the valuation of those investments at their current value and their valuation at purchase price.

SECTION 7

Valuation rules

Article 45

Article 32 of Directive 78/660/EEC, under which the valuation of items shown in the annual accounts must be based on the principle of purchase price or production cost, shall apply to investment subject to Articles 46 to 49 of this Directive.

Article 46

1. Member States may require or permit the valuation of investments shown as assets under C on the basis of their current value calculated in accordance with Articles 48 and 49.

2. The investments shown as assets under D shall be shown at their current value.

3. Where investments are shown at their purchase price, their current value shall be disclosed in the notes on the accounts.

However, Member States in which, on the date of the notification of this Directive, investments are shown at their purchase price may give undertakings the option of initially disclosing in the notes on the account the current value of investment shown as assets under C (I) no later than five years after the date referred to in Article 70 (1) and the current value of other investments no later than three years after the same date.

4. Where investments are shown at their current value, their purchase price shall be disclosed in the notes on the accounts.

5. The same valuation method shall be applied to all investments included in any item denoted by an arabic numeral or shown as assets under C (I).

6. The method applied to each investment item shall be stated in the notes on the accounts.

Article 47

Where current value is applied to investments, Article 33 (2) and (3) of Directive 78/660/EEC shall apply, except as provided in Articles 37 and 44 of this Directive.

Article 48

1. In the case of investments other than land and buildings, current value shall mean market value, save as provided in paragraph 5.

2. Where investments are officially listed on an official stock exchange, market value shall mean the value on the balance-sheet date or, when the balance-sheet date is not a stock-exchange trading day, on the last stock-exchange trading day before that date.

3. Where a market exists for investments other than those referred to in paragraph 2, market value shall mean the average price at which such investments were traded on the balance-sheet date or, when the balance-sheet date is not a trading day, on the last trading day before that date.

4. Where on the date on which the accounts are drawn up investments such as referred to in paragraphs 2 or 3 have been sold or are to be sold within the short term, the market value shall be reduced by the actual or estimated realization costs.

5. Except where the equity method is applied in accordance with Article 59 of Directive 78/660/EEC, all other investments shall be valued on a basis which has prudent regard to the likely realizable value.

6. In all cases the method of valuation shall be precisely described and the reason for adopting it stated in the notes on the accounts.

Article 49

1. In the case of land and buildings current value shall mean the market value on the date of valuation, where relevant reduced as provided in paragraphs 4 and 5.

2. Market value shall mean the price at which land and buildings could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale.

3. The market value shall be determined through the separate valuation of each land and buildings item, carried out at least every five years according to methods generally recognized or recognized by the insurance supervisory authorities. Article 35 (1) (b) of Directive 78/660/EEC shall not apply.

4. Where the value of any land and buildings item has diminished since the preceding valuation under paragraph 3, an appropriate value adjustment shall be made. The lower value thus arrived at shall not be increased in subsequent balance sheets unless such increase results from a new determination of market value arrived at in accordance with paragraphs 2 and 3.

5. Where on the date on which the accounts are drawn up land and buildings have been sold or are to be sold within the short term, the value arrived at in accordance with paragraphs 2 and 4 shall be reduced by the actual or estimated realization costs.

6. Where it is impossible to determine the market value of a land and buildings item, the value arrived at on the basis of the principle of purchase price or production cost shall be deemed to be the current value.

7. The method by which the current value of land and buildings has been arrived at and their breakdown by financial year of valuation shall be disclosed in the notes on the accounts.

Article 50

Where Article 33 of Directive 78/660/EEC is applied to insurance undertakings, it shall be so in the following manner:

(a) paragraph 1 (a) shall apply to assets shown under F (I) as defined in Article 6 of this Directive;

(b) paragraph 1 (c) shall apply to assets shown under C (I), (II), (III) and (IV) and F (I) (except for stocks) and (III) as defined in Article 6 of this Directive.

Article 51

Article 35 of Directive 78/660/EEC shall apply to insurance undertakings subject to the following provisions:

(a) it shall apply to assets shown under B and C and to fixed assets shown under F (I) as defined in Article 6 of this Directive;

(b) paragraph 1 (c) (aa) shall apply to assets shown under C (II), (III) and (IV) and F (III) as defined in Article 6 of this Directive.

Member States may require that value adjustments be made in respect of transferable securities shown as investments, so that they are shown at the lower value to be attributed to them at the balance-sheet date.

Article 52

Article 38 of Directive 78/660/EEC shall apply to assets shown under F (I) as defined in Article 6 of this Directive.

Article 53

Article 39 of Directive 78/660/EEC shall apply to assets shown under E (I), (II) and (III) and F (II) as defined in Article 6 of this Directive.

Article 54

In non-life insurance the amount of any deferred acquisition costs shall be established on a basis compatible with that used for unearned premiums.

In life assurance the calculation of the amount of any acquisition costs to be deferred may be taken into the actuarial calculation referred to in Article 59.

Article 55

1. (a) If they have not been valued at market value, debt securities and other fixed-income securities shown as assets under C (II) and (III) shall be shown in the balance sheet at purchase price. Member States may, however, require or permit such debt securities to be shown in the balance sheet at the amount repayable at maturity.

(b) Where the purchase price of the securities referred to in point (a) exceeds the amount repayable at maturity, the amount of the difference shall be charged to the profit and loss account. Member States may, however, require or permit the amount of the difference to be written off in instalments so that it is completely written off when the securities are repaid. That difference must be shown separately in the balance sheet or in the notes on the accounts.

(c) Where the purchase price of the securities referred to in point (a) is less than the amount repayable at maturity, Member States may require or permit the amount of the difference to be released to income in instalments over the period remaining until repayment. That difference must be shown separately in the balance sheet or in the notes on the accounts.

2. Where debt securities or other fixed-income securities that are not valued at market value are sold before maturity and the proceeds are used to purchase other debt securities or fixed-income securities, Member States may permit the difference between the proceeds of sale and their book value to be spread uniformly over the period remaining until the maturity of the original investment.

Article 56

Technical provisions

The amount of technical provisions must at all times be such that an undertaking can meet any liabilities arising out of insurance contracts as far as can reasonably be foreseen.

Article 57

Provision for unearned premiums

1. The provision for unearned premiums shall in principle be computed separately for each insurance contract. Member States may, however, permit the use of statistical methods, and in particular proportional and flat-rate methods, where they may be expected to give approximately the same results as individual calculations.

2. In classes of insurance where the assumption of a temporal correlation between risk experience and premium is not appropriate, calculation methods shall be applied that take account of the differing pattern of risk over time.

Article 58

Provision for unexpired risks

The provision for unexpired risks referred to in Article 26 shall be computed on the basis of claims and administrative expenses likely to arise after the end of the financial year from contracts concluded before that date, in so far as their estimated value exceeds the provision for unearned premiums and any premiums receivable under those contracts.

Article 59

Life assurance provision

1. The life assurance provision shall in principle be computed separately for each life assurance contract. Member States may, however, permit the use of statistical or mathematical methods where they may be expected to give approximately the same results as individual calculations. A summary of the principal assumptions made shall be given in the notes on the accounts.

2. The computation shall be made annually by an actuary or other specialist in this field on the basis of recognized actuarial methods.

Article 60

Provisions for claims outstanding

1. Non-life insurance

(a) A provision shall in principle be computed separately for each case on the basis of the costs still expected to arise. Statistical methods may be used if they result in an adequate provision having regard to the nature of the risks; Member States may, however, make the application of such methods subject to prior approval.

(b) This provision shall also allow for claims incurred but not reported by the balance-sheet date; its amount shall be determined having regard to past experience as to the number and magnitude of claims reported after the balance-sheet date.

(c) Claims settlement costs shall be included in the calculation of the provision irrespective of their origin.

(d) Recoverable amounts arising out of the acquisition of the rights of policyholders with respect to third parties (subrogation) or of the legal ownership of insured property (salvage) shall be deducted from the provision for claims outstanding; they shall be estimated on a prudent basis. Where such amounts are material, they shall be disclosed in the notes on the accounts.

(e) By way of derogation from subparagraph (d), Member States may require or permit the disclosure of recoverable amounts as assets.

(f) Where benefits resulting from a claim must be paid in the form of annuity, the amounts to be set aside for that purpose shall be calculated by recognized actuarial methods.

(g) Implicit discounting or deductions, whether resulting from the placing of a present value on a provision for an outstanding claim which is expected to be settled later at a higher figure or otherwise effected, shall be prohibited.

Member States may permit explicit discounting or deductions to take account of investment income. No such discounting or deductions shall be permissible unless:

(i) the expected average date for the settlement of claims is at least four years after the accounting date;

(ii) the discounting or deduction is effected on a recognized prudential basis; the competent authority must be given advance notification of any change in method;

(iii) when calculating the total cost of settling claims, an undertaking takes account of all factors that could cause increases in that cost;

(iv) an undertaking has adequate data at its disposal to construct a reliable model of the rate of claims settlements;

(v) the rate of interest used for the calculation of present values does not exceed a prudent estimate of the investment income from assets invested as a provision for claims during the period necessary for the payment of such claims. Moreover, it must not exceed either of the following:

— the investment income from such assets over the preceding five years,

— the investment income from such assets during the year preceding the balance-sheet date.

When discounting or effecting deductions, an undertaking shall, in the notes on its accounts, disclose

the total amount of provisions before discounting or deduction, the categories of claims which are discounted or from which deductions have been made and, for each category of claims, the methods used, in particular the rates used for the estimates referred to in the preceding subparagraph, points (iii) and (v), and the criteria adopted for estimating the period that will elapse before the claims are settled.

2. Life insurance

(a) The amount of the provision for claims shall be equal to the sums due to beneficiaries, plus the costs of settling claims. It shall include the provision for claims incurred but not reported.

(b) Member States may require the disclosure in liabilities item C (2) of the amounts referred to in (a).

Article 61

1. Pending further coordination, Member States may require or permit the application of the following methods where, because of the nature of the class or type of insurance in question, information about premiums receivable, claims payable or both for the underwriting years is insufficient when the annual accounts are drawn up for accurate estimates to be made.

Method 1

The excess of the premiums written over the claims and expenses paid in respect of contracts commencing in the underwriting year shall form a technical provision which is included in the technical provision for claims outstanding shown in the balance sheet in liabilities item C (3). The provision may also be computed on the basis of a given percentage of the premiums written where such a method is appropriate for the type of risk insured. Should the need arise, the amount of this technical provision shall be increased to make it sufficient to meet present and future obligations. The technical provision constituted by this method shall be replaced by a provision for claims outstanding estimated in the usual manner as soon as sufficient information has been gathered and not later than the end of the third year following the underwriting year.

Method 2

The figures shown in the technical account or in certain items within it shall relate to a year which wholly or partly precedes the financial year. It must not do so by more than 12 months. The amounts of the technical provisions shown in the annual accounts shall if necessary be increased to make them sufficient to meet present and future obligations.

2. Where one of the methods described in paragraph 1 is adopted, it shall be applied systematically in successive years unless circumstances justify a change. The use of either method shall be disclosed in the notes on the accounts and the reasons given; in the event of a change in the method applied, the effect on the assets, liabilities, financial position and profit or loss shall be indicated in the notes on the accounts. Where Method 1 is used, the length of time that elapses before a provision for claims outstanding is constituted on the usual basis shall be disclosed in the notes on the accounts. Where Method 2 is used, the length of time by which the earlier year to which the figures relate precedes the financial year and the magnitude of the transactions concerned shall be disclosed in the notes on the accounts.

3. For the purposes of this Article, 'underwriting year' shall mean the financial year in which the insurance contracts in the class or type of insurance in question commenced.

Article 62

Pending further coordination, those Member States which require the constitution of equalization provisions shall prescribe the valuation rules to be applied to them.

SECTION 8

Contents of the notes on the accounts

Article 63

In place of the information provided for in Article 43 (1) (8) of Directive 78/660/EEC, insurance undertakings shall provide the following particulars:

I. As regards non-life insurance, the notes on the accounts shall disclose:

1. gross premiums written;

2. gross premiums earned;

3. gross claims charges;

4. gross operating expenses;

5. the reinsurance balance.

These amounts shall be shown broken down between direct insurance and reinsurance acceptances, if reinsurance acceptances amount to 10% or more of gross premiums written, and then within direct insurance into the following groups of classes:

— accident and health,

— motor, third-party liability,

— motor, other classes,

— marine, aviation and transport,

— fire and other damage to property,

— third-party liability,

— credit and suretyship,

— legal expenses,

— assistance,

— miscellaneous.

The breakdown into groups of classes within direct insurance shall not be required where the amount of the gross premiums written in direct insurance for the group in question does not exceed ECU 10 million. However, undertakings shall in any case disclose the amounts relating to the three largest groups of classes in their business.

II. As regards life assurance, the notes on the accounts shall disclose:

1. gross premiums written, broken down between direct insurance and reinsurance acceptances, if reinsurance acceptances amount to 10 % or more of gross premiums written, and then within direct insurance to indicate:

(a) (i) individual premiums;

(ii) premiums under group contracts;

(b) (i) periodic premiums;

(ii) single premiums;

(c) (i) premiums from non-bonus contracts;

(ii) premiums from bonus contracts;

(iii) premiums from contracts where the investment risk is borne by policyholders.

Disclosure of the figure relating to (a), (b) or (c) shall not be required where it does not exceed 10 % of the gross premiums written in direct insurance;

2. the reinsurance balance;

III. In the case covered by Article 33 (4), gross premiums broken down between life assurance and non-life insurance.

IV. In all cases, the total gross direct insurance premiums resulting from contracts concluded by the insurance undertaking

— in the Member State of its head office,

— in the other Member States, and

— in other countries,

except that disclosure of the figure relating to the above shall not be required if they do not exceed 5 % of total gross premiums.

Article 64

In the notes on their accounts insurance undertakings shall disclose the total amount of commissions for direct insurance business taken into the accounts for the financial year. This requirement shall cover commissions of any kind, and in particular acquisition, renewal, collection and portfolio management commissions.

SECTION 9

Provisions relating to consolidated accounts

Article 65

1. Insurance undertakings shall draw up consolidated accounts and consolidated annual reports in accordance with Directive 83/349/EEC, save as otherwise provided in this section.

2. In so far as a Member State does not have recourse to Article 5 of Directive 83/349/EEC, paragraph 1 shall also apply to parent undertakings, the sole or essential object of which is to acquire holdings in subsidiary undertakings and turn them to profit, where those subsidiary undertakings are either exclusively or mainly insurance undertakings.

Article 66

Directive 83/349/EEC shall apply subject to the following provisions:

1. Articles 4, 6, and 40 shall not apply;

2. the information referred to in the first and second indents of Article 9 (2), namely:

— the amount of the fixed assets, and

— the net turnover,

shall be replaced by particulars of the gross premiums written as defined in Article 35 of this Directive;

3. a Member State may also apply Article 12 of Directive 83/349/EEC to two or more insurance undertakings which are not connected as described in Article 1 (1) or (2) of the same Directive but are managed on a unified basis other than pursuant to a contract or provisions of their memoranda or articles of association. Unified

management may also consist of important and durable reinsurance links;

4. Member States may permit derogations from Article 26 (1)(c) of Directive 83/349/EEC where a transaction has been concluded according to normal market conditions and has established policyholder rights. Any such derogation shall be disclosed and where they have a material effect on the assets, liabilities, financial position and profit or loss of all the undertakings included in the consolidation that fact shall be disclosed in the notes on the consolidated accounts;

5. Article 27 (3) of Directive 83/349/EEC shall apply provided that the balance-sheet date of an undertaking included in a consolidation does not precede the consolidated balance-sheet date by more than six months;

6. Article 29 of Directive 83/349/EEC shall not apply to those liabilities items, the valuation of which by the undertakings included in a consolidation is based on the application of provisions specific to insurance undertakings or to those assets items changes in the values of which also affect or establish policyholders' rights. Where recourse is had to this derogation, the fact shall be disclosed in the notes on the consolidated accounts.

Article 67

In consolidated accounts alone Member States may require or permit all investment income and charges to be disclosed in the non-technical account, even when such income and charges are connected with life-assurance business.

Furthermore, Member States may in such cases require or permit the allocation of part of the investment return to the life-assurance technical account.

SECTION 10

Publication

Article 68

1. The duly approved annual accounts of insurance undertakings, together with the annual reports and the reports by the persons responsible for auditing the accounts, shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC [1].

[1] OJ No L 65, 14. 3. 1968, p. 8.

The laws of a Member State may, however, provide that annual reports need not be published as provided in the first subparagraph. In that event, they shall be made available to the public at the undertakings' head offices in the Member State concerned. It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy shall not exceed its administrative cost.

2. Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual report and the reports by the persons responsible for auditing the accounts.

3. Where an insurance undertaking which has drawn up annual accounts or consolidated accounts is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in paragraph 1 and 2 of this Article as prescribed in Article 3 of Directive 68/151/EEC, it shall at least make them available to the public at its head office. It must be possible to obtain copies of such documents on request. The price of such copies shall not exceed their administrative cost.

4. Member States shall provide for appropriate sanctions for failure to comply with the publication rules laid down in this Article.

SECTION 11

Final provisions

Article 69

The contact committee set up pursuant to Article 52 of Directive 78/660/EEC shall also, when constituted appropriately, have the following functions:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if the need arises, on additions or amendments to this Directive.

Article 70

1. Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall include a reference to this Directive or be accompanied by

such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States may provide that the provisions referred to in paragraph 1 shall first apply to annual accounts and consolidated accounts for financial years beginning on 1 January 1995 or during the calendar year 1995.

3. Member States shall communicate to the Commission the texts of the main provisoins of national law which they adopt in the field governed by this Directive.

Article 71

Five years after the date referred to in Article 70 (2) the Council, acting on a proposal from the Commission, shall examine and if need be revise all those provisions of this Directive which provide for Member State options in the light of the experience acquired in applying this Directive and in particular of the aims of greater transparency and harmonization of the provisions referred to by this Directive.

Article 72

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1991.

For the Council

The President

P. DANKERT

ANNEX

PROVISIONS RELATING TO LLOYD'S

A. General

For the purposes of this Directive, both Lloyd's and Lloyd's syndicates shall be deemed to be insurance undertakings.

Subject to the necessary adaptations set out in section B:

— Lloyd's syndicates shall prepare annual accounts ('syndicate accounts'), and

— Lloyd's shall prepare aggregate accounts ('aggregate accounts') in place of the consolidated accounts prescribed in Directive 83/349/EEC.

In this Annex, 'Lloyd's accounts' shall mean both types of accounts referred to above.

B. Special provisions

1. *Contents of syndicate accounts*

Subject to paragraph 9, syndicate accounts shall be prepared on a cumulative basis for three underwriting years of account at a time and shell comprise a separate underwriting years of account for each such year and a balance sheet for all such years taken together. Accounts prepared after 12 and 24 months respectively shall be known as open years. The underwriting account shall be prepared by analogy with the provisions governing the preparation of the profit and loss account; it shall show, in addition:

(a) for each entry, the change in the figures since the preceding accounting date;

(b) the allocated capacity of the syndicate for the relevant underwriting year of account.

2. *Contents of aggregate accounts*

Aggregate accounts shall be prepared by cumulation of the accounts of all Lloyd's syndicates. They shall include a note giving details of:

(a) inter-syndicate business including premiums written and claims paid;

(b) the method by which run-off years of account, referred to in paragraph 9, are taken into account;

(c) the method by which the premium income limit for individual members of Lloyd's syndicates is calculated.

3. *Capital*

Lloyd's and Lloyd's syndicates shall not be required to disclose, in the aggregate accounts and dyndicate accounts respectively, figures for liabilities items A (I) (Subscribed capital or equivalent fund), A (II) (Share premium account) and A (IV) (Reserves). Instead, Lloyd's shall attach a note to the aggregate accounts disclosing the following:

(a) Members' personal resources

1. Lloyd's deposits
2. The Personal Reserve Fund
3. The Special Reserve Fund
4. Other disclosed means

(b) Central resources of Lloyd's

1. The net assets of the Central Fund
2. The net assets of the Corporation of Lloyd's.

4. *Taxation*

(a) Lloyd's and Lloyd's syndicates shall not be required to disclose, in the aggregate accounts and syndicate accounts respectively, figures for liabilities items E (2) (Provisions for taxation) and G (V) (Other creditors, including tax and social security), as far as tax alone is concerned, and items III (9) (Tax on profit or loss on ordinary activities) and III (14) (Tax on extraordinary profit or loss) in the profit and loss account as with the exception of amounts deducted at source.

(b) However, a note to all Lloyd's accounts shall state why a tax charge is not shown and the basic rate of tax applicable for the amounts deducted at source.

5. *Accounting principles*

(a) Going concern

The going concern principle set out in Article 31 (1) (a) of Directive 78/660/EEC shall not apply to Lloyd's accounts.

(b) Accruals

The accruals principle set out in Article 31 (1) (d) of Directive 78/660/EEC shall not apply to Lloyd's accounts.

(c) Allocation of income

Not more than three years after the date referred to in Article 70 (1), Lloyd's and Lloyd's syndicates shall allocate income which derives from insurance contracts to syndicate years of account on an inception date basis.

(d) Other accounting principles

In all Lloyd's accounts:

— like items shall receive uniform treatment,

— reinsurance recoveries shall be taken into account in respect of open years where a syndicate has paid a claim,

— operating expenses shall be allocated to the underwriting year of account for which they are incurred.

6. *Technical provisions*

Subject to paragraph 9 and by way of derogation from Articles 56 and 60, technical provisions shall not appear in Lloyd's accounts.

However:

(a) the underwriting accounts for open years shall show the excess of the premiums collected over the claims and expenses paid, by analogy with Article 61;

(b) a provision for claims outstanding shall be calculated when the underwriting year of account is closed and shall be shown in accordance with paragraph 8.

7. *Open years*

Syndicates shall prepare accounts for open years on a cash receipts and payments basis.

8. *Reinsurance to close*

Subject to paragraph 9, syndicates shall close their accounts at the end of a three-year period by payment of a premium ('Reinsurance to close') and shall disclose at least the following information:

— Gross notified outstanding claims	.....	
— Reinsurance recoveries anticipated (–)	.....	
— Net notified outstanding claims		.....
— Provision for gross claims incurred but not reported	.....	
— Reinsurance recoveries anticipated (–)	.....	
— Provision for net claims incurred but not reported		.....
— Net premium for 'reinsurance to close' the year of account (net total)		.....

9. *Run-off years of account*

(a) For the purposes of this paragraph a run-off year of account shall be one in respect of which, on the date on which it would normally be closed in accordance with paragraph 8, uncertainty prevents the determination of the 'reinsurance to close', and which accordingly is left open until that uncertainty is resolved.

(b) In respect of each run-off year of account, syndicate accounts shall include an underwriting account showing the amount retained to meet all known and unknown outstanding liabilities, which represents a provision for claims outstanding estimated in the usual manner.

10. *Disclosure of deposits with cedants*

For up to three years after the date referred to in Article 70 (1) Lloyd's and Lloyd's syndicates shall not be required to disclose the figures for assets item C (IV) (Deposits with ceding untertakings).

11. *Life business*

By way of derogation from Article 33 (3), Lloyd's life-assurance business (pure term life assurance for a period of not more than 10 years) may be shown in Lloyd's accounts in the format provided for in Article 34 (I) for non-life-insurance business.

12. *Gross premiums*

By way of derogation from Article 35, gross premiums may be stated net of brokerage. By way of addition to the requirements of Article 35 in relation to profit and loss account items I (1) (a) and II (1) (a) (Gross premiums written, net of reinsurance) a note shall be included:

— in each syndicate's accounts explaining the basis upon which commission and brokerage are charged and giving the estimated average rate of commission and brokerage for each of the main lines of business written by the syndicate,

— in the aggregate accounts giving the estimated average rate of commission and brokerage across the market.

13. *Contents of the notes on Lloyd's accounts*

In the notes on Lloyd's accounts the meaning of gross premiums shall be as set out in paragraph 12.

14. 8. 78 Official Journal of the European Communities No L 222/11

FOURTH COUNCIL DIRECTIVE

of 25 July 1978

based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies

(78/660/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas the coordination of national provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods used therein and their publication in respect of certain companies with limited liability is of special importance for the protection of members and third parties;

Whereas simultaneous coordination is necessary in these fields for these forms of company because, on the one hand, these companies' activities frequently extend beyond the frontiers of their national territories and, on the other, they offer no safeguards to third parties beyond the amounts of their net assets; whereas, moreover, the necessity for and the urgency of such coordination have been recognized and confirmed by Article 2 (1) (f) of Directive 68/151/EEC [3];

Whereas it is necessary, moreover, to establish in the Community minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another;

Whereas annual accounts must give a true and fair view of a company's assets and liabilities, financial position and profit or loss; whereas to this end a mandatory layout must be prescribed for the balance sheet and the profit and loss account and whereas the minimum content of the notes on the accounts and the annual report must be laid down; whereas, however, derogations may be granted for certain companies of minor economic or social importance;

Whereas the different methods for the valuation of assets and liabilities must be coordinated to the extent necessary to ensure that annual accounts disclose comparable and equivalent information;

Whereas the annual accounts of all companies to which this Directive applies must be published in accordance with Directive 68/151/EEC; whereas, however, certain derogations may likewise be granted in this area for small and medium-sized companies;

Whereas annual accounts must be audited by authorized persons whose minimum qualifications will be the subject of subsequent coordination; whereas only small companies may be relieved of this audit obligation;

Whereas, when a company belongs to a group, it is desirable that group accounts giving a true and fair view of the activities of the group as a whole be published; whereas, however, pending the entry into force of a Council Directive on consolidated accounts, derogations from certain provisions of this Directive are necessary;

Whereas, in order to meet the difficulties arising from the present position regarding legislation in certain Member States, the period allowed for the implementation of certain provisions of this Directive must be longer than the period generally laid down in such cases,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and

(1) OJ No C 129, 11. 12. 1972, p. 38.
(2) OJ No C 39, 7. 6. 1973, p. 31.
(3) OJ No L 65, 14. 3. 1968, p. 8.

administrative provisions of the Member States relating to the following types of companies:

— in Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

— in Belgium:

la société anonyme/de naamloze vennootschap, la société en commandite par actions / de commanditaire vennootschap' op aandelen, la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid;

— in Denmark:

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

— in France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in Ireland:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

— in Italy:

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

— in Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

— in the United Kingdom:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. Pending subsequent coordination, the Member States need not apply the provisions of this Directive to banks and other financial institutions or to insurance companies.

SECTION 1

General provisions

Article 2

1. The annual accounts shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. They shall be drawn up clearly and in accordance with the provisions of this Directive.

3. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3, additional information must be given.

5. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. The Member States may authorize or require the disclosure in the annual accounts of other information as well as that which must be disclosed in accordance with this Directive.

SECTION 2

General provisions concerning the balance sheet and the profit and loss account

Article 3

The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons therefor.

Article 4

1. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, 10 and 23 to 26 must be shown separately in the order indicated. A more detailed subdivision of the items shall be authorized provided that the layouts are complied with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts. Such subdivision or new items may be required by the Member States.

2. The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals must be adapted where the special nature of an undertaking so requires. Such adaptations may be required by the Member States of undertakings forming part of a particular economic sector.

3. The balance sheet and profit and loss account items that are preceded by Arabic numerals may be combined where:

(a) they are immaterial in amount for the purposes of Article 2 (3); or

(b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes on the accounts. Such combination may be required by the Member States.

4. In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year must be shown. The Member States may provide that, where these figures are not comparable, the figure for the preceding financial year must be adjusted. In any case, non-comparability and any adjustment of the figures must be disclosed in the notes on the accounts, with relevant comments.

5. Save where there is a corresponding item for the preceding financial year within the meaning of paragraph 4, a balance sheet or profit and loss account item for which there is no amount shall not be shown.

Article 5

1. By way of derogation from Article 4 (1) and (2), the Member States may prescribe special layouts for the annual accounts of investment companies and of financial holding companies provided that these layouts give a view of these companies equivalent to that provided for in Article 2 (3).

2. For the purposes of this Directive, 'investment companies' shall mean only:

(a) those companies the sole object of which is to invest their funds in various securities, real property and other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets;

(b) those companies associated with investment companies with fixed capital if the sole object of the companies so associated is to acquire fully paid shares issued by those investment companies without prejudice to the provisions of Article 20 (1) (h) of Directive 77/91/EEC [1].

3. For the purposes of this Directive, 'financial holding companies' shall mean only those companies the sole object of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the aforegoing without prejudice to their rights as shareholders. The limitations imposed on the activities of these companies must be such that compliance with them can be supervised by an administrative or judicial authority.

Article 6

The Member States may authorize or require adaptation of the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.

Article 7

Any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

SECTION 3

Layout of the balance sheet

Article 8

For the presentation of the balance sheet, the Member States shall prescribe one or both of the

[1] OJ No L 26, 31. 1. 1977, p. 1.

layouts prescribed by Articles 9 and 10. If a Member State prescribes both, it may allow companies to choose between them.

Article 9

Assets

A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under 'Liabilities'. In that case, the part of the capital called but not yet paid must appear as an asset either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

C. Fixed assets

I. *Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
   (a) acquired for valuable consideration and need not be shown under C (I) (3); or
   (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

II. *Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. *Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

D. Current assets

I. *Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. *Debtors*

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A).
6. Prepayments and accrued income (unless national law provides for such items to be shown as an asset under E).

III. *Investments*

1. Shares in affiliated undertakings.

2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

3. Other investments.

IV. *Cash at bank and in hand*

E. **Prepayments and accrued income**

(unless national law provides for such items to be shown as an asset under D (II) (6)).

F. **Loss for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

Liabilities

A. **Capital and reserves**

I. *Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*

III. *Revaluation reserve*

IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.

2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.

3. Reserves provided for by the articles of association.

4. Other reserves.

V. *Profit or loss brought forward*

VI. *Profit or loss for the financial year*

(unless national law requires that this item be shown under F under 'Assets' or under E under 'Liabilities').

B. **Provisions for liabilities and charges**

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

C. **Creditors**

(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year must be shown separately for each item and for the aggregate of these items.)

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under D under 'Liabilities').

D. **Accruals and deferred income**

(unless national law provides for such items to be shown under C (9) under 'Liabilities').

E. **Profit for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

Article 10

A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under L. In that case, the part of the capital called but not yet paid must appear either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

C. Fixed assets

I. *Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
   (a) acquired for valuable consideration and need not be shown under C (I) (3); or
   (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

II. *Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. *Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

D. Current assets

I. *Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. *Debtors*

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown under A).
6. Prepayments and accrued income (unless national law provides that such items be shown under E).

III. *Investments*

1. Shares in affiliated undertakings.

2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

3. Other investments.

IV. *Cash at bank and in hand.*

E. **Prepayments and accrued income**

(unless national law provides for such items to be shown under D (II) (6)).

F. **Creditors: amounts becoming due and payable within one year**

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under K).

G. **Net current assets/liabilities** (taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).

H. **Total assets less current liabilities**

I. **Creditors: amounts becoming due and payable after more than one year**

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under K).

J. **Provisions for liabilities and charges**

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

K. **Accruals and deferred income**

(unless national law provides for such items to be shown under F (9) or I (9) or both).

L. **Capital and reserves**

I. *Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*

III. *Revaluation reserve*

IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.

2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.

3. Reserves provided for by the articles of association.

4. Other reserves.

V. *Profit or loss brought forward*

VI. *Profit or loss for the financial year*

Article 11

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

— balance sheet total: 1 000 000 EUA,

— net turnover: 2 000 000 EUA,

— average number of employees during the financial year: 50

to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9 and in D (II) in Article 10, but in total for each.

Article 12

1. Where on its balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in Article 11, that fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.

2. For the purposes of translation into national currencies, the amounts in European units of account specified in Article 11 may be increased by not more than 10 %.

3. The balance sheet total referred to in Article 11 shall consist of the assets in A to E under 'Assets' in the layout prescribed in Article 9 or those in A to F in the layout prescribed in Article 10.

Article 13

1. Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts, if such disclosure is essential to the comprehension of the annual accounts.

2. Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

Article 14

All commitments by way of guarantee of any kind must, if there is no obligation to show them as liabilities, be clearly set out at the foot of the balance sheet or in the notes on the accounts, and a distinction made between the various types of guarantee which national law recognizes; specific disclosure must be made of any valuable security which has been provided. Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

SECTION 4

Special provisions relating to certain balance sheet items

Article 15

1. Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.

2. Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activities.

3. (a) Movements in the various fixed asset items shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown separately, starting with the purchase price or production cost, for each fixed asset item, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. Value adjustments shall be shown either in the balance sheet, as clear deductions from the relevant items, or in the notes on the accounts.

(b) If, when annual accounts are drawn up in accordance with this Directive for the first

time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this provision must be disclosed in the notes on the accounts.

(c) Where Article 33 is applied, the movements in the various fixed asset items referred to in subparagraph (a) of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.

4. Paragraph 3 (a) and (b) shall apply to the presentation of 'Formation expenses'.

Article 16

Rights to immovables and other similar rights as defined by national law must be shown under 'Land and buildings'.

Article 17

For the purposes of this Directive, 'participating interest' shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds a percentage fixed by the Member States which may not exceed 20 %.

Article 18

Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, though relating to the financial year in question, is not due until after its expiry must be shown under 'Prepayments and accrued income'. The Member States may, however, provide that such income shall be included in 'Debtors'. Where such income is material, it must be disclosed in the notes on the accounts.

Article 19

Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether that reduction is final or not.

Article 20

1. Provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

2. The Member States may also authorize the creation of provisions intended to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

3. Provisions for liabilities and charges may not be used to adjust the values of assets.

Article 21

Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under 'Accruals and deferred income'. The Member States may, however, provide that such charges shall be included in 'Creditors'. Where such charges are material, they must be disclosed in the notes on the accounts.

SECTION 5

Layout of the profit and loss account

Article 22

For the presentation of the profit and loss account, the Member States shall prescribe one or more of the layouts provided for in Articles 23 to 26. If a Member State prescribes more than one layout, it may allow companies to choose from among them.

Article 23

1. Net turnover.
2. Variation in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.

4. Other operating income.
5. (a) Raw materials and consumables.
   (b) Other external charges.
6. Staff costs:
   (a) wages and salaries;
   (b) social security costs, with a separate indication of those relating to pensions.
7. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
   (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
8. Other operating charges.
9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
12. Value adjustments in respect of financial assets and of investments held as current assets.
13. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
14. Tax on profit or loss on ordinary activities.
15. Profit or loss on ordinary activities after taxation.
16. Extraordinary income.
17. Extraordinary charges.
18. Extraordinary profit or loss.
19. Tax on extraordinary profit or loss.
20. Other taxes not shown under the above items.
21. Profit or loss for the financial year.

Article 24

A. Charges

1. Reduction in stocks of finished goods and in work in progress:
2. (a) raw materials and consumables;
   (b) other external charges.
3. Staff costs:
   (a) wages and salaries;
   (b) social security costs, with a separate indication of those relating to pensions.
4. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
   (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
5. Other operating charges.
6. Value adjustments in respect of financial assets and of investments held as current assets.
7. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

B. Income

1. Net turnover.
2. Increase in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
6. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
7. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
8. Profit or loss on ordinary activities after taxation.
9. Extraordinary income.
10. Profit or loss for the financial year.

Article 25

1. Net turnover.
2. Cost of sales (including value adjustments).
3. Gross profit or loss.
4. Distribution costs (including value adjustments).
5. Administrative expenses (including value adjustments).
6. Other operating income.
7. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
9. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
10. Value adjustments in respect of financial assets and of investments held as current assets.
11. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
12. Tax on profit or loss on ordinary activities.
13. Profit or loss on ordinary activities after taxation.
14. Extraordinary income.
15. Extraordinary charges.
16. Extraordinary profit or loss.
17. Tax on extraordinary profit or loss.
18. Other taxes not shown under the above items.
19. Profit or loss for the financial year.

Article 26

A. Charges

1. Cost of sales (including value adjustments).
2. Distribution costs (including value adjustments).
3. Administrative expenses (including value adjustments).
4. Value adjustments in respect of financial assets and of investments held as current assets.
5. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

B. Income

1. Net turnover.
2. Other operating income.
3. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
4. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
5. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
6. Profit or loss on ordinary activities after taxation.
7. Extraordinary income.
8. Profit or loss for the financial year.

Article 27

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

— balance sheet total: 4 million EUA,

— net turnover: 8 million EUA,

— average number of employees during the financial year: 250

to adopt layouts different from those prescribed in Articles 23 to 26 within the following limits:

(a) in Article 23: 1 to 5 inclusive may be combined under one item called 'Gross profit or loss';

(b) in Article 24: A (1), A (2) and B (1) to B (4) inclusive may be combined under one item called 'Gross profit or loss';

(c) in Article 25: (1), (2), (3) and (6) may be combined under one item called 'Gross profit or loss';

(d) in Article 26, A (1), B (1) and B (2) may be combined under one item called 'Gross profit or loss'.

Article 12 shall apply.

SECTION 6

Special provisions relating to certain items in the profit and loss account

Article 28

The net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover.

Article 29

1. Income and charges that arise otherwise than in the course of the company's ordinary activities must be shown under 'Extraordinary income and extraordinary charges'.

2. Unless the income and charges referred to in paragraph 1 are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes on the accounts. The same shall apply to income and charges relating to another financial year.

Article 30

The Member States may permit taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss to be shown in total as one item in the profit and loss account before 'Other taxes not shown under the above items'. In that case, 'Profit or loss on ordinary activities after taxation' shall be omitted from the layouts prescribed in Articles 23 to 26.

Where this derogation is applied, companies must disclose in the notes on the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the 'Extraordinary profit or loss'.

SECTION 7

Valuation rules

Article 31

1. The Member States shall ensure that the items shown in the annual accounts are valued in accordance with the following general principles:

(a) the company must be presumed to be carrying on its business as a going concern;

(b) the methods of valuation must be applied consistently from one financial year to another;

(c) valuation must be made on a prudent basis, and in particular:

(aa) only profits made at the balance sheet date may be included,

(bb) account must be taken of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,

(cc) account must be taken of all depreciation, whether the result of the financial year is a loss or a profit;

(d) account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges;

(e) the components of asset and liability items must be valued separately;

(f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

2. Departures from these general principles shall be permitted in exceptional cases. Any such departures must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss.

Article 32

The items shown in the annual accounts shall be valued in accordance with Articles 34 to 42, which are based on the principle of purchase price or production cost.

Article 33

1. The Member States may declare to the Commission that they reserve the power, by way of

derogation from Article 32 and pending subsequent coordination, to permit or require in respect of all companies or any classes of companies:

(a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;

(b) valuation by methods other than that provided for in (a) which are designed to take account of inflation for the items shown in annual accounts, including capital and reserves;

(c) revaluation of tangible fixed assets and financial fixed assets.

Where national law provides for valuation methods as indicated in (a), (b) and (c), it must define their content and limits and the rules for their application.

The application of any such method, the balance sheet and profit and loss account items concerned and the method by which the values shown are calculated shall be disclosed in the notes on the accounts.

2. (a) Where paragraph 1 is applied, the amount of the difference between valuation by the method used and valuation in accordance with the general rule laid down in Article 32 must be entered in the revaluation reserve under 'Liabilities'. The treatment of this item for taxation purposes must be explained either in the balance sheet or in the notes on the accounts.

For purposes of the application of the last subparagraph of paragraph 1, companies shall, whenever the amount of the reserve has been changed in the course of the financial year, publish in the notes on the accounts *inter alia* a table showing:

— the amount of the revaluation reserve at the beginning of the financial year,

— the revaluation differences transferred to the revaluation reserve during the financial year,

— the amounts capitalized or otherwise transferred from the revaluation reserve during the financial year, the nature of any such transfer being disclosed,

— the amount of the revaluation reserve at the end of the financial year.

(b) The revaluation reserve may be capitalized in whole or in part at any time.

(c) The revaluation reserve must be reduced to the extent that the amounts transferred thereto are no longer necessary for the implementation of the valuation method used and the achievement of its purpose.

The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only to the extent that the amounts transferred have been entered as charges in the profit and loss account or reflect increases in value which have been actually realized. These amounts must be disclosed separately in the profit and loss account. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents gains actually realized.

(d) Save as provided under (b) and (c) the revaluation reserve may not be reduced.

3. Value adjustments shall be calculated each year on the basis of the value adopted for the financial year in question, save that by way of derogation from Articles 4 and 22, the Member States may permit or require that only the amount of the value adjustments arising as a result of the application of the general rule laid down in Article 32 be shown under the relevant items in the layouts prescribed in Articles 23 to 26 and that the difference arising as a result of the valuation method adopted under this Article be shown separately in the layouts. Furthermore, Articles 34 to 42 shall apply *mutatis mutandis*.

4. Where paragraph 1 is applied, the following must be disclosed, either in the balance sheet or in the notes on the accounts, separately for each balance sheet item as provided for in the layouts prescribed in Articles 9 and 10, except for stocks, either:

(a) the amount at the balance sheet date of the valuation made in accordance with the general rule laid down in Article 32 and the amount of the cumulative value adjustments; or

(b) the amount at the balance sheet date of the difference between the valuation made in accordance with this Article and that resulting from the application of Article 32 and, where appropriate, the cumulative amount of the additional value adjustments.

5. Without prejudice to Article 52 the Council shall, on a proposal from the Commission and within seven years of the notification of this Directive, examine and, where necessary, amend this Article in the light of economic and monetary trends in the Community.

Article 34

1. (a) Where national law authorizes the inclusion of formation expenses under 'Assets', they must be written off within a maximum period of five years.

(b) In so far as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.

2. The amounts entered under 'Formation expenses' must be explained in the notes on the accounts.

Article 35

1. (a) Fixed assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.

(b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.

(c) (aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.

(bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.

(cc) The value adjustments referred to in (aa) and (bb) must be charged to the profit and loss account and disclosed separately in the notes on the accounts if they have not been shown separately in the profit and loss account.

(dd) Valuation at the lower of the values provided for in (aa) and (bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

(d) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes on the accounts.

2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

3. (a) The production cost shall be calculated by adding to the purchasing price of the raw materials and consumables the costs directly attributable to the product in question.

(b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent that they relate to the period of production.

4. Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent that it relates to the period of production. In that event, the inclusion of such interest under 'Assets' must be disclosed in the notes on the accounts.

Article 36

By way of derogation from Article 35 (1) (c) (cc), the Member States may allow investment companies within the meaning of Article 5 (2) to set off value adjustments to investments directly against 'Capital and reserves'. The amounts in question must be shown separately under 'Liabilities' in the balance sheet.

Article 37

1. Article 34 shall apply to costs of research and development. In exceptional cases, however, the Member States may permit derogations from Article 34 (1) (a). In that case, they may also provide for derogations from Article 34 (1) (b). Such derogations and the reasons for them must be disclosed in the notes on the accounts.

2. Article 34 (1) (a) shall apply to goodwill. The Member States may, however, permit companies to write goodwill off systematically over a limited period exceeding five years provided that this period does not exceed the useful economic life of the asset and is disclosed in the notes on the accounts together with the supporting reasons therefore.

Article 38

Tangible fixed assets, raw materials and consumables which are constantly being replaced and the overall

value of which is of secondary importance to the undertaking may be shown under 'Assets' at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

Article 39

1. (a) Current assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.

(b) Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.

(c) The Member States may permit exceptional value adjustments where, on the basis of a reasonable commercial assessment, these are necessary if the valuation of these items is not to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes on the accounts.

(d) Valuation at the lower value provided for in (b) and (c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

(e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes on the accounts.

2. The definitions of purchase price and of production cost given in Article 35 (2) and (3) shall apply. The Member States may also apply Article 35 (4). Distribution costs may not be included in production costs.

Article 40

1. The Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or by the 'first in, first out' (FIFO) method, the 'last in, first out' (LIFO) method, or some similar method.

2. Where the value shown in the balance sheet, following application of the methods of calculation specified in paragraph 1, differs materially, at the balance sheet date, from the value on the basis of the last known market value prior to the balance sheet date, the amount of that difference must be disclosed in total by category in the notes on the accounts.

Article 41

1. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes on the accounts.

2. The amount of this difference must be written off by a reasonable amount each year and completely written off no later than the time of repayment of the debt.

Article 42

Provisions for liabilities and charges may not exceed in amount the sums which are necessary.

The provisions shown in the balance sheet under 'Other provisions' must be disclosed in the notes on the accounts if they are material.

SECTION 8

Contents of the notes on the accounts

Article 43

1. In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

(1) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;

(2) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only. The information

concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and less than 50 % of its capital is held (directly or indirectly) by the company;

(3) the number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorized capital, without prejudice as far as the amount of this capital is concerned to Article 2 (1) (e) of Directive 68/151/EEC or to Article 2 (c) of Directive 77/91/EEC;

(4) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class;

(5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;

(6) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in Articles 9 and 10;

(7) the total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately;

(8) the net turnover within the meaning of Article 28, broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another;

(9) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down as provided for in Article 23 (6);

(10) the extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;

(11) the difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;

(12) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category;

(13) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category.

2. Pending subsequent coordination, the Member States need not apply paragraph 1 (2) to financial holding companies within the meaning of Article 5 (3).

Article 44

The Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

Article 45

1. The Member States may allow the disclosures prescribed in Article 43 (1) (2):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which Article 43 (1) (2) relates. The Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed by Article 43 (1) (8).

The Member States may permit the companies referred to in Article 27 to omit the disclosures prescribed by Article 43 (1) (8). Article 12 shall apply.

SECTION 9

Contents of the annual report

Article 46

1. The annual report must include at least a fair review of the development of the company's business and of its position.

2. The report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the company's likely future development;

(c) activities in the field of research and development;

(d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

SECTION 10

Publication

Article 47

1. The annual accounts, duly approved, and the annual report, together with the opinion submitted by the person responsible for auditing the accounts, shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report free of charge upon request.

2. By way of derogation from paragraph 1, the Member States may permit the companies referred to in Article 11 to publish:

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9 and in D (II) in Article 10, but in total for all the items concerned; and

(b) abridged notes on their accounts without the explanations required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

In addition, the Member States may relieve such companies from the obligation to publish their profit and loss accounts and annual reports and the opinions of the persons responsible for auditing the accounts.

3. The Member States may permit the companies mentioned in Article 27 to publish:

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10 disclosing separately, either in the balance sheet or in the notes on the accounts:

— C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6) and D (III) (1) and (2) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities' in Article 9,

— C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6), D (III) (1) and (2), F (1), (2), (6), (7) and (9) and (I) (1), (2), (6), (7) and (9) in Article 10,

— the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9, in total for all the items concerned and separately for D (II) (2) and (3) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities',

— the information required in brackets in D (II) in Article 10, in total for all the items

concerned, and separately for D (II) (2) and (3);

(b) abridged notes on their accounts without the information required in Article 43 (1) (5), (6), (8), (10) and (11). However, the notes on the accounts must give the information specified in Article 43 (1) (6) in total for all the items concerned.

This paragraph shall be without prejudice to paragraph 1 in so far as it relates to the profit and loss account, the annual report and the opinion of the person responsible for auditing the accounts.

Article 12 shall apply.

Article 48

Whenever the annual accounts and the annual report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of his report. If the person responsible for auditing the accounts has made any qualifications or refused to report upon the accounts, that fact must be disclosed and the reasons given.

Article 49

If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the register in which the accounts have been filed in accordance with Article 47 (1). Where such filing has not yet been effected, the fact must be disclosed. The report issued by the person responsible for auditing the accounts may not accompany this publication, but it must be disclosed whether the report was issued with or without qualification, or was refused.

Article 50

The following must be published together with the annual accounts, and in like manner:

— the proposed appropriation of the profit or treatment of the loss,

— the appropriation of the profit or treatment of the loss,

where these items do not appear in the annual accounts.

SECTION 11

Auditing

Article 51

1. (a) Companies must have their annual accounts audited by one or more persons authorized by national law to audit accounts.

(b) The person or persons responsible for auditing the accounts must also verify that the annual report is consistent with the annual accounts for the same financial year.

2. The Member States may relieve the companies referred to in Article 11 from the obligation imposed by paragraph 1.

Article 12 shall apply.

3. Where the exemption provided for in paragraph 2 is granted the Member States shall introduce appropriate sanctions into their laws for cases in which the annual accounts or the annual reports of such companies are not drawn up in accordance with the requirements of this Directive.

SECTION 12

Final provisions

Article 52

1. A Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Committee shall be convened by the chairman either on his own initiative or at the request of one of its members.

Article 53

1. For the purposes of this Directive, the European unit of account shall be that defined by Commission Decision No 3289/75/ECSC of 18 December 1975 (1). The equivalent in national currency shall be calculated initially at the rate obtaining on the date of adoption of this Directive.

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in European units of account in this Directive, in the light of economic and monetary trends in the Community.

Article 54

This Directive shall not affect laws in the Member States requiring that the annual accounts of companies not falling within their jurisdiction be filed in a register in which branches of such companies are listed.

Article 55

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. The Member States may stipulate that the provisions referred to in paragraph 1 shall not apply until 18 months after the end of the period provided for in that paragraph.

That period of 18 months may, however, be five years:

(a) in the case of unregistered companies in the United Kingdom and Ireland;

(b) for purposes of the application of Articles 9 and 10 and Articles 23 to 26 concerning the layouts for the balance sheet and the profit and loss account, where a Member State has brought other layouts for these documents into force not more than three years before the notification of this Directive;

(c) for purposes of the application of this Directive as regards the calculation and disclosure in balance sheets of depreciation relating to assets covered by the asset items mentioned in Article 9, C (II) (2) and (3), and Article 10, C (II) (2) and (3);

(d) for purposes of the application of Article 47 (1) of this Directive except as regards companies already under an obligation of publication under Article 2 (1) (f) of Directive 68/151/EEC. In this case the second subparagraph of Article 47 (1) of this Directive shall apply to the annual accounts and to the opinion drawn up by the person responsible for auditing the accounts;

(e) for purposes of the application of Article 51 (1) of this Directive.

Furthermore, this period of 18 months may be extended to eight years for companies the principal object of which is shipping and which are already in existence on the entry into force of the provisions referred to in paragraph 1.

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

Article 56

The obligation to show in the annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, and the obligation to provide information concerning these undertakings in accordance with Article 13 (2), 14 or 43 (1) (7), shall enter into force at the same time as a Council Directive on consolidated accounts.

Article 57

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directives 68/151/EEC and 77/91/EEC, the Member States need not apply to the dependent companies of any group governed by their national laws the provisions of this Directive concerning the content, auditing and publication of the annual accounts of such dependent companies where the following conditions are fulfilled:

(a) the dominant company must be subject to the laws of a Member State;

(b) all shareholders or members of the dependent company must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the dominant company must have declared that it guarantees the commitments entered into by the dependent company;

(d) the declarations referred to in (b) and (c) must be published by the dependent company in accordance with the first subparagraph of Article 47 (1);

(e) the annual accounts of the dependent company must be consolidated in the group's annual accounts;

(1) OJ No L 327, 19. 12. 1975, p. 4.

(f) the exemption concerning the preparation, auditing and publication of the annual accounts of the dependent company must be disclosed in the notes on the group's annual accounts.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

Article 58

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directive 77/91/EEC, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of this Directive concerning the auditing and publication of the profit and loss accounts of such dominant companies where the following conditions are fulfilled:

(a) this exemption must be published by the dominant company in accordance with Article 47 (1);

(b) the annual accounts of the dominant company must be consolidated in the group's annual accounts;

(c) the exemption concerning the auditing and publication of the profit and loss account of the dominant company must be mentioned in the notes on the group's annual accounts;

(d) the profit or loss of the dominant company, determined in accordance with the principles of this Directive, must be shown in the balance sheet of the dominant company.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

Article 59

Pending subsequent coordination, the Member States may permit the valuation of holdings in affiliated undertakings by the equity method provided the following conditions are fulfilled:

(a) the use of this method of valuation must be disclosed in the notes on the accounts of a company having such holdings;

(b) the amount of any differences existing when such holdings were acquired between their purchase price and the percentage of the capital which they represent, including the affiliated undertaking's reserves, profit and loss and profits and losses brought forward, must be shown separately in the balance sheet or in the notes on the accounts of a company having such holdings;

(c) the purchase price of these holdings shall be increased or reduced in the balance sheet of a company having such holdings by the profits or losses realized by the affiliated undertaking according to the percentage of capital held;

(d) the amounts specified in subparagraph (c) shall be shown each year in the profit and loss account of a company having such holdings as a separate item with an appropriate heading;

(e) when an affiliated undertaking distributes dividends to a company having such holdings, their book values shall be reduced accordingly;

(f) when the amounts shown in the profit and loss account in accordance with subparagraph (d) exceed the amounts of dividends already received or the payment of which can be claimed, the amount of the differences must be placed in a reserve which cannot be distributed to shareholders.

Article 60

Pending subsequent coordination, the Member States may prescribe that investments in which investment companies within the meaning of Article 5 (2) have invested their funds shall be valued on the basis of their market value.

In that case, the Member States may also waive the obligation on investment companies with variable capital to show separately the value adjustments referred to in Article 36.

Article 61

Until the entry into force of a Council Directive on consolidated accounts, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of Article 43 (1) (2) concerning the amount of capital and reserves and the profits and losses of the undertakings concerned if the annual accounts of such undertakings are

consolidated into the group's annual accounts or if the holdings in those undertakings are valued by the equity method.

Article 62

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1978.

For the Council

The President

K. von DOHNANYI

18. 7. 83 Official Journal of the European Communities No L 193/1

II

(Acts whose publication is not obligatory)

COUNCIL

SEVENTH COUNCIL DIRECTIVE
of 13 June 1983
based on the Article 54 (3) (g) of the Treaty on consolidated accounts

(83/349/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC (4) on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC (4) on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

Whereas the power of control is based on a majority of voting rights but also of those in which it is based on agreements, where these are permitted; whereas, furthermore, Member States in which the possibility occurs must be permitted to cover cases in which in certain circumstances control has been effectively exercised on the basis of a minority holding; whereas the Member States must be permitted to cover the case of bodies of undertakings in which the undertakings exist on an equal footing with each other;

Whereas the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with share capital; whereas such protection implies the principle of the preparation of consolidated accounts where such a company is a member of a body of undertakings, and that such accounts must be drawn up at least where such a company is a parent undertaking; whereas, furthermore, the cause of full information also requires that a subsidiary undertaking which is itself a parent undertaking draw up consolidated accounts; whereas, nevertheless, such a parent undertaking may, and, in certain circumstances, must be exempted from the obligation to draw up such consolidated accounts provided that its members and third parties are sufficiently protected;

Whereas, for bodies of undertakings not exceeding a certain size, exemption from the obligation to prepare consolidated accounts may be justified; whereas, accordingly, maximum limits must be set for such exemptions; whereas it follows therefrom that the Member States may either provide that it is sufficient to exceed the limit of one only of the three criteria for the exemption not to apply or adopt limits lower than those prescribed in the Directive;

(1) OJ No C 121, 2. 6. 1976, p. 2.
(2) OJ No C 163, 10. 7. 1978, p. 60.
(3) OJ No C 75, 26. 3. 1977, p. 5.
(4) OJ No L 222, 14. 8. 1978, p. 11.

Whereas consolidated accounts must give a true and fair view of the assets and liabilities, the financial position and the profit and loss of all the undertakings consolidated taken as a whole; whereas, therefore, consolidation should in principle include all of those undertakings; whereas such consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the interests of persons outwith such bodies; whereas, however, the necessary corrections must be made to eliminate the effects of the financial relations between the undertakings consolidated;

Whereas a number of principles relating to the preparation of consolidated accounts and valuation in the context of such accounts must be laid down in order to ensure that items are disclosed consistently, and may readily be compared not only as regards the methods used in their valuation but also as regards the periods covered by the accounts;

Whereas participating interests in the capital of undertakings over which undertakings included in a consolidation exercise significant influence must be included in consolidated accounts by means of the equity method;

Whereas the notes on consolidated accounts must give details of the undertakings to be consolidated;

Whereas certain derogations originally provided for on a transitional basis in Directive 78/660/EEC may be continued subject to review at a later date,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Conditions for the preparation of consolidated accounts

Article 1

1. A Member State shall require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking):

(a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or

(c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or

(d) is a shareholder in or member of an undertaking, and:

(aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

(bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

The Member States shall prescribe at least the arrangements referred to in (bb) above.

They may make the application of (aa) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.

However, (aa) above shall not apply where another undertaking has the rights referred to in subparagraphs (a), (b) or (c) above with regard to that subsidiary undertaking.

2. Apart from the cases mentioned in paragraph 1 above and pending subsequent coordination, the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking) holds a participating interest as defined in Article 17 of Directive 78/660/EEC in another undertaking (a subsidiary undertaking), and:

(a) it actually exercises a dominant influence over it; or

(b) it and the subsidiary undertaking are managed on a unified basis by the parent undertaking.

Article 2

1. For the purposes of Article 1 (1) (a), (b) and (d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

2. For the purposes of Article 1 (1) (a), (b) and (d), the rights mentioned in paragraph 1 above must be reduced by the rights:

(a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or

(b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

3. For the purposes of Article 1 (1) (a) and (c), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

Article 3

1. Without prejudice to Articles 13, 14 and 15, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

2. For the purposes of paragraph 1 above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertakings to be consolidated.

Article 4

1. For the purposes of this Directive, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the following types of company:

(a) *in Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

(b) *in Belgium:*

la société anonyme / de naamloze vennootschap – la société en commandite par actions / de commanditaire vennootschap op aandelen – la société de personnes à responsabilité limitée / de personenvennootschap met beperkte aansprakelijkheid;

(c) *in Denmark:*

aktieselskaber, kommanditaktieselskaber, anparts-selskaber;

(d) *in France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(e) *in Greece:*

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

(f) *in Ireland:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

(g) *in Italy:*

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

(h) *in Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(i) *in the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

(j) *in the United Kingdom:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. A Member State may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not established as one of the types of company listed in paragraph 1 above.

Article 5

1. A Member State may grant exemption from the obligation imposed in Article 1 (1) where the parent

undertaking is a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC, and:

(a) it has not intervened during the financial year, directly or indirectly, in the management of a subsidiary undertaking;

(b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of a subsidiary undertaking's administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the parent undertaking with majority voting rights or member of the administrative, management or supervisory bodies of that undertaking or of a member thereof with majority voting rights is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the parent undertaking or of any of its subsidiary undertakings;

(c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year; and

(d) the exemption is granted by an administrative authority after fulfilment of the above conditions has been checked.

2. (a) Where a financial holding company has been exempted, Article 43 (2) of Directive 78/660/EEC shall not apply to its annual accounts with respect to any majority holdings in subsidiary undertakings as from the date provided for in Article 49 (2).

(b) The disclosures in respect of such majority holdings provided for in point 2 of Article 43 (1) of Directive 78/660/EEC may be omitted when their nature is such that they would be seriously prejudicial to the company, to its shareholders or members or to one of its subsidiaries. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

Article 6

1. Without prejudice to Articles 4 (2) and 5, a Member State may provide for an exemption from the obligation imposed in Article 1 (1) if as at the balance sheet date of a parent undertaking the undertakings to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria laid down in Article 27 of Directive 78/660/EEC.

2. A Member State may require or permit that the set-off referred to in Article 19 (1) and the elimination referred to in Article 26 (1) (a) and (b) be not effected when the aforementioned limits are calculated. In that case, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.

3. Article 12 of Directive 78/660/EEC shall apply to the above criteria.

4. This Article shall not apply where one of the undertakings to be consolidated is a company the securities of which have been admitted to official listing on a stock exchange established in a Member State.

5. For 10 years after the date referred to in Article 49 (2), the Member States may multiply the criteria expressed in ECU by up to 2,5 and may increase the average number of persons employed during the financial year to a maximum of 500.

Article 7

1. Notwithstanding Articles 4 (2), 5 and 6, a Member State shall exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a Member State in the following two cases:

(a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or

(b) where that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.

In so far as the laws of a Member State prescribe consolidation in this case at the time of the adoption of this Directive, that Member State need not apply this provision for 10 years after the date referred to in Article 49 (2).

2. Exemption shall be conditional upon compliance with all of the following conditions:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;

(b) (aa) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;

(bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above, the report by the person responsible for auditing those accounts and, where appropriate, the appendix referred to in Article 9 must be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 38. That Member State may require that those documents be published in its official language and that the translation be certified;

(c) the notes on the annual accounts of the exempted undertaking must disclose:

(aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and

(bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

3. A Member State need not, however, apply this Article to companies the securities of which have been admitted to official listing on a stock exchange established in a Member State.

Article 8

1. In cases not covered by Article 7 (1), a Member State may, without prejudice to Articles 4 (2), 5 and 6, exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in Article 7 (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated accounts at least six months before the end of the financial year. The Member States may fix that proportion at not more than 10% for public limited liability companies and for limited partnerships with share capital, and at not more than 20% for undertakings of other types.

2. A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated accounts described in Article 7 (2) (a) must also be governed by its national law.

3. A Member State may not make exemption subject to conditions concerning the preparation and auditing of the consolidated accounts referred to in Article 7 (2) (a).

Article 9

1. A Member State may make the exemptions provided for in Articles 7 and 8 dependent upon the disclosure of additional information, in accordance with this Directive, in the consolidated accounts referred to in Article 7 (2) (a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated accounts and are in the same circumstances.

2. A Member State may also make exemption dependent upon the disclosure, in the notes on the consolidated accounts referred to in Article 7 (2) (a), or in the annual accounts of the exempted undertaking, of all or some of the following information regarding the body of undertakings, the parent undertaking of which it is exempting from the obligation to draw up consolidated accounts:

— the amount of the fixed assets,

— the net turnover,

— the profit or loss for the financial year and the amount of the capital and reserves,

— the average number of persons employed during the financial year.

Article 10

Articles 7 to 9 shall not affect any Member State's legislation on the drawing up of consolidated accounts or consolidated annual reports in so far as those documents are required:

— for the information of employees or their representatives, or

— by an administrative or judicial authority for its own purposes.

Article 11

1. Without prejudice to Articles 4 (2), 5 and 6, a Member State may exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;

(b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with this Directive or in a manner equivalent to consolidated accounts and consolidated annual reports drawn up in accordance with this Directive;

(c) the consolidated accounts referred to in (a) above must have been audited by one or more persons authorized to audit accounts under the national law governing the undertaking which drew them up.

2. Articles 7 (2) (b) (bb) and (c) and 8 to 10 shall apply.

3. A Member State may provide for exemptions under this Article only if it provides for the same exemptions under Articles 7 to 10.

Article 12

1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

(a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or

(b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.

2. Where paragraph 1 above is applied, undertakings related as defined in that paragraph together with all of their subsidiary undertakings shall be undertakings to be consolidated, as defined in this Directive, where one or more of those undertakings is established as one of the types of company listed in Article 4.

3. Articles 3, 4 (2), 5, 6, 13 to 28, 29 (1), (3), (4) and (5), 30 to 38 and 39 (2) shall apply to the consolidated accounts and the consolidated annual report covered by this Article, references to parent undertakings being understood to refer to all the undertakings specified in paragraph 1 above. Without prejudice to Article 19 (2), however, the items 'capital', 'share premium account', 'revaluation reserve', 'reserves', 'profit or loss brought forward', and 'profit or loss for the financial year' to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 1.

Article 13

1. An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 16 (3).

2. Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated accounts if, as a whole, they are material for the purposes of Article 16 (3).

3. In addition, an undertaking need not be included in consolidated accounts where:

(a) severe long-term restrictions substantially hinder:

(aa) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or

(bb) the exercise of unified management of that undertaking where it is in one of the relationships defined in Article 12 (1); or

(b) the information necessary for the preparation of consolidated accounts in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or

(c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

Article 14

1. Where the activities of one or more undertakings to be consolidated are so different that their inclusion in the consolidated accounts would be incompatible with the obligation imposed in Article 16 (3), such undertakings must, without prejudice to Article 33 of this Directive, be excluded from the consolidation.

2. Paragraph 1 above shall not be applicable merely by virtue of the fact that the undertakings to be consolidated

are partly industrial, partly commercial, and partly provide services, or because such undertakings carry on industrial or commercial activities involving different products or provide different services.

3. Any application of paragraph 1 above and the reasons therefor must be disclosed in the notes on the accounts. Where the annual or consolidated accounts of the undertakings thus excluded from the consolidation are not published in the same Member State in accordance with Directive 68/151/EEC (1), they must be attached to the consolidated accounts or made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 15

1. A Member State may, for the purposes of Article 16 (3), permit the omission from consolidated accounts of any parent undertaking not carrying on any industrial or commercial activity which holds shares in a subsidiary undertaking on the basis of a joint arrangement with one or more undertakings not included in the consolidated accounts.

2. The annual accounts of the parent undertaking shall be attached to the consolidated accounts.

3. Where use is made of this derogation, either Article 59 of Directive 78/660/EEC shall apply to the parent undertaking's annual accounts or the information which would have resulted from its application must be given in the notes on those accounts.

SECTION 2

The preparation of consolidated accounts

Article 16

1. Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit-and-loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. Consolidated accounts shall be drawn up clearly and in accordance with this Directive.

3. Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.

4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3 above, additional information must be given.

5. Where, in exceptional cases, the application of a provision of Articles 17 to 35 and 39 is incompatible with the obligation imposed in paragraph 3 above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. A Member State may require or permit the disclosure in the consolidated accounts of other information as well as that which must be disclosed in accordance with this Directive.

Article 17

1. Articles 3 to 10, 13 to 26 and 28 to 30 of Directive 78/660/EEC shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Directive and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.

2. Where there are special circumstances which would entail undue expense a Member State may permit stocks to be combined in the consolidated accounts.

Article 18

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

Article 19

1. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings:

(a) That set-off shall be effected on the basis of book values as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as

(1) OJ No L 65, 14. 3. 1968, p. 8.

possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.

(b) A Member State may require or permit set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.

(c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes on the accounts. Where the offsetting of positive and negative differences is authorized by a Member State, a breakdown of such differences must also be given in the notes on the accounts.

2. However, paragraph 1 above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with Directive 78/660/EEC.

Article 20

1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that:

(a) the shares held represent at least 90 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares of the kind described in Article 29 (2) (a) of Directive 77/91/EEC (1);

(b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and

(c) the arrangement referred to in (b) above did not include a cash payment exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares issued.

2. Any difference arising under paragraph 1 above shall be added to or deducted from consolidated reserves as appropriate.

3. The application of the method described in paragraph 1 above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes on the accounts.

Article 21

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

Article 22

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit-and-loss account.

Article 23

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit-and-loss account as a separate item with an appropriate heading.

Article 24

Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 25 to 28.

Article 25

1. The methods of consolidation must be applied consistently from one financial year to another.

2. Derogations from the provisions of paragraph 1 above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

Article 26

1. Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:

(1) OJ No L 26, 31. 1. 1977, p. 1.

(a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

(b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

(c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. Pending subsequent coordination, however, a Member State may allow the eliminations mentioned above to be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.

2. A Member State may permit derogations from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes on the consolidated accounts.

3. Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 16 (3).

Article 27

1. Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.

2. A Member State may, however, require or permit consolidated accounts to be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.

3. Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

Article 28

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, a Member State may require or permit this obligation to be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit-and-loss account.

Article 29

1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.

2. (a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, a Member State may require or permit the use in consolidated accounts of other methods of valuation in accordance with the abovementioned Articles of Directive 78/660/EEC.

(b) Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts and the reasons therefor given

3. Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 16 (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes on the consolidated accounts and the reasons for them given.

4. Account shall be taken in the consolidated balance sheet and in the consolidated profit-and-loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

5. Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. A Member State may, however, require or permit that such assets be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes on the consolidated accounts.

Article 30

1. A separate item as defined in Article 19 (1) (c) which corresponds to a positive consolidation difference shall be dealt with in accordance with the rules laid down in Directive 78/660/EEC for the item 'goodwill'.

2. A Member State may permit a positive consolidation difference to be immediately and clearly deducted from reserves.

Article 31

An amount shown as a separate item, as defined in Article 19 (1) (c), which corresponds to a negative consolidation difference may be transferred to the consolidated profit-and-loss account only:

(a) where that difference corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, in so far as such an expectation materializes; or

(b) in so far as such a difference corresponds to a realized gain.

Article 32

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, a Member State may require or permit the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.

2. Articles 13 to 31 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph 1 above.

3. Where this Article is applied, Article 33 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 33.

Article 33

1. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 shall apply.

2. When this Article is applied for the first time to a participating interest covered by paragraph 1 above, that participating interest shall be shown in the consolidated balance sheet either:

(a) at its book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or

(b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.

(c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes on the accounts must indicate whether (a) or (b) has been used.

(d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 29 (2),

they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be rev.lued by the methods used for consolidation. Where such revaluation has not been carried out that fact nust be disclosed in the notes on the accounts. A Meml er State may require such revaluation.

4. The book value referred to in paragr. ph 2 (a) above, or the amount corresponding to the prop•rtion of the associated undertaking's capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has tak :n place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest; it shall be reduc•l by the amount of the dividends relating to that part.cipating interest.

5. In so far as the positive difference refer.•d to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 30 and 39 (3).

6. The proportion of the profit or loss of the associated undertakings attributable to such part cipating interests shall be shown in the consolidated profit and-loss account as a separate item under an apj ropriate heading.

7. The eliminations referred to in Article . 6 (1) (c) shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) shall apply.

8. Where an associated undertaking dr iws up consolidated accounts, the foregoing provisi ns shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where the participating interest in the capital of the a:sociated undertaking is not material for the purj oses of Article 16 (3).

Article 34

In addition to the information required under other provisions of this Directive, the notes on the ıccounts must set out information in respect of the f ollowing matters at least:

1. The valuation methods applied to the vari us items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

2. (a) The names and registered offices of the undertakings included in the consolid:tion; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Articles 1 and 12 (1) following application of Article 2 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 1 (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.

   (b) The same information must be given in respect of undertakings exluded from a consolidation pursuant to Articles 13 and 14 and, without prejudice to Article 14 (3), an explanation must be given for the exclusion of the undertakings referred to in Article 13.

3. (a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 33 (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

   (b) The same information must be given in respect of the associated undertakings referred to in Article 33 (9), together with the reasons for applying that provision.

4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 32, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

5. The name and registered office of each of the undertakings, other than those referred to in paragraphs 2, 3 and 4 above, in which undertakings included in the consolidation and those excluded pursuant to Article 14, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 16 (3), it is of

negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50 % of its capital is held (directly or indirectly) by the abovementioned undertakings.

6. The total amount shown as owed in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount shown as owed in the consolidated balance sheet and covered by valuable security furnished by undertakings included in the consolidation, with an indication of the nature and form of the security.

7. The total amount of any financial commitments that are not included in the consolidated balance sheet, in so far as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

8. The consolidated net turnover as defined in Article 28 of Directive 78/660/EEC broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organized, these categories and markets differ substantially from one another.

9. (a) The average number of persons employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit-and-loss account, the staff costs relating to the financial year.

   (b) The average number of persons employed during the financial year by undertakings to which Article 32 has been applied shall be disclosed separately.

10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42 of Directive 78/660/EEC and in Article 29 (5) of this Directive, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.

11. The difference between the tax charged to the consolidated profit-and-loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.

12. The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category. A Member State may require that emoluments granted by reason of responsibilities assumed in undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

13. The amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category. A Member State may require that advances and credits granted by undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

Article 35

1. A Member State may allow the disclosures prescribed in Article 34 (2), (3), (4) and (5):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed in Article 34 (8).

SECTION 3

The consolidated annual report

Article 36

1. The consolidated annual report must include at least a fair review of the development of business and the position of the undertakings included in the consolidation taken as a whole.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as a whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts.

SECTION 4

The auditing of consolidated accounts

Article 37

1. An undertaking which draws up consolidated accounts must have them audited by one or more persons authorized to audit accounts under the laws of the Member State which govern that undertaking.

2. The person or persons responsible for auditing the consolidated accounts must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.

SECTION 5

The publication of consolidated accounts

Article 38

1. Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the person responsible for auditing the consolidated accounts, shall be published for the undertaking which drew up the consolidated accounts as laid down by the laws of the Member State which govern it in accordance with Article 3 of Directive 68/151/EEC.

2. The second subparagraph of Article 47 (1) of Directive 78/660/EEC shall apply with respect to the consolidated annual report.

3. The following shall be substituted for the second subparagraph of Article 47 (1) of Directive 78/660/EEC: 'It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost'.

4. However, where the undertaking which drew up the consolidated accounts is not established as one of the types of company listed in Article 4 and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

5. Articles 48 and 49 of Directive 78/660/EEC shall apply.

6. The Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

SECTION 6

Transitional and final provisions

Article 39

1. When, for the first time, consolidated accounts are drawn up in accordance with this Directive for a body of undertakings which was already connected, as described in Article 1 (1), before application of the provisions referred to in Article 49 (1), a Member State may require or permit that, for the purposes of Article 19 (1), account be taken of the book value of a holding and the proportion of the capital and reserves that it represents as at a date before or the same as that of the first consolidation.

2. Paragraph 1 above shall apply *mutatis mutandis* to the valuation for the purposes of Article 33 (2) of a holding, or of the proportion of capital and reserves that

it represents, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 32.

3. Where the separate item defined in Article 19 (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Directive, a Member State may:

(a) for the purposes of Article 30 (1), permit the calculation of the limited period of more than five years provided for in Article 37 (2) of Directive 78/660/EEC as from the date of the first consolidated accounts drawn up in accordance with this Directive; and

(b) for the purposes of Article 30 (2), permit the deduction to be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Directive.

Article 40

1. Until expiry of the deadline imposed for the application in national law of the Directives supplementing Directive 78/660/EEC as regards the harmonization of the rules governing the annual accounts of banks and other financial institutions and insurance undertakings, a Member State may derogate from the provisions of this Directive concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes on the accounts:

(a) with regard to any undertaking to be consolidated which is a bank, another financial institution or an insurance undertaking;

(b) where the undertakings to be consolidated comprise principally banks, financial institutions or insurance undertakings.

They may also derogate from Article 6, but only in so far as the limits and criteria to be applied to the above undertakings are concerned.

2. In so far as a Member State has not required all undertakings which are banks, other financial institutions or insurance undertakings to draw up consolidated accounts before implementation of the provisions referred to in Article 49 (1), it may, until its national law implements one of the Directives mentioned in paragraph 1 above, but not in respect of financial years ending after 1993:

(a) suspend the application of the obligation imposed in Article 1 (1) with respect to any of the above undertakings which is a parent undertaking. That fact must be disclosed in the annual accounts of the parent undertaking and the information prescribed in point 2 of Article 43 (1) of Directive 78/660/EEC must be given for all subsidiary undertakings;

(b) where consolidated accounts are drawn up and without prejudice to Article 33, permit the omission from the consolidation of any of the above undertakings which is a subsidiary undertaking. The information prescribed in Article 34 (2) must be given in the notes on the accounts in respect of any such subsidiary undertaking.

3. In the cases referred to in paragraph 2 (b) above, the annual or consolidated accounts of the subsidiary undertaking must, in so far as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent undertaking or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 41

1. Undertakings which are connected as described in Article 1 (1) (a), (b) and (d) (bb), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this Directive and of Directive 78/660/EEC.

2. Where a Member State prescribes the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), the undertakings which are connected as described in those Articles and those other undertakings which are connected similarly, or are connected as described in paragraph 1 above to one of the aforementioned undertakings, shall be affiliated undertakings as defined in paragraph 1.

3. Even where a Member State does not prescribe the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), it may apply paragraph 2 of this Article.

4. Articles 2 and 3 (2) shall apply.

5. When a Member State applies Article 4 (2), it may exclude from the application of paragraph 1 above affiliated undertakings which are parent undertakings and which by virtue of their legal form are not required by

that Member State to draw up consolidated acc ounts in accordance with the provisions of this Directive. as well as parent undertakings with a similar legal forn .

Article 42

The following shall be substituted for Articl 56 of Directive 78/660/EEC:

'Article 56

1. The obligation to show in annual acco ints the items prescribed by Articles 9, 10 and 2.: to 26 which relate to affiliated undertakings, as de ined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerni g these undertakings in accordance with Articles 13 2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.

2. The notes on the accounts must also disclose:

(a) the name and registered office of the und ertaking which draws up the consolidated accoun s of the largest body of undertakings of which the company forms part as a subsidiary undertaking;

(b) the name and registered office of the und ertaking which draws up the consolidated accounts of the smallest body of undertakings of wh ich the company forms part as a subsidiary und ertaking and which is also included in the body of undertakings referred to in (a) above;

(c) the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.'

Article 43

The following shall be substituted for Article 57 of Directive 78/660/EEC:

'Article 57

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive co ncerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

(a) the parent undertaking must be subject to the laws of a Member State;

(b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;

(d) the declarations referred to in (b) and (c must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;

(e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;

(f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC.'

Article 44

The following shall be substituted for Article 58 of Directive 78/660/EEC:

'Article 58

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

(a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;

(b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;

(c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company.'

Article 45

The following shall be substituted for Article 59 of Directive 78/660/EEC:

'Article 59

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items "shares in affiliated undertakings" or "participating interests", as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.

2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:

(a) at its book value calculated in accordance with Articles 31 to 42. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or

(b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Articles 31 to 42 shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.

(c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the accounts must indicate whether (a) or (b) above has been used.

(d) In addition, when applying (a) and (b) above, a Member State may require or permit calculation of the difference as at the date of acquisition of the participating interest referred to in paragraph 1 or, where the acquisition took place in two or more stages, as at the date as at which the holding became a participating interest within the meaning of paragraph 1 above.

3. Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph 1 above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes on the accounts where such revaluation has not been carried out. A Member State may require such revaluation.

4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.

5. In so far as a positive difference covered by paragraph 2 (a) or (b) above cannot be related to any category of asset or liability, it shall be dealt with in accordance with the rules applicable to the item "goodwill".

6. (a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph 1 above shall be shown in the profit-and-loss account as a separate item with an appropriate heading.

(b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.

(c) A Member State may require or permit that the proportion of the profit or loss attributable to the participating interests referred to in paragraph 1 above be shown in the profit-and-loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

7. The eliminations referred to in Article 26 (1) (c) of Directive 83/349/EEC shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) of that Directive shall apply.

8. Where an undertaking in which a participating interest within the meaning of paragraph 1 above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where a participating interest as defined in paragraph 1 is not material for the purposes of Article 2 (3).'

Article 46

The following shall be substituted for Article 61 of Directive 78/660/EEC:

'*Article 61*

A Member State need not apply the provisions of point 2 of Article 43 (1) of this Directive concerning the amount of capital and reserves and profits and losses of the undertakings concerned to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC:

(a) where the undertakings concerned are included in consolidated accounts drawn up by that parent undertaking, or in the consolidated accounts of a larger body of undertakings as referred to in Article 7 (2) of Directive 83/349/EEC; or

(b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 59, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 33 of Directive 83/349/EEC.'

Article 47

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on additions or amendments to this Directive.

Article 48

This Directive shall not affect laws in the Member States requiring that consolidated accounts in which undertakings not falling within their jurisdiction are included be filed in a register in which branches of such undertakings are listed.

Article 49

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990.

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

Article 50

1. Five years after the date referred to in Article 49 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise Articles 1 (1) (d) (second subparagraph), 4 (2), 5, 6, 7 (1), 12, 43 and 44 in the light of the experience acquired in applying this Directive, the aims of this Directive and the economic and monetary situation at the time.

2. Paragraph 1 above shall not affect Article 53 (2) of Directive 78/660/EEC.

Article 51

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1983.

For the Council

The President

H. TIETMEYER

5. Insurance Committee

91/675/EEC 253
Council Directive of 19 December 1991 setting up an Insurance Committee
(OJ L 374 31.12.1991 p. 32)

COUNCIL DIRECTIVE

of 19 December 1991

setting up an Insurance Committee

(91/675/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the Council shall confer on the Commission powers for the implementation of the rules which the Council lays down;

Whereas implementing measures are necessary for the application of Council directives on non-life insurance and life assurance; whereas, in particular, technical adaptations may from time to time be necessary to take account of developments in the insurance sector; whereas it is appropriate that these measures shall be taken in accordance with the procedure laid down in Article 2, procedure III, variant (b), of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (4);

Whereas it is necessary for this purpose to set up an Insurance Committee;

Whereas the establishment of an Insurance Committee does not rule out other forms of cooperation between authorities which supervise the taking up and pursuit of the business of insurance undertakings, and in particular cooperation within the Conference on Insurance Supervisory Authorities, which is in particular competent for the drafting of protocols implementing Community directives; whereas close cooperation between the Committee and the Conference would be particularly useful;

Whereas the examination of problems arising in non-life insurance and life assurance makes cooperation desirable between the competent authorities and the Commission; whereas it is appropriate to confer this task on the Insurance Committee; whereas it should furthermore be ensured that there is smooth coordination of the activities of this Committee with those of other committees of a similar nature set up by Community acts,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Commission shall be assisted by a committee called the 'Insurance Committee', hereinafter referred to as the 'Committee', composed of representatives of Member States and chaired by the representative of the Commission.

2. The Committee shall adopt its own rules of procedure.

Article 2

1. Where the Council, in the acts which it adopts in the field of direct non-life insurance and direct life assurance, confers on the Commission powers for the implementation of the rules which it lays down, the procedure set out in paragraph 2 shall apply.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the

(1) OJ No C 230, 15. 9. 1990, p. 5.
(2) OJ No C 240, 16. 9. 1991, p. 117 and OJ No C 305, 25. 11. 1991.
(3) OJ No C 102, 18. 4. 1991, p. 11.
(4) OJ No L 197, 18. 7. 1987, p. 33.

proposed measures shall be adopted by the Commission, save where the Commission has decided against the said measures by a simple majority.

Article 3

1. The Committee shall examine any question relating to the application of Community provisions concerning the insurance sector, and in particular Directives on direct insurance.

The Commission may also consult the Committee on new proposals it intends to submit to the Council as regards further coordination in the sphere of direct life assurance and direct non-life insurance.

2. The Committee shall not consider specific problems relating to individual insurance undertakings.

Article 4

The Committee shall assume its functions on 1 January 1992.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1991.

For the Council

The President

P. DANKERT

6. Insurance Intermediaries

6.1 **77/92/EEC** 257
Council **Directive** of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of **insurance agents and brokers** (ex ISIC group 630) and, in particular, transitionalmeasures n respect of those activities
(OJ L 26 31.1.1977 p. 14)

6.1.1. Amended by Treaty of Accession

- Greece (OJ L 291, 1979) see 2.2.4.
- Spain and Portugal
  (OJ L 302, 1985, p.156) see 2.2.4.

6.2. **92/48/EEC** 263
Commission Recommendation of 18 December 1991 on **insurance intermediaries**
(OJ L 19 28.01.1992 p. 32)

No L 26/14 Official Journal of the European Communities 31. 1. 77

COUNCIL DIRECTIVE

of 13 December 1976

on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities

(77/92/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57, 66 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

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

Whereas, pursuant to the Treaty, all discriminatory treatment based on nationality with regard to establishment and to the provision of services is prohibited from the end of the transitional period; whereas the principle of such national treatment applies in particular to the right to join professional organizations where the professional activities of the person concerned necessarily involve the exercise of this right;

Whereas not all Member States impose conditions for the taking up and pursuit of activities of insurance agent and broker; whereas in some cases there is freedom to take up and pursue such activities but in other cases there are strict provisions making access to the profession conditional upon possession of formal evidence of qualifications;

Whereas, in view of the differences between Member States as regards the scope of activities of insurance agent and broker, it is desirable to define as clearly as possible the activities to which this Directive is to apply;

Whereas, moreover, Article 57 of the Treaty provides that, in order to make it easier for persons to take up and pursue activities as self-employed persons, Directives are to be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States;

Whereas, in the absence of mutual recognition of diplomas or of immediate coordination, it nevertheless appears desirable to facilitate the effective exercise of freedom of establishment and freedom to provide services for the activities in question, in particular by the adoption of transitional measures of the kind envisaged in the General Programmes (3) in order to avoid undue constraint on the nationals of Member States in which the taking up of such activities is not subject to any conditions;

Whereas, in order to prevent such difficulties arising, the object of the transitional measures should be to allow, as sufficient qualification for taking up the activities in question in host Member States which have rules governing the taking up of such activities, the fact that the activity has been pursued in the Member State whence the foreign national comes for a reasonable and sufficiently recent period of time, in cases where previous training is not required, to ensure that the person concerned possesses professional knowledge equivalent to that required of the host Member State's own nationals;

Whereas, in view of the situation in the Netherlands, where insurance brokers are, depending on their professional knowledge, divided up into several categories, an equivalent system should be provided for in respect of nationals of other Member States who wish to take up an activity in one or other of the categories concerned; whereas the most appropriate and objective criterion for this purpose is the number of employees whom the person concerned has or has had working under him;

Whereas, where the activity of agent includes the exercise of a permanent authority from one or more insurance undertakings empowering the beneficiary, in respect of certain or all transactions falling within the normal scope of the business of the undertaking

(1) OJ No C 78, 2. 8. 1971, p. 13.
(2) OJ No C 113, 9. 11. 1971, p. 6.
(3) OJ No 2, 15. 1. 1962, pp. 32/62 and 36/62.

or undertakings concerned, to enter in the name of such undertaking or undertakings into commitments binding upon it or them, the person concerned must be able to take up the activity of broker in the host Member State;

Whereas the purpose of this Directive will disappear once the coordination of conditions for the taking up and pursuit of the activities in question and the mutual recognition of diplomas, certificates and other formal qualifications have been achieved;

Whereas, in so far as in Member States the taking up or pursuit of the activities referred to in this Directive is also dependent in the case of paid employees on the possession of professional knowledge and ability, this Directive should also apply to this category of persons in order to remove an obstacle to the free movement of workers and thereby to supplement the measures adopted in Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (1), as amended by Regulation (EEC) No 312/76 (2);

Whereas, for the same reason, the provisions laid down in respect of proof of good repute and proof of no previous bankruptcy should also be applicable to paid employees,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall adopt the measures defined in this Directive in respect of establishment or provision of services in their territories by natural persons and companies or firms covered by Title I of the General Programmes (hereinafter referred to as 'beneficiaries') wishing to pursue in a self-employed capacity the activities referred to in Article 2.

2. This Directive shall also apply to nationals of Member States who, as provided in Regulation (EEC) No 1612/68, wish to pursue as paid employees the activities referred to in Article 2.

Article 2

1. This Directive shall apply to the following activities falling within ex ISIC Group 630 in Annex III to the General Programme for the abolition of restrictions on freedom of establishment:

(a) professional activities of persons who, acting with complete freedom as to their choice of undertaking, bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;

(b) professional activities of persons instructed under one or more contracts or empowered to act in the name and on behalf of, or solely on behalf of, one or more insurance undertakings in introducing, proposing and carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or in assisting in the administration and performance of such contracts, in particular in the event of a claim;

(c) activities of persons other than those referred to in (a) and (b) who, acting on behalf of such persons, among other things carry out introductory work, introduce insurance contracts or collect premiums, provided that no insurance commitments towards or on the part of the public are given as part of these operations.

2. This Directive shall apply in particular to activities customarily described in the Member States as follows:

(a) activities referred to in paragraph 1 (a):

— *in Belgium:*

— Courtier d'assurance
Verzekeringsmakelaar,

— Courtier de réassurance
Herverzekeringsmakelaar;

— *in Denmark:*

— Juridiske og fysiske personer, som driver selvstændig virksomhed som formidler ved afsætning af forsikringskontrakter;

— *in Germany:*

— Versicherungsmakler,

— Rückversicherungsmakler;

— *in France:*

— Courtier d'assurance,

— Courtier d'assurance maritime,

— Courtier de réassurance;

(1) OJ No L 257, 19. 10. 1968, p. 2.
(2) OJ No L 39, 14. 2. 1976, p. 2.

— *in Ireland:*
  — Insurance broker,
  — Reinsurance broker;
— *in Italy:*
  — Mediatore di assicurazioni,
  — Mediatore di riassicurazioni;
— *in the Netherlands:*
  — Makelaar,
  — Assurantiebezorger,
  — Erkend assurantieagent,
  — Verzekeringsagent;
— *in the United Kingdom:*
  — Insurance broker;

(b) activities referred to in paragraph 1 (b):
— *in Belgium:*
  — Agent d'assurance
    Verzekeringsagent;
— *in Denmark:*
  — Forsikringsagent;
— *in Germany:*
  — Versicherungsvertreter;
— *in France:*
  — Agent général d'assurance;
— *in Ireland:*
  — Agent;
— *in Italy:*
  — Agente di assicurazioni;
— *in Luxembourg:*
  — Agent principal d'assurance,
  — Agent d'assurance;
— *in the Netherlands:*
  — Gevolmachtigd agent,
  — Verzekeringsagent;
— *in the United Kingdom:*
  — Agent;

(c) activities referred to in paragraph 1 (c):
— *in Belgium:*
  — Sous-agent
    Sub-agent;
— *in Denmark:*
  — Underagent;
— *in Germany:*
  — Gelegenheitsvermittler,
  — Inkassant;
— *in France:*
  — Mandataire,
  — Intermédiaire,
  — Sous-agent;
— *in Ireland:*
  — Sub-agent;
— *in Italy:*
  — Subagente;
— *in Luxembourg:*
  — Sous-agent;
— *in the Netherlands:*
  — Sub-agent;
— *in the United Kingdom:*
  — Sub-agent.

Article 3

Member States in which the taking up or pursuit of any activity referred to in Article 2 is subject to the fulfilment of certain qualifying conditions shall ensure that any beneficiary who applies therefor be provided, before he establishes himself or before he begins to pursue any activity on a temporary basis, with information as to the rules governing the profession which he proposes to pursue.

Article 4

Where in a Member State the taking up or pursuit of any activity referred to in Article 2 (1) (a) and (b) is subject to possession of general, commercial or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that one of the activities in question has been pursued in another Member State for any of the following periods:

(a) four consecutive years in an independent capacity or in a managerial capacity; or

(b) two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has worked for at least three years with one or more insurance agents or brokers or with one or more insurance undertakings; or

(c) one year in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by a competent professional body as fully satisfying its requirements.

Article 5

1. If a Member State makes the taking up or pursuit of any activity referred to in Article 2 (1) (a) dependent on more stringent requirements than those which it lays down in respect of the activities referred to in Article 2 (1) (b), it may in the case of the taking up or pursuit of the first-mentioned activity require this to have been pursued in another Member State in the branch of the profession referred to in Article 2 (1) (a) for:

(a) four consecutive years in an independent capacity or in a managerial capacity; or

(b) two consecutive years in an independent capacity or in a managerial capacity, where the beneficiary proves that he has worked for at least three years with one or more insurance agents or brokers or with one or more insurance undertakings; or

(c) one year in an independent capacity or in a managerial capacity, where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by a competent professional body as fully satisfying its requirements.

An activity pursued by the beneficiary in accordance with Article 2 (1) (b), where it includes the exercise of a permanent authority from one or more insurance undertakings empowering the person concerned, in respect of certain or all transactions falling within the normal scope of the business of the undertaking or undertakings concerned, to enter in the name of such undertaking or undertakings into commitments binding upon it or them, shall be regarded as equivalent to the activity referred to in Article 2 (1) (a).

2. However, in the Netherlands, the taking up or pursuit of the activities referred to in Article 2 (1) (a) shall in addition be subject to the following conditions:

— where the beneficiary wishes to work as a 'makelaar', he must have carried on the activities concerned in a business where he was in charge of at least 10 employees,

— where the beneficiary wishes to work as an 'assurantiebezorger', he must have carried on the activities concerned in a business where he was in charge of at least five employees,

— where the beneficiary wishes to work as an 'erkend assurantieagent', he must have carried on the activities concerned in a business where he was in charge of at least two employees.

Article 6

1. Where in a Member State the taking up or pursuit of an activity referred to in Article 2 (1) (c) is dependent on the possession of general, commercial or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for either of the following periods:

(a) two consecutive years either in an independent capacity or working with one or more insurance agents or brokers or with one or more insurance undertakings; or

(b) one year under the conditions specified under paragraph (a), where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by a competent professional body as fully satisfying its requirements.

2. The pursuit for at least one year of one of the activities referred to in Article 2 (1) (a) or (b) and receipt of the relevant training shall be regarded as satisfying the requirements laid down in paragraph 1.

Article 7

In the cases referred to in Articles 4, 5 and 6, pursuit of the activity in question shall not have ceased more than 10 years before the date when the application provided for in Article 9 (1) is made. However, where a shorter period is laid down in a Member State for its own nationals, that period must also be applied in respect of beneficiaries.

Article 8

1. A person shall be regarded as having pursued an activity in a managerial capacity within the meaning of Articles 4 and 5 (1) where he has pursued the corresponding activity:

(a) as manager of an undertaking or manager of a branch of an undertaking; or

(b) as deputy to the manager of an undertaking or as its authorized representative, where such post involved responsibility equivalent to that of the manager represented.

2. A person shall also be regarded as having pursued an activity in a managerial capacity within the meaning of Article 4 where his duties in an insurance undertaking have involved the management of agents or the supervision of their work.

3. The work referred to in Articles 4 (b) and 5 (1) (b) must have entailed responsibility in respect of the acquisition, administration and performance of contracts of insurance.

Article 9

1. Proof that the conditions laid down in Articles 4, 5, 6 and 7 are satisfied shall be established by a certificate, issued by the competent authority or body in the Member State of origin or Member State whence the person concerned comes, which the latter shall submit in support of his application to pursue one of the activities in question in the host Member State.

2. Member States shall, within the time limit laid down in Article 13, designate the authorities and bodies competent to issue the certificate referred to in paragraph 1 and shall forthwith inform the other Member States and the Commission thereof.

3. Within the time limit laid down in Article 13 every Member State shall also inform the other Member States and the Commission of the authorities and bodies to which an application to pursue in the host Member State an activity referred to in Article 2 and the documents in support thereof are to be submitted.

Article 10

1. Where a host Member State requires of its own nationals wishing to take up or pursue any activity referred to in Article 2 proof of good repute and proof that they have not previously been declared bankrupt, or proof of either one of these, it shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the Member State of origin or the Member State whence the foreign national comes showing that these requirements have been met.

2. Where the Member State of origin or the Member State whence the foreign national concerned comes does not issue the document referred to in paragraph 1 it may be replaced by a declaration on oath, — or, in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in the Member State of origin or the Member State whence that person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional body in the said country.

3. Documents issued in accordance with paragraphs 1 and 2 must not be produced more than three months after their date of issue.

4. Member States shall, within the time limit laid down in Article 13, designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 of this Article and shall forthwith inform the other Member States and the Commission thereof.

Within the time limit laid down in Article 13, each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in this Article are to be submitted in support of an application to carry on in the host Member State an activity referred to in Article 2.

5. Where in the host Member State proof of financial standing is required, that State shall regard certificates issued by banks in the Member State of origin or the Member State whence the foreign national concerned comes as equivalent to certificates issued in its own territory.

Article 11

A host Member State, where it requires its own nationals wishing to take up or pursue one of the activities referred to in Article 2 to take an oath or make a solemn declaration, and where the form of such oath or declaration cannot be used by nationals of other Member States, shall ensure that an appropriate and equivalent form of oath or declaration is offered to the persons concerned.

Article 12

This Directive shall remain applicable until the entry into force of provisions relating to the coordination of national rules concerning the taking up and pursuit of the activities in question.

Article 13

Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

Article 14

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 15

This Directive is addressed to the Member States.

Done at Brussels, 13 December 1976.

For the Council

The President

M. van der STOEL

COMMISSION RECOMMENDATION

of 18 December 1991

on insurance intermediaries

(92/48/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 155 thereof,

Whereas insurance intermediaries are an important factor in the distribution of insurance in the Member States; whereas the creation of the internal market will entail an increasing range of products as a result of the freedom to provide services; whereas the professional competence of insurance intermediaires is an essential element for the protection of the policyholders and those seeking insurance; whereas not all Member States require for the taking up of the activity of insurance intermediary or specific categories of intermediary general, commercial and professional knowledge and ability; whereas such knowledge is desirable in principle for all insurance intermediaries and measures for further convergence are necessary;

Whereas Council Directive 77/92/EEC [1] sets out measures, in the absence of mutual recognition of diplomas and immediate coordination, to facilitate the effective exercise of freedom of establishment and freedom to provide services for the taking up and pursuit of activities of insurance agent and broker; whereas these measures are of a transitional nature;

Whereas it should be left to the Member States or, in certain cases, their insurance undertakings or recognized professional organizations, in conformity with the EEC Treaty, to establish the exact level of general, commercial and professional knowledge considered appropriate to guarantee that policyholders and persons seeking insurance will be adequately informed and assisted, taking into account the type of intermediary involved;

Whereas it is desirable that where appropriate insurance intermediaries also meet professional requirements with regard to professional indemnity insurance, fitness and properness; whereas consistency should exist with Community rules imposing capital requirements on intermediaries holding clients' monies in assisting the administration and performance of insurance contracts;

Whereas it is appropriate to clarify the definition of independence of insurance brokers in view of the application of the relevent provisions of Council Directive 90/619/EEC [2] to insurance intermediaries;

Whereas competent insurance intermediaries should be registered in their Member States and such registration should be a condition for the taking-up and exercise of the activity of intermediating in insurance; whereas central registers should distinguish between dependent and independent insurance intermediaries;

Whereas a recommendation, which is not binding on the Member States to which it is addressed as to the result to be achieved but solicits their cooperation on a voluntary basis, should be an effective means of enabling them to adopt where necessary the appropriate provisions,

HEREBY RECOMMENDS:

1. that Member States ensure that insurance intermediaries established on their territory are subject to professional requirements and registration in accordance with the provisions contained in the attached Annex;

2. that Member States inform the Commission within 36 months of the notification of this recommendation of the texts of the main laws, regulations, administrative provisions which have been adopted or measures taken by professional organizations or insurance undertakings with respect to this recommendation and inform the Commission of any further changes in this field.

Done at Brussels, 18 December 1991.

For the Commission

Leon BRITTAN

Vice-President

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[1] OJ No L 26, 31. 1. 1977, p. 14.

[2] OJ No L 330, 29. 11. 1990, p. 50.

ANNEX

PROFESSIONAL REQUIREMENTS AND REGISTRATION OF INSURANCE INTERMEDIARIES

Article 1

Definitions

For the purpose of this recommendation :

— 'insurance intermediary' is defined as a person taking up or pursuing an activity as defined in Article 2, paragraph 1 (a) to (c) of Directive 77/92/EEC in a self-employed capacity or as a paid employee.

Article 2

Scope

1. Subject to paragraphs 2 and 3, this recommendation shall apply to all insurance intermediaries as defined in Article 1.

2. The Member States need not apply this recommendation to persons providing insurance which does not require any general or specific knowledge and where such insurance covers the risk of loss or damage to goods supplied by that person, whose principal professional activity is other than providing advice on and selling insurance.

3. The management of an undertaking taking up and exercising the activity of insurance intermediary shall include an adequate number of persons who possess the general, commercial and professional knowledge and ability required by Article 4, paragraph 2.

Member States are recommended to further that such undertakings offer relevant basic training for their employees who are involved in mediating in insurance products.

Article 3

Independence of intermediaries

The persons defined in Article 2, paragraph 1 (a) of Directive 77/92/EEC shall disclose :

— to persons seeking insurance or reinsurance of risks any direct legal or economic ties to an insurance undertaking or any shareholdings in or by such undertakings which could affect the complete freedom of choice of insurance undertaking, and

— to a competent body, as determined by the Member State, the spread of business with different insurance undertakings over the previous year.

Article 4

Professional competence

1. The taking up and pursuit of the activity of insurance intermediary shall be subject to the professional requirements of paragraphs 2 to 5.

2. Insurance intermediaries shall possess general, commercial and professional knowledge and ability. The Member States shall require if necessary different levels of knowledge and ability for the category of intermediary mentioned in Article 3. The level of such knowledge and ability shall be determined by the Member States.

Such levels and their practical application may also be determined and administered by professional organisations recognized by a Member State.

Subject to the supervision by Member States, such levels and their practical application may also be determined and administered by an insurance undertaking assuming responsibility and liability for the activities exercised by the category of intermediary defined in Article 2, paragraph 1 (b) of Directive 77/92/EEC.

3. An insurance intermediary shall possess professional indemnity insurance or any other comparable guarantee against liability arising from professional negligence, unless such insurance is already provided for by an insurance undertaking or other undertaking by which he is employed or for which he is empowered to act.

4. An insurance intermediary shall be of good repute. He shall not have previously been declared bankrupt, unless he has been rehabilited in accordance with his national law.

5. Insurance intermediaries as defined in Article 2, paragraph 1 (a) of Directive 77/92/EEC, may be required to have sufficient financial capacity. The level and form of capital required shall be determined by the Member States.

Article 5

Registration

1. Insurance intermediaries that fulfil the professional requirements of Article 4, paragraphs 2 to 5, shall be registered in their Member State. Only registered persons shall be allowed to take up and pursue the activity of insurance intermediary.

2. Each Member State shall appoint a competent body to administer the register mentioned in paragraph 1. Professional organizations recognized by a Member State may also be appointed to administer the register. In the case of Article 4, paragraph 2, last subparagraph, such registers may also be administered by an insurance undertaking. Member States' competent authorities shall have access to the registers.

3. Where one central register exists, it should distinguish between independent and dependent insurance intermediaries.

4. Insurance intermediaries shall inform the public of the fact that they have been registered.

Article 6

Sanctions

1. Adequate sanctions and measures shall exist in the Member States which shall apply to any person pursuing the activity of insurance intermediary without being registered as such in a Member State.

2. Adequate sanctions and measures shall exist in the Member States against an insurance intermediary who ceases to fulfil the requirements of Article 4, paragraphs 3 to 5, including the possibility of removal from the register.

7. Motor Insurance

2.5.72 Official Journal of the European Communities No L 103/1

COUNCIL DIRECTIVE

of 24 April 1972

on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability

(72/166/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 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 the objective of the Treaty is to create a common market which is basically similar to a domestic market, and whereas one of the essential conditions for achieving this is to bring about the free movement of goods and persons;

Whereas the only purpose of frontier controls of compulsory insurance cover against civil liability in respect of the use of motor vehicles is to safeguard the interests of persons who may be the victims of accidents caused by such vehicles; whereas the existence of such frontier controls results from disparities between national requirements in this field;

Whereas these disparities are such as may impede the free movement of motor vehicles and persons within the Community; whereas, consequently, they have a direct effect on the establishment and functioning of the common market;

Whereas the Commission Recommendation of 21 June 1968 on control by customs of travellers crossing intra-Community frontiers calls upon Member States to carry out controls on travellers and their motor vehicles only under exceptional circumstances and to remove the physical barriers at customs posts;

Whereas it is desirable that the inhabitants of the Member States should become more fully aware of the reality of the common market and that to this end measures should be taken further to liberalize the rules regarding the movement of persons and motor vehicles travelling between Member States; whereas the need for such measures has been repeatedly emphasized by members of the European Parliament;

Whereas such relaxation of the rules relating to the movement of travellers constitutes another step towards the mutual opening of their markets by Member States and the creation of conditions similar to those of a domestic market;

Whereas the abolition of checks on green cards for vehicles normally based in a Member State entering the territory of another Member State can be effected by means of an agreement between the six national insurers' bureaux, whereby each national bureau would guarantee compensation in accordance with the provisions of national law in respect of any loss or injury giving entitlement to compensation caused in its territory by one of those vehicles, whether or not insured.

Whereas such a guarantee agreement presupposes that all Community motor vehicles travelling in Community territory are covered by insurance; whereas the national law of each Member State should, therefore, provide for the compulsory insurance of vehicles against civil liability, the insurance to be valid throughout Community territory; whereas such national law may nevertheless provide for exemptions for certain persons and for certain types of vehicles;

Whereas the system provided for in this Directive could be extended to vehicles normally based in the territory of any third country in respect of which the national bureaux of the six Member States have concluded a similar agreement;

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'vehicle' means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;

2. 'injured party' means any person entitled to compensation in respect of any loss or injury caused by vehicles;

3. 'national insurers' bureau' means a professional organization which is constituted in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe and which groups together insurance undertakings which, in a State, are authorized to conduct the business of motor vehicle insurance against civil liability;

4 'territory in which the vehicle is normally based' means

   — the territory of the State in which the vehicle is registered; or

   — in cases where no registration is required for a type of vehicle but the vehicle bears an insurance plate, or a distinguishing sign analogous to the registration plate, the territory of the State in which the insurance plate or the sign is issued; or

   — in cases where neither registration plate nor insurance plate nor distinguishing sign is required for certain types of vehicle, the territory of the State in which the person who has custody of the vehicle is permanently resident;

5. 'green card' means an international certificate of insurance issued on behalf of a national bureau in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe.

Article 2

1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State.

Likewise, Member States shall refrain from making such insurance checks on vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. Member States may, however carry out random checks.

2. As regards vehicles normally based in the territory of a Member State, the provisions of this Directive, with the exception of Articles 3 and 4, shall take effect:

— after an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured;

— from the date fixed by the Commission, upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded;

— for the duration of that agreement.

Article 3

1. Each Member State shall, subject to Article 4, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures.

2. Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:

— according to the law in force in other Member States, any loss or injury which is caused in the territory of those States;

— any loss or injury suffered by nationals of Member States during a direct journey between two territories in which the Treaty establishing the European Economic Community is in force, if there is no national insurers' bureau responsible for the territory which is being crossed; in that case, the loss or injury shall be covered in accordance with the internal laws on compulsory insurance in force in the Member State in whose territory the vehicle is normally based.

Article 4

A Member State may act in derogation of Article 3 in respect of:

(a) certain natural or legal persons, public or private; the list of such persons shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

A Member State so derogating shall take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused in the territory of other Member States by vehicles belonging to such persons. It shall in particular designate an authority or body in the country where the loss or injury occurs responsible for compensating injured parties in accordance with the laws of that State in cases where the procedure provided for in the first indent of Article 2 (2) is not applicable. It shall notify the other Member States and the Commission of the measures taken;

(b) certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

In that case, the other Member States shall retain the right to require, on entry into their territory of such a vehicle, that the person having custody thereof be in possession of a valid green card or that he conclude a frontier insurance contract complying with the requirements of the Member State concerned.

Article 5

Each Member State shall ensure that, where an accident is caused in its territory by a vehicle normally based in the territory of another Member State, the national insurers' bureau shall, without prejudice to the obligation referred to in the first indent of Article 2 (2), obtain information:

— as to the territory in which the vehicle is normally based, and as to its registration mark, if any;

— in so far as is possible, as to the details of the insurance of the vehicle, as they normally appear on the green card, which are in the possession of the person having custody of the vehicle, to the extent that these details are required by the Member State in whose territory the vehicle is normally based.

Each Member State shall also ensure that the bureau communicates this information to the national insurers' bureau of the State in whose territory the vehicle is normally based.

Article 6

Each Member State shall take all appropriate measures to ensure that vehicles normally based in the territory of a third country or in the non-European territory of a Member State entering the territory in which the Treaty establishing the European Economic Community is in force shall not be used in its territory unless any loss or injury caused by those vehicles is covered, in accordance with the requirements of the laws of the various Member States on compulsory insurance against civil liability in respect of the use of vehicles, throughout the territory in which the Treaty establishing the European Economic Community is in force.

Article 7

1. Every vehicle normally based in the territory of a third country or in the non-European territory of a Member State must, before entering the territory in which the Treaty establishing the European Economic Community is in force, be provided either with a valid green card or with a certificate of frontier insurance establishing that the vehicle is insured in accordance with Article 6.

2. However, vehicles normally based in a third country shall be treated as vehicles normally based in the Community if the national bureaux of all the Member States severally guarantee, each in accordance with the provisions of its own national law on compulsory insurance, settlement of claims in respect of accidents occurring in their territory caused by such vehicles.

3. Upon having ascertained, in close cooperation with the Member States, that the obligations referred to in the preceding paragraph have been assumed, the Commission shall fix the date from which and the types of vehicles for which Member States shall no longer require production of the documents referred to in paragraph 1.

Article 8

Member States shall, not later than 31 December 1973, bring into force the measures necessary to comply with this Directive and shall forthwith inform the Commission thereof.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 24 April 1972.

For the Council

The President

G. THORN

No L 291/162 Official Journal of the European Communities 28.12.72

COUNCIL DIRECTIVE

of 19 December 1972

amending Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability

(72/430/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty concerning the Accession of new Member States to the European Economic Community and to the European Atomic Community,[1] signed at Brussels, on 22 January 1972, and in particular Article 153 of the Act annexed thereto;

Having regard to the proposal from the Commission;

Whereas following the enlargement of the Community the number of national bureaux taken into account in Council Directive 72/166[2] of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability is increased from six to nine, necessitating an adjustment to that Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 72/166 shall be amended as follows: The following shall be substituted for the wording of Article 2,[2] first indent:

'after an agreement has been concluded between the nine national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of national law on compulsory insurance, of claims in respect of accidents occurring in its territory, caused by vehicles normally based in the territory of a another Member State, whether or not such vehicles are insured;'.

Article 2

This Directive shall enter into force on the Accession of the new Member States to the European Communities.

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1972.

For the Council

The President

T. WESTERTERP

[1] OJ No L 73, 27.3.1972, p. 1.
[2] OJ No L 103, 2.5.1972, p. 1.

No L 87/12 Official Journal of the European Communities 30. 3. 74

COMMISSION RECOMMENDATION

of 6 February 1974

to the Member States concerning the application of the Council Directive of 24 April 1972 on the approximation of the laws of the Member States relating to the use of motor vehicles, and to the enforcement of the obligation to insure against such liability

(74/165/EEC)

1. By virtue of Article 7 (1) of the Council Directive (1) of 24 April 1972 on the approximation of the laws of the Member States relating to the use of motor vehicles and to the enforcement of the obligation to insure against such liability, as amended by the Council Directive (2) of 19 December 1972, any vehicle normally based in the territory of a third country must be provided either with a valid green card or with a certificate of frontier insurance valid for the whole of the territory of the Community before entering that territory;

2. Now in the Member States practice differs as to the duration of contracts of insurance against civil liability in respect of the use of motor vehicles in the form of frontier insurance; it is necessary to render uniform the practice followed in the Member States as to the minimum duration of frontier insurance so as to prevent abuse, after the removal of checks at intra-community frontiers on insurance against civil liability in respect of motor vehicles, of frontier insurance by vehicles from third countries no longer covered, after their entry into a Member State, by insurance against civil liability valid in other Member States.

3. For these reasons, and by virtue of Article 155 of the Treaty establishing the European Economic Community, the Commission recommends that the Member States ensure that contracts of insurance against civil liability in respect of the use of motor vehicles concluded in the form of frontier insurance shall, not later than 15 May 1974, have a minimum duration of 15 days.

Done at Brussels, 6 February 1974.

For the Commission

The President

François-Xavier ORTOLI

(1) OJ No L 103, 2. 5. 1972, p. 1.
(2) OJ No L 291, 28. 12. 1972, p. 162. Correction in OJ No L 75, 23. 3. 1973, p. 30.

COMMISSION DECISION

of 21 December 1992

relating to the application of Council Directive 72/166/EEC on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability

(93/43/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability (1), as last amended by Directive 90/232/EEC (2), and in particular Articles 2 (2) and 7 (3) thereof,

Whereas the present relationships between the national insurers' bureaux of the Member States, Austria, Finland, Norway, Sweden, Switzerland, Hungary and Czechoslovakia as defined in Article 1 (3) of Directive 72/166/EEC ('bureaux') which collectively provide for the practical means to abolish insurance inspection in the case of vehicles normally based in the territories of the 19 countries, are governed by the following agreements supplementary to the uniform agreement on the green card system between national insurers' bureaux of 2 November 1951 ('supplementary agreements') which have been concluded :

— on 12 December 1973 between the bureaux of the nine Member States and those of Austria, Finland, Norway, Sweden and Switzerland and extended on 15 March 1986 to the bureaux of Portugal and Spain and on 9 October 1987 to the bureau of Greece,

— on 22 April 1974 between the 14 original signatories of the supplementary agreement of 12 December 1973 and the bureau of Hungary,

— on 22 April 1974 between the 14 original signatories of the supplementary agreement of 12 December 1973 and the bureau of Czechoslovakia,

— on 14 March 1986 between the bureau of Greece and those of Czechoslovakia and Hungary ;

Whereas the Commission subsequently adopted Decisions 74/166/EEC (3), 74/167/EEC (4), 75/23/EEC (5), 86/218/EEC (6), 86/219/EEC (7), 86/220/EEC (8), 88/367/EEC (9), 88/368/EEC (10) and 88/369/EEC (11) relating to the application of Directive 72/166/EEC requiring each Member State to refrain from making checks on insurance against civil liability in respect of vehicles which are normally based in the European territory of another Member State or in the territories of Hungary, Czechoslovakia, Sweden, Finland, Norway, Austria and Switzerland and which are the subject of the supplementary agreements ;

Whereas the bureaux have reviewed and unified the texts of the supplementary agreements and replaced them by a single agreement ('the multilateral guarantee agreement') which was concluded on 15 March 1991 in conformity with the principles laid down in Article 2 (2) of Directive 72/166/EEC ;

Whereas the Commission subsequently adopted Decision 91/323/EEC (12) of 30 May 1991 annulling the supplementary agreements requiring Member States to refrain from making checks on insurance against civil liability on vehicles which are normally based in the European territory of another Member State or in the territories of Hungary, Czechoslovakia, Sweden, Finland, Norway, Austria and Switzerland replacing these supplementary agreements by the multilateral guarantee agreement as from 1 June 1991 ;

Whereas Iceland on 3 December 1992 signed the multilateral guarantee agreement,

HAS ADOPTED THIS DECISION :

Article 1

As from 1 January 1993, each Member State shall refrain from making checks on insurance against civil liability in

(1) OJ No L 103, 2. 5. 1972, p. 1.
(2) OJ No L 129, 19. 5. 1990, p. 35.
(3) OJ No L 87, 30. 3. 1974, p. 13.
(4) OJ No L 87, 30. 3. 1974, p. 14.
(5) OJ No L 6, 10. 1. 1975, p. 33.
(6) OJ No L 153, 7. 6. 1986, p. 52.
(7) OJ No L 153, 7. 6. 1986, p. 53.
(8) OJ No L 153, 7. 6. 1986, p. 54.
(9) OJ No L 181, 12. 7. 1988, p. 45.
(10) OJ No L 181, 12. 7. 1988, p. 46.
(11) OJ No L 181, 12. 7. 1988, p. 47.
(12) OJ No L 177, 5. 7. 1991, p. 25.

respect of vehicles which are normally based in the territory of Iceland and which are the subject of the multilateral guarantee agreement between national insurers' bureaux of 15 March 1991.'

Article 2

Member States shall forthwith inform the Commission of measures taken to apply this Decision.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 21 December 1992.

For the Commission

Leon BRITTAN

Vice-President

ANNEX

THE MULTILATERAL GUARANTEE AGREEMENT BETWEEN NATIONAL INSURERS' BUREAUX

of 15 March 1991

PREAMBLE

THE BUREAUX OF THE SIGNATORIES,

Having regard to Recommendation No 5, adopted on 25 January 1949 by the Principal Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations, as amended by Annex 2 to the Consolidated Resolution on the Facilitation of Road Transport adopted by the Principal Working Party in its Session of 25 to 29 June 1984 (hereinafter referred to as the 'Geneva recommendations'),

Whereas the council of bureaux, to which all the signatory bureaux mentioned in Article 9 of this agreement adhere, is the body responsible in conjunction with the Principal Working Party on Road Transport, for the mangement and operation of the international third party motor insurance system (hereinafter referred to as 'the green card system') and for ensuring that all members of the council act in accordance with the said Geneva recommendations,

Having regard to Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability which led certain bureaux to conclude between them agreements to settle claims resulting from the international circulation of vehicles normally based in the countries of the bureaux of the signatories,

Whereas it is desirable for the signatory bureaux to review and unify the texts of their various agreements and to replace them with a unique agreement in which would be incorporated as far as possible, taking into account the aim of each of these agreements, the provisions of the uniform agreement between bureaux,

HAVE CONCLUDED BETWEEN THEM THE PRESENT AGREEMENT (hereinafter referred to as 'THE MULTILATERAL GUARANTEE AGREEMENT') APPLICABLE IN THE TERRITORIES MENTIONED FOR EACH OF THEM IN ARTICLE 9 (SIGNATURE CLAUSE).

Article 1

Scope and application of the agreement

(a) Each signatory bureau acts on behalf of all insurers authorized to transact compulsory third party motor vehicle insurance in its own territory.

(b) The contracting parties base themselves on Council Directives 72/164/EEC of 24 April 1972, 84/5/EEC of 30 December 1983 and 90/232/EEC of 14 May 1990.

(c) For the bureaux of the non-member States of the European Communities, the reference made in paragraph (b) to the Council Directives of the European Communities has regard only to the provisions of those Directives which relate to the international circulation of motor vehicles.

(d) When a vehicle normally based in a territory mentioned in Article 9 enters another territory mentioned in the same Article and is there subject to the compulsory third party motor insurance provisions in force in that other territory, the owner, keeper, user and/or driver shall be considered as insured whether they are holders of a valid policy of insurance or not.

(e) Consequent to the above, each handling bureau assumes responsibility, in accordance with its national legal provisions and the policy of insurance, if one exists, for the handling and settlement of claims arising from accidents caused by vehicles, which are subject to the third party provisions of the compulsory motor insurance law in the territory of that bureau, which are normally based in the terrritory of a paying bureau.

(f) This agreement shall apply to the vehicles defined in Article 2 (b), but shall not apply to the vehicles specified in Annex I.

(g) The territories referred to Article 9 for each signatory bureau are to be regarded, for the purposes of this agreement, as one single undivided territory.

(h) This agreement shall, subject to the provisions of Articles 7 and 8, be concluded for an unlimited period and shall be brought into force on the date fixed by the president of the council of bureaux in conjunction with the Commission of the European Communities and shall apply to all accidents occurring on or after that date.

Article 2

Definitions

For the purpose of this agreement the following words and expressions shall have the following meanings and no other :

(a) 'member' — means an insurance company or underwriting group which is a member of a signatory bureau ;

(b) 'vehicle' — any land-based motor vehicle or trailer whether or not coupled, which is subject to compulsory insurance in a visited territory ;

(c) 'policy of insurance' — means a policy of insurance issued by a member of a paying bureau to cover liability arising out of the use of a vehicle ;

(d) 'claim' — means a third party claim, or series of claims arising from one accident, liability for which is required to be covered by insurance by the law of the territory in which the accident has occurred ;

(e) 'signatory bureau' — means an organization, constituted in accordance with the Geneva recommendations, which groups together all insurance undertakings authorized to transact third party motor vehicle insurance in the territory of one of the signatory bureaux mentioned in Article 9 ;

(f) 'handling bureau' — means the bureau (and/or a member of that bureau acting under its authority) which has responsibility in its own territory for the handling and settlement of a claim, in accordance with the provisions of this agreement and its national legal provisions, arising from an accident caused by a vehicle normally based in the territory of another signatory bureau ;

(g) 'Paying bureau' — means the bureau (and/or a member of that bureau) of the territory in which the vehicle involved in the accident in another territory is normally based, which has responsibility for fulfilling the obligations to the handling bureau in accordance with the provisions of this agreement ;

(h) 'territory in which the vehicle is normally based' — means :

— the territory of the State of which the vehicle bears a registration plate, or

— in the case of a vehicle which is not required to have a registration plate, the territory in which the person who has custody of the vehicle is permanently resident.

Article 3

Handling of claims

(a) As soon as it comes to the knowledge of a handling bureau that an accident has occurred involving a vehicle normally based in the territory of another signatory bureau the handling bureau shall forthwith, without waiting for a formal claim, proceed to investigate the circumstances of the accident with a view to dealing with any claim. The handling bureau shall give immediate notice of any formal claim to the paying bureau or the member of the paying bureau which issued the policy of insurance, if one exists. Any omission by the handling bureau to do so shall not be held against it nor free the paying bureau from its obligations under Article 5.

(b) The paying bureau hereby authorizes the handling bureau to accept service of all judicial or extrajudicial proceedings which may involve the payment of damages arising out of the accident and to settle any claim.

(c) The handling bureau shall be responsible for the action of any agent it appoints to deal with a claim. It shall not of its own volition, or without the written consent of the paying bureau, cause or permit a claim to be handled by any agent, or by a person in the service of such agent, who by virtue of any contractual obligation is financially interested in that claim. If it does so, without such consent, its right to reimbursement from the paying bureau shall be limited to one half of the sum otherwise recoverable.

(d) The handling bureau, in accordance with its national legal provisions and the provisions of the policy of insurance, if one exists, shall act in the best interests of the paying bureau. The handling bureau shall be exclusively competent in all matters concerning the interpretation of its national legal provisions and the settlement of the claim. It shall on request consult the paying bureau or the member of the paying bureau which issued the policy of insurance, if one exists, before taking any final action but without obligation to do so. When, however, the settlement envisaged is in excess of the conditions or limits of the third party provisions of the compulsory motor insurance law in the territory of the handling bureau, but is covered under a policy of insurance, it shall, unless prevented from doing so by the provisions of that law, consult with and obtain the consent of the paying bureau, in relation to that part of the claim which exceeds those conditions or limits.

Article 4

Mandate for the handling of claims

(a) If a member of the paying bureau has a branch or subsidiary established and authorized in the territory of the handling bureau for the transaction of motor insurance the handling bureau shall, if so requested, leave the handling and settlement of claims to the branch or subsidiary.

(b) Optional clause

The paying bureau may, on behalf of one of its members, request the handling bureau to leave the handling and settlment of claims to a correspondent who may be :

(i) a member of the handling bureau ;

(ii) an organization established in the territory of the handling bureau and specializing, on behalf of insurers, in the handling and settlement of claims arising out of accidents caused by a vehicle.

If the handling bureau approves the request, it thereby gives authority to the nominated correspondent to handle and settle claims. It undertakes to inform the third parties of this authority and to forward to the correspondent all notifications relating to such claims.

For its part the member of the paying bureau, in requesting the appointment of nominated correspondent, undertakes to entrust all claims in the terrritory of accident to that correspondent and to forward to that correspondent all documentation relevant to such claims.

As a duly authorized agent of the handling bureau, the nominated correspondent becomes responsible to the said bureau for the handling of the claim and shall take into account any directions, whether general or specific, received from the handling bureau.

Exceptionally, if so requested, the handling bureau may give the same authority as described above to a correspondent nominated to handle a specific claim, notwithstanding that such correspondent has received no general authority.

(c) In the situations described in (a) and (b) :

(i) the member of the paying bureau shall undertake to the handling bureau that its branch, subsidiary, or nominated correspondent shall settle claims in full compliance with the third party provisions of the compulsory motor insurance law in the country of the handling bureau, or the policy of insurance if one exists. The paying bureau shall guarantee the fulfilment of this undertaking ;

(ii) the handling bureau may, at any time and without being required to give a reason, take over the handling of any claim or, where a nominated correspondent is concerned, revoke that correspondent's authority for the particular claim or generally.

Article 5

Reimbursement of the handling bureau

(a) When the handling bureau has disposed of a claim it shall, on demand, and on proof of payment, have a right to recover from the paying bureau, or the member of the paying bureau which issued the policy of insurance, if one exists :

(i) the whole amount paid by the handling bureau as damages or compensation and such costs and charges as the claimant is entitled to recover under a judgement or, where settlement is by agreement with the claimant, then the whole amount of such settlement including the agreed costs and charges ;

(ii) amounts specifically disbursed by the handling bureau for external services in the investigation and settlement of each claim, and costs specifically incurred for the purposes of a legal action, which would also have been disbursed, in similar circumstances, by a motor insurer established in the country of accident ;

(iii) a handling fee, to cover all other costs, calculated at the rate of 15 % of the equivalent of the amount paid under subparagraph (i) subject to minimum and maximum sums at the levels and on the basis determined by the council of bureaux ;

(iv) the minimum and maximum sums referred to above are expressed in Deutsche Mark (DM) calcualted at the rate of exchange current on the date of the first demand for final reimbursement.

(b) When, after the handling fee has been paid, a settled claim is re-opened or a further claim arising from the same accident is made, the balance, if any, to be paid as a handling fee, shall be calculated in accordance with the provisions in force at the time the demand for reimbursement in respect of the re-opened or further claim is presented.

(c) Reimbursement of the amount calculated under these provisions, including the minimum handling fee, shall be made even when the claim is disposed of without payment to the third party.

(d) The amount due to the handling bureau shall be reimbursed in its country on demand, in the currency of its country, and free of cost.

(e) The paying bureau shall not be liable for any payment in respect of fines imposed under the penal law.

(f) Demands for reimbursement of provisional payments which have been made by a handling bureau shall be dealt with in the same way as final payments. A handling fee shall be payable only when a claim has been disposed of and according to the provisions applicable at that time.

(g) If, within a period of two months from the date of the first demand for reimbursement, the member of the paying bureau has failed to pay the amount due to the handling bureau, the paying bureau shall, on receipt of notification of such failure from the handling bureau, itself make the reimbursement within a period of one month from the date of receipt of that notification. This requirement shall be in addition to the penalty of payment of interest referred to below.

(h) If, by the time of the demand for reimbursement, the handling bureau has not been notified of the existence of a policy of insurance, such demand shall be submitted to the paying bureau. The paying bureau shall, in these circumstances, pay the amount due within a period of two months from the date of the demand.

(i) If, within a period of two months of the date of the first demand for provisional or final reimbursement to the member of the paying bureau, or the paying bureau itself, payment has not been received by the handling bureau or its bankers, then there shall be added to the amount due to the handling bureau interest at the rate of 12 % per annum, calculated from the date of such first demand to the date of receipt of the remittance by the handling bureau.

(j) The handling bureau shall on demand, but without delay to the reimbursement, provide documentation regarding the settlement.

Article 6

Arbitration

(a) Any dispute between bureaux regarding the interpretation of the term 'normally based', in so far as it is not defined above, shall be submitted to a court of arbitrators. This court shall consist of the president of the council of bureaux together with one arbitrator appointed by each of the bureaux involved in the dispute. If the president of the council of bureaux is of the same nationality as one of the arbitrators, he shall appoint in his place another arbitrator of a nationality other than his own or that of the other arbitrators.

(b) Any arbitration decision shall be of no effect in the presence of a court decision, whatever the date of either may be, when the latter results from any action of the victim or of his/her dependants.

Article 7

Suspension or cancellation of the agreement

(a) Sanctions, involving the suspension or cancellation of this agreement with a signatory bureau, might be taken against the signatory bureau concerned in any of the following circumstances :

(i) if the country of the signatory bureau places an embargo on the transfer of the necessary funds to fulfil the obligations of such signatory bureau under this agreement , or

(ii) if the transfer of the necessary funds from one country to another is not effected or becomes impossible ; or

(iii) if, otherwise, the conduct of a signatory bureau is such that it seriously impedes the operation of this agreement.

(b) Should any of the foregoing situations arise the president of the council of bureaux shall be notified and he shall bring the matter to the notice of all the other signatories which shall then decide whether any of the sanctions referred to in (a) should be applied. In the event of an affirmative and unanimous decision in this respect the signatories shall mandate the president of the council of bureaux to take action to implement that decision. In this respect the decision shall be notified by the president of the council of bureaux to the offending signatory bureau concerned and the suspension or cancellation of the agreement with the signatory bureau shall take effect immediately on expiry of two months from the date of posting of such notification.

(c) Notice of any such suspension or cancellation shall be given by the other signatory bureaux to their respective government authorities and by the president of the council of bureaux to the Commission of the European Communities.

(d) In the event of the situation referrred to in (b) arising it shall be brought, by the president of the council of bureaux, to the notice of all members of the council and he shall invite them to consider the position of the offending signatory bureau concerned in relation to the uniform agreement.

Article 8

Withdrawal from the agreement

Should a signatory bureau decide to withdraw from this agreement it shall give immediate written notice of that decision to the president of the council of bureaux who shall, in turn, inform the other signatory bureaux and the Commission of the European Communities. Such withdrawal shall take effect on the expiry of six calendar months from the day after the day of the posting of such notification. The signatory bureau concerned shall remain liable under this agreement to satisfy all reimbursement demands relating to settlements of claims arising from accidents up to the expiry of the period described.

Article 9

Signature clause

This agreement is concluded between the undermentioned signatory bureaux, in respect of the territories for which each of them has responsibility, in the form of three specimens in each of the English and French languages.

One specimen in each of the two languages shall be lodged respectively with the secretariat of the council of bureaux, the general-secretariat of the comité européen des assurances and the Commission of the European Communities.

The secretary general of the council of bureaux shall provided each signatory bureau with authorized copies of this agreement.

Signed at Madrid, 15 March 1991.

Austria

For the Verband der Versicherungsunternehmen Österreichs

Robert KRIEGEL
Member of the Board

Gerhard TÖLG
Director

Belgium

For the Bureau belge des assureurs automobiles

Alain PIRE
Director

Czech and Slovak Federal Republic

For the bureau of compulsory motor insurance for the territory of CSFR

Vlastimil UZEL
Chairman

Jakub HRADEC
Secretary

Denmark (and the Faroe Islands)

For the Dansk Forening for International Motorkøretøjsforsikring

Steen LETH JEPPESEN
Managing Director

Thorstein IVERSEN
Deputy Managing Director

Finland

For the Liikennevakuutusyhdistys

Peter KÜTTNER
Member of the Board

Pentti AJO
Managing Director

France (and Monaco)

For the Bureau central français des sociétés d'assurances contre les accidents d'automobiles

Jean RIPOLI
President

(Subject to the reservation expressed in Annex 2 attached)

Germany

For the HUK-Verband

Ulf LEMOR
Deputy Managing Director

Greece	For the Motor Insurers Bureau,
Michael PARASKAKIS	Michael PSALIDAS
Chairman	*General Secretary*
Hungary	For the Hungaria Biztosito
Agnes SULKO	
Member of the Board	
Ireland	For the Irish Visiting Motorists' Bureau Ltd
John FORDE	Noel MULVIN
Chairman	*Secretary*
Italy (and the Republic of San Marino and the Vatican State)	For the Ufficio Centrale Italiano (UCI)
Raffaele DEIDDA	
General Manager	
Luxembourg	For the Bureau luxembourgeois des assureurs contre les accidents automobiles
Philippe MULLER	
President	
The Netherlands	For the Nederlands Bureau der Motorrijtuigverzekeraars
Jan SMIT	
Chairman	
Norway	For the Trafikkforsikringsforeningen
Gunnar BRASK	Anders BULL-LARSEN
Managing Director	*Director*
Portugal	For the Gabinete portugues da Carta Verde
João SANTOS	Maia DOS SANTOS
Chairman	*Delegate*
	Jose NEVES
	Delegate
Spain	For the Oficina Española de Aseguradores de Automóviles
Ricardo PATRON	Jose Antonio NAVES
President	*Vice-President*

Sweden

Lars G. GÖRANSSON

Chairman of the Board

For the Trafikförsakringsföreningen

Arne BRANDT

Managing Director

Switzerland
(and Liechtenstein)

For the Swiss Group of
Motor Insurers

Jean-Marie BOLLER

Secretary General

United Kingdom of Great Britain
and Northern Ireland (and the
Channel Islands, Gibraltar, the Isle of Man)

For the Motor Insurers' Bureau

Timothy KENT

Chairman

ANNEX I

DEROGATIONS

Belgium

Vehicles with temporary registration plates (customs plate).

France (and Monaco)

Military vehicles subject to the terms of international agreements.

Germany

1. Vechicles which, because of their construction, do not exceed the speed of 6 km per hour.
2. Motorized mechanical equipment the speed of which does not exceed 20 km per hour.
3. Vehicles and trailers with temporary registration plates (customs plate).
4. Vehicles and trailers of foreign troops stationed in territory within the sovereignty of Germany, of civilian support personnel or of members and their families, when such vehicles are registered by the competent military authorities.
5. Vehicles and trailers belonging to international military headquarters established in Germany by virtue of the North Atlantic Treaty (NATO).

Greece

1. Vehicles belonging to inter-governmental organizations.
   (Green plates — bearing the letters 'CD' and 'ΔΣ' followed by the registration number.)
2. Vehicles belonging to the armed forces and military and civil personnel of NATO.
   (Yellow plates — bearing the letters 'ΞΑ' followed by the registration number.)
3. Vehicles belonging to the Greek armed forces.
   (Plates bearing the letters 'ΕΣ'.)
4. Vehicles belonging to Allied Forces in Greece.
   (Plates bearing the letters 'AFG'.)
5. Vehicles bearing temporarily registration plates (customs plate).
   (White plates — bearing the letters 'ΑΠΠΕΑ' and 'Ε Υ' followed by the registration number.)
6. Vehicles bearing test plates.
   (White plates — bearing the letters 'ΔΟΚΙΜΗ' followed by the registration number.)

Hungary

1. Motor vehicles bearing registration plates 'DT' and 'CK'
2. Motor vehicles with no registration plates.

Ireland

Vehicles with temporary registration plates (customs plate).

Italy (and the Republic of San Marino and the Vatican State)

1. Vehicle with temporary registration plates
2. Vehicles belonging to military forces and other military and civil personnel governed by international agreements (as, for instance, plate 'AFI' and international organizations like NATO).
3. Vehicles with no registration plates (particularly motorized cycles).
4. Agricultural machines (such as agricultural tractors, their trailers and all other vehicles designed specifically for agricultural work).

Luxembourg

Vehicles with temporary registration plates, after the date of expiry mentioned on the registration plate.

The Netherlands

1. Vehicles with temporary registration plates (customs plate).
2. Private vehicles belonging to Dutch military personnel and their families stationed in Germany.
3. Vehicles belonging to German military personnel stationed in the Netherlands.
4. Vehicles belonging to persons attached to Headquarters Allied Forces Central Europe.
5. Service vehicles of NATO armed forces.

Portugal

1. Agricultural machines and motorized mechanical equipment for which registration plates are not required under Portuguese law.
2. Vehicles belonging to foreign States and to international organizations of which Portugal is a Member State.

   (White plates — red figures, preceded by the letters 'CD' or 'FM'.)
3. Vehicles belonging to the Portuguese State.

   (Black plates — white figures, preceded by the letters 'AM', 'AP', 'EP', 'ME', 'MG' or 'MX', according to the Government department concerned.)

Switzerland (and Liechtenstein)

1. Manually operated vehicles fitted with a motor and machines for agricultural work fitted with an axle and operated solely by one person on foot, which are not used to tow a trailer, more than five months after the date of expiry of the sticker.
2. Motorized-cycles and invalid wheelchairs of which cylinder capacity does not exceed 50 cc and which, under normal circumstances, do not exceed a speed of 30 km per hour, more than five months after the date of expiry of the registration plate.
3. Vehicles with a temporary registration plate (customs plate), after the date of expiry mentioned on the registration plate.

United Kingdom of Great Britain and Northern Ireland (and the Channel Islands, Gibraltar, the Isle of Man)

1. NATO vehicles subject to the provisions of the London Convention of 19 June 1951 and the Paris Protocol of 28 August 1952.
2. Vehicles with the temporary registration plates of Gibraltar (figures preceded by the letters 'GG').

ANNEX II

SUSPENSIVE CLAUSES

France (and Monaco)

Suspensive clause of the Bureau central français

The undertaking of the Bureau central français :

1. will become operative for accidents caused in Czechoslovakia or in Hungary by vehicles normally based in France or in Monaco, when the legal and statutory provisions assimilating Czechoslovakia and Hungary to the other countries signatory to this agreement and modifying accordingly Articles L 221.4, L 421.11 and 12, R 211.14, R 211.28, R 421.1, R 421.69 and A 421.1 of the insurance code are brought into effect ;

2. excludes until further notice the provisions of Article 6 (b) mentioned above from its relations with all of the other signatory bureaux.

Greece

Suspensive clause of the motor insurers' bureau — Greece

Until such time as this Clause is cancelled the application of the supplementary agreement of 12 December 1973, to accidents in Austria, Czechoslovakia, Finland, Norway, Hungary, Sweden and Switzerland caused by vehicles 'normally based' in Greece, is suspended. The motor insurers' bureau — Greece, will consider, in the light of the conditions prevailing at that time, the possibility to bring this agreement into full effect, with those countries, by the end of 1992 but in any case they undertake to bring it into full effect by the end of 1995 at the latest.

Italy (the Republic of San Marino and the Vatican State)

Suspensive clause of the Ufficio Centrale Italiano

(a) With regard to motor vehicles normally based in Italy which are driven in Austria this agreement will come into effect for accidents which occur on or after 1 June 1992.

(b) With regard to motor vehicles normally based in Italy which are driven in Hungary, Switzerland and Liechtenstein, this agreement will come into effect as from the date determined by the signatories involved when :

(i) the necessary measures have been taken by the governments of such States to assimilate, in the event of an accident within these territories, Italian citizens to national citizens of these territories with regard to the benefits provided by the guarantee fund, it being understood that already the citizens of these territories are assimilated to Italian citizens if they are victims of an accident in Italy ;

(ii) the necessary subsequent administrative procedures have been completed by the competent Italian authorities after receipt of the confirmation that the measures under point (i) have been taken.

11. 1. 84 Official Journal of the European Communities No L 8/17

II

(Acts whose publication is not obligatory)

COUNCIL

SECOND COUNCIL DIRECTIVE

of 30 December 1983

on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

(84/5/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, by Council Directive 72/166/EEC (4), as amended by Directive 72/430/EEC (5), the Council approximated the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability;

Whereas Article 3 of Directive 72/166/EEC requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance; whereas the extent of the liability covered and the terms and conditions of the insurance cover are to be determined on the basis of those measures;

Whereas, however, major disparities continue to exist between the laws of the different Member States concerning the extent of this obligation of insurance cover; whereas these disparities have a direct effect upon the establishment and the operation of the common market;

Whereas, in particular, the extension of the obligation of insurance cover to include liability incurred in respect of damage to property is justified;

Whereas the amounts in respect of which insurance is compulsory must in any event guarantee victims adequate compensation irrespective of the Member State in which the accident occurred;

Whereas it is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified; whereas it is important, without amending the provisions applied by the Member States with regard to the subsidiary or non-subsidiary nature of the compensation paid by that body and to the rules applicable with regard to subrogation, to provide that the victim of such an accident should be able to apply directly to that body as a first point of contact; whereas, however, Member States should be given the possibility of applying certain limited exclusions as regards the payment of compensation by that body and of providing that compensation for damage to property caused by an unidentified vehicle may be limited or excluded in view of the danger of fraud;

Whereas it is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible

(1) OJ No C 214, 21. 8. 1980, p. 9 and OJ No C 78, 30. 3. 1982, p. 17.
(2) OJ No C 287, 9. 11. 1981, p. 44.
(3) OJ No C 138, 9. 6. 1981, p. 15.
(4) OJ No L 103, 2. 5. 1972, p. 2.
(5) OJ No L 291, 28. 12. 1972, p. 162.

for the accident; whereas, however, in the case of vehicles stolen or obtained by violence, Member States may specify that compensation will be payable by the abovementioned body;

Whereas in order to alleviate the financial burden on that body, Member States may make provision for the application of certain excesses where the body provides compensation for damage to property caused by uninsured vehicles or, where appropriate, vehicles stolen or obtained by violence;

Whereas the members of the family of the insured person, driver or any other person liable should be afforded protection comparable to that of other third parties, in any event in respect of their personal injuries;

Whereas the abolition of checks on insurance is conditional on the granting by the national insurers' bureau of the host country of a guarantee of compensation for damage caused by vehicles normally based in another Member State; whereas the most convenient criterion for determining whether a vehicle is normally based in a given Member State is the bearing of a registration plate of the State; whereas the first indent of Article 1 (4) of Directive 72/166/EEC should therefore be amended to that effect;

Whereas, in view of the situation in certain Member States at the outset as regards on the one hand the minimum amounts, and on the other hand the cover and the excesses applicable by the abovementioned body in respect of damage to property, provision should be made for transitional measures concerning the gradual implementation in those Member States of the provisions of the Directive concerning minimum amounts and compensation for damage to property by that body,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The insurance referred to in Article 3 (1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require that the amounts for which such insurance is compulsory are at least:

— in the case of personal injury, 350 000 ECU where there is only one victim; where more than one victim is involved in a single claim, this amount shall be multiplied by the number of victims,

— in the case of damage to property 100 000 ECU per claim, whatever the number of victims.

Member States may, in place of the above minimum amounts, provide for a minimum amount of 500 000 ECU for personal injury where more than one victim is involved in a single claim or, in the case of personal injury and damage to property, a minimum overall amount of 600 000 ECU per claim whatever the number of victims or the nature of the damage.

3. For the purposes of this Directive, 'ECU' means the unit of account as defined in Article 1 of Regulation (EEC) No 3180/78 (1). The conversion value in national currency to be adopted for successive four-year periods from 1 January of the first year of each period shall be that obtaining on the last day of the preceding September for which ECU conversion values are available in all the Community currencies. The first period shall begin on 1 January 1984.

4. Each Member State shall set up or authorize a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied. This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident.

The victim may in any case apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

However, Member States may exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

Member States may limit or exclude the payment of compensation by that body in the event of damage to property by an unidentified vehicle.

They may also authorize, in the case of damage to property caused by an uninsured vehicle an excess of not more than 500 ECU for which the victim may be responsible.

Furthermore, each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by this body, without prejudice to any other practice which is more favourable to the victim.

(1) OJ No L 379, 30. 12. 1978, p. 1.

Article 2

1. Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 (1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

— persons who do not have express or implied authorization thereto, or

— persons who do not hold a licence permitting them to drive the vehicle concerned, or

— persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3 (1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

Member States shall have the option — in the case of accidents occurring on their territory — of not applying the provision in the first subparagraph if and in so far as the victim may obtain compensation for the damage suffered from a social security body.

2. In the case of vehicles stolen or obtained by violence, Member States may lay down that the body specified in Article 1 (4) will pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article; where the vehicle is normally based in another Member State, that body can make no claim against any body in that Member State.

The Member States which, in the case of vehicles stolen or obtained by violence, provide that the body referred to in Article 1 (4) shall pay compensation, may fix in respect of damage to property an excess of not more than 250 ECU for which the victim may be responsible.

Article 3

The members of the family of the insured person, driver or any other person who is liable under civil law in the event of an accident, and whose liability is covered by the insurance referred to in Article 1 (1) shall not be excluded from insurance in respect of their personal injuries by virtue of that relationship.

Article 4

The first indent of Article 1 (4) of Directive 72/166/EEC shall be replaced by the following:

'— the territory of the State of which the vehicle bears a registration plate, or'.

Article 5

1. Member States shall amend their national provisions to comply with this Directive not later than 31 December 1987. They shall forthwith inform the Commission thereof.

2. The provisions thus amended shall be applied not later than 31 December 1988.

3. Notwithstanding paragraph 2:

(a) the Hellenic Republic shall have a period until 31 December 1995 in which to increase guarantees to the levels required by Article 1 (2). If it avails itself of this option the guarantee must reach, by reference to the amounts laid down in that Article:

— more than 16 % not later than 31 December 1988,

— 31 % not later than 31 December 1992;

(b) the other Member States shall have a period until 31 December 1990 in which to increase guarantees to the levels required by Article 1 (2). Member States which avail themselves of this option must, by the date indicated in paragraph 1, increase guarantees by at least half the difference between the guarantees in force on 1 January 1984 and the amounts laid down in Article 1 (2).

4. Notwithstanding paragraph 2:

(a) the Italian Republic may provide that the excess laid down in the fifth subparagraph of Article 1 (4) shall be 1 000 ECU until 31 December 1990;

(b) the Hellenic Republic and Ireland may provide that:

— compensation by the body referred to in Article 1 (4) for damage to property shall be excluded until 31 December 1992,

— the excess referred to in the fifth subparagraph of Article 1 (4) and the excess referred to in the second subparagraph of Article 2 (2) shall be 1 500 ECU until 31 December 1995.

Article 6

1. Not later than 31 December 1989 the Commission shall present to the Council a report on the situation in the Member States benefiting from the transi-

tional measures provided for in Article 5 (3) (a) and (4) (b) and shall, where appropriate, submit proposals to review these measures in the light of developments.

2. Not later than 31 December 1993 the Commission shall present to the Council a progress report on the implementation of this Directive and shall, where appropriate, submit proposals in particular as regards adjustment of the amounts laid down in Article 1 (2) and (4).

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 30 December 1983.

For the Council

The President

G. VARFIS

E

Commerce and distribution

Commission Decision 81/428/EEC of 20 May 1981 (OJ No L 165, 23. 6. 1981, p. 24).

In the first paragraph of Article 3, '42' is replaced by '50'.

In the second paragraph of Article 3, '22' is replaced by '26'.

In the first paragraph of Article 7, 'ten' is replaced by 'twelve'.

F

Insurance

Second Council Directive 84/5/EEC of 30 December 1983 (OJ No L 8, 11. 1. 1984, p. 17).

Article 5 (3) (a) is replaced by the following:

'(a) the Kingdom of Spain, the Hellenic Republic and the Portuguese Republic shall have a period until 31 December 1995 in which to increase guarantees to the levels required by Article 1 (2). If they avail themselves of this option the guarantee must reach, by reference to the amounts laid down in that Article:

— more than 16 %, not later than 31 December 1988,

— 31 %, not later than 31 December 1992;'.

Article 5 (4) (b) is replaced by the following:

'(b) the Kingdom of Spain, the Hellenic Republic, Ireland and the Portuguese Republic may provide that:

— compensation by the body referred to in Article 1 (4) for damage to property shall be excluded until 31 December 1992,

— the excess referred to in the fifth subparagraph of Article 1 (4) and the excess referred to in the second subparagraph of Article 2 (2) shall be 1 500 ECU until 31 December 1995.'

X. ENVIRONMENT AND CONSUMER PROTECTION

1. In the following Acts and in the Articles indicated, 'forty-five' is replaced by 'fifty-four'.

(a) Council Directive 72/276/EEC of 17 July 1972 (OJ No L 173, 31. 7. 1972, p. 1), as amended by:

— Commission Directive 79/76/EEC of 21 December 1978 (OJ No L 17, 24. 1. 1979, p. 17),

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),

— Council Directive 81/75/EEC of 17 February 1981 (OJ No L 57, 4. 3. 1981, p. 23):

Article 6 (2).

(b) Council Directive 76/160/EEC of 8 December 1975 (OJ No L 31, 5. 2. 1976, p. 1), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17):

Article 11 (2).

(c) Council Directive 76/768/EEC of 27 July 1976 (OJ No L 262, 27. 9. 1976, p. 169), as amended by:

— Council Directive 79/661/EEC of 24 July 1979 (OJ No L 192, 31. 7. 1979, p. 35),

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),

— Commission Directive 82/147/EEC of 11 February 1982 (OJ No L 63, 6. 3. 1982, p. 26),

— Council Directive 82/368/EEC of 17 May 1982 (OJ No L 167, 15. 6. 1982, p. 1),

— Commission Directive 83/191/EEC of 30 March 1983 (OJ No L 109, 26. 4. 1983, p. 25),

— Commission Directive 83/341/EEC of 29 June 1983 (OJ No L 188, 13. 7. 1983, p. 15),

— Commission Directive 83/496/EEC of 22 September 1983 (OJ No L 275, 8. 10. 1983, p. 20),

— Council Directive 83/574/EEC of 26 October 1983 (OJ No L 332, 28. 11. 1983, p. 38),

— Commission Directive 84/415/EEC of 18 July 1984 (OJ No L 228, 25. 8. 1984, p. 38), as corrected in OJ No L 255, 29. 9. 1984, p. 28:

Article 10 (2).

19. 5. 90 Official Journal of the European Communities No L 129/33

II

(Acts whose publication is not obligatory)

COUNCIL

THIRD COUNCIL DIRECTIVE

of 14 May 1990

on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

(90/232/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, by Directive 72/166/EEC (4), as last amended by Directive 84/5/EEC (5), the Council adopted provisions on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability;

Whereas Article 3 of Directive 72/166/EEC requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance; whereas the extent of the liability covered and the terms and conditions of the insurance cover should be determined on the basis of those measures;

Whereas Directive 84/5/EEC, as amended by the Act of Accession of Spain and Portugal, reduced considerably the disparities between the level and content of compulsory civil liability insurance in the Member States; whereas significant disparities still exist, however, in such insurance cover;

Whereas motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur;

Whereas there are, in particular, gaps in the compulsory insurance cover of motor vehicle passengers in certain Member States; whereas, to protect this particularly vulnerable category of potential victims, such gaps should be filled;

Whereas any uncertainty concerning the application of the first indent of Article 3 (2) of Directive 72/166/EEC should be removed; whereas all compulsory motor insurance policies must cover the entire territory of the Community;

Whereas in the interests of the party insured, every insurance policy should, moreover, guarantee for a single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based, when that cover is higher;

Whereas Article 1 (4) of Directive 84/5/EEC requires each Member State to set up or authorize a body to compensate the victims of accidents caused by uninsured or unidentified vehicles; whereas, however, the said provision is without prejudice to the right of the Member States to regard compensation by this body as subsidiary or non-subsidiary;

(1) OJ No C 16, 20. 1. 1989, p. 12.
(2) OJ No C 304, 4. 12. 1989, p. 41 and OJ No C 113, 7. 5. 1990.
(3) OJ No C 159, 26. 6. 1989, p. 7.
(4) OJ No L 103, 2. 5. 1972, p. 1.
(5) OJ No L 8, 11. 1. 1984, p. 17.

Whereas, however, in the case of an accident caused by an uninsured vehicle, the victim is required in certain Member States to prove that the party liable is unable or refuses to pay compensation before he can claim on the body; whereas this body is better placed than the victim to bring an action against the party liable; whereas, therefore, this body should be prevented from being able to require that the victim, if he is to be compensated, should establish that the party liable is unable or refuses to pay;

Whereas, in the event of a dispute between the body referred to above and a civil liability insurer as to which of them should compensate the victim of an accident, Member States, to avoid any delay in the payment of compensation to the victim, should ensure that one of these parties is designated to be responsible in the first instance for paying compensation pending resolution of the dispute;

Whereas motor vehicle accident victims sometimes have difficulties in finding out the name of the insurance undertaking covering the liability arising out of the use of a motor vehicle involved in an accident; whereas, in the interests of such victims, Member States should take the necessary measures to ensure that such information is made availabie promptly;

Whereas the previous two Directives on civil liability in respect of motor vehicles should, in view of all these considerations, be supplemented in a uniform manner;

Whereas such an addition, which leads to greater protection for the parties insured and for the victims of accidents, will facilitate still further the crossing of internal Community frontiers and hence the establishment and functioning of the internal market; whereas, therefore, a high level of consumer protection should be taken as a basis;

Whereas, under the terms of Article 8c of the Treaty, account should be taken of the extent of the effort which must be made by certain economies which show differences in development; whereas certain Member States should, therefore, be granted transitional arrangements so that certain provisions of this Directive may be implemented gradually,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Without prejudice to the second subparagraph of Article 2 (1) of Directive 84/5/EEC, the insurance referred to in Article 3 (1) of Directive 72/166/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

For the purposes of this Directive, the meaning of the term 'vehicle' is as defined in Article 1 of Directive 72/166/EEC.

Article 2

Member States shall take the necessary steps to ensure that all compulsory insurance policies against civil liability arising out of the use of vehicles:

— cover, on the basis of a single premium, the entire territory of the Community, and

— guarantee, on the basis of the same single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher.

Article 3

The following sentence shall be added to the first subparagraph of Article 1 (4) of Council Directive 84/5/EEC:

'However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person liable is unable or refuses to pay.'

Article 4

In the event of a dispute between the body referred to in Article i (4) of Directive 84/5/EEC and the civil liability insurer as to which must compensate the victim, the Member States shall take the appropriate measures so that one of these parties is designated to be responsible in the first instance for paying compensation to the victim without delay.

If it is ultimately decided that the other party should have paid all or part of the compensation, that other party shall reimburse accordingly the party which has paid.

Article 5

1. Member States shall adopt the necessary measures to ensure that the parties involved in a road traffic accident are able to ascertain promptly the identity of the insurance undertaking covering the liability arising out of the use of any motor vehicle involved in the accident.

2. Not later than 31 December 1995, the Commission shall present to the European Parliament and the Council a report on the implementation of paragraph 1 of this Article.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 6

1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

2. By way of exception from paragraph 1 :

— the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic have until 31 December 1995 to comply with Article 1 and 2,

— Ireland shall have until 31 December 1998 to comply with Article 1 as regards pillion passengers of motorcycles and until 31 December 1995 to comply with Article 1 as regards other vehicles and to comply with Article 2.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 14 May 1990.

For the Council

The President

D. J. O'MALLEY

4. 3. 81 Official Journal of the European Communities No L 57/27

COMMISSION

COMMISSION RECOMMENDATION

of 8 January 1981

on accelerated settlement of claims under insurance against civil liability in respect of the use of motor vehicles

(81/76/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 155 thereof,

Whereas motor vehicles are responsible for a significant proportion of accidents occurring in the Community;

Whereas, on 7 August 1980, the Commission presented to the Council a proposal for a second Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles; whereas that proposal is aimed at reducing certain disparities which continue to exist between the obligatory motor vehicle civil liability insurance schemes in the different Member States, in order to ensure that motor vehicle accident victims have equivalent cover in all Member States;

Whereas, however, that proposal does not deal with the procedures used to settle claims; whereas it is not possible to establish a uniform procedure in all Member States for forwarding police reports, particularly in view of the effect in this area of principles of public policy governing the administration of justice;

Whereas the period elapsing between the occurrence of a road accident and the payment of compensation by the insurer of the person liable is occasionally extremely lengthy; whereas such lengthy periods are undoubtedly prejudicial to accident victims;

Whereas such lengthy periods are largely attributable to the slowness of the legal procedures for determining liability and fixing compensation;

Whereas procedures have been introduced in some Member States enabling the parties concerned and their insurers to obtain more rapid access to police reports containing the particulars that are essential for settling claims; whereas it is appropriate to encourage the extension of such arrangements,

HEREBY RECOMMENDS:

Article 1

The Member States shall take all the measures necessary to facilitate the communication to those concerned of police reports and other documents necessary for the payment of compensation by insurers covering against civil liability in respect of the use of motor vehicles.

Article 2

Member States shall inform the Commission of the measures they take on the basis of this recommendation.

Article 3

This recommendation is addressed to the Member States.

Done at Brussels, 8 January 1981.

For the Commission

Christopher TUGENDHAT

Member of the Commission

III. Proposed measures

1. Pension Funds

2. Winding-up of insurance undertakings

3. Insurance contracts

4. Guarantees issued by insurance undertakings

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision (1)

(93/C 171/11)

COM(93) 237 final — SYN 363

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 26 May 1993)

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,

In cooperation with the European Parliament,

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

Whereas institutions for retirement provision are institutions *sui generis* which are amongst the largest and most important financial institutions within the Community and often represent an alternative means of providing the same benefits as are provided by other competing financial institutions;

Whereas the provision of supplementary retirement benefits through institutions for retirement provision is a matter of considerable importance for social policy within the Community and forms one part of the overall structure of retirement provision, the components of which vary considerably between Member States, particularly as regards the level and the form of statutory social security retirement benefits; whereas there is no intention to alter at Community level the balance which has been arrived at in individual Member States in this respect; whereas the provision of supplementary retirement benefits can facilitate the effective provision of a satisfactory level of overall retirement income; whereas the protection of rights to retirement benefits is therefore a matter of proper concern and great importance for the Member States;

Whereas the provisions of the Directive apply equally to many different types of institution for retirement provision including institutions which operate on a fully funded basis, but also some institutions operating essentially on a pay-as-you-go basis with compulsory membership and limited reserves on the basis of generational transfers; whereas such institutions are different in many other respects; whereas the characteristics which are necessary for their stability must be taken into account;

Whereas freedom of services extends to the provision of investment management services and custody services to institutions for retirement provision; whereas a situation where such institutions are restricted to the use of investment managers or custodians established in a particular Member State is incompatible with the principle of freedom of services; whereas the requirements for authorization and mutual recognition of the providers of such services are set out under the legislation applicable to these providers;

Whereas institutions for retirement provision represent major accumulations of capital within the Community; whereas the provisions of Council Directive 88/361/EEC (2) (capital movements) have a clear impact on such institutions but are without prejudice to the right of Member States to take all requisite measures to prevent infringements of their laws and regulations, *inter alia* in the field of prudential supervision of financial institutions; whereas it is therefore necessary to define in more detail the prudential investment rules which are consistent with the free movement of capital and the freedom of services; whereas the adoption of common prudential investment principles will facilitate the exercise of the freedom of establishment for institutions for retirement provision;

Whereas the protection of members' rights requires that the assets of institutions for retirement provision be invested in a prudent manner; whereas capital movements within the Community must not lead to a

(1) OJ No C 312, 3. 12. 1991, p. 3.

(2) OJ No L 178, 8. 7. 1988, p. 5.

situation where an increased level of risk could endanger those rights; whereas the assets of institutions for retirement provision must therefore be invested with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; whereas those responsible for the investment of the assets of an institution for retirement provision, such as the directors or trustees of such an institution, and their delegates, such as external or internal managers and advisors, must act together in the sole interest of plan participants and beneficiaries; whereas no investment should be made for the particular interest of any such directors or trustees or of their delegates, nor should any investment be made to pursue solely the interests of the undertaking or undertakings which sponsor the institution or any associated undertaking; whereas the investment of the assets of an institution for retirement provision should follow the principles of sufficient diversification, quality, liquidity and restraint on investment in the sponsoring undertaking or associated undertakings; whereas the investment of such assets must be considered and judged within the context of the overall portfolio and the performance objectives and risk tolerance of the institution and not within the context of each investment taken in isolation;

Whereas supplementary retirement provision is often organized on an occupational basis either for a particular sector or associated with particular undertakings; whereas as a result of progress towards the single market such undertakings are often organized on a basis which crosses national borders and wish to organize retirement provision on a consistent basis; whereas direct and indirect barriers still exist to the free provision of cross-border services by institutions for retirement provision; whereas in this respect there are also requests from consumer representatives to take the Community dimension into account in the development of supplementary retirement benefits; whereas this dimension could, subject to certain conditions, contribute to the transnational mobility of workers; whereas further work needs to be done on this subject, taking into account the difference between the types of institution for retirement provision and not calling into question the functioning of institutions with compulsory membership,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to institutions for retirement provision in order to ensure certain freedoms concerning the management and investment of their assets.

2. This Directive shall not apply to financial institutions which are covered by

— Council Directive 89/646/EEC (1),

— Council Directive 92/96/EEC (2),

— Council Directive 92/49/EEC (3),

— Council Directive 85/611/EEC (4),

— Directive (investment services directive).

Article 2

For the purpose of this Directive:

(a) 'institution for retirement provision' means an institution or a fund, other than a statutory social security body, established separately from any sponsoring undertaking or body for the purpose of financing supplementary retirement benefits, including those prescribed by, or provided for, in social security legislation and which constitute reserves which are capable of being invested in assets.

A non-exhaustive list as at the date of adoption of this Directive of the statutory social security bodies, referred to in the above subparagraph, is contained in the Annex.

Member States shall inform the Commission of any changes to this list which shall be published in the *Official Journal of the European Communities*;

(b) 'retirement benefits' means benefits in the form of pensions, whether for life-time or a temporary period, or in the form of lump sums paid on death, disability, cessation of employment or when a defined retirement age is reached, or support payments in case of sickness or indigence when they are supplementary to the abovementioned benefits. Benefits which replace statutory social security benefits are regarded as retirement benefits within this definition;

(c) 'sponsoring undertaking' means any private or public undertaking which pays contributions, or the employees or members of which pay contributions, into an institution for retirement provision;

(d) 'sponsoring body' means any private or public body which pays contributions, or the employees or members of which pay contributions, into an institution for retirement provision.

Article 3

1. Member States which permit the external management of the investments of certain forms of institution for retirement provision shall not restrict the freedom of such institutions to choose an investment

(1) OJ No L 386, 30. 12. 1989, p. 1.
(2) OJ No L 360, 9. 12. 1992, p. 1.
(3) OJ No L 228, 11. 8. 1992, p. 1.
(4) OJ No L 375, 31. 12. 1985, p. 3.

manager, for parts or the whole of their assets, who is established in another Member State and duly authorized for this activity, according to Directives 92/96/EEC, ... (investments services directive) or 89/646/EEC.

2. Member States shall allow institutions for retirement provision of which the sponsoring undertakings or bodies belong to a group of undertakings or bodies to organize the management of their investments on a group basis, through one of these institutions. This shall not affect the right of Member States to provide that institutions for retirement provision shall be managed by a separate legal entity.

3. Member States which permit or require that the assets of an institution for retirement provision are held by a custodian shall not restrict the freedom of such institutions to choose a custodian to hold parts or the whole of their assets who is established in another Member States and duly authorized according to Directive 89/646/EEC or ... (investment services directive), or is accepted as a depositary for the purposes of Directive 85/611/EEC.

Article 4

1. Member States shall require institutions for retirement provision established within their territory to invest all assets held to cover expected future retirement benefit payments in accordance with the following principles:

(a) the assets shall be invested in a manner appropriate to the nature and the duration of the corresponding liabilities and the level of their funding, taking account of the requirements of security, quality, liquidity and profitability of the institution's portfolio as a whole;

(b) the assets shall be sufficiently diversified in such a way as to avoid major accumulations of risk in the portfolio as a whole;

(c) investment in the sponsoring undertaking or undertakings or in affiliated or associated undertakings shall be restricted to a prudent level. 'Affiliated undertakings' are those between which a relationship exists as described in Article 1 of Council Directive 83/349/EEC (1). 'Associated undertakings' are those over which the sponsoring undertaking or undertakings or an affiliated undertaking exercises a significant influence as described in Article 33 (1) of Directive 83/349/EEC.

In the application of these principles the extent of any insolvency insurance or State guarantees may be taken into account.

2. Member States shall not require institutions for retirement provision to invest in particular categories of assets or to localize their assets in a particular Member State.

3. Member States shall in no case require institutions for retirement provision to hold more than 80 % of their assets in matching currencies, after taking account of the effect of any currency hedging instruments held by the institutions. In the case of those institutions for retirement provision whose liabilities are not fixed in monetary terms, but are for instance linked to future salary levels, this percentage shall be reduced to 60 %.

Assets denominated in ecus shall be regarded as matching any particular currency in the Community.

4. Member States shall not subject the investment decisions of an institution for retirement provision or its investment manager to any kind of prior approval or systematic notification requirements.

5. Member States may lay down more detailed rules consistent with paragraphs 1 to 4.

Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ... They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 6

This Directive is addressed to Member States.

(1) OJ No L 193, 19. 7. 1983, p. 2.

ANNEX

List of social security bodies referred to in Article 2 (a)

BELGIQUE/BELGIË

Office national des pensions, Bruxelles — Rijksdienst voor werknemerspensioenen, Brussel

Institut national d'assurances sociales pour travailleurs indépendants, Bruxelles — Rijksinstituut voor de sociale verzekeringen der zelfstandigen, Brussel

DANMARK

Arbejdsmarkedets Tillægspension (ATP)

DEUTSCHLAND

Bundesversicherungsanstalt für Angestellte (BfA)

Landesversicherungsanstalten (LVAen)

Bundesknappschaft

Altershilfe für Landwirte

Seekasse

Bundesbahnversicherungsanstalt

Berufsständische Versorgungswerke

(Ärzte, Architekten, Apotheker, Notare, Rechtsanwälte, Tierärzte, Zahnärzte)

Zusatzversorgung des öffentlichen Dienstes

HELLAS

Ίδρυμα Κοινωνικών Ασφαλίσεων (ΙΚΑ)

Ταμείο Συντάξεων Αυτοκινητιστών

Ταμείο Συντάξεων και Επικουρικής Ασφάλισης Προσωπικού Γεωργικών Συνεταιριστικών Οργανώσεων

Ταμείο Συντάξεων Προσωπικού ΗΣΑΠ

Ταμείο Συντάξεων Προσωπικού Θεραπευτηρίου «Ο Ευαγγελισμός»

Ταμείο Ασφάλισης Προσωπικού Ασφαλιστικής Εταιρείας «Η Εθνική»

Ταμείο Συντάξεων Προσωπικού Εθνικής Τραπέζης της Ελλάδος

Ταμείο Συντάξεων Προσωπικού Τραπέζης Ελλάδος και Κτηματικής

Ταμείο Συντάξεων Προσωπικού Αγροτικής Τραπέζης της Ελλάδος

Ταμείο Ασφάλισης Προσωπικού Ιονικής-Λαϊκής Τραπέζης

Ταμείο Ασφάλισης Προσωπικού ΕΤΒΑ

Ταμείο Ασφάλισης Προσωπικού ΟΤΕ

Ταμείο Επαγγελματιών και Βιοτεχνών Ελλάδας (ΤΕΒΕ)

Ταμείο Ασφάλισης Εμπόρων

Ταμείο Ασφάλισης Ναυτικών Πρακτόρων και Υπαλλήλων

Ταμείο Συντάξεων Εκτελωνιστών

Ταμείο Πρόνοιας Ξενοδόχων

Ταμείο Σύνταξης Νομικών

Ταμείο Σύνταξης και Αυτασφάλισης Υγειονομικών (ΤΣΑΥ)

Ταμείο Σύνταξης Μηχανικών Εργοληπτών Δημοσίων Έργων (ΤΣΜΕΔΕ)

Ταμείο Συντάξεων Προσωπικού Εφημερίδων Αθηνών-Θεσσαλονίκης

Ταμείο Ασφάλισης Ιδιοκτητών Συντακτών και Υπαλλήλων Τύπου

Ταμείο Συντάξεων Εφημεριδοπωλών και Υπαλλήλων Πρακτορείων Θεσσαλονίκης

Ταμείο Ασφαλίσεων Τεχνικών Τύπου Αθηνών και Θεσσαλονίκης

Οργανισμός Γεωργικών Ασφαλίσεων (ΟΓΑ)

ΤΑΠΕΠ Ιπποδρομιών

ΤΕΑΠΕ Λιπασμάτων

ΕΤΕ Μετάλλου

ΤΕΑΕΥΕΕ Οργανώσεων

ΤΕΑΠΕ Τσιμέντων

ΤΕΑΠΟΖ Οινοποιίας

ΤΕΑΥΕ Καταστημάτων

ΤΕΑΑΠ Ασφαλιστικών Επιχειρήσεων

ΤΕΑ Ηλεκτροτεχνιτών

ΤΕΑΕΔ Ξυλουργικών Εργασιών

ΤΕΑΥ Φαρμακευτικών Εργασιών

ΤΕΑΠΕ Πετρελαιοειδών

ΤΕΑΥΕ Τροφίμων

ΤΕΑΠ Αεροπορικών Επιχειρήσεων

ΤΕΑΕΙΓ Εκπαίδευσης

Ίδρυμα Κοινωνικών Ασφαλίσεων — Ταμείο Επικουρικής Ασφάλισης Μισθωτών (ΙΚΑ-ΤΕΑΜ)

Ταμείο Αρωγής Προσωπικού ΟΤΕ

Κλάδος Επικουρικής Ασφάλισης Δικηγόρων

Ταμείο Επικουρικής Ασφάλισης Χημικών

Ταμείο Επικουρικής Ασφάλισης Υπαλλήλων Ραδιοφώνου και Τηλεόρασης

Ταμείο Επικουρικής Ασφάλισης Αρτοποιών

Ταμείο Επικουρικής Ασφάλισης και Πρόνοιας Προσωπικού ΕΡΤ 2

ESPAÑA

Instituto Nacional de la Seguridad Social

Instituto Nacional de Empleo

Instituto Social de la Marina

Mutualidad General de Funcionarios Civiles del Estado

Mutualidad Nacional de Previsión de la Administración Local

Mutuas patronales de accidentes de trabajo reguladas en la Ley General de Seguridad Social

FRANCE

Agence centrale des organismes de sécurité sociale (ACOSS)

Union pour le recouvrement des cotisations de sécurité sociale et d'allocations familiales (URSSAF)

Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS)

Caisses régionales d'assurance maladie (CRAM)

Caisse régionale d'assurance vieillesse de Strasbourg

Caisses générales de securité sociale des départements d'outre-mer

Caisses des Français de l'étranger

Fonds national de solidarité

Caisse centrale de secours mutuels agricoles

Caisse nationale d'assurance vieillesse mutuelle agricole

Caisses de mutualité sociale agricole

Caisse de prévoyance sociale de Saint-Pierre-et-Miquelon

Caisse nationale de retraite des agents des collectivités locales (CNRACL)

Fonds spécial des ouvriers de l'État

Caisse autonome nationale de la sécurité sociale dans les mines (CANSSM)

Établissement national des invalides de la marine (ENIM)

Caisse de retraite et de prévoyance des clercs et employés de notaires (CRPCEN)

Caisses des organisations autonomes d'assurance vieillesse des professions artisanales (Cancava, AVA), des professions industrielles et commerciales (Organic) et des professions libérales (CNAVPL) visées à l'article L 621-3 du code de la sécurité sociale

Caisse nationale des barreaux français (CNBF)

Caisse mutuelle d'assurance vieillesse des cultes (Camavic)

Union nationale interprofessionnelle pour l'emploi dans l'industrie et le commerce (Unedic)

Associations pour l'emploi dans l'industrie et le commerce (Assedic)

IRELAND

The Social Insurance Fund established under Section 122 of the Social Welfare (Consolidation) Act 1981

ITALIA

Istituto nazionale della previdenza sociale

Ente nazionale di previdenza e assistenza per i lavoratori dello spettacolo

Istituto nazionale di previdenza per i dirigenti di aziende industriali, Roma

Istituto nazionale di previdenza per i giornalisti italiani «G. Amendola»

Ente nazionale di previdenza ed assistenza medici

Ente nazionale di previdenza ed assistenza farmacisti

Ente nazionale di previdenza ed assistenza veterinari

Cassa nazionale di previdenza per gli ingegneri ed architetti

Cassa nazionale di previdenza ed assistenza a favore dei geometri

Cassa nazionale di previdenza ed assistenza a favore degli avvocati e dei procuratori

Cassa nazionale di previdenza ed assistenza a favore dei dottori commercialisti

Cassa nazionale di previdenza ed assistenza a favore dei ragionieri e periti commerciali

Ente nazionale di previdenza ed assistenza per i consulenti del lavoro

Cassa nazionale notariato

Fondo di previdenza a favore degli spedizionieri doganali

Ente nazionale assistenza rappresentanti di commercio (Enasarco)

Istituto nazionale della previdenza dipendenti amministrazione pubblica (Inpdap)

Ente ferrovie dello Stato

Istituto postelegrafonico

LUXEMBOURG

Établissement d'assurance contre la vieillesse et l'invalidité, Luxembourg

Caisse de pension des employés privés, Luxembourg

Caisse de pension des artisans, des commerçants et des industriels, Luxembourg

Caisse de pension agricole, Luxembourg

Caisse de prévoyance des fonctionnaires et employés communaux

NEDERLAND

Fondsen en instellingen als bedoeld in de Organisatiewet Sociale Verzekeringen en de Wet op de Sociale Verzekeringsbank, telkens in de van kracht zijnde versies

PORTUGAL

Centro Nacional de Pensões

Caixa Nacional de Seguros de Doenças Profissionais

Caixa de Previdência do Pessoal da Companhia Portuguesa Rádio Marconi

Instituto de Gestão Financeira da Segurança Social

Fundo Especial da Caixa de Previdência do Pessoal da Companhia de Carris de Ferro de Lisboa

Fundo Especial de Segurança Social da Banca dos Casinos

Fundo Especial da Caixa de Previdência dos Profissionais de Espectáculos

Caixa de Previdência dos Advogados e Solicitadores

Caixa Geral de Aposentações

Montepio dos Servidores do Estado

Fundo de Pensões dos Militares das Forças Armadas

UNITED KINGDOM

A. *Great Britain*

National Insurance Fund maintained under the control and management of the Secretary of State under S. 161 (1) of the Social Security Administration Act 1992

B. *Northern Ireland*

Northern Ireland National Insurance Fund maintained under the direction of the Northern Ireland Department of Finance and Personnel under S. 141 (1) of the Social Security Administration (Northern Ireland) Act 1992

C. *Gibraltar*

Social Insurance (Pensions) Fund maintained under the control and management of the Director of Labour and Social Security

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision

(91/C 312/04)

COM(91) 301 final — SYN 363

(Submitted by the Commission on 21 October 1991)

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,

In cooperation with the European Parliament,

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

Whereas institutions for retirement provision are institutions *sui generis* which are amongst the largest and most important financial institutions within the Community and often represent an alternative means of providing the same benefits as are provided by other competing financial institutions;

Whereas the provision of supplementary retirement benefits through institutions for retirement provision is a matter of considerable importance for social policy within the Community and forms one part of the overall structure of retirement provision, the components of which vary considerably between Member States, particularly as regards the level and the form of statutory social security retirement benefits; whereas there is no intention to alter at Community level the balance which has been arrived at in individual Member States in this respect; whereas the provision of supplementary retirement benefits can facilitate the effective provision of a satisfactory level of overall retirement income; whereas the protection of rights to retirement benefits is therefore a matter of proper concern and great importance for the Member States;

Whereas the provisions of this Directive apply equally to many different types of institution for retirement provision including institutions which operate on a fully funded basis, but also some institutions operating essentially on a pay-as-you-go basis with compulsory membership and limited reserves on the basis of generational transfers; whereas such institutions are different in many other respects; whereas the characteristics which are necessary for their stability must be taken into account;

Whereas freedom of services extends to the provision of investment management services and custody services to institutions for retirement provision; whereas a situation where such institutions are restricted to the use of investment managers or custodians established in a particular Member State is incompatible with the principle of freedom of services; whereas the requirements for authorization and mutual recognition of the providers of such services are set out under the legislation applicable to these providers;

Whereas institutions for retirement provision represent major accumulations of capital within the Community; whereas the provisions of Directive 88/361/EEC (1) (capital movements) have a clear impact on such institutions but are without prejudice to the right of Member States to take all requisite measures to prevent infringements of their laws and regulations, *inter alia*, in the field of prudential supervision of financial institutions; whereas it is therefore necessary to define in more detail the prudential investment rules which are consistent with the free movement of capital and the freedom of services; whereas the adoption of common prudential investment principles will facilitate the

(1) OJ No L 178, 8 7 1988, p. 5.

exercise of the freedom of establishment for institutions for retirement provision;

Whereas the protection of members' rights requires that the assets of institutions for retirement provision be invested in a prudent manner; whereas capital movements within the Community must not lead to a situation where an increased level of risk could endanger those rights; whereas the assets of institutions for retirement provision must therefore be invested with the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; whereas those responsible for the investment of the assets of an institution for retirement provision, such as the directors or trustees of such an institution, and their delegates, such as external or internal managers and advisers, must act together in the sole interest of plan participants and beneficiaries; whereas no investment should be made for the particular interest of any such directors or trustees or of their delegates, nor should any investment be made to pursue solely the interests of the undertaking or undertakings which sponsor the institution; whereas the investment of the assets of an institution for retirement provision should follow the principles of sufficient diversification, quality, liquidity and restraint on investment in the sponsoring undertaking or undertakings; whereas the investment of such assets must be considered and judged within the context of the overall portfolio and the performance objectives and risk tolerance of the institution and not within the context of each investment taken in isolation;

Whereas supplementary retirement provision is often organized on an occupational basis either for a particular sector or associated with particular undertakings; whereas as a result of progress towards the single market such undertakings are often organized on a basis which crosses national borders and wish to organise retirement provision on a consistent basis; whereas direct and indirect barriers still exist to the free provision of cross-border services by institutions for retirement provision; whereas in this respect there are also requests from consumer representatives to take the Community dimension into account in the development of supplementary retirement benefits; whereas this dimension could, subject to certain conditions, contribute to the transnational mobility of workers; whereas further work needs to be done on this subject, taking into account the differences between the types of institution for retirement provision and not calling into question the functioning of institutions with compulsory membership.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to institutions for retirement provision in order to ensure certain freedoms concerning the management and investment of their assets.

2. This Directive shall not apply to financial institutions which are covered by:

Directive 89/646/EEC (1);

Directive ../.../EEC (third life assurance Directive) (2);

Directive ../.../EEC (third non-life insurance Directive) (3);

Directive 85/611/EEC (4);

Directive ../.../EEC (investment services Directive) (5).

Article 2

For the purpose of this Directive:

(a) *institution for retirement provision* means an institution which is established separately from any sponsoring undertaking for the purpose of financing retirement benefits to a group of persons defined by an occupational or professional or similar relationship. Institutions, other than competent institutions within the meaning of Regulation No 1408/71 (6), which provide retirement benefits prescribed by or provided for in social security legislation are regarded as institutions for retirement provision within this definition;

(b) *retirement benefits* means benefits in the form of pensions, whether for life time or a temporary period, or in the form of lump sums paid on death, disability, cessation of employment or when a defined retirement age is reached, or support payments in case of sickness or indigence when they are supplementary to the abovementioned benefits. Benefits which replace social security benefits as defined above are regarded as retirement benefits within this definition;

(1) OJ No. L 386, 30 12. 1989, p. 1.
(2) OJ No L .
(3) OJ No L .
(4) OJ No L 375, 31. 12. 1985, p. 3.
(5) OJ No .
(6) OJ No L. 149, 5. 7. 1971, p. 2.

(c) *sponsoring undertaking* means any undertaking or other body which pays contributions into an institution for retirement provision.

Article 3

1. Member States which permit the external management of the investments of certain forms of institution for retirement provision shall not restrict the freedom of such institutions to choose an investment manager, for parts or the whole of their assets, who is established in another Member State and duly authorized for this activity, according to Directive ../.../EEC (third life assurance Directive), Directive ../.../EEC (investments services Directive) or Directive 89/646/EEC.

2. Member States shall allow institutions for retirement provision of which the sponsoring undertakings belong to a group of undertakings to organize the management of their investments on a group basis, through one of these institutions. This shall not affect the right of Member States to provide that institutions for retirement provision shall be managed by a separate legal entity.

3. Member States which permit or require that the assets of an institution for retirement provision are held by a custodian shall not restrict the freedom of such institutions to choose a custodian to hold parts or the whole of their assets, who is established in another Member State and duly authorized according to Directive 89/646/EEC or Directive ../.../EEC (investment services Directive), or is accepted as a depositary for the purposes of Directive 85/611/EEC.

Article 4

1. Member States shall require institutions for retirement provision established within their territory to invest all assets held to cover expected future retirement benefit payments in accordance with the following principles:

(a) the assets shall be invested in a manner appropriate to the nature and the duration of the corresponding liabilities and the level of their funding, taking account of the requirements of security, quality, liquidity and profitability of the institution's portfolio as a whole;

(b) the assets shall be sufficiently diversified in such a way as to avoid major accumulations of risk in the portfolio as a whole;

(c) investment in the sponsoring undertaking or undertakings shall be restricted to a prudent level.

In the application of these principles, the extent of any insolvency insurance or State guarantees must be taken into account.

2. Member States shall not require institutions for retirement provision to invest in particular categories of assets or to localize their assets in a particular Member State.

3. Member States shall in no case require institutions for retirement provision to hold more than 80 % of their assets in matching currencies, after taking account of the effect of any currency-hedging instruments held by the institution. In the case of those institutions for retirement provision whose liabilities are not fixed in monetary terms, but are for instance linked to future salary levels, this percentage shall be reduced to 60 %.

Assets denominated in ecu shall be regarded as matching any particular currency in the Community.

4. Member States shall not subject the investment decisions of an institution for retirement provision or its investment manager to any kind of prior approval or systematic notification requirements.

5. Member States may lay down more detailed rules consistent with paragraphs 1 to 4.

Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 6

This Directive is addressed to the Member States.

II

(Preparatory Acts)

COMMISSION

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 (1)

COM(89) 394 final — SYN 80

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 18 September 1989)

(89/C 253/04)

(1) OJ No C 71, 19. 3. 1987, p. 5.

INITIAL PROPOSAL	AMENDED PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	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 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 proposal from the Commission,
Having regard to the opinion of the European Parliament,	In cooperation with the European Parliament,
Having regard to the opinion of the Economic and Social Committee,	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 of the business of direct life assurance (2);	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/EEC (2), 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 of the business of direct life assurance (3).

(1) OJ L 228, 16. 8. 1973, p. 3.
(2) OJ L 63, 13. 3. 1979, p. 1.

(1) OJ L 228, 16. 8. 1973, p. 3.
(2) OJ L 172, 4. 7. 1988, p. 1.
(3) OJ L 63, 13. 3. 1979, p. 1.

INITIAL PROPOSAL	AMENDED PROPOSAL
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;	Unchanged
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;	Unchanged
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;	Unchanged
Whereas it is not advisable to extend the scope of this Directive to insurance undertakings that are not subject to the First Coordination Directives;	Unchanged
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;	Unchanged
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;	Unchanged
Whereas it is necessary to distinguish 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;	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
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;	Unchanged
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;	Unchanged
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;	Unchanged
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,	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
HAS ADOPTED THIS DIRECTIVE:	HAS ADOPTED THIS DIRECTIVE:
TITLE I	TITLE I
GENERAL PROVISIONS	GENERAL PROVISIONS
Article 1	*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.	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. 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.	2. Unchanged
Article 2	*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.	1. Unchanged
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.	2. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
3. The total value of the assets entered, valued in accordance with national rules, shall at all times be not less that 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.	3. 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.	4. 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.	5. 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.	1. Unchanged
2. Where the supervisory authority restricts or prohibits the free disposal of assets pursuant to Article 20, 22 or 27 of the First Non-Life Coordination Directive or Article 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.	2. 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.	3. 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.	4. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
Where the prohibition on the free disposal of assets is lifted, the register shall be returned to the undertaking.	
Article 4	*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:	1. Unchanged
(a) normal compulsory winding up as long as special compulsory winding up has not been ordered;	
(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.	
2. Once authorization has been withdrawn, the undertaking may no longer be wound up voluntarily.	2. Unchanged
TITLE II	TITLE II
NORMAL COMPULSORY WINDING UP	NORMAL COMPULSORY WINDING UP
Article 5	*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.	1. Unchanged
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 deprival 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.	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 deprival 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.

INITIAL PROPOSAL	AMENDED PROPOSAL
3. The instrument of appointment shall specify the powers of the administrator.	3. 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.*	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.**
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.	5. Unchanged
Article 6	*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.**
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. ex 1. Unchanged
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. ex 2. Unchanged
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.	4. ex 3. Unchanged
Article 7	*Article 7*
1. Normal compulsory winding up shall not entail the automatic termination of insurance contracts, but shall preclude their automatic renewal. The policy holder may, however, terminate the contract when the annual premium falls due, subject to giving notice thereof.	1. Unchanged
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.	2. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
3. The supervisory authorities shall ensure that the insurance undertaking:	3. Unchanged
(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.	4. Unchanged
Article 8	*Article 8*
1. The normal compulsory winding up of an undertaking shall take effect in all the Member States.	1. The normal compulsory winding up of an undertaking shall take effect in all the 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. 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.	2. Unchanged
Article 9	*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:	1. Unchanged
— 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.	2. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
TITLE III	TITLE III
SPECIAL COMPULSORY WINDING UP	SPECIAL COMPULSORY WINDING UP
Article 10	*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.	1. Unchanged
2. A special compulsory winding up shall take effect in all Member States.	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	*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.	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.**
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. ex 2. Unchanged
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.	4. ex 3. Unchanged
Article 12	*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.	1. Unchanged
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.	2. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
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.	3. Unchanged
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.	4. Unchanged
Article 13	*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.	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. 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.	2. Unchanged
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).	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.	1. Unchanged
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 policy holders' rights of termination if genuine negotiations concerning the transfer of an entire portfolio are in progress.	2. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
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 policy holders' rights of termination.	3. Unchanged
Article 15	*Article 15*
1. Special compulsory winding up shall not entail the automatic termination of existing life assurance contracts.	1. Unchanged
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.	2. Unchanged
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. 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.	3. Unchanged
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.	1. Unchanged
2. The liquidators shall seek appropriate reinsurance cover throughout the special compulsory winding up procedure.	2. Unchanged
3. Special compulsory winding-up shall not preclude the offsetting of reinsurance claims and liabilities.	3. 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.	1. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
2. No alteration other than the correction of purely technical errors shall be made in the registers.	2. Unchanged
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.	3. 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 (2) respectively.	4. 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.	5. Unchanged
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:	1. 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.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(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.	2. 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:	1. 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 policy-holders and entitled third parties or, as the case may be, gurantee 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:	2. 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 policy holders and beneficiaries;	

INITIAL PROPOSAL	AMENDED PROPOSAL
(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.	3. 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.	4. 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.	5. 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.	1. 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.	2. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
TITLE IV	TITLE IV
NON-COMMUNITY UNDERTAKINGS	NON-COMMUNITY UNDERTAKINGS
Article 21	*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.	1. Unchanged
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.	2. Unchanged
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.	3. Unchanged
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.	4. Unchanged
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 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.	5. Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
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.	6. 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.	7. Unchanged
TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS
Article 22	*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.	Unchanged
	The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.
Article 23	*Article 23*
This Directive is addressed to the Member States.	Unchanged

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Amendment of the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts (1)

(Submitted to the Council by the Commission pursuant to the second paragraph of Article 149 of the EEC Treaty on 30 December 1980)

INITIAL PROPOSAL	NEW PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES	THE COUNCIL OF THE EUROPEAN COMMUNITIES
Citations unchanged	
First recital unchanged	
Second recital	
Whereas the second Council Directive .../.../EEC of ... 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 granted the parties freedom to choose the law applicable to the contract, firstly in the case of risks classified as transport, primarily on account of their frequently international character, and secondly in the case of certain risks which are defined by precise criteria in respect of which there is less need of protection for insured persons;	Whereas the second Council Directive .../.../EEC of ... 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, granted the parties freedom to choose the law applicable to the contract, firstly in the case of risks classified as transport, primarily on account of their frequently international character, and secondly in the case of certain risks which are defined by precise criteria; **(13 words deleted);**
New recital	
	Whereas coordination of laws relating to insurance contracts would facilitate the provision of services in a Member State by those providing them in another Member State;
Third recital	
Whereas, however, pending subsequent coordination of national rules governing insurance contracts, that Directive maintained in respect of other risks the principle of the application of the law in force in the State in which the risk is situated; whereas such coordination, by establishing a balance between the interests of the insurer on the one hand and the protection of the policyholder and the insured person on the other, is likely to enable freedom of choice to be extended and thus to facilitate the exercise of freedom to provide services;	Whereas in coordinating the laws relating to insurance contracts it is necessary to maintain the fairest balance between the interests of the insurer on the one hand and the protection of the insured person on the other; whereas such coordination is likely to facilitate an extension of the freedom of choice of the law applicable to the contract;

(1) OJ No C 190, 28. 7. 1979, p. 2.

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Fourth recital	
Whereas it was considered advisable to exclude from the scope of the Directive marine, aviation and transport insurance because of their widely international character and the freedom traditionally allowed to the parties in concluding such contracts; whereas the credit and suretyship insurance classes display peculiarities which, pending subsequent coordination, justify not making them subject to the provisions of this Directive as they stand;	Whereas it was considered advisable to exclude from the scope of the Directive, marine, aviation and transport insurance because of their widely international character and the freedom traditionally allowed to the parties in concluding such contracts, and **sickness insurance which in some cases is operated in a manner similar to life assurance and has special technical features;** whereas the credit and suretyship insurance classes display peculiarities which, pending subsequent coordination, justify not making them subject to the provisions of this Directive as they stand;
Fifth recital	
Whereas among the fundamental problems posed by legislation on insurance contracts are the consequences resulting firstly from the conduct of the policyholder at the time of the conclusion and in the course of the contract concerning the declaration of the risk and of the claim, and secondly his attitude with regard to the measures to be taken in the event of a claim;	Whereas among the problems **(one word deleted)** posed by legislation on insurance contracts are the consequences resulting **(one word deleted)** from the conduct of the policyholder at the time of the conclusion and in the course of the contract concerning the declaration of the risk and of the claim, and **(three words deleted)** with regard to the measures to be taken in the event of a claim;
Sixth recital	
Whereas it is also necessary to regulate certain general questions relating in particular to the existence of cover depending on the payment of the premium, the duration of the contract, and the position of insured persons who are not policyholders;	Whereas it is also **desirable to coordinate the law** relating in particular to the existence of cover depending on the payment of the premium, the duration of the contract, and the position of insured persons who are not policyholders;
Seventh recital unchanged	
	HAS ADOPTED THIS DIRECTIVE
Article 1	*Article 1*
The object of this Directive is to coordinate the fundamental laws, regulations and administrative provisions governing insurance contracts relating to one of the classes contained in point A of the Annex to 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), with the exception of the classes contained in points 4 (railway rolling stock), 5 (aircraft), 6	The object of this Directive is to coordinate the **important** laws, regulations and administrative provisions governing insurance contracts **covering risks situated in Member States of the Community and** relating to one of the classes contained in point A of the Annex to 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, with the exception of the classes

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(ships, sea, lake and river and canal vessels), 7 (goods in transit), 11 (aircraft liability), 12 (liability for ships, sea, lake and river and canal vessels), 14 (credit) and 15 (suretyship).	contained in points 2 (sickness), 4 (railway rolling stock), 5 (aircraft), 6 (ships (sea, lake and river and canal vessels)), 7 (goods in transit), 11 (aircraft liability), 12 (liability for ships (sea, lake and river and canal vessels)), 14 (credit) and 15 (suretyship).
Article 2	*Article 2*
1. Every insurance contract shall give rise to the issue to the policyholder of a document containing at least the following information:	1. Every insurance contract shall give rise to the issue to the policyholder of a document containing at least the following information:
(a) the name and address or head office of the contracting parties;	(a) the name and address **of the policyholder; name and registered office of the insurer or co-insurers; address of the establishment to which the policyholder is to send his declarations and pay the premiums;**
(b) the subject matter of the insurance and a description of the risks covered;	(b) the subject matter of the insurance, **any exclusions** and a description of the risks covered;
(c) the amount insured or the method of calculating it;	(c) the amount insured or the method of calculating it;
(d) the amount of the premium or contribution or the method of calculating it;	(d) the amount of the premium or contribution or the method of calculating it;
(e) the dates on which premiums or contributions fall due;	(e) the dates on which premiums or contributions fall due;
(f) the duration of the contract and the times at which cover commences and expires and, where it applies, the time of automatic renewal.	(f) the duration of the contract and the times at which cover commences and expires and, where it applies, the time of automatic renewal.
2. Pending the issue of such a document the policyholder shall be entitled to receive, at the earliest opportunity, a document which attests to the existence of an insurance contract and contains at least the information referred to in paragraph 1 (1), (b) and (c).	2. Pending the issue of such a document the policyholder shall be entitled to receive, **without delay,** a document which attests to the existence of an insurance contract and contains at least the information referred to in paragraph 1 (a), (b) and (c).
3. If, after the contract has been concluded any change occurs that affects the information referred to under paragraph 1 (a) to (f), the insurer shall furnish the policyholder with a document notifying such change	3. If, after the contract has been concluded, any **agreed** change occurs that affects the information referred to under paragraph 1 (a) to (f), the insurer shall furnish the policyholder with a document **containing information as to** such change.
4. If provisional cover is provided the policyholder shall receive a document which certifies that such cover has in fact been provided and which contains at least the information referred to in paragraph 1 (a), (b), (c) and (f).	4. If provisional cover is provided, the policyholder shall be entitled to receive a document **which contains the information** that such cover has in fact been provided and which contains at least the information referred to in paragraph 1 (a), (b), (c) and (f).
(') OJ No L 228, 16. 8. 1973, p. 3.	(') OJ No L 228, 16. 8. 1973, p. 3.

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5. The contract shall be drafted in the language of the Member State whose law is applicable.	5. **The documents referred to in paragraphs 1, 2, 3 and 4** shall be drafted in the language of the Member State whose law is applicable **according to the second Council Directive .../.../EEC of .....**
However, the policyholder shall be entitled to stipulate as a condition precedent to the conclusion of the contract that all documents relating to the conclusion, amendment and performance of the insurance contract be translated into the language of his habitual residence, provided such language is an official language of the Community.	However, the policyholder shall be entitled to stipulate as a condition precedent to the conclusion of the contract that all documents relating to the conclusion, amendment and performance of the insurance contract be **drafted** in the language of his habitual residence, provided such language is an official language of the Community.
6. The documents referred to in the above paragraphs have only a probative value.	6. The documents referred to in the above paragraphs shall have only a probative value.
7. Notwithstanding the provisions of this Article, the laws of the Member States may authorize a simplified form for insurance contracts concluded for a short period and for bearer policies.	7. Notwithstanding the provisions of this Article, the laws of the Member States may authorize a simplified form for insurance contracts concluded for **a period of less than six months** and for bearer policies.
Article 3	*Article 3*
1. When concluding the contract, the policyholder shall declare to the insurer any circumstances of which he is aware which may influence the insurer's assessment or acceptance of the risk. The policyholder shall not be obliged to declare to the insurer circumstances which are already known to the latter or which are common knowledge. Any circumstance in respect of which the insurer has asked specific questions in writing shall, in the absence of proof the contrary, be regarded as influencing the assessment and acceptance of the risk.	1. When concluding the contract, the policyholder shall declare to the insurer any circumstances of which he **ought reasonably to be aware and which he ought to expect to influence a prudent insurer's** assessment or acceptance of the risk. The policyholder shall not be obliged to declare to the insurer circumstances of which the latter is already **aware because he has already covered the risk. In the case of a corporate policyholder, circumstances of which it ought reasonably to be aware means circumstances of which the appropriate officer of the corporation ought reasonably to have been aware.** Any circumstances in respect of which the insurer has asked specific questions in writing shall, in the absence of proof to the contrary, be regarded as influencing the assessment and acceptance of the risk.
2. (a) If circumstances which were unknown to both parties when the contract was concluded come to light subsequently, or if the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer shall be entitled, within a period of two months from the date on which he becomes aware of the fact, to propose an amendment to the contract.	2. (a) If circumstances **existing at the time of entering into the contract** which were unknown to both parties when the contract was concluded come to light subsequently, or if the policyholder has failed **to declare circumstances of which he was aware but which he did not expect to influence a prudent insurer's assessment of the risk,** the insurer **or the policyholder** shall be entitled, within a period of two months from the date on which he becomes aware of the fact, to propose an amendment to **or termination of** the contract.

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(b) 1. The policyholder shall be entitled to a period of fifteen days from the date on which he receives the proposal for an amendment in which to accept or reject it. If the policyholder rejects the proposal or fails to reply within the above time limit, the insurer may terminate the contract within a period of eight days by giving fifteen days' notice.	**Where one of the parties proposes an amendment to the contract, the insurer shall be entitled to a period of fifteen days and the policyholder to a period of one month** from the date of receipt of the proposal in which to accept or reject it. **In the event of rejection of the proposal or failure** to reply within the above time limit, **the party proposing the amendment** may terminate the contract within a period of eight days. **Termination shall not take effect until a period of fifteen days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address.** **The abovementioned periods shall be extended to three weeks and one month where they are to the policyholder's benefit and the contract covers a risk which is not connected with a commercial or industrial activity of the policyholder.** **Where one of the parties proposes that the contract be terminated, termination shall not take effect until a period of fifteen days has elapsed from the date on which notice of termination is given to the insurer or to the policyholder at his last known address.** **The abovementioned period shall be extended to one month where the insurer terminates the contract and the contract covers a risk which is not connected with a commercial or industrial activity of the policyholder.**
2. If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.	(b) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.
3. If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall provide the agreed cover.	(c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall provide the agreed cover.
3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 and may be considered to have acted improperly, the insurer may terminate the contract or propose an amendment to it.	3. (a) If the policyholder has failed to fulfil the obligation referred to in paragraph 1, **(eight words deleted)** the insurer may, **within two months from the date on which he becomes aware of such fact, propose an amendment to the contract or terminate it.**
(a) The insurer shall choose either to terminate the contract or to propose an amendment to it within two months from the date on which he becomes aware of such facts. Termination shall take effect fifteen days after the date on which the policyholder is notified thereof at his last known address. If the insurer has proposed an	Where the insurer has proposed an amendment to the contract, the policyholder shall be entitled to accept or reject it within **one month** from the date on which he receives the proposal for an amendment. If the policyholder refuses the proposal or fails to

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amendment to the contract, the policyholder shall be entitled to accept or reject it within fifteen days from the date on which he receives the proposal for an amendment. If the policyholder refuses the proposal or fails to reply, the insurer may terminate the contract within eight days by giving fifteen days' notice.	reply, the insurer may terminate the contract within eight days. **Termination shall not take effect until a period of fifteen days has elapsed from the date on which the policyholder is notified thereof at his last known address.** Where the insurer terminates the contract, termination shall take effect fifteen days after the date on which the policyholder is notified thereof at his last known address.
(b) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.	(b) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.
(c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall be liable to provide only such cover as is in accordance with the ratio between the premium paid and the premium that the policyholder should have paid if he had declared the risk correctly.	(c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall **pay the policyholder a proportion of the compensation which would have been payable had the policyholder not failed to fulfil his obligations under paragraph 1 equal to the ratio between the agreed premium and the premium which a prudent insurer would have fixed if the policyholder had fulfilled his obligations under paragraph 1. However, if the insurer can show that no prudent insurer would have accepted the risk regardless of the rate of premium if he had been aware of the circumstances which the policyholder should have disclosed, or if the insurer can show that a prudent insurer would not have accepted the risk unless certain conditions were complied with, he shall not be bound to pay any claim.**
4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract.	4. (a) If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract **(six words deleted)** within two months from the date on which he becomes aware of such fact.
(a) The insurer shall take such action within two months from the date on which he becomes aware of such facts.	
(b) By way of damages, premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due.	(b) By way of damages, premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due, **without prejudice to the payment of damages in respect of any additional losses he has incurred by reason of the intention to deceive.**
(c) The insurer shall not be liable in respect of any claim.	(c) The insurer shall not be liable in respect of any claim.
5. In the cases referred to in paragraphs 3 and 4, the burden of proof of fraudulent or improper conduct on the part of the policyholder shall rest on the insurer.	5. In the cases referred to in paragraphs 3 and 4, the burden of proof of **failure to fulfil the obligation referred to in paragraph 1 or of intention to deceive** on the part of the policyholder shall rest on the insurer.

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Article 4	*Article 4*
	1. unchanged.
2. The insurer may, within two months of the date on which he was notified of the increase of the risk, propose an amendment to the contract in accordance with the procedure laid down in Article 3 (2) (b).	2. The insurer may, within two months of the date on which he **became aware of the increase of risk,** propose an amendment to or terminate the contract in accordance **with the provisions covering such circumstances set out in Article 3 (2).**
3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, such failure to give notice shall not give rise to any sanction where it relates to a new circumstance or change in circumstances which is not liable to appreciably and permanently increase the risk and lead to an increase in the premium.	3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, such failure to give notice shall not give rise to any sanction where it relates to a new circumstance which is **(one word deleted)** liable **neither** to increase the risk appreciably **or** permanently **nor** lead to an increase in the premium.
4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer may, within two months of the date on which he becomes aware of such fact, propose an amendment to the contract in accordance with the procedure laid down in Article 3 (2) (b).	4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer may, within two months of the date on which he becomes aware of such fact, propose an amendment to the contract or terminate it in the manner provided for in **Article 3 (3). However, in respect of the application of the proportionality provided for in Article 3 (3) (c) account shall be taken only of the portion of premium corresponding to the period subsequent to the increase.**
5. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 and may be considered to have acted improperly, Article 3 (3) shall apply.	(deleted)
6. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract.	5. (a) If the policyholder has failed to fulfil the obligation referred to in paragraph 1, with the intention of deceiving the insurer, the latter may terminate the contract **(six words deleted)** within two months from the date on which he becomes aware of such fact.
(a) The insurer shall take such action within two months from the date on which he becomes aware of such fact;	
(b) By way of damages, any premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due.	(b) By way of damages, any premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due **without prejudice to the payment of damages in respect of any additional losses he has incurred by reason of the intention to deceive.**
(c) The insurer shall not be liable in respect of any claim arising after the increase of the risk.	(c) The insurer shall not be liable in respect of any claim arising after the increase of the risk.
7. In the case referred to in paragraphs 5 and 6, the burden of proof of fraudulent or improper conduct on the part of the policyholder shall rest on the insurer.	6. In the cases referred to in paragraphs 4 **and 5,** the burden of proof of **failure to fulfil the obligation referred to in paragraph 1 or of intention to deceive**

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	on the part of the policyholder shall rest on the insurer.
	7. **The provisions of this Article shall not apply to circumstances which form the subject of an express exclusion of cover in the contract.**
Article 5	(Article 5 becomes Article 9).
Any unjustified payment made pursuant to Articles 3 and 4 shall be refunded.	
Article 6	*Article 5*
If, while the contract is in force, the risk has diminished appreciably and permanently because of circumstances other than those covered by the contract, and if this justifies a reduction in the premium, the policyholder shall be entitled to terminate the contract without compensation if the insurer does not consent to reduce the premium proportionately.	If, while the contract is in force, the risk has diminished appreciably and permanently because of circumstances other than those covered by the contract **(nine words deleted) the policyholder may ask for the premium to be reduced.** The policyholder shall be entitled to terminate the contract without compensation if the insurer does not consent to reduce the premium proportionately.
The right to terminate the contract shall arise immediately the insurer refuses to reduce the premium or, where he fails to reply to the policyholder's proposal, after a period of 15 days following such proposal.	The right to terminate the contract shall arise immediately the insurer refuses to reduce the premium or, where he fails to reply to the policyholder's proposal, after a period of fifteen days following such proposal.
Where the contract is terminated, the insurer shall refund to the policyholder a proportion of the premium corresponding to the period for which cover is not provided, less the administrative costs involved.	Where the contract is terminated, the insurer shall refund to the policyholder a proportion of the premium corresponding to the period for which cover is not provided, less the administrative costs involved.
	Article 6
	(Old Article 7 unchanged).
Article 8	*Article 7*
	1. (Old Article 8 (a) unchanged).
2. Any costs incurred by the policyholder in performing the obligation referred to in paragraph 1 shall be borne by the insurer.	2. Any costs incurred by the policyholder in performing the obligation referred to in paragraph 1 shall be borne by the insurer.
	Notwithstanding this, where the policyholder carries on a commercial or industrial activity and the contract covers a risk connected with such activity, they shall be defrayed only in so far as, when combined with the amount of damage suffered, they do not exceed the sum insured.

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	Paragraphs 3, 4 and 5 unchanged.
Article 9	*Article 8*
1. If a claim arises, the policyholder shall declare it to the insurer in accordance with the conditions and time limits laid down in the policy. The time limit must be reasonable. Such time limit may be fixed by national laws for certain classes of insurance.	1. If a claim arises **or if an event occurs which may result in a claim arising,** the policyholder shall declare it to the insurer in accordance with the conditions and time limits laid down in the policy. The time limit must be reasonable. Such time limit may be fixed by national laws for certain classes of insurance. Paragraphs 2, 3 and 4 unchanged.
Article 5	*Article 9*
Any unjustified payment made pursuant to Articles 3 and 4 shall be refunded.	Any unjustified payment made **by the parties** pursuant to **the foregoing Articles** shall be refunded.
Article 10	*Article 10*
1. The circumstances and conditions in which the contract may be denounced or terminated shall be set out in the contract either directly or by reference to the law.	1. The circumstances and conditions in which the contract may be denounced or terminated shall be set out in the contract either directly or by reference to the law **applicable to the contract.**
	2. (unchanged).
3. Without prejudice to the circumstances referred to in paragraph 2:	3. Without prejudice to the circumstances referred to in paragraph 2:
(a) premature termination on the part of the policyholder or the insurer shall not take effect until a period of 15 days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address;	(a) **Save where the parties have agreed to a shorter period in the case of war, insurrection or civil war,** premature termination on the part of the policyholder or the insurer shall not take effect until a period of fifteen days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address.
	(b) unchanged.
(c) if the contract is for a period of more than three years, the policyholder may terminate it at the end of the third year or of any subsequent year by giving at least two months' notice;	(c) If the contract is for a period of more than three years, the policyholder may terminate it at the end of the third year or of any subsequent year by giving at least two months' notice, **provided that the premiums were not agreed for a fixed period.**
(d) as regards sickness insurance and contracts drawn up on the same basis as life assurance contracts, national law may, by way of derogation from	(d) deleted.

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subparagraphs (a) and (b), limit or prohibit termination of the contract by the insurer.	
	Articles 11 and 12
	(unchanged).
Article 13	*Article 13*
Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification. They shall forthwith inform the Commission thereof.	Member States shall bring into force the measures, necessary to comply with this Directive **before 1 July 1983.** They shall inform the Commission thereof immediately.
	Articles 14 and 15
	(unchanged).

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II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts

(Submitted by the Commission to the Council on 10 July 1979)

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, pursuant to the Treaty, any discrimination in relation to the provision of services which is based on the fact that an undertaking is not established in the Member State in which the service is provided has been prohibited since the end of the transitional period; whereas this prohibition applies to services provided from any establishment in the Community, whether it is the head office of an undertaking or an agency or branch;

Whereas the second Council Directive .../.../EEC of ... 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, granted the parties freedom to choose the law applicable to the contract, firstly in the case of risks classified as transport, primarily on account of their frequently international character, and secondly in the case of certain risks which are defined by precise criteria in respect of which there is less need of protection for insured persons;

Whereas, however, pending subsequent coordination of national rules governing insurance contracts, that Directive maintained in respect of other risks the principle of the application of the law in force in the State in which the risk is situated; whereas such coordination, by establishing a balance between the interests of the insurer on the one hand and the protection of the policyholder and the insured person on the other, is likely to enable freedom of choice to be extended and thus to facilitate the exercise of freedom to provide services;

Whereas it was considered advisable to exclude from the scope of the Directive, marine, aviation and transport insurance because of their widely international character and the freedom traditionally allowed to the parties in concluding such contracts; whereas the credit and suretyship insurance classes display peculiarities which, pending subsequent coordination, justify not making them subject to the provisions of this Directive as they stand;

Whereas among the fundamental problems posed by legislation on insurance contracts are the consequences resulting firstly from the conduct of the policyholder at the time of the conclusion and in the course of the contract concerning the declaration of the risk and of the claim, and secondly his attitude with regard to the measures to be taken in the event of a claim;

Whereas it is also necessary to regulate certain general questions relating in particular to the existence of cover depending on the payment of the premium, the duration of the contract, and the position of insured persons who are not policyholders;

Whereas, as regards the problems regulated in this Directive, Member States may be authorized to adopt different solutions only where this is expressly provided for in the text of the Directive; whereas any other approach would call into question the objectives of the Directive; whereas, however, there is nothing to prevent the parties from derogating from the provisions adopted pursuant to the Directive, provided that such derogations favour the policyholder, insured person or third party.

HAS ADOPTED THIS DIRECTIVE:

Article 1

The object of this Directive is to coordinate the fundamental laws, regulations and administrative provisions governing insurance contracts relating to one of the classes contained in point A of the Annex to 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), with the exception of the classes contained in points 4 (railway rolling stock), 5 (aircraft), 6 (ships (sea, lake and river and canal vessels)), 7 (goods in transit), 11 (aircraft liability), 12 (liability for ships (sea, lake and river and canal vessels)), 14 (credit) and 15 (suretyship).

Article 2

1. Every insurance contract shall give rise to the issue to the policyholder of a document containing at least the following information:

(a) the name and address or head office of the contracting parties;

(b) the subject matter of the insurance and a description of the risks covered;

(c) the amount insured or the method of calculating it;

(d) the amount of the premium or contribution or the method of calculating it;

(e) the dates on which premiums or contributions fall due;

(f) the duration of the contract and the times at which cover commences and expires and, where it applies, the time of automatic renewal.

2. Pending the issue of such a document, the policyholder shall be entitled to receive, at the earliest opportunity, a document which attests to the existence of an insurance contract and contains at least the information referred to in paragraph 1 (a), (b) and (c).

3. If, after the contract has been concluded, any change occurs that affects the information referred to under paragraph 1 (a) to (f), the insurer shall furnish the policyholder with a document notifying such change.

4. If provisional cover is provided, the policyholder shall receive a document which certifies that such cover has in fact been provided and which contains at least the information referred to in paragraph 1 (a), (b), (c) and (f).

5. The documents referred to in the above paragraphs have only a probative value.

6. The contract shall be drafted in the language of the Member State whose law is applicable.

However, the policyholder shall be entitled to stipulate as a condition precedent to the conclusion of the contract that all documents relating to the conclusion, amendment and performance of the insurance contract be translated into the language of his habitual residence, provided such language is an official language of the Community.

7. Notwithstanding the provisions of this Article, the laws of the Member States may authorize a simplified form for insurance contracts concluded for a short period and for bearer policies.

Article 3

1. When concluding the contract, the policyholder shall declare to the insurer any circumstances of which he is aware which may influence the insurer's assessment or acceptance of the risk. The policyholder shall not be obliged to declare to the insurer circumstances which are already known to the latter or which are common knowledge. Any circumstance in respect of which the insurer has asked specific questions in writing shall, in the absence of proof to the contrary, be regarded as influencing the assessment and acceptance of the risk.

2. (a) If circumstances which were unknown to both parties when the contract was concluded come to light subsequently, or if the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer shall be entitled, within a period of two months from the date

(1) OJ No L 228, 16. 8. 1973, p. 3.

on which he becomes aware of the fact, to propose an amendment to the contract.

(b) (i) The policyholder shall be entitled to a period of 15 days from the date on which he receives the proposal for an amendment in which to accept or reject it. If the policyholder rejects the proposal or fails to reply within the above time limit, the insurer may terminate the contract within a period of eight days by giving 15 days' notice.

(ii) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium of the period for which cover is not provided.

(iii) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall provide the agreed cover.

3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 and may be considered to have acted improperly, the insurer may terminate the contract or propose an amendment to it.

(a) The insurer shall choose either to terminate the contract or to propose an amendment to it within two months from the date on which he becomes aware of such facts. Termination shall take effect 15 days after the date on which the policyholder is notified thereof at his last known address.

If the insurer has proposed an amendment to the contract, the policyholder shall be entitled to accept or reject it within 15 days from the date on which he receives the proposal for an amendment. If the policyholder refuses the proposal or fails to reply, the insurer may terminate the contract within eight days by giving 15 days' notice.

(b) If the contract is terminated the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.

(c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall be liable to provide only such cover as is in accordance with the ratio between the premium paid and the premium that the policyholder should have paid if he had declared the risk correctly.

4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract.

(a) The insurer shall take such action within two months from the date on which he becomes aware of such facts;

(b) by way of damages, premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due;

(c) the insurer shall not be liable in respect of any claim.

5. In the cases referred to in paragraphs 3 and 4, the burden of proof of fraudulent or improper conduct on the part of the policyholder shall rest on the insurer.

Article 4

1. From the time when the contract is concluded, the policyholder shall declare to the insurer any new circumstances or changes in circumstance of which the insurer has requested notification in the contract. Such declaration shall be made not later than the time when the risk increases where this is attributable to an intentional act of the policyholder; in all other cases, it must be made immediately the policyholder becomes aware of the increase.

2. The insurer may, within two months of the date on which he was notified of the increase of the risk, propose an amendment to the contract in accordance with the procedure laid down in Article 3 (2) (b).

3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, such failure to give notice shall not give rise to any sanction where it relates to a new circumstance or change in circumstances which is not liable to appreciably and permanently increase the risk and lead to an increase in the premium.

4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer may, within two months of the date on which he becomes aware of such fact, propose an amendment to the contract in accordance with the procedure laid down in Article 3 (2) (b).

5. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 and may be considered to have acted improperly, Article 3 (3) shall apply.

6. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract.

(a) The insurer shall take such action within two months from the date on which he becomes aware of such fact;

(b) by way of damages, any premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due;

(c) the insurer shall not be liable in respect of any claim arising after the increase of the risk.

7. In the cases referred to in paragraphs 5 and 6, the burden of proof of fraudulent or improper conduct on the part of the policyholder shall rest on the insurer.

Article 5

Any unjustified payment made pursuant to Articles 3 and 4 shall be refunded.

Article 6

If, while the contract is in force, the risk has diminished appreciably and permanently because of circumstances other than those covered by the contract, and if this justifies a reduction in the premium, the policyholder shall be entitled to terminate the contract without compensation if the insurer does not consent to reduce the premium proportionately.

The right to terminate the contract shall arise immediately the insurer refuses to reduce the premium or, where he fails to reply to the policyholder's proposal, after a period of 15 days following such proposal.

Where the contract is terminated, the insurer shall refund to the policyholder a proportion of the premium corresponding to the period for which cover is not provided, less the administrative costs involved.

Article 7

Failure to pay a premium or part thereof shall be penalized only after a period of grace of at least 15 days has elapsed from the date on which the policyholder is notified, in writing and after the date on which payment is due, of the penalty.

This provision shall not apply to any failure to pay the first premium or the single premium of an annual contract where the contract or the law provides that commencement of cover shall be conditional upon payment of such premium.

Article 8

1. If a claim arises, the policyholder shall take all reasonable steps to avoid or reduce the consequences. In particular, instructions from the insurer or compliance with specific provisions on this point contained in the contract shall be considered reasonable.

2. Any costs incurred by the policyholder in performing the obligation referred to in paragraph 1 shall be borne by the insurer.

3. If the insurer is required, under the contract, to pay in respect of only part of the loss, he shall be obliged to refund only a proportion of the costs referred to in the preceding paragraph unless the policyholder acted on his instructions.

4. If the policyholder fails to comply with the provision laid down in paragraph 1, and may be considered to have acted improperly, the insurer may claim compensation for the loss which he has suffered.

5. If the insurer proves that the policyholder's failure to fulfil the obligation laid down in paragraph 1 was intended to cause him loss or to deceive him, he shall be released from all liability to make payment in respect of the claim.

Article 9

1. If a claim arises, the policyholder shall declare it to the insurer in accordance with the conditions and time limits laid down in the policy.

The time limit must be reasonable. Such time limit may be fixed by national laws for certain classes of insurance.

2. The insurer may require the policyholder to provide all the necessary information and documents on the circumstances and consequences of the claim.

3. If the policyholder fails to fulfil the obligations referred to in paragraphs 1 and 2, and may be considered to have acted improperly, the insurer shall be entitled to claim compensation for the loss he has suffered.

4. If the insurer proves that the policyholder's failure to fulfil one of the obligations laid down in paragraphs 1 and 2 was intended to cause him loss or to deceive him, he shall be released from all liability to make payment in respect of the claim.

Article 10

1. The circumstances and conditions in which the contract may be denounced or terminated shall be set out in the contract either directly or by reference to the law.

2. The contract may be terminated without notice only where one of the parties has failed to fulfil one of its obligations with the intention of deceiving the other. The policyholder may also be granted a right under national law to terminate the contract without notice in other circumstances.

3. Without prejudice to the circumstances referred to in paragraph 2:

(a) premature termination on the part of the policyholder or the insurer shall not take effect until a period of 15 days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address;

(b) if provision is made in the contract for automatic renewal, such renewal shall take effect in each case for a period not exceeding one year, unless one of the parties gives notice of termination at least two months before the date of expiry of the current insurance period;

(c) if the contract is for a period of more than three years, the policyholder may terminate it at the end of the third year or of any subsequent year by giving at least two months' notice;

(d) as regards sickness insurance and contracts drawn up on the same basis as life assurance contracts, national law may, by way of derogation from subparagraphs (a) and (b), limit or prohibit termination of the contract by the insurer.

Article 11

If the insured person is not the policyholder, he shall have the same rights against the insurer as Article 8 (2) grants to the policyholder. He shall be treated in the same way as the latter for the purposes of Articles 3 (1), 4 (1), 8 (1) and 9 (1) and (2) as regards the obligations referred to in those Articles where he has knowledge of the contract and is able to fulfil such obligations.

Article 12

The parties to the contract may agree on more favourable terms for the policyholder, insured person or injured third party than are provided for in this Directive.

Article 13

Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification. They shall forthwith inform the Commission thereof.

Article 14

After notification of this Directive, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments, of any new laws, regulations or administrative provisions which they intend to adopt. They shall also inform the other Member States thereof.

Article 15

This Directive is addressed to the Member States.

Amended proposal for a Council Regulation (EEC) on securities given by credit institutions or insurance undertakings

COM(90) 567 final — SYN 180

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 31 January 1991)

(91/C 53/11)

Initial proposal	*Amended proposal*
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,	Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,
Having regard to the proposal from the Commission,	Having regard to the proposal from the Commission (1),
In cooperation with the European Parliament,	In cooperation with the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee,	Having regard to the opinion of the Economic and Social Committee (3),
Whereas the Treaty, in Article 59, enshrines the principle of freedom to provide services;	Whereas the Treaty, in Article 59, enshrines the principle of freedom to provide services;
Whereas many public authorities, when demanding guarantees, ask for guarantees issued by a resident of their national territory, which conflicts with that principle;	Whereas many public authorities, when demanding a security, ask for a security given by a resident of their national territory, which conflicts with that principle;
Whereas the Treaty principle of non-discrimination is directly applicable and does not require implementing legislation;	Whereas the Treaty principle of non-discrimination is directly applicable and does not require implementing legislation;
Whereas public authorities have a certain discretion in judging the acceptability of the guarantor;	Whereas public authorities have a certain discretion in judging the acceptability of the guarantor;
Whereas public authorities also have a particular responsibility for the establishment and functioning of the internal market;	Whereas public authorities also have a particular responsibility for the establishment and functioning of the internal market;
Whereas this responsibility calls for a limitation of the discretion of public authorities in the case of a specific financial service provided by institutions supervised on the basis of Community rules;	Whereas, in the case of a specific financial service provided by institutions already supervised on the basis of Community rules, a positive measure is needed to limit the discretion of public authorities which accept a security;
	Whereas it does not appear reasonable for an authority to be subject without its consent to the law and jurisdiction of another Member State;

(1) OJ No C 51, 28. 2. 1989, p. 6.
(2) OJ No C 159, 26. 6. 1989, p. 4.

Initial proposal

Whereas the First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions (1), as last amended by Directive 86/524/EEC (2), provides for a Community system for licensing and supervising credit institutions;

Whereas 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 insurance (3), as last amended by Directive 87/344/EEC (4), provides for a Community system for licensing and supervising insurance undertakings;

Whereas it appears inappropriate that authorities other than those in charge of prudential supervision of these institutions judge the credit-worthiness of credit institutions or insurance companies acting as guarantors,

HAS ADOPTED THIS REGULATION:

Article 1

Obligation to accept guarantees issued by credit institutions or insurance undertakings

1. A public authority which requires to be secured for payment of an actual or potential debt or for respect of any other obligation shall be bound to accept a guarantee issued by any credit institution licensed according to Article 3 of Directive 77/780/EEC or by any insurance undertaking authorized for the class of suretyship insurance according to Articles 6 and 7 of Directive 73/239/EEC.

(1) OJ No L 322, 17. 12. 1977, p. 30.
(2) OJ No L 309, 4. 11. 1986, p. 15.
(3) OJ No L 228, 16. 8. 1973, p. 3.
(4) OJ No L 185, 4. 7. 1987, p. 77.

Amended proposal

Whereas the First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions (1), as last amended by Directive 86/646/EEC (2), provides for a Community system for licensing and supervising credit institutions;

Whereas 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 insurance (3), as last amended by Directive 87/357/EEC (4), provides for a Community system for licensing and supervising insurance undertakings;

Whereas branches of credit institutions from non-Member States are authorized in the Community only in respect of national territories and therefore have no right to cross-border acceptance of their security;

Whereas it appears inappropriate that authorities other than those in charge of prudential supervision of credit institutions or insurance companies judge the credit-worthness of such institutions when the latter are acting as guarantors;

Whereas, given the operational requirements of the Single Market, this should apply to security from both the domestic Member State and other Member States,

HAS ADOPTED THIS REGULATION:

Article 1

Obligation to accept security given by credit institutions or insurance undertakings

1. A public authority which requires to be secured for payment of an actual or potential debt or for respect of any other obligation shall be bound to accept security given by any credit institution licensed according to Article 3 of Directive 77/780/EEC or by any insurance undertaking authorized for the class of suretyship insurance according to Articles 6 and 7 of Directive 73/239/EEC unless

— the public authority has reason to doubt the soundness of the guarantor, notably if facts are known that cast doubt on his continued solvency,

— the offer does not meet the conditions normally required by that public authority;

(1) OJ No 322, 17. 12. 1977, p. 30
(2) OJ No L 386, 30. 12. 1989, p. 1
(3) OJ No L 228, 16. 8. 1973, p. 3.
(4) OJ No L 172, 4. 7. 1988, p. 1

Initial proposal	*Amended proposal*
	2. Paragraph 1 shall not abbly to central banks in the context of their operations in the implementation of monetary policy.
	Article 2 **Applicable law and court of jurisdiction** The legislation applicable to the security and the court of jurisdiction shall be determined by the debt secured unless the authority accepts another arrangement.
Article 2 **Amendment of existing legislation** Article 27 (3) of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (1) is hereby replaced by the following: '3. Subject to Article 33 (2), the guarantee shall consist of the joint and several guarantee of either — a credit institution licensed according to Article 3 of Council Directive 77/780/EEC (2), or — an insurance undertaking authorized for the class of suretyship insurance according to Articles 6 and 7 of Council Directive 73/239/EEC (3), or — any other natural or legal third person established in the Community and approved as guarantor by the Member State in which the guarantee is provided.'	Suppressed because modified by Article 24 of Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit
Article 3 Entry into force This Regulation shall enter into force on the first day of the month following the adoption.	*Article 3* Unchanged
This Regulation shall be binding in its entirety and directly applicable in all Member States.	Unchanged

(1) OJ No L 38, 9. 2. 1977, p. 1.
(2) OJ No L 322, 17. 12. 1977, p. 30.
(3) OJ No L 228, 16. 8. 1973, p. 3.

V. International Agreements

27. 7. 91 Official Journal of the European Communities No L 205/1

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2155/91

of 20 June 1991

laying down particular provisions for the application of Articles 37, 39 and 40 of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Article 57 (2) and Article 235 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas an Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance was signed at Luxembourg on 10 October 1989;

Whereas under that Agreement a Joint Committee is to be set up to administer the Agreement, ensure that it is properly implemented and take decisions in the circumstances provided for therein; whereas the Community's representatives on the Joint Committee have to be designated and particular provisions have to be adopted concerning the determination of the Community's positions in the Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall be represented on the Joint Committee provided for in Article 37 of the Agreement by the Commission, assisted by representatives of the Member States.

Article 2

The Community's position in the Joint Committee shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

With regard to the adoption of decisions to be taken by the Joint Committee pursuant to Articles 37, 39 and 40 of the Agreement, the Commission shall submit proposals to the Council, which shall act by a qualified majority.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 20 June 1991.

For the Council

The President

R. GOEBBELS

(1) OJ No C 53, 5. 3. 1990, p. 46.
(2) OJ No C 72, 18. 3. 1991, p. 175, and Decision of 12 June 1991 (not yet published in the Official Journal).
(3) OJ No C 56, 7. 3. 1990, p. 27.

No L 205/2 Official Journal of the European Communities 27. 7. 91

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 20 June 1991

on the conclusion of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance

(91/370/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Article 57 (2) and Article 235 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is desirable to approve the Agreement with Switzerland concerning direct insurance other than life assurance, signed at Luxembourg on 10 October 1989,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall take the measures necessary for the exchange of instruments provided for in Article 44 of the Agreement (4).

Done at Luxembourg, 20 June 1991.

For the Council

The President

R. GOEBBELS

(1) OJ No C 53, 5. 3. 1990, p. 1.
(2) OJ No C 72, 18. 3. 1991, p. 175, and Decision of 12 June 1991 (not yet published in the Official Journal).
(3) OJ No C 56, 7. 3. 1990, p. 27.
(4) The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General-Secretariat of the Council.

AGREEMENT

between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

CONTENTS

of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

PREAMBLE

THE EUROPEAN ECONOMIC COMMUNITY

of the one part

THE SWISS CONFEDERATION

of the other part

CONSIDERING the close relations which exist between Switzerland and the Community;

DESIRING to avail themselves of the occasion offered by the establishment of a unified Community insurance market to consolidate existing economic relations between the two Parties in this field, and to promote, under fair conditions of competition, the harmonious development of these relations by ensuring protection for insured persons;

RESOLVED to that end to remove obstacles to the taking-up and pursuit of the business of direct insurance, other than life assurance, on a reciprocal and non-discriminatory basis safeguarded by the necessary legal conditions in respect of supervision, and thus to introduce between themselves freedom of establishment in this field;

EMPHASIZING that this in no way affects their power to legislate subject to limits set by public international law;

ENDEAVOURING to do everything in their power to see that their domestic legal orders in this field evolve in a mutually compatible manner;

OBSERVING that it is in the interest of their economies to develop and strengthen their relations in this way in a field which up to now has not been governed by contractual rules, and to contribute thus to the coordination of economic law between the two Parties;

DECLARE themselves ready to consider in the light of any relevant factor, and particularly of the evolution of Community insurance law, the possibility of concluding other agreements in respect of private insurance;

HAVE AGREED in pursuit of these aims to conclude the present Agreement and to this end have designated as their Plenipotentiaries:

THE EUROPEAN ECONOMIC COMMUNITY:

Mrs Edith CRESSON,

Minister for European Affairs,
President-in-Office of the Council of the European Communities;

Sir Leon BRITTAN,

Vice-President of the Commission of the European Communities;

THE SWISS CONFEDERATION:

Mr Jean Pascal DELAMURAZ,

President of the Swiss Confederation,
Head of the Federal Department of Public Economy;

Mr Franz BLANKART,

State Secretary,
Director of the Federal Office for Foreign Economic Affairs;

WHO, having exchanged their Full Powers, found in good and due form, have agreed as follows:

SECTION I

BASIC PROVISIONS

Article 1

Object of the Agreement

The object of the Agreement is to lay down, on a reciprocal basis, the conditions which are necessary and sufficient to enable agencies and branches of undertakings whose head office is situated in the territory of one of the Contracting Parties and which wish to become established in the territory of the other Contracting Party, or are established there, to take up or pursue the self-employed activity of direct insurance other than life assurance.

Article 2

Scope

The classes of insurance which are subject to this Agreement are set out in Annex 1.

Article 3

Exceptions to the scope

The kinds of insurance, operations and undertakings which are not subject to this Agreement are listed in Annex 2.

Article 4

Application of domestic law

The law in force in each Contracting Party shall apply:

— to points which are not governed by this Agreement, and

— to questions relating to points governed by this Agreement, in so far as such questions are not regulated by the Agreement.

Article 5

Principle of non-discrimination

The Contracting Parties undertake to apply the principle of non-discrimination when introducing and applying the provisions of this Agreement.

Article 6

Supervisory authority

For the purposes of this Agreement, the supervisory authority shall, in the case of the Community, be the competent authority of the Member State in whose territory the head office of the undertaking is situated or in whose territory an agency or branch takes up or pursues the business of direct insurance.

SECTION II

CONDITIONS GOVERNING ADMISSION

Article 7

Compulsory authorization

7.1. Each Contracting Party shall make the taking-up of the business of direct insurance in its territory by an undertaking which establishes its head office there subject to authorization by the supervisory authority.

7.2. Each Contracting Party shall, furthermore, make the opening in its territory of an agency or branch of an undertaking whose head office is situated in the territory of the other Contracting Party subject to authorization by the supervisory authority.

7.3. In addition, it shall make the opening in its territory of an agency or branch of an undertaking whose head office is situated outside the territories to which this Agreement applies, as laid down in Article 43, subject to authorization by the supervisory authority.

Article 8

Scope of authorization

8.1. An authorization shall be valid for the covering of risks situated in the entire territory in which the supervisory authority granting the authorization is competent unless, and in so far as the legislation applicable permits, the applicant seeks permission to carry on his business only in a part of that territory.

8.2. A risk is situated in the territory in which a supervisory authority is competent:

— in the case of insurance relating either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy, where the property is situated in that territory;

— in the case of insurance relating to vehicles of any type, where the vehicle is registered in that territory;

— in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned, where the policy-holder took out the policy in that territory;

— in all cases not explicitly covered by the foregoing indents, where the policy-holder has his habitual residence in that territory or, if the policy-holder is a legal person, where the latter's establishment, to which the contract relates, is situated in that territory.

8.3. Authorization shall be granted in respect of a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only part of the risks pertaining to such class, as classified under Part A of Annex 1.

However:

— it shall be open to the supervisory authority to grant authorization for any group of classes classified under Part B of Annex 1, provided that it attaches to such authorization the appropriate denomination specified therein;

— authorization granted for one class or group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified under Part C of Annex 1 are fulfilled.

Article 9

Legal form

The legal forms which may be assumed by an undertaking whose head office is situated in the territory of a Contracting Party are listed in Annex 3.

Article 10

Conditions of authorization

10.1. Each Contracting Party shall require that an undertaking whose head office is situated in the territory of the other Contracting Party and which seeks an authorization to open in its territory an agency or branch shall satisfy the following conditions:

(a) it shall submit its statutes and a list of its directors and managers;

(b) it shall produce a certificate issued by the supervisory authority of the Contracting Party in whose territory its head office is situated, attesting:

— that the applicant undertaking is constituted in one of the legal forms listed in Annex 3,

— that the applicant undertaking limits its business activities to the business of insurance and to operations directly arising therefrom to the exclusion of all other commercial business,

— the classes of insurance which the undertaking is entitled to transact,

— that it possesses the minimum guarantee fund referred to in paragraph 3.2 of Protocol No 1 or, where appropriate, the minimum solvency margin calculated in accordance with paragraph 2.2 of that Protocol if the minimum solvency margin is higher than the minimum guarantee fund,

— the risks which it actually covers,

— the existence of the financial resources referred to in paragraph 1 (f) of Protocol No 2;

(c) it shall submit a scheme of operations drawn up in accordance with Protocol No 2, accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years.

However, where an undertaking has existed for fewer than three financial years, it shall submit such documents only for the financial years that have closed, if:

— it is a new undertaking created as a result of a merger between existing undertakings, or

— it is a new undertaking created by one or more existing undertakings for the purpose of transacting a specific class of insurance, previously pursued by one of the undertakings in question;

(d) it shall designate an authorized agent having his permanent residence and abode in the territory in which the supervisory authority of the Contracting Party in question is competent and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of that Contracting Party.

Where the legal provisions of a Contracting Party permit the authorized agent to have legal personality, it shall have its head office in the territory of that Contracting Party and in turn designate a natural person to represent it who satisfies the above conditions.

10.2. This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring for all insurance undertakings, at the time of granting of the authorization, approval of the general and special policy conditions, scales of premiums and any other documents necessary for the normal exercise of supervision.

However, with regard to the risks referred to in paragraph 2.1 of Protocol No 2, the Contracting Parties shall not lay down provisions requiring the approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which the undertaking intends to use in its dealings with policy holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks, and this requirement may not constitute a prior condition for an undertaking to be able to carry on its activities.

For the purposes of this Agreement, general and special policy conditions shall not include specific conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

This Agreement shall likewise not prevent the Contracting Parties from subjecting undertakings requesting authorization for class 18 in Part A of Annex 1 to checks on

their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.

Article 11

Granting of authorization

11.1. Each Contracting Party undertakes to grant authorization provided the conditions laid down in Article 10 are met and further provided that the other provisions governing undertakings with their head offices in its territory are observed.

11.2. The Contracting Parties shall not make authorization subject to the lodging of a deposit or the provision of security.

11.3. The Contracting Parties undertake furthermore that no application for an authorization shall be examined in the light of the economic requirements of the market.

11.4. The designated authorized agent may be challenged by the supervisory authority only on grounds relating to his good repute or technical qualifications.

Article 12

Extension of the scope of an authorization

12.1. Each Contracting Party shall make any extension of the business for which an initial authorization was granted pursuant to Articles 7 and 8 subject to a new authorization.

12.2. Each Contracting Party shall require that, for the purpose of extending the business of an agency or branch either to other classes or in the circumstances referred to in paragraph 8.1, the applicant for the authorization shall submit a scheme of operations in accordance with Protocol No 2 and produce the certificate referred to in paragraph 10.1 (b).

Article 13

Authorization procedure

13.1. Authorization shall be sought from the supervisory authority by the undertaking whose head office is situated in the territory of the other Contracting Party.

13.2. The scheme of operations drawn up in accordance with Protocol No 2, together with the observations of the supervisory authority responsible for granting authorization, shall be forwarded by the latter to the supervisory authority of the Contracting Party in whose territory the head office is situated.

The latter shall make known its opinion to the former within three months following receipt of the documents. If no opinion has been received upon the expiry of that period, it shall be deemed to be favourable.

13.3. The supervisory authority from whom authorization has been sought shall forward to the applicant undertaking its decision on the application not later than six months following receipt of the application for authorization.

Article 14

Refusal of authorization

14.1. Any decision to refuse an authorization shall be accompanied by the grounds on which it is based and shall be notified to the undertaking in question.

14.2. Each Contracting Party shall make provision for a right of recourse to the courts in the event of any refusal of authorization. Provision shall also be made for such right in regard to cases where the supervisory authority has not given a decision on an application for authorization upon the expiry of a period of six months from the date of its receipt.

SECTION III

CONDITIONS GOVERNING THE PURSUIT OF BUSINESS

Article 15

Choice of assets

The Contracting Parties shall not prescribe any rules as to the choice of assets in excess of those representing the technical reserves referred to in Articles 19 to 23. Subject to the provisions of paragraph 18.2, Articles 20, 21 and 23 and paragraphs 29.2 and 29.3, the Contracting Parties shall not restrict the free disposal of movable or immovable property forming part of the assets of undertakings.

Article 16

Establishment of solvency margin

16.1. Each Contracting Party shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.

16.2. The definition of the solvency margin and the manner in which it is to be calculated and represented, and the minimum guarantee fund fixed, are set out in Protocol No 1.

Article 17

Verification of the state of solvency

17.1. The supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated shall verify the state of solvency of the undertaking with respect to its entire business.

17.2. The supervisory authority of the other Contracting Party shall, where it has granted the said undertaking authorization to open an agency or branch, provide the abovementioned authority with all the information necessary to enable such verification to be carried out.

17.3. Each Contracting Party shall require undertakings whose head office is situated in its territory to produce an annual account, covering all their transactions, of their situation and solvency, and, as regards cover for risks listed under class 18 in Part A of Annex No 1, of the other resources available to them for meeting their liabilities, where its laws provide for supervision of such resources.

Article 18

Restoration of financial situation

18.1. For the purpose of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under paragraph 2.2 of Protocol No 1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall require a plan for the restoration of a sound financial situation to be submitted for its approval.

18.2. If the solvency margin falls below the guarantee fund defined in Article 3 of Protocol No 1, the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated shall require the latter to submit a short-term financing plan for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the supervisory authority of the Contracting Party in whose territory authorized agencies or branches of the undertaking are situated of any such measures. If they are requested by the former authority, the latter authority shall take the same measures.

The supervisory authority may, furthermore, take all measures necessary to safeguard the interests of insured persons should the situation envisaged in this paragraph arise.

Article 19

Establishment of technical reserves

19.1. Each Contracting Party in whose territory an undertaking carries on business shall require that undertaking to establish sufficient technical reserves.

19.2. The amount of such reserves shall be determined in accordance with the rules laid down in each Contracting Party, or, in the absence of such rules, in accordance with the established practices in each Contracting Party.

19.3. Each Contracting Party shall furthermore require undertakings established in its territory and underwriting risks listed under class 14 in Part A of Annex 1 (credit insurance) to set up an equalization reserve for the purpose of offsetting any technical deficit or above average claims ratio arising in that class for a financial year.

The methods of calculating the equalization reserve and the conditions governing exemption from the obligation to make such a reserve are set out in Annex No 5.

The equalization reserve must be calculated, under the rules laid down by each Contracting Party, in accordance with one of the four methods set out in Annex 5, which shall be regarded as being equivalent. Up to the amount calculated in accordance with those methods, the equalization reserve shall be disregarded for purposes of calculating the solvency margin.

Undertakings shall make available to the supervisory authority accounts showing both the technical results and the technical reserves relating to this business.

Article 20

Matching assets and localization of assets constituting technical reserves

20.1. Technical reserves shall be represented by equivalent and matching assets localized in the territory in which the supervisory authority of each Contracting Party is respectively competent. Each Contracting Party may, however, permit relaxations of the rules on matching assets and the localization of assets.

20.2. 'Matching assets' means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency.

20.3. 'Localization of assets' means the existence of movable or immovable assets in the territory in which the supervisory authority of the Contracting Party concerned is competent, but shall not be construed as involving a requirement that movable property be deposited or that immovable property be made subject to restrictive measures such as the registration of a mortgage. Assets represented by claims against debtors shall be regarded as localized in the territory in which the supervisory authority of the Contracting Party where they are to be realized is competent.

Subject to the above, localization shall be governed by the respective rules in force in the Contracting Parties.

Article 21

Nature of technical reserves

21.1. The rules in force in each Contracting Party in whose territory an undertaking pursues its business shall determine the nature of the assets and, where appropriate,

the extent to which they may be used for the purpose of representing the technical reserves, and shall also determine the rules for valuing such assets.

21.2. The expression 'nature of the assets' refers to the various categories of movable and immovable assets and their specific characteristics, such as those relating to the debtor in the case of a claim forming part of the representation of the technical reserves.

21.3. If a Contracting Party allows any technical reserves to be represented by claims against re-insurers, it shall fix the percentage so allowed or shall make provision for it to be fixed. In such case, notwithstanding the provisions of paragraph 20.1, it may not require the assets representing such claims to be localized.

Article 22

Balance sheet

The supervisory authority of the Contracting Party in whose territory the head office of an undertaking is situated shall verify that the undertaking's balance sheet shows in respect of the technical reserves assets equivalent to the underwriting liabilities assumed in all the countries in which it carries on business.

Article 23

Non-compliance with the requirements relating to technical reserves

If an agency or branch does not comply with the provisions laid down in Articles 19 to 21, the supervisory authority of the Contracting Party in whose territory it carries on business may prohibit the free disposal of assets localized in its territory after having informed the supervisory authority of the Contracting Party in whose territory the head office is situated that it intends to take such action.

The supervisory authority of the Contracting Party in whose territory such agency or branch carries on business may, furthermore, take any measure necessary to safeguard the interests of insured persons.

Article 24

Transfer of portfolio

24.1. Under the conditions laid down by the legal provisions in force in the Contracting Party in question, the supervisory authority shall authorize undertakings which are established in the territory for which it is responsible to transfer all or part of their portfolios of contracts to an accepting office established in the same territory as the transferring undertaking, if the supervisory authority of the Contracting Party in whose territory the head office of the accepting office is situated certifies that the latter possesses the necessary margin of solvency after taking the transfer into account.

24.2. A transfer authorized in accordance with paragraph 24.1 shall be published in the territory in which the supervisory authority of the Contracting Party in which the transferring undertaking and the accepting office are established is competent, under the conditions laid down by the legal provisions in force in each Contracting Party in question. Such transfer shall be automatically valid against the policy-holders, the insured persons and any other person having rights and obligations arising out of the contracts transferred. However, this paragraph shall not preclude the existence in each of the Contracting Parties of provisions providing policy-holders with the option of cancelling the contract within a given period after the transfer.

Article 25

Approval of conditions and scales of premiums

25.1. This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring of all undertakings and in respect of all classes of insurance, during the pursuit of business, approval of the general and special policy conditions, scales of premiums and any other documents necessary for the normal exercise of supervision.

However, with regard to the risks referred to in paragraph 2.1 of Protocol No 2, the Contracting Parties shall not lay down provisions requiring the approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks.

With regard to the same risks, the Contracting Parties may not retain or introduce prior notification or approval of proposed increases in scales of premiums except as part of a general price control system.

25.2. This Agreement shall likewise not prevent the Contracting Parties from subjecting undertakings which have obtained authorization for class 18 in Part A of Annex 1 to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.

25.3. For the purposes of this Agreement, general and special policy conditions shall not include specific conditions

intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Article 26

Documentation

The Contracting Parties shall require undertakings carrying on business in their territory to produce the documents, including statistical documents, necessary for the exercise of supervision and, as regards cover for risks listed under class 18 in Part A of Annex 1, to indicate the resources available to them for meeting their liabilities, where their laws provide for supervision of such resources.

SECTION IV

WITHDRAWAL OF AUTHORIZATION

Article 27

Withdrawal conditions

The supervisory authority of a Contracting Party may withdraw from an undertaking whose head office is situated in the territory of the other Contracting Party the authorization which it granted to open an agency or branch, where such agency or branch:

(a) no longer fulfils the conditions for admission, or

(b) fails seriously to fulfil its obligations under the rules applicable to it, in particular with respect to the establishment of technical reserves.

Article 28

Withdrawal procedure

28.1. Before withdrawing authorization, the supervisory authority shall consult the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated.

If the former authority deems it necessary to suspend the business of the agency or branch referred to in Article 27 before consultation is concluded, it shall immediately advise the latter authority thereof.

28.2. Any decision to withdraw an authorization or to order the suspension of business shall state the reasons on which it is based and shall be notified to the undertaking in question.

28.3. Each Contracting Party shall make provision for a right of recourse to the courts against such a decision.

Article 29

Withdrawal of the authorization granted to the head office

29.1. Where the supervisory authority of a Contracting Party in whose territory the head office is situated withdraws the authorization which it has granted to the undertaking, it shall notify such action to the supervisory authority of the other Contracting Party if the latter has granted the undertaking authorization to open an agency or branch. The latter authority shall also withdraw its authorization.

29.2. In the case referred to in paragraph 1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall, in conjunction with the supervisory authority of the other Contracting Party, take all measures necessary to safeguard the interests of insured persons and shall, in particular, restrict the free disposal of the assets of the undertaking, if this measure has not already been taken, pursuant to paragraph 18.2 and Article 23.

29.3. Paragraph 29.1 and, where relevant, 29.2 shall likewise apply where the undertaking surrenders of its own accord the authorization granted to it.

SECTION V

COLLABORATION BETWEEN SUPERVISORY AUTHORITIES

Article 30

Conditions of collaboration

The Contracting Parties shall take all necessary measures to enable their supervisory authorities to collaborate closely in the implementation of this Agreement.

Article 31

Objectives of collaboration

31.1. The supervisory authorities shall collaborate in verifying the provisions by undertakings of financial guarantees as defined in Articles 16 and 19 to 21 and, in particular, in applying the measures provided for in Articles 18 and 23.

31.2. Where the undertakings in question are authorized to cover the risks listed under class 18 in Part A of Annex No 1, the supervisory authorities shall also collaborate in supervising the resources available to those undertakings for carrying out the assistance operations they have undertaken to perform, where their laws provide for supervision of such resources.

Article 32

Exchange of information

The supervisory authorities shall furnish each other with all documents and information necessary for exercising supervision.

Article 33

Requirements of secrecy

33.1. Articles 30 to 32 shall under no circumstances be interpreted as requiring any supervisory authority to furnish information which would disclose commercial secrets of an undertaking or information the communication of which would be contrary to public policy.

33.2. Nevertheless, the secrecy rules to which the supervisory authorities are subject shall not hinder collaboration between those authorities and the mutual assistance provided for by this Agreement.

33.3. The information exchanged shall be used by such authorities solely for the purpose of carrying out their supervisory duties.

SECTION VI

GENERAL AND FINAL PROVISIONS

Article 34

Particular provisions and undertakings of third countries

34.1. Particular provisions applicable to certain Member States of the Community are set out in Annex 4.

34.2. The provisions applicable to agencies and branches of undertakings whose head office is situated outside the territories to which this Agreement applies pursuant to Article 43 thereof are set out in Protocol No 4.

Article 35

Integral parts of the Agreement

The Annexes, Protocols and Exchanges of Letters annexed to this Agreement shall form an integral part thereof.

Article 36

Failure to fulfil obligations

36.1. The Contracting Parties shall refrain from taking any measures which might jeopardize the attainment of the objectives of the Agreement.

36.2. They shall take all general or special measures necessary to ensure fulfilment of the obligations arising from this Agreement.

If either Contracting Party considers that the other Contracting Party has failed to fulfil an obligation arising from this Agreement, the procedure referred to in paragraph 37.2 shall apply.

Article 37

Joint Committee

37.1. A Joint Committee, composed of representatives of Switzerland and representatives of the Community, is hereby established, which shall be responsible for the administration of the Agreement and its proper implementation and for taking decisions in the circumstances provided for therein. Its decisions shall be taken by mutual agreement.

37.2. For the purpose of the proper implementation of the Agreement, the contracting Parties shall exchange information and, at the request of either Party, shall hold consultations within the Joint Committee. The exercise of supervision, referred to in Section V, shall not come within its powers.

37.3. The Joint Committee shall adopt its own rules of procedure.

37.4. The Joint Committee shall be chaired in turn by each of the Contracting Parties in accordance with detailed arrangements to be laid down in its rules of procedure. At the request of either Contracting Party, in accordance with conditions to be laid down in its rules of procedure, it shall be convened by its Chairman whenever special circumstances so require.

The Joint Committee may decide to set up any working party needed to assist it in carrying out its tasks.

Article 38

Settlement of disputes

38.1. If a dispute arises between the Contracting Parties concerning the operation of this Agreement and in particular its interpretation or implementation and such dispute cannot be resolved either through collaboration between the supervisory authorities referred to in Section V or by the Joint Committee referred to in Article 37, the Contracting Parties shall consult each other through diplomatic channels.

38.2. If it has not been possible to resolve the dispute by means of the procedure provided for in paragraph 38.1, it shall be referred, at the request of either of the Parties, to an arbitration tribunal consisting of three members. Reference may be made to this tribunal at the earliest after a period of two years following the first reference to the Joint Committee referred to in Article 37, unless the Parties agree jointly to

refer their dispute to the said tribunal before the end of that period. Each Party shall appoint an arbitrator. The two arbitrators appointed shall appoint an umpire who shall be a national neither of Switzerland nor of a Member State of the Community.

38.3. Where one of the Contracting Parties does not appoint its arbitrator and has not complied with the request made by the other Party to make such appointment within two months, the arbitrator shall be appointed, at the request of that other Party, by the President of the International Court of Justice.

38.4. Where after a period of two months following their appointment the two arbitrators are unable to agree on the choice of an umpire, the latter shall be appointed at the request of one of the Parties by the President of the International Court of Justice.

38.5. Where, in the case provided for in paragraphs 38.3 and 38.4, the President of the International Court of Justice is unable to act, or is a national of Switzerland or of a Member State of the Community, the appointments shall be made by the Vice-President. If the latter is unable to act or is a national of Switzerland or of a Member State of the Community, the appointments shall be made by the oldest member of the Court who is not a national either of Switzerland or of a Member State of the Community.

38.6. Save as otherwise provided by the Contracting Parties, the tribunal shall lay down its own rules of procedure. It shall take its decision by majority vote.

38.7. The decisions of the tribunal shall be binding on the Contracting Parties.

Article 39

Evolution of the domestic legislation of the Contracting Parties

39.1. The Agreement shall be without prejudice to the right of each Contracting Party, subject to compliance with the principle of non-discrimination and the provisions of this Article, unilaterally to amend its domestic legislation on a point regulated by this Agreement.

39.2. As soon as a Contracting Party has initiated the process for adopting a draft amendment of its domestic legislation concerning the conditions for taking up and pursuing, by means of establishment, the activity of direct insurance other than life assurance, it shall inform the other Contracting Party via the Joint Committee referred to in Article 37. The Joint Committee shall hold an exchange of views on the implications of such an amendment for the proper functioning of the Agreement.

39.3. As soon as the amended legislation has been adopted, and eight days after adoption at the latest, the Contracting Party concerned shall notify the text of the new provisions to the other Contracting Party.

39.4. In order to guarantee legal certainty, a period of at least 12 months from the date of adoption of the amended legislation must be laid down by the Contracting Party concerned for the implementation of any amendment of legislation which deviates from the provisions of the Agreement.

39.5. Any amendment of legislation which has been the subject of the procedures referred to in paragraphs 39.2 and 39.3 and which, in the opinion of either Contracting Party, deviates from the provisions of the Agreement, shall be referred to the Joint Committee. The Joint Committee shall meet at the latest six weeks after the notification laid down in paragraph 39.3.

39.6. The Joint Committee shall:

— either adopt a decision revising the provisions of the Agreement so as to integrate therein, if necessary on a basis of reciprocity, the amendments made to the legislation in question,

— or, as long as the insured person is guaranteed equivalent protection to that provided for under the Agreement, adopt a decision to the effect that the amendments to the legislation in question shall be regarded as in accordance with the Agreement,

— or decide any other measure to safeguard the proper functioning of the Agreement.

39.7. The decisions of the Joint Committee shall be published in the Official Compendium of Federal Laws *(Recueil Officiel des lois fédérales)* and in the *Official Journal of the European Communities*. Each decision shall state the date of its implementation in the two Contracting Parties and any other information likely to concern economic operators. The decisions shall be submitted as necessary for ratification or approval by the Contracting Parties in accordance with their own procedures.

The Contracting Parties shall notify each other of the completion of this formality. If upon the expiry of the period provided for in paragraph 39.4 such notification has not taken place, the decisions of the Joint Committee shall be implemented provisionally pending their ratification or approval by the Contracting Parties. If either Contracting Party notifies the non-ratification or non-approval of a decision of the Joint Committee, paragraph 39.8 shall apply *mutatis mutandis* from the time of such notification.

39.8. If the Joint Committee does not reach agreement on the decisions to be taken within six months of the date of referral pursuant to paragraph 39.5, the Agreement shall be regarded as ended on the day the legislation in question is implemented, pursuant to paragraph 39.4; in that event the provisions of Article 38 are not applicable. The provisions of paragraph 42.2 shall apply *mutatis mutandis*.

Article 40

Revision of the Agreement

40.1. If a Contracting Party wishes that this Agreement be revised, it shall request the other Contracting Party to open negotiations to that end. Such request shall be made through diplomatic channels.

40.2. Amendments to this Agreement shall enter into force in accordance with the procedure set out in Article 44.

40.3. Nevertheless, amendments to the Annexes, Protocols and Exchanges of Letters annexed to this Agreement shall be adopted by the Joint Committee referred to in Article 37, which shall determine the date of their entry into force.

Article 41

Matters not covered by the Agreement

41.1. Where a Contracting Party considers that it would be useful in the interests of both Contracting Parties to develop the relations established by this Agreement by extending them to private insurance activities not covered thereby, it shall propose to the other Contracting Party that negotiations be opened to that end.

41.2. Agreements resulting from negotiations referred to in paragraph 41.1 shall be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 42

Denunciation

42.1. Either Contracting Party may denounce this Agreement at any time by notifying the other Contracting Party to that effect. The Agreement shall cease to be in force 12 months after the date of such notification.

42.2. In the event of denunciation, the Contracting Parties shall jointly agree on rules governing the situation of undertakings which have obtained authorization in accordance with paragraph 11.1. In the absence of agreement upon expiry of the period of 12 months referred to in paragraph 42.1, those undertakings shall be made subject to the rules applicable to those of third countries. Nevertheless, the Contracting Parties hereby undertake that the authorization obtained in accordance with paragraph 11.1 shall not be withdrawn in the light of the economic requirements of the market for a period of at least five years from the date on which this Agreement ceases to be in force.

Article 43

Territorial scope

This Agreement shall apply, on the one hand, to the territory of the Swiss Confederation and, on the other hand, to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty.

Article 44

Entry into force

44.1. This Agreement was negotiated in French and drawn up in duplicate in the Danish, Dutch, English, French, German, Italian, Portuguese and Spanish languages, each of these texts being equally authentic.

44.2. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures.

44.3. This Agreement shall enter into force on the first day of the calendar year following the exchange of instruments of ratification or approval on condition that such exchange takes place not later than one month before that date.

Nevertheless, the Contracting Parties may, on exchanging instruments of ratification or approval, jointly agree on another date for the entry into force of this Agreement; in that case, the date shall be published forthwith.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Acuerdo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne aftale.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Abkommen gesetzt.

Εις πίστωση των ανωτέρω, οι υπογεγραμμένοι πληρεξούσιοι έθεσαν τις υπογραφές τους στην παρούσα συμφωνία.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent accord.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente accordo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze Overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final do presente acordo.

Hecho en Luxemburgo, el diez de octubre de mil novecientos ochenta y nueve.

Udfærdiget i Luxembourg, den tiende oktober nitten hundrede og niogfirs.

Geschehen zu Luxemburg am zehnten Oktober neunzehnhundertneunundachtzig.

Έγινε στο Λουξεμβούργο, στις δέκα Οκτωβρίου χίλια εννιακόσια ογδόντα εννέα.

Done at Luxembourg on the tenth day of October in the year one thousand nine hundred and eighty-nine.

Fait à Luxembourg, le dix octobre mil neuf cent quatre-vingt-neuf.

Fatto a Lussemburgo, addì dieci ottobre millenovecentottantanove.

Gedaan te Luxemburg, de tiende oktober negentienhonderd negenentachtig.

Feito no Luxemburgo, em dez de Outubro de mil novecentos e oitenta e nove.

En nombre del Consejo de las Comunidades Europeas

På vegne af Rådet for De Europæiske Fællesskaber

Im Namen des Rates der Europäischen Gemeinschaften

Εξ ονόματος του Συμβουλίου των Ευρωπαϊκών Κοινοτήτων

On behalf of the Council of the European Communities

Au nom du Conseil des Communautés européennes

A nome del Consiglio delle Comunità europee

Namens de Raad van de Europese Gemeenschappen

Em nome do Conselho das Comunidades Europeias

Por el Gobierno de la Confederación Suiza

For regeringen for Schweiz

Für die Regierung der Schweizerischen Eidgenossenschaft

Για την κυβέρνηση της Ελβετικής Συνομοσπονδίας

For the Government of the Swiss Confederation

Pour le gouvernement de la Confédération suisse

Per il governo della Confederazione svizzera

Voor de Regering van de Zwitserse Bondsstaat

Pelo Governo da Confederação Suíça

ANNEX 1

CLASSES OF INSURANCE SUBJECT TO THE AGREEMENT

A. Classification of risks according to classes of insurance

1. *Accident (including industrial injury and occupational diseases)*

   — fixed pecuniary benefits,
   — benefits in the nature of indemnity,
   — combinations of the two,
   — injury to passengers.

2. *Sickness*

   — fixed pecuniary benefits,
   — benefits in the nature of indemnity,
   — combinations of the two.

3. *Land vehicles (other than railway rolling stock)*

   All damage to or loss of:
   — land motor vehicles,
   — land vehicles other than motor vehicles.

4. *Railway rolling stock*

   All damage to or loss of railway rolling stock.

5. *Aircraft*

   All damage to or loss of aircraft.

6. *Ships (sea, lake and river and canal vessels)*

   All damage to or loss of:
   — river and canal vessels,
   — lake vessels,
   — sea vessels.

7. *Goods in transit (including merchandise, baggage and all other goods)*

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. *Fire and natural forces*

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:
   — fire,
   — explosion,
   — storm,
   — natural forces other than storm,
   — nuclear energy,
   — land subsidence.

9. *Other damage to property*

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8.

10. *Motor vehicle liability*

    All liability arising out of the use of motor vehicles operating on land (including carrier's liability).

11. *Aircraft liability*

All liability arising out of the use of aircraft (including carrier's liability).

12. *Liability for ships (sea, lake and river and canal vessels)*

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. *General liability*

All liability other than those forms mentioned under Nos 10, 11 and 12.

14. *Credit*

— insolvency (general),
— export credit,
— instalment credit,
— mortgages,
— agricultural credit.

15. *Suretyship*

— suretyship (direct),
— suretyship (indirect).

16. *Miscellaneous financial loss*

— employment risks,
— insufficiency of income (general),
— bad weather,
— loss of profits,
— continuing general expenses,
— unforeseen trading expenses,
— loss of market value,
— loss of rent or revenue,
— indirect trading losses other than those mentioned above,
— other financial loss (non-trading),
— other forms of financial loss.

17. *Legal expenses*

Legal expenses and costs of litigation.

18. *Tourist assistance*

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence.

The risks included in a class may not be included in any other class except in the cases referred to in Part C.

B. **Description of authorizations granted simultaneously for more than one class of insurance**

Where the authorization simultaneously covers:

(a) classes Nos 1 and 2, it shall be named 'Accident and Health Insurance';

(b) classes Nos 1 (fourth indent), 3, 7 and 10, it shall be named 'Motor Insurance';

(c) classes Nos 1 (fourth indent), 4, 6, 7 and 12, it shall be named 'Marine and Transport Insurance';

(d) classes Nos 1 (fourth indent), 5, 7 and 11, it shall be named 'Aviation Insurance';

(e) classes Nos 8 and 9, it shall be named 'Insurance against Fire and other Damage to Property';

(f) classes Nos 10, 11, 12 and 13, it shall be named 'Liability Insurance';

(g) classes Nos 14 and 15, it shall be named 'Credit and Suretyship Insurance';

(h) all classes, it shall have the name or names chosen by the Contracting Party in question, which shall notify the other Contracting Party of its choice(s).

C. Ancillary risks

An undertaking obtaining an authorization for a principal risk belonging to one class or a group of classes may also insure risks included in another class without an authorization being necessary for them if they:

— are connected with the principal risk,

— concern the object which is covered against the principal risk, and

— are covered by the contract insuring the principal risk.

However, the risks included in classes 14, 15 and 17 may not be regarded as risks ancillary to other classes.

Nonetheless, the risk included in class 17 (legal expenses insurance) may be regarded as an ancillary risk of class 18 where the conditions laid down in the first subparagraph of Part C of this Annex are fulfilled, and where the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence.

Legal expenses insurance may also be regarded as an ancillary risk under the conditions set out in the first subparagraph of Part C of this Annex where it concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

D. Assistance

1. The assistance activity shall be the assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence. It shall consist in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

   The aid may consist in the provision of benefits in cash or in kind. The provision of benefis in kind may also be effected by means of the staff and equipment of the person providing them.

   The assistance activity does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

2. Either Contracting Party may, in its territory, make the provision of assistance to persons who get into difficulties in circumstances other than those referred to in 1 subject to the arrangements introduced by this Agreement. If a Contracting Party makes use of this possibility it shall, for the purposes of applying these arrangements, treat such activity as if it were listed under class 18 in Part A of this Annex, without prejudice to Part C thereof.

This shall in no way affect the possibilities for classification laid down in this Annex for activities which clearly come under other classes.

It shall not be possible to refuse authorization sought for an agency or branch by an undertaking whose head office is situated in the territory of the other Contracting Party solely on the grounds that the activity covered by this point is classified differently in the Contracting Party, in the territory of which the head office of the undertaking is situated.

ANNEX 2

KINDS OF INSURANCE, OPERATIONS AND UNDERTAKINGS NOT SUBJECT TO THE AGREEMENT

A. Kinds of insurance excluded

This Agreement does not apply to:

1. life assurance, that is to say the class of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, tontines, marriage assurance and birth assurance;

2. annuities;

3. supplementary insurance carried on by life assurance undertakings, that is to say, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;

4. *in Switzerland:*

   insurance forming part of a statutory system of social security, except where such insurance is written by authorized undertakings;

   in the Community:

   insurance forming part of a statutory system of social security;

5. the type of insurance existing in Ireland and the United Kingdom known as 'permanent health insurance not subject to cancellation'.

B. Operations excluded

This Agreement does not apply to:

1. capital redemption operations, as defined by the law in each Contracting Party;

2. operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of members are determined on a flat rate basis;

3. operations carried out by organizations not having legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

4. export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer;

5. the assistance activity in which liability is limited to the following operations provided in the event of an accident or breakdown involving a road vehicle which normally occurs in the territory in which the supervisory authority of the Contracting Party in which the undertaking providing cover is established is competent:

   — an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment,

   — the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means,

   — if provided for by the provisions in force in the territory in which the supervisory authority of the Contracting Party in which the undertaking providing cover is established is competent, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same territory,

   unless such operations are carried out by an undertaking subject to the Agreement.

In the cases referred to in the first two indents, the condition that the accident or breakdown must have happened in the territory in which the supervisory authority of the Contracting Party, in which the undertaking providing cover is established, is competent:

(a) shall not apply where the latter is a body of which the beneficiary is a member and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the same or the other Contracting Party on the basis of a reciprocal agreement;

(b) shall not preclude the provision of such assistance in Ireland and the United Kingdom by a single body operating in both States.

In the circumstances referred to in the third indent, where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland, the vehicle, possibly accompanied by the driver and passengers, may be conveyed to their home, point of departure or original destination within either territory.

Moreover, the Agreement does not concern assistance operations carried out on the occasion of an accident to or the breakdown of a road vehicle and consisting in conveying the vehicle which has been involved in an accident or has broken down outside the territory of the Grand Duchy of Luxembourg, possibly accompanied by the driver and passengers, to their home, where such operations are carried out by the Automobile Club of the Grand Duchy of Luxembourg.

Undertakings subject to the Agreement may engage in the activity referred to under this point only if they have received authorization for class 18 in Part A of Annex 1 without prejudice to Part C of the said Annex. In that event the Agreement shall apply to the operations in question.

C. Exclusion of undertakings occupying special positions

This Agreement does not apply:

1. to undertakings which fulfil the following conditions:

   — the undertaking does not pursue any activity falling within the scope of the Agreement other than the one described in class 18 in Part A of Annex No 1,

   — the activity is carried out exclusively on a local basis and consists only of benefits in kind,

   and

   — the total annual income collected in respect of the activity of assistance to persons who get into difficulties does not exceed ECU 200 000.

2. in the case of undertakings whose head office is situated in Switzerland, to:

   undertakings whose annual premium income for the activities covered by the Agreement does not exceed the sum of three million Swiss francs on the date of entry into force of this Agreement and whose activities extend only to Swiss territory for such time as they satisfy these conditions. Once it has become subject to the rules of the Agreement an undertaking may no longer rely on this exception even if it satisfies the two abovementioned conditions.

3. in the case of undertakings whose head office is situated in the Community, to:

   mutual associations in so far as they fulfil all the following conditions:

   — the articles of association contain provisions for calling up additional contributions or reducing their benefits,

   — their business does not cover liability risks — unless the latter constitute ancillary cover within the meaning of Part C of Annex 1 — or credit and suretyship risks,

   — the annual contribution income from the activities covered by this Agreement does not exceed ECU 1 million, and

   — at least half of the contribution income from the activities covered by this Agreement comes from persons who are members of the mutual association.

   Mutual associations which have concluded with another undertaking of the same nature an agreement which provides for the full reinsurance of the insurance contracts concluded by them or under which the concessionary undertaking is to meet the liabilities arising out of such contracts in the place of the ceding undertaking.

   In such a case, the concessionary undertaking shall be subject to this Agreement.

D. **Exclusion of specific undertakings**

This Agreement shall not apply to the undertakings listed under 1 and 2 unless their articles of association are amended as regards capacity.

However, the territorial capacity of the undertakings referred to in 1 and 2 (b) shall not be regarded as modified in the case of a merger between or division of such undertakings which has the effect of maintaining for the benefit of the new undertaking or undertakings the territorial capacity of the undertaking which has divided or the undertakings which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these undertakings takes over in respect of the same territory one or more of the classes of another such undertaking.

1. *in Switzerland*

The following cantonal institutions under public law, enjoying a monopoly:

(a) Aargau: Aargauisches Versicherungsamt, Aarau;

(b) Appenzell Ausser-Roden: Brand und Elementarschadenversicherung Appenzell AR, Herisau;

(c) Basel Land: Basellandschaftliche Gebäudeversicherung, Liestal;

(d) Basel Stadt: Gebäudeversicherung des Kantons Basel Stadt, Basel;

(e) Bern/Berne: Gebäudeversicherung des Kantons Bern, Bern, Assurance immobilière du canton de Berne, Berne;

(f) Fribourg/Freiburg: Etablissement cantonal d'assurance des bâtiments du canton de Fribourg, Fribourg/Kantonale Gebäudeversicherungsanstalt Freiburg, Freiburg;

(g) Glarus: Kantonale Sachversicherung Glarus, Glarus;

(h) Graubünden/Grigioni/Grischun: Gebäudeversicherungsanstalt des Kantons Graubünden, Chur / Istituto d'assicurazione fabbricati del cantone dei Grigioni, Coira / Institut dil cantun Grischun per assicuranzas da baghetgs, Cuera;

(i) Jura: Assurance immobilière de la République et canton du Jura, Saignelégier;

(j) Luzern: Gebäudeversicherung des Kantons Luzern, Luzern;

(k) Neuchâtel: Etablissement cantonal d'assurance immobilière contre l'incendie, Neuchâtel;

(l) Nidwalden: Kantonale Brandversicherungsanstalt Nidwalden, Stans;

(m) Schaffhausen: Gebäudeversicherung des Kantons Schaffhausen, Schaffhausen;

(n) Solothurn: Solothurnische Gebäudeversicherung, Solothurn;

(o) St. Gallen: Gebäudeversicherungsanstalt des Kantons St. Gallen, St. Gallen;

(p) Thurgau: Gebäudeversicherung des Kantons Thurgau, Frauenfeld;

(q) Vaud: Etablissement d'assurance contre l'incendie et les éléments naturels du canton de Vaud, Lausanne;

(r) Zug: Gebäudeversicherung des Kantons Zug, Zug;

(s) Zürich: Gebäudeversicherung des Kantons Zürich, Zürich;

2. *in the Community*

(a) in Denmark

Falcks Redningskorps A/S, København;

(b) in Germany

— the following institutions under public law enjoying a monopoly (Monopolanstalten):

(aa) Badische Gebäudeversicherungsanstalt, Karlsruhe;

(bb) Bayerische Landesbrandversicherungsanstalt, München;

(cc) Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, München;

(dd) Braunschweigische Landesbrandversicherungsanstalt, Braunschweig;

(ee) Hamburger Feuerkasse, Hamburg;

(ff) Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt;

(gg) Hessische Brandversicherungsanstalt, Kassel;

(hh) Lippische Landesbrandversicherungsanstalt, Detmold;

(ii) Nassauische Brandversicherungsanstalt, Wiesbaden;

(jj) Oldenburgische Landesbrandkasse, Oldenburg;

(kk) Ostfriesische Landschaftliche Brandkasse, Aurich;

(ll) Feuersozietät Berlin, Berlin;

(mm) Württembergische Gebäudebrandversicherungsanstalt, Stuttgart,

— the following semi-public institutions:

(nn) Postbeamtenkrankenkasse;

(oo) Krankenversorgung der Bundesbahnbeamten;

(c) in Spain

the following public institutions:

(aa) Comisariá de Seguro Obligatorio de Viajeros;

(bb) Consorcio de Compensación de Seguros;

(cc) Fondo Nacional de Garantiá de Riesgos de la Circulación;

(d) in France

the following institutions:

(aa) Caisse départementale des incendiés des Ardennes;

(bb) Caisse départementale des incendiés de la Côte d'Or;

(cc) Caisse départementale des incendiés de la Marne;

(dd) Caisse départementale des incendiés de la Meuse;

(ee) Caisse départementale des incendiés de la Somme;

(e) in Ireland

Voluntary Health Insurance Board;

(f) in Italy

la Cassa di Previdenza per l'assicurazione degli sportivi (Sportass);

(g) in the United Kingdom

the Crown Agents.

ANNEX 3

LISTING OF ACCEPTABLE LEGAL FORMS

An undertaking whose head office is situated in the territory of a Contracting Party shall be constituted in one of the legal forms listed below.

The Contracting Parties may also set up, where appropriate, undertakings under any form governed by public law provided that such institutions have as their object insurance transactions under conditions equivalent to those of undertakings governed by private law.

A. **In Switzerland**

— Aktiengesellschaft / société anonyme / società per azioni
— Genossenschaft / coopérative / cooperativa

B. **In the Community**

1. *in Belgium*
   — société anonyme / naamloze vennootschap,
   — société en commandite par actions / vennootschap bij wijze van geldschieting op aandelen,
   — association d'assurance mutuelle / onderlinge verzekeringsmaatschappij,
   — Société coopérative / coöperatieve vennootschap;
2. *in Denmark*
   — aktieselskaber,
   — gensidige selskaber;
3. *in Germany*
   — Aktiengesellschaft,
   — Versicherungsverein auf Gegenseitigkeit,
   — Öffentlich-rechtliche Wettbewerbs-Versicherungsunternehmen;
4. *in France*
   — société anonyme,
   — société à forme mutuelle,
   — mutuelle,
   — union de mutuelles;
5. *in Spain*
   — sociedad anónima,
   — sociedad mutua,
   — sociedad cooperativa;
6. *in Greece*
   — Ανώνυμος Εταιρία,
   — Αλληλασφαλιστικός Συνεταιρισμός;
7. *in Ireland*
   — incorporated companies limited by shares or by guarantee or unlimited;
8. *in Italy*
   — società per azioni,
   — società cooperativa,
   — mutua di assicurazione;
9. *in Luxembourg*
   — société anonyme,
   — société en commandite par actions,
   — association d'assurances mutuelles,
   — société coopérative;

10. *in the Netherlands*

— naamloze vennootschap,

— onderlinge waarborgmaatschappij;

11. *in Portugal*

— sociedade anónima,

— mútua de seguros;

12. *in the United Kingdom*

— incorporated companies limited by shares or by guarantee or unlimited,

— societies registered under the Industrial and Provident Societies Acts,

— societies registered under the Friendly Societies Act,

— the association of underwriters known as Lloyd's.

ANNEX 4

PARTICULAR PROVISIONS FOR CERTAIN MEMBER STATES OF THE COMMUNITY

By way of derogation from the provisions of this Agreement, the following special provisions shall apply in certain Member States of the Community:

1. **in Denmark**

   re Article 15:

   Denmark may retain in force its legislation restricting the free disposal of assets built up by insurance undertakings to cover pensions payable under compulsory insurance against industrial accidents;

2. **in Germany**

   re paragraph 8.2:

   Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance with other classes;

   re Article 15:

   Germany may maintain, with respect to health insurance within the meaning of paragraph 2.3 of Protocol No 1, the restrictions imposed on the free disposal of assets in so far as the free disposal of assets covering mathematical reserves is subject to the agreement of a 'Treuhänder';

3. **in Luxembourg**

   re paragraphs 20.1 and 20.3:

   Luxembourg may retain the system of guarantees for technical reserves existing at the time of entry into force of this Agreement;

4. **in the United Kingdom**

   re paragraph 10.1 (c):

   with regard to the association of underwriters known as Lloyd's, submission of the balance sheet and the profit and loss account shall be replaced by the compulsory presentation of overall annual trading accounts covering the insurance operations, and accompanied by an affidavit certifying that auditors' certificates have been supplied in respect of each insurer and showing that the liabilities incurred as a result of those operations are wholly covered by the assets. These documents must allow the supervisory authorities to form a comparable view of the state of solvency of the Association;

   re paragraph 10.1 (d):

   with regard to the association of underwriters known as Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, insured persons must not be less favourably treated than if the litigation had been brought against a business of a more conventional type. The authorized agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

ANNEX 5

METHODS OF CALCULATING THE EQUALIZATION RESERVE FOR THE CREDIT INSURANCE CLASS AND CONDITIONS GOVERNING EXEMPTION FROM THE OBLIGATION TO SET UP SUCH A RESERVE

A. Methods

Method No 1

1.1. In respect of the risks listed under class 14 in Part A of Annex 1 (credit insurance), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

1.2. Such reserve shall in each financial year receive 75 % of any technical surplus arising on credit insurance business, subject to a limit of 12 % of the net premiums or contributions until the reserve has reached 150 % of the highest annual amount of net premiums or contributions received during the previous five financial years.

Method No 2

2.1. In respect of the risks listed under class 14 in Part A of Annex 1 (credit insurance), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

2.2. The minimum amount of the equalization reserve shall be 134 % of the average of the premiums or contributions received annually during the previous five financial years after subtraction of the cessions and addition of the reinsurance acceptances.

2.3. Such reserve shall in each of the successive financial years receive 75 % of any technical surplus arising in that class until the reserve is at least equal to the minimum calculated in accordance with point 2.2 of this Annex.

2.4. The Contracting Parties may lay down special rules for the calculation of the amount of the reserve and/or the amount of the annual levy in excess of the minimum amounts laid down in points 2.2 and 2.3 of this Annex.

Method No 3

3.1. An equalization reserve shall be formed for class 14 in Part A of Annex 1 (credit insurance) for the purpose of offsetting any above average claims ratio for a financial year in that class of insurance.

3.2. The equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached, or is restored to, the required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The required amount shall be equal to six times the standard deviation of the claims ratios in the reference period from the average claims ratio, multiplied by the earned premium for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

Irrespective of claims experience, 3,5 % of the required amount of the equalization reserve shall be first placed to that reserve each financial year until its required amount has been reached or restored.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

The required amount of the equalization reserve and the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin.

Method No 4

4.1. An equalization reserve shall be formed for class 14 in Part A of Annex 1 (credit insurance) for the purpose of offsetting any above average claims ratio for a financial year in that class of insurance.

4.2. This equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached the maximum required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The maximum required amount shall be equal to six times the standard deviation of the claims ratio in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve until it has reached the minimum required amount. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The minimum required amount shall be equal to three times the standard deviation of the claims ratio in the reference period from the average claims ratio multiplied by the earned premiums for the financial year.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

Both required amounts of the equalization reserve and the amount to be placed to it or the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin and that safety margin is more than one and a half times the standard deviation of the claims ratio in the reference period. In such a case the amounts in question shall be multiplied by the quotient of one and a half times the standard deviation and the safety margin.

B. **Exemption**

Each Contracting Party may exempt head offices, agencies or branches from the obligation to set up an equalization reserve for credit insurance business where the premiums or contributions receivable in respect of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than ECU 2 500 000.

The relationship between the ecu and the Swiss franc and the procedures necessary for defining that relationship for the purposes of this Annex are laid down in Protocol No 3.

PROTOCOL No 1

SOLVENCY MARGIN

Article 1

Definition of the solvency margin

The solvency margin shall correspond to the assets of the undertaking, free of all foreseeable liabilities, less any intangible items. In particular the following shall be considered:

— the paid up share capital or, in the case of a mutual concern, the effective initial fund,

— one half of the share capital or the initial fund which is not yet paid up, once the paid up part reaches 25 % of this capital or fund,

— reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities,

— any carry forward of profits,

— in the case of a mutual or mutual type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to an overriding limit of 50 % of the margin,

— at the request of, and upon proof being shown by the undertaking, and with the agreement of the concerned supervisory authorities of the Contracting Parties in whose territory the undertaking carries on its business, any hidden reserves resulting from under-estimation of assets or over-estimation of liabilities in the balance sheet, in so far as such hidden reserves are not of an exceptional nature.

Over-estimation of technical reserves shall be determined in relation to their amount calculated by the undertaking in conformity with national rules; however, an amount equivalent to 75 % of the difference between the amount of the reserve for outstanding risks calculated at a flat rate by the undertaking by application of a minimum percentage in relation to premiums and the amount that would have been obtained by calculating the reserve contract by contract where the national law in question gives an option between the two methods, can be taken into account in the solvency margin up to 20 %.

Article 2

Relationship between the solvency margin and the amount of premiums or the burden of claims

2.1. The solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years. In the case, however, of undertakings which essentially underwrite only one or more of the risks of credit, storm, hail and frost, the last seven years shall be taken as the period of reference for the average burden of claims.

2.2. Subject to the provisions of Article 3 of this Protocol, the amount of the solvency margin shall be equal to the higher of the following two results:

First Result (premium basis):

— the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of all direct business in the last financial year for all financial years, shall be aggregated,

— to this aggregate there shall be added the amount of premiums accepted for all reinsurance in the last financial year,

— from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to ECU 10 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The first result shall be obtained by multiplying the sum so calculated by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the undertaking after deduction of transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

Second result (claims basis):

— the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionnaires) in the periods specified in paragraph 2.1 of this Protocol shall be aggregated,

— to this aggregate there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods,

— to this sum there shall be added the amount of provisions or reserves for outstanding claims established at the end of the last financial year both for direct business and for reinsurance acceptances,

— from this sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 2.1 of this Protocol,

— from the sum then remaining, there shall be deducted the amount of provisions or reserves for outstanding claims established at the commencement of the second financial

year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in paragraph 2.1 of this Protocol, shall be divided into two portions, the first extending up to ECU 7 million, and the second comprising the excess; 26% and 23% of these portions respectively shall be calculated and added together.

The second result shall be obtained by multiplying the sum so obtained by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the business after transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50%.

2.3. The fractions applicable to the portions referred to in paragraph 2.2 of this Protocol shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if

— the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance,

— a reserve is set up for increasing age,

— an additional premium is collected in order to set up a safety margin of an appropriate amount,

— the insurer may only cancel the contract before the end of the third year of insurance at the latest,

— the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

2.4. In the case of the association of underwriters known as Lloyd's, the calculation of the first result in respect of premiums, referred to in paragraph 2.2 of this Protocol, shall be made on the basis of net premiums, which shall be multiplied by a flat rate percentage fixed annually by the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated. This flat rate percentage must be calculated on the basis of the most recent statistical data on commissions paid.

The details, together with the relevant calculations, shall be sent to the supervisory authority of Switzerland if the association of underwriters known as Lloyd's is established there.

2.5. In the case of the risks listed under class 18 in Part A of Annex 1, the amount of claims paid used to calculate the second result (claims basis) shall be the costs borne by the undertaking in respect of assistance given. Such costs shall be calculated in accordance with the provisions of the Contracting Party in whose territory the head office of the undertaking is situated.

Article 3

Guarantee fund

3.1. One-third of the solvency margin shall constitute the guarantee fund.

3.2. The guarantee fund may not, however, be less than:

— ECU 1 400 000 in the case where all or some of the risks included in the class listed in Part A of Annex 1 under No 14 are covered. This provision shall apply to every undertaking for which the annual amount of premiums or contributions due in this class for each of the last three financial years exceeded ECU 2 500 000 or 4% of the total amount of premiums or contributions receivable by the undertaking concerned,

— ECU 400 000 in the case where all or some of the risks included in one of the classes listed in Part A of Annex 1 under Nos 10, 11, 12, 13 and 15 and, in so far as the first indent does not apply, No 14, are covered,

— ECU 300 000 in the case where all or some of the risks included in one of the classes listed in Part A of Annex 1 under Nos 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 are covered,

— ECU 200 000 in the case where all or some of the risks included in one of the classes listed in Part A of Annex 1 under Nos 9 and 17 are covered.

3.3. If the business carried on by the undertaking covers several classes or several risks, only that class or risk for which the highest amount is required shall be taken into account.

3.4. Each Contracting Party may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual type associations.

3.5. Where an undertaking has, in accordance with the first indent of paragraph 3.2 of this Protocol, to increase the guarantee fund to ECU 1 400 000, the Contracting Party in question shall allow such undertaking:

— a period of three years in which to bring the fund up to ECU 1 000 000,

— a period of five years in which to bring the fund up to ECU 1 200 000,

— a period of seven years in which to bring the fund up to ECU 1 400 000.

These periods shall run from the date from which the conditions referred to in the first indent of paragraph 3.2 of this Protocol are fulfilled.

Article 4

Relationship between the ecu and the Swiss franc

The relationship between the ecu and the Swiss franc and the procedures necessary for defining that relationship for the purposes of this Protocol are laid down in Protocol No 3.

PROTOCOL No 2

SCHEME OF OPERATIONS

Article 1

Content

The scheme of operations of the agency or branch shall contain the following particulars or proofs concerning:

(a) the nature of the risks which the undertaking proposes to cover;

(b) the general and special policy conditions which it proposes to use;

(c) the scales of premiums which the undertaking proposes to apply or each category of business;

(d) the guiding principles as to reinsurance;

(e) the state of the solvency margin of the undertaking, referred to in Protocol No 1;

(f) estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them, and, where the risks to be covered are listed under class 18 in Part A of Annex No 1, the resources available to the undertaking for providing the promised assistance; and, in addition, for the first three financial years,

(g) estimates relating to expenses of management;

(h) estimates relating to premiums or contributions and to claims in respect of the new business;

(i) the forecast balance sheet for the agency for branch.

Article 2

Exceptions

2.1. The particulars referred to in (b) and (c) of Article 1 of this Protocol shall not be required with regard to the following risks (large risks):

(a) risks listed under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex 1;

(b) risks listed under classes 14 and 15 in Part A of Annex No 1, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;

(c) risks listed under classes 8, 9, 13 and 16 in Part A of Annex 1 in so far as the policy holder exceeds the limits of at least two of the following three criteria:

First stage: until 31 December 1992:

— balance sheet total: ECU 12,4 million,

— net turnover: ECU 24 million,

— average number of employees during the financial year: 500.

Second stage: from 1 January 1993:

— balance sheet total: ECU 6,2 million,

— net turnover: ECU 12,8 million,

— average number of employees during the financial year: 250.

If the policy holder belongs to a group of undertakings for which consolidated accounts are drawn up in accordance with the law in force in the Contracting Party to whose jurisdiction the group is subject, the criteria mentioned above shall be applied on the basis of the consolidated accounts.

Each Contracting Party may add to the category mentioned under (c) risks insured by professional associations, joint ventures or temporary groupings.

2.2. However, in Switzerland the particulars referred to in (b) and (c) of Article 1 of this Protocol may be required with regard to the risks listed under No 12 in Part A of Annex 1 where the vessels involved are lake or river vessels.

PROTOCOL No 3

RELATIONSHIP BETWEEN THE ECU AND THE SWISS FRANC

Article 1

Ecu

For the purposes of this Agreement, 'ecu' means the ecu as defined by the competent Community authorities.

Article 2

Relationship between national currencies and the ecu

2.1. In so far as amounts expressed in ecus in this Agreement have to be converted into national currencies to enable the supervisory authorities to apply the Agreement's provisions directly, the conversion shall be effected in accordance with the provisions of paragraphs 2.2 and 2.3 of this Protocol.

2.2. With regard to the conversion of amounts expressed in ecus into the national currencies of the Member States of the Community, the rules laid down by the competent Community authorities shall apply.

2.3. With regard to the equivalent in Swiss francs of amounts expressed in ecus, the exchange value of one ecu shall, for the purposes of this Agreement, be . . . . . Swiss francs.

Article 3

Alteration of the relationship between the ecu and the Swiss franc

3.1. The relationship between the ecu and the Swiss franc referred to in paragraph 2.3 shall be reviewed annually on the basis of the following: where the exchange value of the ecu in terms of Swiss francs as fixed by the Swiss National Bank for the last working day in October differs by more than 10 % on either side of the value in force for the purposes of this Agreement, that value shall be adjusted accordingly with effect from 1 January of the following year.

3.2. The Joint Committee referred to in Article 37 may make such other adjustments as may be necessary.

PROTOCOL No 4

AGENCIES AND BRANCHES OF UNDERTAKINGS WHOSE HEAD OFFICE IS SITUATED OUTSIDE THE TERRITORIES TO WHICH THIS AGREEMENT APPLIES

Article 1

Conditions for authorization

Each Contracting Party may grant to an undertaking whose head office is situated outside the territories to which this Agreement applies under Article 43 thereof, authorization to open an agency or branch in its territory, if the applicant undertaking fulfils at least the following conditions:

(a) it is entitled to undertake insurance business under its national law;

(b) it establishes an agency or branch in the territory of the Contracting Party in question;

(c) it undertakes to establish at the place of management of the agency or branch accounts specific to the business which it undertakes there, and to keep there all the records relating to the business transacted;

(d) it designates an authorized agent, to be approved by the supervisory authority;

(e) it possesses in the country in which it carries on its business assets of an amount equal to at least one-half of the minimum amount prescribed in paragraph 3.2 of Protocol No 1, in respect of the guarantee fund, and deposits one-quarter of the minimum amount as security;

(f) it undertakes to keep a solvency margin in accordance with Article 3 of this Protocol;

(g) it submits a scheme of operations in accordance with the provisions of paragraph 10.1 (c) of the Agreement and Protocol No 2. Each Contracting Party may, if the legal provisions in force therein so permit, require an undertaking which has been in existence for fewer than three financial years to supply the balance sheet and profit and loss account which must accompany the scheme of operations only in respect of the financial years which have closed.

Article 2

Technical reserves

Under this Protocol, each Contracting Party shall apply to agencies or branches set up in its territory rules regarding technical reserves which may not be more favourable than those provided for in Articles 19, 20 and 21. By way of derogation from the second sentence of paragraph 20.1 it shall require assets representing technical reserves to be localized in the territory in which the supervisory authority of the Contracting Party concerned is competent.

Article 3

Solvency margin

3.1. Under this Protocol, each Contracting Party shall require for agencies or branches established in its territory a solvency margin consisting of assets free of all foreseeable liabilities, less any intangible items. The solvency margin shall be calculated in accordance with paragraphs 2.2 and 2.3 of Protocol No 1. However, for the purpose of calculating this margin, account shall be taken only of the premiums or contributions and claims pertaining to the business effected by the agency or branch concerned.

3.2. One-third of the solvency margin shall constitute the guarantee fund. The guarantee fund may not be less than one-half of the minimum required under paragraph 3.2 of Protocol No 1. The initial security lodged in accordance with paragraph 1 (e) of this Protocol shall be counted towards such guarantee fund.

3.3. The assets representing the solvency margin shall be localized in the territory in which the supervisory authority of the Contracting Party concerned is competent.

3.4. The Community may allow these rules to be relaxed in the case of undertakings with agencies or branches in various Member States in order to facilitate their supervision.

Article 4

Verification and restoration of financial situation

The provisions of paragraph 17.3 and Article 18 shall apply *mutatis mutandis* in relation to agencies and branches of undertakings to which this Protocol applies.

Article 5

Agreements with third countries

Each Contracting Party may, by means of agreements concluded with one or more third countries, agree to the application of provisions different from those provided for in this Protocol on condition that its insured persons are adequately protected under conditions of reciprocity.

EXCHANGE OF LETTERS No 1

Principle of non-discrimination

Delegation of the Commission
of the European Communities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to confirm that the obligation of non-discrimination referred to in Article 5 thereof exclusively concerns the taking up and pursuit of the activity of direct insurance in the territory in which the supervisory authority which grants authorization is competent and also applies to the Member States of the Community in the exercise of their power to legislate in the areas covered by the said Agreement.

I would ask you to take note of this communication, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart, Esq.
State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to confirm that the obligation of non-discrimination referred to in Article 5 thereof exclusively concerns the taking up and pursuit of the activity of direct insurance in the territory in which the supervisory authority which grants authorization is competent and also applies to the Member States of the Community in the exercise of their power to legislate in the areas covered by the said Agreement.'

I have taken note of this communication, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation
(s. Franz BLANKART)

Geoffrey Fitchew, Esq.
Director General

Head of the Delegation of the Commission of the European Communities

Brussels

EXCHANGE OF LETTERS No 2

Scope of authorization

Delegation of the Commission
of the European Comunities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that paragraph 8.1 does not affect the provisions in force in each Contracting Party concerning the possibility for an insurance undertaking to cover risks situated outside the territory in which the supervisory authority which granted it authorization is competent.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart, Esq.
State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that paragraph 8.1 does not affect the provisions in force in each Contracting Party concerning the possibility for an insurance undertaking to cover risks situated outside the territory in which the supervisory authority which granted it authorization is competent.'

I have taken note of this communication, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation
(s. Franz BLANKART)

Geoffrey Fitchew, Esq.
Director General

Head of the Delegation
of the Commission of the European Communities

Brussels

EXCHANGE OF LETTERS No 3

Authorized agent

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state that it does not preclude the authorized agent referred to in paragraphs 10.1 (d) and 11.4 thereof and in paragraph 1 (d) of Protocol No 4 being required to assume effective management of the agency or branch in respect of all the business activities the latter intends carrying on in the territory in which the supervisory authority from which authorization is sought is competent.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert, Esq.
Director

Head of the Delegation
of the Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state that it does not preclude the authorized agent referred to in paragraphs 10.1 (d) and 11.4 thereof and in paragraph 1 (d) of Protocol No 4 being required to assume effective management of the agency or branch in respect of all the business activities the latter intends carrying on in the territory in which the supervisory authority from which authorization is sought is competent.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(s. Gérard IMBERT)

Franz Blankart, Esq. Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 4

Assignment to the Swiss Securities Fund of immovable property directly owned by insurance undertakings

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland reserves the right, with regard to the assignment to the securities fund of immovable property directly owned by insurance undertakings, to have the said immovable property registered in the securities fund register maintained by the undertaking and to have included in the land register a note relating there to restricting the right to dispose freely of such property which, under Swiss law, does not constitute registration of a mortgage.

I would ask you to confirm that you are also of the opinion that such a procedure is not contrary to paragraphs 11.2 and 20.3 of the said Agreement.

Please accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(Franz BLANKART)

Gérard Imbert, Esq.

Director
Head of the Delegation of the Commission
of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follow:

> 'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland reserves the right, with regard to the assignment to the securities fund of immovable property directly owned by insurance undertakings, to have the said immovable property registered in the securities fund register maintained by the undertaking and to have included in the land register a note relating thereto restricting the right to dispose freely of such property which, under Swiss law, does not constitute registration of a mortgage.'

I hereby confirm that I am also of the opinion that such a procedure is not contrary to paragraphs 11.2 and 20.3 of the said Agreement.

Please accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(Gérard IMBERT)

Franz Blankart, Esq. Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 5

Principles governing investment

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state with regard to the assets referred to in Article 15 that the said Agreement does not preclude the supervisory authority from taking action in specific cases where the choice of assets is likely to place the financial security of an undertaking in serious jeopardy or diminish its degree of liquidity.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert, Esq.
Director

Head of the Delegation
of the Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state with regard to the assets referred to in Article 15 that the said Agreement does not preclude the supervisory authority from taking action in specific cases where the choice of assets is likely to place the financial security of an undertaking in serious jeopardy or diminish its degree of liquidity.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(s. Gérard IMBERT)

Franz Blankart, Esp.
Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 6

Swiss List of classes of insurance

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland will continue to apply to head office, agencies and branches established in its territory its 'List of classes of insurance' for the purposes of submission of accounts and statistics. This will also be the case with regard to the report of the Federal Office for Private Insurance on 'Private insurance undertakings in Switzerland'. However, the 'Classification of risks according to classes of insurance', set out in Part A of Annex 1 to the said Agreement, will apply for the purposes of the specification of classes in applications for authorization and assessment of the need to approve the general and special conditions of insurance policies and scales of premiums.

This does not preclude examination by Switzerland, at a later date, of the possibility of applying the abovementioned 'Classification' in its entirety. A decision to that effect would be notified to the Community through diplomatic channels.

Is it agreed that the scope of the 'List of classes of insurance' is the same as that of the 'Classification of risks according to classes of insurance'. Comparability as between the two types of classification is as follows:

Swiss list of classes of insurance	Classes of insurance according to the classification in Annex 1
1. Accident	A. 1
2. Liability	A. 10, 11, 12, 13
3. Fire and natural forces	A. 8
4. Transport	A. 4, 6, 7
5. Vehicles	A. 3, 5
6. Hail	A. 9
7. Animals	
8. Theft	
9. Breakage of glass	
10. Damage by water	
11. Machinery	
12. Jewellery	
13. Suretyship	A. 15
14. Credit	A. 14
15. Legal expenses	A. 17
16. Health	A. 2
17. Rain	A. 16, 18
18. Special policies	

I would ask you to take note of this communication, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert
Head of the Delegation of the
Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland will continue to apply to head offices, agencies and branches established in its territory its "List of classes of insurance" for the purposes of submission of accounts and statistics. This will also be the case with regard to the report of the Federal Office for Private Insurance on "Private insurance undertakings in Switzerland". However, the "Classification of risks according to classes of insurance", set out in Part A of Annex No 1 to the said Agreement, will apply for the purposes of the specification of classes in applications for authorization and assessment of the need to approve the general and special conditions of insurance policies and scales of premiums.

This does not preclude examination by Switzerland, at a later date, of the possibility of applying the abovementioned "Classification" in its entirety. A decision to that effect would be notified to the Community through diplomatic channels.

It is agreed that the scope of the "List of classes of insurance" is the same as that of the "Classification of risks according to classes of insurance". Comparability as between the two types of classification is as follows:

Swiss list of classes of insurance	Classes of insurance according to the classification in Annex 1
1. Accident	A. 1
2. Liability	A. 10, 11, 12, 13
3. Fire and natural forces	A. 8
4. Transport	A. 4, 6, 7
5. Vehicles	A. 3, 5
6. Hail	A. 9
7. Animals	
8. Theft	
9. Breakage of glass	
10. Damage by water	
11. Machinery	
12. Jewellery	
13. Suretyship	A. 15
14. Credit	A. 14
15. Legal expenses	A. 17
16. Health	A. 2
17. Rain	A. 16, 18.'.
18. Special policies	

I have taken note of this communication, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Gérard IMBERT)

Franz Blankart
Ambassador
Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 7

The capital of insurance undertakings

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to remind you of our understanding that the provisions concerning the minimum solvency margin calculated in accordance with paragraph 2.2 of Protocol No 1, and the minimum guarantee fund, referred to in paragraph 3.2 of that Protocol, have no bearing on the laws or practices of the Contracting Parties regarding the requirements relating to the capital of undertakings.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert, Esq. Director

Head of the Delegation
of the Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to remind you of our understanding that the provisions concerning the minimum solvency margin calculated in accordance with paragraph 2.2 of Protocol No 1, and the minimum guarantee fund, referred to in paragraph 3.2 of that Protocol, have no bearing on the laws or practices of the Contracting Parties regarding the requirements relating to the capital of undertakings.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(s. Gérard IMBERT)

Franz Blankart, Esq. Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 8

Transitional arrangements for assistance

Delegation of the Commission
of the European Communities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that the Member States of the Community may allow undertakings which, on 12 December 1984, provided only assistance in their territory a period of five years from that date in order to comply with the requirements set out in Article 16 of this Agreement.

The Member States of the Community may allow any undertakings referred to above which, upon expiry of the five year period, have not fully established the solvency margin a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 18 of this Agreement, submitted for the approval of the supervisory authority the measures which they propose to take for that purpose.

Any undertaking referred to above which wishes to extend its business to other classes or, in the case referred to in paragraph 8.1 of this Agreement, to another part of the territory, may do so only on condition that it complies forthwith with this Agreement.

Moreover, until 12 December 1992, the condition specified in point 5 of Part B of Annex 2 to this Agreement, namely that the accident or breakdown must have happened in the territory of the Contracting Party in which the undertaking providing cover is established, shall not apply to the operations referred to in the third indent of the abovementioned point where these operations are carried out by the ELPA (Automobile and Touring Club of Greece).

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart Esq. State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that the Member States of the Community may allow undertakings which, on 12 December 1984, provided only assistance in their territory a period of five years from that date in order to comply with the requirements set out in Article 16 of the Agreement.

The Member States of the Community may allow any undertakings referred to above which, upon expiry of the five year period, have not fully established the solvency margin a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 18 of this Agreement, submitted for the approval of the supervisory authority the measures which they propose to take for that purpose.

Any undertaking referred to above which wishes to extend its business to other classes or, in the case referred to in paragraph 8.1 of this Agreement, to another part of the territory, may do so only on condition that it complies forthwith with this Agreement.

Moreover, until 12 December 1992, the condition specified in point 5 of Part B of Annex 2 to this Agreement, namely that the accident or breakdown must have happened in the territory of the Contracting Party in which the undertaking providing cover is established, shall not apply to the operations referred to in the third indent of the abovementioned point where these operations are carried out by the ELPA (Automobile and Touring Club of Greece).'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Geoffrey Fitchew, Esq. Director General

Head of the Delegation
of the Commission of the European Communities

Brussels

EXCHANGE OF LETTERS No 9

Transitional arrangements for the large risks referred to in paragraph 2.1 of Protocol No 2

Delegation of the Commission
of the European Communities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that Greece, Ireland, Portugal and Spain benefit from the following transitional arrangements in respect of the large risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement:

(a) until 31 December 1992, they may apply, to all risks, the regime other than that for risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement;

(b) from 1 January 1993 to 31 December 1994, the regime for large risks shall apply to risks referred to in paragraph 2.1 (a) and (b) of Protocol No 2 to this Agreement; for risks referred to under (c) of the same paragraph, these Member States shall fix the thresholds to apply therefor;

(c) Spain:

— from 1 January 1995 to 31 December 1996, the thresholds of the first stage fixed in paragraph 2.1 (c) of Protocol No 2 to this Agreement shall apply,

— from 1 January 1997, the thresholds of the second stage shall apply;

(d) Greece, Ireland and Portugal:

— from 1 January 1995 to 31 December 1998, the thresholds of the first stage fixed in paragraph 2 1 (c) of Protocol No 2 to this Agreement shall apply,

— from 1 January 1999, the thresholds of the second stage shall apply.

The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 8, 9, 13 and 16 in Part A of Annex 1 situated exclusively in one of the four Member States of the Community benefiting from these provisions.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart, Esq. State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that Greece, Ireland, Portugal and Spain benefit from the following transitional arrangements in respect of the large risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement:

(a) until 31 December 1992, they may apply, to all risks, the regime other than that for risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement;

(b) from 1 January 1993 to 31 December 1994, the regime for large risks shall apply to risks referred to in paragraph 2.1 (a) and (b) of Protocol No 2 to this Agreement; for risks referred to under (c) of the same paragraph, these Member States shall fix the thresholds to apply therefor;

(c) Spain:

— from 1 January 1995 to 31 December 1996, the thresholds of the first stage fixed in paragraph 2.1 (c) of Protocol No 2 to this Agreement shall apply,

— from 1 January 1997, the thresholds of the second stage shall apply;

(d) Greece, Ireland and Portugal:

— from 1 January 1995 to 31 December 1998, the thresholds of the first stage fixed in paragraph 2.1 (c) of Protocol No 2 to this Agreement shall apply,

— from 1 January 1999, the thresholds of the second stage shall apply.

The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 8, 9, 13 and 16 in Part A of Annex No 1 situated exclusively in one of the four Member States of the Community benefiting from these provisions.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Geoffrey Fitchew, Esq. Director General

Head of the Delegation
of the Commission of the European Communities

Brussels

Joint Declaration by the Contracting Parties concerning the period between the date of signature and the date of entry into force of the Agreement

During the period between the date of signature and the date of entry into force of this Agreement, referred to in paragraph 44.3 thereof, each Contracting Party hereby declares that it will not introduce any new provisions on supervision which are liable to be repealed under this Agreement concerning agencies and branches belonging to undertakings whose head office is situated in the territory of the other Contracting Party and which wish to become established in its territory, or are established there, for the purpose of taking up or pursuing the self-employed activity of direct insurance other than life assurance.

The Contracting Parties further undertake to initiate without delay the procedures necessary to amend their national laws in accordance with this Agreement.

FINAL ACT

The representatives of

THE EUROPEAN ECONOMIC COMMUNITY,

AND THE SWISS CONFEDERATION,

assembled in Luxembourg on 10 October 1989,

on the occasion of the signature of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance,

have, at the time of signature of this Agreement:

— taken note of the Exchanges of Letters annexed to the abovementioned Agreement:

Exchange of Letters No 1:	Principle of non-discrimination
Exchange of Letters No 2:	Scope of authorization
Exchange of Letters No 3:	Authorized agent
Exchange of Letters No 4:	Assignment to the Swiss Securities Fund of immovable property directly owned by insurance undertakings
Exchange of Letters No 5:	Principles governing investment
Exchange of Letters No 6:	Swiss list of classes of insurance
Exchange of Letters No 7:	The capital of insurance undertakings
Exchange of Letters No 8:	Transitional arrangements for assistance
Exchange of Letters No 9:	Transitional arrangements for the large risks referred to in paragraph 2.1 of Protocol No 2,

— adopted the following Declaration which is annexed to the above Agreement:

Joint Declaration by the Contracting Parties concerning the period between the date of signature and the date of entry into force of the Agreement.

Hecho en Luxemburgo, el diez de octubre de mil novecientos ochenta y nueve.

Udfærdiget i Luxembourg, den tiende oktober nitten hundrede og niogfirs.

Geschehen zu Luxemburg an zehnten Oktober neunzehnhundertneunundachtzig.

Έγινε Λουξεμβούργο, στις δέκα Οκτωβρίου χίλια εννιακόσια ογδόντα εννέα.

Done at Luxembourg on the tenth day of October in the year one thousand nine hundred and eighty-nine.

Fait à Luxembourg, le dix octobre mil neuf cent quatre-vingt-neuf.

Fatto a Lussemburgo, addì dieci ottobre millenovecentottantanove.

Gedaan te Luxemburg, de tiende oktober negentienhonderd negenentachtig.

Feito em Luxemburgo, em dez de Outubro de mil novecentos e oitenta e nove.

En nombre del Consejo de las Comunidades Europeas

På vegne af Rådet for De Europæiske Fællesskaber

Im Namen des Rates der Europäischen Gemeinschaften

Εξ ονόματος του Συμβουλίου Ευρωπαϊκών Κοινοτήτων

On behalf of the Council of the European Communities

Au nom du Conseil des Communautés européennes

A nome del Consiglio delle Comunità europee

Namens de Raad van de Europese Gemeenschappen

Em nome do Conselho das Comunidades Europeias

Por el Gobierno de la Confederación Suiza

For regeringen for Schweiz

Für die Regierung der Schweizerischen Eidgenossenschaft

Για την Κυβέρνηση της Ελβετικής Συνομοσπονδίας

For the Government of the Swiss Confederation

Pour le gouvernement de la Confédération suisse

Per il governo della Confederazione svizzera

Voor de Regering van de Zwitserse Bondsstaat

Pelo Governo da Confederação Suíça.

COUNCIL DIRECTIVE

of 20 June 1991

on the implementation of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance

(91/371/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Article 57 (2) and Article 235 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas an Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance was signed at Luxembourg on 10 October 1989;

Whereas one of the effects of that Agreement is to impose, in relation to insurance undertakings which have their head offices in Switzerland, legal rules different from those applicable, under Title III of 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 (4), to agencies and branches established within the Community of undertakings whose head offices are outside the Community;

Whereas the coordinated rules relating to the pursuit of these activities within the Community by the Swiss undertakings subject to the provisions of the said Agreement must take effect on the same date in all the Member States of the Community; whereas that Agreement will not come into force until the first day of the calendar year following the date on which the instruments of approval are exchanged,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall amend their national provisions to comply with the Agreement between the European Economic Community and the Swiss Confederation within a period of 24 months following the notification of this Directive. They shall immediately inform the Commission thereof.

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

Article 2

The Member States shall specify in their national provisions that the amendments thereto made pursuant to the Agreement shall not come into force until the date on which the Agreement enters into force.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 20 June 1991.

For the Council
The President
R. GOEBBELS

(1) OJ No C 53, 5. 3. 1990, p. 45.
(2) OJ No C 72, 18. 3. 1991, p. 175, and Decision of 12 June 1991 (not yet published in the Official Journal).
(3) OJ No C 56, 7. 3. 1990, p. 27.
(4) OJ No L 228, 16. 8. 1973, p. 3.

CHAPTER 2
RIGHT OF ESTABLISHMENT

Article 31

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.

   Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.

2. Annexes VIII to XI contain specific provisions on the right of establishment.

Article 32

The provisions of this Chapter shall not apply, so far as any given Contracting Party is concerned, to activities which in that Contracting Party are connected, even occasionally, with the exercise of official authority.

Article 33

The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

Article 34

Companies or firms formed in accordance with the law of an EC Member State or an EFTA State and having their registered office, central administration or principal place of business within the territory of the Contracting Parties shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of EC Member States or EFTA States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 35

The provisions of Article 30 shall apply to the matters covered by this Chapter.

CHAPTER 3
SERVICES

Article 36

1. Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.

2. Annexes IX to XI contain specific provisions on the freedom to provide services.

Article 37

Services shall be considered to be 'services' within the meaning of this Agreement where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include :

(a) activities of an industrial character;
(b) activities of a commercial character;
(c) activities of craftsmen;
(d) activities of the professions.

Without prejudice to the provisions of Chapter 2, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 38

Freedom to provide services in the field of transport shall be governed by the provisions of Chapter 6.

Article 39

The provisions of Articles 30 and 32 to 34 shall apply to the matters covered by this Chapter.

CHAPTER 4
CAPITAL

Article 40

Within the framework of the provisions of this Agreement, there shall be no restrictions between the Contracting Parties on the movement of capital belonging to persons resident in EC Member States or EFTA States and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested. Annex XII contains the provisions necessary to implement this Article.

Article 41

Current payments connected with the movement of goods, persons, services or capital between Contracting Parties within the framework of the provisions of this Agreement shall be free of all restrictions.

Article 42

1. Where domestic rules governing the capital market and the credit system are applied to the movements of capital liberalized in accordance with the provisions of this Agreement, this shall be done in a non-discriminatory manner.

2. Loans for the direct or indirect financing of an EC Member State or an EFTA State or its regional or local authorities shall not be issued or placed in other EC Member States or EFTA States unless the States concerned have reached agreement thereon.

Article 43

1. Where differences between the exchange rules of EC Member States and EFTA States could lead persons resident in one of these States to use the freer transfer facilities within the territory of the Contracting Parties which are provided for in Article 40 in order to evade the rules of one of these States concerning the movement of capital to or from third countries, the Contracting Party concerned may take appropriate measures to overcome these difficulties.

2. If movements of capital lead to disturbances in the functioning of the capital market in any EC Member State or EFTA State, the Contracting Party concerned may take protective measures in the field of capital movements.

3. If the competent authorities of a Contracting Party make an alteration in the rate of exchange which seriously distorts conditions of competition, the other Contracting Parties may take, for a strictly limited period, the necessary measures in order to counter the consequences of such alteration.

4. Where an EC Member State or an EFTA State is in difficulties, or is seriously threatened with difficulties, as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardize the functioning of this Agreement, the Contracting Party concerned may take protective measures.

Article 44

The Community, on the one hand, and the EFTA States, on the other, shall apply their internal procedures, as provided for in Protocol 18, to implement the provisions of Article 43.

Article 45

1. Decisions, opinions and recommendations related to the measures laid down in Article 43 shall be notified to the EEA Joint Committee.

2. All measures shall be the subject of prior consultations and exchange of information within the EEA Joint Committee.

3. In the situation referred to in Article 43(2), the Contracting Party concerned may, however, on the grounds of secrecy and urgency take the measures, where this proves necessary, without prior consultations and exchange of information.

4. In the situation referred to in Article 43(4), where a sudden crisis in the balance of payments occurs and the procedures set out in paragraph 2 cannot be followed, the Contracting Party concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of this Agreement and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

5. When measures are taken in accordance with paragraphs 3 and 4, notice thereof shall be given at the latest by the date of their entry into force, and the exchange of information and consultations as well as the notifications referred to in paragraph 1 shall take place as soon as possible thereafter.

CHAPTER 2
THE DECISION-MAKING PROCEDURE

Article 97

This Agreement does not prejudge the right for each Contracting Party to amend, without prejudice to the principle of non-discrimination and after having informed the other Contracting Parties, its internal legislation in the areas covered by this Agreement:

— if the EEA Joint Committee concludes that the legislation as amended does not affect the good functioning of this Agreement; or

— if the procedures referred to in Article 98 have been completed.

Article 98

The Annexes to this Agreement and Protocols 1 to 7, 9 to 11, 19 to 27, 30 to 32, 37, 39, 41 and 47, as appropriate, may be amended by a decision of the EEA Joint Committee in accordance with Articles 93 (2), 99, 100, 102 and 103.

Article 99

1. As soon as new legislation is being drawn up by the EC Commission in a field which is governed by this Agreement, the EC Commission shall informally seek advice from experts of the EFTA States in the same way as it seeks advice from experts of the EC Member States for the elaboration of its proposals.

2. When transmitting its proposal to the Council of the European Communities, the EC Commission shall transmit copies thereof to the EFTA States.

   At the request of one of the Contracting Parties, a preliminary exchange of views takes place in the EEA Joint Committee.

3. During the phase preceding the decision of the Council of the European Communities, in a continuous information and consultation process, the Contracting Parties consult each other again in the EEA Joint Committee at the significant moments at the request of one of them.

4. The Contracting Parties shall cooperate in good faith during the information and consultation phase with a view to facilitating, at the end of the process, the decision-taking in the EEA Joint Committee.

Article 100

The EC Commission shall ensure experts of the EFTA States as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the EC Commission in the exercise of its executive powers. In this regard, when drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis as it refers to experts of the EC Member States.

In the cases where the Council of the European Communities is seized in accordance with the procedure applicable to the type of committee involved, the EC Commission shall transmit to the Council of the European Communities the views of the experts of the EFTA States.

Article 101

1. In respect of committees which are covered neither by Article 81 nor by Article 100 experts from EFTA States shall be associated with the work when this is called for by the good functioning of this Agreement.

   These committees are listed in Protocol 37. The modalities of such an association are set out in the relevant sectoral Protocols and Annexes dealing with the matter concerned.

2. If it appears to the Contracting Parties that such an association should be extended to other committees which present similar characteristics, the EEA Joint Committee may amend Protocol 37.

Article 102

1. In order to guarantee the legal security and the homogeneity of the EEA, the EEA Joint Committee shall take a decision concerning an amendment of an Annex to this Agreement as closely as possible to the adoption by the Community of the corresponding new Community legislation with a view to permitting a simultaneous application of the latter as well as of the amendments of the Annexes to the Agreement. To this end, the Community shall, whenever adopting a legislative act on an issue which is governed by this Agreement, as soon as possible inform the other Contracting Parties in the EEA Joint Committee.

2. The part of an Annex to this Agreement which would be directly affected by the new legislation is assessed in the EEA Joint Committee.

3. The Contracting Parties shall make all efforts to arrive at an agreement on matters relevant to this Agreement.

   The EEA Joint Committee shall, in particular, make every effort to find a mutually acceptable solution where a serious problem arises in any area which, in the EFTA States, falls within the competence of the legislator.

4. If, notwithstanding the application of the preceding paragraph, an agreement on an amendment of an Annex to this Agreement cannot be reached, the EEA Joint Committee shall examine all further possibilities to maintain the good functioning of this Agreement and take any decision necessary to this effect, including the possibility to take notice of the equivalence of legislation. Such a decision shall be taken at the latest at the expiry of a period of six months from the date of referral to the EEA Joint Committee or, if that date is later, on the date of entry into force of the corresponding Community legislation.

5. If, at the end of the time limit set out in paragraph 4, the EEA Joint Committee has not taken a decision on an amendment of an Annex to this Agreement, the affected part thereof, as determined in accordance with paragraph 2, is regarded as provisionally suspended, subject to a decision to the contrary by the EEA Joint Committee. Such a suspension shall take effect six months after the end of the period referred to in paragraph 4, but in no event earlier than the date on which the corresponding EC act is implemented in the Community. The EEA Joint Committee shall pursue its efforts to agree on a mutually acceptable solution in order for the suspension to be terminated as soon as possible.

6. The practical consequences of the suspension referred to in paragraph 5 shall be discussed in the EEA Joint Committee. The rights and obligations which individuals and economic operators have already acquired under this Agreement shall remain. The Contracting Parties shall, as appropriate, decide on the adjustments necessary due to the suspension.

Article 103

1. If a decision of the EEA Joint Committee can be binding on a Contracting Party only after the fulfilment of constitutional requirements, the decision shall, if a date is contained therein, enter into force on that date, provided that the Contracting Party concerned has notified the other Contracting Parties by that date that the constitutional requirements have been fulfilled.

   In the absence of such a notification by that date, the decision shall enter into force on the first day of the second month following the last notification.

2. If upon the expiry of a period of six months after the decision of the EEA Joint Committee such a notification has not taken place, the decision of the EEA Joint Committee shall be applied provisionally pending the fulfilment of the constitutional requirements unless a Contracting Party notifies that such a provisional application cannot take place. In the latter case, or if a Contracting Party notifies the non-ratification of a decision of the EEA Joint Committee, the suspension provided for in Article 102 (5) shall take effect one month after such a notification but in no event earlier than the date on which the corresponding EC act is implemented in the Community.

Article 104

Decisions taken by the EEA Joint Committee in the cases provided for in this Agreement shall, unless otherwise provided for therein, upon their entry into force be binding on the Contracting Parties which shall take the necessary steps to ensure their implementation and application.

CHAPTER 3
HOMOGENEITY, SURVEILLANCE PROCEDURE AND SETTLEMENT OF DISPUTES

Section 1
Homogeneity

Article 105

1. In order to achieve the objective of the Contracting Parties to arrive at as uniform an interpretation as possible of the provisions of the Agreement and those provisions of Community legislation which are substantially reproduced in the Agreement, the EEA Joint Committee shall act in accordance with this Article.

2. The EEA Joint Committee shall keep under constant review the development of the case law of the Court of Justice of the European Communities and the EFTA Court. To this end judgments of these Courts shall be transmitted to the EEA Joint Committee which shall act so as to preserve the homogeneous interpretation of the Agreement.

3. If the EEA Joint Committee within two months after a difference in the case law of the two Courts has been brought before it, has not succeeded to preserve the homogeneous interpretation of the Agreement, the procedures laid down in Article 111 may be applied.

Article 106

In order to ensure as uniform an interpretation as possible of this Agreement, in full deference to the independence of courts, a system of exchange of information concerning judgments by the EFTA Court, the Court of Justice of the European Communities and the Court of First Instance of the European Communities and the Courts of last instance of the EFTA States shall be set up by the EEA Joint Committee. This system shall comprise:

(a) transmission to the Registrar of the Court of Justice of the European Communities of judgments delivered by such courts on the interpretation and application of, on the one hand, this Agreement or, on the other hand, the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community, as amended or supplemented, as well as the acts adopted in pursuance thereof in so far as they concern provisions which are identical in substance to those of this Agreement;

(b) classification of these judgments by the Registrar of the Court of Justice of the European Communities including, as far as necessary, the drawing up and publication of translations and abstracts;

(c) communications by the Registrar of the Court of Justice of the European Communities of the relevant documents to the competent national authorities, to be designated by each Contracting Party.

Article 107

Provisions on the possibility for an EFTA State to allow a court or tribunal to ask the Court of Justice of the European Communities to decide on the interpretation of an EEA rule are laid down in Protocol 34.

Section 2
Surveillance procedure

Article 108

1. The EFTA States shall establish an independent surveillance authority (EFTA Surveillance Authority) as well as procedures similar to those existing in the Community including procedures for ensuring the fulfilment of obligations under this Agreement and for control of the legality of acts of the EFTA Surveillance Authority regarding competition.

2. The EFTA States shall establish a court of justice (EFTA Court).

   The EFTA Court shall, in accordance with a separate agreement between the EFTA States, with regard to the application of this Agreement be competent, in particular, for:

   (a) actions concerning the surveillance procedure regarding the EFTA States;

   (b) appeals concerning decisions in the field of competition taken by the EFTA Surveillance Authority;

   (c) the settlement of disputes between two or more EFTA States.

Article 109

1. The fulfilment of the obligations under this Agreement shall be monitored by, on the one hand, the EFTA Surveillance Authority and, on the other, the EC Commission acting in conformity with the Treaty establishing the European Economic Community, the Treaty establishing the European Coal and Steel Community and this Agreement.

2. In order to ensure a uniform surveillance throughout the EEA, the EFTA Surveillance Authority and the EC Commission shall cooperate, exchange information and consult each other on surveillance policy issues and individual cases.

3. The EC Commission and the EFTA Surveillance Authority shall receive any complaints concerning the application of this Agreement. They shall inform each other of complaints received.

4. Each of these bodies shall examine all complaints falling within its competence and shall pass to the other body any complaints which fall within the competence of that body.

5. In case of disagreement between these two bodies with regard to the action to be taken in relation to a complaint or with regard to the result of the examination, either of the bodies may refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111.

Article 110

Decisions under this Agreement by the EFTA Surveillance Authority and the EC Commission which impose a pecuniary obligation on persons other than States, shall be enforceable. The same shall apply to such judgments under this Agreement by the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the EFTA Court.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the authority which each Contracting Party shall designate for this purpose and shall make known to the other Contracting Parties, the EFTA Surveillance Authority, the EC Commission, the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the EFTA Court.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement, in accordance with the law of the State in the territory of which enforcement is to be carried out, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice of the European Communities, as far as decisions by the EC Commission, the Court of First Instance of the European Communities or the Court of Justice of the European Communities are concerned, or by a decision of the EFTA Court as far as decisions by the EFTA Surveillance Authority or the EFTA Court are concerned. However, the courts of the States concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Section 3
Settlement of disputes

Article 111

1. The Community or an EFTA State may bring a matter under dispute which concerns the interpretation or application of this Agreement before the EEA Joint Committee in accordance with the following provisions.

2. The EEA Joint Committee may settle the dispute. It shall be provided with all information which might be of use in making possible an indepth examination of the situation, with a view to finding an acceptable solution. To this end, the EEA Joint Committee shall examine all possibilities to maintain the good functioning of the Agreement.

3. If a dispute concerns the interpretation of provisions of this Agreement, which are identical in substance to corresponding rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two Treaties and if the dispute has not been settled within three months after it has been brought before the EEA Joint Committee, the Contracting Parties to the dispute may agree to request the Court of Justice of the European Communities to give a ruling on the interpretation of the relevant rules.

If the EEA Joint Committee in such a dispute has not reached an agreement on a solution within six months from the date on which this procedure was initiated or if, by then, the Contracting Parties to the dispute have not decided to ask for a ruling by the Court of Justice of the European Communities, a Contracting Party may, in order to remedy possible imbalances,

— either take a safeguard measure in accordance with Article 112(2) and following the procedure of Article 113;

— or apply Article 102 mutatis mutandis.

4. If a dispute concerns the scope or duration of safeguard measures taken in accordance with Article 111(3) or Article 112, or the proportionality of rebalancing measures taken in accordance with Article 114, and if the EEA Joint Committee after three months from the date when the matter has been brought before it has not succeeded to resolve the dispute, any Contracting Party may refer the dispute to arbitration under the procedures laid down in Protocol 33. No question of interpretation of the provisions of this Agreement referred to in paragraph 3 may be dealt with in such procedures. The arbitration award shall be binding on the parties to the dispute.

CHAPTER 4
SAFEGUARD MEASURES

Article 112

1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113.

2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement.

3. The safeguard measures shall apply with regard to all Contracting Parties.

Article 113

1. A Contracting Party which is considering taking safeguard measures under Article 112 shall, without delay, notify the other Contracting Parties through the EEA Joint Committee and shall provide all relevant information.

2. The Contracting Parties shall immediately enter into consultations in the EEA Joint Committee with a view to finding a commonly acceptable solution.

3. The Contracting Party concerned may not take safeguard measures until one month has elapsed after the date of notification under paragraph 1, unless the consultation procedure under paragraph 2 has been concluded before the expiration of the stated time limit. When exceptional circumstances requiring immediate action exclude prior examination, the Contracting Party concerned may apply forthwith the protective measures strictly necessary to remedy the situation.

   For the Community, the safeguard measures shall be taken by the EC Commission.

4. The Contracting Party concerned shall, without delay, notify the measures taken to the EEA Joint Committee and shall provide all relevant information.

5. The safeguard measures taken shall be the subject of consultations in the EEA Joint Committee every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application.

   Each Contracting Party may at any time request the EEA Joint Committee to review such measures.

Article 114

1. If a safeguard measure taken by a Contracting Party creates an imbalance between the rights and obligations under this Agreement, any other Contracting Party may towards that Contracting Party take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of the EEA.

2. The procedure under Article 113 shall apply.

PART IX
GENERAL AND FINAL PROVISIONS

Article 118

1. Where a Contracting Party considers that it would be useful in the interests of all the Contracting Parties to develop the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Contracting Parties within the EEA Council. The latter may instruct the EEA Joint Committee to examine all the aspects of this request and to issue a report.

   The EEA Council may, where appropriate, take the political decisions with a view to opening negotiations between the Contracting Parties.

2. The agreements resulting from the negotiations referred to in paragraph 1 will be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 119

The Annexes and the acts referred to therein as adapted for the purposes of this Agreement as well as the Protocols shall form an integral part of this Agreement.

Article 120

Unless otherwise provided in this Agreement and in particular in Protocols 41, 43 and 44, the application of the provisions of this Agreement shall prevail over provisions in existing bilateral or multilateral agreements binding the European Economic Community, on the one hand, and one or more EFTA States, on the other, to the extent that the same subject matter is governed by this Agreement.

Article 121

The provisions of this Agreement shall not preclude cooperation :

(a) within the framework of the Nordic cooperation to the extent that such cooperation does not impair the good functioning of this Agreement;

(b) within the framework of the regional union between Switzerland and Liechtenstein to the extent that the objectives of this union are not attained by the application of this Agreement and the good functioning of this Agreement is not impaired;

(c) within the framework of cooperation between Austria and Italy concerning Tyrol, Vorarlberg and Trentino - South Tyrol/Alto Adige, to the extent that such cooperation does not impair the good functioning of this Agreement.

Article 122

The representatives, delegates and experts of the Contracting Parties, as well as officials and other servants acting under this Agreement shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article 123

Nothing in this Agreement shall prevent a Contracting Party from taking any measures:

(a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;

(b) which relate to the production of, or trade in, arms, munitions and war materials or other products indispensable for defence purposes or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

(c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article 124

The Contracting Parties shall accord nationals of EC Member States and EFTA States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 34, without prejudice to the application of the other provisions of this Agreement.

Article 125

This Agreement shall in no way prejudice the rules of the Contracting Parties governing the system of property ownership.

Article 126

1. The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community is applied and under the conditions laid down in those Treaties, and to the territories of the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation.

2. Notwithstanding paragraph 1, this Agreement shall not apply to the Åland Islands. The Government of Finland may, however, give notice, by a declaration deposited when ratifying this Agreement with the Depositary, which shall transmit a certified copy thereof to the Contracting Parties, that the Agreement shall apply to those Islands under the same conditions as it applies to other parts of Finland subject to the following provisions :

   (a) The provisions of this Agreement shall not preclude the application of the provisions in force at any given time on the Åland Islands on :

      (i) restrictions on the right for natural persons who do not enjoy regional citizenship in Åland, and for legal persons, to acquire and hold real property on the Åland Islands without permission by the competent authorities of the Islands;

      (ii) restrictions on the right of establishment and the right to provide services by natural persons who do not enjoy regional citizenship in Åland, or by any legal person, without permission by the competent authorities of the Åland Islands.

   (b) The rights enjoyed by Ålanders in Finland shall not be affected by this Agreement.

   (c) The authorities of the Åland Islands shall apply the same treatment to all natural and legal persons of the Contracting Parties.

Article 127

Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months' notice in writing to the other Contracting Parties.

Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement.

Article 128

1. Any European State becoming a member of the Community shall, or becoming a member of EFTA may, apply to become a Party to this Agreement. It shall address its application to the EEA Council.

2. The terms and conditions for such participation shall be the subject of an agreement between the Contracting Parties and the applicant State. That agreement shall be submitted for ratification or approval by all Contracting Parties in accordance with their own procedures.

Article 129

1. This Agreement is drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Italian, Norwegian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

   The texts of the acts referred to in the Annexes are equally authentic in Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish as published in the Official Journal of the European Communities and shall for the authentication thereof be drawn up in the Finnish, Icelandic, Norwegian and Swedish languages.

2. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective constitutional requirements.

   It shall be deposited with the General Secretariat of the Council of the European Communities by which certified copies shall be transmitted to all other Contracting Parties.

   The instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the European Communities which shall notify all other Contracting Parties.

3. This Agreement shall enter into force on 1 January 1993, provided that all Contracting Parties have deposited their instruments of ratification or approval before that date. After that date this Agreement shall enter into force on the first day of the second month following the last notification. The final date for such a notification shall be 30 June 1993. After that date the Contracting Parties shall convene a diplomatic conference to appreciate the situation.

ANNEX IX

FINANCIAL SERVICES

List provided for in Article 36(2)

INTRODUCTION

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as:

— preambles,
— the addressees of the Community acts,
— references to territories or languages of the EC,
— references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other, and
— references to information and notification procedures,

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

SECTORAL ADAPTATIONS

Regarding exchange of information between the competent authorities of EC Member States envisaged in the acts included in this Annex, paragraph 7 of Protocol 1 shall apply for the purposes of this Agreement.

ACTS REFERRED TO

I. INSURANCE

(i) Non-life insurance

1. 364 L 0225: Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession (OJ No 56, 4.4.1964, p. 878/64).

   The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

   Article 3 shall not apply.

2. 373 L 0239: 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), as amended by:

   — 376 L 0580: Council Directive 76/580/EEC of 29 June 1976 (OJ No L 189, 13.7.1976, p. 13),

— **384 L 0641:** Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the first Directive (73/239/EEC) 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 339, 27.12.1984, p. 21),

— **387 L 0343:** Council Directive 87/343/EEC of 22 June 1987 amending, as regards credit assurance and suretyship assurance, the first Directive (73/239/EEC) (OJ No L 185, 4.7.1987, p. 72),

— **387 L 0344:** Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (OJ No L 185, 4.7.1987, p. 77),

— **388 L 0357:** Second Council Directive 88/357/EEC 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),

— **390 L 0618:** Council Directive 90/618/EEC of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (OJ No L 330, 29.11.1990, p. 44).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) The following shall be added to Article 4:

"(f) in Iceland

— Húsatryggingar Reykjavíkurborgar;
— Viðlagatrygging Islands.

(g) in Switzerland

— Aargau: Aargauisches Versicherungsamt, Aarau;
— Appenzell Ausser-Rhoden: Brand- und Elementarschadenversicherung Appenzell AR, Herisau;
— Basel-Land: Basellandschaftliche Gebäudeversicherung, Liestal;
— Basel-Stadt: Gebäudeversicherung des Kantons Basel-Stadt, Basel;
— Bern/Berne: Gebäudeversicherung des Kantons Bern, Bern /Assurance immobilière du canton de Berne, Berne;
— Fribourg/Freiburg: Etablissement cantonal d'assurance des bâtiments du canton de Fribourg, Fribourg/Kantonale Gebäudeversicherungsanstalt Freiburg, Freiburg;
— Glarus: Kantonale Sachversicherung Glarus, Glarus;
— Graubünden/Grigioni/Grischun: Gebäudeversicherungsanstalt des Kantons Graubünden, Chur/Istituto d'assicurazione fabbricati del cantone dei Grigioni, Coira/ Institut dil cantun Grischun per assicuranzas da baghetgs, Cuera;

— Jura: Assurance immobilière de la République et canton du Jura, Saignelégier;
— Luzern: Gebäudeversicherung des Kantons Luzern, Luzern;
— Neuchâtel: Etablissement cantonal d'assurance immobilière contre l'incendie, Neuchâtel;
— Nidwalden: Nidwaldner Sachversicherung, Stans;
— Schaffhausen: Gebäudeversicherung des Kantons Schaffhausen, Schaffhausen;
— Solothurn: Solothurnische Gebäudeversicherung, Solothurn;
— St. Gallen: Gebäudeversicherungsanstalt des Kantons St. Gallen, St. Gallen;
— Thurgau: Gebäudeversicherung des Kantons Thurgau, Frauenfeld;
— Vaud: Etablissement d'assurance contre l'incendie et les éléments naturels du canton de Vaud, Lausanne;
— Zug: Gebäudeversicherung des Kantons Zug, Zug;
— Zürich: Gebäudeversicherung des Kantons Zürich, Zürich."

(b) the following shall be added to Article 8:

"— in the case of Austria:
Aktiengesellschaft, Versicherungsverein auf Gegenseitigkeit.

— in the case of Finland:
Keskinäinen Vakuutusyhtiö/Ömsesidigt Försäkringsbolag,
Vakuutusosakeyhtiö/Försäkringsaktiebolag,
Vakuutusyhdistys/Försäkringsförening.

— in the case of Iceland:
Hlutafélag, Gagnkvæmt félag.

— in the case of Liechtenstein:
Aktiengesellschaft, Genossenschaft.

— in the case of Norway:
Aksjeselskaper, Gjensidige selskaper.

— in the case of Sweden:
Försäkringsaktiebolag, Ömsesidiga försäkringsbolag,
Understödsföreningar.

— in the case of Switzerland:
Aktiengesellschaft, Société anonyme, Società anonima , Genossenschaft, Société coopérative, Società cooperativa.

(c) Article 29 shall not apply;

the following provision shall be applicable:

each Contracting Party may, by means of agreements concluded with one or more third countries, agree to the application of provisions different from those provided for in Articles 23 to 28 of the Directive on the condition that its insured persons are given adequate and equivalent protection. The Contracting Parties shall inform and consult each other prior to concluding such agreements. The Contracting Parties shall not apply to branches of insurance undertakings having their head office outside the territory of the Contracting Parties provisions which result in more favourable treatment than that accorded to branches of insurance undertakings having their head office within the territory of the Contracting Parties;

(d) Articles 30, 31, 32 and 34 shall not apply;

the following provision shall be applicable:

the non-life insurance undertakings to be identified separately by Finland, Iceland and Norway shall be exempt from Articles 16 and 17. The competent supervisory authority shall require such undertakings to meet the requirements of these Articles by 1 January 1995. Prior to that date the EEA Joint Committee shall examine the financial situation of the undertakings still not meeting the requirements and make appropriate recommendations. As long as an insurance undertaking fails to meet the requirements of Articles 16 and 17 it shall not establish a branch or provide services in the territory of another Contracting Party. Undertakings desiring to extend their operations within the meaning of Article 8(2) or Article 10 may not do so unless they comply immediately with the rules of the Directive;

(e) as regards relations with third-country insurance undertakings described in Article 29b (see Article 4 of Council Directive 90/618/EEC) the following shall apply:

1. With a view to achieving a maximum degree of convergence in the application of a third-country regime for insurance undertakings, the Contracting Parties shall exchange information as described in Articles 29b(1) and 29b(5) and consultations shall be held regarding matters referred to in Articles 29b(2), 29b(3) and 29b(4), within the framework of the EEA Joint Committee and according to specific procedures to be agreed by the Contracting Parties.

2. Authorizations granted by the competent authorities of a Contracting Party to insurance undertakings being direct or indirect subsidiaries of parent undertakings governed by the laws of a third country shall have validity in accordance with the provisions of the Directive throughout the territory of all Contracting Parties. However,

   (a) when a third country imposes quantitative restrictions on the establishment of insurance undertakings of an EFTA State or imposes restrictions on such insurance undertakings that it does not impose on Community insurance undertakings, authorizations granted by competent authorities within the Community to insurance undertakings being direct or indirect subsidiaries of parent undertakings governed by the laws of that third country shall have validity only in the Community, except where an EFTA State decides otherwise for its own jurisdiction;

   (b) where the Community has decided that decisions regarding authorizations of insurance undertakings being direct or indirect subsidiaries of parent undertakings governed by the laws of a third country shall be limited or suspended, any authorization granted by a competent authority of an EFTA State to such insurance undertakings shall have validity only in its jurisdiction, except where another Contracting Party decides otherwise for its own jurisdiction;

   (c) the limitations or suspensions referred to in sub-paragraphs (a) and (b) may not apply to insurance undertakings or their subsidiaries already authorized in the territory of a Contracting Party.

3. Whenever the Community negotiates with a third country on the basis of Articles 29b(3) and 29b(4) in order to obtain national treatment and effective market access for its insurance undertakings, it shall endeavour to obtain equal treatment for the insurance undertakings of the EFTA States.

3. **373 L 0240:** Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in business of direct insurance other than life assurance (OJ No L 228, 16.8.1973, p. 20).

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptation:

Articles 1, 2 and 5 shall not apply.

4. **378 L 0473:** Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (OJ No L 151, 7.6.1978, p. 25).

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptation:

Article 9 shall not apply.

5. **384 L 0641:** Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) 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 339, 27.12.1984, p. 21).

6. **387 L 0344:** Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (OJ No L 185, 4.7.1987, p. 77).

7. **388 L 0357:** Second Council Directive 88/357/EEC 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), as amended by:

— **390 L 0618:** Council Directive 90/618/EEC of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (OJ No L 330, 29.11.1990, p. 44).

(ii) **Motor insurance**

8. **372 L 0166:** Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ No L 103, 2.5.1972, p. 1), as amended by:

   — **372 L 0430:** Council Directive 72/430/EEC of 19 December 1972 (OJ No L 291, 28.12.1972, p. 162),

   — **384 L 0005:** Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No L 8, 11.1.1984, p. 17),

   — **390 L 0232:** Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No L 129, 19.5.1990, p. 33),

   — **391 D 0323:** Commission Decision of 30 May 1991 relating to the application of Council Directive 72/166/EEC (OJ No L 177 5.7.1991, p. 25).

9. **384 L 0005:** Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No L 8, 11.1.1984, p. 17), as amended by:

   — **390 L 0232:** Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No L 129, 19.5.1990, p. 33).

10. **390 L 0232:** Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ No L 129, 19.5.1990, p. 33).

(iii) **Life assurance**

11. **379 L 0267:** 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), as amended by:

   — **390 L 0619:** Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ No L 330, 29.11.1990, p. 50).

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptations:

(a) the following shall be added to Article 4:

"This Directive shall not concern the pension activities of pension insurance undertakings prescribed in the Employees' Pensions Act (TEL) and other related Finnish legislation. However, the Finnish authorities shall allow in a non-discriminatory manner all nationals and companies of Contracting Parties to perform according to Finnish legislation the activities specified in Article 1 related to this exemption whether by means of:

— ownership or participation in an existing insurance company or group;

— creation or participation of new insurance companies or groups, including pension insurance companies.";

(b) the following shall be added to Article 8(1)(a):

"— in the case of Austria:
Aktiengesellschaft, Versicherungsverein auf Gegenseitigkeit.

— in the case of Finland:
Keskinäinen Vakuutusyhtiö / Ömsesidigt Försäkringsbolag,
Vakuutusosakeyhtiö / Försäkringsaktiebolag,
Vakuutusyhdistys / Försäkringsförening.

— in the case of Iceland:
Hlutafélag, Gagnkvæmt félag.

— in the case of Liechtenstein:
Aktiengesellschaft, Genossenschaft, Stiftung.

— in the case of Norway:
Aksjeselskaper, Gjensidige selskaper.

— in the case of Sweden:
Försäkringsaktiebolag, Ömsesidiga försäkringsbolag,
Understödsföreningar.

— in the case of Switzerland:
Aktiengesellschaft/ Société anonyme/ Società anonima,
Genossenschaft/ Société coopérative/ Società cooperativa,
Stiftung/ Fondation/ Fondazione.";

(c) Articles 13(5), 33, 34, 35 and 36 shall not apply; the following provision shall be applicable:

the life assurance undertakings to be identified separately by Iceland shall be exempt from Articles 18, 19 and 20. The competent supervisory authority shall require such undertakings to meet the requirements of these Articles by 1 January 1995. Prior to that date the EEA Joint Committee shall examine the financial situation of the undertakings still not meeting the requirements and make appropriate recommendations. As long as an insurance undertaking fails to meet the requirements of Articles 18, 19 and 20 it shall not establish a branch or provide services in the territory of another Contracting Party.

Undertakings desiring to extend their operations within the meaning of Article 8(2) or Article 10 may not do so unless they comply immediately with the rules of the Directive.

(d) Article 32 shall not apply;

the following provision shall be applicable:

each Contracting Party may, by means of agreements concluded with one or more third countries, agree to the application of provisions different from those provided for in Articles 27 to 31 of the Directive on the condition that its insured persons are given adequate and equivalent protection. The Contracting Parties shall inform and consult each other prior to concluding such agreements.

The Contracting Parties shall not apply to branches of insurance undertakings having their head office outside the territory of the Contracting Parties provisions which result in more favourable treatment than that accorded to branches of insurance undertakings having their head office within the territory of the Contracting Parties;

(e) as regards relations with third-country insurance undertakings described in Article 32b (see Article 9 of Council Directive 90/619/EEC) the following shall apply:

1. With a view to achieving a maximum degree of convergence in the application of a third-country regime for insurance undertakings, the Contracting Parties shall exchange information as described in Articles 32b(1) and 32b(5) and consultations shall be held regarding matters referred to in Articles 32b(2), 32b(3) and 32b(4), within the framework of the EEA Joint Committee and according to specific procedures to be agreed by the Contracting Parties.

2. Authorizations granted by the competent authorities of a Contracting Party to insurance undertakings being direct or indirect subsidiaries of parent undertakings governed by the laws of a third country shall have validity in accordance with the provisions of the Directive throughout the territory of all Contracting Parties. However,

(a) when a third country imposes quantitative restrictions on the establishment of insurance undertakings of an EFTA State, or imposes restrictions on such insurance undertakings that it does not impose on Community insurance undertakings, authorizations granted by competent authorities within the Community to insurance undertakings being direct or indirect subsidiaries of parent undertakings governed by the laws of that third country shall have validity only in the Community, except where an EFTA State decides otherwise for its own jurisdiction;

(b) where the Community has decided that decisions regarding authorizations of insurance undertakings being direct or indirect subsidiaries of parent undertakings governed by the laws of a third country, shall be limited or suspended, any authorization granted by a competent authority of an EFTA State to such insurance undertakings shall have validity only in its jurisdiction, except where another Contracting Party decides otherwise for its own jurisdiction.

(c) the limitations or suspensions referred to in subparagraphs (a) and (b) may not apply to insurance undertakings or their subsidiaries already authorized in the territory of a Contracting Party.

3. Whenever the Community negotiates with a third country on the basis of 32b(3) and 32b(4), in order to obtain national treatment and effective market access for its insurance undertakings, it shall endeavour to obtain equal treatment for the insurance undertakings of the EFTA States;

(f) in Article 13(3), the words "at the time of notification of this Directive" shall be replaced by "at the time of signature of the EEA Agreement".

12. **390 L 0619:** Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ No L 330, 29.11.1990, p. 50).

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptation:

Article 9: see adaptation (e) to Council Directive 79/267/EEC.

(iv) **Other issues**

13. **377 L 0092:** Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex. ISIC group 630) and, in particular, transitional measures in respect of those activities (OJ No L 26, 31.1.1977, p. 14).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) the following shall be added to Article 2(2)(a):

"in Austria:
— Versicherungsmakler
— Rückversicherungsmakler

in Finland:
— Vakuutuksenvälittäjä/Försäkringsmäklare

in Iceland:
— Vátryggingamiðlari

in Liechtenstein:
— Versicherungsmakler

in Norway:
— Forsikringsmegler

in Sweden:
— Försäkringsmäklare

in Switzerland:
— Versicherungsmakler
— Courtier en assurances
— Mediatore d'assicurazione
— Broker";

(b) the following shall be added to Article 2(2)(b):

"in Austria:
— Versicherungsvertreter

in Finland:
— Vakuutusasiamies/Försäkringsombud

in Iceland:
— Vátryggingaumboðsmaður

in Liechtenstein:
— Versicherungs-Generalagent
— Versicherungsagent
— Versicherungsinspektor

in Norway:
— Assurandør
— Agent

in Sweden:
— Försäkringsombud

in Switzerland:
— Versicherungs-Generalagent
— Agent général d'assurance
— Agente generale d'assicurazione
— Versicherungsagent
— Agent d'assurance
— Agente d'assicurazione
— Versicherungsinspektor
— Inspecteur d'assurance
— Ispettore d'assicurazione";

(c) the following shall be added to Article 2(2)(c):

"in Iceland:
— Vátryggingasölumaður

in Norway:
— Underagent".

V. Competition law

1. Adopted measure

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1534/91

of 31 May 1991

on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 85 (1) of the Treaty may, in accordance with Article 85 (3), be declared inapplicable to categories of agreements, decisions and concerted practices when satisfy the requirements of Article 85 (3);

Whereas the detailed rules for the application of Article 85 (3) of the Treaty must be adopted by way of a Regulation based on Article 87 of the Treaty;

Whereas cooperation between undertakings in the insurance sector is, to a certain extent, desirable to ensure the proper functioning of this sector and may at the same time promote consumers' interests;

Whereas the application of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (4) enables the Commission to exercise close supervision on issues arising from concentrations in all sectors, including the insurance sector;

Whereas exemptions granted under Article 85 (3) of the Treaty cannot themselves affect Community and national provisions safeguarding consumers' interests in this sector;

Whereas agreements, decisions and concerted practices serving such aims may, in so far as they fall within the prohibition contained in Article 85 (1) of the Treaty, be exempted therefrom under certain conditions; whereas this applies in particular to agreements, decisions and concerted practices relating to the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims, the establishment of standard policy conditions, common coverage of certain types of risks, the settlement of claims, the testing and acceptance of security devices, and registers of, and information on, aggravated risks;

Whereas in view of the large number of notifications submitted pursuant to Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (5), as last amended by the Act of Accession of Spain and Portugal, it is desirable that in order to facilitate the Commission's task, it should be enabled to declare, by way of Regulation, that the provisions of Article 85 (1) of the Treaty are inapplicable to certain categories of agreements, decisions and concerted practices;

Whereas it should be laid down under which conditions the Commission, in close and constant liaison with the competent authorities of the Member States, may exercise such powers;

Whereas, in the exercise of such powers, the Commission will take account not only of the risk of competition being eliminated in a substantial part of the relevant market and of any benefit that might be conferred on policyholders resulting from the agreements, but also of the risk which the proliferation of restrictive clauses and the operation of accommodation companies would entail for policyholders;

Whereas the keeping of registers and the handling of information on aggravated risks should be carried out subject to the proper protection of confidentiality;

(1) OJ No C 16, 23. 1. 1990, p. 13.
(2) OJ No C 260, 15. 10. 1990, p. 57.
(3) OJ No C 182, 23. 7. 1990, p. 27.
(4) OJ No L 395, 30. 12. 1989, p. 1.

(5) OJ No 13, 21. 2. 1962, p. 204/62.

Whereas, under Article 6 of Regulation No 17, the Commission may provide that a decision taken in accordance with Article 85 (3) of the Treaty shall apply with retroactive effect; whereas the Commission should also be able to adopt provisions to such effect in a Regulation;

Whereas, under Article 7 of Regulation No 17, agreements, decisions and concerted practices may, by decision of the Commission, be exempted from prohibition, in particular if they are modified in such manner that they satisfy the requirements of Article 85 (3) of the Treaty; whereas it is desirable that the Commission be enabled to grant by Regulation like exemption to such agreements, decisions and concerted practices if they are modified in such manner as to fall within a category defined in an exempting Regulation;

Whereas it cannot be ruled out that, in specific cases, the conditions set out in Article 85 (3) of the Treaty may not be fulfilled; whereas the Commission must have the power to regulate such cases pursuant to Regulation No 17 by way of a Decision having effect for the future,

HAS ADOPTED THIS REGULATION:

Article 1

1. Without prejudice to the application of Regulation No 17, the Commission may, by means of a Regulation and in accordance with Article 85 (3) of the Treaty, declare that Article 85 (1) shall not apply to categories of agreements between undertakings, decisions of associations of undertakings and concerted practices in the insurance sector which have as their object cooperation with respect to:

(a) the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims;

(b) the establishment of common standard policy conditions;

(c) the common coverage of certain types of risks;

(d) the settlement of claims;

(e) the testing and acceptance of security devices;

(f) registers of, and information on, aggravated risks, provided that the keeping of these registers and the handling of this information is carried out subject to the proper protection of confidentiality.

2. The Commission Regulation referred to in paragraph 1, shall define the categories of agreements, decisions and concerted practices to which it applies and shall specify in particular:

(a) the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices;

(b) the clauses which must be contained in the agreements, decisions and concerted practices or the other conditions which must be satisfied.

Article 2

Any Regulation adopted pursuant to Article 1 shall be of limited duration.

It may be repealed or amended where circumstances have changed with respect to any of the facts which were essential to its being adopted; in such case, a period shall be fixed for modification of the agreements, decisions and concerted practices to which the earlier Regulation applies.

Article 3

A Regulation adopted pursuant to Article 1 may provide that it shall apply with retroactive effect to agreements, decisions and concerted practices to which, at the date of entry into force of the said Regulation, a Decision taken with retroactive effect pursuant to Article 6 of Regulation No 17 would have applied.

Article 4

1. A Regulation adopted pursuant to Article 1 may provide that the prohibition contained in Article 85 (1) of the Treaty shall not apply, for such period as shall be fixed in that Regulation, to agreements, decisions and concerted practices already in existence on 13 March 1962 which do not satisfy the conditions of Article 85 (3) where:

— within six months from the entry into force of the said Regulation, they are so modified as to satisfy the said conditions in accordance with the provisions of the said Regulation and

— the modifications are brought to the notice of the Commission within the time limit fixed by the said Regulation.

The provisions of the first subparagraph shall apply in the same way to those agreements, decisions and concerted practices existing at the date of accession of new Member States to which Article 85 (1) of the Treaty applies by virtue of accession and which do not satisfy the conditions of Article 85 (3).

2. Paragraph 1 shall apply to agreements, decisions and concerted practices which had to be notified before 1 February 1963, in accordance with Article 5 of Regulation No 17, only where they have been so notified before that date.

Paragraph 1 shall not apply to agreements, decisions and concerted practices existing at the date of accession of new Member States to which Article 85 (1) of the Treaty applies by virtue of accession and which had to be notified within six months from the date of accession in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within the said period.

3. The benefit of provisions adopted pursuant to paragraph 1 may not be invoked in actions pending at the date of entry into force of a Regulation adopted pursuant to Article 1 ; neither may it be invoked as grounds for claims for damages against third parties.

Article 5

Where the Commission proposes to adopt a Regulation, it shall publish a draft thereof to enable all persons and organizations concerned to submit to it their comments within such time limit, being not less than one month, as it shall fix.

Article 6

1. The Commission shall consult the Advisory Committee on Restrictive Practices and Monopolies :

(a) before publishing a draft Regulation ;

(b) before adopting a Regulation.

2. Article 10 (5) and (6) of Regulation No 17, relating to consultation of the Advisory Committee, shall apply. However, joint meetings with the Commission shall take place not earlier than one month after dispatch of the notice convening them.

Article 7

Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that, in any particular case, agreements, decisions and concerted practices, to which a Regulation adopted pursuant to Article 1 applies, have nevertheless certain effects which are incompatible with the conditions laid down in Article 85 (3) of the Treaty, it may withdraw the benefit of application of the said regulation and take a decision in accordance with Articles 6 and 8 of Regulation No 17, without any notification under Article 4 (1) of Regulation No 17 being required.

Article 8

Not later than six years after the entry into force of the Commission Regulation provided for in Article 1, the Commission shall submit to the European Parliament and the Council a report on the functioning of this Regulation, accompanied by such proposals for amendments to this Regulation as may appear necessary in the light of experience.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31 May 1991.

For the Council

The President

A. BODRY

COMMISSION REGULATION (EEC) No 3932/92

of 21 December 1992

on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1534/91 of 31 May 1991 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (1),

Having published a draft of this Regulation (2),

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation (EEC) No 1534/91 empowers the Commission to apply Article 85 (3) of the Treaty by regulation to certain categories of agreements, decisions and concerted practices in the insurance sector which have as their object:

(a) cooperation with respect to the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims;

(b) the establishment of common standard policy conditions;

(c) the common coverage of certain types of risks;

(d) the settlement of claims;

(e) the testing and acceptance of security devices;

(f) registers of, and information on, aggravated risks.

(2) The Commission by now has acquired sufficient experience in handling individual cases to make use of such power in respect of the categories of agreements specified in points (a), (b), (c) and (e) of the list.

(3) In many cases, collaboration between insurance companies in the aforementioned fields goes beyond what the Commission has permitted in its notice concerning cooperation between enterprises (3), and is caught by the prohibition in Article 85 (1). It is therefore appropriate to specify the obligations restrictive of competition which may be included in the four categories of agreements covered by it.

(4) It is further necessary to specify for each of the four categories the conditions which must be satisfied before the exemption can apply. These conditions have to ensure that the collaboration between insurance undertakings is and remains compatible with Article 85 (3).

(5) It is finally necessary to specify for each of these categories the situations in which the exemption does not apply. For this purpose it has to define the clauses which may not be included in the agreements covered by it because they impose undue restrictions on the parties, as well as other situations falling under Article 85 (1) for which there is no general presumption that they will yield the benefits required by Article 85 (3).

(6) Collaboration between insurance undertakings or within associations of undertakings in the compilation of statistics on the number of claims, the number of individual risks insured, total amounts paid in respect of claims and the amount of capital insured makes it possible to improve the knowledge of risks and facilitates the rating of risks for individual companies. The same applies to their use to establish indicative pure premiums or, in the case of insurance involving capitalization, frequency tables. Joint studies on the probable impact of extraneous circumstances that may influence the frequency or scale of claims, or the yield of different types of investments, should also be included. It is, however, necessary to ensure that the restrictions are only exempted to the extent to which they are necessary to attain these objectives. It is therefore appropriate to stipulate that concerted practices on commercial premiums — that is to say, the premiums actually charged to policyholders, comprising a loading to cover administrative, commercial and other costs, plus a loading for contingencies or profit margins — are not exempted, and that even pure premiums can serve only for reference purposes.

(1) OJ No L 143, 7. 6. 1991, p. 1.
(2) OJ No C 207, 14. 8. 1992, p. 2.
(3) OJ No C 75, 29. 7. 1968, p. 3, corrigendum OJ No C 84, 28. 8. 1968, p. 14.

(7) Standard policy conditions or standard individual clauses for direct insurance and standard models illustrating the profits of a life assurance policy have the advantage of improving the comparability of cover for the consumer and of allowing risks to be classified more uniformly. However, they must not lead either to the standardization of products or to the creation of too captive a customer base. Accordingly, the exemptions should apply on condition that they are not binding, but serve only as models.

(8) Standard policy conditions may in particular not contain any systematic exclusion of specific types of risk without providing for the express possibility of including that cover by agreement and may not provide for the contractual relationship with the policyholder to be maintained for an excessive period or go beyond the initial object to the policy. This is without prejudice to obligations arising from Community or national law.

(9) In addition, it is necessary to stipulate that the common standard policy conditions must be generally accessible to any interested person, and in particular to the policyholder, so as to ensure that there is real transparency and therefore benefit for consumers.

(10) The establishment of co-insurance or co-reinsurance groups designed to cover an unspecified number of risks must be viewed favourably in so far as it allows a greater number of undertakings to enter the market and, as a result, increases the capacity for covering, in particular, risks that are difficult to cover because of their scale, rarity or novelty.

(11) However, so as to ensure effective competition it is appropriate to exempt such groups subject to the condition that the participants shall not hold a share of the relevant market in excess of a given percentage. The percentage of 15 % appears appropriate in the case of co-reinsurance groups. The percentage should be reduced to 10 % in the case of co-insurance groups. This is because the mechanism of co-insurance requires uniform policy conditions and commercial premiums, with the result that residual competition between members of a co-insurance group is particularly reduced. As regards catastrophe risks or aggravated risks, those figures shall be calculated only with reference to the market share of the group itself.

(12) In the case of co-reinsurance groups, it is necessary to cover the determination of the risk premium including the probable cost of covering the risks. It is further necessary to cover the determination of the operating cost of the co-reinsurance and the remuneration of the participants in their capacity as co-reinsurers.

(13) It should be legitimate in both cases to declare group cover for the risks brought into the group to be subject to (a) the application of common or accepted conditions of cover, (b) the requirement that agreement be obtained prior to the settlement of all (or all large) claims, (c) to joint negotiation of retrocession, and (d) to a ban on retroceding individual shares. The requirement that all risks be brought into the group should however be excluded because that would be an excessive restriction of competition.

(14) The establishment of groups constituted only by reinsurance companies need not be covered by this Regulation due to lack of sufficient experience in this field.

(15) The new approach in the realm of technical harmonization and standardization, as defined in the Council resolution of 7 May 1985 (1), and also the global approach to certification and testing, which was presented by the Commission in its communication to the Council of 15 June 1989 (2) and which was approved by the Council in its resolution of 21 December 1989 (3), are essential to the functioning of the internal market because they promote competition, being based on standard quality criteria throughout the Community.

(16) It is in the hope of promoting those standard quality criteria that the Commission permits insurance undertakings to collaborate in order to establish technical specifications and rules concerning the evaluation and certification of the compliance of security devices, which as far as possible should be uniform at a European level, thereby ensuring their use in practice.

(17) Cooperation in the evaluation of security devices and of the undertakings installing and maintaining them is useful in so far as it removes the need for repeated individual evaluation. Accordingly, the Regulation should define the conditions under which the formulation of technical specifications and procedures for certifying such security devices and the undertakings installing or maintaining them are authorized. The purpose of such conditions is to ensure that all manufacturers and installation and maintenance undertakings may apply for evaluation, and that the evaluation and certification are guided by objective and well-defined criteria.

(18) Lastly, such agreements must not result in an exhaustive list; each undertaking must remain free to accept devices and installation and maintenance undertakings not approved jointly.

(1) OJ No C 136, 4. 6. 1985, p. 1.
(2) OJ No C 267, 19. 10. 1989, p. 3.
(3) OJ No C 10, 16. 1. 1990, p. 1.

(19) If individual agreements exempted by this Regulation nevertheless have effects which are incompatible with Article 85 (3), as interpreted by the administrative practice of the Commission and the case-law of the Court of Justice, the Commission must have the power to withdraw the benefit of the block exemption. This applies for example where studies on the impact of future developments are based on un-justifiable hypotheses; or where recommended standard policy conditions contain clauses which create, to the detriment of the policyholder, a significant imbalance between the rights and obligations arising from the contract; or where groups are used or managed in such a way as to give one or more participating undertakings the means of acquiring or reinforcing a preponderant influence on the relevant market, or if these groups result in market sharing, or if policyholders encounter unusual difficulties in finding cover for aggravated risks outside a group. This last consideration would normally not apply where a group covers less than 25 % of those risks.

(20) Agreements which are exempted pursuant to this Regulation need not be notified. Undertakings may nevertheless in cases of doubt notify their agreements pursuant to Council Regulation No 17 (1), as last amended by the Act of Accession of Spain and Portugal,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to agreements, decisions by associations of undertakings and concerted practices in the insurance sector which seek cooperation with respect to:

(a) the establishment of common risk-premium tariffs based on collectively ascertained statistics or on the number of claims;

(b) the establishment of standard policy conditions;

(c) the common coverage of certain types of risks;

(d) the establishment of common rules on the testing and acceptance of security devices.

(1) OJ No 13, 21. 2. 1962, p. 204/62.

TITLE II

Calculation of the premium

Article 2

The exemption provided for in Article 1 (a) hereof shall apply to agreements, decisions and concerted practices which relate to:

(a) the calculation of the average cost of risk cover (pure premiums) or the establishment and distribution of mortality tables, and tables showing the frequency of illness, accident and invalidity, in connection with insurance involving an element of capitalization — such tables being based on the assembly of data, spread over a number of risk-years chosen as an observation period, which relate to identical or comparable risks in sufficient number to constitute a base which can be handled statistically and which will yield figures on (*inter alia*):

— the number of claims during the said period,

— the number of individual risks insured in each risk-year of the chosen observation period,

— the total amounts paid or payable in respect of claims arisen during the said period,

— the total amount of capital insured for each risk-year during the chosen observation period.

(b) the carrying-out of studies on the probable impact of general circumstances external to the interested undertakings on the frequency or scale of claims, or the profitability of different types of investment, and the distribution of their results.

Article 3

The exemption shall apply on condition that:

(a) the calculations, tables or study results referred to in Article 2, when compiled and distributed, include a statement that they are purely illustrative;

(b) the calculations or tables referred to in Article 2 (a) do not include in any way loadings for contingencies, income deriving from reserves, administrative or commercial costs comprising commissions payable to intermediaries, fiscal or para-fiscal contributions or the anticipated profits of the participating undertakings;

(c) the calculations, tables or study results referred to in Article 2 do not identify the insurance undertakings concerned.

Article 4

The exemption shall not benefit undertakings or associations of undertakings which enter into an undertaking or commitment among themselves, or which oblige other undertakings, not to use calculations or tables that differ from those established pursuant to Article 2 (a), or not to depart from the results of the studies referred to in Article 2 (b).

TITLE III

Standard policy conditions for direct insurance

Article 5

1. The exemption provided for in Article 1 (b) shall apply to agreements, decisions and concerted practices which have as their object the establishment and distribution of standard policy conditions for direct insurance.

2. The exemption shall also apply to agreements, decisions and concerted practices which have as their object the establishment and distribution of common models illustrating the profits to be realized from an insurance policy involving an element of capitalization.

Article 6

1. The exemption shall apply on condition that the standard policy conditions referred to in Article 5 (1):

(a) are established and distributed with an explicit statement that they are purely illustrative; and

(b) expressly mention the possibility that different conditions may be agreed; and

(c) are accessible to any interested person and provided simply upon request.

2. The exemption shall apply on condition that the illustrative models referred to in Article 5 (2) are established and distributed only by way of guidance.

Article 7

1. The exemption shall not apply where the standard policy conditions referred to in Article 5 (1) contain clauses which:

(a) exclude from the cover losses normally relating to the class of insurance concerned, without indicating explicitly that each insurer remains free to extend the cover to such events;

(b) make the cover of certain risks subject to specific conditions, without indicating explicity that each insurer remains free to waive them;

(c) impose comprehensive cover including risks to which a significant number of policyholders is not simultaneously exposed, without indicating explicitly that each insurer remains free to propose separate cover;

(d) indicate the amount of the cover or the part which the policyholder must pay himself (the 'excess');

(e) allow the insurer to maintain the policy in the event that he cancels part of the cover, increases the premium without the risk or the scope of the cover being changed (without prejudice to indexation clauses), or otherwise alters the policy conditions without the express consent of the policyholder;

(f) allow the insurer to modify the term of the policy without the express consent of the policyholder;

(g) impose on the policyholder in the non-life assurance sector a contract period of more than three years;

(h) impose a renewal period of more than one year where the policy is automatically renewed unless notice is given upon the expiry of a given period;

(i) require the policyholder to agree to the reinstatement of a policy which has been suspended on account of the disappearance of the insured risk, if he is once again exposed to a risk of the same nature;

(j) require the policyholder to obtain cover from the same insurer for different risks;

(k) require the policyholder, in the event of disposal of the object of insurance, to make the acquirer take over the insurance policy.

2. The exemption shall not benefit undertakings or associations of undertakings which concert or undertake among themselves, or oblige other undertakings not to apply conditions other than those referred to in Article 5 (1).

Article 8

Without prejudice to the establishment of specific insurance conditions for particular social or occupational categories of the population, the exemption shall not apply to agreements decisions and concerted practices which exclude the coverage of certain risk categories because of the characteristics associated with the policyholder.

Article 9

1. The exemption shall not apply where, without prejudice to legally imposed obligations, the illustrative models referred to in Article 5 (2) include only specified interest rates or contain figures indicating administrative costs;

2. The exemption shall not benefit undertakings or associations of undertakings which concert or undertake among themselves, or oblige other undertakings not to apply models illustrating the benefits of an insurance policy other than those referred to in Article 5 (2).

TITLE IV

Common coverage of certain types of risks

Article 10

1. The exemption under Article 1 (c) hereof shall apply to agreements which have as their object the setting-up and operation of groups of insurance undertakings or of insurance undertakings and reinsurance undertakings for the common coverage of a specific category of risks in the form of co-insurance or co-reinsurance.

2. For the purposes of this Regulation :

(a) 'co-insurance groups' means groups set up by insurance undertakings which :

— agree to underwrite in the name and for the account of all the participants the insurance of a specified risk category, or

— entrust the underwriting and management of the insurance of a specified risk category in their name and on their behalf to one of the insurance undertakings, to a common broker or to a common body set up for this purpose ;

(b) 'co-reinsurance groups' means groups set up by insurance undertakings, possibly with the assistance of one or more re-insurance undertakings :

— in order to reinsure mutually all or part of their liabilities in respect of a specified risk category,

— incidentally, to accept in the name and on behalf of all the participants the re-insurance of the same category of risks.

3. The agreements referred to in paragraph 1 may determine :

(a) the nature and characteristics of the risks covered by the co-insurance or co-reinsurance ;

(b) the conditions governing admission to the group ;

(c) the individual own-account shares of the participants in the risks co-insured or co-reinsured ;

(d) the conditions for individual withdrawal of the participants ;

(e) the rules governing the operation and management of the group.

4. The agreements alluded to in paragraph 2 (b) may further determine :

(a) the shares in the risks covered which the participants to not pass on for co-reinsurance (individual retentions) ;

(b) the cost of co-reinsurance, which includes both the operating costs of the group and the remuneration of the participants in their capacity as co-reinsurers.

Article 11

1. The exemption shall apply on condition that :

(a) the insurance products underwritten by the participating undertakings or on their behalf do not, in any of the markets concerned, represent :

— in the case of co-insurance groups, more than 10 % of all the insurance products that are identical or regarded as similar from the point of view of the risks covered and of the cover provided,

— in the case of co-reinsurance groups, more than 15 % of all the insurance products that are identical or regarded as similar from the point of view of the risks covered and of the cover provided ;

(b) each participating undertaking has the right to withdraw from the group, subject to a period of notice of not more than six months, without incurring any sanctions;

2. By way of derogation from paragraph 1, the respective percentages of 10 and 15 % apply only to the insurance products brought into the group, to the exclusion of identical or similar products underwritten by the participating companies or on their behalf and which are not brought into the group, where this group covers :

— catastrophe risks where the claims are both rare and large,

— aggravated risks which involve a higher probability of claims because of the characteristics of the risk insured.

This derogation is subject to the following conditions :

— that none of the concerned undertakings shall participate in another group that covers risks on the same market, and

— with respect to groups which cover aggravated risks, that the insurance products brought into the group shall not represent more than 15 % of all identical or similar products underwritten by the participating companies or on their behalf on the market concerned.

Article 12

Apart from the obligations referred to in Article 10, no restriction on competition shall be imposed on the undertakings participating in a co-insurance group other than :

(a) the obligation, in order to qualify for the co-insurance cover within the group, to

— take preventive measures into account,

— use the general or specific insurance conditions accepted by the group,

— use the commercial premiums set by the group ;

(b) the obligation to submit to the group or approval any settlement of a claim relating to a co-insured risk;

(c) the obligation to entrust to the group the negotiation of reinsurance agreements on behalf of all concerned;

(d) a ban on reinsuring the individual share of the co-insured risk.

Article 13

Apart from the obligations referred to in Article 10, no restriction on competition shall be imposed on the undertakings participating in a co-reinsurance group other than:

(a) the obligation, in order to qualify for the co-reinsurance cover, to

— take preventive measures into account,

— use the general or specific insurance conditions accepted by the group,

— use a common risk-premium tariff for direct insurance calculated by the group, regard being had to the probable cost of risk cover or, where there is not sufficient experience to establish such a tariff, a risk premium accepted by the group,

— participate in the cost of the co-reinsurance;

(b) the obligation to submit to the group for approval the settlement of claims relating to the co-reinsured risks and exceeding a specified amount, or to pass such claims on to it for settlement;

(c) the obligation to entrust to the group the negotiation of retrocession agreements on behalf of all concerned;

(d) a ban on reinsuring the individual retention or retroceding the individual share.

TITLE V

Security devices

Article 14

The exemption provided for in Article 1 (d) shall apply to agreements, decisions and concerted practices which have as their object the establishment, recognition and distribution of:

— technical specifications, in particular technical specifications intended as future European norms, and also procedures for assessing and certifying the compliance with such specifications of security devices and their installation and maintenance,

— rules for the evaluation and approval of installation undertakings or maintenance undertakings.

Article 15

The exemption shall apply on condition that:

(a) the technical specifications and compliancy assessment procedures are precise, technically justified and in proportion to the performance to be attained by the security device concerned;

(b) the rules for the evaluation of installation undertakings and maintenance undertakings are objective, relate to their technical competence and are applied in a non-discriminatory manner;

(c) such specifications and rules are established and distributed with the statement that insurance undertakings are free to accept other security devices or approve other installation and maintenance undertakings which do not comply with these technical specifications or rules;

(d) such specifications and rules are provided simply upon request to any interested person;

(e) such specifications include a classification based on the level of performance obtained;

(f) a request for an assessment may be submitted at any time by any applicant;

(g) the evaluation of conformity does not impose on the applicant any expenses that are disproportionate to the costs of the approval procedure;

(h) the devices and installation undertakings and maintenance undertakings that meet the assessment criteria are certified to this effect in a non-discriminatory manner within a period of six months of the date of application, except where technical considerations justify a reasonable additional period;

(i) the fact of compliance or approval is certified in writing;

(j) the grounds for a refusal to issue the ceritifcate of compliance are given in writing by attaching a duplicate copy of the records of the tests and controls that have been carried out;

(k) the grounds for a refusal to take into account a request for assessment are provided in writing;

(l) the specifications and rules are applied by bodies observing the appropriate provisions of norms in the series EN 45 000.

TITLE VI

Miscellaneous provisions

Article 16

1. The provisions of this Regulation shall also apply where the participating undertakings lay down rights and obligations for the undertakings connected with them. The market shares, legal acts or conduct of the connected undertakings shall be considered to be those of the participating undertakings.

2. 'Connected undertakings' for the purposes of this Regulation means:

(a) undertakings in which a participating undertaking, directly or indirectly:

— owns more than half the capital or business assets, or

— has the power to exercise more than half the voting rights, or

— has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or

— has right to manage the affairs of the undertaking;

(b) undertakings which directly or indirectly have in or over a participating undertaking the rights or powers listes in (a);

(c) undertakings in which an undertaking referred to in (b) directly or indirectly has the rights or powers listed in (a).

3. Undertakings in which the participating undertakings or undertakings connected with them have directly or indirectly the rights or powers set out in paragraph 2 (a) shall be considered to be connected with each of the participating undertakings.

Article 17

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of 1534/91, where it finds in a particular case that an agreement, decision or concerted practice exempted under this Regulation nevertheless has certain effects which are incompatible with the conditions laid down in Article 85 (3) of the EEC Treaty, and in particular where,

— in the cases referred to in Title II, the studies are based on unjustifiable hypotheses,

— in the cases referred to in Title III, the standard policy conditions contain clauses other than those listed in Article 7 (1) which create, to the detriment of the policyholder, a significant imbalance between the rights and obligations arising from the contract,

— in the cases referred to in Title IV:

(a) the undertakings participating in a group would not, having regard to the nature, characteristics and scale of the risks concerned, encounter any significant difficulties in operating individually on the relevant market without organizing themselves in a group;

(b) one or more participating undertakings exercise a determining influence on the commercial policy of more than one group on the same market;

(c) the setting-up or operation of a group may, through the conditions governing admission, the definition of the risks to be covered, the agreements on retrocession or by any other means, result in the sharing of the markets for the insurance products concerned or form neighbouring products;

(d) an insurance group which benefits from the provisions of Article 11 (2) has such a position with respect to aggravated risks that the policyholders encounter considerable difficulties in finding cover outside this group.

Article 18

1. As regards agreements existing on 13 March 1962 and notified before 1 February 1963 and agreements, whether notified or not, to which Article 4 (2) (1) of Regulation No 17 applies, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall have retroactive effect from the time at which the conditions for application of this Regulation were fulfilled.

2. As regards all other agreements notified before this Regulation entered into force, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall have retroactive effect from the time at which the conditions for application of this Regulation were fulfilled, or from the date of notification, whichever is later.

Article 19

If agreements existing on 13 March 1962 and notified before 1 February 1963, or agreements covered by Article 4 (2) (1) of Regulation No 17 and notified before 1 January 1967, are amended before 31 December 1993 so as to fulfil the conditions for application of this Regulation, and if the amendment is communicated to the Commission before 1 April 1994, the prohibition in Article 85 (1) of the Treaty shall not apply in respect of the period prior to the amendment. The communication shall take effect from the time of its receipt by the Commission. Where the communication is sent by registered post, it shall take effect from the date shown on the postmark of the place of posting.

Article 20

1. As regards agreements covered by Article 85 of the Treaty as a result of the accession of the United Kingdom, Ireland and Denmark, Articles 18 and 19 shall apply, on the understanding that the relevant dates shall be 1 January 1973 instead of 13 March 1962 and 1 July 1973 instead of 1 February 1963 and 1 January 1967.

2. As regards agreements covered by Article 85 of the Treaty as a result of the accession of Greece, Articles 18 and 19 shall apply, on the understanding that the relevant dates shall be 1 January 1981 instead of 13 March 1962 and 1 July 1981 instead of 1 February 1963 and 1 January 1967.

3. As regards agreements covered by Article 85 of the Treaty as a result of the accession of Spain and Portugal, Articles 18 and 19 shall apply, on the understanding that the relevant dates shall be 1 January 1986 instead of 13 March 1962 and 1 July 1986 instead of 1 February 1963 and 1 January 1967.

Article 21

This Regulation shall enter into force on 1 April 1993.

It shall apply until 31 March 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 December 1992.

For the Commission

Leon BRITTAN

Vice-President

VI. Capital movemnts

88/361/EEC 443
Counil Diretive of 24 June 1988 for the Implementation of Article 67 of the Treaty
(OJ L 178, 08.07.1988, p. 5-18)

8. 7. 88 Official Journal of the European Communities No L 178/5

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 24 June 1988

for the implementation of Article 67 of the Treaty

(88/361/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 69 and 70 (1) thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee (1),

Having regard to the opinion of the European Parliament (2),

Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of capital is ensured, without prejudice to the other provisions of the Treaty;

Whereas Member States should be able to take the requisite measures to regulate bank liquidity; whereas these measures should be restricted to this purpose;

Whereas Member States should, if necessary, be able to take measures to restrict, temporarily and within the framework of appropriate Community procedures, short-term capital movements which, even where there is no appreciable divergence in economic fundamentals, might seriously disrupt the conduct of their monetary and exchange-rate policies;

Whereas, in the interests of transparency, it is advisable to indicate the scope, in accordance with the arrangements laid down in this Directive, of the transitional measures adopted for the benefit of the Kingdom of Spain and the Portuguese Republic by the 1985 Act of Accession in the field of capital movements;

Whereas the Kingdom of Spain and the Portuguese Republic may, under the terms of Articles 61 to 66 and 222 to 232 respectively of the 1985 Act of Accession, postpone the liberalization of certain capital movements in derogation from the obligations set out in the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty (3), as last amended by Directive 86/566/EEC (4); whereas Directive 86/566/EEC also provides for transitional arrangements to be applied for the benefit of those two Member States in respect of their obligations to liberalize capital movements; whereas it is appropriate for those two Member States to be able to postpone the application of the new liberalization obligations resulting from this Directive;

Whereas the Hellenic Republic and Ireland are faced, albeit to differing degrees, with difficult balance-of-payments situations and high levels of external indebtedness; whereas the immediate and complete liberalization of capital movements by those two Member States would make it more difficult for them to continue to apply the measures they have taken to improve their external positions and to reinforce the capacity of their financial systems to adapt to the requirements of an integrated financial market in the Community; whereas it is appropriate, in accordance with Article 8c of the Treaty, to grant to those two Member States, in the light of their specific circumstances, further time in which to comply with the obligations arising from this Directive;

Whereas, since the full liberalization of capital movements could in some Member States, and especially in border areas, contribute to difficulties in the market for secondary residences; whereas existing national legislation regulating these purchases should not be affected by the entry into effect of this Directive;

(1) OJ No C 26, 1. 2. 1988, p. 1.
(2) Opinion delivered on 17 June 1988 (not yet published in the Official Journal).

(3) OJ No 43, 12. 7. 1960, p. 921/60.
(4) OJ No L 332, 26. 11. 1986, p. 22.

Whereas advantage should be taken of the period adopted for bringing this Directive into effect in order to enable the Commission to submit proposals designed to eliminate or reduce risks of distortion, tax evasion and tax avoidance resulting from the diversity of national systems for taxation and to permit the Council to take a position on such proposals;

Whereas, in accordance with Article 70 (1) of the Treaty, the Community shall endeavour to attain the highest possible degree of liberalization in respect of the movement of capital between its residents and those of third countries;

Whereas large-scale short-term capital movements to or from third countries may seriously disturb the monetary or financial situation of Member States or cause serious stresses on the exchange markets; whereas such developments may prove harmful for the cohesion of the European Monetary System, for the smooth operation of the internal market and for the progressive achievement of economic and monetary union; whereas it is therefore appropriate to create the requisite conditions for concerted action by Member States should this prove necessary;

Whereas this Directive replaces Council Directive 72/156/EEC of 21 March 1972 on regulating international capital flows and neutralizing their undesirable effects on domestic liquidity (1); whereas Directive 72/156/EEC should accordingly be repealed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.

2. Transfers in respect of capital movements shall be made on the same exchange rate conditions as those governing payments relating to current transactions.

Article 2

Member States shall notify the Committee of Governors of the Central Banks, the Monetary Committee and the Commission, by the date of their entry into force at the latest, of measures to regulate bank liquidity which have a specific impact on capital transactions carried out by credit institutions with non-residents.

Such measures shall be confined to what is necessary for the purposes of domestic monetary regulation. The Monetary Committee and the Committee of Governors of the Central Banks shall provide the Commission with opinions on this subject.

(1) OJ No L 91, 18. 4 1972, p. 13.

Article 3

1. Where short-term capital movements of exceptional magnitude impose severe strains on foreign-exchange markets and lead to serious disturbances in the conduct of a Member State's monetary and exchange rate policies, being reflected in particular in substantial variations in domestic liquidity, the Commission may, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, authorize that Member State to take, in respect of the capital movements listed in Annex II, protective measures the conditions and details of which the Commission shall determine.

2. The Member State concerned may itself take the protective measures referred to above, on grounds of urgency, should these measures be necessary. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. The Commission, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, shall decide whether the Member State concerned may continue to apply these measures or whether it should amend or abolish them.

3. The decisions taken by the Commission under paragraphs 1 and 2 may be revoked or amended by the Council acting by a qualified majority.

4. The period of application of protective measures taken pursuant to this Article shall not exceed six months.

5. Before 31 December 1992, the Council shall examine, on the basis of a report from the Commission, after delivery of an opinion by the Monetary Committee and the Committee of Governors of the Central Banks, whether the provisions of this Article remain appropriate, as regards their principle and details, to the requirements which they were intended to satisfy.

Article 4

This Directive shall be without prejudice to the right of Member States to take all requisite measures to prevent infringements of their laws and regulations, *inter alia* in the field of taxation and prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information.

Application of those measures and procedures may not have the effect of impeding capital movements carried out in accordance with Community law.

Article 5

For the Kingdom of Spain and the Portuguese Republic, the scope, in accordance with the Nomenclature of capital movements contained in Annex I, of the provisions of the

1985 Act of Accession in the field of capital movements shall be as indicated in Annex III.

Article 6

1. Member States shall take the measures necessary to comply with this Directive no later than 1 July 1990. They shall forthwith inform the Commission thereof. They shall also make known, by the date of their entry into force at the latest, any new measure or any amendment made to the provisions governing the capital movements listed in Annex I.

2. The Kingdom of Spain and the Portuguese Republic, without prejudice for these two Member States to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, and the Hellenic Republic and Ireland may temporarily continue to apply restrictions to the capital movements listed in Annex IV, subject to the conditions and time limits laid down in that Annex.

If, before expiry of the time limit set for the liberalization of the capital movements referred to in Lists III and IV of Annex IV, the Portuguese Republic or the Hellenic Republic considers that it is unable to proceed with liberalization, in particular because of difficulties as regards its balance of payments or because the national financial system is insufficiently adapted, the Commission, at the request of one or other of these Member States, shall in collaboration with the Monetary Committee, review the economic and financial situation of the Member State concerned. On the basis of the outcome of this review, the Commission shall propose to the Council an extension of the time limit set for liberalization of all or part of the capital movements referred to. This extension may not exceed three years. The Council shall act in accordance with the procedure laid down in Article 69 of the Treaty.

3. The Kingdom of Belgium and the Grand Duchy of Luxembourg may temporarily continue to operate the dual exchange market under the conditions and for the periods laid down in Annex V.

4. Existing national legislation regulating purchases of secondary residences may be upheld until the Council adopts further provisions in this area in accordance with Article 69 of the Treaty. This provision does not affect the applicability of other provisions of Community law.

5. The Commission shall submit to the Council, by 31 December 1988, proposals aimed at eliminating or reducing risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems.

The Council shall take a position on these Commission proposals by 30 June 1989. Any tax provisions of a Community nature shall, in accordance with the Treaty, be adopted unanimously.

Article 7

1. In their treatment of transfers in respect of movements of capital to or from third countries, the Member States shall endeavour to attain the same degree of liberalization as that which applies to operations with residents of other Member States, subject to the other provisions of this Directive.

The provisions of the preceding subparagraph shall not prejudice the application to third countries of domestic rules or Community law, particularly any reciprocal conditions, concerning operations involving establishment, the provisions of financial services and the admission of securities to capital markets.

2. Where large-scale short-term capital movements to or from third countries seriously disturb the domestic or external monetary or financial situation of the Member States, or of a number of them, or cause serious strains in exchange relations within the Community or between the Community and third countries, Member States shall consult with one another on any measure to be taken to counteract such difficulties. This consultation shall take place within the Committee of Governors of the Central Banks and the Monetary Committee on the initiative of the Commission or of any Member State.

Article 8

At least once a year the Monetary Committee shall examine the situation regarding free movement of capital as it results from the application of this Directive. The examination shall cover measures concerning the domestic regulation of credit and financial and monetary markets which could have a specific impact on international capital movements and on all other aspects of this Directive. The Committee shall report to the Commission on the outcome of this examination.

Article 9

The First Directive of 11 May 1960 and Directive 72/156/EEC shall be repealed with effect from 1 July 1990.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1988.

For the Council

The President

M. BANGEMANN

ANNEX I

NOMENCLATURE OF THE CAPITAL MOVEMENTS REFERRED TO IN ARTICLE 1 OF THE DIRECTIVE

In this Nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this Nomenclature are taken to cover:

— all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),

— operations carried out by any natural or legal person (1), including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68 (3) of the Treaty,

— access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example, the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position,

— operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof (1) or immediate use of such proceeds within the limits of Community obligations,

— operations to repay credits or loans.

This Nomenclature is not an exhaustive list for the notion of capital movements — whence a heading XIII — F. 'Other capital movements — Miscellaneous'. It should not therefore be interpreted as restricting the scope of the principle of full liberalization of capital movements as referred to in Article 1 of the Directive.

I — DIRECT INVESTMENTS (1)

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings.

2. Participation in new or existing undertaking with a view to establishing or maintaining lasting economic links.

3. Long-term loans with a view to establishing or maintaining lasting economic links.

4. Reinvestment of profits with a view to maintaining lasting economic links.

A — Direct investments on national territory by non-residents (1)

B — Direct investments abroad by residents (1)

II — INVESTMENTS IN REAL ESTATE (not included under I) (1)

A — Investments in real estate on national territory by non-residents

B — Investments in real estate abroad by residents

III — OPERATIONS IN SECURITIES NORMALLY DEALT IN ON THE CAPITAL MARKET (not included under I, IV and V)

(a) *Shares and other securities of a participating nature* (1).

(b) *Bonds* (1).

(1) See Explanatory Notes below.

A — Transactions in securities on the capital market

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange (1).
2. Acquisition by residents of foreign securities dealt in on a stock exchange.
3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange (1).
4. Aquisition by residents of foreign securities not dealt in on a stock exchange.

B — Admission of securities to the capital market (1)

(i) *Introduction on a stock exchange (1).*

(ii) *Issue and placing on a capital market (1).*

1. Admission of domestic securities to a foreign capital market.
2. Administration of foreign securities to the domestic capital market.

IV — OPERATIONS IN UNITS OF COLLECTIVE INVESTMENT UNDERTAKINGS (1)

(a) Units of undertakings for collective investment in securities normally dealt in on the capital market (shares, other equities and bonds).

(b) Units of undertakings for collective investment in securities or instruments normally dealt in on the money market.

(c) Units of undertakings for collective investment in other assets.

A — Transactions in units of collective investment undertakings

1. Acquisition by non-residents of units of national undertakings dealt in on a stock exchange.
2. Acquisition by residents of units of foreign undertakings dealt in on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not dealt in on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not dealt in on a stock exchange.

B — Administration of units of collective investment undertakings to the capital market

(i) *Introduction on a stock exchange.*

(ii) *Issue and placing on a capital market.*

1. Admission of units of national collective investment undertakings to a foreign capital market.
2. Admission of units of foreign collective investment undertakings to the domestic capital market.

V - OPERATIONS IN SECURITIES AND OTHER INSTRUMENTS NORMALLY DEALT IN ON THE MONEY MARKET (1)

A — Transactions in securities and other instruments on the money market

1. Acquisition by non-residents of domestic money market securities and instruments.
2. Acquisition by residents of foreign money market securities and instruments.

B — Admission of securities and other instruments to the money market

(i) *Introduction on a recognized money market (1).*

(ii) *Issue and placing on a recognized money market.*

1. Admission of domestic securities and instruments to a foreign money market.
2. Admission of foreign securities and instruments to the domestic money market.

(1) See Explanatory Notes below.

VI — OPERATIONS IN CURRENT AND DEPOSIT ACCOUNTS WITH FINANCIAL INSTITUTIONS (1)

A — Operations carried out by non-residents with domestic financial institutions

B — Operations carried out by residents with foreign financial institutions

VII — CREDITS RELATED TO COMMERCIAL TRANSACTIONS OR TO THE PROVISION OF SERVICES IN WHICH A RESIDENT IS PARTICIPATING (1)

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).

A — Credits granted by non-residents to residents

B — Credits granted by residents to non-residents

VIII — FINANCIAL LOANS AND CREDITS (not included under I, VII and XI) (1)

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).

A — Loans and credits granted by non-residents to residents

B — Loans and credits granted by residents to non-residents

IX — SURETIES, OTHER GUARANTEES AND RIGHTS OF PLEDGE

A — Granted by non-residents to residents

B — Granted by residents to non-residents

X — TRANSFERS IN PERFORMANCE OF INSURANCE CONTRACTS

A — Premiums and payments in respect of life assurance

1. Contracts concluded between domestic life assurance companies and non-residents.
2. Contracts concluded between foreign life assurance companies and residents.

B — Premiums and payments in respect of credit insurance

1 Contracts concluded between domestic credit insurance companies and non-residents.
2. Contracts concluded between foreign credit insurance companies and residents.

C — Other transfers of capital in respect of insurance contracts

XI — PERSONAL CAPITAL MOVEMENTS

A — Loans

B — Gifts and endowments

C — Dowries

D — Inheritances and legacies

E — Settlement of debts by immigrants in their previous country of residence

F — Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad

G — Transfers, during their period of stay, of immigrants' savings to their previous country of residence

(1) See Explanatory Notes below.

XII — PHYSICAL IMPORT AND EXPORT OF FINANCIAL ASSETS

A — Securities

B — Means of payment of every kind

XIII — OTHER CAPITAL MOVEMENTS

A — Death duties

B — Damages (where these can be considered as capital)

C — Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)

D — Authors' royalties: patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)

E — Transfers of the monies required for the provision of services (not included under VI)

F — Miscellaneous

EXPLANATORY NOTES

For the purposes of this Nomenclature and the Directive only, the following expressions have the meanings assigned to them respectively:

Direct investments

Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

The undertakings mentioned under I-1 of the Nomenclature include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under I-2 of the Nomenclature which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person or another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

Long-term loans of a participating nature, mentioned under I-3 of the Nomenclature, means loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links. The main examples which may be cited are loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement. Loans granted by financial institutions with a view to establishing or maintaining lasting economic links are also included under this heading.

Investments in real estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights.

Introduction on a stock exchange or on a recognized money market

Access — in accordance with a specified procedure — for securities and other negotiable instruments to dealings, whether controlled officially or unofficially, on an officially recognized stock exchange or in an officially recognized segment of the money market.

Securities dealt in on a stock exchange (quoted or unquoted)

Securities the dealings in which are controlled by regulations, the prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange — e.g. committees of banks (unquoted securities).

Issue of securities and other negotiable instruments

Sale by way of an offer to the public.

Placing of securities and other negotiable instruments

The direct sale of securities by the issuer of by the consortium which the issuer has instructed to sell them, with no offer being made to the public.

Domestic or foreign securities and other instruments

Securities according to the country in which the issuer has his principal place of business. Acquisition by residents of domestic securities and other instruments issued on a foreign market ranks as the acquisition of foreign securities.

Shares and other securities of a participating nature

Including rights to subscribe to new issues of shares.

Bonds

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue.

Collective investment undertakings

Undertakings:

— the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and

— the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of the Directive, 'common funds' shall also include unit trusts.

Securities and other instruments normally dealt in on the money market

Treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other like instruments.

Credits related to commercial transactions or to the provision of services

Contractual trade credits (advances or payments by instalment in respect of work in progress or on order and extended payment terms, whether or not involving subscription to a commercial bill) and their financing by credits provided by credit institutions. This category also includes factoring operations.

Financial loans and credits

Financing of every kind granted by financial institutions, including financing related to commercial transactions or to the provision of services in which no resident is participating.

This category also includes mortgage loans, consumer credit and financial leasing, as well as back-up facilities and other note-issuance facilities.

Residents or non-residents

Natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State.

Proceeds of liquidation (of investments, securities, etc.)

Proceeds of sale including any capital appreciation, amount of repayments, proceeds of execution of judgements, etc.

Natural or legal persons

As defined by the national rules.

Financial institutions

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character.

Credit institutions

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit.

ANNEX II

LIST OF OPERATIONS REFERRED TO IN ARTICLE 3 OF THE DIRECTIVE

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings — undertakings for investment in securities or instruments normally dealt in on the money market	IV-A and B (c)
Financial loans and credits — short-term	VIII-A and B-1
Personal capital movements — loans	XI-A
Physical import and export of financial assets — securities normally dealt in on the money market — means of payment	XII
Other capital movements: Miscellaneous — short-term operations similar to those listed above	XIII-F

The restrictions which Member States may apply to the capital movements listed above must be defined and applied in such a way as to cause the least possible hindrance to the free movement of persons, goods and services.

ANNEX III

REFERRED TO IN ARTICLE 5 OF THE DIRECTIVE

Scope of the provisions of the 1985 Act of Accession relating to capital movements, in accordance with the Nomenclature of capital movements set out in Annex I to the Directive

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
	(a) Provisions concerning the Kingdom of Spain	
Article 62 (31. 12. 1990)	Direct investments abroad by residents	I-B
Article 63 (31. 12. 1990)	Investments in real estate abroad by residents	II-B
Article 64 (31. 12. 1988)	Operations in securities normally dealt in on the capital market	
	— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2
	— excluding bonds issued on a foreign market and denominated in national currency	
	Operations in units of collective investment undertakings	
	— Acquisition by residents of units of collective investment undertakings dealt in on a stock exchange	IV-A-2
	— excluding units of undertakings taking the form of common funds	
	(b) Provisions concerning the Portuguese Republic	
Article 222 (31. 12. 1989)	Direct investments on national territory by non-residents	I-A
Article 224 (31. 12. 1992)	Direct investments abroad by residents	I-B
Articles 225 and 226 (31. 12. 1990)	Investments in real estate on national territory by non-residents	II-A
Article 227 (31. 12. 1992)	Investments in real estate abroad by residents	II-B
Article 228 (31. 12. 1990)	Personal capital movements	
	(i) for the purpose of applying the higher amounts specified in Article 228 (2):	
	— Dowries	XI-C
	— Inheritances and legacies	XI-D
	— Transfers of assets built up by residents in case of emigration at the time of their installation or during their period of stay abroad	XI-F
	(ii) for the purpose of applying the lower amounts specified in Article 228 (2):	
	— Gifts and endowments	XI-B
	— Settlement of debts by immigrants in their previous country of residence	XI-E
	— Transfers of immigrants' savings to their previous country of residence during their period of stay	XI-G

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
	(b) Provisions concerning the Portuguese Republic *(cont'd)*	
Article 229 (31. 12. 1990)	Operations in securities normally dealt in on the capital market	
	— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2
	— excluding bonds issued on a foreign market and denominated in national currency	
	Operations in units of collective investment undertakings	
	— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2
	— excluding units of undertakings taking the form of common funds	

ANNEX IV

REFERRED TO IN ARTICLE 6 (2) OF THE DIRECTIVE

I. The Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 restrictions existing on the date of notification of the Directive on capital movements given in List I below:

LIST I

Nature of operation	Heading
Operations in units of collective investment undertakings	
— acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2 (a)
— undertakings subject to Directive 85/611/EEC (1) and taking the form of common funds	
— Acquisition by residents of units of foreign collective investment undertakings not dealt in on a stock exchange	IV-A-4 (a)
— undertakings subject to Directive 85/611/EEC (1)	

(1) Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31.12. 1985, p. 3).

II. The Kingdom of Spain and the Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 and 31 December 1992 respectively, restrictions existing on the date of notification of the Directive on capital movements given in List II below:

LIST II

Nature of operation	Heading
Operations in securities normally dealt in on the capital market	
— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2 (b)
— bonds issued on a foreign market and denominated in national currency	
— Acquisition by residents (non-residents) of foreign (domestic) securities not dealt in on a stock exchange	III-A-3 and 4
— Admission of securities to the capital market	III-B-1 and 2
— where they are dealt in on or in the process of introduction to a stock exchange in a Member State	
Operations in units of collective investment undertakings	
— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2
— undertakings not subject to Directive 85/611/EEC (1) and taking the form of common funds	
— Acquisition by residents (non-residents) of units of foreign (domestic) collective investment undertakings not dealt in on a stock exchange	IV-A-3 and 4
— undertakings not subject to Directive 85/611/EEC (1) and the sole object of which is the acquisition of assets that have been liberalized	
— Admission to the capital market of units of collective investment of undertakings	IV-B-1 and 2 (a)
— undertakings subject to Directive 85/611/EEC (1)	
— Credits related to commercial transactions or to the provision of services in which a resident is participating	VII-A and B-3
— Long-term credits	

(1) See footnote to List I.

III. The Hellenic Republic, the Kingdom of Spain, Ireland and the Portuguese Republic may, until 31 December 1992, continue to apply or reintroduce restrictions existing at the date of notification of the Directive on capital movements given in List III below:

LIST III

Nature of operation	Heading
Operations in securities dealt in on the capital market	
— Admission of securities to the capital market	III-B-1 and 2
— where they are not dealt in on or in the process of introduction to a stock exchange in a Member State	
Operations in units of collective investment undertakings	
— Admission to the capital market of units of collective investment undertakings	IV-B-1 and 2
— undertakings not subject to Directive 85/611/EEC (1) and the sole object of which is the acquisition of assets that have been liberalized	
Financial loans and credits	VIII-A, B-2 and 3
— medium-term and long-term	

(1) See footnote to List I.

IV. The Hellenic Republic, the Kingdom of Spain, Ireland and the Portuguese Republic may, until 31 December 1992, defer liberalization of the capital movements given in List IV below:

LIST IV

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings	IV-A and B (c)
— undertakings for investment in securities or instruments normally dealt in on the money market	
Financial loans and credits	VIII-A and B-1
— short term	
Personal capital movements	XI-A
— loans	
Physical import and export of financial assets	XII
— securities normally dealt in on the money market	
— means of payment	
Other capital movements: Miscellaneous	XIII-F

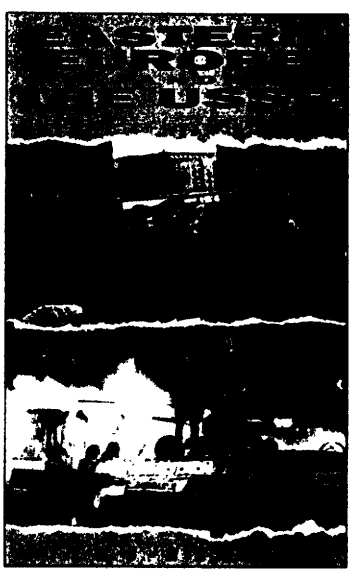
ANNEX V

Since the dual exchange market system, as operated by the Kingdom of Belgium and the Grand Duchy of Luxembourg, has not had the effect of restricting capital movements but nevertheless constitutes an anomaly in the EMS and should therefore be brought to an end in the interests of effective implementation of the Directive and with a view to strengthening the European Monetary System, these two Member States undertake to abolish it by 31 December 1992. They also undertake to administer the system, until such time as it is abolished, on the basis of procedures which will still ensure the *de facto* free movement of capital on such conditions that the exchange rates ruling on the two markets show no appreciable and lasting differences.

Eastern Europe and the USSR

THE CHALLENGE OF FREEDOM

GILES MERRITT



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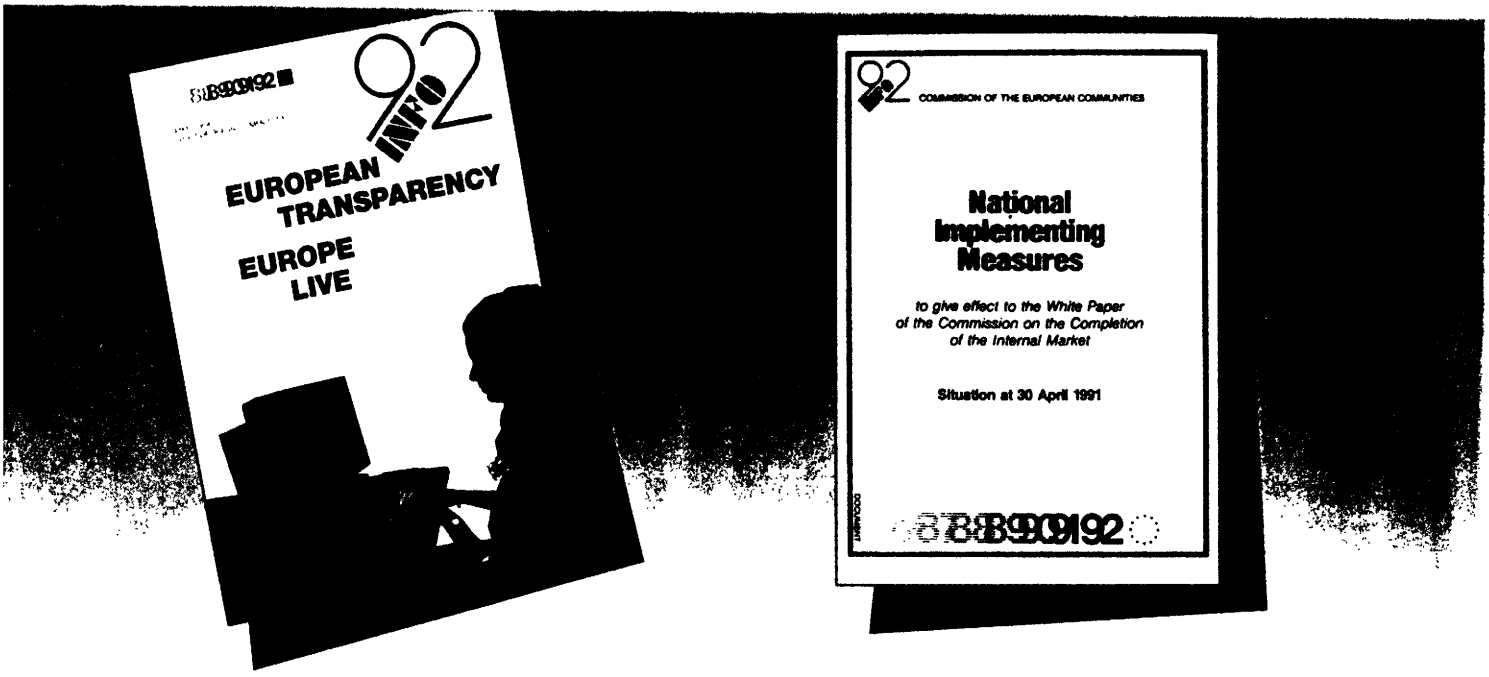

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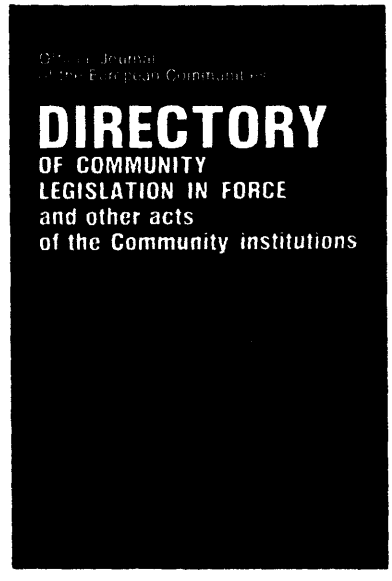

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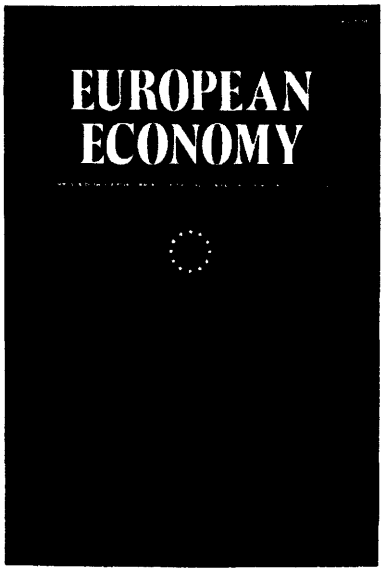

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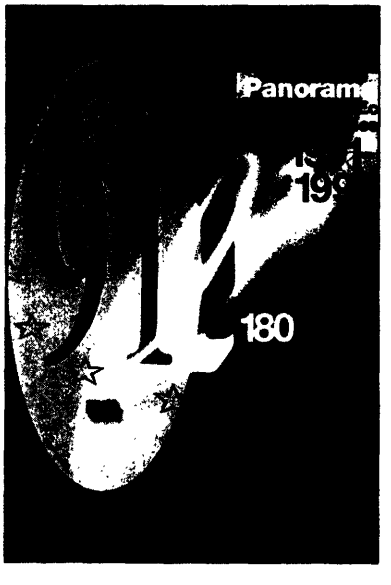

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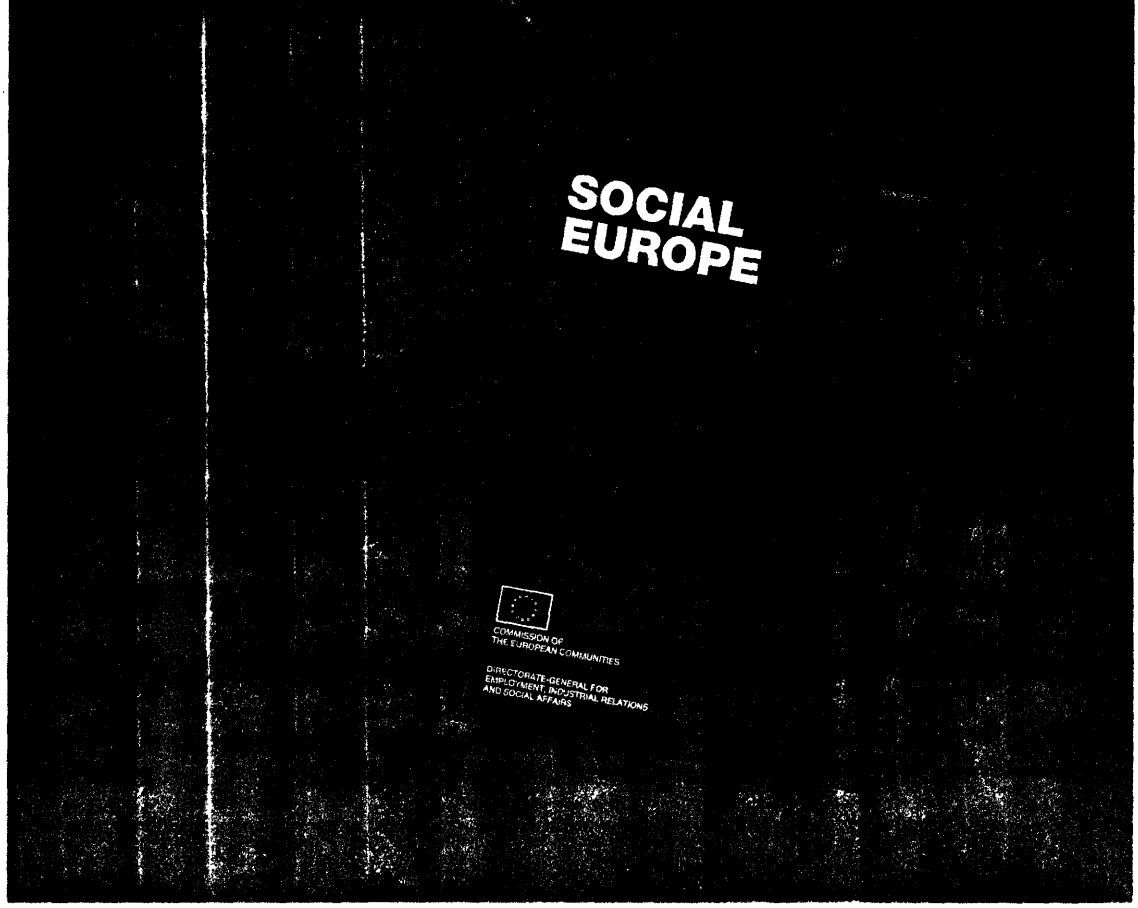

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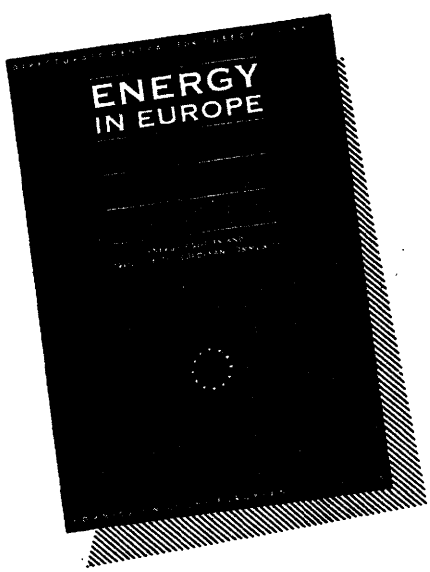

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