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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)

(OJ L 172, 4.7.1988, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Directive 90/618/EEC of 8 November 1990	L 330	44	29.11.1990
►**M2**	Council Directive 92/49/EEC of 18 June 1992	L 228	1	11.8.1992
►**M3**	Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000	L 181	65	20.7.2000

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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(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;

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(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.

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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;

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

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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.

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

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

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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.

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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.

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(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.

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(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.

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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. ▶ **M2** (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. ◀

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(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.

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(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

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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.

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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.

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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.

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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 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.

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.

▼M3

If the insurance undertaking has failed to appoint a representative, Member States may give their approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC [1] assuming the function of the representative appointed according to this paragraph.

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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 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

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[1] Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 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 amending Council Directives 73/239/EEC and 88/357/EEC (OJ L 181, 20.7.2000, p. 65).

▼M2

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 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.

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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.

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The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 3, 8, 9, 10, 13 and 16

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situated exclusively in one of the four Member States benefiting from the transitional arrangements.

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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 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 [2] and shall forthwith inform the Commission thereof.

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[1] OJ No L 189, 13. 9. 1976, p. 13.

[2] This Directive was notified to Member States on 30 June 1988.

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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.

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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.

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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

▼B

currency that requirement shall also be considered as satisfied when the assets are expressed in ecus.

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ANNEX 2A

Underwriting account

1. Total gross premiums earned
2. Total cost of claims
3. Commission costs
4. Gross underwriting result

▼B

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