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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)

(OJ L 228, 16.8.1973, p. 3)

Amended by:

		Official Journal		
		No	page	date
►M1	Council Directive 76/580/EEC of 29 June 1976	L 189	13	13.7.1976
►M2	Council Directive 84/641/EEC of 10 December 1984	L 339	21	27.12.1984
►M3	Council Directive 87/343/EEC of 22 June 1987	L 185	72	4.7.1987
►M4	Council Directive 87/344/EEC of 22 June 1987	L 185	77	4.7.1987
►M5	Second Council Directive 88/357/EEC of 22 June 1988	L 172	1	4.7.1988
►M6	Council Directive 90/618/EEC of 8 November 1990	L 330	44	29.11.1990
►M7	Council Directive 92/49/EEC of 18 June 1992	L 228	1	11.8.1992
►M8	European Parliament and Council Directive 95/26/EC of 29 June 1995	L 168	7	18.7.1995
►M9	Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000	L 181	65	20.7.2000
►M10	Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002	L 77	17	20.3.2002
►M11	Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002	L 35	1	11.2.2003

Amended by:

►A1	Act of Accession of Greece	L 291	17	19.11.1979
►A2	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
►A3	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995
►A4	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

►**C1** Corrigendum, OJ L 5, 7.1.1978, p. 27 (73/239/EEC)

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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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;

([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.

▼B

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;

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 coordinated 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

▼M2

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

▼M2

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.

▼B

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;

▼M3

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

▼M2

3. The assistance activity in which liability is limited to the following operations provided in the event of an accident or breakdown invol-

▼M2

ving 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 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.

▼B

Article 3

▼M10

1. This Directive shall not apply to mutual associations which fulfil all the following conditions:

(a) the articles of association must contain provisions for calling up additional contributions or reducing their benefits;
(b) their business does not cover liability risks unless these constitute ancillary cover within the meaning of point C of the Annex or credit and suretyship risks;
(c) the annual contribution income for the activities covered by this Directive must not exceed EUR 5 million; and
(d) 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.

▼M10

This Directive shall not apply to undertakings which fulfil all 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 EUR 200 000.

Nevertheless, the provisions of this Article shall not prevent a mutual insurance undertaking from applying, or continuing, to be licensed under this Directive.

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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

(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;

▼M2

(f) *In Denmark*

Falcks Redningskorps A/S, København;

▼A2

(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

Article 5

For the purposes of this Directive:

▼M1

(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;

▼B

(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;

▼M5

(d) ‘Large risks’ means:

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

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

▼M5

(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) ►M6 risks classified under classes 3, 8, 9, 10, 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.

▼B

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

Section A: Conditions of admission

▼M7

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 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

(1) OJ No L 193, 18. 7. 1983, p. 1.

▼M7

another class if the conditions imposed in point C of the Annex are fulfilled.

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';

▼A3

— in the case of the Republic of Austria: 'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit';

— in the case of the Republic of Finland: 'keskinäinen vakuutusyhtiö — ömsesidigt försäkringsbolag' — , 'vakuutusosakeyhtiö — försäkringsaktiebolag' — , 'vakuutusyhdistys — försäkringsförening';

— in the case of the Kingdom of Sweden: 'försäkringsaktiebolag', 'ömsesidiga försäkringsbolag', 'understödsföreningar';

▼A4

— in the case of the Czech Republic: *'akciová společnost'*, *'družstvo'*;

— in the case of the Republic of Estonia: *'aktsiaselts'*;

— in the case of the Republic of Cyprus: *'Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης χωρίς μετοχικό κεφάλαιο'*;

— in the case of the Republic of Latvia: *'apdrošināšanas akciju sabiedrība'*, *'savstarpējās apdrošināšanas kooperatīvā biedrība'*;

▼A4

— in the case of the Republic of Lithuania: *'akcinės bendrovės'*, *'uždarosios akcinės bendrovės'*;
— in the case of the Republic of Hungary: *'biztosító részvénytársaság'*, *'biztosító szövetkezet'*, *'biztosító egyesület'*, *'külföldi székhelyű biztosító magyarországi fióktelepe'*;
— in the case of the Republic of Malta: *'kumpanija pubblika'*, *'kumpanija privata'*, *'fergħa'*, *'Korp ta' l- Assikurazzjoni Rikonnoxxut'*;
— in the case of the Republic of Poland: *'spółka akcyjna'*, *'towarzystwo ubezpieczeń wzajemnych'*;
— in the case of the Republic of Slovenia: *'delniška družba'*, *'družba za vzajemno zavarovanje'*;
— in the case of the Slovak Republic: *'akciová spoločnosť'*.

▼M7

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;

▼M9

(f) communicate the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of the Annex, other than carrier's liability.

▼M8

Moreover, where close links exist between the insurance undertaking and other natural or legal persons, the competent authorities shall grant authorization only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorization if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require insurance undertaking to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

1a. Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices.

▼M7

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 asso-

▼M7

ciation 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 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 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

▼M7

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.

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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.

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Article 12a

1. The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to an insurance undertaking, which is:

(a) a subsidiary of an insurance undertaking authorised in another Member State; or

(b) a subsidiary of the parent undertaking of an insurance undertaking authorised in another Member State; or

(c) controlled by the same person, whether natural or legal, who controls an insurance undertaking authorised in another Member State.

2. The competent authority of a Member State involved responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to an insurance undertaking which is:

(a) a subsidiary of a credit institution or investment firm authorised in the Community; or

(b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or

(c) controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

▼B

Section B: Conditions for exercise of business

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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 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

▼M7

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 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 Community. 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 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.

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Article 16

1. Each Member State shall require of every insurance undertaking whose head office is situated in its territory an adequate available solvency margin in respect of its entire business at all times, which is at least equal to the requirements in this Directive.

2. The available solvency margin shall consist of the assets of the insurance undertaking free of any foreseeable liabilities, less any intangible items, including:

(a) 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:

   (i) 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 available solvency margin

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to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) 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;

(iii) 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 points (i) and (ii);

(b) reserves (statutory and free) not corresponding to underwriting liabilities;

(c) the profit or loss brought forward after deduction of dividends to be paid.

The available solvency margin shall be reduced by the amount of own shares directly held by the insurance undertaking.

For those insurance undertakings which discount or reduce their technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings [1], the available solvency margin shall be reduced by the difference between the undiscounted technical provisions or technical provisions before deductions as disclosed in the notes on the accounts, and the discounted or technical provisions after deductions. This adjustment shall be made for all risks listed in point A of the Annex, except for risks listed under classes 1 and 2. For classes other than 1 and 2, no adjustment need be made in respect of the discounting of annuities included in technical provisions.

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The available solvency margin shall also be reduced by the following items:

(a) participations which the insurance undertaking holds in

— insurance undertakings within the meaning of Article 6 of this Directive, Article 6 of First 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], or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council [3],

— reinsurance undertakings within the meaning of Article 1(c) of Directive 98/78/EC,

— insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,

— credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council [4],

(1) OJ L 374, 31.12.1991, p. 7.
(2) OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 11).
(3) OJ L 330, 5.12.1998, p. 1.
(4) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EEC (OJ L 275, 27.10.2000, p. 37).

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— investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC [1] and of Article 2(4) and (7) of Directive 93/6/EEC [2];

(b) each of the following items which the insurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:

— instruments referred to in paragraph 3,

— instruments referred to in Article 18(3) of Directive 79/267/EEC,

— subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to under (a) and (b) of the fourth subparagraph.

As an alternative to the deduction of the items referred to in (a) and (b) of the fourth subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate [3]. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner overtime.

Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the fourth subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.

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3. The available solvency margin may also consist of:

(a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided in the event of the bankruptcy or liquidation of the insurance undertaking, binding agreements 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:

(i) only fully paid-up funds may be taken into account;

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(1) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

(2) OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council (OJ L 204, 21.7.1998, p. 29).

(3) OJ L 35, 11.2.2003.

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(ii) 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 available 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 available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing insurance undertaking and its available solvency margin will not fall below the required level;

(iii) 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 available 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 available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the insurance undertaking's available solvency margin will not fall below the required level;

(iv) 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;

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the insurance undertaking to defer the payment of interest on the loan;

(iii) the lender's claims on the insurance undertaking must rank entirely after those of all non-subordinated creditors;

(iv) 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;

(v) only fully paid-up amounts may be taken into account.

4. Upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of:

(a) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available solvency margin and the required solvency margin;

(b) in the case of 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 a limit of 50 % of the lesser of the available solvency margin and the required solvency margin. The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;

▼M10

(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature.

5. Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin, shall be adopted in accordance with the procedure laid down in Article 2 of Council Directive 91/675/EEC [1].

Article 16a

1. The required 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 insurance 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.

2. Subject to Article 17, the amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4.

3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

Premiums or contributions in respect of the classes 11, 12 and 13 listed in point A of the Annex shall be increased by 50 %.

The premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the last financial year shall be aggregated.

To this sum 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 EUR 50 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

With the approval of the competent authorities, statistical methods may be used to allocate the premiums or contributions in respect of the classes 11, 12 and 13.

4. The claims basis shall be calculated, as follows, using in respect of the classes 11, 12 and 13 listed in point A of the Annex, claims, provisions and recoveries increased by 50 %.

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 paragraph 1 shall be aggregated.

To this sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the last financial year both for direct business and for reinsurance acceptances.

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(1) OJ L 374, 31.12.1991, p. 32.

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From this sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding 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. If the period of reference established in paragraph 1 equals seven years, the amount of provisions for claims outstanding established at the commencement of the sixth financial year preceding the last financial year for which there are accounts shall be deducted.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in paragraph 1, shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

With the approval of the competent authorities, statistical methods may be used to allocate the claims, provisions and recoveries in respect of the classes 11, 12 and 13. In the case of the risks listed under class 18 in point A of the Annex, the amount of claims paid used to calculate the claims basis shall be the costs borne by the insurance undertaking in respect of assistance given. Such costs shall be calculated in accordance with the national provisions of the home Member State.

5. If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least equal to the required solvency margin of the year before multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of reinsurance but the ratio may in no case be higher than 1.

6. The fractions applicable to the portions referred to in the sixth subparagraph of paragraph 3 and the sixth subparagraph of paragraph 4 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

(a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;

(b) a provision is set up for increasing age;

(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;

(d) the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;

(e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

Article 17

1. One third of the required solvency margin as specified in Article 16a shall constitute the guarantee fund. This fund shall consist of the items listed in Article 16(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(c).

2. The guarantee fund may not be less than EUR 2 million. Where, however, all or some of the risks included in one of the classes 10 to 15 listed in point A of the Annex are covered, it shall be EUR 3 million.

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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 17a

1. The amounts in euro as laid down in Article 16a (3) and (4) and Article 17(2) shall be reviewed annually starting 20 September 2003 in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of this Directive and the review date and rounded up to a multiple of EUR 100 000.

If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place.

2. The Commission shall inform annually the European Parliament and the Council of the review and the adapted amounts referred to in paragraph 1.

▼M7

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.

▼M2

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.

▼M3

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.

▼M7

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.

▼**M7**

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 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 ►**M10** Article 16a ◄, 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.

▼**M10**

Article 20a

1. Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those insurance

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undertakings where competent authorities consider that policyholders' rights are threatened. The financial recovery plan shall as a minimum include particulars or proof concerning for the next three financial years:

(a) estimates of management expenses, in particular current general expenses and commissions;

(b) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover underwriting liabilities and the required solvency margin;

(e) the overall reinsurance policy.

2. Where policyholders' rights are threatened because the financial position of the undertaking is deteriorating, Member States shall ensure that the competent authorities have the power to oblige insurance undertakings to have a higher required solvency margin, in order to ensure that the insurance undertaking is able to fulfil the solvency requirements in the near future. The level of this higher required solvency margin shall be based on the financial recovery plan referred to in paragraph 1.

3. Member States shall ensure that the competent authorities have the power to revalue downwards all elements eligible for the available solvency margin, in particular, where there has been a significant change in the market value of these elements since the end of the last financial year.

4. Member States shall ensure that the competent authorities have the power to decrease the reduction, based on reinsurance, to the solvency margin as determined in accordance with Article 16a where:

(a) the nature or quality of reinsurance contracts has changed significantly since the last financial year;

(b) there is no or an insignificant risk transfer under the reinsurance contracts.

5. If the competent authorities have required a financial recovery plan for the insurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 10(3), second subparagraph of this Directive, Article 16(1)(a) of Council Directive 88/357/EEC (second non-life insurance Directive) ([1]) and Article 12(2) of Council Directive 92/49/EEC (third non-life insurance Directive) ([2]), as long as they consider that policyholders rights are threatened within the meaning of paragraph 1.

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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.

([1]) OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

([2]) OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

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Section C: Withdrawal of authorization

▼M7

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.

▼M6

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

▼B

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);

▼M9

(h) It communicates the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of the Annex, other than carrier's liability.

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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.

▼M2

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 applica-

▼M2

tion 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.

▼B

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.

▼M2

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.

▼B

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.

▼M7

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.

▼M7

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.

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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.

▼M6

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 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

▼M6

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 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.

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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

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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 'arrête 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

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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.

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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)

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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

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18. *Assistance*

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

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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.

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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.

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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.

▼M3

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.

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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 betwen 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.