Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance

TITLE III

CONDITIONS GOVERNING THE BUSINESS OF ASSURANCE

CHAPTER 2

RULES RELATING TO TECHNICAL PROVISIONS AND THEIR REPRESENTATION

Article 20

Establishment of technical provisions

1 The home Member State shall require every assurance undertaking to establish sufficient technical provisions, including mathematical provisions, in respect of its entire business.

The amount of such technical provisions shall be determined according to the following principles.

A. (i) the amount of the technical life-assurance provisions shall be calculated by a sufficiently prudent prospective actuarial valuation, taking account of all future liabilities as determined by the policy conditions for each existing contract, including:

— all guaranteed benefits, including guaranteed surrender values,

— bonuses to which policy holders are already either collectively or individually entitled, however those bonuses are described — vested, declared or allotted,

— all options available to the policy holder under the terms of the contract,

— expenses, including commissions,

taking credit for future premiums due;

(ii) the use of a retrospective method is allowed, if it can be shown that the resulting technical provisions are not lower than would be required under a sufficiently prudent prospective calculation or if a prospective method cannot be used for the type of contract involved;

(iii) a prudent valuation is not a 'best estimate' valuation, but shall include an appropriate margin for adverse deviation of the relevant factors;

(iv) the method of valuation for the technical provisions must not only be prudent in itself, but must also be so having regard to the method of valuation for the assets covering those provisions;

(v) technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalisations is allowed, however,

where they are likely to give approximately the same result as individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualised;

(vi) where the surrender value of a contract is guaranteed, the amount of the mathematical provisions for the contract at any time shall be at least as great as the value guaranteed at that time;

B. the rate of interest used shall be chosen prudently. It shall be determined in accordance with the rules of the competent authority in the home Member State, applying the following principles:

(a) for all contracts, the competent authority of the assurance undertaking's home Member State shall fix one or more maximum rates of interest, in particular in accordance with the following rules:

(i) when contracts contain an interest rate guarantee, the competent authority in the home Member State shall set a single maximum rate of interest. It may differ according to the currency in which the contract is denominated, provided that it is not more than 60 % of the rate on bond issues by the State in whose currency the contract is denominated.

If a Member State decides, pursuant to the second sentence of the first subparagraph, to set a maximum rate of interest for contracts denominated in another Member State's currency, it shall first consult the competent authority of the Member State in whose currency the contract is denominated;

(ii) however, when the assets of the assurance undertaking are not valued at their purchase price, a Member State may stipulate that one or more maximum rates may be calculated taking into account the yield on the corresponding assets currently held, minus a prudential margin and, in particular for contracts with periodic premiums, furthermore taking into account the anticipated yield on future assets. The prudential margin and the maximum rate or rates of interest applied to the anticipated yield on future assets shall be fixed by the competent authority of the home Member State;

(b) the establishment of a maximum rate of interest shall not imply that the assurance undertaking is bound to use a rate as high as that;

(c) the home Member State may decide not to apply paragraph (a) to the following categories of contracts:

— unit-linked contracts,

— single-premium contracts for a period of up to eight years,

— without-profits contracts, and annuity contracts with no surrender value.

In the cases referred to in the second and third indents of the first subparagraph, in choosing a prudent rate of interest, account may be taken of the currency in which the contract is denominated and corresponding assets currently held and where the undertaking's assets are valued at their current value, the anticipated yield on future assets.

Under no circumstances may the rate of interest used be higher than the yield on assets as calculated in accordance with the accounting rules in the home Member State, less an appropriate deduction;

(d) the Member State shall require an assurance undertaking to set aside in its accounts a provision to meet interest-rate commitments vis-à-vis policy holders if the present or foreseeable yield on the undertaking's assets is insufficient to cover those commitments;

(e) the Commission and the competent authorities of the Member States which so request shall be notified of the maximum rates of interest set under (a);

C. the statistical elements of the valuation and the allowance for expenses used shall be chosen prudently, having regard to the State of the commitment, the type of policy and the administrative costs and commissions expected to be incurred;

D. in the case of participating contracts, the method of calculation for technical provisions may take into account, either implicitly or explicitly, future bonuses of all kinds, in a manner consistent with the other assumptions on future experience and with the current method of distribution of bonuses;

E. allowance for future expenses may be made implicitly, for instance by the use of future premiums net of management charges. However, the overall allowance, implicit or explicit, shall be not less than a prudent estimate of the relevant future expenses;

F. the method of calculation of technical provisions shall not be subject to discontinuities from year to year arising from arbitrary changes to the method or the bases of calculation and shall be such as to recognise the distribution of profits in an appropriate way over the duration of each policy.

2 Assurance undertakings shall make available to the public the bases and methods used in the calculation of the technical provisions, including provisions for bonuses.

3 The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 26. In respect of business written in the Community, these assets must be localised within the Community. Member States shall not require assurance undertakings to localise their assets in a particular Member State. The home Member State may, however, permit relaxations in the rules on the localisation of assets.

4 If the home Member State allows any technical provisions to be covered by claims against reassurers, it shall fix the percentage so allowed. In such case, it may not require the localisation of the assets representing such claims.

Article 21

Premiums for new business

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable assurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For this purpose, all aspects of the financial situation of an assurance undertaking may be taken into account, without the input from resources other than premiums and income

earned thereon being systematic and permanent in such a way that it may jeopardise the undertaking's solvency in the long term.

Article 22

Assets covering technical provisions

The assets covering the technical provisions shall take account of the type of business carried on by an assurance undertaking in such a way as to secure the safety, yield and marketability of its investments, which the undertaking shall ensure are diversified and adequately spread.

Article 23

Categories of authorised assets

1 The home Member State may not authorise assurance undertakings to cover their technical provisions with any but the following categories of assets:

A. investments

(a) debt securities, bonds and other money- and capital-market instruments;

(b) loans;

(c) shares and other variable-yield participations;

(d) units in undertakings for collective investment in transferable securities (UCITS) and other investment funds;

(e) land, buildings and immovable-property rights;

B. debts and claims

(f) debts owed by reassurers, including reassurers' shares of technical provisions;

(g) deposits with and debts owed by ceding undertakings;

(h) debts owed by policy holders and intermediaries arising out of direct and reassurance operations;

(i) advances against policies;

(j) tax recoveries;

(k) claims against guarantee funds;

C. others

(l) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortisation;

(m) cash at bank and in hand, deposits with credit institutions and any other body authorised to receive deposits;

(n) deferred acquisition costs;

(o) accrued interest and rent, other accrued income and prepayments;

(p) reversionary interests.

2 In the case of the association of underwriters known as 'Lloyd's', asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 2000/12/EC of the European Parliament and of the Council[(1)] or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

3 The inclusion of any asset or category of assets listed in paragraph 1 shall not mean that all these assets should automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets; in this connection, it may require valuable security or guarantees, particularly in the case of debts owed by reassurers.

In determining and applying the rules which it lays down, the home Member State shall, in particular, ensure that the following principles are complied with:

(i) assets covering technical provisions shall be valued net of any debts arising out of their acquisition;

(ii) all assets must be valued on a prudent basis, allowing for the risk of any amounts not being realisable. In particular, tangible fixed assets other than land and buildings may be accepted as cover for technical provisions only if they are valued on the basis of prudent amortisation;

(iii) loans, whether to undertakings, to a State or international organisation, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by assurance undertakings or other forms of security;

(iv) derivative instruments such as options, futures and swaps in connection with assets covering technical provisions may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;

(v) transferable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realised in the short term or if they are holdings in credit institutions, in assurance undertakings, within the limits permitted by Article 6, or in investment undertakings established in a Member State;

(vi) debts owed by and claims against a third party may be accepted as cover for the technical provisions only after deduction of all amounts owed to the same third party;

(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realisable. In particular, debts owed by policy holders and intermediaries arising out of assurance and reassurance operations may be accepted only in so far as they have been outstanding for not more than three months;

(viii) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article,

take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that this is consistent with the calculation of the mathematical provisions.

4 Notwithstanding paragraphs 1, 2 and 3, in exceptional circumstances and at an assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 22.

Article 24

Rules for investment diversification

1 As regards the assets covering technical provisions, the home Member State shall require every assurance undertaking to invest no more than:

a 10 % of its total gross technical provisions in any one piece of land or building, or a number of pieces of land or buildings close enough to each other to be considered effectively as one investment;

b 5 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money- and capital-market instruments from the same undertaking, or in loans granted to the same borrower, taken together, the loans being loans other than those granted to a State, regional or local authority or to an international organisation of which one or more Member States are members. This limit may be raised to 10 % if an undertaking invests not more than 40 % of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 % of its assets;

c 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertakings — in so far as Article 6 allows it — and investment undertakings established in a Member State. The limits may be raised to 8 % and 2 % respectively by a decision taken on a case-by-case basis by the competent authority of the home Member State;

d 3 % of its total gross technical provisions in the form of cash in hand;

e 10 % of its total gross technical provisions in shares, other securities treated as shares and debt securities which are not dealt in on a regulated market.

2 The absence of a limit in paragraph 1 on investment in any particular category does not imply that assets in that category should be accepted as cover for technical provisions without limit. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets. In particular it shall ensure, in the determination and the application of those rules, that the following principles are complied with:

(i) assets covering technical provisions must be diversified and spread in such a way as to ensure that there is no excessive reliance on any particular category of asset, investment market or investment;

(ii) investment in particular types of asset which show high levels of risk, whether because of the nature of the asset or the quality of the issuer, must be restricted to prudent levels;

(iii) limitations on particular categories of asset must take account of the treatment of reassurance in the calculation of technical provisions;

(iv) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(v) the percentage of assets covering technical provisions which are the subject of non-liquid investments must be kept to a prudent level;

(vi) where the assets held include loans to or debt securities issued by certain credit institutions, the home Member State may, when applying the rules and principles contained in this Article, take into account the underlying assets held by such credit institutions. This treatment may be applied only where the credit institution has its head office in a Member State, is entirely owned by that Member State and/or that State's local authorities and its business, according to its memorandum and articles of association, consists of extending, through its intermediaries, loans to, or guaranteed by, States or local authorities or of loans to bodies closely linked to the State or to local authorities.

3 In the context of the detailed rules laying down the conditions for the use of acceptable assets, the Member State shall give more limitative treatment to:

— any loan unaccompanied by a bank guarantee, a guarantee issued by an assurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral,

— UCITS not coordinated within the meaning of Directive 85/611/EEC and other investment funds, as compared with UCITS coordinated within the meaning of that Directive,

— securities which are not dealt in on a regulated market, as compared with those which are,

— bonds, debt securities and other money- and capital-market instruments not issued by States, local or regional authorities or undertakings belonging to zone A as defined in Directive 2000/12/EC or the issuers of which are international organisations not numbering at least one Community Member State among their members, as compared with the same financial instruments issued by such bodies.

4 Member States may raise the limit laid down in paragraph 1(b) to 40 % in the case of certain debt securities when these are issued by a credit institution which has its head office in a Member State and is subject by law to special official supervision designed to protect the holders of those debt securities. In particular, sums deriving from the issue of such debt securities must be invested in accordance with the law in assets which, during the whole period of validity of the debt securities, are capable of covering claims attaching to debt securities and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

5 Member States shall not require assurance undertakings to invest in particular categories of assets.

6 Notwithstanding paragraph 1, in exceptional circumstances and at the assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1(a) to (e), subject to Article 22.

Article 25

Contracts linked to UCITS or share index

1 Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurance undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

2 Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in paragraph 1, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

3 Articles 22 and 24 shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in paragraphs 1 and 2. References to the technical provisions in Article 24 shall be to the technical provisions excluding those in respect of such liabilities.

4 Where the benefits referred to in paragraphs 1 and 2 include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional technical provisions shall be subject to Articles 22, 23, and 24.

Article 26

Matching rules

1 For the purposes of Articles 20(3) and 54, Member States shall comply with Annex II as regards the matching rules.

2 This Article shall not apply to the commitments referred to in Article 25.

(**1**) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).