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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)

Corrected by:

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

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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;

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[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.

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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

Article 1

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

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Article 2

This Directive does not apply to:

1. The following kinds of insurance:

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

   (b) Annuities;

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

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

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

2. The following operations:

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

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

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

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

Article 3

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

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

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

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

and

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

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

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

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Article 4

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

(a) *In Germany*

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

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

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

The following semi-public institutions:

1. Postbeamtenkrankenkasse,
2. Krankenversorgung der Bundesbahnbeamten;

(b) *In France*

The following institutions:

1. Caisse départementale des incendiés des Ardennes,
2. Caisse départementale des incendiés de la Côte-d'Or,
3. Caisse départementale des incendiés de la Marne,
4. Caisse départementale des incendiés de la Meuse,
5. Caisse départementale des incendiés de la Somme,
6. Caisse départementale grêle du Gers,
7. Caisse départementale grêle de l'Hérault;

(c) *In Ireland*

Voluntary Health Insurance Board;

(d) *In Italy*

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

(e) *In the United Kingdom*

The Crown Agents.

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Article 5

For the purposes of this Directive:

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

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

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

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

Section A: Conditions of admission

Article 6

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

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

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

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

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

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

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

Article 7

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

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

However:

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

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

(c) Pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of

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Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes.

Article 8

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

(a) Adopt one of the following forms:

— in the case of the Kingdom of Belgium:

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

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— in the case of Denmark:

'Aktieselskaber', 'gensidige selskaber',

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— in the case of the Federal Republic of Germany:

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

— in the case of the French Republic:

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

— in the case of the Republic of Ireland:

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

— in the case of the Italian Republic:

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

— in the case of the Grand Duchy of Luxembourg:

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

— in the case of the Kingdom of the Netherlands:

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

— in the case of the United Kingdom:

'incorporated companies limited by shares or by guarantee or unlimited', 'societies registered under the Industrial and Provident Societies Acts', 'societies registered under the Friendly Societies Act' ►C1 the association of underwriters known as Lloyd's ◄.

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

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

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

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

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

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

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

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

Article 9

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

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

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

(c) The guiding principles as to reinsurance;

(d) The items constituting the minimum guarantee fund;

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

and in addition, for the first three financial years:

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

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

(h) A forecast balance sheet;

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

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

Article 10

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

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

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

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

(d) Designate an authorized agent having his permanent residence and abode in the host country, and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the host country; if the

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agent has a legal personality, it must have its head office in the host country and it must in its turn designate an individual to represent it who complies with the above conditions. The designated agent shall not be refused by the Member State except on grounds relating to repute or technical qualifications such as apply to directors of undertakings whose head offices are situated in the territory of the State in question.

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

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

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

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

Article 11

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

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

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

(c) The guiding principles as to reinsurance;

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

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

and in addition, for the first three financial years:

(f) Estimates relating to expenses of management;

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

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

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

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

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

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

Article 12

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

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

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

Section B: Conditions for exercise of business

Article 13

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

Article 14

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

Article 15

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

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

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

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

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

3. If a Member State allows any technical reserves to be covered by claims against reinsurers, it shall fix the percentage so allowed. In such

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case, it may not require the assets representing such claims to be localized in its territory, notwithstanding the provisions of paragraph 2.

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

Article 16

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

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

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

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

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

— any carry-forward of profits,

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

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

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

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

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

first result (premium basis):

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

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

— from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as

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well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

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

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

Second result (claims basis):

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

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

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

— from this sum there shall be deducted the amount of ►C1 recoveries effected ◄ during the periods specified in (2),

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

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

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

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

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

— a reserve is set up for increasing age,

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

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

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

5. In the case of Lloyd's, the calculation of the first result in respect of premiums, referred to in paragraph 3, shall be made on the basis of net premiums, which shall be multiplied by a flat-rate percentage fixed annually by ►C1 the supervisory authority of the head office. ◄ This flat-rate percentage must be calculated on the basis of the most recent statistical data on commissions paid.

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

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Article 17

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

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

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

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

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

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

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

Article 18

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

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

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

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

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

Article 19

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

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

Article 20

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

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

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

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

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

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

Article 21

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

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

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

Section C: Withdrawal of authorization

Article 22

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

(a) No longer fulfils the conditions of admission;

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

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

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

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

(a) No longer fulfils the conditions for admission;

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

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

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

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

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

Article 23

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

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

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

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

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

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

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

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

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

Article 24

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

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

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

Article 25

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

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

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

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

Article 26

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

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

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

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

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

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

Article 27

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

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

Article 28

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

Article 29

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application

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of provisions different to those provided for in this Title, for the purpose of ensuring, under conditions of reciprocity, adequate protection for insured persons in the Member States.

Title IV — Transitional and other provisions

Article 30

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

2. Furthermore, Member States may:

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

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

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

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

Undertakings in Belgium which, in accordance with their objects, carry on the business of intervention mortgage loans or savings operations in accordance with No 4 of Article 15 of the provisions relating to the supervision of private savings banks, coordinated by the ‘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

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Directive, are undertaking one or more classes referred to in Article 1 and do not extend their business within the meaning of Article 10 (2) a maximum period of five years, from the date of notification of this Directive, in order to comply with the conditions of Article 25.

Article 32

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

Title V — Final provisions

Article 33

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

Article 34

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

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

Article 35

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

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

Article 36

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

Article 37

The Annex shall form an integral part of this Directive.

Article 38

This Directive is addressed to the Member States.

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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

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

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

Where the authorization simultaneously covers:

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

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

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

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

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

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

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

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

C. **Ancillary risks**

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

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

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— are covered by the contract insuring the principal risk.

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