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FIRST COUNCIL DIRECTIVE

of 5 March 1979

on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance

(79/267/EEC)

(OJ L 63, 13.3.1979, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Directive 90/619/EEC of 8 November 1990	L 330	50	29.11.1990
►**M2**	Council Directive 92/96/EEC of 10 November 1992	L 360	1	9.12.1992

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

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FIRST COUNCIL DIRECTIVE

of 5 March 1979

on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance

(79/267/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49 and 57 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas, in order to facilitate the taking up and pursuit of the business of life assurance, it is essential to eliminate certain divergences which exist between national supervisory legislation; whereas, in order to achieve this objective and at the same time ensure adequate protection for policy-holders and beneficiaries in all Member States, the provisions relating to the financial guarantees required of life assurance undertakings should be coordinated;

Whereas a classification by class of insurance is necessary in order to determine, in particular, the activities subject to compulsory authorization;

Whereas certain mutual associations which, by virtue of their legal status, fulfil requirements as to security and other specific financial guarantees should be excluded from the scope of this Directive; whereas certain organizations whose activity covers only a very restricted sector and is limited by their articles of association should also be excluded;

Whereas the Member States have different regulations and practices as to the simultaneous carrying on of life assurance and non-life insurance; whereas newly formed undertakings should no longer be authorized to carry on these two activities simultaneously; whereas Member States should be allowed to permit existing undertakings which carry on these activities simultaneously to continue to do so provided that separate management is adopted for each of their activities, in order that the respective interests of life policy-holders and non-life policy-holders are safeguarded and the minimum financial obligations in respect of one of the activities are not borne by the other activity; whereas, when one of the undertakings wishes to establish itself in a Member State to pursue life assurance in that State, it should set up a subsidiary for that purpose, which may be eligible on a transitional basis for certain facilities; whereas, Member States should be given the option of requiring those existing undertakings established in their territory which carry on life assurance and non-life insurance simultaneously to put an end to this practice; whereas, moreover, specialized undertakings should be subject to special supervision where a non-life undertaking belongs to the same financial group as a life undertaking;

Whereas life assurance is subject to official authorization and supervision in each Member State; whereas the conditions for the granting or withdrawal of such authorization should be defined; whereas provision must be made for the right to apply to the courts should an authorization be refused or withdrawn;

Whereas, as regards technical reserves, including mathematical reserves, the same rules may be adopted as in the case of non-life insurance, namely, they must be localized in the country where activities are carried on and the rules of that country are to govern the methods of

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[1] OJ No C 35, 28. 3. 1974, p. 9.
[2] OJ No C 140, 13. 11. 1974, p. 44.
[3] OJ No C 109, 19. 9. 1974, p. 1.

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calculation, the determination of investment categories and the valuation of assets; whereas, although it is desirable that these various subjects should be coordinated, this is not essential for the purposes of this Directive and may be carried out subsequently;

Where it is necessary that, over and above technical reserves, including mathematical reserves, of sufficient amount to meet their underwriting liabilites, insurance undertakings should possess a supplementary reserve, known as the solvency margin, represented by free assets and, with the agreement of the supervisory authority, by other implicit assets, in order to provide against business fluctuations; whereas, in order to ensure that the requirements imposed for such purposes are determined according to objective criteria whereby undertakings of the same size will be placed on an equal footing as regards competition, it is desirable to provide that this margin shall be related to all the commitments of the undertaking and to the nature and gravity of the risks presented by the various activities falling within the scope of the Directive; whereas this margin should therefore vary according to whether the risks are of investment, death or management only; whereas it should accordingly be determined in terms of mathematical reserves and capital at risk underwritten by an undertaking, of premiums or contributions received, of reserves only or of the assets of tontines;

Whereas it is necessary to require a guarantee fund, the amount and composition of which are such as to provide an assurance that the undertakings possess adequate resources when they are set up and that in the subsequent course of business the solvency margin in no event falls below a minimum of security; whereas the whole or a specified part of this guarantee fund must consist of explicit asset items;

Whereas it is necessary to provide for measures in cases where the financial position of the undertaking becomes such that it is difficult for it to meet its underwriting liabilities;

Whereas the coordinated rules concerning the pursuit of the business of direct insurance within the Community should, in principle, apply to all undertakings operating on the market and, consequently, also to agencies and branches where the head office of the undertaking is situated outside the Community; whereas it is nevertheless desirable as regards the methods of supervision to lay down special provisions for such agencies or branches, in view of the fact that the assets of the undertakings to which they belong are situated outside the Community;

Whereas it is desirable to provide for the conclusion of reciprocal agreements with one or more third countries in order to permit the relaxation of such special conditions, while observing the principle that such agencies and branches should not obtain more favourable treatment than Community undertakings;

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

Whereas Article 52 of the EEC Treaty has been directly applicable since the end of the transitional period; whereas since that time there has accordingly been no need for the adoption of Directives abolishing restrictions on the freedom of establishment; whereas, however, the provisions concerning proof of good repute and no previous bankruptcy contained in Council Directive 73/240/EEC of 24 July 1973, abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance [1] do not strictly speaking constitute restrictions and are also required in life assurance; whereas they should accordingly be included in this coordination Directive;

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

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[1] OJ No L 228, 16. 8. 1973, p. 20.

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HAS ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1

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

1. The following kinds of insurance where they are on a contractual basis:

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

   (b) annuities;

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

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

2. The following operations, where they are on a contractual basis, in so far as they are subject to supervision by the administrative authorities responsible for the supervision of private insurance ►M2 ——— ◄:

   (a) tontines whereby associations of subscribers are set up with a view to jointly capitalizing their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased;

   (b) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

   (c) management of group pension funds, i.e. operations consisting, for the undertaking concerned, in managing the investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

   (d) the operations referred to in (c) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

   (e) the operations carried out by insurance companies such as those referred to in Chapter 1, Title 4 of Book IV of the French ‘Code des assurances’.

3. Operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, when they are effected or managed at their own risk by assurance undertakings in accordance with the laws of a Member State.

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Article 2

This Directive shall not concern:

1. subject to the application of Article 1 (1) (c) of this Directive, the classes designated in the Annex to First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance [1], hereinafter referred to as 'the first coordination Directive (non-life insurance)';
2. operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;
3. operations carried out by organizations other than undertakings referred to in Article 1, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical reserves;
4. subject to the application of Article 1 (3), insurance forming part of a statutory system of social security.

Article 3

This Directive shall not concern:

1. organizations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;
2. mutual associations, where:
   — the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it, and
   — the annual contribution income for the activities covered by this Directive does not exceed 500 000 units of account for three consecutive years. If this amount is exceeded for three consecutive years this Directive shall apply with effect from the fourth year.

Article 4

This Directive shall not concern the 'Versorgungsverband deutscher Wirtschaftsorganisationen' in Germany or the 'Caisse d'épargne de l'État' in Luxembourg unless their statutes are amended as regards the scope of their activities.

Article 5

For the purposes of this Directive:

(a) 'unit of account' means the European unit of account (EUA) as defined by Article 10 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities [2]; wherever this Directive refers to the unit of account, the conversion value in national currency to be adopted shall as from 31 December of each year be that of the last day of the preceding month of October for which EUA conversion values are available in all the Community currencies;

(b) 'matching assets' means the representation of underwriting liabilities which can be required to be met in a particular currency by assets expressed or realisable in the same currency;

(1) OJ No L 228, 16. 8. 1973, p. 3.
(2) OJ No L 356, 31. 12. 1977, p. 1.

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

(d) ‘capital at risk’ means the amount payable on death less the mathematical reserve for the main risk.

TITLE II

RULES APPLICABLE TO UNDERTAKINGS WHOSE HEAD OFFICES ARE SITUATED WITHIN THE COMMUNITY

Section A

Conditions of admission

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Article 6

The taking-up of the activities covered by this Directive shall be subject to prior official authorization.

Such authorization shall be sought from the authorities of the home Member State by:

(a) any undertaking which establishes its head office in the territory of that State;

(b) any undertaking which, having received the authorization required in the first subparagraph, extends its business to an entire class or to other classes.

Article 7

1. Authorization shall be valid for the entire Community. It shall permit an undertaking to carry on business there, under either the right of establishment or freedom to provide services.

2. Authorization shall be granted for a particular class of assurance as listed in the Annex. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

The competent authorities may restrict authorization requested for one of the classes to the operations set out in the scheme of operations referred to in Article 9.

Each Member State may grant authorization for two or more of the classes, where its national laws permit such classes to be carried on simultaneously.

Article 8

1. The home Member State shall require every assurance undertaking for which authorization is sought to:

(a) adopt one of the following forms:

— in the case of the Kingdom of Belgium: ‘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’, ‘pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)’,

— in the case of the Federal Republic of Germany: ‘Aktiengesellschaft’, ‘Versicherungsverein auf Gegenseitigkeit’, ‘öffentlich-rechtliches Wettbewerbsversicherungsunternehmen’,

— in the case of the French Republic: ‘société anonyme’, ‘société d'assurance mutuelle’, ‘institution de prévoyance régie par le

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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, societies registered under the Industrial and Provident Societies Acts and societies registered under the Friendly Societies Acts,

— in the case of the Italian Republic: 'societá per azioni', 'societá 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 or incorporated under the Friendly Societies Acts, the association of underwriters known as Lloyd's,

— in the case of the Hellenic Republic: 'ανώνυμη εταιρία',

— in the case of the Kingdom of Spain: 'sociedad anonima', 'sociedad mutua', 'sociedad cooperativa',

— in the case of the Portuguese Republic: 'sociedade anónima', 'mútua de seguros'.

An assurance undertaking may also adopt the form of a European company when that has been established.

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

(b) limit its objects to the business provided for in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business;

(c) submit a scheme of operations in accordance with Article 9;

(d) possess the minimum guarantee fund provided for in Article 20 (2);

(e) be effectively run by persons of good repute with appropriate professional qualifications or experience.

2. An undertaking seeking authorization to extend its business to other classes or to extend an authorization covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 9.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 19 and the guarantee fund referred to in Article 20 (1) and (2).

3. Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions or of forms and other printed documents which an assurance undertaking intends to use in its dealings with policy-holders.

Notwithstanding the first subparagraph, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for an undertaking to carry on its business.

Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and the communication of any other documents necessary for the normal exercise of supervision.

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Not later than five years after the date of entry into force of Directive 92/96/EEC [1], the Commission shall submit a report to the Council on the implementation of this paragraph.

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

Article 9

The scheme of operations referred to in Article 8 (1) (c) and (2) shall include particulars or proof concerning:

(a) the nature of the commitments which the undertaking proposes to cover;

(b) the guiding principles as to reassurance;

(c) the items constituting the minimum guarantee fund;

(d) estimates relating to the costs of setting up the administrative services and the organization for securing business and the financial resources intended to meet those costs;in addition, for the first three financial years:

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

(f) a forecast balance sheet;

(g) estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

Article 10

1. An assurance undertaking that proposes to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. The Member States shall require every assurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which it proposes to establish a branch;

(b) a scheme of operations setting out *inter alia* the types of business envisaged and the structural organization of the branch;

(c) the address in the Member State of the branch from which documents may be obtained and to which they may be delivered, it being understood that that address shall be the one to which all communications to the authorized agent are sent;

(d) the name of the branch's authorized agent, who must possess sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the assured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorized agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the assurance undertaking or the good repute and professional qualification or experience of the directors or managers or the authorized agent, taking into account the business planned, they shall

[1] OJ No L 360, 9. 12. 1992, p. 1.

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within three months of receiving all the information referred to in paragraph 2 communicate that information to the competent authorities of the Member State of the branch and shall inform the undertaking concerned accordingly.

The competent authorities of the home Member State shall also attest that the assurance undertaking has the minimum solvency margin calculated in accordance with Articles 19 and 20.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the Member State of the branch they shall give the reasons for their refusal to the undertaking concerned within three months of receiving all the information in question. That refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4. Before the branch of an assurance undertaking starts business, the competent authorities of the Member State of the branch shall, within two months of receiving the information referred to in paragraph 3, inform the competent authority of the home Member State, if appropriate, of the conditions under which, in the interest of the general good, that business must be carried on in the Member State of the branch.

5. On receiving a communication from the competent authorities of the Member State of the branch or, if no communication is received from them, on expiry of the period provided for in paragraph 4, the branch may be established and start business.

6. In the event of a change in any of the particulars communicated under paragraph 2 (b), (c) or (d), an assurance undertaking shall give written notice of the change to the competent authorities of the home Member State and of the Member State of the branch at least one month before making the change so that the competent authorities of the home Member State and the competent authorities of the Member State of the branch may fulfil their respective roles under paragraphs 3 and 4.

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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 the competent authorities have not dealt with an application for an authorization upon the expiry of a period of six months from the date of its receipt.

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Article 13

1. Without prejudice to paragraphs 3 and 7, no undertaking may be authorized both pursuant to this Directive and pursuant to Directive 73/239/EEC.

2. However, Member States may provide that:

— undertakings authorized pursuant to this Directive may also obtain authorization, in accordance with Article 6 of Directive 73/239/EEC for the risks listed in classes 1 and 2 in the Annex to that Directive,

— undertakings authorized pursuant to Article 6 of Directive 73/239/EEC solely for the risks listed in classes 1 and 2 in the Annex to that Directive may obtain authorization pursuant to this Directive.

3. Subject to paragraph 6, undertakings referred to in paragraph 2 and those which at the time of notification of this Directive carry on simultaneously both of the activities covered by this Directive and by

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Directive 73/239/EEC may continue to do so, provided that each activity is separately managed in accordance with Article 14.

4. Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing undertakings authorized pursuant to this Directive for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in the Annex to Directive 73/239/EEC carried on by the undertakings referred to in paragraph 2 shall be governed by the rules applicable to life assurance activities.

5. Where an undertaking carrying on the activities referred to in the Annex to Directive 73/239/EEC has financial, commercial or administrative links with an undertaking carrying on the activities covered by this Directive, the supervisory authorities of the Member States within whose territories the head offices of those undertakings are situated shall ensure that the accounts of the undertakings in question are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.

6. Any Member State may require undertakings whose head offices are situated in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged at the time of notification of this Directive.

7. The provisions of this Article shall be reviewed on the basis of a report from the Commission to the Council in the light of future harmonization of the rules on winding-up, and in any case before 31 December 1999.

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Article 14

1. The separate management referred to in Article 13 (3) must be organized in such a way that the activities covered by this Directive are distinct from the activities covered by the first coordination Directive (non-life insurance) in order that:

— the respective interests of life policy-holders and non-life policy-holders are not prejudiced and, in particular, that profits from life assurance benefit life policy-holders as if the undertaking only carried on the activity of life assurance,

— the minimum financial obligations, in particular solvency margins, in respect of one or other of the two activities, namely an activity under this Directive and an activity under the first coordination Directive (non-life insurance) are not borne by the other activity.

However, as long as the minimum financial obligations are fulfilled under the conditions laid down in the second indent of the first subparagraph and, provided the competent authority is informed, the undertaking may use those explicit items of the solvency margin which are still available for one or other activity.

The supervisory authorities shall analyze the results in both activities so as to ensure that the provisions of this paragraph are complied with.

2. (a) Accounts shall be drawn up in such a manner as to show the sources of the results for each of the two activities, life assurance and non-life insurance. To this end all income (in particular premiums, payments by re-insurers and investment income) and expenditure (in particular insurance settlements, additions to technical reserves, reinsurance premiums, operating expenses in respect of insurance business) shall be broken down according to origin. Items common to both activities shall be entered in accordance with methods of apportionment to be accepted by the competent supervisory authority.

(b) Undertakings must, on the basis of the accounts, prepare a statement clearly identifying the items making up each solvency margin, in accordance with Article 18 of this Directive and Article 16 (1) of the first coordination Directive (non-life insurance).

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3. If one of the solvency margins is insufficient, the supervisory authorities shall apply to the deficient activity the measures provided for in the relevant Directive, whatever the results in the other activity. By way of derogation from the second indent of the first subparagraph of paragraph 1, these measures may involve the authorization of a transfer from one activity to the other.

Section B

Conditions for carrying on activities

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Article 15

1. The financial supervision of an assurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State. If the competent authorities of the Member State of the commitment have reason to consider that the activities of an assurance undertaking might affect its financial soundness, they shall inform the competent authorities of the undertaking's home Member State. The latter authorities shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

2. That financial supervision shall include verification, with respect to the assurance undertaking's entire business, of its state of solvency, the establishment of technical provisions, including mathematical provisions, and of the assets covering them, in accordance with the rules laid down or practices followed in the home Member State pursuant to the provisions adopted at Community level.

3. The competent authorities of the home Member State shall require every assurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.

Article 16

The Member State of the branch shall provide that, where an assurance undertaking authorized in another Member State carries on business through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the Member State of the branch, carry out themselves, or through the intermediary of persons they appoint for that purpose, on-the-spot verification of the information necessary to ensure the financial supervision of the undertaking. The authorities of the Member State of the branch may participate in that verification.

Article 17

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

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

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

— all guaranteed benefits, including guaranteed surrender values,

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

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

— expenses, including commissions;

taking credit for future premiums due;

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

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

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

(v) technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalizations is allowed, however, where they are likely to give approximately the same result as individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualized;

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

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

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

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

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

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

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

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

— unit-linked contracts,

— single-premium contracts for a period of up to eight years, — without-profits contracts, and annuity contracts with no surrender value.

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

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

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

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

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

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

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

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

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

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

3. The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 24 of Directive 92/96/EEC. In respect of business written in the Community, these assets must be localized within the Community. Member States shall not require assurance undertakings to localize their assets in a particular Member State. The home Member State may, however, permit relaxations in the rules on the localization of assets.

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

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Article 18

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

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The solvency margin shall consist of:

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1. the assets of the undertaking free of any foreseeable liabilities, less any intangible items. In particular the following shall be included:

   — the paid-up share capital or, in the case of a mutual assurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

   (a) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

   (b) the memorandum and articles of association must stipulate, with respect to any such payments for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

   (c) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in (a) and (b),

   — one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund,

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

   — any profits brought forward,

   — cumulative preferential share capital and subordinated loan capital may be included but, if so, only up to 50 % of the margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, if the following minimum criteria are met:

   (a) in the event of the bankruptcy or liquidation of the assurance undertaking, binding agreements must exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

   Subordinated loan capital must also fulfil the following conditions:

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

   (c) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the assurance undertaking must submit to the competent authorities for their approval a plan showing how the solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorize the early repayment of such loans provided application is made by the issuing assurance undertaking and its solvency margin will not fall below the required level;

   (d) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the assurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the actual and required solvency margin both before and after that repayment. The competent authorities shall authorize repayment only if the assurance undertaking's solvency margin will not fall below the required

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level; (e) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;

(e) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;

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

— securities with no specified maturity date and other instruments that fulfil the following conditions, including cumulative preferential shares other than those mentioned in the preceding indent, up to 50 % of the margin for the total of such securities and the subordinated loan capital referred to in the preceding indent:

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

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

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

(d) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the assurance undertaking to continue its business;

(e) only fully paid-up amounts may be taken into account;

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2. in so far as authorized under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to policy-holders;

3. upon application, with supporting evidence, by the undertaking to the supervisory authority of the Member State in the territory of which its head office is situated and with the agreement of that authority:

(a) an amount equal to 50 % of the undertaking's future profits; the amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies; the factor used may not exceed 10; the estimated annual profit shall be the arithmetical average of the profits made over the last five years in the activities listed in Article 1.

The bases for calculating the factor by which the estimated annual profit is to be multiplied and the items comprising the profits made shall be defined by common agreement by the competent authorities of the Member States in collaboration with the Commission. Pending such agreement, those items shall be determined in accordance with the laws of the Member State in the territory of which the undertaking (head office, agency or branch) carries on its activities.

When the competent authorities have defined the concept of profits made, the Commission shall submit proposals for the harmonization of this concept by means of a Directive on the harmonization of the annual accounts of insurance undertakings and providing for the coordination set out in Article 1 (2) of Directive 78/660/EEC [1];

(b) where Zillmerizing is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerized or partially

[1] OJ No L 222, 14. 8. 1978, p. 11.

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Zillmerized mathematical reserve and a mathematical reserve Zillmerized at a rate equal to the loading for acquisition costs included in the premium; this figure may not, however, exceed 3·5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical reserves for all policies for which Zillmerizing is possible; the difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;

(c) where approval is given by the supervisory authorities of the Member States concerned in which the undertaking is carrying on its activities any hidden reserves resulting from the under-estimation of assets and over-estimation of liabilities other than mathematical reserves in so far as such hidden reserves are not of an exceptional nature.

Article 19

Subject to Article 20, the minimum solvency margin shall be determined as shown below according to the classes of insurance underwritten:

(a) For the kinds of insurance referred to in Article 1 (1) (a) and (b) other than assurances linked to investment funds and for the operations referred to in Article 1 (3), it must be equal to the sum of the following two results:

— first result:

a 4 % fraction of the mathematical reserves, relating to direct business gross of re-insurance cessions and to re-insurance acceptances shall be multiplied by the ratio, for the last financial year, of the total mathematical reserves net of re-insurance cessions to the gross total mathematical reserves as specified above; that ratio may in no case be less than 85 %;

— second result:

for policies on which the capital at risk is not a negative figure, a 0·3 % fraction of such capital underwritten by the undertaking shall be multiplied by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after re-insurance cessions and retrocessions to the total capital at risk gross of re-insurance; that ratio may in no case be less than 50 %.

For temporary assurance on death of a maximum term of three years the above fraction shall be 0·1 %; for such assurance of a term of more than three years but not more than five years the above fraction shall be 0·15 %.

(b) For the supplementary insurance referred to in Article 1 (1) (c), it shall be equal to the result of the following calculation:

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

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

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

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

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

In the case of the assocation of underwriters known as Lloyd's, the calculation of the solvency margin shall be made on the basis of net

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premiums, which shall be multiplied by flat-rate percentage fixed annually by the supervisory authority of the head-office Member State. This flat-rate percentage must be calculated on the basis of the most recent statistical data on commissions paid. The details together with the relevant calculations shall be sent to the supervisory authorities of the countries in whose territory Lloyd's is established.

(c) For permanent health insurance not subject to cancellation referred to in Article 1 (1) (d), and for capital redemption operations referred to in Article 1 (2) (b), it shall be equal to a 4 % fraction of the mathematical reserves calculated in compliance with the conditions set out in the first result in (a) of this Article.

(d) For tontines, referred to in Article 1 (2) (a), it shall be equal to 1 % of their assets.

(e) For assurances covered by Article 1 (1) (a) and (b) linked to investment funds and for the operations referred to in Article 1 (2) (c), (d) and (e) it shall be equal to:

— a 4 % fraction of the mathematical reserves, calculated in compliance with the conditions set out in the first result in (a) of this Article in so far as the undertaking bears an investment risk, and a 1 % fraction of the reserves calculated in the fashion, in so far as the undertaking bears no investment risk provided that the term of the contract exceeds five years and the allocation to cover management expenses set out in the contract is fixed for a period exceeding five years

plus

— a 0·3 % fraction of the capital at risk calculated in compliance with the conditions set out in the first subparagraph of the second result of (a) of this Article in so far as the undertaking covers a death risk.

Article 20

1. One third of the minimum solvency margin as specified in Article 19 shall constitute the guarantee fund. Subject to paragraph 2, at least 50 % of this fund shall consist of the items listed in Article 18 (1) and (2).

2. (a) The guarantee fund may not, however, be less than a minimum of 800 000 units of account.

(b) Any Member State may provide for the minimum of the guarantee fund to be reduced to 600 000 units of account in the case of mutual associations and mutual-type associations and tontines.

(c) For mutual associations referred to in the second sentence of the second indent of Article 3 (2), as soon as they come within the scope of this Directive, and for tontines, any Member State may permit the establishment of a minimum of the guarantee fund of 100 000 units of account to be increased progressively to the amount fixed in (b) by successive tranches of 100 000 units of account whenever the contributions increase by 500 000 units of account.

(d) The minimum of the guarantee fund referred to in (a), (b) and (c) must consist of the items listed in Article 18 (1) and (2).

3. Mutual associations wishing to extend their business within the meaning of Article 8 (2) or Article 10 may not do so unless they comply immediately with the requirements of paragraph 2 (a) and (b) of this Article.

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Article 21

1. Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 17.

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2. Subject to Article 17 (3), Article 24 (1), (2), (3) and (5) and the second subparagraph of Article 26 (1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorized assurance undertakings.

3. Paragraphs 1 and 2 shall not preclude any measures which Member States, while safeguarding the interests of the lives assured, are entitled to take as owners or members of or partners in the undertakings in question.

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Article 22

1. Member States may not require undertakings to cede part of their underwriting of activities listed in Article 1 to an organization or organizations designated by national regulations.

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2. The Italian Republic shall take all steps to ensure that the requirement that undertakings established in its territory cede part of their underwriting to the 'Istituto Nazionale di Assicurazioni' is abolished no later than 20 November 1994.

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Article 23

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

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2. Member States shall require assurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

3. Every Member State shall take all steps necessary to ensure that the competent authorities have the powers and means necessary for the supervision of the business of assurance undertakings with head offices within their territories, including business carried on outside those territories, in accordance with the Council directives governing those activities and for the purpose of seeing that they are implemented.

These powers and means must, in particular, enable the competent authorities to:

(a) make detailed enquiries regarding the undertaking's situation and the whole of its business, *inter alia* by:

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

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

(b) take any measures, with regard to the undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that the undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of the assured persons;

(c) ensure that those measures are carried out, if need be by enforcement, where appropriate through judicial channels.

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

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Article 24

1. If an undertaking does not comply with Article 17, the competent authority of its home Member State may prohibit the free disposal of its assets after having communicated its intention to the competent authorities of the Member States of commitment.

2. For the purposes of restoring the financial situation of an undertaking the solvency margin of which has fallen below the minimum required under Article 19, the competent authority of the home Member State shall require that a plan for the restoration of a sound financial position be submitted for its approval.

In exceptional circumstances, if the competent authority is of the opinion that the financial situation of the undertaking will further deteriorate, it may also restrict or prohibit the free disposal of the undertaking's assets. It shall inform the authorities of other Member States within the territories of which the undertaking carries on business of any measures it has taken and the latter shall, at the request of the former, take the same measures.

3. If the solvency margin falls below the guarantee fund as defined in Article 20, the competent authority of the home Member State shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the undertaking's assets. It shall inform the authorities of other Member States within the territories of which the undertaking carries on business accordingly and the latter shall, at the request of the former, take the same measures.

4. The competent authorities may further take all measures necessary to safeguard the interests of the assured persons in the cases provided for in paragraphs 1, 2 and 3.

5. Each Member State shall take the measures necessary to be able in accordance with its national law to prohibit the free disposal of assets located within its territory at the request, in the cases provided for in paragraphs 1, 2 and 3, of the undertaking's home Member State, which shall designate the assets to be covered by such measures.

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Section C

Withdrawal of authorization

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Article 26

1. Authorization granted to an assurance undertaking by the competent authority of its home Member State may be withdrawn by that authority if that undertaking:

(a) does not make use of the authorization within 12 months, expressly renounces it or ceases to carry on business for more than six months, unless the Member State concerned has made provision for authorization to lapse in such cases;

(b) no longer fulfils the conditions for admission;

(c) has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 24;

(d) fails seriously in its obligations under the regulations to which it is subject.

In the event of the withdrawal or lapse of the authorization, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly and they shall take appropriate measures to prevent the undertaking from commencing new operations within their territories, under either the freedom of establishment or the freedom to provide services. The home

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Member State's competent authority shall, in conjunction with those authorities, take all necessary measures to safeguard the interests of the assured persons and shall restrict, in particular, the free disposal of the assets of the undertaking in accordance with Article 24 (1), (2), second subparagraph, or (3), second subparagraph.

2. Any decision to withdraw an authorization shall be supported by precise reasons and notified to the undertaking in question.

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TITLE III A

RULES APPLICABLE TO AGENCIES OR BRANCHES ESTABLISHED WITHIN THE COMMUNITY AND BELONGING TO UNDERTAKINGS WHOSE HEAD OFFICES ARE OUTSIDE THE COMMUNITY

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Article 27

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

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

(a) it is entitled to undertake insurance activities covered by Article 1 under its national law;

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

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

(d) it designates a general representative, to be approved by the competent authorities;

(e) it possesses in the Member State where it carries on an activity assets of an amount equal in value to at least one half of the minimum amount prescribed in Article 20 (2) (a) in respect of the guarantee fund and deposits one fourth of the minimum amount as security;

(f) it undertakes to keep a solvency margin complying with Article 29;

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

Article 28

Member States shall require undertakings to establish reserves, referred to in Article 17, adequate to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such reserves by means of assets which are equivalent to such reserves and, to the extent fixed by the Member State in question, matching assets.

The law of the Member States shall be applicable to the calculation of such reserves, the determination of categories of investment and the valuation of assets, and, where appropriate, the determination of the extent to which these assets may be used for the purpose of covering such reserves.

The Member State in question shall require that the assets covering these reserves, shall be localized in its territory. Article 17 (3) shall, however, apply.

Article 29

1. Each Member State shall require of agencies or branches set up in its territory a solvency margin consisting of the items listed in Article 18. The minimum solvency margin shall be calculated in accordance with Article 19. However, for the purpose of calculating this margin,

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account shall be taken only of the operations effected by the agency or branch concerned.

2. One third of the minimum solvency margin shall constitute the guarantee fund.

However, the amount of this fund may not be less than one half of the minimum required under Article 20 (2) (a). The initial deposit lodged in accordance with Article 27 (2) (e) shall be counted towards such guarantee fund.

The guarantee fund and the minimum of such fund shall be constituted in accordance with Article 20.

3. The assets representing the minimum solvency margin must be kept within the Member State where activities are carried on up to the amount of the guarantee fund and the excess within the Community.

Article 30

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

(a) the solvency margin referred to in Article 29 shall be calculated in relation to the entire business which it carries on within the Community; in such case, account shall be taken only of the operations effected by all the agencies or branches established within the Community for the purposes of this calculation;

(b) the deposit required under Article 27 (2) (e) shall be lodged in only one of those Member States;

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

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

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

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

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

Article 31

1. (a) Subject to point (b), agencies and branches referred to in this Title may not simultaneously carry on in a Member State the activities referred to in the Annex to the first coordination Directive (non-life insurance) and those covered by this Directive.

(b) Subject to point (c), Member States may provide that agencies and branches referred to in this Title which at the time of notification of this Directive carry on both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 14.

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(c) Any Member State which under Article 13 (6) (a) and (b) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they are engaged at the time of notification of this Directive must also impose this requirement on agencies and branches referred to in this Title which are established in its territory and simultaneously carry on both activities there.

(d) Member States may provide that agencies and branches referred to in this Title whose head office simultaneously carries on both activities and which at the time of notification of this Directive carry on in the territory of a Member State solely the activity covered by this Directive may continue their activity there. If the undertaking wishes to carry on the activity referred to in the first coordination Directive (non-life insurance) in that territory it may only carry on the activity covered by this Directive through a subsidiary.

2. Articles 23 and 24 shall apply *mutatis mutandis* to agencies and branches referred to in this Title.

For the purposes of applying Article 24, the supervisory authority which supervises the overall solvency of agencies or branches shall be treated in the same way as the supervisory authority of the head-office Member State.

3. In the case of a withdrawal of authorization by the authority referred to in Article 30 (2), this authority shall notify the supervisory authorities of the other Member States where the undertaking operates and the latter authorities shall take the appropriate measures. If the reason for the withdrawal of authorization is the inadequacy of the solvency margin calculated in accordance with Article 30 (1) (a), the supervisory authorities of the other Member States concerned shall also withdraw their authorizations.

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Article 31a

1. Under the conditions laid down by national law, each Member State shall authorize agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an accepting office established in the same Member State if the competent authorities of that Member State or, if appropriate, those of the Member State referred to in Article 30 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

2. Under the conditions laid down by national law, each Member State shall authorize agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an assurance undertaking with a head office in another Member State if the competent authorities of that Member State certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

3. If under the conditions laid down by national law a Member State authorizes agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an agency or branch covered by this Title and set up within the territory of another Member State it shall ensure that the competent authorities of the Member State of the accepting office or, if appropriate, of the Member State referred to in Article 30 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin, that the law of the Member State of the accepting office permits such a transfer and that the State has agreed to the transfer.

4. In the circumstances referred to in paragraphs 1, 2 and 3 the Member State in which the transferring agency or branch is situated shall authorize the transfer after obtaining the agreement of the competent authorities of the Member State of the commitment, where

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different from the Member State in which the transferring agency or branch is situated.

5. The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring assurance undertaking within three months of receiving a request; the absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

6. A transfer authorized in accordance with this Article shall be published as laid down by national law in the Member State of the commitment. Such transfers shall automatically be valid against policyholders, assured persons and any other persons having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' right to give policyholders the opinion of cancelling contracts within a fixed period after a transfer.

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Article 32

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

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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 32a

The competent authorities of the Member States shall inform the Commission:

(a) of any authorization of a direct of indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Committee referred to in Article 32b (6) accordingly;

(b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Committee referred to in Article 32b (6) accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the groupe shall be specified in the notification which the competent authorities shall address to the Commission.

Article 32b

1. The Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially no later than six months before the date referred to in the second paragraph of Article 30 of Directive 90/619/EEC [1], and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The

[1] OJ No L 330, 29. 11. 1990, p. 50.

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Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granting Community to insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community insurance undertakings. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negociations, in accordance with the procedure laid down in Article 32b (6), that the competent authorities of the Member States must limit or suspend their decisions:

— regarding requests pending at the moment of the decision or future requests for authorizations, and

— regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.

The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request:

(a) of any request for the authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;

(b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 3 or 4 when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the

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Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of insurance undertakings.

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TITLE IV

TRANSITIONAL AND OTHER PROVISIONS

Article 33

1. Member States shall allow undertakings referred to in Title II which at the entry into force of the implementing measures to this Directive provide insurance in their territories in one or more of the classes referred to in the Annex, a period of five years from the date of notification of this Directive in order to comply with Articles 18, 19 and 20.

2. Furthermore, Member States may:

(a) allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the solvency margin, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 24, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose;

(b) except for the mutual associations referred to in the second sentence of the second indent of Article 3 (2), exempt undertakings referred to in paragraph 1 of this Article, for which upon the expiry of the five-year period the solvency margin to be established pursuant to Article 19 without deduction for re-insurance does not reach the minimum of the guarantee fund referred to in Article 20 (2) (a) and (b), from the requirement to establish this fund before the end of the financial year in respect of which the solvency margin referred to reaches this minimum amount.

The maximum period thus granted to these undertakings to establish this minimum amount shall in no case exceed 10 years from the date of notification of this Directive.

3. Undertakings desiring to extend their business within the meaning of Article 8 (2) or 10 may not do so unless they comply immediately with the rules of this Directive.

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

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

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5. Undertakings which, in accordance with their objects, carry on the activities of life assurance and savings operations may continue to carry on such activities, with the exception of savings operations, which must cease within three years from the date of notification of this Directive. As an exception, the 'Caisse générale d'épargne et de retraite (CGER)'/ 'Algemene Spoor- en Lifrentekas (ASLK)' in Belgium, the societies registered under the Friendly Societies Acts in the United Kingdom and the 'Banca nazionale delle communicazioni' in Italy may continue the activities they were carrying on when the Directive was notified.

6. Undertakings which carry on simultaneously both activities in accordance with the terms of Article 13 shall have a period of five years from the date of notification of this Directive to comply with the provisions of Article 14.

7. At the request of undertakings which comply with the requirements of Articles 17 to 20, Member States shall cease to apply any restrictive measures such as those relating to mortgages, deposits or securities established under their present regulations.

Article 34

Member States shall allow agencies or branches referred to in Title III which, at the entry into force of the implementing measures to this Directive, are carrying on one or more classes referred to in Annex I and which do not extend their business within the meaning of Article 10 (2), a maximum period of five years from the date of notification of this Directive in order to comply with the conditions in Article 29.

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Article 36

During a period which terminates at the time of the entry into force of an agreement concluded with a third country pursuant to Article 32, and at the latest upon the expiry of a period of four years after the notification of this Directive, each Member State may retain for undertakings of that country established in its territory the rules applied to them on 1 January 1979 in respect of matching assets and the localization of technical reserves, including mathematical reserves, provided that notification is given to the other Member States and the Commission and that the limits of relaxations granted pursuant to Article 17 (2) in favour of the undertakings of Member States established in its territory are not exceeded.

Article 37

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

2. Where the Member State of origin or the Member State whence the foreign national concerned comes does not issue the document referred to in paragraph 1, it may be replaced by a declaration on oath — or in States where there is no provision for declaration on oath by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in the Member State of origin or the Member State whence that person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

3. Documents issued in accordance with paragraphs 1 and 2 must not be produced more than three months after their date of issue.

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4. Member States shall, within the time limit of 18 months from the date of notification of this Directive, designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 shall forthwith inform the other Member States and the Commission thereof.

Within the same time limit, each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in this Article are to be submitted in support of an application to carry on in the territory of this Member State the activities referred to in Article 1.

TITLE V

FINAL PROVISIONS

Article 38

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

Article 39

1. The Commission shall submit to the Council, within six years from the date of notification of this Directive, a report dealing with the effects of the financial requirements imposed by this Directive on the situation in the insurance markets of the Member States. If necessary, the Commission shall submit interim reports to the Council before the end of the transitional period provided for in Article 33 (1).

2. Following a period of 10 years from the notification of this Directive, the Commission shall submit to the Council a report dealing with the operations of the two types of undertakings covered by this Directive: that is to say, those undertakings which carry on simultaneously the activity covered by the first coordination Directive (non-life insurance) in addition to the activity covered by this Directive and those undertakings which carry on only the activity covered by this Directive.

3. The Council, acting on a proposal from the Commission, shall every two years examine and, where appropriate, review the amounts expressed in units of account in this Directive, in the light of how the Community's economic and monetary situation has evolved. The Commission shall submit its first proposal in this connection to the Council at the time as a proposal concerning non-life insurance, as laid down in Article 3 of Directive 76/580/EEC ([1]), and not later than four years after the date of notification of this Directive.

Article 40

Member States shall amend their national provisions to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof. The provisions thus amended shall, subject to Articles 33 to 36, be applied within 30 months from the date of notification.

Article 41

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

Article 42

This Directive is addressed to the Member States.

([1]) OJ No L 189, 13. 7. 1976, p. 13.

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ANNEX

Classes of insurance

I. The assurance referred to in Article 1 (1) (a), (b) and (c) excluding those referred to in II and III

II. Marriage assurance, birth assurance

III. The assurance referred to in Article 1 (1) (a) and (b), which are linked to investment funds

IV. Permanent health insurance, referred to in Article 1 (1) (d)

V. Tontines, referred to in Article 1 (2) (a)

VI. Capital redemption operations, referred to in Article 1 (2) (b)

VII. Management of group pension funds, referred to in Article 1 (2) (c) and (d)

VIII. The operations referred to in Article 1 (2) (e)

IX. The operations referred to in Article 1 (3)