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COUNCIL DIRECTIVE 92/96/EEC

of 10 November 1992

on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive)

(OJ L 360, 9.12.1992, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 311, 14.11.1997, p. 34 (92/96)

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COUNCIL DIRECTIVE 92/96/EEC

of 10 November 1992

on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

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

In cooperation with the European Parliament [2],

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

1. Whereas it is necessary to complete the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services, to make it easier for assurance undertakings with head offices in the Community to cover commitments situated within the Community;

2. Whereas the Second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC [4] has already contributed substantially to the achievement of the internal market in direct life assurance by granting policy-holders who, by virtue of the fact that they take the initiative in entering into a commitment with an assurance undertaking in another Member State, do not require special protection in the Member State of the commitment complete freedom to avail themselves of the widest possible life assurance market;

3. Whereas Directive 90/619/EEC therefore represents an important stage in the merging of national markets into an integrated market and that stage must be supplemented by other Community instruments with a view to enabling all policy-holders, irrespective of whether they themselves take the initiative, to have recourse to any assurer with a head office in the Community who carries on business there, under the right of establishment or the freedom to provide services, while guaranteeing them adequate protection;

4. Whereas this Directive forms part of the body of Community legislation already enacted which includes the First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance [5] and Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings [6];

5. Whereas the approach adopted consists in bringing about such harmonization as is essential, necessary and sufficient to achieve the mutual recognition of authorizations and prudential control systems, thereby making it possible to grant a single authoriza-

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[1] OJ No C 99, 16. 4. 1991, p. 2.
[2] OJ No C 176, 13. 7. 1992, p. 93; and Decision of 28 October 1992 (not yet published in the Official Journal).
[3] OJ No C 14, 20. 1. 1992, p. 11.
[4] OJ No L 330, 29. 11. 1990, p. 50.
[5] OJ No L 63, 13. 3. 1979, p. 1. Directive as last amended by the Second Directive 90/619/EEC (OJ No L 330, 29. 11. 1990, p. 50).
[6] OJ No L 374, 31. 12. 1991, p. 7.

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tion valid throughout the Community and apply the principle of supervision by the home Member State;

6. Whereas, as a result, the taking up and the pursuit of the business of assurance are henceforth to be subject to the grant of a single official authorization issued by the competent authorities of the Member State in which an assurance undertaking has its head office; whereas such authorization enables an undertaking to carry on business throughout the Community, under the right of establishment or the freedom to provide services; whereas the Member State of the branch or of the provision of services may no longer require assurance undertakings which wish to carry on assurance business there and which have already been authorized in their home Member State to seek fresh authorization; whereas Directives 79/267/EEC and 90/619/EEC should therefore be amended along those lines;

7. Whereas the competent authorities of home Member States will henceforth be responsible for monitoring the financial health of assurance undertakings, including their state of solvency, the establishment of adequate technical provisions and the covering of those provisions by matching assets;

8. Whereas the performance of the operations referred to in Article 1 (2) (c) of Directive 79/267/EEC cannot under any circumstances affect the powers conferred on the respective authorities with regard to the entities holding the assets with which that provision is concerned;

9. Whereas certain provisions of this Directive define minimum standards; whereas a home Member State may lay down stricter rules for assurance undertakings authorized by its own competent authorities;

10. Whereas the competent authorities of the Member States must have at their disposal such means of supervision as are necessary to ensure the orderly pursuit of business by assurance undertakings throughout the Community whether carried on under the right of establishment or the freedom to provide services; whereas, in particular, they must be able to introduce appropriate safeguards or impose sanctions aimed at preventing irregularities and infringements of the provisions on assurance supervision;

11. Whereas the provisions on transfers of portfolios must be adapted to bring them into line with the single legal authorization system introduced by this Directive;

12. Whereas provision should be made for the specialization rule laid down by Directive 79/267/EEC to be relaxed so that those Member States which so wish are able to grant the same undertaking authorizations for the classes referred to in the Annex to Directive 79/267/EEC and the insurance business coming under classes 1 and 2 in the Annex to Directive 73/239/EEC [1]; whereas that possibility may, however, be subject to certain conditions as regards compliance with accounting rules and rules on winding-up;

13. Whereas it is necessary from the point of view of the protection of lives assured that every assurance undertaking should establish adequate technical provisions; whereas the calculation of such provisions is based for the most part on actuarial principles; whereas those principles should be coordinated in order to facilitate mutual recognition of the prudential rules applicable in the various Member States;

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[1] 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 (OJ No L 228, 16. 8. 1973, p. 3). Directive as last amended by Directive 90/618/EEC (OJ No L 330, 29. 11. 1990, p. 44).

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14. Whereas it is desirable, in the interests of prudence, to establish a minimum of coordination of rules limiting the rate of interest used in calculating the technical provisions; whereas, for the purposes of such limitation, since existing methods are all equally correct, prudential and equivalent, it seems appropriate to leave Member States a free choice as to the method to be used;

15. Whereas the rules governing the spread, localization and matching of the assets used to cover technical provisions must be coordinated in order to facilitate the mutual recognition of Member States' rules; whereas that coordination must take account of the measures on the liberalization of capital movements provided for in Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty ([1]) and the progress made by the Community towards economic and monetary union;

16. Whereas, however, the home Member State may not require assurance undertakings to invest the assets covering their technical provisions in particular categories of assets, as such a requirement would be incompatible with the measures on the liberalization of capital movements provided for in Directive 88/361/EEC;

17. Whereas, pending the adoption of a directive on investment services harmonizing *inter alia* the definition of the concept of a regulated market, for the purposes of this Directive and without prejudice to such future harmonization that concept must be defined provisionally, to be replaced by the definition harmonized at Community level, which will give the home Member State of the market the responsibilities for these matters which this Directive transitionally gives to the assurance undertaking's home Member State;

18. Whereas the list of items of which the solvency margin required by Directive 79/267/EEC may be made up must be supplemented to take account of new financial instruments and of the facilities granted to other financial institutions for the constitution of their own funds;

19. Whereas the harmonization of assurance contract law is not a prior condition for the achievement of the internal market in assurance; whereas, therefore, the oppportunity afforded to the Member States of imposing the application of their law to assurance contracts covering commitments within their territories is likely to provide adequate safeguards for policy-holders;

20. Whereas within the framework of an internal market it is in the policy-holder's interest that he should have access to the widest possible range of assurance products available in the Community so that he can choose that which is best suited to his needs; whereas it is for the Member State of the commitment to ensure that there is nothing to prevent the marketing within its territory of all the assurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in the Member State of the commitment and in so far as the general good is not safeguarded by the rules of the home Member State, provided that such provisions must be applied without discrimination to all undertakings operating in that Member State and be objectively necessary and in proportion to the objective pursued;

21. Whereas the Member States must be able to ensure that the assurance products and contract documents used, under the right of establishment or the freedom to provide services, to cover commitments within their territories comply with such specific legal provisions protecting the general good as are applicable; whereas the systems of supervision to be employed must meet

([1]) OJ No L 178, 8. 7. 1988, p. 5.

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the requirements of an internal market but their employment may not constitute a prior condition for carrying on assurance business; whereas, from this standpoint, systems for the prior approval of policy conditions do not appear to be justified; whereas it is therefore necessary to provide for other systems better suited to the requirements of an internal market which enable every Member State to guarantee policy-holders adequate protection;

22. Whereas, for the purposes of implementing actuarial principles in conformity with this Directive, the home Member State may nevertheless require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, with such notification of technical bases excluding notification of the general and special policy conditions and the undertaking's commercial rates;

23. Whereas in a single assurance market the consumer will have a wider and more varied choice of contracts; whereas, if he is to profit fully from this diversity and from increased competition, he must be provided with whatever information is necessary to enable him to choose the contract best suited to his needs; whereas this information requirement is all the more important as the duration of commitments can be very long; whereas the minimum provisions must therefore be coordinated in order for the consumer to receive clear and accurate information on the essential characteristics of the products proposed to him as well as the particulars of the bodies to which any complaints of policy-holders, assured persons or beneficiaries of contracts may be addressed;

24. Whereas publicity for assurance products is an essential means of enabling assurance business to be carried on effectively within the Community; whereas it is necessary to leave open to assurance undertakings the use of all normal means of advertising in the Member State of the branch or of provision of services; whereas Member States may nevertheless require compliance with their national rules on the form and content of advertising, whether laid down pursuant to Community legislation on advertising or adopted by Member States for reasons of the general good;

25. Whereas, within the framework of the internal market, no Member State may continue to prohibit the simultaneous carrying on of assurance business within its territory under the right of establishment and the freedom to provide services; whereas the option granted to Member States in this connection by Directive 90/619/EEC should therefore be abolished;

26. Whereas provision should be made for a system of penalties to be imposed when, in the Member State in which the commitment is entered into, an assurance undertaking does not comply with those provisions protecting the general good that are applicable to it;

27. Whereas some Member States do not subject assurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution; whereas the structures and rates of such taxes and contributions vary considerably between the Member States in which they are applied; whereas it is desirable to prevent existing differences leading to distortions of competition in assurance services between Member States; whereas, pending subsequent harmonization, application of the tax systems and other forms of contribution provided for by the Member States in which commitments entered into are likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected;

28. Whereas it is important to introduce Community coordination on the winding-up of assurance undertakings; whereas it is henceforth essential to provide, in the event of the winding-up of an assurance undertaking, that the system of protection in place in

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each Member State must guarantee equality of treatment for all assurance creditors, irrespective of nationality and of the method of entering into the commitment;

29. Whereas technical adjustments to the detailed rules laid down in this Directive may be necessary from time to time to take account of the future development of the assurance industry; whereas the Commission will make such adjustments as and when necessary, after consulting the Insurance Committee set up by Directive 91/675/EEC [1], in the exercise of the implementing powers conferred on it by the Treaty;

30. Whereas it is necessary to adopt specific provisions intended to ensure smooth transition from the legal arrangements in existence when this Directive becomes applicable to those that it introduces; whereas care should be taken in such provisions not to place an additional workload on Member States' competent authorities;

31. Whereas, pursuant to Article 8c of the Treaty, account should be taken of the extent of the effort which must be made by certain economies at different stages of development; whereas, therefore, transitional arrangements should be adopted for the gradual application of this Directive by certain Member States,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS AND SCOPE

Article 1

For the purposes of this Directive:

(a) *assurance undertaking* shall mean an undertaking which has received official authorization in accordance with Article 6 of Directive 79/267/EEC;

(b) *branch* shall mean an agency or branch of an assurance undertaking, having regard to Article 3 of Directive 90/619/EEC;

(c) *commitment* shall mean a commitment represented by one of the kinds of insurance or operations referred to in Article 1 of Directive 79/267/EEC;

(d) *home Member State* shall mean the Member State in which the head office of the assurance undertaking covering the commitment is situated;

(e) *Member State of the branch* shall mean the Member State in which the branch covering the commitment is situated;

(f) *Member State of the provision of services* shall mean the Member State of the commitment, as defined in Article 2 (e) of Directive 90/619/EEC, if the commitment is covered by an assurance undertaking or a branch situated in another Member State;

(g) *control* shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC [2], or a similar relationship between any natural or legal person and an undertaking;

(h) *qualifying holding* shall mean a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant

[1] OJ No L 374, 31. 12. 1991, p. 32.
[2] Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (OJ No L 193, 18. 7. 1983, p. 1). Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

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influence over the management of the undertaking in which a holding subsists.

For the purposes of this definition, in the context of Articles 7 and 14 and of the other levels of holding referred to in Article 14, the voting rights referred to in Article 7 of Directive 88/627/EEC (1) shall be taken into consideration;

(i) *parent undertaking* shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(j) *subsidiary* shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the undertaking which is those undertakings' ultimate parent undertaking;

(k) *regulated market* shall mean a financial market regarded by an undertaking's home Member State as a regulated market pending the adoption of a definition in a Directive on investment services and characterized by:

— regular operation, and

— the fact that regulations issued or approved by the appropriate authorities define the conditions for the operation of the market, the conditions for access to the market and, where Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing (2) applies, the conditions for admission to listing imposed in that Directive or, where that Directive does not apply, the conditions to be satisfied by a financial instrument in order to be effectively dealt in on the market.

For the purposes of this Directive, a regulated market may be situated in a Member State or in a third country. In the latter event, the market must be recognized by the undertaking's home Member State and meet comparable requirements. Any financial instruments dealt in must be of a quality comparable to that of the instruments dealt in on the regulated market or markets of the Member State in question;

(l) *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise assurance undertakings.

Article 2

1. This Directive shall apply to the commitments and undertakings referred to in Article 1 of Directive 79/267/EEC.

2. In Article 1 (2) of Directive 79/267/EEC the words 'and are authorized in the country concerned' shall be deleted.

3. This Directive shall apply neither to classes of insurance or operations nor to undertakings or institutions to which Directive 79/267/EEC does not apply, nor shall it apply to the bodies referred to in Article 4 of that Directive.

(1) Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (OJ No L 348, 17. 12. 1988, p. 62).

(2) OJ No L 66, 13. 3. 1979, p. 21. Directive as last amended by Directive 82/148/EEC (OJ No L 62, 5. 3. 1982, p. 22).

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TITLE II

THE TAKING-UP OF THE BUSINESS OF LIFE ASSURANCE

Article 3

Article 6 of Directive 79/267/EEC shall be replaced by the following:

'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 4

Article 7 of Directive 79/267/EEC shall be replaced by the following:

'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 5

Article 8 of Directive 79/267/EEC shall be replaced by the following:

'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 code de la sécurité sociale", "institution de prévoyance régie par le code rural" and "mutuelles régies par le code de la mutualité",

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— 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.

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

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

(*) OJ No L 360, 9. 12. 1992, p. 1.'

Article 6

Article 9 of Directive 79/267/EEC shall be replaced by the following:

'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 7

The competent authorities of the home Member State shall not grant an undertaking authorization to take up the business of assurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The same authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an assurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

TITLE III

HARMONIZATION OF CONDITIONS GOVERNING PURSUIT OF BUSINESS

Chapter 1

Article 8

Article 15 of Directive 79/267/EEC shall be replaced by the following:

'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

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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 9

Article 16 of Directive 79/267/EEC shall be replaced by the following:

'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 10

Article 23 (2) and (3) of Directive 79/267/EEC shall be replaced by the following:

'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

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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.'

Article 11

1. Article 6 (2) to (7) of Directive 90/619/EEC shall be deleted.

2. Under the conditions laid down by national law, each Member State shall authorize assurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, concluded under either the right of establishment or the freedom to provide services, to an accepting office established within the Community, if the competent authorities of the home Member State of the accepting office certify that after taking the transfer into account the latter possesses the necessary solvency margin.

3. Where a branch proposes to transfer all or part of its portfolio of contracts, concluded under either the right of establishment or the freedom to provide services, the Member State of the branch shall be consulted.

4. In the circumstances referred to in paragraph 2 and 3, the authorities of the home Member State of the transferring undertaking shall authorize the transfer after obtaining the agreement of the competent authorities of the Member States of the commitment.

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 within that period from the authorities consulted 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 policy-holders, the assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' rights to give policy-holders the option of cancelling contracts within a fixed period after a transfer.

Article 12

1. Article 24 of Directive 79/267/EEC shall be replaced by the following:

'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.

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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.'

Article 13

Article 26 of Directive 79/267/EEC shall be replaced by the following:

'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 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.'

Article 14

1. Member States shall require any natural or legal person ►C1 who proposes to hold, ◄ directly or indirectly, a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of the intended holding. Such a person must likewise inform the competent authorities of the home Member State if he proposes to increase his qualifying holding so that the proportion of the voting rights or of

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the capital held by him would reach or exceed 20, 33 or 50 % or so that the assurance undertaking would become his subsidiary.

The competent authorities of the home Member State shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the assurance undertaking, they are not satisfied as to the qualifications of the person referred to in the first subparagraph. If they do not oppose the plan in question they may fix a maximum period for its implementation.

2. Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his intended holding. Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20, 33 or 50 % or so that the assurance undertaking would cease to be his subsidiary.

3. On becoming aware of them, assurance undertakings shall inform the competent authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 2.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

4. Member States shall require that, if the influence exercised by the persons referred to in paragraph 1 is likely to operate to the detriment of the prudent and sound management of the assurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 15

1. The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual assurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an assurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of the different Member States from exchanging information in accordance with the directives applicable to assurance undertakings. That infor-

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mation shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article.

4. Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking-up of the business of assurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms, or

— to impose sanctions, or

— in administrative appeals against decisions of the competent authority, or

— in court proceedings initiated pursuant to Article 50 or under special provisions provided for in the directives adopted in the field of assurance undertakings.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

— authorities responsible for the official supervision of credit institutions and other financial organizations and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation and bankruptcy of assurance undertakings and in other similar procedures, and

— persons responsible for carrying out statutory audits of the accounts of assurance undertakings and other financial institutions, in the discharge of their supervisory functions, and the disclosure, to bodies which administer (compulsory) winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

in the discharge of their supervisory functions, and the disclosure, to bodies which administer (compulsory) winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

6. In addition, notwithstanding paragraphs 1 and 4, Member States may, under provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and assurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

However, Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 16 of Directive 79/267/EEC may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

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Article 16

Article 13 of Directive 79/267/EEC shall be replaced by the following:

'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 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.'

Article 17

Article 35 of Directive 79/267/EEC and Article 18 of Directive 90/619/EEC shall be deleted.

Chapter 2

Article 18

Article 17 of Directive 79/267/EEC shall be replaced by the following:

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'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;

(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

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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.

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.

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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.'

Article 19

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

For this purpose, all aspects of the financial situation of an assurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in such a way that it may jeopardize the undertaking's solvency in the long term.

Article 20

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

Article 21

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

A. *Investments*

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

(b) loans;

(c) shares and other variable-yield participations;

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

(e) land, buildings and immovable property rights;

B. *Debts and claims*

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

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

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

(i) advances against policies;

(j) tax recoveries;

(k) claims against guarantee funds;

C. *Others*

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

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

(n) deferred acquisition costs;

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

(p) reversionary interests.

In the case of the association of underwriters known as Lloyd's, asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 77/780/EEC [1] or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

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

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

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

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

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

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

(v) transferrable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realized in the short term or if they are holdings in credits institutions, in assurance undertakings, within the limits permitted by Article 8 of Directive 79/267/EEC, or in investment undertakings established in a Member State;

(vi) Forderungen an einen Dritten können zur Bedeckung der versicherungstechnischen Rückstellungen nur nach Abzug aller aufrechenbaren Gegenforderungen an diesen Dritten zugelassen werden.

(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realizable. In particular, debts owed by policy-holders and intermediaries

[1] First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ No L 322, 17. 12. 1977, p. 30). Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

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arising out of assurance and reassurance operations may be accepted only in so far as they have been outstanding for not more than three months;

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

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

2. Notwithstanding paragraph 1, in exceptional circumstances and at an assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 20.

Article 22

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

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

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

(c) 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertakings — in so far as Article 8 of Directive 79/267/EEC allows it — and investment undertakings established in a Member State. The limits may be raised to 8 and 2 % respectively by a decision taken on a case-by-case basis by the competent authority of the home Member State;

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

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

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

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

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

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

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

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

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

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

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

— UCITS not coordinated within the meaning of Directive 85/611/EEC [1] and other investment funds, as compared with UCITS coordinated within the meaning of that Directive,

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

— bonds, debt securities and other money- and capital-market instruments not issued by States, local or regional authorities or undertakings belonging to Zone A as defined in Directive 89/647/EEC [2], or the issuers of which are international organizations not numbering at least one Community Member State among their members, as compared with the same financial instruments issued by such bodies.

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

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[1] Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31. 12. 1985, p. 3). Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

[2] Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions (OJ No L 386, 30. 12. 1989, p. 14).

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

6. Notwithstanding paragraph 1, in exceptional circumstances and at the assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1 (a) to (e), subject to Article 20.

Article 23

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

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

3. Articles 20 and 22 shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in paragraphs 1 and 2. References to the technical provisions in Article 22 shall be to the technical provisions excluding those in respect of such liabilities.

4. Where the benefits referred to in paragraph 1 and 2 include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional technical provisions shall be subject to Articles 20, 21 and 22.

Article 24

1. For the purposes of Articles 17 (3) and 28 of Directive 79/267/EEC, Member States shall comply with Annex I to this Directive as regards the matching rules.

2. This Article shall not apply to the commitments referred to in Article 23 of this Directive.

Article 25

Article 18, second subparagraph, point 1 of Directive 79/267/EEC shall be replaced by the following:

'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;

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(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 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

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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.'

Article 26

No more than three years after the date of application of this Directive, the Commission shall submit a report to the Insurance Committee on the need for further harmonization of the solvency margin.

Article 27

Article 21 of Directive 79/267/EEC shall be replaced by the following:

'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.

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.'

Chapter 3

Article 28

The Member State of the commitment shall not prevent a policy-holder from concluding a contract with an assurance undertaking authorized under the conditions of Article 6 of Directive 79/267/EEC, as long as that does not conflict with legal provisions protecting the general good in the Member State of the commitment.

Article 29

Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or 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 Member State of origin may require systematic communication of the technical Bases used in particular for calculating scales of premiums and technical provisions, without that requirement

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constituting a prior condition for an undertaking to carry on its business.

Not later than five years after the date of application of this Directive, the Commission shall submit a report to the Council on the implementation of those provisions.

Article 30

1. In the first subparagraph of Article 15 (1) of Directive 90/619/EEC the words 'in one of the cases referred to in Title III'' shall be deleted.

2. Article 15 (2) of Directive 90/619/EEC shall be replaced by the following:

'2. The Member States need not apply paragraph 1 to contracts of six months' duration or less, nor where, because of the status of the policy-holder or the circumstances in which the contract is concluded, the policy-holder does not need this special protection. Member States shall specify in their rules where paragraph 1 is not applied.'

Article 31

1. Before the assurance contract is concluded, at least the information listed in point A of Annex II shall be communicated to the policy-holder.

2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in point B of Annex II.

3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex II only if it is necessary for a proper understanding by the policy-holder of the essential elements of the commitment.

4. The detailed rules for implementing this Article and Annex II shall be laid down by the Member State of the commitment.

TITLE IV

PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Article 32

Article 10 of Directive 79/267/EEC shall be replaced by the following:

'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

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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 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.'

Article 33

Article 11 of Directive 79/267/EEC shall be deleted.

Article 34

Article 11 of Directive 90/619/EEC shall be replaced by the following:

'Article 11

Any undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first inform the competent authorities of the home Member State, indicating the nature of the commitments it proposes to cover.'

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Article 35

Article 14 of Directive 90/619/EEC shall be replaced by the following:

'Article 14

1. Within one month of the notification provided for in Article 11, the competent authorities of the home Member State shall communicate to the Member State or Member States within the territory of which the undertaking intends to carry on business by way of the freedom to provide services:

(a) a certificate attesting that the undertaking has the minimum solvency margin calculated in accordance with Articles 19 and 20 of Directive 79/267/EEC;

(b) the classes which the undertaking has been authorized to offer;

(c) the nature of the commitments which the undertaking proposes to cover in the Member State of the provision of services.

At the same time, they shall inform the undertaking concerned accordingly.

2. Where the competent authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down, they shall give the reasons for their refusal to the undertaking within that same period. The refusal shall be subject to a right to apply to the courts in the home Member State.

3. The undertaking may start business on the certified date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.'

Article 36

Article 17 of Directive 90/619/EEC shall be replaced by the following:

'Article 17

Any change which an undertaking intends to make to the information referred to in Article 11 shall be subject to the procedure provided for in Articles 11 and 14.'

Article 37

Articles 10, 12, 13, 16, 22 and 24 of Directive 90/619/EEC shall be deleted.

Article 38

The competent authorities of the Member State of the branch or the Member State of the provision of services may require that the information which they are authorized under this Directive to request with regard to the business of assurance undertakings operating in the territory of that State shall be supplied to them in the official language or languages of that State.

Article 39

1. Article 19 of Directive 90/619/EEC shall be deleted.

2. The Member State of the branch or of provision of services shall not lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions, forms and other printed docu-

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ments which an undertaking intends to use in its dealings with policy-holders. For the purpose of verifying compliance with national provisions concerning assurance contracts, it may require an undertaking that proposes to carry on assurance business within its territory, under the right of establishment or the freedom to provide services, to effect only non-systematic notification of those policy conditions and other printed documents without that requirement constituting a prior condition for an undertaking to carry on its business.

Article 40

1. Article 20 of Directive 90/619/EEC shall be deleted.

2. Any undertaking carrying on business under the right of establishment or the freedom to provide services shall submit to the competent authorities of the Member State of the branch and/or of the Member State of the provision of services all documents requested of it for the purposes of this Article in so far as undertakings the head office of which is in those Member States are also obliged to do so.

3. If the competent authorities of a Member State establish that an undertaking with a branch or carrying on business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that State, they shall require the undertaking concerned to remedy that irregular situation.

4. If the undertaking in question fails to take the necessary action, the competent authorities of the Member State concerned shall inform the competent authorities of the home Member State accordingly. The latter authorities shall, at the earliest opportunity, take all appropriate measures to ensure that the undertaking concerned remedies that irregular situation. The nature of those measures shall be communicated to the competent authorities of the Member State concerned.

5. If, despite the measures taken by the home Member State or because those measures prove inadequate or are lacking in that State, the undertaking persists in violating the legal provisions in force in the Member State concerned, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalize further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new assurance contracts within its territory. Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on assurance undertakings.

6. Paragraphs 3, 4 and 5 shall not affect the emergency power of the Member States concerned to take appropriate measures to prevent or penalize irregularities committed within their territories. This shall include the possibility of preventing assurance undertakings from continuing to conclude new assurance contracts within their territories.

7. Paragraph 3, 4 and 5 shall not affect the power of the Member States to penalize infringements within their territories.

8. If an undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the competent authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

9. Any measure adopted under paragraphs 4 to 8 involving penalties or restrictions on the conduct of assurance business must be properly reasoned and communicated to the undertaking concerned.

10. Every two years, the Commission shall submit to the Insurance Committee a report summarizing the number and type of cases in which, in each Member State, authorization has been refused pursuant to Article 10 of Directive 79/267/EEC or Article 14 of

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Directive 90/619/EEC as amended by this Directive or measures have been taken under paragraph 5. Member States shall cooperate with the Commission by providing it with the information required for that report.

Article 41

Nothing in this Directive shall prevent assurance undertakings with head offices in other Member States from advertising their services through all available means of communication in the Member State of the branch or Member State of the provision of services, subject to any rules governing the form and content of such advertising adopted in the interest of the general good.

Article 42

1. Article 21 of Directive 90/619/EEC shall be deleted.

2. Should an assurance undertaking be wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other assurance contracts, without distinction as to nationality as far as the lives assured and the beneficiaries are concerned.

Article 43

1. Article 23 of Directive 90/619/EEC shall be deleted.

2. Every assurance undertaking shall inform the competent authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, without deduction of reassurance, by Member State and by each of classes I to IX, as defined in the Annex to Directive 79/267/EEC.

The competent authority of the home Member State shall, within a reasonable time and on an aggregate basis forward this information to the competent authorities of each of the Member States concerned which so request.

Article 44

1. Article 25 of Directive 90/619/EEC shall be deleted.

2. Without prejudice to any subsequent harmonization, every assurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment within the meaning of Article 2 (e) of Directive 90/619/EEC and also, with regard to Spain, to the surcharges legally established in favour of the Spanish 'Consorcio de compensación de seguros' for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

The law applicable to the contract pursuant to Article 4 of Directive 90/619/EEC shall not affect the fiscal arrangements applicable.

Pending future harmonization, each Member State shall apply to those undertakings which cover commitments situated within its territory its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under the first subparagraph.

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TITLE V

TRANSITIONAL PROVISIONS

Article 45

Member States may allow assurance undertakings with head offices in their territories, and whose buildings and land covering their technical provisions exceed, at the time of the notification of this Directive, the percentage laid down in Article 22 (1) (a) a period expiring no later than 31 December 1998 within which to comply with that provision.

Article 46

1. Article 26 of Directive 90/619/EEC shall be deleted.

2. Spain and Portugal, until 31 December 1995, and Greece, until 31 December 1998, may operate the following transitional arrangements for contracts in respect of which one of those Member States is the Member State of the commitment:

(a) by way of derogation from Article 8 (3) of Directive 79/267/EEC and from Articles 29 and 39 of this Directive, the competent authorities of the Member States in question may require the communication, before use, of general and special insurance policy conditions;

(b) the amount of the technical provisions relating to such contracts shall be determined under the supervision of the Member State concerned in accordance with its own rules or, failing that, in accordance with the procedures established in that State in accordance with this Directive. Cover of those technical provisions by equivalent and matching assets and the localization of those assets shall be effected under the supervision of that Member State in accordance with its rules and practices adopted in accordance with this Directive.

TITLE VI

FINAL PROVISIONS

Article 47

The following technical adjustments to be made to Directives 79/267/EEC and 90/619/EEC and to this Directive shall be adopted in accordance with the procedure laid down in Directive 91/675/EEC:

— extension of the legal forms provided for in Article 8 (1) (a) of Directive 79/267/EEC,

— amendments to the list set out in the Annex to Directive 79/267/EEC, or adaptation of the terminology used in that list to take account of the development of assurance markets,

— clarification of the items constituting the solvency margin listed in Article 18 of Directive 79/267/EEC to take account of the creation of new financial instruments,

— alteration of the minimum guarantee fund provided for in Article 20 (2) of Directive 79/267/EEC to take account of economic and financial developments,

— amendments, to take account of the creation of new financial instruments, to the list of assets acceptable as cover for technical provisions set out in Article 21 of this Directive and to the rules on the spreading of investments laid down in Article 22 of this Directive,

— changes in the relaxations in the matching rules laid down in Annex I to this Directive, to take account of the development of new currency-hedging instruments or progress made in economic and monetary union,

— clarification of the definitions in order to ensure uniform application of Directives 79/267/EEC and 90/619/EEC and of this Directive throughout the Community,

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— the technical adjustments necessary to the rules for setting the maxima applicable to interest rates, pursuant to Article 17 of Directive 79/267/EEC, as amended by this Directive, in particular to take account of progress made in economic and monetary union.

Article 48

1. Branches which have started business, in accordance with the provisions in force in their Member State of establishment, before the entry into force of the provisions adopted in implementation of this Directive shall be presumed to have been subject to the procedure laid down in Article 10 (1) to (5) of Directive 79/267/EEC. They shall be governed, from the date of that entry into force, by Articles 17, 23, 24 and 26 of Directive 79/267/EEC and by Article 40 of this Directive.

2. Articles 11 and 14 of Directive 90/619/EEC, as amended by this Directive, shall not affect rights acquired by assurance undertakings carrying on business under the freedom to provide services before the entry into force of the provisions adopted in implementation of this Directive.

Article 49

The following Article 31a shall be inserted in Directive 79/267/EEC:

'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 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

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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 policy-holders, 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 policy-holders the opinion of cancelling contracts within a fixed period after a transfer.'

Article 50

Member States shall ensure that decisions taken in respect of an assurance undertaking under laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts.

Article 51

1. Member States shall adopt the laws, regulations and administrative provisions necessary for their compliance with this Directive no later than 31 December 1993 and bring them into force no later than 1 July 1994. They shall forthwith inform the Commission thereof.

When they adopt such measures, the Member States shall include references to this Directive or shall make such references when they effect official publication. The manner in which such references are to be made shall be laid down by the Member States.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 52

This Directive is addressed to the Member States.

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ANNEX I

MATCHING RULES

The currency in which the assurer's commitments are payable shall be determined in accordance with the following rules:

1. Where the cover provided by a contract is expressed in terms of a particular currency, the assurer's commitments are considered to be payable in that currency.
2. Member States may authorize undertakings not to cover their technical provisions, including their mathematical provisions, by matching assets if application of the above procedures would result in the undertaking being obliged, in order to comply with the matching principle, to hold assets in a currency amounting to not more than 7 % of the assets existing in other currencies.
3. Member States may choose not to require undertakings to apply the matching principle where commitments are payable in a currency other than the currency of one of the Community Member States, if investments in that currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, it is not suitable for covering technical provisions.
4. Undertakings are authorized not to hold matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.

   However, total assets in all currencies combined must be at least equal to total commitments in all currencies combined.
5. Each Member State may provide that, whenever under the preceding procedures a commitment has to be covered by assets expressed in the currency of a Member State, this requirement shall also be considered to be satisfied when the assets are expressed in ecus.

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ANNEX II

INFORMATION FOR POLICY-HOLDERS

The following information, which is to be communicated to the policy-holder before the contract is concluded (A) or during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policy-holder so requests and the law of the Member State so permits or the policy-holder is free to choose the law applicable.

A. **Before concluding the contract**

Information about the assurance undertaking	Information about the commitment
(a) 1. The name of the undertaking and its legal form	(a) 4. Definition of each benefit and each option
(a) 2. The name of the Member State in which the head office and, where appropriate, the agency or branch concluding the contract is situated	(a) 5. Term of the contract
(a) 3. The address of the head office and, where appropriate, of the agency or branch concluding the contract	(a) 6. Means of terminating the contract
	(a) 7. Means of payment of premiums and duration of payments
	(a) 8. Means of calculation and distribution of bonuses
	(a) 9. Indication of surrender and paid-up values and the extent to which they are guaranteed
	(a) 10. Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate
	(a) 11. For unit-linked policies, definition of the units to which the benefits are linked
	(a) 12. Indication of the nature of the underlying assets for unit-linked policies
	(a) 13. Arrangements for application of the cooling-off period
	(a) 14. General information on the tax arrangements applicable to the type of policy
	(a) 15. The arrangements for handling complaints concerning contracts by policy-holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings
	(a) 16. Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose

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B. **During the term of the contract**

In addition to the policy conditions, both general and special, the policy-holder must receive the following information throughout the term of the contract.

Information about the assurance undertaking	Information about the commitment
(b) 1. Any change in the name of the undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract	(b) 2. All the information listed in points (a) (4) to (a) (12) of A in the event of a change in the policy conditions or amendment of the law applicable to the contract (b) 3. Every year, information on the state of bonuses