

First Council Directive of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (73/239/EEC) (repealed)

Title II —

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

Section B:

Conditions for exercise of business

[^{F1}Article 13

1 The financial supervision of an insurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.

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

Where the undertaking in question is authorized to cover the risks classified in class 18 in point A of the Annex, supervision shall extend to monitoring of the technical resources which the undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.

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

Textual Amendments

- F1** Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).

[^{F1}Article 14

The Member State of the branch shall provide that where an insurance undertaking authorized in another Member State carries on business through a branch the competent authorities of the home Member State may, after having informed the competent authorities of the Member 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.]

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Textual Amendments

- F1** Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).

[^{F1}Article 15

1 The home Member State shall require every insurance undertaking to establish adequate technical provisions in respect of its entire business.

The amount of such technical provisions shall be determined in accordance with the rules laid down in Directive 91/674/EEC.

2 The home Member State shall require every insurance undertaking to cover the technical provisions in respect of its entire business by matching assets in accordance with Article 6 of Directive 88/357/EEC. In respect of risks situated within the European Community, those assets must be localized within the Community. Member States shall not require insurance undertakings to localize their assets in any particular Member State. The home Member State may, however, permit relaxations in the rules on the localization of assets.

3 If the home Member State allows any technical provisions to be covered by claims against reinsurers, it shall fix the percentage so allowed. In such cases, it may not specify the localization of the assets representing such claims.]

Textual Amendments

- F1** Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).

[^{F1}Article 15a

1 Member States shall require every insurance undertaking with a head office within their territories which underwrites risks included in class 14 in point A of the Annex (hereinafter referred to as ‘credit insurance’) to set up an equalization reserve for the purpose of offsetting any technical deficit or above-average claims ration arising in that class in any financial year.

2 The equalization reserve shall be calculated in accordance with the rules laid down by the home Member State in accordance with one of the four methods set out in point D of the Annex, which shall be regarded as equivalent.

3 Up to the amount calculated in accordance with the methods set out in point D of the Annex, the equalization reserve shall be disregarded for the purpose of calculating the solvency margin.

4 Member States may exempt insurance undertakings with head offices within their territories from the obligation to set up equalization reserves for credit insurance business where the premiums or contributions receivable in respect of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than ECU 2 500 000.]

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Textual Amendments

- F1** Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).

[^{F2}Article 16

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

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

- a the paid-up share capital or, in the case of a mutual insurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:
 - (i) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the available solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;
 - (ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;
 - (iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);
- b reserves (statutory and free) not corresponding to underwriting liabilities;
- c the profit or loss brought forward after deduction of dividends to be paid.

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

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

[^{F3}The available solvency margin shall also be reduced by the following items:

- a participations which the insurance undertaking holds in
 - insurance undertakings within the meaning of Article 6 of this Directive, Article 6 of First Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and

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- pursuit of the business of direct life assurance⁽²⁾, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council⁽³⁾,
- reinsurance undertakings within the meaning of Article 1(c) of Directive 98/78/EC,
- insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,
- credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council⁽⁴⁾,
- investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC⁽⁵⁾ and of Article 2(4) and (7) of Directive 93/6/EEC⁽⁶⁾;
- b each of the following items which the insurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:
 - instruments referred to in paragraph 3,
 - instruments referred to in Article 18(3) of Directive 79/267/EEC,
 - subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

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

As an alternative to the deduction of the items referred to in (a) and (b) of the fourth subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate⁽⁷⁾. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner overtime.

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

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

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

subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

- (i) only fully paid-up funds may be taken into account;
 - (ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the insurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing insurance undertaking and its available solvency margin will not fall below the required level;
 - (iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the insurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the insurance undertaking's available solvency margin will not fall below the required level;
 - (iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the insurance undertaking, the debt will become repayable before the agreed repayment dates;
 - (v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;
- b securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:
- (i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;
 - (ii) the contract of issue must enable the insurance undertaking to defer the payment of interest on the loan;
 - (iii) the lender's claims on the insurance undertaking must rank entirely after those of all non-subordinated creditors;
 - (iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurance undertaking to continue its business;
 - (v) only fully paid-up amounts may be taken into account.

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

- a one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available solvency margin and the required solvency margin;
- b in the case of mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50 % of the lesser of the available solvency margin and the required solvency margin. The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;
- c any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature.

5 Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin, shall be adopted in accordance with the procedure laid down in Article 2 of Council Directive 91/675/EEC⁽⁶⁾.]

Textual Amendments

- F2** Substituted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings](#).
- F3** Inserted by [Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council](#).

[^{F4}Article 16a

1 The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

In the case, however, of insurance undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.

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

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

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

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

To this sum there shall be added the amount of premiums accepted for all reinsurance in the last financial year.

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

The amount so obtained shall be divided into two portions, the first portion extending up to EUR 50 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

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

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

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

The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph 1 shall be aggregated.

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

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

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

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

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

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

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undertaking in respect of assistance given. Such costs shall be calculated in accordance with the national provisions of the home Member State.

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

6 The fractions applicable to the portions referred to in the sixth subparagraph of paragraph 3 and the sixth subparagraph of paragraph 4 shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if

- a the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;
- b a provision is set up for increasing age;
- c an additional premium is collected in order to set up a safety margin of an appropriate amount;
- d the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;
- e the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.]

Textual Amendments

- F4** Inserted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.](#)

[^{F2}Article 17

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

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

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

Textual Amendments

- F2** Substituted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.](#)

[^{F4}Article 17a

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

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

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

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

Textual Amendments

F4 Inserted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings](#).

[^{F1}Article 18

1 Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 15.

2 Subject to Article 15 (2), Article 20 (1), (2), (3) and (5) and the last subparagraph of Article 22 (1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorized insurance undertakings.

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

Textual Amendments

F1 Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).

[^{F5}Article 19

1 Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation, solvency and, as regards cover for risks listed under No 18 in point A of the Annex, other resources available to them for meeting their liabilities, where its laws provide for supervision of such resources.

[^{F6}1a In respect of credit insurance, the undertaking shall make available to the supervisory authority accounts showing both the technical results and the technical reserves relating to that business.]

[^{F1}2 Member States shall require insurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are

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necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

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

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

- a make detailed enquiries regarding an undertaking's situation and the whole of its business, *inter alia*, by:
 - gathering information or requiring the submission of documents concerning its insurance business,
 - carrying out on-the-spot investigations at the undertaking's premises;
- b take any measures with regard to an undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that that undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations insofar as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of insured persons;
- c ensure that those measures are carried out, if need be by enforcement and where appropriate through judicial channels.

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

Textual Amendments

- F1** Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).
- F5** Substituted by [Council Directive of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive \(73/239/EEC\) 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 \(84/641/EEC\)](#).
- F6** Inserted by [Council Directive of 22 June 1987 amending, as regards credit insurance and suretyship insurance, First Directive 73/239/EEC 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 \(87/343/EEC\)](#).

[^{F1} Article 20

1 If an undertaking does not comply with Article 15, the competent authority of its home Member State may prohibit the free disposal of its assets after having communicated its intention to the competent authorities of the Member States in which the risks are situated.

2 For the purposes of restoring the financial situation of an undertaking the solvency margin of which has fallen below the minimum required under [^{F2}Article 16a], the competent authority of the home Member State shall require that a plan for the restoration of a sound financial situation be submitted for its approval.

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

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

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

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

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

Textual Amendments

- F1** Substituted by [Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC \(third non-life insurance Directive\)](#).
- F2** Substituted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings](#).

[^{F4}Article 20a

1 Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those insurance undertakings where competent authorities consider that policyholders' rights are threatened. The financial recovery plan shall as a minimum include particulars or proof concerning for the next three financial years:

- a estimates of management expenses, in particular current general expenses and commissions;
- b a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- c a forecast balance sheet;
- d estimates of the financial resources intended to cover underwriting liabilities and the required solvency margin;
- e the overall reinsurance policy.

2 Where policyholders' rights are threatened because the financial position of the undertaking is deteriorating, Member States shall ensure that the competent authorities have the power to oblige insurance undertakings to have a higher required solvency margin, in order to ensure that the insurance undertaking is able to fulfil the solvency requirements in the near

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future. The level of this higher required solvency margin shall be based on the financial recovery plan referred to in paragraph 1.

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

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

- a the nature or quality of reinsurance contracts has changed significantly since the last financial year;
- b there is no or an insignificant risk transfer under the reinsurance contracts.

5 If the competent authorities have required a financial recovery plan for the insurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 10(3), second subparagraph of this Directive, Article 16(1)(a) of Council Directive 88/357/EEC (second non-life insurance Directive)⁽⁹⁾ and Article 12(2) of Council Directive 92/49/EEC (third non-life insurance Directive)⁽¹⁰⁾, as long as they consider that policyholders rights are threatened within the meaning of paragraph 1.]

Textual Amendments

- F4** Inserted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings](#).

Article 21

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

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

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

- (1) [^{F2}OJ L 374, 31.12.1991, p. 7.
- (2) [^{F3}OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 11).
- (3) OJ L 330, 5.12.1998, p. 1.
- (4) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EEC (OJ L 275, 27.10.2000, p. 37).
- (5) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).
- (6) OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council (OJ L 204, 21.7.1998, p. 29).
- (7) OJ L 35, 11.2.2003.]
- (8) OJ L 374, 31.12.1991, p. 32.]
- (9) [^{F4}OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).
- (10) OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).]

Textual Amendments

- F2** Substituted by Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.
- F3** Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.
- F4** Inserted by Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.