

COUNCIL DIRECTIVE

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

(90/619/EEC)

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⁾,

Whereas it is necessary to develop the internal market in life assurance and in the operations referred to in 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 ⁽⁴⁾, hereinafter called the 'First Directive' as last amended by the Act of Accession of Spain and Portugal; whereas, in order to achieve that objective, it is desirable to make it easier for assurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policy-holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States;

Whereas, under the Treaty, any discrimination with regard to freedom to provide services based on the fact that an undertaking is not established in the Member State in which the services are provided has been prohibited since the end of the transitional period; whereas that prohibition applies to services provided from any establishment in the Community, whether it be the head office of an undertaking or an agency or branch;

Whereas, for practical reasons, it is desirable to define provision of services taking into account both the assurer's establishment and the place where the commitment is to be covered; whereas, therefore, commitment should

also be defined; whereas, moreover, it is desirable to distinguish between activities pursued by way of establishment and activities pursued by way of freedom to provide services;

Whereas it is desirable to supplement the First Council Directive in order in particular to clarify the powers and means of supervision vested in the supervisory authorities; whereas it is also desirable to lay down specific provisions regarding the taking-up, pursuit and supervision of activity by way of freedom to provide services;

Whereas policy-holders who, by virtue of the fact that they take the initiative in entering into a commitment in another State and thus place themselves under the protection of the legal system of that other State, do not require special protection in the State of the commitment, should be granted complete freedom to avail themselves of the widest possible market in life assurance and in the operations referred to in the First Directive; whereas other policy-holders should also be afforded adequate protection;

Whereas in the management of some group pension funds, the multiplicity and complexity of the various schemes and their close connection with social security schemes call for careful study; whereas they should therefore be excluded from the scope of the provisions specific to freedom to provide services contained in this Directive; whereas they will form the subject matter of another Directive;

Whereas the provisions in force in the Member States regarding contract law applicable to the activities referred to in the First Directive continue to differ; whereas the freedom to choose, as the law applicable to the contract, a law other than that of the State of the commitment may be granted in certain cases, in accordance with rules which take into account specific circumstances;

Whereas the First Directive's provisions on transfer of portfolio should be reinforced and supplemented by provisions specifically concerning the transfer to another undertaking of the portfolio of contracts concluded by way of freedom to provide services;

Whereas, in the interests of protecting policy-holders, Member States should, at the present stage of the coordination process, be given the option of limiting the simul-

⁽¹⁾ OJ No C 38 of 15. 2. 1989, p. 7 and

OJ No C 72 of 22. 3. 1990, p. 5.

⁽²⁾ OJ No C 175, 16. 7. 1990, p. 107, and Decision of 24 October 1990 (not yet published in the Official Journal).

⁽³⁾ OJ No C 298, 27. 11. 1989, p. 2.

⁽⁴⁾ OJ No L 63, 13. 3. 1979, p. 1.

taneous pursuit of activity by way of freedom to provide services and activity by way of establishment ; whereas no such limitation can be provided for where policy-holders do not require such protection ;

Whereas the taking-up and pursuit of activity by way of freedom to provide services should be subject to procedures guaranteeing the assurance undertaking's compliance with provisions regarding financial guarantees, conditions of assurance and premium rates ; whereas those procedures may be relaxed where the activity pursued by way of freedom to provide services covers policy-holders who, by virtue of the characteristics of the commitment they propose to enter into, do not require special protection in the State of the commitment ;

Whereas for life assurance contracts entered into by way of the free provision of services the policy-holder should be given the opportunity of cancelling the contract within a period of between 14 and 30 days ;

Whereas the First Directive adopted the principle of prohibiting the simultaneous pursuit of the activities covered by Directive 73/239/EEC⁽¹⁾ (called the First Directive on the coordination of non-life insurance) as last amended by Directive 88/357/EEC⁽²⁾ and those covered by the First Directive ; whereas, while it authorized the continued existence of existing composite undertakings, it stated that they may not set up agencies or branches for life assurance ; whereas the specific nature of the commitments entered into in the insurance field under the freedom of services regime nevertheless justifies, at least on a transitional basis as from notification of this Directive to Member States, the introduction of a degree of flexibility in the application of the above principle ;

Whereas nothing in this Directive would prevent a composite undertaking from dividing itself into two undertakings, one active in the field of life assurance, the other in non-life insurance ; whereas in order to allow such division to take place under the best possible conditions, it is desirable to permit Member States, in accordance with Community rules of competition law, to provide for appropriate tax arrangements, in particular with regard to the capital gains such division could entail ;

Whereas it is necessary to make provision for special cooperation in the sphere of freedom to provide services between the competent supervisory authorities of the Member States and between those authorities and the Commission ; whereas provision should also be made for

a system of penalties to apply where the undertaking providing the service fails to comply with the provisions of the Member State in which the service is provided ;

Whereas the technical reserves, including mathematical reserves, should be subject to the rules of and supervision by the Member State in which the service is provided where the provision of services involves commitments in respect of which the State in which the service is received wishes to provide special protection for policy-holders ; whereas, however, if such concern to protect policy-holders is unjustified, the technical reserves, including mathematical reserves, should remain subject to the rules of and supervision by the Member State in which the undertaking is established ;

Whereas some Member States do not subject life assurance contracts and the other operations covered by the First Directive to any form of indirect taxation, while others apply special taxes ; whereas the structure and rate of those taxes vary considerably between the Member States in which they are applied ; whereas it is desirable to avoid a situation where those differences lead to distortions of competition between undertakings in the various Member States ; whereas, pending further harmonization, the application of the tax arrangements provided for by the Member State in which the commitment is entered into is a means of remedying such mischief ; whereas it is for the Member States to establish a method of ensuring that such taxes are collected ;

Whereas the First Directive makes express provision for specific rules concerning the authorization of agencies and branches of undertakings whose head offices are outside the Community ;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis ; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in other third countries ; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations ;

Whereas it is desirable to take into account, within the meaning of Article 8c of the Treaty, the extent of the effort which needs to be made by certain economies showing differences in development ; whereas, therefore, it is desirable to grant certain Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to freedom to provide services ;

⁽¹⁾ OJ No L 228, 16. 8. 1973, p. 3.

⁽²⁾ OJ No L 172, 4. 7. 1988, p. 1.

Whereas, in view of the differences in the national legislations, it is also appropriate to grant to those Member States which so wish transitional arrangements enabling them to adapt their legislation before applying in their entirety, as regards group insurance contracts linked to a contract of employment or the intervention of a broker, the provisions of this Directive relating to the case where the policy-holder takes the initiative to conclude a contract by way of provision of services;

Whereas it will be particularly important to allow those Member States who so wish a sufficiently long period to be able to adopt the appropriate provisions in order to ensure the professional qualification and independence of insurance brokers; whereas taking into account the growing role such brokers play in advising those buying insurance and facing an increasing range of products as a result of the freedom to provide services, their professional qualification and independence will become essential elements for protection of the consumer,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

The object of this Directive is to:

- (a) supplement Directive 79/267/EEC;
- (b) lay down specific provisions relating to freedom to provide services in respect of the activities referred to in the said Directive, such provisions being set forth in Title III of this Directive.

Article 2

For the purposes of this Directive:

- (a) 'First Directive': means Directive 79/267/EEC;
- (b) 'undertaking':
 - for the purposes of Titles I and II, means any undertaking which has received official authorization under Article 6 or Article 27 of the First Directive,
 - for the purposes of Titles III and IV, means any undertaking which has received official authorization under Article 6 of the First Directive;
- (c) 'establishment':

means the head office, an agency or a branch of an undertaking, having regard to Article 3;
- (d) 'commitment':

means a commitment represented by one of the kinds of insurance or operation referred to in Article 1 of the First Directive;

- (e) 'Member State of the commitment':

means the Member State where the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State where the latter's establishment, to which the contract relates is situated;
- (f) 'Member State of establishment':

means the Member State in which the establishment covering the commitment is situated;
- (g) 'Member State of provision of services':

means the Member State of the commitment where the commitment is covered by an establishment situated in another Member State;
- (h) 'parent undertaking':

means a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC⁽¹⁾;
- (i) 'subsidiary':

means a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 3

For the purposes of the First Directive and of this Directive, any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

TITLE II

Provisions supplementary to the First Directive

Article 4

1. The law applicable to contracts relating to the activities referred to in the First Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.
2. Where the policy-holder is a natural person and has his habitual residence in a Member State other than that of which he is a national, the parties may choose the law of the Member State of which he is a national.
3. Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

⁽¹⁾ OJ No L 193, 18. 7. 1983, p. 1.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

4. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

5. Subject to the preceding paragraphs, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

Article 5

The following paragraph is added to Article 23 of the First Directive :

'3. Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising assurance undertakings have the powers and means necessary for supervision of the activities of assurance undertakings established within their territory, including activities engaged in outside that territory, in accordance with the Council Directives governing those activities and for the purpose of ensuring that they are implemented.

Those powers and means must, in particular, enable the supervisory authorities to :

- make detailed inquiries about the undertaking's situation and the whole of its business, *inter alia* by :
 - gathering information or requiring the submission of documents concerning assurance business,
 - carrying out on-the-spot investigations at the undertaking's premises,
- take any measures, with regard to the undertaking, which are appropriate and necessary to ensure that the activities of the undertaking remain in conformity with the laws, regulations and administrative provisions with which the undertaking has to comply in each Member State and in particular with the scheme of operations insofar as it remains mandatory, and to prevent or remove any

irregularities prejudicial to the interests of policyholders,

- ensure that measures required by the supervisory authorities are carried out, if need be by enforcement, where appropriate through judicial channels.

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

Article 6

1. Article 25 of the First Directive is hereby deleted.
2. Each Member State shall, under the conditions laid down by national law, authorize undertakings which are established within its territory to transfer all or part of their portfolios of contracts for which that State is the State of the commitment, to an accepting office established in that same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.
3. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10 (1) to an accepting office established in the Member State of provision of services if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.
4. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10 (1) to an accepting office established in the same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the accepting office possesses the necessary margin of solvency after taking the transfer into account and if it fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services.
5. In the cases referred to in paragraphs 3 and 4, the supervisory authorities of the Member State in which the transferring undertaking is established shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member State of provision of services.
6. If a Member State, under the conditions laid down by national law, authorizes undertakings established within its territory to transfer all or part of their portfolios of contracts to an accepting office established in another

Member State which is not the Member State of provision of services, it shall ensure that the following conditions are fulfilled :

- the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account,
- the Member State in which the accepting office is established agrees,
- the accepting office fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services, the law of that Member State provides for the possibility of such a transfer and that Member State agrees to the transfer.

7. A transfer authorized in accordance with this Article shall be published, under the conditions laid down by national law, in the Member State of the commitment. Such transfer shall be automatically valid against policy-holders, assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the right of Member States to provide that policy-holders may cancel the contract within a given period after the transfer.

Article 7

Article 22 (2) of the First Directive is replaced by the following :

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

Article 8

1. The heading of Title III of the First Directive is replaced by the following :

TITLE III A

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

2. The following heading is placed after Article 32 of the First Directive :

TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of holdings by such parent undertakings'.

Article 9

The following Articles are added to Title III B of the First Directive :

Article 32a

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

- (a) of any authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Committee referred to in Article 32b (6) accordingly ;
- (b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Committee referred to in Article 32b (6) accordingly.

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

Article 32b

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

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

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

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not

receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

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

- regarding requests pending at the moment of the decision or future requests for authorizations, and
- regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.

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

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

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

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

- (a) of any request for the authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;
- (b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

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

6. The Commission shall be assisted by a committee composed of the representatives of the

Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

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

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

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

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

(¹) OJ No L 330, 29. 11. 1990, p. 50.

TITLE III

Provisions relating specifically to the freedom to provide services

Article 10

1. This Title shall apply where an undertaking, through an establishment situated in a Member State, covers a commitment in another Member State.

2. This Title shall apply to:

- the types of insurance referred to in Article 1 (1) of the First Directive,
- the operations referred to in Article 1 (2) (a) and (b) of the First Directive.

3. This Title shall not apply to the operations and bodies referred to in Article 1 (2) (c), (d) and (e), Article 1 (3) and Articles 2, 3 and 4 of the First Directive.

4. An undertaking shall not cover a commitment in another Member State unless it is authorized under Article 6 of the First Directive to cover such a commitment in its Member State of establishment.

Article 11

Any undertaking which intends to provide services shall first inform the competent authorities of the head office Member State, and, where appropriate, of the Member State of the establishment concerned, indicating the Member State or Member States within whose territory it intends to provide services and the nature of the commitments it proposes to cover.

Article 12

1. Subject to Article 13, each Member State within whose territory an undertaking intends, by way of freedom to provide services, to cover commitments within the meaning of Article 10 may make the taking-up of such activity conditional on official authorization insofar as the commitments are not entered into in accordance with the arrangements referred to in Article 13; to that end, it may require that the undertaking:

- (a) produce a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the First Directive and that, in accordance with Article 6 (1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment;
- (b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services;
- (c) submit a scheme of operations concerning the following particulars:
 - the nature of the commitments which the undertaking proposes to cover in the Member State of provision of services,
 - the general and special conditions of the assurance policies which it proposes to use there,
 - the premium rates which the undertaking envisages applying and the technical bases which it proposes to use for each class of business,

— the forms and other printed documents which it intends to use in its dealings with policy-holders, insofar as these are also required of established undertakings.

2. The competent authorities of the Member State of provision of services may require that the particulars referred to in paragraph 1 (c) be supplied to them in the official language of that State.

3. The competent authorities of the Member State of provision of services shall have a period of six months from receipt of the documents referred to in paragraph 1 in which to grant or refuse authorization on the basis of the compliance or non-compliance of the particulars in the scheme of operations submitted by the undertaking with the laws, regulations and administrative provisions applicable in that State.

Such authorization may not be refused on the grounds that some operations in the scheme of operations, which are subject in the Member State of establishment of the undertaking to supervision by the authorities responsible for the supervision of insurance undertakings, are not subject to such supervision in the Member State of provision of services.

4. If the competent authorities of the Member State of provision of services have not taken a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be refused.

5. Any decision to refuse authorization or to refuse a certificate as referred to in paragraph 1 (a) or (b) shall be accompanied by the precise grounds therefor and communicated to the undertaking in question.

6. Each Member State shall make provision for the right to apply to the courts in respect of a refusal of authorization or refusal to issue the certificate referred to in paragraph 1 (a) or (b).

Article 13

1. Commitments covered by way of freedom to provide services shall be subject to Article 14 where the policy-holder takes the initiative in seeking a commitment from the undertaking.

The policy-holder shall be deemed to have taken the initiative:

- where, on the one hand, the contract is entered into by both parties in the Member State in which the undertaking is established or by each of the parties in that party's own State of establishment or of habitual residence, and where, on the other hand, the policy-holder has not been contacted in his State of habitual residence by the undertaking or through an insurance intermediary or any person authorized to act for it or by means of any solicitation of business addressed to him personally,

— where the policy-holder approaches an intermediary established in the Member State in which the policy-holder has his habitual residence and carrying on the professional activities defined in Article 2 (1) (a) of Directive 77/92/EEC⁽¹⁾, in order to obtain information on assurance contracts offered by undertakings established in Member States other than his State of habitual residence or with a view to entering into a commitment through the intermediary with such an undertaking. In that event the policy-holder shall sign a statement, the text of which is set out, under item A in the Annex, expressly so requesting.

2. Before entering into a commitment in the cases referred to in the first and second indents of paragraph 1, the policy-holder shall sign a statement, the text of which is set out under item B in the Annex, to the effect that he notes that the commitment is subject to the rules of supervision of the Member State of establishment which is to cover the commitment.

Article 14

1. Each Member State within whose territory an undertaking intends, by way of freedom to provide services, to cover commitments in accordance with Article 13 shall require that the undertaking abide by the following procedure :

- (a) production of a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the First Directive and that, in accordance with Article 6 (1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment ;
- (b) production of a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services ;
- (c) statement of the nature of the commitments which it proposes to cover in the Member State of provision of services.

The above procedure shall not apply where an activity falling within this Directive is not subject, in the Member State of the commitment, to supervision by the administrative authorities responsible for supervising private insurance.

2. Each Member State shall make provision for the right to apply to the courts in respect of a refusal to issue the certificate referred to in paragraph 1 (a) or (b).

3. The undertaking may commence activities as from the certified date on which the authorities of the Member State of provision of services are in possession of the documents referred to in paragraph 1.

4. This Article shall also apply where the Member State in whose territory an undertaking intends, by way of freedom to provide services, to cover commitments in accordance with arrangements other than those referred to in Article 13 of this Directive does not make the taking-up of such activity conditional on official authorization.

5. Member States may not prevent the policy-holder from entering into any commitment which may be lawfully undertaken in the Member State of establishment unless it is contrary to public policy in the Member State of the commitment.

Article 15

1. Each Member State shall prescribe that a policy-holder who concludes an individual life-assurance contract in one of the cases referred to in Title III shall have a period of between 14 and 30 days from the time when he was informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy-holder shall have the effect of releasing him from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 4, notably as regards the arrangements for informing the policy-holder that the contract has been concluded.

2. The Member States need not apply paragraph 1 to contracts of six months' duration or less.

Article 16

Member States' legislation shall provide that an undertaking established in a Member State may cover within that State by way of freedom to provide services from an establishment in another Member State at least :

- the commitments within the meaning of Article 10, where they are entered into in accordance with the arrangements in Article 13,
- the commitments within the meaning of Article 10 entered into in accordance with arrangements other than those laid down in Article 13, where they fall within classes in respect of which the undertaking established in the first Member State lacks authorization there in accordance with Article 6 of the First Directive.

If, however, in the latter case that undertaking has such authorization, the first Member State may prevent such provision of services.

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 14.

Article 17

1. Where an undertaking referred to in Article 11 intends to amend the information referred to in Article 12 (1) (c) or 14 (1) (c), it shall submit the amendments to the competent authorities of the Member State of provision of services. Those amendments shall be subject to the provisions of Article 12 (3) and 14 (3), as the case may be.

2. Where the undertaking intends to extend its activities to commitments within the meaning of Article 10 in accordance with arrangements other than those laid down in Article 13 or 14 (4), it shall follow the procedure laid down in Articles 11 and 12.

3. Where the undertaking intends to extend its activities to commitments in accordance with the arrangements laid down in Article 13 or 14 (4), it shall follow the procedure laid down in Articles 11 and 14.

Article 18

1. Undertakings which, by virtue of Article 13 (3) of the First Directive, carry on simultaneously the activities referred to in the Annex to Directive 73/239/EEC and those listed in Article 1 of the First Directive may accept commitments in any of the classes referred to in the First Directive by way of provision of services as referred to in Article 13 of this Directive. They may also accept commitments by way of provision of services as referred to in Article 12 if the law of the Member State of provision of services so allows at the time of notification of this Directive, or thereafter and until 31 December 1995 in the other Member States.

2. This Article will be reviewed in the light of the report to be prepared by the Commission in accordance with Article 39 (2) of the First Directive.

Article 19

1. Member States of provision of services may maintain or introduce laws, regulations or administrative provisions justified on policy-holder protection grounds, concerning, in particular, approval of general and special policy conditions, of forms and other printed documents for use in dealings with policy-holders, of scales of premiums and of any other document necessary for the normal exercise of supervision on condition that the rules of the Member State of establishment are insufficient to achieve the necessary level of protection and the requirements of the Member State of provision of services do not go beyond what is necessary in that respect.

2. However, with regard to commitments entered into in accordance with the arrangements described in Article 13, Member States of provision of services shall not lay down provisions requiring approval or notification of general and special policy conditions, scales of premiums,

forms and other printed documents which the undertaking intends to use in its dealings with policy-holders.

3. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such commitments, although this requirement may not constitute a prior condition in order for an undertaking to carry on its activities.

Article 20

1. Any undertaking providing services shall submit to the competent authorities of the Member State of provision of services all documents requested of it for the purposes of implementing this Article, insofar as undertakings established there are also obliged to do so.

2. If the competent authorities of a Member State establish that an undertaking providing services within its territory does not comply with the legal provisions applicable to it in that State, such authorities shall request the undertaking concerned to put an end to the irregular situation.

3. If the undertaking in question fails to comply with the request referred to in paragraph 2, the competent authorities of the Member State of provision of services shall inform the competent authorities of the Member State of establishment accordingly. The latter authorities shall take all appropriate steps to ensure that the undertaking concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the authorities of the Member State of provision of services.

The competent authorities of the Member State of provision of services may also apply to the competent authorities responsible for the head office of the assurance undertaking if the services are being provided by agencies or branches.

4. If, despite the steps thus taken by the Member State of establishment, or because such steps prove inadequate or are lacking in the Member State in question, the undertaking persists in violating the legal provisions in force in the Member State of provision of services, the latter Member State may, after informing the supervisory authorities of the Member State of establishment, take appropriate steps to prevent further irregularities, including, insofar as it is strictly necessary, the prevention of the further covering of commitments by the undertaking by way of freedom to provide services within its territory. In the case of commitments covered by way of freedom to provide services in accordance with arrangements other than those referred to in Article 13 of this Directive, such steps shall include withdrawal of the authorization referred to in Article 12. Member States shall ensure that within their territory it is possible to effect the notifications necessary for such steps.

5. These provisions shall not affect the right of Member States to punish irregularities committed within their territory.

6. If the undertaking which has committed the irregularity has an establishment or owns property in the Member State of provision of services, the supervisory authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for such irregularity by way of enforcement against such establishment or property.

7. Any step taken under paragraphs 2 to 6 involving penalties or restrictions on the provision of services must be properly justified and communicated to the undertaking concerned. Every such measure shall be subject to the right to apply to the courts in the Member State in which the authorities adopted it.

8. Where steps are taken under Article 24 of the First Directive, the competent authorities of the Member State of provision of services shall be informed accordingly by the authority which takes them and, where the steps are taken under paragraphs 1 and 3 of the said Article, take whatever action is necessary to safeguard the interests of assured persons.

In the event of withdrawal of authorization under Article 26 of the First Directive, the competent authorities of the Member State of provision of services shall be informed accordingly and shall take appropriate steps to prevent the establishment concerned from continuing to conclude assurance contracts by way of freedom to provide services within the territory of that Member State.

9. Every two years the Commission shall submit to the Council a report summarizing the number and type of cases in which, in each Member State, decisions refusing authorization have been communicated under Article 12 or measures have been taken under paragraph 4. Member States shall cooperate with the Commission by providing it with the information required for the report.

Article 21

In the event of an assurance undertaking being wound up, commitments arising from contracts underwritten by way of freedom to provide services shall be met in the same way as those arising from that undertaking's other assurance contracts, no distinction being made on grounds of the nationality of assured persons or beneficiaries.

Article 22

1. Where an operation is offered by way of freedom to provide services, the policy-holder shall, before any commitment is entered into, be informed of the Member State in which the head office, agency or branch with which the contract is to be concluded is established.

Any document issued to the policy-holder or to the insured shall contain the information referred to in the preceding subparagraph.

2. The contract or other document granting cover, together with the assurance proposal where it is binding upon the proposer, shall specify the address of the establishment which grants the cover and that of the head office.

Article 23

Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without deduction of reinsurance, receivable by Member State and by each of classes I to VI, as defined in the Annex to the First Directive.

This information shall be provided separately for commitments covered in accordance with the arrangements in Article 12 and for those covered in accordance with the arrangements in Article 14.

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services which so requests.

Article 24

1. Where the provision of services is conditional upon authorization by the Member State of provision of services, the amount of the technical reserves, including mathematical reserves, and the rules on profit sharing and on the surrender and paid-up values of the contracts concerned shall be determined under the supervision of that Member State in accordance with the rules it has laid down or, failing such rules, in accordance with established practice in that Member State. The covering of those reserves by equivalent and matching assets, the location of those assets and the application of the rules on profit sharing and on surrender and paid-up values shall be under the supervision of that Member State in accordance with its rules or practice.

2. In all other cases, those various operations shall be under the supervision of the Member State of establishment, in accordance with its rules or practice.

3. The Member State of establishment shall ensure that the reserves relating to all the contracts which the undertaking concludes through the establishment concerned are sufficient and covered by equivalent and matching assets.

4. In the circumstances referred to in paragraph 1, the Member State of establishment and the Member State of provision of services shall exchange any information necessary for carrying out their respective duties under paragraphs 1 and 3.

Article 25

Without prejudice to any subsequent harmonization, every assurance contract concluded by way of freedom to provide services shall be subject only to the indirect taxes and parafiscal charges on assurance premiums of the

Member State of the commitment within the meaning of Article 2 (e) and, in the case of Spain, to the surcharges legally fixed to assist the Spanish body 'Consortio de Compensación de Seguros' in its function of compensating for losses resulting from the occurrence of exceptional events in that Member State.

The law applicable to the contract pursuant to Article 4 shall not affect the tax arrangements applicable.

Subject to future harmonization, each Member State shall apply to undertakings which provide services in the territory its own national provisions concerning measures to ensure the collection of indirect taxes and parafiscal charges due under the first paragraph.

TITLE IV

Transitional provisions

Article 26

The following transitional arrangements shall apply for the benefit of Spain until 31 December 1995 and of Greece and Portugal until 31 December 1998:

- they may limit the commitments for which they are the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 13,
- they may require that the technical reserves, including mathematical reserves, relating to those commitments, should be calculated, covered and located in accordance with their national legislation in force.

Article 27

1. In the case of group assurance contracts entered into by virtue of the insured person's contract of employment or professional activity, any Member State may, until 31 December 1994, limit the commitments for which it is the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 12.

2. Member States may, up to three years at the latest after the date of application laid down in the second paragraph of Article 30, consider that the policy-holder shall be deemed to have taken the initiative only in the case provided for in the first indent of Article 13 (1).

TITLE V

Final provisions

Article 28

The Commission and the competent authorities of the Member States shall collaborate closely with a view to

facilitating the supervision of the kinds of insurance and the operations referred to in the First Directive within the Community.

Each Member State shall inform the Commission of any major difficulties to which application of this Directive gives rise, *inter alia* any arising if a Member State becomes aware of an abnormal transfer of business referred to in the first Directive to the detriment of undertakings established in its territory and to the advantage of agencies and branches located just beyond its borders.

The Commission and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 29

The Commission shall forward to the European Parliament and the Council regular reports, the first on 20 November 1995, on the development of the market in assurance and operations transacted under conditions of freedom to provide services.

Article 30

Member States shall amend their national provisions to comply with this Directive within 24 months of the date of its notification⁽¹⁾ and shall forthwith inform the Commission thereof.

The provisions amended in accordance with the first paragraph shall be applied within 30 months of the date of notification of this Directive.

Article 31

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

Article 32

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

⁽¹⁾ This Directive was notified to the Member States on 20 November 1990.

*ANNEX**A. Statement to be signed by the policy-holder under Article 13 (1), second indent*

'I hereby state that I wish (name of intermediary) to provide me with information on assurance contracts offered by undertakings established in Member States other than (Member State of habitual residence of policy-holder). I understand that such undertakings are subject to the supervisory arrangements of the State in which they are established and not to the supervisory arrangements of (Member State of habitual residence of policy-holder).'

B. Statement to be signed by the policy-holder under Article 13 (2)

'I hereby take note that (name of assurer) is established in (Member State of establishment of assurer) and I realize that supervision of that assurer is the responsibility of the supervisory authorities in (Member State of establishment of assurer) and not the responsibility of the authorities in (Member State of habitual residence of policy-holder).'
