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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)

(OJ L 228, 11.8.1992, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	European Parliament and Council Directive 95/26/EC of 29 June 1995	L 168	7	18.7.1995
►**M2**	Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000	L 290	27	17.11.2000
►**M3**	Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002	L 35	1	11.2.2003
►**M4**	Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005	L 79	9	24.3.2005
►**M5**	Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005	L 323	1	9.12.2005
►**M6**	Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007	L 247	1	21.9.2007
►**M7**	Directive 2008/36/EC of the European Parliament and of the Council of 11 March 2008	L 81	69	20.3.2008

Corrected by:

►**C1** Corrigendum, OJ L 311, 14.11.1997, p. 34 (92/49/EEC)

►**C2** Corrigendum, OJ L 270, 13.10.2007, p. 32 (2005/68/EC)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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COUNCIL DIRECTIVE 92/49/EEC

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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)

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 insurance other than 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 insurance undertakings with head offices in the Community to cover risks situated within the Community;

(2) Whereas the Second Council Directive of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 72/239/EEC (88/357/EEC) ([4]) has already contributed substantially to the achievement of the internal market in direct insurance other than life assurance by granting policyholders who, by virtue of their status, their size or the nature of the risks to be insured, do not require special protection in the Member State in which a risk is situated complete freedom to avail themselves of the widest possible insurance market;

(3) Whereas Directive 88/357/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 policyholders, irrespective of their status, their size or the nature of the risks to be insured, to have recourse to any insurer 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 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) ([5]) and the Council Directive of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (91/674/EEC) ([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 authorization

([1]) OJ No C 244, 28.9.1990, p. 28 and OJ No C 93, 13.4.1992, p. 1.
([2]) OJ No C 67, 16.3.1992, p. 98 and OJ No C 150, 15.6.1992.
([3]) OJ No C 102, 18.4.1991, p. 7.
([4]) OJ No L 172, 4.7.1988, p. 1. Last amended by Directive 90/618/EEC (OJ No L 330, 29.11.1990, p. 44).
([5]) OJ No L 228, 16.8.1973, p. 3. Last amended by Directive 88/357/EEC (OJ No L 172, 4.7.1988, p. 1).
([6]) OJ No L 374, 31.12.1991, p. 7.

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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 insurance 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 insurance 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 insurance undertakings which wish to carry on insurance business there and which have already been authorized in their home Member State to seek fresh authorization; whereas Directives 73/239/EEC and 88/357/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 insurance undertakings, including their state of solvency, the establishment of adequate technical provisions and the covering of those provisions by matching assets;

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

(9) 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 insurance 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 insurance supervision;

(10) Whereas the internal market comprises an area without internal frontiers and involves access to all insurance business other than life assurance throughout the Community and, hence, the possibility for any duly authorized insurer to cover any of the risks referred to in the Annex to Directive 73/239/EEC; whereas, to that end, the monopoly enjoyed by certain bodies in certain Member States in respect of the coverage of certain risks must be abolished;

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

(12) Whereas Directive 91/674/EEC has already effected the necessary harmonization of the Member States' rules on the technical provisions which insurers are required to establish to cover their commitments, and that harmonization makes it possible to grant mutual recognition of those provisions;

(13) 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 the Council Directive of 24 June 1988 for the implementation of Article 67 of the Treaty (88/361/EEC) ([1]) and the progress made by the Community towards economic and monetary union;

([1]) OJ No L 178, 8.7.1988, p. 5.

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(14) Whereas, however, the home Member State may not require insurance 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;

(15) Whereas, pending the adoption of a Directive on investment services harmonizing *inter alia* the definition of the concept of regulated market, for the purposes of this Directive and without prejudice to such future harmonization that concept must be defined provisionally; whereas that definition will be replaced by that 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 insurance undertaking's home Member State;

(16) Whereas the list of items of which the solvency margin required by Directive 73/239/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;

(17) Whereas within the framework of an integrated insurance market policyholders who, by virtue of their status, their size or the nature of the risks to be insured, do not require special protection in the Member State in which a risk is situated should be granted complete freedom to choose the law applicable to their insurance contracts;

(18) Whereas the harmonization of insurance contract law is not a prior condition for the achievement of the internal market in insurance; whereas, therefore, the opportunity afforded to the Member States of imposing the application of their law to insurance contracts covering risks situated within their territories is likely to provide adequate safeguards for policyholders who require special protection;

(19) Whereas within the framework of an internal market it is in the policyholder's interest that he should have access to the widest possible range of insurance 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 in which the risk is situated to ensure that there is nothing to prevent the marketing within its territory of all the insurance 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 in which the risk is situated, and insofar 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;

(20) Whereas the Member States must be able to ensure that the insurance products and contract documents used, under the right of establishment or the freedom to provide services, to cover risks situated 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 the requirements of an integrated market but their employment may not constitute a prior condition for carrying on insurance 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 policyholders adequate protection;

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(21) Whereas if a policyholder is a natural person, he should be informed by the insurance undertaking of the law which will apply to the contract and of the arrangements for handling policyholders' complaints concerning contracts;

(22) Whereas in some Member States private or voluntary health insurance serves as a partial or complete alternative to health cover provided for by the social security systems;

(23) Whereas the nature and social consequences of health insurance contracts justify the competent authorities of the Member State in which a risk is situated in requiring systematic notification of the general and special policy conditions in order to verify that such contracts are a partial or complete alternative to the health cover provided by the social security system; whereas such verification must not be a prior condition for the marketing of the products; whereas the particular nature of health insurance, serving as a partial or complete alternative to the health cover provided by the social security system, distinguishes it from other classes of indemnity insurance and life assurance insofar as it is necessary to ensure that policyholders have effective access to private health cover or health cover taken out on a voluntary basis regardless of their age or risk profile;

(24) Whereas to this end some Member States have adopted specific legal provisions; whereas, to protect the general good, it is possible to adopt or maintain such legal provisions in so far as they do not unduly restrict the right of establishment or the freedom to provide services, it being understood that such provisions must apply in an identical manner whatever the home Member State of the undertaking may be; whereas these legal provisions may differ in nature according to the conditions in each Member State; whereas these measures may provide for open enrolment, rating on a uniform basis according to the type of policy and lifetime cover; whereas that objective may also be achieved by requiring undertakings offering private health cover or health cover taken out on a voluntary basis to offer standard policies in line with the cover provided by statutory social security schemes at a premium rate at or below a prescribed maximum and to participate in loss compensation schemes; whereas, as a further possibility, it may be required that the technical basis of private health cover or health cover taken out on a voluntary basis be similar to that of life assurance;

(25) Whereas, because of the coordination effected by Directive 73/239/EEC as amended by this Directive, the possibility, afforded to the Federal Republic of Germany under Article 7 (2) (c) of the same Directive, of prohibiting the simultaneous transaction of health insurance and other classes is no longer justified and must therefore be abolished;

(26) Whereas Member States may require any insurance undertakings offering compulsory insurance against accidents at work at their own risk within their territories to comply with the specific provisions laid down in their national law on such insurance; whereas, however, this requirement may not apply to the provisions concerning financial supervision, which are the exclusive responsibility of the home Member State;

(27) Whereas exercise of the right of establishment requires an undertaking to maintain a permanent presence in the Member State of the branch; whereas responsibility for the specific interests of insured persons and victims in the case of third-party liability motor insurance requires adequate structures in the Member State of the branch for the collection of all the necessary information on compensation claims relating to that risk, with sufficient powers to represent the undertaking vis-à-vis injured parties who could claim compensation, including powers to pay

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such compensation, and to represent the undertaking or, if necessary, to arrange for it to be represented in the courts and before the competent authorities of that Member State in connection with claims for compensation;

(28) Whereas within the framework of the internal market no Member State may continue to prohibit the simultaneous carrying on of insurance 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 88/357/EEC should therefore be abolished;

(29) Whereas provision should be made for a system of penalties to be imposed when, in the Member State in which a risk is situated, an insurance undertaking does not comply with those provisions protecting the general good that are applicable to it;

(30) Whereas some Member States do not subject insurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution, including surcharges intended for compensation bodies; 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 insurance 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 risks are situated is likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected;

(31) 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 insurance 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;

(32) Whereas it is necessary to adopt specific provisions intended to ensure smooth transition from the legal regime in existence when this Directive becomes applicable to the regime that it introduces, taking care not to place an additional workload on Member States' competent authorities;

(33) Whereas under Article 8 c 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) *insurance undertaking* shall mean an undertaking which has received official authorization in accordance with Article 6 of Directive 73/239/EEC;

([1]) OJ No L 374, 31.12.1991, p. 32.

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(b) *branch* shall mean an agency or branch of an insurance undertaking, having regard to Article 3 of Directive 88/357/EEC;

(c) *home Member State* shall mean the Member State in which the head office of the insurance undertaking covering a risk is situated;

(d) *Member State of the branch* shall mean the Member State in which the branch covering a risk is situated;

(e) *Member State of the provision of services* shall mean the Member State in which a risk is situated, as defined in Article 2 (d) of Directive 88/357/EEC, if it is covered by an insurance undertaking or a branch situated in another Member State;

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

(g) *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 influence over the management of the undertaking in which a holding subsists.

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For the purposes of this definition, in the context of Articles 8 and 15 and of the other levels of holding referred to in Article 15, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC ([2]), as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC ([3]), provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;

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

(i) *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;

(j) *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 the Council

([1]) OJ No L 193, 18.7.1983, p. 1.

([2]) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 390, 31.12.2004, p. 38).

([3]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1). Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1)

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Directive of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing (79/279/EEC) ([1]) 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 home Member State and meet comparable requirements. Any financial instruments dealt in on that market 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;

(k) *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise insurance undertakings;

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(l) *close links* shall mean a situation in which two or more natural or legal persons are linked by:

(a) 'participation', which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking or

(b) 'control', which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC ([2]), or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

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Article 2

1. This Directive shall apply to the types of insurance and undertakings referred to in Article 1 of Directive 73/239/EEC.

2. This Directive shall apply neither to the types of insurance or operations, nor to undertakings or institutions to which Directive 73/239/EEC does not apply, nor to the bodies referred to in Article 4 of that Directive.

Article 3

Notwithstanding Article 2 (2), Member States shall take every step to ensure that monopolies in respect of the taking up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in Article 4 of Directive 73/239/EEC, are abolished by 1 July 1994.

([1]) OJ No L 66, 13.3.1979, p. 21. Last amended by Directive 82/148/EEC (OJ No L 62, 5.3.1982, p. 22).

([2]) 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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TITLE II

THE TAKING UP OF THE BUSINESS OF INSURANCE

Article 4

Article 6 of Directive 73/239/EEC shall be replaced by the following:

'Article 6

The taking up of the business of direct insurance shall be subject to prior official authorization.

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

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

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

Article 5

Article 7 of Directive 73/239/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 the freedom to provide services.

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

However:

(a) Member States may grant authorization for the groups of classes listed in point B of the Annex, attaching to them the appropriate denominations specified therein;

(b) authorization granted for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions imposed in point C of the Annex are fulfilled'.

Article 6

Article 8 of Directive 72/239/EEC shall be replaced by the following:

'Article 8

1. The home Member State shall require every insurance 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";

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— in the case of the Kingdom of Denmark: “aktieselskaber”, “gensidige selskaber”;

— 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”;

— in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;

— in the case of the Italian Republic: “società per azioni”, “società cooperativa”, “mutua di assicurazione”;

— in the case of the Grand Duchy of Luxembourg: “société anonyme”, “société en commandite par actions”, “association d'assurances mutuelles”, “société coopérative”;

— in the case of the Kingdom of the Netherlands: “naamloze vennootschap”, “onderlinge waarborgmaatschappij”;

— in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's;

— in the case of the Hellenic Republic: “ανώνυμη εταιρία”, “αλληλασφαλιστικός συνεταιρισμός”;

— in the case of the Kingdom of Spain: “sociedad anónima”, “sociedad mutua”, “sociedad cooperativa”;

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

An insurance undertaking may also adopt the form of a European Company (SE) 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 objects insurance operations under conditions equivalent to those under which private-law undertakings operate;

(b) limit its objects to the business of insurance and operations arising directly 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 17 (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 16 and, if with regard to such other classes Article 17 (2) requires a higher minimum guarantee fund than before, that is possesses that minimum.

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3. 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 communication of any other documents necessary for the normal exercise of supervision.

Member States shall not, however, adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums and forms and other printed documents which an undertaking intends to use in its dealings with policyholders.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Nothing in this Directive shall prevent Member States from subjecting undertakings seeking or having obtained authorization for class 18 in point A of the Annex to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of this class of insurance.

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

Article 7

Article 9 of Directive 73/239/EEC shall be replaced by the following:

'Article 9

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

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

(b) the guiding principles as to reinsurance;

(c) the items constituting the minimum guarantee fund;

(d) estimates of the costs of setting up the administrative services and the organization for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in point A of the Annex, the resources at the undertaking's disposal for the provision of the assistance promised

and, in addition, for the first three financial years:

(e) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(f) estimates of premiums or contributions and claims;

(g) a forecast balance sheet;

(h) estimates of the financial resources intended to cover underwriting liabilities and the solvency margin.'

Article 8

The competent authorities of the home Member State shall not grant an undertaking authorization to take up the business of insurance 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.

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

TITLE III

HARMONIZATION OF THE CONDITIONS GOVERNING THE BUSINESS OF INSURANCE

Chapter 1

Article 9

Article 13 of Directive 73/239/EEC shall be replaced by the following:

'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.'

Article 10

Article 14 of Directive 73/239/EEC shall be replaced by the following:

'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'.

Article 11

Article 19 (2) and (3) of Directive 73/239/EEC shall be replaced by the following:

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‘2. Member States shall require insurance 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 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.’

Article 12

1. Article 11 (2) to (7) of Directive 88/357/EEC is hereby repealed.

2. Under the conditions laid down by national law, each Member State shall authorize insurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, concluded either under 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 either under 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 paragraphs 2 and 3, the competent 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 in which the risks are 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 insurance undertaking within three months of receiving a request; the absence of any response within

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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 in which the risk is situated. Such transfers shall automatically be valid against policy-holders, insured persons and any other persons 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 13

Article 20 of Directive 73/239/EEC shall be replaced by the following:

'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 Article 16 (3), 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.'

Article 14

Article 22 of Directive 73/239/EEC shall be replaced by the following:

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'Article 22

1. Authorization granted to an insurance 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 that 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 20;

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

In the event of the withdrawal or lapse of 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 right of establishment or the freedom to provide services. The home Member State's competent authority shall, in conjunction with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the undertaking's assets in accordance with Article 20 (1), (2), second subparagraph, or (3), second subparagraph.

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

Article 15

▼M6

1. Member States shall require any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the insurance undertaking would become its subsidiary (hereinafter referred to as the proposed acquisition), first to notify in writing the competent authorities of the insurance undertaking in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 15b(4). Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

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2. Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance undertaking first to notify in writing the competent authorities of the home Member State, indicating the size of his intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance undertaking would cease to be his subsidiary. Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

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3. On becoming aware of them, insurance 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 any of the tresholds 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 annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

4. Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to operate against the prudent and sound management of an insurance 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 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 imposes 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.

▼M6

Article 15a

1. The competent authorities shall, promptly and in any event within two working days following receipt of the notification required under Article 15(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 15b(4) (hereinafter referred to as the assessment period), to carry out the assessment provided for in Article 15b(1) (hereinafter referred to as the assessment).

The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

▼M6

3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is:

(a) situated or regulated outside the Community; or

(b) a natural or legal person not subject to supervision under this Directive or Directives 85/611/EEC ([1]), 2002/83/EC ([2]), 2004/39/EC, 2005/68/EC ([3]) or 2006/48/EC ([4]).

4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.

5. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

*Article 15*b

1. In assessing the notification provided for in Article 15(1) and the information referred to in Article 15a(2), the competent authorities shall, in order to ensure the sound and prudent management of the insurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the insurance undertaking as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance undertaking in which the acquisition is proposed;

(d) whether the insurance undertaking will be able to comply and continue to comply with the prudential requirements based on this

([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 L 375, 31.12.1985, p. 3). Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council (OJ L 79, 24.3.2005, p. 9).

([2]) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1). Directive as last amended by Directive 2007/44/EC.

([3]) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L 323, 9.12.2005, p. 1). Directive as amended by Directive 2007/44/EC.

([4]) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1). Directive as last amended by Directive 2007/44/EC.

▼M6

Directive and, where applicable, other Directives, notably, Directives 73/239/EEC, 98/78/EC ([1]), 2002/13/EC ([2]) and 2002/87/EC ([3]), in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC ([4]) is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 15(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 15a(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same insurance undertaking have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

*Article 15*c

1. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment if the proposed acquirer is one of the following:

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a, point 2 of Directive 85/611/EEC (hereinafter referred to as the 'UCITS management company') authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or

([1]) Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group (OJ L 330, 5.12.1998, p. 1). Directive as last amended by Directive 2005/68/EC.

([2]) 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 (OJ L 77, 20.3.2002, p. 17).

([3]) 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 (OJ L 35, 11.2.2003, p. 1). Directive as amended by Directive 2005/1/EC.

([4]) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

▼M6

UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or

(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the insurance undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

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Article 16

1. The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors and 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 while performing their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an insurance 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 different Member States from exchanging information in accordance with the Directives applicable to insurance undertakings. Such information shall be subject to the conditions of professional secrecy laid down in paragraph 1.

▼M2

3. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 5a only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

▼M5

4. Competent authorities receiving confidential information under paragraph 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 insurance 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,

— to impose penalties,

▼M5

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

▼C2

— in court proceedings initiated under Article 56 or under special provisions provided for in this Directive and other Directives adopted in the field of insurance undertakings and reinsurance undertakings.

▼M5

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 organisations and the authorities responsible for the supervision of financial markets,

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

— persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance 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 those authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

▼C2

5a. Notwithstanding paragraphs 1 to 4, Member States may authorise exchanges of information between the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of assurance undertakings, reinsurance undertakings and other similar procedures, or

— the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions, or

— independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to this paragraph.

▼M1

5b. Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditons are met:

— the information shall be for the purpose of performing the task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

▼M3

5c. This Article shall not prevent a competent authority from transmitting

— to central banks and other bodies with a similar function in their capacity as monetary authorities,

— where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

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6. In addition, notwithstanding paragraphs 1 and 4, the 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 insurance companies and to inspectors acting on behalf of those departments.

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

The Member States shall, however, provide that information received under paragraphs 2 and 5 and that obtained by means of the on-thespot verification referred to in Article 14 of Directive 73/239/EEC may never

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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.

▼M1

Article 16a

1. Member States shall provide at least that:

(a) any person authorized within the meaning of Directive 84/253/EEC [1], performing in an insurance undertaking the task described in Article 51 of Directive 78/660/EEC [2], Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:

— constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of insurance undertaking, or

— affect the continuous functioning of the insurance undertaking, or

— lead to refusal to certify the accounts or to the expression of reservations;

(b) that person shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the insurance undertaking within which he is carrying out the abovementioned task.

2. The disclosure in good faith to the competent authorities, by persons authorized within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract of by any legislative, regulatory or administrative provision and shall not involce such persons in liability of any kind.

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Chapter 2

Article 17

Article 15 of Directive 73/239/EEC shall be replaced by the following:

'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.

[1] OJ No L 126, 12.5.1984, p. 20.
[2] OJ No L 222, 14.8.1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16.11.1990, p. 60).

▼B

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.'

Article 18

Article 15a of Directive 72/239/EEC shall be replaced by the following:

'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.'

Article 19

Article 23 of Directive 88/357/EEC is hereby repealed.

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

▼M5

1. The home Member State may not authorise insurance undertakings to cover their technical provisions and equalisation reserves with any assets other than those in the following categories:

▼B

A. **Investments**

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

(b) loans;

(c) shares and other variable yield participations;

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(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**

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(f) debts owed by reinsurers, including reinsurers shares of technical provisions, and by the special purpose vehicles referred to in Article 46 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance [1];

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

(h) debts owed by policyholders and intermediaries arising out of direct and reinsurance operations;

(i) claims arising out of salvage and subrogation;

(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;

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

(n) deferred acquisition costs;

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

In the case of the association of underwriters know 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 [2] or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

▼M5

The inclusion of any asset or category of assets listed in the first subparagraph shall not mean that all those assets should automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules setting the conditions for the use of acceptable assets.

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In the determination and the application of 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 State authorities or international organizations, 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

[1] OJ L 323, 9.12.2005, p. 1.
[2] OJ No L 322, 17.12.1977, p. 30. Last amended by Directive 89/646/EEC (OJ No L 386, 30.12.1989, p. 1).

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on the status of the borrower, mortgages, bank guarantees or guarantees granted by insurance 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;

(vi) debts owed by and claims against a third party may be accepted as cover for technical provisions only after deduction of all amounts owed to the same third party;

(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 policyholders and intermediaries arising out of insurance and reinsurance 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 insurance 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 that is consistent with the calculation of the technical provision for unearned premiums.

2. Notwithstanding paragraph 1, in exceptional circumstances and at an insurance 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

▼M5

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

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(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 does not invest 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;

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(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 undertaking - in so far as Article 8 of Directive 73/239/EEC allows it - and investment undertakings established in a 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;

(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 reinsurance 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 insurance 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 laid down 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 intermediary, loans to or guaranteed by the State or local authorities or 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 insurance 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,

([1]) OJ No L 375, 31.12.1985, p. 3. Amended by Directive 88/220/EEC (OJ No L 100, 19.4.1988, p. 31).

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

— bonds, debt securities and other money and capitalmarket instruments not issued by States, local or regional authorities or undertakings belonging to Zone A as defined in Directive 89/647/EEC [1], or the issuers of which are international organizations not numbering at least one Community Member State among their member, 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 the debt securities and which, in the event of failure of the issues, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

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

6. Notwithstanding paragraph 1, in exceptional circumstances and at an insurance 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

Points 8 and 9 of Annex 1 to Directive 88/357/EEC shall be replaced by the following:

‘8. Insurance undertakings may hold non-matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.

9. A Member State may provide that when under the preceding procedures a commitment must be covered by assets expressed in a Member State's currency that requirement shall also be considered as satisfied when the assets are expressed in ecus’.

Article 24

Article 16 (1) of Directive 73/239/EEC shall be replaced by the following:

‘1. The home Member State shall require every insurance undertaking to establish an adequate solvency margin in respect of its entire business.

The solvency margin shall correspond to the assets of the undertaking free of 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 insurance 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 insofar 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;

[1] OJ No L 386, 30.12.1989, p. 14.

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(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 and

(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,

— in the case of mutual or mutal-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 margin,

— at the request of and on the production of proof by the insurance undertaking, any hidden reserves arising out of the undervaluation of assets, insofar as those hidden reserves are not of an exceptional nature,

— 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 insurance 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 fulfil the following additional 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 insurance 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 insurance 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 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 insurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the actual and required solvency margins

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both before and after that repayment. The competent authorities shall authorize repayment only if the insurance 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 insurance undertaking, the debt will become repayable before the agreed repayment dates;

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

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

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

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

(c) the lender's claims on the insurance 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 insurance undertaking to continue its business;

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

Article 25

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 26

Article 18 of Directive 79/239/EEC shall be replaced by the following:

'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 isured persons, are entitled to take as owners or members of or partners to the undertakings in question.'

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Chapter 3

Article 27

Article 7 (1) (f) of Directive 88/357/EEC shall be replaced by the following:

‘(f) in the case of the risks referred to in Article 5 (d) of Directive 73/239/EEC, the parties to the contract may choose any law.’

Article 28

The Member State in which a risk is situated shall not prevent a policyholder from concluding a contract with an insurance undertaking authorized under the conditions of Article 6 of Directive 73/239/EEC, as long as that does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated.

Article 29

Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy-holders. They may only require non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 30

1. Article 8 (4) (b) of Directive 88/357/EEC shall be deleted. Article 8 (4) (a) of that Directive shall therefore be amended to read as follows:

‘(a) Subject to subparagraph (c), the third subparagraph of Article 7 (2) shall apply where the insurance contract provides cover in two or more Member States, at least one of which makes insurance compulsory.’

2. Notwithstanding any provision to the contrary, a Member State which makes insurance compulsory may require that the general and special conditions of the compulsory insurance be communicated to its competent authority before being circulated.

Article 31

1. Before an insurance contract is concluded the insurance undertaking shall inform the policyholder of:

— the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the insurer proposes to choose,

— the arrangements for handling policyholders' complaints concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the policyholders's right to take legal proceedings.

2. The obligation referred to in paragraph 1 shall apply only where the policyholder is a natural person.

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3. The rules for implementing this Article shall be determined in accordance with the law of the Member State in which the risk is situated.

TITLE IV

PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

Article 32

Article 10 of Directive 73/239/EEC shall be replaced by the following:

'Article 10

1. An insurance 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 insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

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

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

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

(d) the name of the branch's authorized agent, who must possess sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the insured 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.

Where the undertaking intends its branch to cover risks in class 10 of point A of the Annex, not including carrier's liability, it must produce a declaration that it has become a member of the national bureau and the national guarantee fund of the Member State of the branch.

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 insurance undertaking or the good repute and professional qualifications 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 insurance undertaking has the minimum solvency margin calculated in accordance with Articles 16 and 17.

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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 may be subject to a right to apply to the courts in the home Member State.

4. Before the branch of an insurance 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 insurance 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 73/239/EEC is hereby repealed.

Article 34

Article 14 of Directive 88/357/EEC shall be replaced by the following:

'Article 14

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 risks it proposes to cover.'

Article 35

Article 16 of Directive 88/357/EEC shall be replaced by the following:

'Article 16

1. Within one month of the notification provided for in Article 14, the competent authorities of the home Member State shall communicate to the Member State or Member States within the territories of which an undertaking intends to carry on business under the freedom to provide services:

(a) a certificate attesting that the undertaking has the minimum solvency margin calculated in accordance with Articles 16 and 17 of Directive 73/239/EEC;

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

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

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

Each Member State within the territory of which an undertaking intends, under the freedom to provide services, to cover risks in class 10 of point A of the Annex to Directive 73/239/EEC other than carrier's liability may require that the undertaking:

— communicate the name and address of the representative referred to in Article 12a (4) of this Directive,

— produce a declaration that the undertaking has become a member of the national bureau and national guarantee fund of the Member State of the provision of services.

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. That 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 88/357/EEC shall be replaced by the following:

'Article 17

Any change which an undertaking intends in make to the information referred to in Article 14 shall be subject to the procedure provided for in Articles 14 and 16.'

Article 37

Article 12 (2), second and third subparagraphs, Article 12 (3) and Articles 13 and 15 of Directive 88/357/EEC are hereby repealed.

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 insurance 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 18 of Directive 88/357/EEC is hereby repealed.

2. The Member State of the branch or of the provision of services shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an undertaking intends to use in its dealings with policyholders. It may only require an undertaking that proposes to carry on insurance business within its territory, under the right of establishment or the freedom to provide services, to effect non-systematic notification ot those policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

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3. The Member State of the branch or of the provision of services may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 40

1. Article 19 of Directive 88/357/EEC is hereby repealed.

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 with head offices 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 within 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 infringing 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 infringements, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on insurance undertakings.

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

7. Paragraphs 3, 4 and 5 shall not affect the powers 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 insurance business must be properly reasoned and communicated to the undertaking concerned.

10. Every two years, the Commission shall ►M4 inform the European Insurance and Occupational Pensions Committee of ◄ the number and types of cases in which, in each Member State, authorization has been refused under Article 10 of Directive 73/239/EEC or Article 16 of Directive 88/357/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.

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Article 41

Nothing in this Directive shall prevent insurance undertakings with head offices in Member States from advertising their services, through all available means of communication, in the Member State of the branch or the 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 20 of Directive 88/357/EEC is hereby repealed.

2. In the event of an insurance undertaking's being 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 insurance contracts, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Article 43

1. Article 21 of Directive 88/357/EEC is hereby repealed.

2. Where insurance is offered unter the right of establishment or the freedom to provide services, the policyholder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents issued to the policyholder must convey the information referred to in the first subparagraph.

The obligations imposed in the first two subparagraphs shall not apply to the risks referred to in Article 5 (d) of Directive 73/239/EEC.

3. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policyholder, must state the address of the head office, or, where appropriate, of the branch of the insurance undertaking which grants the cover.

Each Member State may require that the name and address of the representative of the insurance undertaking referred to in Article 12 a (4) of Directive 88/357/EEC also appear in the documents referred to in the first subparagraph.

Article 44

1. Article 22 of Directive 88/357/EEC is hereby repealed.

2. Every insurance 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, claims and commissions, without deduction of reinsurance, by Member State and by group of classes, and also as regards class 10 of point A of the Annex to Directive 73/239/EEC, not including carrier's liability, the frequency and average cost of claims.

The groups of classes are hereby defined as follows:

— accident and sickness (classes 1 and 2),

— motor (classes 3, 7 and 10, the figures for class 10, excluding carriers' liability, being given separately),

— fire and other damage to property (classes 8 and 9),

— aviation, marine and transport (classes 4, 5, 6, 7, 11 and 12),

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— general liability (class 13),

— credit and suretyship (classes 14 and 15),

— other classes (classes 16, 17 and 18).

The competent authority of the home Member State shall forward that information within a reasonable time and in aggregate form to the competent authorities of each of the Member States concerned which so request.

Article 45

1. Article 24 of Directive 88/357/EEC is hereby repealed.

2. Nothing in this Directive shall affect the Member States' right to require undertakings carrying on business within their territories under the right of establishment or the freedom to provide services to join and participate, on the same terms as undertakings authorized there, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

Article 46

1. Article 25 of Directive 88/357/EEC is hereby repealed.

2. Without prejudice to any subsequent harmonization, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated as defined in Article 2 (d) of Directive 88/357/EEC, and also, in the case of 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.

In derogation from the first indent of Article 2 (d) of Directive 88/357/EEC, and for the purposes of this paragraph, moveable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be a risk situated in that Member State, even if the building and its contents are not covered by the same insurance policy.

The law applicable to the contract under Article 7 of Directive 88/357/EEC shall not affect the fiscal arrangements applicable.

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

TITLE V

TRANSITIONAL PROVISIONS

Article 47

The Federal Republic of Germany may postpone until 1 January 1996 the application of the first sentence of the second subparagraph of Article 54 (2). During that period, the provisions of the following subparagraph shall apply in the situation referred to in Article 54 (2).

When the technical basis for the calculation of premiums has been communicated to the competent authorities of the home Member State in accordance with the third sentence of the second subparagraph of Article 54 (2), those authorities shall without delay forward that information to the competent authorities of the Member State in which the risk is situated so that they may comment. If the competent authorities

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of the home Member State take no account of those comments, they shall inform the competent authorities of the Member State in which the risk is situated accordingly in detail and state their reasons.

Article 48

Member States may allow insurance undertakings with head offices in their territories, the buildings and land of which that cover 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 49

The Kingdom of Denmark may postpone until 1 January 1999 the application of this Directive to compulsory insurance against accidents at work. During that period the exclusion provided for in Article 12 (2) of Directive 88/357/EEC for accidents at work shall continue to apply in the Kingdom of Denmark.

Article 50

Spain, until 31 December 1996, and Greece and Portugal, until 31 December 1998, may operate the following transitional arrangements for contracts covering risks situated exclusively in one of those Member States other than those defined in Article 5 (d) of Directive 73/239/EEC:

(a) in derogation from Article 8 (3) of Directive 73/239/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 the contracts referred to in this Article 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 within its territory 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 51

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The following technical adjustments designed to amend non-essential elements of Directives 73/239/EEC and 88/357/EEC and of this Directive, *inter alia*, by supplementing them, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 2 of Directive 91/675/EEC:

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— extension of the legal forms provided for in Article 8 (1) (a) of Directive 73/239/EEC,

— amendments to the list set out in the Annex to Directive 73/239/EEC, or adaptation of the terminology used in that list to take account of the development of insurance markets,

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— clarification of the items constituting the solvency margin listed in Article 16 (1) of Directive 73/239/EEC to take account of the creation of new financial instruments,

— alteration of the minimum guarantee fund provided for in Article 17 (2) of Directive 73/239/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,

— changes in the relaxations in the matching rules laid down in Annex 1 to Directive 88/357/EEC, to take account of the development of new currency-hedging instruments or progress made towards economic and monetary union,

— clarification of the definitions in order to ensure uniform application of Directives 73/239/EEC and 88/357/EEC and of this Directive throughout the Community,

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— adjustments of the criteria set out in Article 15b(1), in order to take account of future developments and to ensure the uniform application of this Directive.

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Article 52

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 73/239/EEC. They shall be governed, from the date of that entry into force, by Articles 15, 19, 20 and 22 of Directive 73/239/EEC and by Article 40 of this Directive.

2. Articles 34 and 35 shall not affect rights acquired by insurance 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 53

The following Article shall be inserted in Directive 73/239/EEC:

'Article 28a

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, of the Member State referred to in Article 26 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 insurance 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

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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 26 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 that 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 in which the risks are situated, 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 insurance undertaking within three months of receiving a request; the absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

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

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

Article 54

1. Notwithstanding any provision to the contrary, a Member State in which contracts covering the risks in class 2 of point A of the Annex to Directive 73/239/EEC may serve as a partial or complete alternative to health cover provided by the statutory social security system may require that those contracts comply with the specific legal provisions adopted by that Member State to protect the general good in that class of insurance, and that the general and special conditions of that insurance be communicated to the competent authorities of that Member State before use.

2. Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life assurance where:

— the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance,

— a reserve is set up for increasing age,

— the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated,

— the contract provides that premiums may be increased or payments reduced, even for current contracts,

— the contract provides that the policyholder may change his existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of his acquired rights. In particular, account must be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

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In that event, the competent authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in the first subparagraph and transmit them to the competent authorities of the home Member State. The premiums must be sufficient, on rasonable actuarial assumptions, for undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require that the technical basis for the calculation of premiums be communicated to its competent authorities before the product is circulated. This paragraph shall also apply where existing contracts are modified.

Article 55

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

Article 56

Member States shall ensure that decisions taken in respect of an insurance 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 57

1. The Member States shall adopt the laws, regulations and administrative provisions necessary for their compliance with this Directive not 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 58

This Directive is addressed to the Member States.