

Directive 2002/83/EC of the European Parliament and of  
the Council of 5 November 2002 concerning life assurance

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PARLIAMENT AND OF THE COUNCIL

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concerning life assurance

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and Article 55 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

- (1) First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance<sup>(4)</sup>, the second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC<sup>(5)</sup> and Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive)<sup>(6)</sup> have been substantially amended several times. Since further amendments are to be made, the Directives should be recast in the interests of clarity.
- (2) In order to facilitate the taking-up and pursuit of the business of life assurance, it is essential to eliminate certain divergences which exist between national supervisory legislation. In order to achieve this objective and at the same time ensure adequate protection for policy holders and beneficiaries in all Member States, the provisions relating to the financial guarantees required of life assurance undertakings should be coordinated.
- (3) It is necessary to complete the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services in the Member States, to make it easier for assurance undertakings with head offices in the Community to cover commitments situated within the Community and to make it possible for policy holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States.

- (4) Under the Treaty, any discrimination with regard to freedom to provide services based on the fact that an undertaking is not established in the Member State in which the services are provided is prohibited. That prohibition applies to services provided from any establishment in the Community, whether it be the head office of an undertaking or an agency or branch.
- (5) This Directive therefore represents an important step in the merging of national markets into an integrated market and that stage must be supplemented by other Community instruments with a view to enabling all policy holders 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.
- (6) This Directive forms part of the body of Community legislation in the field of life assurance which also includes Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings<sup>(7)</sup>.
- (7) The approach adopted consists in bringing about such harmonisation as is essential, necessary and sufficient to achieve the mutual recognition of authorisations and prudential control systems, thereby making it possible to grant a single authorisation valid throughout the Community and apply the principle of supervision by the home Member State.
- (8) As a result, the taking up and the pursuit of the business of assurance are subject to the grant of a single official authorisation issued by the competent authorities of the Member State in which an assurance undertaking has its head office. Such authorisation enables an undertaking to carry on business throughout the Community, under the right of establishment or the freedom to provide services. The Member State of the branch or of the provision of services may not require assurance undertakings which wish to carry on assurance business there and which have already been authorised in their home Member State to seek fresh authorisation.
- (9) The competent authorities should not authorise or continue the authorisation of an assurance undertaking where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that undertaking and other natural or legal persons. Assurance undertakings already authorised must also satisfy the competent authorities in that respect.
- (10) The definition of 'close links' in this Directive lays down minimum criteria and that does not prevent Member States from applying it to situations other than those envisaged by the definition.
- (11) The sole fact of having acquired a significant proportion of a company's capital does not constitute participation, within the meaning of 'close links', if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.
- (12) The principles of mutual recognition and of home Member State supervision require that Member States' competent authorities should not grant or should withdraw authorisation

where factors such as the content of programmes of operations or the geographical distribution of the activities actually carried on indicate clearly that an assurance undertaking has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities. An assurance undertaking must be authorised in the Member State in which it has its registered office. In addition, Member States must require that an assurance undertaking's head office always be situated in its home Member State and that it actually carries on its business there.

- (13) For practical reasons, it is desirable to define provision of services taking into account both the assurer's establishment and the place where the commitment is to be covered. Therefore, commitment should also be defined. Moreover, it is desirable to distinguish between activities pursued by way of establishment and activities pursued by way of freedom to provide services.
- (14) A classification by class of assurance is necessary in order to determine, in particular, the activities subject to compulsory authorisation.
- (15) Certain mutual associations which, by virtue of their legal status, fulfil requirements as to security and other specific financial guarantees should be excluded from the scope of this Directive. Certain organisations whose activity covers only a very restricted sector and is limited by their articles of association should also be excluded.
- (16) Life assurance is subject to official authorisation and supervision in each Member State. The conditions for the granting or withdrawal of such authorisation should be defined. Provision must be made for the right to apply to the courts should an authorisation be refused or withdrawn.
- (17) It is desirable to clarify the powers and means of supervision vested in the competent authorities. It is also desirable to lay down specific provisions regarding the taking up, pursuit and supervision of activity by way of freedom to provide services.
- (18) The competent authorities of home Member States should be responsible for monitoring the financial health of assurance undertakings, including their state of solvency, the establishment of adequate technical provisions and the covering of those provisions by matching assets.
- (19) It is appropriate to provide for the possibility of exchanges of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, the list of addressees must remain within strict limits.
- (20) Certain behaviour, such as fraud and insider offences, is liable to affect the stability, including integrity, of the financial system, even when involving undertakings other than assurance undertakings.
- (21) It is necessary to specify the conditions under which the abovementioned exchanges of information are authorised.

- (22) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these may, where appropriate, make their agreement subject to compliance with strict conditions.
- (23) Member States may conclude agreements on exchange of information with third countries provided that the information disclosed is subject to appropriate guarantees of professional secrecy.
- (24) For the purposes of strengthening the prudential supervision of assurance undertakings and protection of clients of assurance undertakings, it should be stipulated that an auditor must have a duty to report promptly to the competent authorities, wherever, as provided for by this Directive, he/she becomes aware, while carrying out his/her tasks, of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organisation of an assurance undertaking.
- (25) Having regard to the aim in view, it is desirable for Member States to provide that such a duty should apply in all circumstances where such facts are discovered by an auditor during the performance of his/her tasks in an undertaking which has close links with an assurance undertaking.
- (26) The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning an assurance undertaking which they discover during the performance of their tasks in a non-assurance undertaking does not in itself change the nature of their tasks in that undertaking nor the manner in which they must perform those tasks in that undertaking.
- (27) The performance of the operations of management of group pension funds cannot under any circumstances affect the powers conferred on the respective authorities with regard to the entities holding the assets with which that management is concerned.
- (28) Certain provisions of this Directive define minimum standards. A home Member State may lay down stricter rules for assurance undertakings authorised by its own competent authorities.
- (29) The competent authorities of the Member States must have at their disposal such means of supervision as are necessary to ensure the orderly pursuit of business by assurance undertakings throughout the Community whether carried on under the right of establishment or the freedom to provide services. In particular, they must be able to introduce appropriate safeguards or impose sanctions aimed at preventing irregularities and infringements of the provisions on assurance supervision.
- (30) The provisions on transfers of portfolios should include provisions specifically concerning the transfer to another undertaking of the portfolio of contracts concluded by way of freedom to provide services.
- (31) The provisions on transfers of portfolios must be in line with the single legal authorisation system provided for in this Directive.
- (32) Undertakings formed after the dates referred to in Article 18(3) should not be authorised to carry on life assurance and non-life insurance activities simultaneously. Member

States should be allowed to permit undertakings which, on the relevant dates referred to in Article 18(3), carried on these activities simultaneously to continue to do so provided that separate management is adopted for each of their activities, in order that the respective interests of life policy holders and non-life policy holders are safeguarded and the minimum financial obligations in respect of one of the activities are not borne by the other activity. Member States should be given the option of requiring those existing undertakings established in their territory which carry on life assurance and non-life insurance simultaneously to put an end to this practice. Moreover, specialised undertakings should be subject to special supervision where a non-life undertaking belongs to the same financial group as a life undertaking.

- (33) Nothing in this Directive prevents a composite undertaking from dividing itself into two undertakings, one active in the field of life assurance, the other in non-life insurance. In order to allow such division to take place under the best possible conditions, it is desirable to permit Member States, in accordance with Community rules of competition law, to provide for appropriate tax arrangements, in particular with regard to the capital gains such division could entail.
- (34) Those Member States which so wish should be able to grant the same undertaking authorisations for the classes referred to in Annex I and the insurance business coming under classes 1 and 2 in the Annex to Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>(8)</sup>. That possibility may, however, be subject to certain conditions as regards compliance with accounting rules and rules on winding-up.
- (35) It is necessary from the point of view of the protection of lives assured that every assurance undertaking should establish adequate technical provisions. The calculation of such provisions is based for the most part on actuarial principles. Those principles should be coordinated in order to facilitate mutual recognition of the prudential rules applicable in the various Member States.
- (36) It is desirable, in the interests of prudence, to establish a minimum of coordination of rules limiting the rate of interest used in calculating the technical provisions. For the purposes of such limitation, since existing methods are all equally correct, prudential and equivalent, it seems appropriate to leave Member States a free choice as to the method to be used.
- (37) The rules governing the calculation of technical provisions and the rules governing the spread, localisation and matching of the assets used to cover technical provisions must be coordinated in order to facilitate the mutual recognition of Member States' rules. That coordination must take account of the liberalisation of capital movements provided for in Article 56 of the Treaty and the progress made by the Community towards economic and monetary union.
- (38) The home Member State may not require assurance undertakings to invest the assets covering their technical provisions in particular categories of assets, as such a requirement would be incompatible with the liberalisation of capital movements provided for in Article 56 of the Treaty.

- (39) It is necessary that, over and above technical provisions, including mathematical provisions, of sufficient amount to meet their underwriting liabilities, assurance undertakings should possess a supplementary reserve, known as the solvency margin, represented by free assets and, with the agreement of the competent authority, by other implicit assets, which shall act as a buffer against adverse business fluctuations. This requirement is an important element of prudential supervision for the protection of insured persons and policy holders. In order to ensure that the requirements imposed for such purposes are determined according to objective criteria whereby undertakings of the same size will be placed on an equal footing as regards competition, it is desirable to provide that this margin shall be related to all the commitments of the undertaking and to the nature and gravity of the risks presented by the various activities falling within the scope of this Directive. This margin should therefore vary according to whether the risks are of investment, death or management only. It should accordingly be determined in terms of mathematical provisions and capital at risk underwritten by an undertaking, of premiums or contributions received, of provisions only or of the assets of tontines.
- (40) Directive 92/96/EEC provided for a provisional definition of a regulated market, pending the adoption of a directive on investment services in the securities field, which would harmonise that concept at Community level. Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>(9)</sup> provides for a definition of regulated market, although it excludes from its scope life assurance activities. It is appropriate to apply the concept of regulated market also to life assurance activities.
- (41) The list of items of which the solvency margin required by this Directive may be made up takes account of new financial instruments and of the facilities granted to other financial institutions for the constitution of their own funds. In the light of market developments in the nature of reinsurance cover purchased by primary insurers, there is a need for the competent authorities to be empowered to decrease the reduction to the solvency margin requirement in certain circumstances. In order to improve the quality of the solvency margin, the possibility of including future profits in the available solvency margin should be limited and subject to conditions and should in any case cease after 2009.
- (42) It is necessary to require a guarantee fund, the amount and composition of which are such as to provide an assurance that the undertakings possess adequate resources when they are set up and that in the subsequent course of business the solvency margin in no event falls below a minimum of security. The whole or a specified part of this guarantee fund must consist of explicit asset items.
- (43) To avoid major and sharp increases in the amount of the minimum guarantee fund in the future, a mechanism should be established providing for its increase in line with the European index of consumer prices. This Directive should lay down minimum standards for the solvency margin requirements and home Member States should be able to lay down stricter rules for insurance undertakings authorised by their own competent authorities.
- (44) The provisions in force in the Member States regarding contract law applicable to the activities referred to in this Directive differ. The harmonisation of assurance contract

law is not a prior condition for the achievement of the internal market in assurance. Therefore, the opportunity afforded to the Member States of imposing the application of their law to assurance contracts covering commitments within their territories is likely to provide adequate safeguards for policy holders. The freedom to choose, as the law applicable to the contract, a law other than that of the State of the commitment may be granted in certain cases, in accordance with rules which take into account specific circumstances.

- (45) For life assurance contracts the policy holder should be given the opportunity of cancelling the contract within a period of between 14 and 30 days.
- (46) Within the framework of an internal market it is in the policy holder's interest that they should have access to the widest possible range of assurance products available in the Community so that they can choose that which is best suited to their needs. It is for the Member State of the commitment to ensure that there is nothing to prevent the marketing within its territory of all the assurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in the Member State of the commitment and in so far as the general good is not safeguarded by the rules of the home Member State, provided that such provisions must be applied without discrimination to all undertakings operating in that Member State and be objectively necessary and in proportion to the objective pursued.
- (47) The Member States must be able to ensure that the assurance products and contract documents used, under the right of establishment or the freedom to provide services, to cover commitments within their territories comply with such specific legal provisions protecting the general good as are applicable. The systems of supervision to be employed must meet the requirements of an internal market but their employment may not constitute a prior condition for carrying on assurance business. From this standpoint, systems for the prior approval of policy conditions do not appear to be justified. It is therefore necessary to provide for other systems better suited to the requirements of an internal market which enable every Member State to guarantee policy holders adequate protection.
- (48) It is necessary to make provision for cooperation between the competent authorities of the Member States and between those authorities and the Commission.
- (49) Provision should be made for a system of penalties to be imposed when, in the Member State in which the commitment is entered into, an assurance undertaking does not comply with those provisions protecting the general good that are applicable to it.
- (50) It is necessary to provide for measures in cases where the financial position of the undertaking becomes such that it is difficult for it to meet its underwriting liabilities. In specific situations where policy holders' rights are threatened, there is a need for the competent authorities to be empowered to intervene at a sufficiently early stage, but in the exercise of those powers, competent authorities should inform the insurance undertakings of the reasons motivating such supervisory action, in accordance with the principles of sound administration and due process. As long as such a situation exists, the competent authorities should be prevented from certifying that the insurance undertaking has a sufficient solvency margin.

- (51) For the purposes of implementing actuarial principles in conformity with this Directive, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, with such notification of technical bases excluding notification of the general and special policy conditions and the undertaking's commercial rates.
- (52) In an internal market for assurance the consumer will have a wider and more varied choice of contracts. If he/she is to profit fully from this diversity and from increased competition, he/she must be provided with whatever information is necessary to enable him/her to choose the contract best suited to his/her needs. This information requirement is all the more important as the duration of commitments can be very long. The minimum provisions must therefore be coordinated in order for the consumer to receive clear and accurate information on the essential characteristics of the products proposed to him/her as well as the particulars of the bodies to which any complaints of policy holders, assured persons or beneficiaries of contracts may be addressed.
- (53) Publicity for assurance products is an essential means of enabling assurance business to be carried on effectively within the Community. It is necessary to leave open to assurance undertakings the use of all normal means of advertising in the Member State of the branch or of provision of services. Member States may nevertheless require compliance with their national rules on the form and content of advertising, whether laid down pursuant to Community legislation on advertising or adopted by Member States for reasons of the general good.
- (54) Within the framework of the internal market, no Member State may continue to prohibit the simultaneous carrying on of assurance business within its territory under the right of establishment and the freedom to provide services.
- (55) Some Member States do not subject assurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution. The structures and rates of such taxes and contributions vary considerably between the Member States in which they are applied. It is desirable to prevent existing differences leading to distortions of competition in assurance services between Member States. Pending subsequent harmonisation, application of the tax systems and other forms of contribution provided for by the Member States in which commitments entered into are likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected.
- (56) It is important to introduce Community coordination on the winding-up of assurance undertakings. It is henceforth essential to provide, in the event of the winding-up of an assurance undertaking, that the system of protection in place in each Member State must guarantee equality of treatment for all assurance creditors, irrespective of nationality and of the method of entering into the commitment.
- (57) The coordinated rules concerning the pursuit of the business of direct insurance within the Community should, in principle, apply to all undertakings operating on the market and, consequently, also to agencies and branches where the head office of the undertaking is situated outside the Community. As regards the methods of supervision



this Directive lays down special provisions for such agencies or branches, in view of the fact that the assets of the undertakings to which they belong are situated outside the Community.

- (58) It is desirable to provide for the conclusion of reciprocal agreements with one or more third countries in order to permit the relaxation of such special conditions, while observing the principle that such agencies and branches should not obtain more favourable treatment than Community undertakings.
- (59) A provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis. The aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalisation of the global financial markets in other third countries. To that end, this Directive provides for procedures for negotiating with third countries. As a last resort, the possibility of taking measures involving the suspension of new applications for authorisation or the restriction of new authorisations should be provided for using the regulatory procedure under Article 5 of Council Decision 1999/468/EC<sup>(10)</sup>.
- (60) This Directive should establish provisions concerning proof of good repute and no previous bankruptcy.
- (61) In order to clarify the legal regime applicable to life assurance activities covered by this Directive, some provisions of Directives 79/267/EEC, 90/619/EEC and 92/96/EEC should be adapted. For that purpose some provisions concerning the establishment of the solvency margin and the rights acquired by branches of assurance undertakings established before 1 July 1994 should be amended. The content of the scheme of operation of branches of third-country undertakings to be established in the Community should also be defined.
- (62) Technical adjustments to the detailed rules laid down in this Directive may be necessary from time to time to take account of the future development of the assurance industry. The Commission will make such adjustments as and when necessary, after consulting the Insurance Committee set up by Council Directive 91/675/EEC<sup>(11)</sup>, in the exercise of the implementing powers conferred on it by the Treaty. These measures being measures of general scope within the meaning of Article 2 of Decision 1999/468/EC, they should be adopted by the use of the regulatory procedure provided for in Article 5 of that Decision.
- (63) Pursuant to Article 15 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. Therefore, transitional arrangements should be adopted for the gradual application of this Directive by certain Member States.
- (64) Directives 79/267/EEC and 90/619/EEC granted special derogation with regard to some undertakings existing at the time of the adoption of these Directives. Such undertakings have thereafter modified their structure. Therefore they do not need any longer such special derogation.

- (65) This Directive should not affect the obligations of Member States concerning the deadlines for transposition and for application of the Directives set out in Annex V(B),

HAVE ADOPTED THIS DIRECTIVE:

## TITLE I

### DEFINITIONS AND SCOPE

#### *Article 1*

#### **Definitions**

- 1 For the purposes of this Directive:
- a 'assurance undertaking' shall mean an undertaking which has received official authorisation in accordance with Article 4;
  - b 'branch' shall mean an agency or branch of an assurance undertaking;
- Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would;
- c 'establishment' shall mean the head office, an agency or a branch of an undertaking;
  - d 'commitment' shall mean a commitment represented by one of the kinds of insurance or operations referred to in Article 2;
  - e 'home Member State' shall mean the Member State in which the head office of the assurance undertaking covering the commitment is situated;
  - f 'Member State of the branch' shall mean the Member State in which the branch covering the commitment is situated;
  - g 'Member State of the commitment' shall mean the Member State where the policy holder has his/her habitual residence or, if the policy holder is a legal person, the Member State where the latter's establishment, to which the contract relates, is situated;
  - h 'Member State of the provision of services' shall mean the Member State of the commitment, if the commitment is covered by an assurance undertaking or a branch situated in another Member State;
  - i 'control' shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Council Directive 83/349/EEC<sup>(12)</sup>, or a similar relationship between any natural or legal person and an undertaking;
  - j '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;

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 Article 92 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities<sup>(13)</sup> shall be taken into consideration;

- k 'parent undertaking' shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;
- l '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;
- m 'regulated market' shall mean:
  - in the case of a market situated in a Member State, a regulated market as defined in Article 1(13) of Directive 93/22/EEC, and
  - in the case of a market situated in a third country, a financial market recognised by the home Member State of the assurance undertaking which meets 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;
- n 'competent authorities' shall mean the national authorities which are empowered by law or regulation to supervise assurance undertakings;
- o 'matching assets' shall mean the representation of underwriting liabilities which can be required to be met in a particular currency by assets expressed or realisable in the same currency;
- p 'localisation of assets' shall mean the existence of assets, whether movable or immovable, within a Member State but shall not be construed as involving a requirement that movable assets be deposited or that immovable assets be subjected to restrictive measures such as the registration of mortgages; assets represented by claims against debtors shall be regarded as situated in the Member State where they are realisable;
- q capital at risk shall mean the amount payable on death less the mathematical provision for the main risk;
- r 'close' links shall mean a situation in which two or more natural or legal persons are linked by:
  - (i) 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
  - (ii) 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, 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.

2 Wherever this Directive refers to the euro, the conversion value in national currency to be adopted shall as from 31 December of each year be that of the last day of the preceding month of October for which euro conversion values are available in all the relevant Community currencies.

## Article 2

### Scope

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

1. the following kinds of assurance where they are on a contractual basis:
  - (a) life assurance, that is to say, the class of assurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;
  - (b) annuities;
  - (c) supplementary insurance carried on by life assurance undertakings, that is to say, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;
  - (d) the type of insurance existing in Ireland and the United Kingdom known as permanent health insurance not subject to cancellation;
2. the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the administrative authorities responsible for the supervision of private insurance:
  - (a) tontines whereby associations of subscribers are set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased;
  - (b) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;
  - (c) management of group pension funds, i.e. operations consisting, for the undertaking concerned, in managing the investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
  - (d) the operations referred to in (c) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;
  - (e) the operations carried out by assurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French 'Code des assurances'.
3. Operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, when they are effected or managed at their own risk by assurance undertakings in accordance with the laws of a Member State.

### Article 3

#### Activities and bodies excluded

This Directive shall not concern:

1. subject to the application of Article 2(1)(c), the classes designated in the Annex to Directive 73/239/EEC;
2. operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;
3. operations carried out by organisations other than undertakings referred to in Article 2, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;
4. subject to the application of Article 2(3), insurance forming part of a statutory system of social security;
5. organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;
6. mutual associations, where:
  - the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it, and
  - the annual contribution income for the activities covered by this Directive does not exceed EUR 5 million for three consecutive years. If this amount is exceeded for three consecutive years this Directive shall apply with effect from the fourth year.

Nevertheless, the provisions of this paragraph shall not prevent a mutual assurance undertaking from applying, or continuing, to be licensed under this Directive;

7. the ‘Versorgungsverband deutscher Wirtschaftsorganisationen’ in Germany unless its statutes are amended as regards the scope of its activities;
8. the pension activities of pension insurance undertakings prescribed in the Employees Pension Act (TEL) and other related Finnish legislation provided that:
  - (a) pension insurance companies which already under Finnish law are obliged to have separate accounting and management systems for their pension activities will furthermore, as from the date of accession, set up separate legal entities for carrying out these activities;
  - (b) the Finnish authorities shall allow in a non-discriminatory manner all nationals and companies of Member States to perform according to Finnish legislation the activities specified in Article 2 related to this exemption whether by means of:

- ownership or participation in an existing insurance company or group,
  - creation or participation of new insurance companies or groups, including pension insurance companies;
- (c) the Finnish authorities will submit to the Commission for approval a report within three months from the date of accession, stating which measures have been taken to separate TEL activities from normal insurance activities carried out by Finnish insurance companies in order to conform to all the requirements of this Directive.

## TITLE II

### THE TAKING UP OF THE BUSINESS OF LIFE ASSURANCE

#### *Article 4*

##### **Principle of authorisation**

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

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

- (a) any undertaking which establishes its head office in the territory of that State;
- (b) any undertaking which, having received the authorisation required in the first subparagraph, extends its business to an entire class or to other classes.

#### *Article 5*

##### **Scope of authorisation**

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

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

The competent authorities may restrict authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Article 7.

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

## Article 6

### Conditions for obtaining authorisation

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

a adopt one of the following forms:

- in the case of the Kingdom of Belgium: ‘société anonyme/naamloze vennootschap’, ‘société en commandite par actions/commanditaire vennootschap op aandelen’, ‘association d’assurance mutuelle/onderlinge verzekeringsvereniging’, ‘société coopérative/coöperatieve vennootschap’,
- in the case of the Kingdom of Denmark: ‘aktieselskaber’, ‘gensidige selskaber’, ‘pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)’,
- in the case of the Federal Republic of Germany: ‘Aktiengesellschaft’, ‘Versicherungsverein auf Gegenseitigkeit’, ‘öffentlich-rechtliches Wettbewerbsversicherungsunternehmen’,
- in the case of the French Republic: ‘société anonyme’, ‘société d’assurance mutuelle’, ‘institution de prévoyance régie par le code de la sécurité sociale’, ‘institution de prévoyance régie par le code rural’ and ‘mutuelles régies par le code de la mutualité’,
- in the case of Ireland: ‘incorporated companies limited by shares or by guarantee or unlimited’, ‘societies registered under the Industrial and Provident Societies Acts’ and ‘societies registered under the Friendly Societies Acts’,
- in the case of the Italian Republic: ‘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 or incorporated under the Friendly Societies Acts’, ‘the association of underwriters known as Lloyd’s’,
- in the case of the Hellenic Republic: ‘ανώνυμη εταιρία’,
- in the case of the Kingdom of Spain: ‘sociedad anónima’, ‘sociedad mutua’, ‘sociedad cooperativa’,
- in the case of the Portuguese Republic: ‘sociedade anónima’, ‘mútua de seguros’,
- in the case of the Republic of Austria: ‘Aktiengesellschaft’, ‘Versicherungsverein auf Gegenseitigkeit’,
- in the case of the Republic of Finland: ‘keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag’, ‘vakuutusosakeyhtiö/försäkringsaktiebolag’, ‘vakuutusyhdistys/försäkringsförening’,
- in the case of Kingdom of Sweden: ‘försäkringsaktiebolag’, ‘ömsesidiga försäkringsbolag’, ‘understödsföreningar’.

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

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

- b limit its objects to the business provided for in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business;
- c submit a scheme of operations in accordance with Article 7;
- d possess the minimum guarantee fund provided for in Article 29(2);
- e be effectively run by persons of good repute with appropriate professional qualifications or experience.

2 Where close links exist between the assurance undertaking and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the assurance undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require assurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3 Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices.

4 An assurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 7.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 28 and the guarantee fund referred to in Article 29(1) and (2).

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

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

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



Not later than 1 July 1999, the Commission shall submit a report to the Council on the implementation of this paragraph.

6 The provisions referred to in paragraphs 1 to 5 may not require that any application for authorisation be considered in the light of the economic requirements of the market.

#### *Article 7*

### **Scheme of operations**

The scheme of operations referred to in Article 6(1)(c) and (4) shall include particulars or evidence of:

- (a) the nature of the commitments which the assurance undertaking proposes to cover;
- (b) the guiding principles as to reinsurance;
- (c) the items constituting the minimum guarantee fund;
- (d) estimates relating to the costs of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs;

in addition, for the first three financial years:

- (e) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- (f) a forecast balance sheet;
- (g) estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

#### *Article 8*

### **Shareholders and members with qualifying holdings**

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

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

#### *Article 9*

### **Refusal of authorisation**

Any decision to refuse an authorisation shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts should there be any refusal.

Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorisation upon the expiry of a period of six months from the date of its receipt.

### TITLE III

## CONDITIONS GOVERNING THE BUSINESS OF ASSURANCE

### CHAPTER 1

## PRINCIPLES AND METHODS OF FINANCIAL SUPERVISION

### *Article 10*

#### **Competent authorities and object of supervision**

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

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

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

### *Article 11*

#### **Supervision of branches established in another Member State**

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

## Article 12

### **Prohibition on compulsory ceding of part of underwriting**

Member States may not require assurance undertakings to cede part of their underwriting of activities listed in Article 2 to an organisation or organisations designated by national regulations.

## Article 13

### **Accounting, prudential and statistical information: supervisory powers**

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

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

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

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

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

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

## Article 14

### Transfer of portfolio

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

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

3 In the circumstances referred to in paragraphs 1 and 2, the authorities of the home Member State of the transferring assurance undertaking shall authorise the transfer after obtaining the agreement of the competent authorities of the Member States of the commitment.

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

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

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

## Article 15

### Qualifying holdings

1 Member States shall require any natural or legal person who proposes to hold, directly or indirectly, a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of the intended holding. Such a person must likewise inform the competent authorities of the home Member State if he/she proposes to increase his/her qualifying holding so that the proportion of the voting rights or of the capital held by him/her would reach or exceed 20 %, 33 % or 50 % or so that the assurance undertaking would become his/her subsidiary.

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

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

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

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

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

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

#### *Article 16*

#### **Professional secrecy**

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

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

2 Paragraph 1 shall not prevent the competent authorities of the different Member States from exchanging information in accordance with the directives applicable to assurance undertakings. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

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 6 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.

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

- to check that the conditions governing the taking-up of the business of assurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms, or
- to impose sanctions, or
- in administrative appeals against decisions of the competent authority, or
- in court proceedings initiated pursuant to Article 67 or under special provisions provided for in this Directive and other directives adopted in the field of assurance undertakings.

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

- authorities responsible for the official supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation and bankruptcy of assurance undertakings and in other similar procedures, and
- persons responsible for carrying out statutory audits of the accounts of assurance undertakings and other financial institutions,

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

6 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 and other similar procedures, or
- the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions, or
- independent actuaries of insurance 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.

7 Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise 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 conditions 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 third 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 this paragraph.

- 8 Member States may authorise the competent authorities to transmit:
- 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 and may authorise such authorities or bodies to communicate 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.

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

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

However, Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 11 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

#### *Article 17*

##### **Duties of auditors**

- 1 Member States shall provide at least that:
  - a any person authorised within the meaning of Council Directive 84/253/EEC<sup>(14)</sup>, performing in an assurance undertaking the task described in Article 51 of Council Directive 78/660/EEC<sup>(15)</sup>, Article 37 of Directive 83/349/EEC or Article 31 of Council Directive 85/611/EEC<sup>(16)</sup> 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/she 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 authorisation or which specifically govern pursuit of the activities of assurance undertakings, or
    - affect the continuous functioning of the assurance 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/she 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 assurance undertaking within which he/she is carrying out the abovementioned task.

2 The disclosure in good faith to the competent authorities, by persons authorised 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 or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

#### *Article 18*

##### **Pursuit of life assurance and non-life insurance activities**

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



- 2 By way of derogation from paragraph 1, Member States may provide that:
- undertakings authorised pursuant to this Directive may also obtain authorisation, in accordance with Article 6 of Directive 73/239/EEC for the risks listed in classes 1 and 2 in the Annex to that Directive,
  - undertakings authorised pursuant to Article 6 of Directive 73/239/EEC solely for the risks listed in classes 1 and 2 in the Annex to that Directive may obtain authorisation pursuant to this Directive.
- 3 Subject to paragraph 6, undertakings referred to in paragraph 2 and those which on:
- 1 January 1981 for undertakings authorised in Greece,
  - 1 January 1986 for undertakings authorised in Spain and Portugal,
  - 1 January 1995 for undertakings authorised in Austria, Finland and Sweden, and
  - 15 March 1979 for all other undertakings,

carried on simultaneously both the activities covered by this Directive and those covered by Directive 73/239/EEC may continue to carry on those activities simultaneously, provided that each activity is separately managed in accordance with Article 19 of this Directive.

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

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

6 Any Member State may require assurance undertakings whose head offices are situated in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged on the dates referred to in paragraph 3.

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

#### *Article 19*

#### **Separation of life assurance and non-life insurance management**

- 1 The separate management referred to in Article 18(3) must be organised in such a way that the activities covered by this Directive are distinct from the activities covered by Directive 73/239/EEC in order that:
- the respective interests of life policy holders and non-life policy holders are not prejudiced and, in particular, that profits from life assurance benefit life policy holders as if the assurance undertaking only carried on the activity of life assurance,

- the minimum financial obligations, in particular solvency margins, in respect of one or other of the two activities, namely an activity under this Directive and an activity under Directive 73/239/EEC, are not borne by the other activity.

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

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

2

- a Accounts shall be drawn up in such a manner as to show the sources of the results for each of the two activities, life assurance and non-life insurance. To this end all income (in particular premiums, payments by re-insurers and investment income) and expenditure (in particular insurance settlements, additions to technical provisions, reinsurance premiums, operating expenses in respect of insurance business) shall be broken down according to origin. Items common to both activities shall be entered in accordance with methods of apportionment to be accepted by the competent authority.
- b Assurance undertakings must, on the basis of the accounts, prepare a statement clearly identifying the items making up each solvency margin, in accordance with Article 27 of this Directive and Article 16(1) of Directive 73/239/EEC.

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

## CHAPTER 2

### **RULES RELATING TO TECHNICAL PROVISIONS AND THEIR REPRESENTATION**

#### *Article 20*

#### **Establishment of technical provisions**

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

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

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

- bonuses to which policy holders are already either collectively or individually entitled, however those bonuses are described — vested, declared or allotted,
  - all options available to the policy holder under the terms of the contract,
  - expenses, including commissions,
- taking credit for future premiums due;
- (ii) the use of a retrospective method is allowed, if it can be shown that the resulting technical provisions are not lower than would be required under a sufficiently prudent prospective calculation or if a prospective method cannot be used for the type of contract involved;
  - (iii) a prudent valuation is not a ‘best estimate’ valuation, but shall include an appropriate margin for adverse deviation of the relevant factors;
  - (iv) the method of valuation for the technical provisions must not only be prudent in itself, but must also be so having regard to the method of valuation for the assets covering those provisions;
  - (v) technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalisations is allowed, however, where they are likely to give approximately the same result as individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualised;
  - (vi) where the surrender value of a contract is guaranteed, the amount of the mathematical provisions for the contract at any time shall be at least as great as the value guaranteed at that time;
- B. the rate of interest used shall be chosen prudently. It shall be determined in accordance with the rules of the competent authority in the home Member State, applying the following principles:
- (a) for all contracts, the competent authority of the assurance undertaking's home Member State shall fix one or more maximum rates of interest, in particular in accordance with the following rules:
    - (i) when contracts contain an interest rate guarantee, the competent authority in the home Member State shall set a single maximum rate of interest. It may differ according to the currency in which the contract is denominated, provided that it is not more than 60 % of the rate on bond issues by the State in whose currency the contract is denominated.  
  
If a Member State decides, pursuant to the second sentence of the first subparagraph, to set a maximum rate of interest for contracts denominated in another Member State's currency, it shall first consult the competent authority of the Member State in whose currency the contract is denominated;
    - (ii) however, when the assets of the assurance undertaking are not valued at their purchase price, a Member State may stipulate that one or more maximum rates may be calculated taking into

account the yield on the corresponding assets currently held, minus a prudential margin and, in particular for contracts with periodic premiums, furthermore taking into account the anticipated yield on future assets. The prudential margin and the maximum rate or rates of interest applied to the anticipated yield on future assets shall be fixed by the competent authority of the home Member State;

- (b) the establishment of a maximum rate of interest shall not imply that the assurance undertaking is bound to use a rate as high as that;
- (c) the home Member State may decide not to apply paragraph (a) to the following categories of contracts:
  - unit-linked contracts,
  - single-premium contracts for a period of up to eight years,
  - without-profits contracts, and annuity contracts with no surrender value.

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

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

- (d) the Member State shall require an assurance undertaking to set aside in its accounts a provision to meet interest-rate commitments vis-à-vis policy holders if the present or foreseeable yield on the undertaking's assets is insufficient to cover those commitments;
  - (e) the Commission and the competent authorities of the Member States which so request shall be notified of the maximum rates of interest set under (a);
- C. the statistical elements of the valuation and the allowance for expenses used shall be chosen prudently, having regard to the State of the commitment, the type of policy and the administrative costs and commissions expected to be incurred;
  - D. in the case of participating contracts, the method of calculation for technical provisions may take into account, either implicitly or explicitly, future bonuses of all kinds, in a manner consistent with the other assumptions on future experience and with the current method of distribution of bonuses;
  - E. allowance for future expenses may be made implicitly, for instance by the use of future premiums net of management charges. However, the overall allowance, implicit or explicit, shall be not less than a prudent estimate of the relevant future expenses;
  - F. the method of calculation of technical provisions shall not be subject to discontinuities from year to year arising from arbitrary changes to the method or the bases of calculation and shall be such as to recognise the distribution of profits in an appropriate way over the duration of each policy.
- 2 Assurance undertakings shall make available to the public the bases and methods used in the calculation of the technical provisions, including provisions for bonuses.

3 The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 26. In respect of business written in the Community, these assets must be localised within the Community. Member States shall not require assurance undertakings to localise their assets in a particular Member State. The home Member State may, however, permit relaxations in the rules on the localisation of assets.

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

#### *Article 21*

### **Premiums for new business**

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

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

#### *Article 22*

### **Assets covering technical provisions**

The assets covering the technical provisions shall take account of the type of business carried on by an assurance 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 23*

### **Categories of authorised assets**

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

- A. investments
  - (a) debt securities, bonds and other money- and capital-market instruments;
  - (b) loans;
  - (c) shares and other variable-yield participations;
  - (d) units in undertakings for collective investment in transferable securities (UCITS) and other investment funds;
  - (e) land, buildings and immovable-property rights;
- B. debts and claims

- (f) debts owed by reinsurers, including reinsurers' shares of technical provisions;
  - (g) deposits with and debts owed by ceding undertakings;
  - (h) debts owed by policy holders and intermediaries arising out of direct and reinsurance operations;
  - (i) advances against policies;
  - (j) tax recoveries;
  - (k) claims against guarantee funds;
- C. others
- (l) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortisation;
  - (m) cash at bank and in hand, deposits with credit institutions and any other body authorised to receive deposits;
  - (n) deferred acquisition costs;
  - (o) accrued interest and rent, other accrued income and prepayments;
  - (p) reversionary interests.

2 In the case of the association of underwriters known as 'Lloyd's', asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 2000/12/EC of the European Parliament and of the Council<sup>(17)</sup> or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

3 The inclusion of any asset or category of assets listed in paragraph 1 shall not mean that all these assets should automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets; in this connection, it may require valuable security or guarantees, particularly in the case of debts owed by reinsurers.

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

- (i) assets covering technical provisions shall be valued net of any debts arising out of their acquisition;
- (ii) all assets must be valued on a prudent basis, allowing for the risk of any amounts not being realisable. 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 amortisation;
- (iii) loans, whether to undertakings, to a State or international organisation, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by assurance undertakings or other forms of security;

- (iv) derivative instruments such as options, futures and swaps in connection with assets covering technical provisions may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;
- (v) transferable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realised in the short term or if they are holdings in credit institutions, in assurance undertakings, within the limits permitted by Article 6, or in investment undertakings established in a Member State;
- (vi) debts owed by and claims against a third party may be accepted as cover for the 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 realisable. In particular, debts owed by policy holders and intermediaries arising out of assurance 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 assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;
- (ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that this is consistent with the calculation of the mathematical provisions.

4 Notwithstanding paragraphs 1, 2 and 3, in exceptional circumstances and at an assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 22.

#### *Article 24*

### **Rules for investment diversification**

- 1 As regards the assets covering technical provisions, the home Member State shall require every assurance undertaking to invest no more than:
- a 10 % of its total gross technical provisions in any one piece of land or building, or a number of pieces of land or buildings close enough to each other to be considered effectively as one investment;
  - b 5 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money- and capital-market instruments from the same undertaking, or in loans granted to the same borrower, taken together, the loans being loans other than those granted to a State, regional or local authority or to an international organisation of which one or more Member States are members. This limit may be raised to 10 % if an undertaking invests not more than 40 % of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 % of its assets;
  - c 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertakings — in so far as Article 6 allows it — and investment undertakings established in a Member State. The limits may be raised to 8 % and 2 % respectively

by a decision taken on a case-by-case basis by the competent authority of the home Member State;

- d 3 % of its total gross technical provisions in the form of cash in hand;
- e 10 % of its total gross technical provisions in shares, other securities treated as shares and debt securities which are not dealt in on a regulated market.

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

- (i) assets covering technical provisions must be diversified and spread in such a way as to ensure that there is no excessive reliance on any particular category of asset, investment market or investment;
- (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 assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;
- (v) the percentage of assets covering technical provisions which are the subject of non-liquid investments must be kept to a prudent level;
- (vi) where the assets held include loans to or debt securities issued by certain credit institutions, the home Member State may, when applying the rules and principles contained in this Article, take into account the underlying assets held by such credit institutions. This treatment may be applied only where the credit institution has its head office in a Member State, is entirely owned by that Member State and/or that State's local authorities and its business, according to its memorandum and articles of association, consists of extending, through its intermediaries, loans to, or guaranteed by, States or local authorities or of loans to bodies closely linked to the State or to local authorities.

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

- any loan unaccompanied by a bank guarantee, a guarantee issued by an assurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral,
- UCITS not coordinated within the meaning of Directive 85/611/EEC and other investment funds, as compared with UCITS coordinated within the meaning of that Directive,
- securities which are not dealt in on a regulated market, as compared with those which are,
- bonds, debt securities and other money- and capital-market instruments not issued by States, local or regional authorities or undertakings belonging to zone A as defined in Directive 2000/12/EC or the issuers of which are international organisations not



numbering at least one Community Member State among their members, as compared with the same financial instruments issued by such bodies.

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

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

6 Notwithstanding paragraph 1, in exceptional circumstances and at the assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1(a) to (e), subject to Article 22.

#### *Article 25*

### **Contracts linked to UCITS or share index**

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

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

3 Articles 22 and 24 shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in paragraphs 1 and 2. References to the technical provisions in Article 24 shall be to the technical provisions excluding those in respect of such liabilities.

4 Where the benefits referred to in paragraphs 1 and 2 include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional technical provisions shall be subject to Articles 22, 23, and 24.

#### *Article 26*

### **Matching rules**

1 For the purposes of Articles 20(3) and 54, Member States shall comply with Annex II as regards the matching rules.

2 This Article shall not apply to the commitments referred to in Article 25.

## CHAPTER 3

**RULES RELATING TO THE SOLVENCY  
MARGIN AND TO THE GUARANTEE FUND***Article 27***Available solvency margin**

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

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

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

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

3 The available solvency margin may also consist of:

- a cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided that binding agreements exist under which, in the event of the bankruptcy or liquidation of the assurance undertaking, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

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

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

- a until 31 December 2009 an amount equal to 50 % of the undertaking's future profits, but not exceeding 25 % of the lesser of the available solvency margin and the required solvency margin. The amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies. The factor used may not exceed six. The estimated annual profit shall not exceed the arithmetical average of the profits made over the last five financial years in the activities listed in Article 2(1).

Competent authorities may only agree to include such an amount for the available solvency margin:

- (i) when an actuarial report is submitted to the competent authorities substantiating the likelihood of emergence of these profits in the future; and
  - (ii) in so far as that part of future profits emerging from hidden net reserves referred to in point (c) has not already been taken into account;
- b where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium. This figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;
- c any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;
- d one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available and required solvency margin.

5 Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin shall be adopted in accordance with the procedure laid down in Article 65(2).

#### *Article 28*

#### **Required solvency margin**

1 Subject to Article 29, the required solvency margin shall be determined as laid down in paragraphs 2 to 7 according to the classes of assurance underwritten.

2 For the kinds of assurance referred to in Article 2(1)(a) and (b) other than assurances linked to investment funds and for the operations referred to in Article 2(3), the required solvency margin shall be equal to the sum of the following two results:

- a first result:

a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, for the last financial year, of the total mathematical provisions net of reinsurance cessions to the gross total mathematical provisions. That ratio may in no case be less than 85 %;

- b second result:

for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the assurance undertaking shall be multiplied

by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance; that ratio may in no case be less than 50 %. For temporary assurance on death of a maximum term of three years the fraction shall be 0,1 %. For such assurance of a term of more than three years but not more than five years the above fraction shall be 0,15 %.

3 For the supplementary insurance referred to in Article 2(1)(c) the required solvency margin shall be equal to the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive.

4 For permanent health insurance not subject to cancellation referred to in Article 2(1)(d), the required solvency margin shall be equal to:

- a a 4 % fraction of the mathematical provisions, calculated in compliance with paragraph 2(a) of this Article; plus
- b the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive. However, the condition contained in Article 16a(6)(b) of that Directive that a provision be set up for increasing age may be replaced by a requirement that the business be conducted on a group basis.

5 For capital redemption operations referred to in Article 2(2)(b), the required solvency margin shall be equal to a 4 % fraction of the mathematical provisions calculated in compliance with paragraph 2(a) of this Article.

6 For tontines, referred to in Article 2(2)(a), the required solvency margin shall be equal to 1 % of their assets.

7 For assurances covered by Article 2(1)(a) and (b) linked to investment funds and for the operations referred to in Article 2(2)(c), (d) and (e), the required solvency margin shall be equal to the sum of the following:

- a in so far as the assurance undertaking bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;
- b in so far as the undertaking bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;
- c in so far as the undertaking bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the last financial year's net administrative expenses pertaining to such business;
- d in so far as the assurance undertaking covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 2(b) of this Article.

## *Article 29*

### **Guarantee fund**

1 One third of the required solvency margin as specified in Article 28 shall constitute the guarantee fund. This fund shall consist of the items listed in Article 27(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(c).

2 The guarantee fund may not be less than a minimum of EUR 3 million.

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

#### *Article 30*

##### **Review of the amount of the guarantee fund**

1 The amount in euro as laid down in Article 29(2) shall be reviewed annually starting on 20 September 2003, in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

The amount shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between 20 March 2002 and the review date and rounded up to a multiple of EUR 100 000.

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

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

#### *Article 31*

##### **Assets not used to cover technical provisions**

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 20.

2 Subject to Article 20(3), Article 37(1), (2), (3) and (5), and the second subparagraph of Article 39(1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorised assurance undertakings.

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

### CHAPTER 4

#### **CONTRACT LAW AND CONDITIONS OF ASSURANCE**

#### *Article 32*

##### **Law applicable**

1 The law applicable to contracts relating to the activities referred to in this Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.

2 Where the policy holder is a natural person and has his/her habitual residence in a Member State other than that of which he/she is a national, the parties may choose the law of the Member State of which he/she is a national.

3 Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

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

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

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

5 Subject to paragraphs 1 to 4, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

### *Article 33*

#### **General good**

The Member State of the commitment shall not prevent a policy holder from concluding a contract with an assurance undertaking authorised under the conditions of Article 4 as long as that does not conflict with legal provisions protecting the general good in the Member State of the commitment.

### *Article 34*

#### **Rules relating to conditions of assurance and scales of premiums**

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

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

Not later than 1 July 1999 the Commission shall submit a report to the Council on the implementation of those provisions.

### *Article 35*

#### **Cancellation period**

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

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

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 32, notably as regards the arrangements for informing the policy holder that the contract has been concluded.

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

### *Article 36*

#### **Information for policy holders**

1 Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.

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

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

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

## CHAPTER 5

### **ASSURANCE UNDERTAKINGS IN DIFFICULTY OR IN AN IRREGULAR SITUATION**

#### *Article 37*

#### **Assurance undertakings in difficulty**

1 If an assurance undertaking does not comply with Article 20, the competent authority of its home Member State may prohibit the free disposal of its assets after having communicated its intention to the competent authorities of the Member States of commitment.

2 For the purposes of restoring the financial situation of an assurance undertaking, the solvency margin of which has fallen below the minimum required under Article 28, the



competent authority of the home Member State shall require that a plan for the restoration of a sound financial position be submitted for its approval.

In exceptional circumstances, if the competent authority is of the opinion that the financial situation of the assurance undertaking will further deteriorate, it may also restrict or prohibit the free disposal of the assurance undertaking's assets. It shall inform the authorities of other Member States within the territories of which the assurance 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 29, the competent authority of the home Member State shall require the assurance undertaking to submit a short-term finance scheme for its approval.

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

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

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

#### *Article 38*

### **Financial recovery plan**

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

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

2 Where policy holders' rights are threatened because the financial position of the undertaking is deteriorating, Member States shall ensure that the competent authorities have the power to oblige insurance undertakings to have a higher required solvency margin, in order to ensure that the insurance undertaking is able to fulfil the solvency requirements in the near future. The level of this higher required solvency margin shall be based on a financial recovery plan referred to in paragraph 1.

3 Member States shall ensure that the competent authorities have the power to revalue downwards all elements eligible for the available solvency margin, in particular, where there

has been a significant change in the market value of these elements since the end of the last financial year.

4 Member States shall ensure that the competent authorities have the powers to decrease the reduction, based on reinsurance, to the solvency margin as determined in accordance with Article 28 where:

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

5 If the competent authorities have required a financial recovery plan for the insurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 14(1), Article 40(3), second subparagraph, and Article 42(1)(a), as long as they consider that policy holders' rights are threatened within the meaning of paragraph 1.

### *Article 39*

#### **Withdrawal of authorisation**

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

- a does not make use of the authorisation 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 authorisation 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 37;
- d fails seriously in its obligations under the regulations to which it is subject.

In the event of the withdrawal or lapse of the authorisation, 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 assurance undertaking from commencing new operations within their territories, under either the freedom of establishment or the freedom to provide services. The home Member State's competent authority shall, in conjunction with those authorities, take all necessary measures to safeguard the interests of the assured persons and shall restrict, in particular, the free disposal of the assets of the assurance undertaking in accordance with Article 37(1), (2), second subparagraph, and (3), second subparagraph.

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

## TITLE IV

**PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT  
AND FREEDOM TO PROVIDE SERVICES***Article 40***Conditions for branch establishment**

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

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

- a the Member State within the territory of which it proposes to establish a branch;
- b a scheme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation 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 authorised agent are sent;
- d the name of the branch's authorised agent, who must possess sufficient powers to bind the assurance undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the assured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorised agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

3 Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the assurance undertaking or the good repute and professional qualification or experience of the directors or managers or the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the Member State of the branch and shall inform the undertaking concerned accordingly.

The competent authorities of the home Member State shall also attest that the assurance undertaking has the minimum solvency margin calculated in accordance with Articles 28 and 29.

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 assurance undertaking concerned within three months of receiving all the information in question. That refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4 Before the branch of an assurance undertaking starts business, the competent authorities of the Member State of the branch shall, within two months of receiving the information referred to in paragraph 3, inform the competent authority of the home Member

State, if appropriate, of the conditions under which, in the interest of the general good, that business must be carried on in the Member State of the branch.

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

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

#### *Article 41*

##### **Freedom to provide services: prior notification to the home Member State**

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

#### *Article 42*

##### **Freedom to provide services: notification by the home Member State**

1 Within one month of the notification provided for in Article 41, the competent authorities of the home Member State shall communicate to the Member State or Member States within the territory of which the assurance undertaking intends to carry on business by way of the freedom to provide services:

- a a certificate attesting that the assurance undertaking has the minimum solvency margin calculated in accordance with Articles 28 and 29;
- b the classes which the assurance undertaking has been authorised to offer;
- c the nature of the commitments which the assurance undertaking proposes to cover in the Member State of the provision of services.

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

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

3 The assurance 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 43

#### **Freedom to provide services: changes in the nature of commitments**

Any change which an assurance undertaking intends to make to the information referred to in Article 41 shall be subject to the procedure provided for in Articles 41 and 42.

### Article 44

#### **Language**

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 authorised under this Directive to request with regard to the business of assurance undertakings operating in the territory of that State shall be supplied to them in the official language or languages of that State.

### Article 45

#### **Rules relating to conditions of assurance and scales of premiums**

The Member State of the branch or of the provision of services shall not lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions, forms and other printed documents which an assurance undertaking intends to use in its dealings with policy holders. For the purpose of verifying compliance with national provisions concerning assurance contracts, it may require an assurance undertaking that proposes to carry on assurance business within its territory, under the right of establishment or the freedom to provide services, to effect only non-systematic notification of those policy conditions and other printed documents without that requirement constituting a prior condition for an assurance undertaking to carry on its business.

### Article 46

#### **Assurance undertakings not complying with the legal provisions**

1 Any assurance 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 assurance undertakings the head office of which is in those Member States are also obliged to do so.

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

3 If the assurance 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 assurance undertaking concerned remedies that irregular situation. The nature of those measures shall be communicated to the competent authorities of the Member State concerned.

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

5 Paragraphs 2, 3 and 4 shall not affect the emergency power of the Member States concerned to take appropriate measures to prevent or penalise irregularities committed within their territories. This shall include the possibility of preventing assurance undertakings from continuing to conclude new assurance contracts within their territories.

6 Paragraphs 2, 3 and 4 shall not affect the power of the Member States to penalise infringements within their territories.

7 If an assurance 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.

8 Any measure adopted under paragraphs 3 to 7 involving penalties or restrictions on the conduct of assurance business must be properly reasoned and communicated to the assurance undertaking concerned.

9 Every two years, the Commission shall submit to the Insurance Committee a report summarising the number and type of cases in which, in each Member State, authorisation has been refused pursuant to Articles 40 or 42 or measures have been taken under paragraph 4 of this Article. Member States shall cooperate with the Commission by providing it with the information required for that report.

#### *Article 47*

### **Advertising**

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

#### *Article 48*

### **Winding-up**

Should an assurance undertaking be wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other assurance contracts,

without distinction as to nationality as far as the lives assured and the beneficiaries are concerned.

#### *Article 49*

### **Statistical information on cross-border activities**

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

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

#### *Article 50*

### **Taxes on premiums**

1 Without prejudice to any subsequent harmonisation, every assurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment, and also, with regard to Spain, to the surcharges legally established in favour of the Spanish 'Consorcio de Compensación de Seguros' for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

2 The law applicable to the contract pursuant to Article 32 shall not affect the fiscal arrangements applicable.

3 Pending future harmonisation, each Member State shall apply to those assurance undertakings which cover commitments situated within its territory its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.

## TITLE V

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

#### *Article 51*

### **Principles and conditions of authorisation**

1 Each Member State shall make access to the activities referred to in Article 2 by any undertaking whose head office is outside the Community subject to an official authorisation.

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

- a it is entitled to undertake insurance activities covered by Article 2 under its national law;
- b it establishes an agency or branch in the territory of such Member State;
- c it undertakes to establish at the place of management of the agency or branch accounts specific to the activity which it carries on there and to keep there all the records relating to the business transacted;
- d it designates a general representative, to be approved by the competent authorities;
- e it possesses in the Member State where it carries on an activity assets of an amount equal in value to at least one half of the minimum amount prescribed in Article 29(2), first subparagraph, in respect of the guarantee fund and deposits one quarter of the minimum amount as security;
- f it undertakes to keep a solvency margin complying with Article 55;
- g it submits a scheme of operations in accordance with the provisions of paragraph 3.

3 The scheme of operations of the agency or branch referred to in paragraph 2(g) shall contain the following particulars or evidence of:

- a the nature of the commitments which the undertaking proposes to cover;
- b the guiding principles as to reinsurance;
- c the state of the undertaking's solvency margin and guarantee fund referred to in Article 55;
- d estimates relating to the cost of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs;

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

- e a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- f a forecast balance sheet;
- g estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

4 A Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for an assurance undertaking to carry on its business.

#### *Article 52*

### **Rules applicable to branches of third-country undertakings**

1

- a Subject to point (b), agencies and branches referred to in this Title may not simultaneously carry on in a Member State the activities referred to in the Annex to Directive 73/239/EEC and those covered by this Directive.
- b Subject to point (c), Member States may provide that agencies and branches referred to in this Title which on the relevant date referred to in Article 18(3) carried on both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 19.
- c Any Member State which under Article 18(6) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they were engaged on the relevant date referred to in Article 18(3) must also impose this requirement on agencies and branches referred to in this Title which are established in its territory and simultaneously carry on both activities there.



- d Member States may provide that agencies and branches referred to in this Title whose head office simultaneously carries on both activities and which on the dates referred to in Article 18(3) carried on in the territory of a Member State solely the activity covered by this Directive may continue their activity there. If the undertaking wishes to carry on the activity referred to in Directive 73/239/EEC in that territory it may only carry on the activity covered by this Directive through a subsidiary.

2 Articles 13 and 37 shall apply *mutatis mutandis* to agencies and branches referred to in this title.

For the purposes of applying Article 37, the competent authority which supervises the overall solvency of agencies or branches shall be treated in the same way as the competent authority of the head-office Member State.

3 In the case of a withdrawal of authorisation by the authority referred to in Article 56(2), this authority shall notify the competent authorities of the other Member States where the undertaking operates and the latter authorities shall take the appropriate measures. If the reason for the withdrawal of authorisation is the inadequacy of the solvency margin calculated in accordance with Article 56(1)(a), the competent authorities of the other Member States concerned shall also withdraw their authorisations.

### Article 53

#### **Transfer of portfolio**

1 Under the conditions laid down by national law, each Member State shall authorise agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an accepting office established in the same Member State if the competent authorities of that Member State or, if appropriate, those of the Member State referred to in Article 56 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 authorise agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an assurance undertaking with a head office in another Member State, if the competent authorities of that Member State certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

3 If under the conditions laid down by national law, a Member State authorises agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an agency or branch covered by this Title and set up within the territory of another Member State, it shall ensure that the competent authorities of the Member State of the accepting office or, if appropriate, of the Member State referred to in Article 56 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin, that the law of the Member State of the accepting office permits such a transfer and that the State has agreed to the transfer.

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

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

authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

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

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

#### *Article 54*

### **Technical provisions**

Member States shall require undertakings to establish provisions, referred to in Article 20, adequate to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such provisions by means of assets which are equivalent to such provisions and matching assets in accordance with Annex II.

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

The Member State in question shall require that the assets covering these provisions, shall be localised in its territory. Article 20(4) shall, however, apply.

#### *Article 55*

### **Solvency margin and guarantee fund**

1 Each Member State shall require of agencies or branches set up in its territory a solvency margin consisting of the items listed in Article 27. The minimum solvency margin shall be calculated in accordance with Article 28. However, for the purpose of calculating this margin, account shall be taken only of the operations effected by the agency or branch concerned.

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

However, the amount of this fund may not be less than one half of the minimum required under Article 29(2) first subparagraph. The initial deposit lodged in accordance with Article 51(2)(e) shall be counted towards such guarantee fund.

The guarantee fund and the minimum of such fund shall be constituted in accordance with Article 29.

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

### Article 56

#### **Advantages to undertakings authorised in more than one Member State**

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

- a the solvency margin referred to in Article 55 shall be calculated in relation to the entire business which it carries on within the Community; in such case, account shall be taken only of the operations effected by all the agencies or branches established within the Community for the purposes of this calculation;
- b the deposit required under Article 51(2)(e) shall be lodged in only one of those Member States;
- c the assets representing the guarantee fund shall be localised in any one of the Member States in which it carries on its activities.

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

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

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

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

### Article 57

#### **Agreements with third countries**

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

## TITLE VI

**RULES APPLICABLE TO SUBSIDIARIES OF PARENT UNDERTAKINGS  
GOVERNED BY THE LAWS OF A THIRD COUNTRY AND TO THE  
ACQUISITIONS OF HOLDINGS BY SUCH PARENT UNDERTAKINGS***Article 58***Information from Member States to the Commission**

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

- (a) of any authorisation of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Committee referred to in Article 65(1) accordingly;
- (b) whenever such a parent undertaking acquires a holding in a Community assurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Committee referred to in Article 65(1) accordingly.

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

*Article 59***Third-country treatment of Community assurance undertakings**

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

2 Periodically, the Commission shall draw up a report examining the treatment accorded to Community assurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying-on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

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

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

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in Article 65(2), that the competent authorities of the Member States must limit or suspend their decisions:

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

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

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

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

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

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

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

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

## TITLE VII

### TRANSITIONAL AND OTHER PROVISIONS

#### *Article 60*

#### **Derogations and abolition of restrictive measures**

1 Undertakings set up in the United Kingdom by Royal Charter or by private Act or by special Public Act may carry on their activity in the legal form in which they were constituted on 15 March 1979 for an unlimited period.

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

2 The societies registered in the United Kingdom under the Friendly Societies Acts may continue the activities of life assurance and savings operations which, in accordance with their objects, they were carrying on on 15 March 1979.

### Article 61

#### **Proof of good repute**

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

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

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

4 Member States shall designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.

Each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in this Article are to be submitted in support of an application to carry on in the territory of this Member State the activities referred to in Article 2.

## TITLE VIII

### **FINAL PROVISIONS**

#### Article 62

#### **Cooperation between the Member States and the Commission**

The Commission and the competent authorities of the Member States shall collaborate closely with a view to facilitating the supervision of the kinds of insurance and the operations referred to in this Directive within the Community.

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

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

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

### *Article 63*

#### **Reports on the development of the market under the freedom to provide services**

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

### *Article 64*

#### **Technical adjustment**

The following technical adjustments to be made to this Directive shall be adopted in accordance with the procedure laid down in Article 65(2):

- extension of the legal forms provided for in Article 6(1)(a),
- amendments to the list set out in Annex I, or adaptation of the terminology used in that list to take account of the development of assurance markets,
- clarification of the items constituting the solvency margin listed in Article 27 to take account of the creation of new financial instruments,
- alteration of the minimum guarantee fund provided for in Article 29(2) 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 23 and to the rules on the spreading of investments laid down in Article 24,
- changes in the relaxations in the matching rules laid down in Annex II, to take account of the development of new currency-hedging instruments or progress made in economic and monetary union,
- clarification of the definitions in order to ensure uniform application of this Directive throughout the Community,
- the technical adjustments necessary to the rules for setting the maxima applicable to interest rates, pursuant to Article 20, in particular to take account of progress made in economic and monetary union.

### *Article 65*

#### **Committee procedure**

1 The Commission shall be assisted by the Insurance Committee instituted by Directive 91/675/EEC.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 The Committee shall adopt its Rules of Procedure.

#### *Article 66*

### **Rights acquired by existing branches and assurance undertakings**

1 Branches which started business, in accordance with the provisions in force in the Member State of the branch, before 1 July 1994 shall be presumed to have been subject to the procedure laid down in Article 40(1) to (5).

They shall be governed, from that date by Articles 13, 20, 37, 39 and 46.

2 Articles 41 and 42 shall not affect rights acquired by assurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

#### *Article 67*

### **Right to apply to the courts**

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

#### *Article 68*

### **Review of amounts expressed in euro**

1 The Commission shall submit to the Council before 15 March 1985 a report dealing with the effects of the financial requirements imposed by this Directive on the situation in the insurance markets of the Member States.

2 The Council, acting on a proposal from the Commission, shall every two years examine and, where appropriate, revise the amounts expressed in euro in this Directive, in the light of how the Community's economic and monetary situation has evolved.

#### *Article 69*

### **Implementation of new provisions**

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1)(m), Article 18(3), Article 51(2)(g), (3) and (4), Article 60(2) and Article 66(1) not later than 19 June 2004. They shall immediately inform the Commission thereof.

2 Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with Article 16(3) not later than 17 November 2002. They shall forthwith inform the Commission thereof. Before this date, Member States shall apply the provision referred to in Annex IV(1).

3 Member States shall adopt by 20 September 2003 the laws, regulations and administrative provisions necessary to comply with Articles 3(6), 27, 28, 29, 30 and 38. They shall forthwith inform the Commission thereof.



Member States shall provide that the provisions referred to in the first subparagraph shall first apply to the supervision of accounts for financial years beginning on 1 January 2004 or during that calendar year. Before this date, Member States shall apply the provisions referred to in Annex IV(2) and (3).

4 When Member States adopt the measures mentioned in paragraphs (1), (2) and (3), they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

5 Not later than 1 January 2007 the Commission shall submit to the European Parliament and to the Council a report on the application of Articles 3(6), 27, 28, 29, 30 and 38 and, if necessary, on the need for further harmonisation. The report shall indicate how Member States have made use of the possibilities under those articles and, in particular, whether the discretionary powers afforded to the national supervisory authorities have resulted in major supervisory differences in the single market.

#### *Article 70*

### **Information to the Commission**

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 71*

### **Transitional period for Articles 3(6), 27, 28, 29, 30 and 38**

1 Member States may allow assurance undertakings which at 20 March 2002 provided assurance in their territories in one or more of classes referred to in Annex I, a period of five years, commencing on that same date, in order to comply with the requirements set out in Articles 3(6), 27, 28, 29, 30 and 38.

2 Member States may allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the required solvency margin, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 37, submitted for the approval of the competent authorities, the measures which they propose to take for such purpose.

#### *Article 72*

### **Repealed directives and their correlation with this Directive**

1 The Directives listed in Annex V, part A, are hereby repealed, without prejudice to the obligations of the Member States concerning the time limits for transposition and for application of the said Directives listed in Annex V, part B.

2 References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

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*Status: This is the original version (as it was originally adopted).*

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*Article 73*

**Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

*Article 74*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 5 November 2002.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

T. PEDERSEN

- (1) [OJ C 365 E, 19.12.2000, p. 1.](#)
- (2) [OJ C 123, 25.4.2001, p. 24.](#)
- (3) Opinion of the European Parliament of 15 March 2001 ([OJ C 343, 5.12.2001, p. 202](#)), Council Common Position of 27 May 2002 ([OJ C 170 E, 16.7.2002, p. 45](#)) and decision of the European Parliament of 25 September 2002 (not yet published in the Official Journal).
- (4) [OJ L 63, 13.3.1979, p. 1.](#) Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 11](#)).
- (5) [OJ L 330, 29.11.1990, p. 50.](#) Directive as amended by Directive 92/96/EEC ([OJ L 360, 9.12.1992, p. 1](#)).
- (6) [OJ L 360, 9.12.1992, p. 1.](#) Directive as amended by Directive 2000/64/EC of the European Parliament and of the Council ([OJ L 290, 17.11.2000, p. 27](#)).
- (7) [OJ L 374, 31.12.1991, p. 7.](#)
- (8) [OJ L 228, 16.8.1973, p. 3.](#) Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 17](#)).
- (9) [OJ L 141, 11.6.1993, p. 27.](#) Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council.
- (10) [OJ L 184, 17.7.1999, p. 23.](#)
- (11) [OJ L 374, 31.12.1991, p. 32.](#)
- (12) [OJ L 193, 18.7.1983, p. 1.](#) Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council ([OJ L 283, 27.10.2001, p. 28](#)).
- (13) [OJ L 184, 6.7.2001, p. 1.](#)
- (14) [OJ L 126, 12.5.1984, p. 20.](#)
- (15) [OJ L 222, 14.8.1978, p. 11.](#) Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council ([OJ L 283, 27.10.2001, p. 28](#)).
- (16) [OJ L 375, 31.12.1985, p. 3.](#) Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council ([OJ L 41, 13.2.2002, p. 35](#)).
- (17) [OJ L 126, 26.5.2000, p. 1.](#) Directive as amended by Directive 2000/28/EC ([OJ L 275, 27.10.2000, p. 37](#)).