# Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

## DIRECTIVE 2009/138/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) A number of substantial changes are to be made to First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance[(3)]; Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance[(4)]; Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance[(5)]; Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services[(6)]; Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)[(7)]; Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group[(8)]; Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings[(9)]; Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance[(10)]; and

Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance[11]. In the interests of clarity those Directives should be recast.

(2) In order to facilitate the taking-up and pursuit of the activities of insurance and reinsurance, it is necessary to eliminate the most serious differences between the laws of the Member States as regards the rules to which insurance and reinsurance undertakings are subject. A legal framework should therefore be provided for insurance and reinsurance undertakings to conduct insurance business throughout the internal market thus making it easier for insurance and reinsurance undertakings with head offices in the Community to cover risks and commitments situated therein.

(3) It is in the interests of the proper functioning of the internal market that coordinated rules be established relating to the supervision of insurance groups and, with a view to the protection of creditors, to the reorganisation and winding-up proceedings in respect of insurance undertakings.

(4) It is appropriate that certain undertakings which provide insurance services are not covered by the system established by this Directive due to their size, their legal status, their nature – as being closely linked to public insurance systems – or the specific services they offer. It is further desirable to exclude certain institutions in several Member States, the business of which covers only a very limited sector and is restricted by law to a specific territory or to specified persons.

(5) Very small insurance undertakings fulfilling certain conditions, including gross premium income below EUR 5 million, are excluded from the scope of this Directive. However, all insurance and reinsurance undertakings which are already licensed under the current Directives should continue to be licensed when this Directive is implemented. Undertakings that are excluded from the scope of this Directive should be able to make use of the basic freedoms granted by the Treaty. Those undertakings have the option to seek authorisation under this Directive in order to benefit from the single licence provided for in this Directive.

(6) It should be possible for Member States to require undertakings that pursue the business of insurance or reinsurance and which are excluded from the scope of this Directive to register. Member States may also subject those undertakings to prudential and legal supervision.

(7) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability[12]; Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts[13]; Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles[14]; Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[15]; and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[16] lay down general rules in the fields of accounting, motor insurance liability, financial instruments and credit institutions and provide for definitions in those

areas. It is appropriate that certain of the definitions laid down in those directives apply for the purposes of this Directive.

(8) The taking-up of insurance or of reinsurance activities should be subject to prior authorisation. It is therefore necessary to lay down the conditions and the procedure for the granting of that authorisation as well as for any refusal.

(9) The directives repealed by this Directive do not lay down any rules in respect of the scope of reinsurance activities that an insurance undertaking may be authorised to pursue. It is for the Member States to decide to lay down any rules in that regard.

(10) References in this Directive to insurance or reinsurance undertakings should include captive insurance and captive reinsurance undertakings, except where specific provision is made for those undertakings.

(11) Since this Directive constitutes an essential instrument for the achievement of the internal market, insurance and reinsurance undertakings authorised in their home Member States should be allowed to pursue, throughout the Community, any or all of their activities by establishing branches or by providing services. It is therefore appropriate to bring about such harmonisation as is necessary and sufficient to achieve the mutual recognition of authorisations and supervisory systems, and thus a single authorisation which is valid throughout the Community and which allows the supervision of an undertaking to be carried out by the home Member State.

(12) Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth motor insurance Directive)[(17)] lays down rules on the appointment of claims representatives. Those rules should apply for the purposes of this Directive.

(13) Reinsurance undertakings should limit their objects to the business of reinsurance and related operations. Such a requirement should not prevent a reinsurance undertaking from pursuing activities such as the provision of statistical or actuarial advice, risk analysis or research for its clients. It may also include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate[(18)]. In any event, that requirement does not allow the pursuit of unrelated banking and financial activities.

(14) The protection of policy holders presupposes that insurance and reinsurance undertakings are subject to effective solvency requirements that result in an efficient allocation of capital across the European Union. In light of market developments the current system is no longer adequate. It is therefore necessary to introduce a new regulatory framework.

(15) In line with the latest developments in risk management, in the context of the International Association of Insurance Supervisors, the International Accounting Standards Board and the International Actuarial Association and with recent developments in other financial sectors an economic risk-based approach should be

adopted which provides incentives for insurance and reinsurance undertakings to properly measure and manage their risks. Harmonisation should be increased by providing specific rules for the valuation of assets and liabilities, including technical provisions.

(16) The main objective of insurance and reinsurance regulation and supervision is the adequate protection of policy holders and beneficiaries. The term beneficiary is intended to cover any natural or legal person who is entitled to a right under an insurance contract. Financial stability and fair and stable markets are other objectives of insurance and reinsurance regulation and supervision which should also be taken into account but should not undermine the main objective.

(17) The solvency regime laid down in this Directive is expected to result in even better protection for policy holders. It will require Member States to provide supervisory authorities with the resources to fulfil their obligations as set out in this Directive. This encompasses all necessary capacities, including financial and human resources.

(18) The supervisory authorities of the Member States should therefore have at their disposal all means necessary to ensure the orderly pursuit of business by insurance and reinsurance undertakings throughout the Community whether pursued under the right of establishment or the freedom to provide services. In order to ensure the effectiveness of the supervision all actions taken by the supervisory authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking, regardless of the importance of the undertaking concerned for the overall financial stability of the market.

(19) This Directive should not be too burdensome for small and medium-sized insurance undertakings. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance undertakings and to the exercise of supervisory powers.

(20) In particular, this Directive should not be too burdensome for insurance undertakings that specialise in providing specific types of insurance or services to specific customer segments, and it should recognise that specialising in this way can be a valuable tool for efficiently and effectively managing risk. In order to achieve that objective, as well as the proper application of the proportionality principle, provision should also be made specifically to allow undertakings to use their own data to calibrate the parameters in the underwriting risk modules of the standard formula of the Solvency Capital Requirement.

(21) This Directive should also take account of the specific nature of captive insurance and captive reinsurance undertakings. As those undertakings only cover risks associated with the industrial or commercial group to which they belong, appropriate approaches should thus be provided in line with the principle of proportionality to reflect the nature, scale and complexity of their business.

(22) The supervision of reinsurance activity should take account of the special characteristics of reinsurance business, notably its global nature and the fact that the policy holders are themselves insurance or reinsurance undertakings.

(23) Supervisory authorities should be able to obtain from insurance and reinsurance undertakings the information which is necessary for the purposes of supervision, including, where appropriate, information publicly disclosed by an insurance or reinsurance undertaking under financial reporting, listing and other legal or regulatory requirements.

(24) The supervisory authorities of the home Member State should be responsible for monitoring the financial health of insurance and reinsurance undertakings. To that end, they should carry out regular reviews and evaluations.

(25) Supervisory authorities should be able to take account of the effects on risk and asset management of voluntary codes of conduct and transparency complied with by the relevant institutions dealing in unregulated or alternative investment instruments.

(26) The starting point for the adequacy of the quantitative requirements in the insurance sector is the Solvency Capital Requirement. Supervisory authorities should therefore have the power to impose a capital add-on to the Solvency Capital Requirement only under exceptional circumstances, in the cases listed in this Directive, following the supervisory review process. The Solvency Capital Requirement standard formula is intended to reflect the risk profile of most insurance and reinsurance undertakings. However, there may be some cases where the standardised approach does not adequately reflect the very specific risk profile of an undertaking.

(27) The imposition of a capital add-on is exceptional in the sense that it should be used only as a measure of last resort, when other supervisory measures are ineffective or inappropriate. Furthermore, the term exceptional should be understood in the context of the specific situation of each undertaking rather than in relation to the number of capital add-ons imposed in a specific market.

(28) The capital add-on should be retained for as long as the circumstances under which it was imposed are not remedied. In the event of significant deficiencies in the full or partial internal model or significant governance failures the supervisory authorities should ensure that the undertaking concerned makes every effort to remedy the deficiencies that led to the imposition of the capital add-on. However, where the standardised approach does not adequately reflect the very specific risk profile of an undertaking the capital add-on may remain over consecutive years.

(29) Some risks may only be properly addressed through governance requirements rather than through the quantitative requirements reflected in the Solvency Capital Requirement. An effective system of governance is therefore essential for the adequate management of the insurance undertaking and for the regulatory system.

(30) The system of governance includes the risk-management function, the compliance function, the internal audit function and the actuarial function.

(31) A function is an administrative capacity to undertake particular governance tasks. The identification of a particular function does not prevent the undertaking from freely deciding how to organise that function in practice save where otherwise specified in this Directive. This should not lead to unduly burdensome requirements because account should be taken of the nature, scale and complexity of the operations of the undertaking. It should therefore be possible for those functions to be staffed by own staff, to rely on advice from outside experts or to be outsourced to experts within the limits set by this Directive.

(32) Furthermore, save as regards the internal audit function, in smaller and less complex undertakings it should be possible for more than one function to be carried out by a single person or organisational unit.

(33) The functions included in the system of governance are considered to be key functions and consequently also important and critical functions.

(34) All persons that perform key functions should be fit and proper. However, only the key function holders should be subject to notification requirements to the supervisory authority.

(35) For the purpose of assessing the required level of competence, professional qualifications and experience of those who effectively run the undertaking or have other key functions should be taken into consideration as additional factors.

(36) All insurance and reinsurance undertakings should have, as an integrated part of their business strategy, a regular practice of assessing their overall solvency needs with a view to their specific risk profile (own-risk and solvency assessment). That assessment neither requires the development of an internal model nor serves to calculate a capital requirement different from the Solvency Capital Requirement or the Minimum Capital Requirement. The results of each assessment should be reported to the supervisory authority as part of the information to be provided for supervisory purposes.

(37) In order to ensure effective supervision of outsourced functions or activities, it is essential that the supervisory authorities of the outsourcing insurance or reinsurance undertaking have access to all relevant data held by the outsourcing service provider, regardless of whether the latter is a regulated or unregulated entity, as well as the right to conduct on-site inspections. In order to take account of market developments and to ensure that the conditions for outsourcing continue to be complied with, the supervisory authorities should be informed prior to the outsourcing of critical or important functions or activities. Those requirements should take into account the work of the Joint Forum and are consistent with the current rules and practices in the banking sector and Directive 2004/39/EC and its application to credit institutions.

(38) In order to guarantee transparency, insurance and reinsurance undertakings should publicly disclose – that is to say make it available to the public either in printed or electronic form free of charge – at least annually, essential information on their solvency and financial condition. Undertakings should be allowed to disclose publicly additional information on a voluntary basis.

(39) Provision should be made for exchanges of information between the supervisory authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. It is therefore necessary to specify the conditions under which those exchanges of information should be possible. Moreover, where information may be disclosed only with the express agreement of the supervisory authorities, those authorities should be able, where appropriate, to make their agreement subject to compliance with strict conditions.

(40) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) established by Commission Decision 2009/79/EC[(19)] should play an important role in this respect and report regularly to the European Parliament and the Commission on the progress made.

(41) The objective of the information and report to be presented in relation to capital add-ons by CEIOPS is not to inhibit their use as permitted under this Directive but to contribute to an ever higher degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States.

(42) In order to limit the administrative burden and avoid duplication of tasks, supervisory authorities and national statistical authorities should cooperate and exchange information.

(43) For the purposes of strengthening the supervision of insurance and reinsurance undertakings and the protection of policy holders, the statutory auditors within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts[(20)] should have a duty to report promptly any facts which are likely to have a serious effect on the financial situation or the administrative organisation of an insurance or a reinsurance undertaking.

(44) Insurance undertakings pursuing both life and non-life activities should manage those activities separately, in order to protect the interests of life policy holders. In particular, those undertakings should be subject to the same capital requirements as those applicable to an equivalent insurance group, made up of a life insurance undertaking and a non-life undertaking, taking into account the increased transferability of capital in the case of composite insurance undertakings.

(45) The assessment of the financial position of insurance and reinsurance undertakings should rely on sound economic principles and make optimal use of the information provided by financial markets, as well as generally available data on insurance technical risks. In particular, solvency requirements should be based on an economic valuation of the whole balance sheet.

(46) Valuation standards for supervisory purposes should be compatible with international accounting developments, to the extent possible, so as to limit the administrative burden on insurance or reinsurance undertakings.

(47) In accordance with that approach, capital requirements should be covered by own funds, irrespective of whether they are on or off the balance-sheet items. Since not all financial resources provide full absorption of losses in the case of winding-up and on a going-concern basis, own-fund items should be classified in accordance with quality criteria into three tiers, and the eligible amount of own funds to cover capital requirements should be limited accordingly. The limits applicable to own-fund items should only apply to determine the solvency standing of insurance and reinsurance undertakings, and should not further restrict the freedom of those undertakings with respect to their internal capital management.

(48) Generally, assets which are free from any foreseeable liabilities are available to absorb losses due to adverse business fluctuations on a going-concern basis and in the case of winding-up. Therefore the vast majority of the excess of assets over liabilities, as valued in accordance with the principles set out in this Directive, should be treated as high-quality capital (Tier 1).

(49) Not all assets within an undertaking are unrestricted. In some Member States, specific products result in ring-fenced fund structures which give one class of policy holders greater rights to assets within their own fund. Although those assets are included in computing the excess of assets over liabilities for own-fund purposes they cannot in fact be made available to meet the risks outside the ring-fenced fund. To be consistent with the economic approach, the assessment of own funds needs to be adjusted to reflect the different nature of assets, which form part of a ring-fenced arrangement. Similarly, the Solvency Capital Requirement calculation should reflect the reduction in pooling or diversification related to those ring-fenced funds.

(50) It is current practice in certain Member States for insurance companies to sell life insurance products in relation to which the policy holders and beneficiaries contribute to the risk capital of the company in exchange for all or part of the return on the contributions. Those accumulated profits are surplus funds, which are the property of the legal entity in which they are generated.

(51) Surplus funds should be valued in line with the economic approach laid down in this Directive. In this respect, a mere reference to the evaluation of surplus funds in the statutory annual accounts should not be sufficient. In line with the requirements on own funds, surplus funds should be subject to the criteria laid down in this Directive on the classification in tiers. This means, *inter alia*, that only surplus funds which fulfil the requirements for classification in Tier 1 should be considered as Tier 1 capital.

(52) Mutual and mutual-type associations with variable contributions may call for supplementary contributions from their members (supplementary members' calls) in order to increase the amount of financial resources that they hold to absorb losses. Supplementary members' calls may represent a significant source of funding for mutual and mutual-type associations, including when those associations are confronted with adverse business fluctuations. Supplementary members' calls should therefore be recognised as ancillary own-fund items and treated accordingly for solvency purposes. In particular, in the case of mutual or mutual-type associations of shipowners with variable contributions solely insuring maritime risks, the recourse to supplementary

members' calls has been a long-established practice, subject to specific recovery arrangements, and the approved amount of those members' calls should be treated as good-quality capital (Tier 2). Similarly, in the case of other mutual and mutual-type associations where supplementary members' calls are of similar quality, the approved amount of those members' calls should also be treated as good-quality capital (Tier 2).

(53) In order to allow insurance and reinsurance undertakings to meet their commitments towards policy holders and beneficiaries, Member States should require those undertakings to establish adequate technical provisions. The principles and actuarial and statistical methodologies underlying the calculation of those technical provisions should be harmonised throughout the Community in order to achieve better comparability and transparency.

(54) The calculation of technical provisions should be consistent with the valuation of assets and other liabilities, market consistent and in line with international developments in accounting and supervision.

(55) The value of technical provisions should therefore correspond to the amount an insurance or reinsurance undertaking would have to pay if it transferred its contractual rights and obligations immediately to another undertaking. Consequently, the value of technical provisions should correspond to the amount which another insurance or reinsurance undertaking (the reference undertaking) would be expected to require to take over and fulfil the underlying insurance and reinsurance obligations. The amount of technical provisions should reflect the characteristics of the underlying insurance portfolio. Undertaking-specific information, such as that regarding claims management and expenses, should therefore be used in their calculation only insofar as that information enables insurance and reinsurance undertakings better to reflect the characteristics of the underlying insurance portfolio.

(56) The assumptions made about the reference undertaking assumed to take over and meet the underlying insurance and reinsurance obligations should be harmonised throughout the Community. In particular, the assumptions made about the reference undertaking that determine whether or not, and if so to what extent, diversification effects should be taken into account in the calculation of the risk margin should be analysed as part of the impact assessment of implementing measures and should then be harmonised at Community level.

(57) For the purpose of calculating technical provisions, it should be possible to apply reasonable interpolations and extrapolations from directly observable market values.

(58) It is necessary that the expected present value of insurance liabilities is calculated on the basis of current and credible information and realistic assumptions, taking account of financial guarantees and options in insurance or reinsurance contracts, to deliver an economic valuation of insurance or reinsurance obligations. The use of effective and harmonised actuarial methodologies should be required.

(59) In order to reflect the specific situation of small and medium-sized undertakings, simplified approaches to the calculation of technical provisions should be provided for.

(60) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policy holders. For the good functioning of this Directive, there should be an adequate ladder of intervention between the Solvency Capital Requirement and the Minimum Capital Requirement.

(61) In order to mitigate undue potential pro-cyclical effects of the financial system and avoid a situation in which insurance and reinsurance undertakings are unduly forced to raise additional capital or sell their investments as a result of unsustained adverse movements in financial markets, the market risk module of the standard formula for the Solvency Capital Requirement should include a symmetric adjustment mechanism with respect to changes in the level of equity prices. In addition, in the event of exceptional falls in financial markets, and where that symmetric adjustment mechanism is not sufficient to enable insurance and reinsurance undertakings to fulfil their Solvency Capital Requirement, provision should be made to allow supervisory authorities to extend the period within which insurance and reinsurance undertakings are required to re-establish the level of eligible own funds covering the Solvency Capital Requirement.

(62) The Solvency Capital Requirement should reflect a level of eligible own funds that enables insurance and reinsurance undertakings to absorb significant losses and that gives reasonable assurance to policy holders and beneficiaries that payments will be made as they fall due.

(63) In order to ensure that insurance and reinsurance undertakings hold eligible own funds that cover the Solvency Capital Requirement on an on-going basis, taking into account any changes in their risk profile, those undertakings should calculate the Solvency Capital Requirement at least annually, monitor it continuously and recalculate it whenever the risk profile alters significantly.

(64) In order to promote good risk management and align regulatory capital requirements with industry practices, the Solvency Capital Requirement should be determined as the economic capital to be held by insurance and reinsurance undertakings in order to ensure that ruin occurs no more often than once in every 200 cases or, alternatively, that those undertakings will still be in a position, with a probability of at least 99,5 %, to meet their obligations to policy holders and beneficiaries over the following 12 months. That economic capital should be calculated on the basis of the true risk profile of those undertakings, taking account of the impact of possible risk-mitigation techniques, as well as diversification effects.

(65) Provision should be made to lay down a standard formula for the calculation of the Solvency Capital Requirement, to enable all insurance and reinsurance undertakings to assess their economic capital. For the structure of the standard formula, a modular approach should be adopted, which means that the individual exposure to each risk category should be assessed in a first step and then aggregated in a second step. Where the use of undertaking-specific parameters allows for the true underwriting risk

profile of the undertaking to be better reflected, this should be allowed, provided such parameters are derived using a standardised methodology.

(66) In order to reflect the specific situation of small and medium-sized undertakings, simplified approaches to the calculation of the Solvency Capital Requirement in accordance with the standard formula should be provided for.

(67) As a matter of principle, the new risk-based approach does not comprise the concept of quantitative investment limits and asset eligibility criteria. It should however be possible to introduce investment limits and asset eligibility criteria to address risks which are not adequately covered by a sub-module of the standard formula.

(68) In accordance with the risk-oriented approach to the Solvency Capital Requirement, it should be possible, in specific circumstances, to use partial or full internal models for the calculation of that requirement rather than the standard formula. In order to provide policy holders and beneficiaries with an equivalent level of protection, such internal models should be subject to prior supervisory approval on the basis of harmonised processes and standards.

(69) When the amount of eligible basic own funds falls below the Minimum Capital Requirement, the authorisation of insurance and reinsurance undertakings should be withdrawn where those undertakings are unable to re-establish the amount of eligible basic own funds at the level of the Minimum Capital Requirement within a short period of time.

(70) The Minimum Capital Requirement should ensure a minimum level below which the amount of financial resources should not fall. It is necessary that that level be calculated in accordance with a simple formula, which is subject to a defined floor and cap based on the risk-based Solvency Capital Requirement in order to allow for an escalating ladder of supervisory intervention, and that it is based on the data which can be audited.

(71) Insurance and reinsurance undertakings should have assets of sufficient quality to cover their overall financial requirements. All investments held by insurance and reinsurance undertakings should be managed in accordance with the ‘prudent person’ principle.

(72) Member States should not require insurance or reinsurance undertakings to invest their assets in particular categories of assets, as such a requirement could be incompatible with the liberalisation of capital movements provided for in Article 56 of the Treaty.

(73) It is necessary to prohibit any provisions enabling Member States to require pledging of assets covering the technical provisions of an insurance or reinsurance undertaking, whatever form that requirement might take, when the insurer is reinsured by an insurance or reinsurance undertaking authorised pursuant to this Directive, or by a third-country undertaking where the supervisory regime of that third country has been deemed equivalent.

(74) The legal framework has so far provided neither detailed criteria for a prudential assessment of a proposed acquisition nor a procedure for their application. A clarification of the criteria and the process of prudential assessment is therefore needed to provide the necessary legal certainty, clarity and predictability with regard to the

assessment process, as well as to the result thereof. Those criteria and procedures were introduced by provisions in Directive 2007/44/EC. As regards insurance and reinsurance those provisions should therefore be codified and integrated into this Directive.

(75) Maximum harmonisation throughout the Community of those procedures and prudential assessments is therefore critical. However, the provisions on qualifying holdings should not prevent the Member States from requiring that the supervisory authorities are to be informed of acquisitions of holdings below the thresholds laid down in those provisions, so long as a Member State imposes no more than one additional threshold below 10 % for that purpose. Nor should those provisions prevent the supervisory authorities from providing general guidance as to when such holdings would be deemed to result in significant influence.

(76) In view of the increasing mobility of citizens of the Union, motor liability insurance is increasingly being offered on a cross-border basis. To ensure the continued proper functioning of the green card system and the agreements between the national bureaux of motor insurers, it is appropriate that Member States are able to require insurance undertakings providing motor liability insurance in their territory by way of provision of services to join and participate in the financing of the national bureau as well as of the guarantee fund set up in that Member State. The Member State of provision of services should require undertakings which provide motor liability insurance to appoint a representative in its territory to collect all necessary information in relation to claims and to represent the undertaking concerned.

(77) Within the framework of an internal market it is in the interest of policy holders that they should have access to the widest possible range of insurance products available in the Community. The Member State in which the risk is situated or the Member State of the commitment should therefore ensure that there is nothing to prevent the marketing within its territory of all the insurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in that Member State and in so far as the general good is not safeguarded by the rules of the home Member State.

(78) Provision should be made for a system of sanctions to be imposed when, in the Member State in which the risk is situated or the Member State of the commitment, an insurance undertaking does not comply with any applicable provisions protecting the general good.

(79) In an internal market for insurance, consumers have a wider and more varied choice of contracts. If they are to benefit fully from that diversity and from increased competition, consumers should be provided with whatever information is necessary before the conclusion of the contract and throughout the term of the contract to enable them to choose the contract best suited to their needs.

(80) An insurance undertaking offering assistance contracts should possess the means necessary to provide the benefits in kind which it offers within an appropriate period of time. Special provisions should be laid down for calculating the Solvency Capital

Requirement and the absolute floor of the Minimum Capital Requirement which such undertaking should possess.

(81) The effective pursuit of Community co-insurance business for activities which are by reason of their nature or their size likely to be covered by international co-insurance should be facilitated by a minimum of harmonisation in order to prevent distortion of competition and differences in treatment. In that context, the leading insurance undertaking should assess claims and fix the amount of technical provisions. Moreover, special cooperation should be provided for in the Community co-insurance field both between the supervisory authorities of the Member States and between those authorities and the Commission.

(82) In the interest of the protection of insured persons, national law concerning legal expenses insurance should be harmonised. Any conflicts of interest arising, in particular, from the fact that the insurance undertaking is covering another person or is covering a person in respect of both legal expenses and any other class of insurance should be precluded as far as possible or resolved. To that end, a suitable level of protection of policy holders can be achieved by different means. Whichever solution is adopted, the interest of persons having legal expenses cover should be protected by equivalent safeguards.

(83) Conflicts between insured persons and insurance undertakings covering legal expenses should be settled in the fairest and speediest manner possible. It is therefore appropriate that Member States provide for an arbitration procedure or a procedure offering comparable guarantees.

(84) In some Member States, private or voluntary health insurance serves as a partial or complete alternative to health cover provided for by the social security systems. The particular nature of such health insurance distinguishes it from other classes of indemnity insurance and life insurance insofar as it is necessary to ensure that policy holders have effective access to private health cover or health cover taken out on a voluntary basis regardless of their age or risk profile. Given the nature and the social consequences of health insurance contracts, the supervisory authorities of the Member State in which a risk is situated should be able to require systematic notification of the general and special policy conditions in the case of private or voluntary health insurance in order to verify that such contracts are a partial or complete alternative to the health cover provided by the social security system. Such verification should not be a prior condition for the marketing of the products.

(85) To that end, some Member States have adopted specific legal provisions. To protect the general good, it should be possible to adopt or maintain such legal provisions in so far as they do not unduly restrict the right of establishment or the freedom to provide services, it being understood that such provisions should apply in an identical manner. Those legal provisions may differ in nature according to the conditions in each Member State. The objective of protecting the general good may also be achieved by requiring undertakings offering private health cover or health cover taken out on a voluntary basis to offer standard policies in line with the cover provided by statutory social security schemes at a premium rate at or below a prescribed maximum and to participate in loss

compensation schemes. As a further possibility, it may be required that the technical basis of private health cover or health cover taken out on a voluntary basis be similar to that of life insurance.

(86) Host Member States should be able to require any insurance undertaking which offers, within their territories, compulsory insurance against accidents at work at its own risk to comply with the specific provisions laid down in their national law on such insurance. However, such a requirement should not apply to the provisions concerning financial supervision, which should remain the exclusive responsibility of the home Member State.

(87) Some Member States do not subject insurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution, including surcharges intended for compensation bodies. 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 insurance services between Member States. Pending subsequent harmonisation, the application of the tax systems and other forms of contribution provided for by the Member States in which the risk is situated or in the Member State of the commitment is likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected.

(88) Those Member States not subject to the application of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)[21] should, in accordance with this Directive, apply the provisions of that Regulation in order to determine the law applicable to contracts of insurance falling within the scope of Article 7 of that Regulation.

(89) In order to take account of the international aspects of reinsurance, provision should be made to enable the conclusion of international agreements with a third country aimed at defining the means of supervision over reinsurance entities which conduct business in the territory of each contracting party. Moreover, a flexible procedure should be provided for to make it possible to assess prudential equivalence with third countries on a Community basis, so as to improve liberalisation of reinsurance services in third countries, be it through establishment or cross-border provision of services.

(90) Due to the special nature of finite reinsurance activities, Member States should ensure that insurance and reinsurance undertakings concluding finite reinsurance contracts or pursuing finite reinsurance activities can properly identify, measure and control the risks arising from those contracts or activities.

(91) Appropriate rules should be provided for special purpose vehicles which assume risks from insurance and reinsurance undertakings without being an insurance or reinsurance undertaking. Recoverable amounts from a special purpose vehicle should be considered as amounts deductible under reinsurance or retrocession contracts.

(92) Special purpose vehicles authorised before 31 October 2012 should be subject to the law of the Member State having authorised the special purpose vehicle. However, in order

to avoid regulatory arbitrage, any new activity commenced by such a special purpose vehicle after 31 October 2012 should be subject to the provisions of this Directive.

(93) Given the increasing cross-border nature of insurance business, divergences between Member States' regimes on special purpose vehicles, which are subject to the provisions of this Directive, should be reduced to the greatest extent possible, taking account of their supervisory structures.

(94) Further work on special purpose vehicles should be conducted taking into account the work undertaken in other financial sectors.

(95) Measures concerning the supervision of insurance and reinsurance undertakings in a group should enable the authorities supervising an insurance or reinsurance undertaking to form a more soundly based judgment of its financial situation.

(96) Such group supervision should take into account insurance holding companies and mixed-activity insurance holding companies to the extent necessary. However, this Directive should not in any way imply that Member States are required to apply supervision to those undertakings considered individually.

(97) Whilst the supervision of individual insurance and reinsurance undertakings remains the essential principle of insurance supervision it is necessary to determine which undertakings fall under the scope of supervision at group level.

(98) Subject to Community and national law, undertakings, in particular mutual and mutual-type associations, should be able to form concentrations or groups, not through capital ties but through formalised strong and sustainable relationships, based on contractual or other material recognition that guarantees a financial solidarity between those undertakings. Where a dominant influence is exercised through a centralised coordination, those undertakings should be supervised in accordance with the same rules as those provided for groups constituted through capital ties in order to achieve an adequate level of protection for policy holders and a level playing field between groups.

(99) Group supervision should apply in any case at the level of the ultimate parent undertaking which has its head office in the Community. Member States should however be able to allow their supervisory authorities to apply group supervision at a limited number of lower levels, where they deem it necessary.

(100) It is necessary to calculate solvency at group level for insurance and reinsurance undertakings forming part of a group.

(101) The consolidated Solvency Capital Requirement for a group should take into account the global diversification of risks that exist across all the insurance and reinsurance undertakings in that group in order to reflect properly the risk exposures of that group.

(102) Insurance and reinsurance undertakings belonging to a group should be able to apply for the approval of an internal model to be used for the solvency calculation at both group and individual levels.

(103) Some provisions of this Directive expressly provide for a mediatory or a consultative role for CEIOPS, but this should not preclude CEIOPS from also playing a mediatory or a consultative role with regard to other provisions.

(104) This Directive reflects an innovative supervisory model where a key role is assigned to a group supervisor, whilst recognising and maintaining an important role for the solo supervisor. The powers and responsibilities of supervisors are linked with their accountability.

(105) All policy holders and beneficiaries should receive equal treatment regardless of their nationality or place of residence. For this purpose, each Member State should ensure that all measures taken by a supervisory authority on the basis of that supervisory authority's national mandate are not regarded as contrary to the interests of that Member State or of policy holders and beneficiaries in that Member State. In all situations of settling of claims and winding-up, assets should be distributed on an equitable basis to all relevant policy holders, regardless of their nationality or place of residence.

(106) It is necessary to ensure that own funds are appropriately distributed within the group and are available to protect policy holders and beneficiaries where needed. To that end, insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirements.

(107) All supervisors involved in group supervision should be able to understand the decisions made, in particular where those decisions are made by the group supervisor. A soon as it becomes available to one of the supervisors, the relevant information should therefore be shared with the other supervisors, in order for all supervisors to be able to establish an opinion based on the same relevant information. In the event that the supervisors concerned cannot reach an agreement, qualified advice from CEIOPS should be sought to resolve the matter.

(108) The solvency of a subsidiary insurance or reinsurance undertaking of an insurance holding company, third-country insurance or reinsurance undertaking may be affected by the financial resources of the group of which it is part and by the distribution of financial resources within that group. The supervisory authorities should therefore be provided with the means of exercising group supervision and of taking appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is being or may be jeopardised.

(109) Risk concentrations and intra-group transactions could affect the financial position of insurance or reinsurance undertakings. The supervisory authorities should therefore be able to exercise supervision over such risk concentrations and intra-group transactions, taking into account the nature of relationships between regulated entities as well as non-regulated entities, including insurance holding companies and mixed activity insurance holding companies, and take appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is being or may be jeopardised.

(110) Insurance and reinsurance undertakings within a group should have appropriate systems of governance which should be subject to supervisory review.

(111) All insurance and reinsurance groups subject to group supervision should have a group supervisor appointed from among the supervisory authorities involved. The rights and duties of the group supervisor should comprise appropriate coordination and decision-making powers. The authorities involved in the supervision of insurance and reinsurance undertakings belonging to the same group should establish coordination arrangements.

(112) In light of the increasing competences of group supervisors the prevention of arbitrary circumvention of the criteria for choosing the group supervisor should be ensured. In particular in cases where the group supervisor will be designated taking into account the structure of the group and the relative importance of the insurance and reinsurance activities in different markets, internal group transactions as well as group reinsurance should not be double counted when assessing their relative importance within a market.

(113) Supervisors from all Member States in which undertakings of the group are established should be involved in group supervision through a college of supervisors (the College). They should all have access to information available with other supervisory authorities within the College and they should be involved in decision-making actively and on an on-going basis. Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

(114) The activities of the College should be proportionate to the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group and to the cross-border dimension. The College should be set up to ensure that cooperation, exchange of information and consultation processes among the supervisory authorities of the College are effectively applied in accordance with this Directive. Supervisory authorities should use the College to promote convergence of their respective decisions and to cooperate closely to carry out their supervisory activities across the group under harmonised criteria.

(115) This Directive should provide a consultative role for CEIOPS. Advice by CEIOPS to the relevant supervisor should not be binding on that supervisor when taking its decision. When taking a decision, the relevant supervisor should, however, take full account of that advice and explain any significant deviation therefrom.

(116) Insurance and reinsurance undertakings which are part of a group, the head of which is outside the Community should be subject to equivalent and appropriate group supervisory arrangements. It is therefore necessary to provide for transparency of rules and exchange of information with third-country authorities in all relevant circumstances. In order to ensure a harmonised approach to the determination and assessment of equivalence of third-country insurance and reinsurance supervision, provision should be made for the Commission to make a binding decision regarding the equivalence of third-country solvency regimes. For third countries regarding which no decision has been made by the Commission the assessment of equivalence should be made by the group supervisor after consulting the other relevant supervisory authorities.

(117) Since national legislation concerning reorganisation measures and winding-up proceedings is not harmonised, it is appropriate, in the framework of the internal market, to ensure the mutual recognition of reorganisation measures and winding-up legislation of the Member States concerning insurance undertakings, as well as the necessary cooperation, taking into account the need for unity, universality, coordination and publicity for such measures and the equivalent treatment and protection of insurance creditors.

(118) It should be ensured that reorganisation measures which were adopted by the competent authority of a Member State in order to preserve or restore the financial soundness of an insurance undertaking and to prevent as far as possible a winding-up situation, produce full effects throughout the Community. However, the effects of any such reorganisation measures as well as winding-up proceedings vis-à-vis third countries should not be affected.

(119) A distinction should be made between the competent authorities for the purposes of reorganisation measures and winding-up proceedings and the supervisory authorities of the insurance undertakings.

(120) The definition of a branch for insolvency purposes, should, in accordance with existing insolvency principles, take account of the single legal personality of the insurance undertaking. However, the legislation of the home Member State should determine the manner in which the assets and liabilities held by independent persons who have a permanent authority to act as agent for an insurance undertaking are to be treated in the winding-up of that insurance undertaking.

(121) Conditions should be laid down under which winding-up proceedings which, without being founded on insolvency, involve a priority order for the payment of insurance claims, fall within the scope of this Directive. Claims by the employees of an insurance undertaking arising from employment contracts and employment relationships should be capable of being subrogated to a national wage guarantee scheme. Such subrogated claims should benefit from the treatment determined by the law of the home Member State (lex concursus).

(122) Reorganisation measures do not preclude the opening of winding-up proceedings. Winding-up proceedings should therefore be able to be opened in the absence of, or following, the adoption of reorganisation measures and they may terminate with composition or other analogous measures, including reorganisation measures.

(123) Only the competent authorities of the home Member State should be empowered to take decisions on winding-up proceedings concerning insurance undertakings. The decisions should produce their effects throughout the Community and should be recognised by all Member States. The decisions should be published in accordance with the procedures of the home Member State and in the *Official Journal of the European Union*. Information should also be made available to known creditors who are resident in the Community, who should have the right to lodge claims and submit observations.

(124) All the assets and liabilities of the insurance undertaking should be taken into consideration in the winding-up proceedings.

(125) All the conditions for the opening, conduct and closure of winding-up proceedings should be governed by the law of the home Member State.

(126) In order to ensure coordinated action amongst the Member States the supervisory authorities of the home Member State and those of all the other Member States should be informed as a matter of urgency of the opening of winding-up proceedings.

(127) It is of utmost importance that insured persons, policy holders, beneficiaries and any injured party having a direct right of action against the insurance undertaking on a claim arising from insurance operations be protected in winding-up proceedings, it being understood that such protection does not include claims which arise not from obligations under insurance contracts or insurance operations but from civil liability caused by an agent in negotiations for which, according to the law applicable to the insurance contract or operation, the agent is not responsible under such insurance contract or operation. In order to achieve that objective, Member States should be provided with a choice between equivalent methods to ensure special treatment for insurance creditors, none of those methods impeding a Member State from establishing a ranking between different categories of insurance claim. Furthermore, an appropriate balance should be ensured between the protection of insurance creditors and other privileged creditors protected under the legislation of the Member State concerned.

(128) The opening of winding-up proceedings should involve the withdrawal of the authorisation to conduct business granted to the insurance undertaking unless this has already occurred.

(129) Creditors should have the right to lodge claims or to submit written observations in winding-up proceedings. Claims by creditors resident in a Member State other than the home Member State should be treated in the same way as equivalent claims in the home Member State without discrimination on grounds of nationality or residence.

(130) In order to protect legitimate expectations and the certainty of certain transactions in Member States other than the home Member State, it is necessary to determine the law applicable to the effects of reorganisation measures and winding-up proceedings on pending lawsuits and on individual enforcement actions arising from lawsuits.

(131) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(22)].

(132) In particular, the Commission should be empowered to adopt measures concerning the adaptation of Annexes and measures specifying in particular the supervisory powers and actions to be taken and laying down more detailed requirements in areas such as the system of governance, public disclosure, assessment criteria in relation to qualifying holdings, calculation of technical provisions and capital requirements, investment rules and group supervision. The Commission should also be empowered to adopt implementing measures granting to third countries the status of equivalence with the provisions of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it

with non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny laid down in Article 5a of Decision 1999/468/EC.

(133) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(134) Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession[(23)]; Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life insurance[(24)]; Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance[(25)]; and Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, First Directive (73/239/EEC) on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life[(26)] have become obsolete and should therefore be repealed.

(135) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged is provided for in the earlier Directives.

(136) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VI, Part B.

(137) The Commission will review the adequacy of existing guarantee schemes in the insurance sector and make an appropriate legislative proposal.

(138) Article 17(2) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision[(27)] refers to the existing legislative provisions on solvency margins. Those references should be retained in order to maintain the status quo. The Commission should conduct its review of Directive 2003/41/EC under Article 21(4) thereof as quickly as possible. The Commission, assisted by CEIOPS, should develop a proper system of solvency rules concerning institutions for occupational retirement provision, whilst fully reflecting the essential distinctiveness of insurance and, therefore, should not prejudge the application of this Directive to be imposed upon those institutions.

(139) Adoption of this Directive changes the risk profile of the insurance company vis-à-vis the policy holder. The Commission should as soon as possible and in any event by the end of 2010 put forward a proposal for the revision of Directive 2002/92/EC of the

European Parliament and of the Council of 9 December 2002 on insurance mediation[(28)], taking into account the consequences of this Directive for policy holders.

(140) Further wide-ranging reforms of the regulatory and supervisory model of the EU financial sector are greatly needed and should be put forward swiftly by the Commission with due consideration of the conclusions presented by the group of experts chaired by Jacques de Larosière of 25 February 2009. The Commission should propose legislation needed to tackle the shortcomings identified regarding the provisions related to supervisory coordination and cooperation arrangements.

(141) It is necessary to seek advice from CEIOPS on how best to address the issues of an enhanced group supervision and capital management within a group of insurance or reinsurance undertakings. CEIOPS should be invited to provide advice that will help the Commission to develop its proposals under conditions that are consistent with a high level of policy holder (and beneficiary) protection and the safeguarding of financial stability. In that regard CEIOPS should be invited to advise the Commission on the structure and principles which could guide potential future amendments to this Directive which may be needed to give effect to the changes that may be proposed. The Commission should submit a report followed by appropriate proposals to the European Parliament and the Council for alternative regimes for the prudential supervision of insurance and reinsurance undertakings within groups which enhance the efficient capital management within groups if it is satisfied that an adequate supportive regulatory framework for the introduction of such a regime is in place.
In particular, it is desirable that a group support regime operate on sound foundations based on the existence of harmonised and adequately funded insurance guarantee schemes; a harmonised and legally binding framework for competent authorities, central banks and ministries of finance concerning crisis management, resolution and fiscal burden-sharing which aligns supervisory powers and fiscal responsibilities; a legally binding framework for the mediation of supervisory disputes; a harmonised framework on early intervention; and a harmonised framework on asset transferability, insolvency and winding-up procedures which eliminates the relevant national company or corporate law barriers to asset transferability. In its report, the Commission should also take into account the behaviour of diversification effects over time and risk associated with being part of a group, practices in centralised group risk management, functioning of group internal models as well as supervision of intra-group transactions and risk concentrations.

(142) In accordance with point 34 of the Interinstitutional agreement on better law-making[(29)], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 224, 30.8.2008, p. 11.

(**2**) Opinion of the European Parliament of 22 April 2009 (not yet published in the Official Journal) and Council Decision of 10 November 2009.

(**3**) OJ L 228, 16.8.1973, p. 3.

(**4**) OJ L 151, 7.6.1978, p. 25.

(**5**) OJ L 185, 4.7.1987, p. 77.

(**6**) OJ L 172, 4.7.1988, p. 1.

(**7**) OJ L 228, 11.8.1992, p. 1.

(**8**) OJ L 330, 5.12.1998, p. 1.

(**9**) OJ L 110, 20.4.2001, p. 28.

(**10**) OJ L 345, 19.12.2002, p. 1.

(**11**) OJ L 323, 9.12.2005, p. 1.

(**12**) OJ L 103, 2.5.1972, p. 1.

(**13**) OJ L 193, 18.7.1983, p. 1.

(**14**) OJ L 8, 11.1.1984, p. 17.

(**15**) OJ L 145, 30.4.2004, p. 1.

(**16**) OJ L 177, 30.6.2006, p. 1.

(**17**) OJ L 181, 20.7.2000, p. 65.

(**18**) OJ L 35, 11.2.2003, p. 1.

(**19**) OJ L 25, 29.1.2009, p. 28.

(**20**) OJ L 157, 9.6.2006, p. 87.

(**21**) OJ L 177, 4.7.2008, p. 6.

(**22**) OJ L 184, 17.7.1999, p. 23.

(**23**) OJ 56, 4.4.1964, p. 878.

(**24**) OJ L 228, 16.8.1973, p. 20.

(**25**) OJ L 189, 13.7.1976, p. 13.

(**26**) OJ L 339, 27.12.1984, p. 21.

(**27**) OJ L 235, 23.9.2003, p. 10.

(**28**) OJ L 9, 15.1.2003, p. 3.

(**29**) OJ C 321, 31.12.2003, p. 1.