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COUNCIL

SECOND COUNCIL DIRECTIVE

of 22 June 1988

on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC

(88/357/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is necessary to develop the internal insurance market and, to achieve this objective, it is desirable to make it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policy-holders to have recourse not only to insurers established in their own country, but also to insurers which have their head office in the Community and are established in other Member States;

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

Whereas, for practical reasons, it is desirable to define the provision of services taking into account both the insurer's establishment and the place where the risk is situated; whereas therefore a definition of the situation of the risk should also be adopted; whereas, moreover, it is desirable to distinguish between the activity pursued by way of establishment and the activity pursued by way of freedom to provide services;

Whereas it is desirable to supplement the 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 (4), hereinafter referred to as the 'first Directive', as last amended by Directive 87/343/EEC (5), in order particularly to clarify the powers and means of supervision vested in the supervisory authorities; whereas it is also desirable to lay down specific provisions regarding the taking-up, pursuit and supervision of activity by way of freedom to provide services;

Whereas policy-holders who, by virtue of their status, their size or the nature of the risk to be insured, do not require special protection in the State in which the risk is situated should be granted complete freedom to avail themselves of the widest possible insurance market; whereas, moreover, it is desirable to guarantee other policy-holders adequate protection;

Whereas the concern to protect policy-holders and to avoid any disturbance of competition justifies coordinating the relaxation of the matching assets rules, provided for by the first Directive;

(1) OJ No C 32, 12. 2. 1976, p. 2.
(2) OJ No C 36, 13. 2. 1978, p. 14, OJ No C 167, 27. 6. 1988 and Decision of 15 June 1988 (not yet published in the Official Journal).
(3) OJ No C 204, 30. 8. 1976, p. 13.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 185, 4. 7. 1987, p. 72.

Whereas the provisions in force in the Member States regarding insurance contract law continue to differ; whereas the freedom to choose, as the law applicable to the contract, a law other than that of the State in which the risk is situated may be granted in certain cases, in accordance with rules taking into account specific circumstances;

Whereas the scope of this Directive should include compulsory insurance but should require the contract covering such insurance to be in conformity with the specific provisions relating to such insurance, as provided by the Member State imposing the insurance obligation;

Whereas the provisions of the first Directive on the transfer of portfolio should be reinforced and supplemented by provisions specifically covering the transfer of the portfolio of contracts concluded for the provision of services to another undertaking;

Whereas the scope of the provisions specifically concerning freedom to provide services should exclude certain risks, the application to which of the said provisions is rendered inappropriate at this stage by the specific rules adopted by the Member States' authorities, owing to the nature and social implications of such provisions; whereas, therefore, these exclusions should be re-examined after this Directive has been in force for a certain period;

Whereas, in the interests of protecting policy-holders, Member States should, at the present stage in coordination, be allowed the option of limiting the simultaneous pursuit of activity by way of freedom to provide services and activity by way of establishment; whereas no such limitation can be provided for where policy-holders do not require this protection;

Whereas the taking-up and pursuit of freedom to provide services should be subject to procedures guaranteeing the insurance undertaking's compliance with the provisions regarding both financial guarantees and conditions of insurance; whereas these procedures may be relaxed in cases where the activity by way of provision of services covers policy-holders who, by virtue of their status, their size or the nature of the risk to be insured, do not require special protection in the State in which the risk is situated;

Whereas it is necessary to initiate special cooperation with regard to freedom to provide services between the competent supervisory authorities of the Member States and between these authorities and the Commission; whereas provision should also be made for a system of penalties to apply where the undertaking providing the service fails to comply with the provisions of the Member State of provision of service;

Whereas, pending future coordination, the technical reserves should be subject to the rules and supervision of the Member State of provision of services where such provision of services involves risks in respect of which the State receiving the service wishes to provide special protection for policy-holders; whereas, however, if such concern to protect the policy-holders is unjustified, the technical reserves continue to be subject to the rules and supervision of the Member State in which the insurer is established;

Whereas some Member States do not subject insurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution, including surcharges intended for compensation bodies; whereas the structure and rate of these taxes and contributions vary considerably between the Member States in which they are applied; whereas it is desirable to avoid a situation where existing differences lead to disturbances of competition in insurance services between Member States; whereas, pending future harmonization, the application of the tax system and of other forms of contributions provided for by the Member State in which the risk is situated is likely to remedy such mischief and whereas it is for the Member States to establish a method of ensuring that such taxes and contributions are collected;

Whereas it is desirable to prevent the uncoordinated application of this Directive and of Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance [1] from leading to the existence of three different systems in every Member State; whereas, therefore, the criteria defining 'large risks' in this Directive should also define risks likely to be covered under Community co-insurance arrangements;

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

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

The object of this Directive is:

(a) to supplement the first Directive 73/239/EEC;

(b) to lay down special provisions relating to freedom to provide services for the undertakings and in respect of the classes of insurance covered by that first Directive.

[1] OJ No L 151, 7. 6. 1978, p. 25.

Article 2

For the purposes of this Directive:

(a) 'first Directive' means:

Directive 73/239/EEC;

(b) 'undertaking':

— for the purposes of applying Titles I and II, means:

any undertaking which has received official authorization under Article 6 or 23 of the first Directive,

— for the purposes of applying Title III and Title V, means:

any undertaking which has received official authorization under Article 6 of the first Directive;

(c) 'establishment':

means the head office, agency or branch of an undertaking, account being taken of Article 3;

(d) 'Member State where the risk is situated' means:

— the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy,

— the Member State of registration, where the insurance relates to vehicles of any type,

— the Member State where the policy-holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned,

— the Member State where the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State where the latter's establishment, to which the contract relates, is situated, in all cases not explicitly covered by the foregoing indents;

(e) 'Member State of establishment' means:

the Member State in which the establishment covering the risk is situated;

(f) 'Member State of provision of services' means:

the Member State in which the risk is situated when it is covered by an establishment situated in another Member State.

Article 3

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

Article 4

For the purposes of this Directive and the first Directive, general and special policy conditions shall not include specific conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

TITLE II

Provisions supplementary to the first Directive

Article 5

The following is added to Article 5 of the first Directive:

'(d) "large risks" means:

(i) risks classified under classes 4, 5, 6, 7, 11 and 12 of point A of the Annex;

(ii) risks classified under classes 14 and 15 of point A of the Annex, where the policy-holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;

(iii) risks classified under classes 8, 9, 13 and 16 of point A of the Annex in so far as the policy-holder exceeds the limits of at least two of the following three criteria:

first stage: until 31 December 1992:

— balance-sheet total: 12,4 million ECU,

— net turnover: 24 million ECU,

— average number of employees during the financial year: 500.

second stage: from 1 January 1993:

— balance-sheet total: 6,2 million ECU,

— net turnover: 12,8 million ECU,

— average number of employees during the financial year: 250.

If the policy-holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC [1] are drawn up, the criteria mentioned above shall be applied on the basis of the consolidated accounts.

Each Member State may add to the category mentioned under (iii) risks insured by professional associations, joint ventures or temporary groupings.'

[1] OJ No L 193, 18. 7. 1983, p. 1.

Article 6

For the purposes of applying the first subparagraph of Article 15 (2) and Article 24 of the first Directive, the Member States shall comply with Annex 1 to this Directive as regards the matching rules.

Article 7

1. The law applicable to contracts of insurance referred to by this Directive and covering risks situated within the Member States is determined in accordance with the following provisions:

(a) Where a policy-holder has his habitual residence or central administration within the territory of the Member State in which the risk is situated, the law applicable to the insurance contract shall be the law of that Member State. However, where the law of that Member State so allows, the parties may choose the law of another country.

(b) Where a policy-holder does not have his habitual residence or central administration in the Member State in which the risk is situated, the parties to the contract of insurance may choose to apply either the law of the Member State in which the risk is situated or the law of the country in which the policy-holder has his habitual residence or central administration.

(c) Where a policy-holder pursues a commercial or industrial activity or a liberal profession and where the contract covers two or more risks relating to these activities and situated in different Member States, the freedom of choice of the law applicable to the contract shall extend to the laws of those Member States and of the country in which the policy-holder has his habitual residence or central administration.

(d) Notwithstanding subparagraphs (b) and (c), where the Member States referred to in those subparagraphs grant greater freedom of choice of the law applicable to the contract, the parties may take advantage of this freedom.

(e) Notwithstanding subparagraphs (a), (b) and (c), when the risks covered by the contract are limited to events occurring in one Member State other than the Member State where the risk is situated, as defined in Article 2 (d), the parties may always choose the law of the former State.

(f) For the risks referred to in Article 5 (d) (i) of the first Directive, the parties to the contract may choose any law.

(g) The fact that, in the cases referred to in subparagraph (a) or (f), the parties have chosen a law shall not, where all the other elements relevant to the situation at the time of the choice are connected with one Member State only, prejudice the application of the mandatory rules of the law of that Member State, which means the rules from which the law of that Member State allows no derogation by means of a contract.

(h) The choice referred to in the preceding subparagraphs must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. If this is not so, or if no choice has been made, the contract shall be governed by the law of the country, from amongst those considered in the relevant subparagraphs above, with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country, from amongst those considered in the relevant subparagraphs, may by way of exception be governed by the law of that other country. The contract shall be rebuttably presumed to be most closely connected with the Member State in which the risk is situated.

(i) Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as 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.

2. 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 in which the risk is situated or of the Member State imposing the obligation to take out insurance may be applied if and in so far as, under the law of those States, those rules must be applied whatever the law applicable to the contract.

Where the contract covers risks situated in more than one Member State, the contract is considered for the purposes of applying this paragraph as constituting several contracts each relating to only one Member State.

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

Article 8

1. Under the conditions set out in this Article, insurance undertakings may offer and conclude compulsory insurance contracts in accordance with the rules of this Directive and of the first Directive.

2. When a Member State imposes an obligation to take out insurance, the contract shall not satisfy that obligation unless it is in accordance with the specific provisions relating to that insurance laid down by that Member State.

3. When, in the case of compulsory insurance, the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail.

4. (a) Subject to subparagraphs (b) and (c) of this paragraph, the third subparagraph of Article 7 (2) shall apply where the insurance contract provides cover in several Member States of which at least one imposes an obligation to take out insurance.

(b) A Member State which, on the date of notification of this Directive, requires that any undertaking established within its territory must obtain approval for the general and special conditions of its compulsory insurance, may also, by way of derogation from Articles 9 and 18, require such conditions to be approved in the case of any insurance undertaking offering such cover, within its territory, under the conditions provided for in Article 12 (1).

(c) A Member State may, by way of derogation from Article 7, lay down that the law applicable to a compulsory insurance contract is the law of the State which imposes the obligation to take out insurance.

(d) Where a Member State imposes compulsory insurance and the insurer must notify the competent authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down in the legislation of that State.

5. (a) Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating:

— the specific legal provisions relating to that insurance,

— the particulars which must be given in the certificate which an insurer must issue to an insured person where that State requires proof that the obligation to take out insurance has been complied with. A Member State may require that those particulars include a declaration by the insurer to the effect that the contract complies with the specific provisions relating to that insurance.

(b) The Commission shall publish the particulars referred to in subparagraph (a) in the *Official Journal of the European Communities*.

(c) A Member State shall accept, as proof that the insurance obligation has been fulfilled, a certificate, the content of which is in conformity with the second indent of subparagraph (a).

Article 9

1. The last subparagraph of Article 9 and the last subparagraph of Article 11 (1) of the first Directive are replaced by the following:

'However, the information referred to in (a) and (b) concerning the general and special conditions and the scales of premiums shall not be required in the case of risks referred to in Article 5 (d).'

2. Article 8 (3) and Article 10 (3) of the first Directive are replaced by the following:

'3. This coordination shall not prevent the Member States from maintaining or introducing laws, regulations or administrative provisions concerning, in particular, the necessity for managers and directors to be technically qualified and the approval of articles of association, the general and special conditions of insurance policies, the scales of premiums and any other document necessary for the normal exercise of supervision.

However, with regard to the risks referrred to in Article 5 (d), Member States shall not lay down provisions requiring the approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which the undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks, and this requirement may not constitute a prior condition for an undertaking to be able to carry on its activities.

With regard to the risks referred to in Article 5 (d), Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of a general price control system.

This coordination shall also not prevent Member States from subjecting undertakings requesting or having obtained authorization for class 18 in point A of the Annex to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.'

Article 10

The following paragraph is added to Article 19 of the first Directive:

'3. Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising

insurance undertakings have the powers and means necessary for supervision of the activities of insurance undertakings established within their territory, including activities engaged in outside that territory, in accordance with the Council Directives governing those activities and for the purpose of seeing that they are implemented.

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

— make detailed inquiries about the undertaking's situation and the whole of its business, *inter alia* by:

  — gathering information or requiring the submission of documents concerning insurance business,

  — carrying out on-the-spot investigations at the undertaking's premises,

— take any measures with regard to the undertaking which are appropriate and necessary to ensure that the activities of the undertaking remain in conformity with the laws, regulations and administrative provisions with which the undertaking has to comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent, or remove any irregularities prejudicial to the interests of policy-holders,

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

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

Article 11

1. Article 21 of the first Directive is hereby deleted.

2. Each Member State shall, on the conditions laid down by national law, authorize undertakings which are established within its territory to transfer all or part of their portfolios of contracts for which that State is the State where the risk is situated to an accepting office established in that same Member State, if the supervisory authorities of the Member State in which the head office of the accepting office is located certify that the latter possesses the necessary margin of solvency after taking the transfer into account.

3. Each Member State shall, on the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 12 (1) to an accepting office established in the Member State of provision of services if the supervisory authorities of the Member State in which the head office of the accepting office is located certify that the latter possesses the necessary margin of solvency after taking the transfer into account.

4. Each Member State shall, on the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 12 (1) to an accepting office established in the same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is located certify that the accepting office possesses the necessary margin of solvency after taking the transfer into account and if it fulfils the conditions in Articles 13 to 16 in the Member State of provision of services.

5. In the cases referred to in paragraphs 3 and 4, the supervisory authorities of the Member State in which the transferring undertaking is established shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member State of provision of services.

6. If a Member State, on the conditions laid down by national law, authorizes undertakings established within its territory to transfer all or part of their portfolios of contracts to an accepting office established in another Member State which is not the Member State of provision of services, it shall ensure that the following conditions are fulfilled:

— the supervisory authorities of the Member State in which the head office of the accepting office is located shall certify that the latter possesses the necessary margin of solvency after taking the transfer into account,

— the Member State in which the accepting office is established agrees,

— the accepting office fulfils the conditions in Articles 13 to 16 in the Member State of provision of services, the law of that Member State provides for the possibility of such a transfer and that Member State agrees to the transfer.

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

This provision shall not affect the right of Member States to provide policy-holders with the option of cancelling the contract within a given period after the transfer.

TITLE III

Provisions peculiar to the freedom to provide services

Article 12

1. This Title shall apply where an undertaking, through an establishment situated in a Member State, covers a risk situated, within the meaning of Article 2 (d), in another Member State; the latter shall be the Member State of provision of services for the purposes of this Title.

2. This Title shall not apply to the transactions, undertakings and institutions to which the first Directive does not apply, nor to the risks to be covered by the institutions under public law referred to in Article 4 of that Directive.

This Title shall not apply to insurance contracts covering risks classified under the following numbers of point A of the Annex to the first Directive:

— No 1:

as regards accidents at work,

— No 10:

not including carrier's liability,

— No 12:

as regards motorboats and boats which the Member State concerned makes subject to the same arrangements as land motor vehicles at the time of notification of this Directive,

— No 13:

as regards nuclear civil liability and pharmaceutical products liability,

— Nos 9 and 13:

as regards compulsory insurance of building works.

These exclusions will be examined by the Council not later than 1 July 1998.

3. Pending the coordination referred to in Article 7 (2) (c) of the first Directive, the Federal Republic of Germany may retain the prohibition on the simultaneous undertaking in its territory, under the arrangements for the provision of services, of health insurance with other classes.

Article 13

Member States' legislation shall provide that an undertaking established in a Member State may cover within that State, by way of provision of services, at least:

— large risks as defined in Article 5 (d) of the first Directive,

— risks other than those defined in Article 5 (d) of the first Directive coming within classes for which its establishment there has no authorization.

Article 14

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

Those authorities may require provision of the information or proof referred to in Article 9 or 11 of the first Directive.

Article 15

1. Subject to the provisions of Article 16, each Member State within the territory of which an undertaking intends to provide services may make access to such activity subject to administrative authorization; to that end, it may require that the undertaking:

(a) produce a certificate issued by the competent authorities of the head office Member State attesting that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Articles 16 and 17 of the first Directive and that the authorization, in accordance with Article 7 (1) of the said Directive, enables the undertaking to operate outside the Member State of establishment;

(b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes which the undertaking has been authorized to practise and attesting that those authorities do not object to the undertaking providing services;

(c) submit a scheme of operations containing the following particulars

— the nature of the risks which the undertaking proposes to cover in the Member States of provision of services,

— the general and special conditions of the insurance policies which it proposes to use there,

— the premium rates which the undertaking envisages applying for each class of business,

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

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

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

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

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

6. Each Member State shall institute the right to take legal action in the courts against a refusal of authorization or refusal to issue the certificate referred to in paragraph 1 (a) or (b).

Article 16

1. Each Member State within the territory of which an undertaking intends to provide services covering the risks referred to in Article 5 (d) of the first Directive shall require that the undertaking:

(a) produce a certificate issued by the competent authorities of the head office Member State attesting that it possesses for its activites as a whole the minimum solvency margin calculated in accordance with Articles 16 and 17 of the first Directive and that the authorization, in accordance with Article 7 (1) of the said Directive, enables the undertaking to operate outside the Member State of establishment;

(b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes which the undertaking has been authorized to practice and attesting that those authorities do not object to the undertaking providing services;

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

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

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

4. This Article shall also apply where the Member State, in the territory of which an undertaking intends to provide services covering risks other than those referred to in Article 5 (d) of the first Directive, does not make access to such activity conditional on administrative authorization.

Article 17

1. Where an undertaking referred to in Article 14 intends to amend the information referred to in Article 15 (1) (c) or Article 16 (1) (c), it shall submit the amendments to the competent authorities of the Member State of provision of services. These amendments shall enter info force in accordance with the rules in Articles 15 (3) and 16 (3) respectively.

2. Where an undertaking referred to in Article 14 intends to extend its activities to risks other than those referred to in Article 5 (d) of the first Directive, it shall follow the procedure described in Articles 14 and 15.

3. Where an undertaking referred to in Article 14 intends to extend its activities to risks referred to in Article 5 (d) of the first Directive or Article 16 (4) of this Directive, it shall follow the procedure described in Articles 14 and 16.

Article 18

1. This coordination shall not prevent the Member States from maintaining or introducing laws, regulations or administrative provisions concerning, in particular, approval of general and special policy conditions, of forms and other printed documents for use in dealing with policy-holders, of scales of premiums and of any other document necessary for the normal exercise of supervision provided that the rules of the Member State of establishment are not sufficient to achieve the necessary level of protection and the requirements of the Member State of provision of services do not go beyond what is necessary in that respect.

2. However, with regard to the risks referred to in Article 5 (d) of the first Directive, Member States shall not lay down provisions requiring approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks, although this requirement may not constitute a prior condition in order for an undertaking to carry on its activities.

3. With regard to the risks referred to in Article 5 (d) of the first Directive, Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of a general price control system.

Article 19

1. Any undertaking providing services shall submit to the competent authorities of the Member State of provision of

services all documents requested of it for the purposes of implementing this Article, in so far as undertakings established there are also obliged to do so.

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

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

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

4. If, despite the measures thus taken by the Member State of establishment, or because such measures prove inadequate or are lacking in the Member State in question, the undertaking persists in violating the legal rules in force in the Member State of provision of services, the latter Member State may, after informing the supervisory authorities of the Member State of establishment, take appropriate measures to prevent further irregularities, including, in so far as it is strictly necessary, the prevention of the further conclusion of insurance contracts by that undertaking by way of provision of services within its territory. In the case of risks other than those referred to in Article 5 (d) of the first Directive, such measures shall include withdrawal of the authorization referred to in Article 15. The Member States shall ensure that within their territory it is possible to make the notifications necessary for these measures.

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

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

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

8. Where measures have been taken pursuant to Article 20 of the first Directive, the competent authorities of the Member State of provision of services shall be informed of them by the authority which has taken them and shall, where the measures have been taken under the terms of paragraphs 1 and 3 of the said Article, take any steps necessary to safeguard the interests of insured persons.

In the event of withdrawal of authorization on the basis of Article 22 of the first Directive, the competent authorities of the Member State of provision of services shall be informed of such action and shall take appropriate measures to prevent the establishment concerned from continuing to conclude insurance contracts by way of provision of services within the territory of that State.

9. Every two years the Commission shall submit to the Council a report summarizing the number and type of cases in which, in each Member State, decisions refusing authorizations have been communicated under Article 15 or measures have been taken in accordance with paragraph 4. Member States shall cooperate with the Commission by providing it with the information required for this report.

Article 20

In the event of an insurance undertaking being wound up, commitments arising from contracts underwritten in the course of the provision of services shall be met in the same way as those arising under that undertaking's other insurance contracts, without distinction of nationality as far as the insured and the beneficiaries are concerned.

Article 21

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

Any document issued to the policy-holder must contain the information referred to in the preceding subparagraph.

The requirements in the first two subparagraphs shall not apply to the risks referred to in Article 5 (d) of the first Directive.

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

Article 22

1. Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without

deduction of reinsurance, receivable by Member State and by group of classes. The groups of classes shall be defined as follows:

— accident and sickness (1 and 2),

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

— aviation, marine and transport (3, 4, 5, 6, 7, 11 and 12),

— general liability (13),

— credit and suretyship (14 and 15),

— other classes (16, 17 and 18).

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

2. Where an establishment earns in a Member State, in respect of the operations referred to in the first subparagraph of paragraph 1, a volume of premiums, without deduction of reinsurance, higher than 2 500 000 ECU, it must keep an underwriting account, comprising the items listed in Annex 2A or 2B, broken down by group of classes for that Member State.

However, where an undertaking, with all its establishments taken together, earns in a Member State, in respect of the operations referred to in the first subparagraph of paragraph 1, a volume of premiums, without deduction of reinsurance, higher than 2 500 000 ECU, the supervisory authority of the Member State of provision of services may ask the supervisory authority of the Member State of the head office that an underwriting account be kept, in future, for the operations effected in its country by each of the establishments of that undertaking.

The underwriting account referred to in the first or second subparagraph of this paragraph shall be forwarded by the supervisory authority of the Member State of establishment to the supervisory authority of the Member State of provision of services on the latter's request.

Article 23

1. Where the provision of services is subject to authorization by the Member State of provision of services, the amount of the technical reserves relating to the contracts concerned shall be determined, pending further harmonization, under the supervision of that Member State in accordance with the rules it has laid down or, failing such rules, in accordance with established practice in that Member State. The covering of these reserves by equivalent and matching assets and the localization of those assets shall be under the supervision of that Member State in accordance with its rules or practice.

2. In all other cases, determination of the amount of the technical reserves, and their covering by equivalent and matching assets and the localization of those assets shall be under the supervision of the Member State of establishment, in accordance with its rules or practice.

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

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

Article 24

Notwithstanding this Directive, the Member States shall be entitled to require undertakings operating by way of provision of services in their territories to join and participate in any scheme designed to guarantee the payment of insurance claims to policy-holders and injured third parties, on the same terms as established undertakings.

Article 25

Without prejudice to any subsequent harmonization, every insurance contract concluded by way of provision of services shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated within the meaning of Article 2 (d), and also, with regard to Spain, to the surcharges legally established in favour of the Spanish 'Consorcio de compensación de Seguros' for the fulfilment of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

By way of derogation from the first indent of Article 2 (d), and for application of this Article, the moveable property contained in a building situated in the territory of a Member State, except for goods in commercial transit, shall be a risk situated in that Member State, even though the building and its contents are not covered by the same insurance policy.

The law applicable to the contract pursuant to Article 7 shall not affect the fiscal arrangements applicable.

Each Member State shall, subject to future harmonization, apply to those undertakings which provide services in its territory, its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under the first subparagraph.

Article 26

1. The risks which may be covered by way of Community co-insurance within the meaning of Directive 78/473/EEC

shall be those defined in Article 5 (d) of the first Directive.

2. The provisions of this Directive regarding the risks defined in Article 5 (d) of the first Directive shall apply to the leading insurer.

TITLE IV

Transitional arrangements

Article 27

1. Greece, Ireland, Spain and Portugal may apply the following transitional arrangements:

(i) until 31 December 1992, they may apply, to all risks, the regime other than that for risks referred to in Article 5 (d) of the first Directive,

(ii) from 1 January 1993 to 31 December 1994, the regime for large risks shall apply to risks referred to under (i) and (ii) of Article 5 (d) of the first Directive; for risks referred to under (iii) of the abovementioned Article 5 (d), these Member States shall fix the thresholds to apply therefor;

(iii) *Spain*

— from 1 January 1995 to 31 December 1996, the thresholds of the first stage described in Article 5 (d) (iii) of the first Directive shall apply,

— from 1 January 1997, the thresholds of the second stage shall apply.

Portugal, Ireland and Greece

— from 1 January 1995 to 31 December 1998 the thresholds of the first stage described in Article 5 (d) (iii) of the first Directive shall apply,

— from 1 January 1999 the thresholds of the second stage shall apply.

The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 8, 9, 13 and 16 situated exclusively in one of the four Member States benefiting from the transitional arrangements.

2. Until 31 December 1994, Article 26 (1) of this Directive shall not apply to risks situated in the four Member States listed in this Article. For the transitional period from 1 January 1995, the risks defined under Article 5 (d) (iii) of the first Directive situated in these Member States and capable of being covered by Community co-insurance within the meaning of Directive 78/473/EEC shall be those which exceed the thresholds referred to in paragraph 1 (iii) of this Article.

TITLE V

Final provisions

Article 28

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community.

Every 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 insurance business to the detriment of undertakings established in its territory and to the advantage of branches and agencies located just beyond its borders.

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

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

Article 29

The Commission shall forward to the Council regular reports, the first on 1 July 1993, on the development of the market in insurance transacted under conditions of freedom to provide services.

Article 30

Where this Directive makes reference to the ECU, the exchange value in national currencies to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October for which exchange values for the ECU are available in all Community currencies.

Article 2 of Directive 76/580/EEC [1] shall apply only to Articles 3, 16 and 17 of the first Directive.

Article 31

Every five years, the Council, acting on a proposal from the Commission, shall review and if necessary amend any

[1] OJ No L 189, 13. 9. 1976, p. 13.

amounts expressed in ECU in this Directive, taking into account changes in the economic and monetary situation of the Community.

Article 32

Member States shall amend their national provisions to comply with this Directive within 18 months of the date of its notification [1] and shall forthwith inform the Commission thereof.

The provisions amended in accordance with this Article shall be applied within 24 months of the date of the notification of the Directive.

Article 33

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

Article 34

The Annexes shall form an integral part of this Directive.

Article 35

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1988.

For the Council

The President

M. BANGEMANN

[1] This Directive was notified to Member States on 30 June 1988.

ANNEX 1

MATCHING RULES

The currency in which the insurer's commitments are payable shall be determined in accordance with the following rules:

1. Where the cover provided by a contract is expressed in terms of a particular currency, the insurer's commitments are considered to be payable in that currency.

2. Where the cover provided by a contract is not expressed in terms of any currency, the insurer's commitments are considered to be payable in the currency of the country in which the risk is situated. However, the insurer may choose the currency in which the premium is expressed if there are justifiable grounds for exercising such a choice.

   This could be the case if, from the time the contract is entered into, it appears likely that a claim will be paid in the currency of the premium and not in the currency of the country in which the risk is situated.

3. The Member States may authorize the insurer to consider that the currency in which he must provide cover will be either that which he will use in accordance with experience acquired or, in the absence of such experience, the currency of the country in which he is established:

   — for contracts covering risks classified under classes 4, 5, 6, 7, 11, 12 and 13 (producers' liability only), and

   — for contracts covering the risks classified under other classes where, in accordance with the nature of the risks, the cover is to be provided in a currency other than that which would result from the application of the above procedures.

4. Where a claim has been reported to an insurer and is payable in a specified currency other than the currency resulting from application of the above procedures, the insurer's commitments shall be considered to be payable in that currency, and in particular the currency in which the compensation to be paid by the insurer has been determined by a court judgment or by agreement between the insurer and the insured.

5. Where a claim is assessed in a currency which is known to the insurer in advance but which is different from the currency resulting from application of the above procedures, the insurers may consider their commitments to be payable in that currency.

6. The Member States may authorize undertakings not to cover their technical reserves by matching assets if application of the above procedures would result in the undertaking — whether head office or branch — being obliged, in order to comply with the matching principle, to hold assets in a currency amounting to not more than 7 % of the assets existing in other currencies.

   However:

   (a) in the case of technical reserve assets to be matched in Greek drachmas, Irish pounds and Portuguese escudos, this amount shall not exceed:

      — 1 million ECU during a transitional period ending 31 December 1992,

      — 2 million ECU from 1 January 1993 to 31 December 1998;

   (b) in the case of technical reserve assets to be matched in Belgian francs, Luxembourg francs and Spanish pesetas, this amount shall not exceed 2 million ECU during a transitional period ending 31 December 1996.

   From the end of the transitional periods defined under (a) and (b), the general regime shall apply for these currencies, unless the Council decides otherwise.

7. The Member States may choose not to require undertakings — whether head offices or branches — to apply the matching principle where commitments are payable in a currency other than the currency of one of the Community Member States, if investments in that currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, it is not suitable for covering technical reserves.

8. The Member States may authorize undertakings — whether head offices or branches — not to hold matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.

   However, total assets in all currencies combined must be at least equal to total commitments in all currencies combined.

9. Each Member State may provide that, whenever under the preceding procedures a commitment has to be covered by assets expressed in the currency of a Member State, this requirement shall also be considered to be satisfied when up to 50 % of the assets in expressed in ECU.

ANNEX 2A

Underwriting account

1. Total gross premiums earned
2. Total cost of claims
3. Commission costs
4. Gross underwriting result

ANNEX 2B

Underwriting account

1. Gross premiums for the last underwriting year
2. Gross claims in the last underwriting year (including reserve at the end of underwriting year)
3. Commission costs
4. Gross underwriting result