AGREEMENT

between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

CONTENTS

of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

PREAMBLE

THE EUROPEAN ECONOMIC COMMUNITY

of the one part

THE SWISS CONFEDERATION

of the other part

CONSIDERING the close relations which exist between Switzerland and the Community;

DESIRING to avail themselves of the occasion offered by the establishment of a unified Community insurance market to consolidate existing economic relations between the two Parties in this field, and to promote, under fair conditions of competition, the harmonious development of these relations by ensuring protection for insured persons;

RESOLVED to that end to remove obstacles to the taking-up and pursuit of the business of direct insurance, other than life assurance, on a reciprocal and non-discriminatory basis safeguarded by the necessary legal conditions in respect of supervision, and thus to introduce between themselves freedom of establishment in this field;

EMPHASIZING that this in no way affects their power to legislate subject to limits set by public international law;

ENDEAVOURING to do everything in their power to see that their domestic legal orders in this field evolve in a mutually compatible manner;

OBSERVING that it is in the interest of their economies to develop and strengthen their relations in this way in a field which up to now has not been governed by contractual rules, and to contribute thus to the coordination of economic law between the two Parties;

DECLARE themselves ready to consider in the light of any relevant factor, and particularly of the evolution of Community insurance law, the possibility of concluding other agreements in respect of private insurance;

HAVE AGREED in pursuit of these aims to conclude the present Agreement and to this end have designated as their Plenipotentiaries:

THE EUROPEAN ECONOMIC COMMUNITY:

Mrs Edith CRESSON,

Minister for European Affairs,
President-in-Office of the Council of the European Communities;

Sir Leon BRITTAN,

Vice-President of the Commission of the European Communities;

THE SWISS CONFEDERATION:

Mr Jean Pascal DELAMURAZ,

President of the Swiss Confederation,
Head of the Federal Department of Public Economy;

Mr Franz BLANKART,

State Secretary,
Director of the Federal Office for Foreign Economic Affairs;

WHO, having exchanged their Full Powers, found in good and due form, have agreed as follows:

SECTION I

BASIC PROVISIONS

Article 1

Object of the Agreement

The object of the Agreement is to lay down, on a reciprocal basis, the conditions which are necessary and sufficient to enable agencies and branches of undertakings whose head office is situated in the territory of one of the Contracting Parties and which wish to become established in the territory of the other Contracting Party, or are established there, to take up or pursue the self-employed activity of direct insurance other than life assurance.

Article 2

Scope

The classes of insurance which are subject to this Agreement are set out in Annex 1.

Article 3

Exceptions to the scope

The kinds of insurance, operations and undertakings which are not subject to this Agreement are listed in Annex 2.

Article 4

Application of domestic law

The law in force in each Contracting Party shall apply:

— to points which are not governed by this Agreement, and

— to questions relating to points governed by this Agreement, in so far as such questions are not regulated by the Agreement.

Article 5

Principle of non-discrimination

The Contracting Parties undertake to apply the principle of non-discrimination when introducing and applying the provisions of this Agreement.

Article 6

Supervisory authority

For the purposes of this Agreement, the supervisory authority shall, in the case of the Community, be the competent authority of the Member State in whose territory the head office of the undertaking is situated or in whose territory an agency or branch takes up or pursues the business of direct insurance.

SECTION II

CONDITIONS GOVERNING ADMISSION

Article 7

Compulsory authorization

7.1. Each Contracting Party shall make the taking-up of the business of direct insurance in its territory by an undertaking which establishes its head office there subject to authorization by the supervisory authority.

7.2. Each Contracting Party shall, furthermore, make the opening in its territory of an agency or branch of an undertaking whose head office is situated in the territory of the other Contracting Party subject to authorization by the supervisory authority.

7.3. In addition, it shall make the opening in its territory of an agency or branch of an undertaking whose head office is situated outside the territories to which this Agreement applies, as laid down in Article 43, subject to authorization by the supervisory authority.

Article 8

Scope of authorization

8.1. An authorization shall be valid for the covering of risks situated in the entire territory in which the supervisory authority granting the authorization is competent unless, and in so far as the legislation applicable permits, the applicant seeks permission to carry on his business only in a part of that territory.

8.2. A risk is situated in the territory in which a supervisory authority is competent:

— in the case of insurance relating either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy, where the property is situated in that territory;

— in the case of insurance relating to vehicles of any type, where the vehicle is registered in that territory;

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

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

8.3. Authorization shall be granted in respect of a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only part of the risks pertaining to such class, as classified under Part A of Annex 1.

However:

— it shall be open to the supervisory authority to grant authorization for any group of classes classified under Part B of Annex 1, provided that it attaches to such authorization the appropriate denomination specified therein;

— authorization granted for one class or group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified under Part C of Annex 1 are fulfilled.

Article 9

Legal form

The legal forms which may be assumed by an undertaking whose head office is situated in the territory of a Contracting Party are listed in Annex 3.

Article 10

Conditions of authorization

10.1. Each Contracting Party shall require that an undertaking whose head office is situated in the territory of the other Contracting Party and which seeks an authorization to open in its territory an agency or branch shall satisfy the following conditions:

(a) it shall submit its statutes and a list of its directors and managers;

(b) it shall produce a certificate issued by the supervisory authority of the Contracting Party in whose territory its head office is situated, attesting:

— that the applicant undertaking is constituted in one of the legal forms listed in Annex 3,

— that the applicant undertaking limits its business activities to the business of insurance and to operations directly arising therefrom to the exclusion of all other commercial business,

— the classes of insurance which the undertaking is entitled to transact,

— that it possesses the minimum guarantee fund referred to in paragraph 3.2 of Protocol No 1 or, where appropriate, the minimum solvency margin calculated in accordance with paragraph 2.2 of that Protocol if the minimum solvency margin is higher than the minimum guarantee fund,

— the risks which it actually covers,

— the existence of the financial resources referred to in paragraph 1 (f) of Protocol No 2;

(c) it shall submit a scheme of operations drawn up in accordance with Protocol No 2, accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years.

However, where an undertaking has existed for fewer than three financial years, it shall submit such documents only for the financial years that have closed, if:

— it is a new undertaking created as a result of a merger between existing undertakings, or

— it is a new undertaking created by one or more existing undertakings for the purpose of transacting a specific class of insurance, previously pursued by one of the undertakings in question;

(d) it shall designate an authorized agent having his permanent residence and abode in the territory in which the supervisory authority of the Contracting Party in question is competent and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of that Contracting Party.

Where the legal provisions of a Contracting Party permit the authorized agent to have legal personality, it shall have its head office in the territory of that Contracting Party and in turn designate a natural person to represent it who satisfies the above conditions.

10.2. This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring for all insurance undertakings, at the time of granting of the authorization, approval of the general and special policy conditions, scales of premiums and any other documents necessary for the normal exercise of supervision.

However, with regard to the risks referred to in paragraph 2.1 of Protocol No 2, the Contracting Parties 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.

For the purposes of this Agreement, 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.

This Agreement shall likewise not prevent the Contracting Parties from subjecting undertakings requesting authorization for class 18 in Part A of Annex 1 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 11

Granting of authorization

11.1. Each Contracting Party undertakes to grant authorization provided the conditions laid down in Article 10 are met and further provided that the other provisions governing undertakings with their head offices in its territory are observed.

11.2. The Contracting Parties shall not make authorization subject to the lodging of a deposit or the provision of security.

11.3. The Contracting Parties undertake furthermore that no application for an authorization shall be examined in the light of the economic requirements of the market.

11.4. The designated authorized agent may be challenged by the supervisory authority only on grounds relating to his good repute or technical qualifications.

Article 12

Extension of the scope of an authorization

12.1. Each Contracting Party shall make any extension of the business for which an initial authorization was granted pursuant to Articles 7 and 8 subject to a new authorization.

12.2. Each Contracting Party shall require that, for the purpose of extending the business of an agency or branch either to other classes or in the circumstances referred to in paragraph 8.1, the applicant for the authorization shall submit a scheme of operations in accordance with Protocol No 2 and produce the certificate referred to in paragraph 10.1 (b).

Article 13

Authorization procedure

13.1. Authorization shall be sought from the supervisory authority by the undertaking whose head office is situated in the territory of the other Contracting Party.

13.2. The scheme of operations drawn up in accordance with Protocol No 2, together with the observations of the supervisory authority responsible for granting authorization, shall be forwarded by the latter to the supervisory authority of the Contracting Party in whose territory the head office is situated.

The latter shall make known its opinion to the former within three months following receipt of the documents. If no opinion has been received upon the expiry of that period, it shall be deemed to be favourable.

13.3. The supervisory authority from whom authorization has been sought shall forward to the applicant undertaking its decision on the application not later than six months following receipt of the application for authorization.

Article 14

Refusal of authorization

14.1. Any decision to refuse an authorization shall be accompanied by the grounds on which it is based and shall be notified to the undertaking in question.

14.2. Each Contracting Party shall make provision for a right of recourse to the courts in the event of any refusal of authorization. Provision shall also be made for such right in regard to cases where the supervisory authority has not given a decision on an application for authorization upon the expiry of a period of six months from the date of its receipt.

SECTION III

CONDITIONS GOVERNING THE PURSUIT OF BUSINESS

Article 15

Choice of assets

The Contracting Parties shall not prescribe any rules as to the choice of assets in excess of those representing the technical reserves referred to in Articles 19 to 23. Subject to the provisions of paragraph 18.2, Articles 20, 21 and 23 and paragraphs 29.2 and 29.3, the Contracting Parties shall not restrict the free disposal of movable or immovable property forming part of the assets of undertakings.

Article 16

Establishment of solvency margin

16.1. Each Contracting Party shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.

16.2. The definition of the solvency margin and the manner in which it is to be calculated and represented, and the minimum guarantee fund fixed, are set out in Protocol No 1.

Article 17

Verification of the state of solvency

17.1. The supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated shall verify the state of solvency of the undertaking with respect to its entire business.

17.2. The supervisory authority of the other Contracting Party shall, where it has granted the said undertaking authorization to open an agency or branch, provide the abovementioned authority with all the information necessary to enable such verification to be carried out.

17.3. Each Contracting Party shall require undertakings whose head office is situated in its territory to produce an annual account, covering all their transactions, of their situation and solvency, and, as regards cover for risks listed under class 18 in Part A of Annex No 1, of the other resources available to them for meeting their liabilities, where its laws provide for supervision of such resources.

Article 18

Restoration of financial situation

18.1. For the purpose of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under paragraph 2.2 of Protocol No 1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall require a plan for the restoration of a sound financial situation to be submitted for its approval.

18.2. If the solvency margin falls below the guarantee fund defined in Article 3 of Protocol No 1, the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated shall require the latter to submit a short-term financing plan for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the supervisory authority of the Contracting Party in whose territory authorized agencies or branches of the undertaking are situated of any such measures. If they are requested by the former authority, the latter authority shall take the same measures.

The supervisory authority may, furthermore, take all measures necessary to safeguard the interests of insured persons should the situation envisaged in this paragraph arise.

Article 19

Establishment of technical reserves

19.1. Each Contracting Party in whose territory an undertaking carries on business shall require that undertaking to establish sufficient technical reserves.

19.2. The amount of such reserves shall be determined in accordance with the rules laid down in each Contracting Party, or, in the absence of such rules, in accordance with the established practices in each Contracting Party.

19.3. Each Contracting Party shall furthermore require undertakings established in its territory and underwriting risks listed under class 14 in Part A of Annex 1 (credit insurance) to set up an equalization reserve for the purpose of offsetting any technical deficit or above average claims ratio arising in that class for a financial year.

The methods of calculating the equalization reserve and the conditions governing exemption from the obligation to make such a reserve are set out in Annex No 5.

The equalization reserve must be calculated, under the rules laid down by each Contracting Party, in accordance with one of the four methods set out in Annex 5, which shall be regarded as being equivalent. Up to the amount calculated in accordance with those methods, the equalization reserve shall be disregarded for purposes of calculating the solvency margin.

Undertakings shall make available to the supervisory authority accounts showing both the technical results and the technical reserves relating to this business.

Article 20

Matching assets and localization of assets constituting technical reserves

20.1. Technical reserves shall be represented by equivalent and matching assets localized in the territory in which the supervisory authority of each Contracting Party is respectively competent. Each Contracting Party may, however, permit relaxations of the rules on matching assets and the localization of assets.

20.2. 'Matching assets' means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency.

20.3. 'Localization of assets' means the existence of movable or immovable assets in the territory in which the supervisory authority of the Contracting Party concerned is competent, but shall not be construed as involving a requirement that movable property be deposited or that immovable property be made subject to restrictive measures such as the registration of a mortgage. Assets represented by claims against debtors shall be regarded as localized in the territory in which the supervisory authority of the Contracting Party where they are to be realized is competent.

Subject to the above, localization shall be governed by the respective rules in force in the Contracting Parties.

Article 21

Nature of technical reserves

21.1. The rules in force in each Contracting Party in whose territory an undertaking pursues its business shall determine the nature of the assets and, where appropriate,

the extent to which they may be used for the purpose of representing the technical reserves, and shall also determine the rules for valuing such assets.

21.2. The expression 'nature of the assets' refers to the various categories of movable and immovable assets and their specific characteristics, such as those relating to the debtor in the case of a claim forming part of the representation of the technical reserves.

21.3. If a Contracting Party allows any technical reserves to be represented by claims against re-insurers, it shall fix the percentage so allowed or shall make provision for it to be fixed. In such case, notwithstanding the provisions of paragraph 20.1, it may not require the assets representing such claims to be localized.

Article 22

Balance sheet

The supervisory authority of the Contracting Party in whose territory the head office of an undertaking is situated shall verify that the undertaking's balance sheet shows in respect of the technical reserves assets equivalent to the underwriting liabilities assumed in all the countries in which it carries on business.

Article 23

Non-compliance with the requirements relating to technical reserves

If an agency or branch does not comply with the provisions laid down in Articles 19 to 21, the supervisory authority of the Contracting Party in whose territory it carries on business may prohibit the free disposal of assets localized in its territory after having informed the supervisory authority of the Contracting Party in whose territory the head office is situated that it intends to take such action.

The supervisory authority of the Contracting Party in whose territory such agency or branch carries on business may, furthermore, take any measure necessary to safeguard the interests of insured persons.

Article 24

Transfer of portfolio

24.1. Under the conditions laid down by the legal provisions in force in the Contracting Party in question, the supervisory authority shall authorize undertakings which are established in the territory for which it is responsible to transfer all or part of their portfolios of contracts to an accepting office established in the same territory as the transferring undertaking, if the supervisory authority of the Contracting Party in whose territory the head office of the accepting office is situated certifies that the latter possesses the necessary margin of solvency after taking the transfer into account.

24.2. A transfer authorized in accordance with paragraph 24.1 shall be published in the territory in which the supervisory authority of the Contracting Party in which the transferring undertaking and the accepting office are established is competent, under the conditions laid down by the legal provisions in force in each Contracting Party in question. 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. However, this paragraph shall not preclude the existence in each of the Contracting Parties of provisions providing policy-holders with the option of cancelling the contract within a given period after the transfer.

Article 25

Approval of conditions and scales of premiums

25.1. This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring of all undertakings and in respect of all classes of insurance, during the pursuit of business, approval of the general and special policy conditions, scales of premiums and any other documents necessary for the normal exercise of supervision.

However, with regard to the risks referred to in paragraph 2.1 of Protocol No 2, the Contracting Parties shall not lay down provisions requiring the 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.

With regard to the same risks, the Contracting Parties may not retain or introduce prior notification or approval of proposed increases in scales of premiums except as part of a general price control system.

25.2. This Agreement shall likewise not prevent the Contracting Parties from subjecting undertakings which have obtained authorization for class 18 in Part A of Annex 1 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.

25.3. For the purposes of this Agreement, 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.

Article 26

Documentation

The Contracting Parties shall require undertakings carrying on business in their territory to produce the documents, including statistical documents, necessary for the exercise of supervision and, as regards cover for risks listed under class 18 in Part A of Annex 1, to indicate the resources available to them for meeting their liabilities, where their laws provide for supervision of such resources.

SECTION IV

WITHDRAWAL OF AUTHORIZATION

Article 27

Withdrawal conditions

The supervisory authority of a Contracting Party may withdraw from an undertaking whose head office is situated in the territory of the other Contracting Party the authorization which it granted to open an agency or branch, where such agency or branch:

(a) no longer fulfils the conditions for admission, or

(b) fails seriously to fulfil its obligations under the rules applicable to it, in particular with respect to the establishment of technical reserves.

Article 28

Withdrawal procedure

28.1. Before withdrawing authorization, the supervisory authority shall consult the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated.

If the former authority deems it necessary to suspend the business of the agency or branch referred to in Article 27 before consultation is concluded, it shall immediately advise the latter authority thereof.

28.2. Any decision to withdraw an authorization or to order the suspension of business shall state the reasons on which it is based and shall be notified to the undertaking in question.

28.3. Each Contracting Party shall make provision for a right of recourse to the courts against such a decision.

Article 29

Withdrawal of the authorization granted to the head office

29.1. Where the supervisory authority of a Contracting Party in whose territory the head office is situated withdraws the authorization which it has granted to the undertaking, it shall notify such action to the supervisory authority of the other Contracting Party if the latter has granted the undertaking authorization to open an agency or branch. The latter authority shall also withdraw its authorization.

29.2. In the case referred to in paragraph 1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall, in conjunction with the supervisory authority of the other Contracting Party, take all measures necessary to safeguard the interests of insured persons and shall, in particular, restrict the free disposal of the assets of the undertaking, if this measure has not already been taken, pursuant to paragraph 18.2 and Article 23.

29.3. Paragraph 29.1 and, where relevant, 29.2 shall likewise apply where the undertaking surrenders of its own accord the authorization granted to it.

SECTION V

COLLABORATION BETWEEN SUPERVISORY AUTHORITIES

Article 30

Conditions of collaboration

The Contracting Parties shall take all necessary measures to enable their supervisory authorities to collaborate closely in the implementation of this Agreement.

Article 31

Objectives of collaboration

31.1. The supervisory authorities shall collaborate in verifying the provisions by undertakings of financial guarantees as defined in Articles 16 and 19 to 21 and, in particular, in applying the measures provided for in Articles 18 and 23.

31.2. Where the undertakings in question are authorized to cover the risks listed under class 18 in Part A of Annex No 1, the supervisory authorities shall also collaborate in supervising the resources available to those undertakings for carrying out the assistance operations they have undertaken to perform, where their laws provide for supervision of such resources.

Article 32

Exchange of information

The supervisory authorities shall furnish each other with all documents and information necessary for exercising supervision.

Article 33

Requirements of secrecy

33.1. Articles 30 to 32 shall under no circumstances be interpreted as requiring any supervisory authority to furnish information which would disclose commercial secrets of an undertaking or information the communication of which would be contrary to public policy.

33.2. Nevertheless, the secrecy rules to which the supervisory authorities are subject shall not hinder collaboration between those authorities and the mutual assistance provided for by this Agreement.

33.3. The information exchanged shall be used by such authorities solely for the purpose of carrying out their supervisory duties.

SECTION VI

GENERAL AND FINAL PROVISIONS

Article 34

Particular provisions and undertakings of third countries

34.1. Particular provisions applicable to certain Member States of the Community are set out in Annex 4.

34.2. The provisions applicable to agencies and branches of undertakings whose head office is situated outside the territories to which this Agreement applies pursuant to Article 43 thereof are set out in Protocol No 4.

Article 35

Integral parts of the Agreement

The Annexes, Protocols and Exchanges of Letters annexed to this Agreement shall form an integral part thereof.

Article 36

Failure to fulfil obligations

36.1. The Contracting Parties shall refrain from taking any measures which might jeopardize the attainment of the objectives of the Agreement.

36.2. They shall take all general or special measures necessary to ensure fulfilment of the obligations arising from this Agreement.

If either Contracting Party considers that the other Contracting Party has failed to fulfil an obligation arising from this Agreement, the procedure referred to in paragraph 37.2 shall apply.

Article 37

Joint Committee

37.1. A Joint Committee, composed of representatives of Switzerland and representatives of the Community, is hereby established, which shall be responsible for the administration of the Agreement and its proper implementation and for taking decisions in the circumstances provided for therein. Its decisions shall be taken by mutual agreement.

37.2. For the purpose of the proper implementation of the Agreement, the contracting Parties shall exchange information and, at the request of either Party, shall hold consultations within the Joint Committee. The exercise of supervision, referred to in Section V, shall not come within its powers.

37.3. The Joint Committee shall adopt its own rules of procedure.

37.4. The Joint Committee shall be chaired in turn by each of the Contracting Parties in accordance with detailed arrangements to be laid down in its rules of procedure. At the request of either Contracting Party, in accordance with conditions to be laid down in its rules of procedure, it shall be convened by its Chairman whenever special circumstances so require.

The Joint Committee may decide to set up any working party needed to assist it in carrying out its tasks.

Article 38

Settlement of disputes

38.1. If a dispute arises between the Contracting Parties concerning the operation of this Agreement and in particular its interpretation or implementation and such dispute cannot be resolved either through collaboration between the supervisory authorities referred to in Section V or by the Joint Committee referred to in Article 37, the Contracting Parties shall consult each other through diplomatic channels.

38.2. If it has not been possible to resolve the dispute by means of the procedure provided for in paragraph 38.1, it shall be referred, at the request of either of the Parties, to an arbitration tribunal consisting of three members. Reference may be made to this tribunal at the earliest after a period of two years following the first reference to the Joint Committee referred to in Article 37, unless the Parties agree jointly to

refer their dispute to the said tribunal before the end of that period. Each Party shall appoint an arbitrator. The two arbitrators appointed shall appoint an umpire who shall be a national neither of Switzerland nor of a Member State of the Community.

38.3. Where one of the Contracting Parties does not appoint its arbitrator and has not complied with the request made by the other Party to make such appointment within two months, the arbitrator shall be appointed, at the request of that other Party, by the President of the International Court of Justice.

38.4. Where after a period of two months following their appointment the two arbitrators are unable to agree on the choice of an umpire, the latter shall be appointed at the request of one of the Parties by the President of the International Court of Justice.

38.5. Where, in the case provided for in paragraphs 38.3 and 38.4, the President of the International Court of Justice is unable to act, or is a national of Switzerland or of a Member State of the Community, the appointments shall be made by the Vice-President. If the latter is unable to act or is a national of Switzerland or of a Member State of the Community, the appointments shall be made by the oldest member of the Court who is not a national either of Switzerland or of a Member State of the Community.

38.6. Save as otherwise provided by the Contracting Parties, the tribunal shall lay down its own rules of procedure. It shall take its decision by majority vote.

38.7. The decisions of the tribunal shall be binding on the Contracting Parties.

Article 39

Evolution of the domestic legislation of the Contracting Parties

39.1. The Agreement shall be without prejudice to the right of each Contracting Party, subject to compliance with the principle of non-discrimination and the provisions of this Article, unilaterally to amend its domestic legislation on a point regulated by this Agreement.

39.2. As soon as a Contracting Party has initiated the process for adopting a draft amendment of its domestic legislation concerning the conditions for taking up and pursuing, by means of establishment, the activity of direct insurance other than life assurance, it shall inform the other Contracting Party via the Joint Committee referred to in Article 37. The Joint Committee shall hold an exchange of views on the implications of such an amendment for the proper functioning of the Agreement.

39.3. As soon as the amended legislation has been adopted, and eight days after adoption at the latest, the Contracting Party concerned shall notify the text of the new provisions to the other Contracting Party.

39.4. In order to guarantee legal certainty, a period of at least 12 months from the date of adoption of the amended legislation must be laid down by the Contracting Party concerned for the implementation of any amendment of legislation which deviates from the provisions of the Agreement.

39.5. Any amendment of legislation which has been the subject of the procedures referred to in paragraphs 39.2 and 39.3 and which, in the opinion of either Contracting Party, deviates from the provisions of the Agreement, shall be referred to the Joint Committee. The Joint Committee shall meet at the latest six weeks after the notification laid down in paragraph 39.3.

39.6. The Joint Committee shall:

— either adopt a decision revising the provisions of the Agreement so as to integrate therein, if necessary on a basis of reciprocity, the amendments made to the legislation in question,

— or, as long as the insured person is guaranteed equivalent protection to that provided for under the Agreement, adopt a decision to the effect that the amendments to the legislation in question shall be regarded as in accordance with the Agreement,

— or decide any other measure to safeguard the proper functioning of the Agreement.

39.7. The decisions of the Joint Committee shall be published in the Official Compendium of Federal Laws *(Recueil Officiel des lois fédérales)* and in the *Official Journal of the European Communities*. Each decision shall state the date of its implementation in the two Contracting Parties and any other information likely to concern economic operators. The decisions shall be submitted as necessary for ratification or approval by the Contracting Parties in accordance with their own procedures.

The Contracting Parties shall notify each other of the completion of this formality. If upon the expiry of the period provided for in paragraph 39.4 such notification has not taken place, the decisions of the Joint Committee shall be implemented provisionally pending their ratification or approval by the Contracting Parties. If either Contracting Party notifies the non-ratification or non-approval of a decision of the Joint Committee, paragraph 39.8 shall apply *mutatis mutandis* from the time of such notification.

39.8. If the Joint Committee does not reach agreement on the decisions to be taken within six months of the date of referral pursuant to paragraph 39.5, the Agreement shall be regarded as ended on the day the legislation in question is implemented, pursuant to paragraph 39.4; in that event the provisions of Article 38 are not applicable. The provisions of paragraph 42.2 shall apply *mutatis mutandis*.

Article 40

Revision of the Agreement

40.1. If a Contracting Party wishes that this Agreement be revised, it shall request the other Contracting Party to open negotiations to that end. Such request shall be made through diplomatic channels.

40.2. Amendments to this Agreement shall enter into force in accordance with the procedure set out in Article 44.

40.3. Nevertheless, amendments to the Annexes, Protocols and Exchanges of Letters annexed to this Agreement shall be adopted by the Joint Committee referred to in Article 37, which shall determine the date of their entry into force.

Article 41

Matters not covered by the Agreement

41.1. Where a Contracting Party considers that it would be useful in the interests of both Contracting Parties to develop the relations established by this Agreement by extending them to private insurance activities not covered thereby, it shall propose to the other Contracting Party that negotiations be opened to that end.

41.2. Agreements resulting from negotiations referred to in paragraph 41.1 shall be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 42

Denunciation

42.1. Either Contracting Party may denounce this Agreement at any time by notifying the other Contracting Party to that effect. The Agreement shall cease to be in force 12 months after the date of such notification.

42.2. In the event of denunciation, the Contracting Parties shall jointly agree on rules governing the situation of undertakings which have obtained authorization in accordance with paragraph 11.1. In the absence of agreement upon expiry of the period of 12 months referred to in paragraph 42.1, those undertakings shall be made subject to the rules applicable to those of third countries. Nevertheless, the Contracting Parties hereby undertake that the authorization obtained in accordance with paragraph 11.1 shall not be withdrawn in the light of the economic requirements of the market for a period of at least five years from the date on which this Agreement ceases to be in force.

Article 43

Territorial scope

This Agreement shall apply, on the one hand, to the territory of the Swiss Confederation and, on the other hand, to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty.

Article 44

Entry into force

44.1. This Agreement was negotiated in French and drawn up in duplicate in the Danish, Dutch, English, French, German, Italian, Portuguese and Spanish languages, each of these texts being equally authentic.

44.2. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures.

44.3. This Agreement shall enter into force on the first day of the calendar year following the exchange of instruments of ratification or approval on condition that such exchange takes place not later than one month before that date.

Nevertheless, the Contracting Parties may, on exchanging instruments of ratification or approval, jointly agree on another date for the entry into force of this Agreement; in that case, the date shall be published forthwith.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Acuerdo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne aftale.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Abkommen gesetzt.

Εις πίστωση των ανωτέρω, οι υπογεγραμμένοι πληρεξούσιοι έθεσαν τις υπογραφές τους στην παρούσα συμφωνία.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent accord.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente accordo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze Overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no final do presente acordo.

Hecho en Luxemburgo, el diez de octubre de mil novecientos ochenta y nueve.

Udfærdiget i Luxembourg, den tiende oktober nitten hundrede og niogfirs.

Geschehen zu Luxemburg am zehnten Oktober neunzehnhundertneunundachtzig.

Έγινε στο Λουξεμβούργο, στις δέκα Οκτωβρίου χίλια εννιακόσια ογδόντα εννέα.

Done at Luxembourg on the tenth day of October in the year one thousand nine hundred and eighty-nine.

Fait à Luxembourg, le dix octobre mil neuf cent quatre-vingt-neuf.

Fatto a Lussemburgo, addì dieci ottobre millenovecentottantanove.

Gedaan te Luxemburg, de tiende oktober negentienhonderd negenentachtig.

Feito no Luxemburgo, em dez de Outubro de mil novecentos e oitenta e nove.

En nombre del Consejo de las Comunidades Europeas

På vegne af Rådet for De Europæiske Fællesskaber

Im Namen des Rates der Europäischen Gemeinschaften

Εξ ονόματος του Συμβουλίου των Ευρωπαϊκών Κοινοτήτων

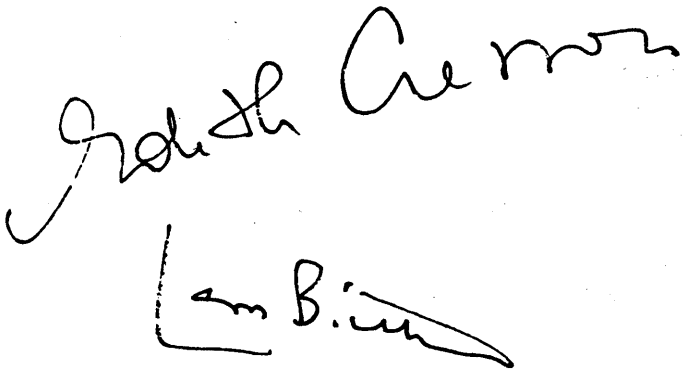
On behalf of the Council of the European Communities

Au nom du Conseil des Communautés européennes

A nome del Consiglio delle Comunità europee

Namens de Raad van de Europese Gemeenschappen

Em nome do Conselho das Comunidades Europeias



Por el Gobierno de la Confederación Suiza

For regeringen for Schweiz

Für die Regierung der Schweizerischen Eidgenossenschaft

Για την κυβέρνηση της Ελβετικής Συνομοσπονδίας

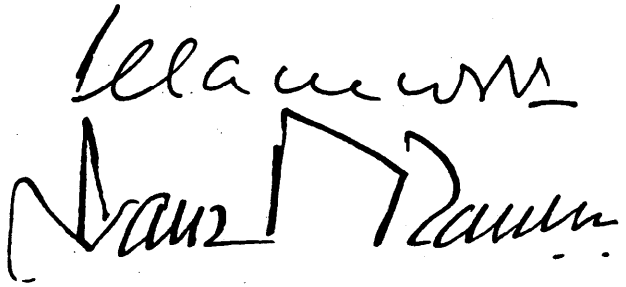
For the Government of the Swiss Confederation

Pour le gouvernement de la Confédération suisse

Per il governo della Confederazione svizzera

Voor de Regering van de Zwitserse Bondsstaat

Pelo Governo da Confederação Suíça



ANNEX 1

CLASSES OF INSURANCE SUBJECT TO THE AGREEMENT

A. Classification of risks according to classes of insurance

1. *Accident (including industrial injury and occupational diseases)*

   — fixed pecuniary benefits,
   — benefits in the nature of indemnity,
   — combinations of the two,
   — injury to passengers.

2. *Sickness*

   — fixed pecuniary benefits,
   — benefits in the nature of indemnity,
   — combinations of the two.

3. *Land vehicles (other than railway rolling stock)*

   All damage to or loss of:
   — land motor vehicles,
   — land vehicles other than motor vehicles.

4. *Railway rolling stock*

   All damage to or loss of railway rolling stock.

5. *Aircraft*

   All damage to or loss of aircraft.

6. *Ships (sea, lake and river and canal vessels)*

   All damage to or loss of:
   — river and canal vessels,
   — lake vessels,
   — sea vessels.

7. *Goods in transit (including merchandise, baggage and all other goods)*

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. *Fire and natural forces*

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:
   — fire,
   — explosion,
   — storm,
   — natural forces other than storm,
   — nuclear energy,
   — land subsidence.

9. *Other damage to property*

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8.

10. *Motor vehicle liability*

    All liability arising out of the use of motor vehicles operating on land (including carrier's liability).

11. *Aircraft liability*

All liability arising out of the use of aircraft (including carrier's liability).

12. *Liability for ships (sea, lake and river and canal vessels)*

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. *General liability*

All liability other than those forms mentioned under Nos 10, 11 and 12.

14. *Credit*

— insolvency (general),
— export credit,
— instalment credit,
— mortgages,
— agricultural credit.

15. *Suretyship*

— suretyship (direct),
— suretyship (indirect).

16. *Miscellaneous financial loss*

— employment risks,
— insufficiency of income (general),
— bad weather,
— loss of profits,
— continuing general expenses,
— unforeseen trading expenses,
— loss of market value,
— loss of rent or revenue,
— indirect trading losses other than those mentioned above,
— other financial loss (non-trading),
— other forms of financial loss.

17. *Legal expenses*

Legal expenses and costs of litigation.

18. *Tourist assistance*

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence.

The risks included in a class may not be included in any other class except in the cases referred to in Part C.

B. Description of authorizations granted simultaneously for more than one class of insurance

Where the authorization simultaneously covers:

(a) classes Nos 1 and 2, it shall be named 'Accident and Health Insurance';

(b) classes Nos 1 (fourth indent), 3, 7 and 10, it shall be named 'Motor Insurance';

(c) classes Nos 1 (fourth indent), 4, 6, 7 and 12, it shall be named 'Marine and Transport Insurance';

(d) classes Nos 1 (fourth indent), 5, 7 and 11, it shall be named 'Aviation Insurance';

(e) classes Nos 8 and 9, it shall be named 'Insurance against Fire and other Damage to Property';

(f) classes Nos 10, 11, 12 and 13, it shall be named 'Liability Insurance';

(g) classes Nos 14 and 15, it shall be named 'Credit and Suretyship Insurance';

(h) all classes, it shall have the name or names chosen by the Contracting Party in question, which shall notify the other Contracting Party of its choice(s).

C. **Ancillary risks**

An undertaking obtaining an authorization for a principal risk belonging to one class or a group of classes may also insure risks included in another class without an authorization being necessary for them if they:

— are connected with the principal risk,

— concern the object which is covered against the principal risk, and

— are covered by the contract insuring the principal risk.

However, the risks included in classes 14, 15 and 17 may not be regarded as risks ancillary to other classes.

Nonetheless, the risk included in class 17 (legal expenses insurance) may be regarded as an ancillary risk of class 18 where the conditions laid down in the first subparagraph of Part C of this Annex are fulfilled, and where the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence.

Legal expenses insurance may also be regarded as an ancillary risk under the conditions set out in the first subparagraph of Part C of this Annex where it concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

D. **Assistance**

1. The assistance activity shall be the assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence. It shall consist in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

   The aid may consist in the provision of benefits in cash or in kind. The provision of benefis in kind may also be effected by means of the staff and equipment of the person providing them.

   The assistance activity does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

2. Either Contracting Party may, in its territory, make the provision of assistance to persons who get into difficulties in circumstances other than those referred to in 1 subject to the arrangements introduced by this Agreement. If a Contracting Party makes use of this possibility it shall, for the purposes of applying these arrangements, treat such activity as if it were listed under class 18 in Part A of this Annex, without prejudice to Part C thereof.

This shall in no way affect the possibilities for classification laid down in this Annex for activities which clearly come under other classes.

It shall not be possible to refuse authorization sought for an agency or branch by an undertaking whose head office is situated in the territory of the other Contracting Party solely on the grounds that the activity covered by this point is classified differently in the Contracting Party, in the territory of which the head office of the undertaking is situated.

ANNEX 2

KINDS OF INSURANCE, OPERATIONS AND UNDERTAKINGS NOT SUBJECT TO THE AGREEMENT

A. Kinds of insurance excluded

This Agreement does not apply to:

1. life assurance, that is to say the class of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, tontines, marriage assurance and birth assurance;

2. annuities;

3. supplementary insurance carried on by life assurance undertakings, that is to say, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;

4. *in Switzerland:*

   insurance forming part of a statutory system of social security, except where such insurance is written by authorized undertakings;

   in the Community:

   insurance forming part of a statutory system of social security;

5. the type of insurance existing in Ireland and the United Kingdom known as 'permanent health insurance not subject to cancellation'.

B. Operations excluded

This Agreement does not apply to:

1. capital redemption operations, as defined by the law in each Contracting Party;

2. operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of members are determined on a flat rate basis;

3. operations carried out by organizations not having legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

4. export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer;

5. the assistance activity in which liability is limited to the following operations provided in the event of an accident or breakdown involving a road vehicle which normally occurs in the territory in which the supervisory authority of the Contracting Party in which the undertaking providing cover is established is competent:

   — an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment,

   — the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means,

   — if provided for by the provisions in force in the territory in which the supervisory authority of the Contracting Party in which the undertaking providing cover is established is competent, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same territory,

   unless such operations are carried out by an undertaking subject to the Agreement.

In the cases referred to in the first two indents, the condition that the accident or breakdown must have happened in the territory in which the supervisory authority of the Contracting Party, in which the undertaking providing cover is established, is competent:

(a) shall not apply where the latter is a body of which the beneficiary is a member and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the same or the other Contracting Party on the basis of a reciprocal agreement;

(b) shall not preclude the provision of such assistance in Ireland and the United Kingdom by a single body operating in both States.

In the circumstances referred to in the third indent, where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland, the vehicle, possibly accompanied by the driver and passengers, may be conveyed to their home, point of departure or original destination within either territory.

Moreover, the Agreement does not concern assistance operations carried out on the occasion of an accident to or the breakdown of a road vehicle and consisting in conveying the vehicle which has been involved in an accident or has broken down outside the territory of the Grand Duchy of Luxembourg, possibly accompanied by the driver and passengers, to their home, where such operations are carried out by the Automobile Club of the Grand Duchy of Luxembourg.

Undertakings subject to the Agreement may engage in the activity referred to under this point only if they have received authorization for class 18 in Part A of Annex 1 without prejudice to Part C of the said Annex. In that event the Agreement shall apply to the operations in question.

C. **Exclusion of undertakings occupying special positions**

This Agreement does not apply:

1. to undertakings which fulfil the following conditions:

   — the undertaking does not pursue any activity falling within the scope of the Agreement other than the one described in class 18 in Part A of Annex No 1,

   — the activity is carried out exclusively on a local basis and consists only of benefits in kind,

   and

   — the total annual income collected in respect of the activity of assistance to persons who get into difficulties does not exceed ECU 200 000.

2. in the case of undertakings whose head office is situated in Switzerland, to:

   undertakings whose annual premium income for the activities covered by the Agreement does not exceed the sum of three million Swiss francs on the date of entry into force of this Agreement and whose activities extend only to Swiss territory for such time as they satisfy these conditions. Once it has become subject to the rules of the Agreement an undertaking may no longer rely on this exception even if it satisfies the two abovementioned conditions.

3. in the case of undertakings whose head office is situated in the Community, to:

   mutual associations in so far as they fulfil all the following conditions:

   — the articles of association contain provisions for calling up additional contributions or reducing their benefits,

   — their business does not cover liability risks — unless the latter constitute ancillary cover within the meaning of Part C of Annex 1 — or credit and suretyship risks,

   — the annual contribution income from the activities covered by this Agreement does not exceed ECU 1 million, and

   — at least half of the contribution income from the activities covered by this Agreement comes from persons who are members of the mutual association.

   Mutual associations which have concluded with another undertaking of the same nature an agreement which provides for the full reinsurance of the insurance contracts concluded by them or under which the concessionary undertaking is to meet the liabilities arising out of such contracts in the place of the ceding undertaking.

   In such a case, the concessionary undertaking shall be subject to this Agreement.

D. **Exclusion of specific undertakings**

This Agreement shall not apply to the undertakings listed under 1 and 2 unless their articles of association are amended as regards capacity.

However, the territorial capacity of the undertakings referred to in 1 and 2 (b) shall not be regarded as modified in the case of a merger between or division of such undertakings which has the effect of maintaining for the benefit of the new undertaking or undertakings the territorial capacity of the undertaking which has divided or the undertakings which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these undertakings takes over in respect of the same territory one or more of the classes of another such undertaking.

1. *in Switzerland*

The following cantonal institutions under public law, enjoying a monopoly:

(a) Aargau: Aargauisches Versicherungsamt, Aarau;

(b) Appenzell Ausser-Roden: Brand und Elementarschadenversicherung Appenzell AR, Herisau;

(c) Basel Land: Basellandschaftliche Gebäudeversicherung, Liestal;

(d) Basel Stadt: Gebäudeversicherung des Kantons Basel Stadt, Basel;

(e) Bern/Berne: Gebäudeversicherung des Kantons Bern, Bern, Assurance immobilière du canton de Berne, Berne;

(f) Fribourg/Freiburg: Etablissement cantonal d'assurance des bâtiments du canton de Fribourg, Fribourg/Kantonale Gebäudeversicherungsanstalt Freiburg, Freiburg;

(g) Glarus: Kantonale Sachversicherung Glarus, Glarus;

(h) Graubünden/Grigioni/Grischun: Gebäudeversicherungsanstalt des Kantons Graubünden, Chur / Istituto d'assicurazione fabbricati del cantone dei Grigioni, Coira / Institut dil cantun Grischun per assicuranzas da baghetgs, Cuera;

(i) Jura: Assurance immobilière de la République et canton du Jura, Saignelégier;

(j) Luzern: Gebäudeversicherung des Kantons Luzern, Luzern;

(k) Neuchâtel: Etablissement cantonal d'assurance immobilière contre l'incendie, Neuchâtel;

(l) Nidwalden: Kantonale Brandversicherungsanstalt Nidwalden, Stans;

(m) Schaffhausen: Gebäudeversicherung des Kantons Schaffhausen, Schaffhausen;

(n) Solothurn: Solothurnische Gebäudeversicherung, Solothurn;

(o) St. Gallen: Gebäudeversicherungsanstalt des Kantons St. Gallen, St. Gallen;

(p) Thurgau: Gebäudeversicherung des Kantons Thurgau, Frauenfeld;

(q) Vaud: Etablissement d'assurance contre l'incendie et les éléments naturels du canton de Vaud, Lausanne;

(r) Zug: Gebäudeversicherung des Kantons Zug, Zug;

(s) Zürich: Gebäudeversicherung des Kantons Zürich, Zürich;

2. *in the Community*

(a) in Denmark

Falcks Redningskorps A/S, København;

(b) in Germany

— the following institutions under public law enjoying a monopoly (Monopolanstalten):

(aa) Badische Gebäudeversicherungsanstalt, Karlsruhe;

(bb) Bayerische Landesbrandversicherungsanstalt, München;

(cc) Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, München;

(dd) Braunschweigische Landesbrandversicherungsanstalt, Braunschweig;

(ee) Hamburger Feuerkasse, Hamburg;

(ff) Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt;

(gg) Hessische Brandversicherungsanstalt, Kassel;

(hh) Lippische Landesbrandversicherungsanstalt, Detmold;

(ii) Nassauische Brandversicherungsanstalt, Wiesbaden;

(jj) Oldenburgische Landesbrandkasse, Oldenburg;

(kk) Ostfriesische Landschaftliche Brandkasse, Aurich;

(ll) Feuersozietät Berlin, Berlin;

(mm) Württembergische Gebäudebrandversicherungsanstalt, Stuttgart,

— the following semi-public institutions:

(nn) Postbeamtenkrankenkasse;

(oo) Krankenversorgung der Bundesbahnbeamten;

(c) in Spain

the following public institutions:

(aa) Comisariá de Seguro Obligatorio de Viajeros;

(bb) Consorcio de Compensación de Seguros;

(cc) Fondo Nacional de Garantiá de Riesgos de la Circulación;

(d) in France

the following institutions:

(aa) Caisse départementale des incendiés des Ardennes;

(bb) Caisse départementale des incendiés de la Côte d'Or;

(cc) Caisse départementale des incendiés de la Marne;

(dd) Caisse départementale des incendiés de la Meuse;

(ee) Caisse départementale des incendiés de la Somme;

(e) in Ireland

Voluntary Health Insurance Board;

(f) in Italy

la Cassa di Previdenza per l'assicurazione degli sportivi (Sportass);

(g) in the United Kingdom

the Crown Agents.

ANNEX 3

LISTING OF ACCEPTABLE LEGAL FORMS

An undertaking whose head office is situated in the territory of a Contracting Party shall be constituted in one of the legal forms listed below.

The Contracting Parties may also set up, where appropriate, undertakings under any form governed by public law provided that such institutions have as their object insurance transactions under conditions equivalent to those of undertakings governed by private law.

A. In Switzerland

— Aktiengesellschaft / société anonyme / società per azioni
— Genossenschaft / coopérative / cooperativa

B. In the Community

1. *in Belgium*
   — société anonyme / naamloze vennootschap,
   — société en commandite par actions / vennootschap bij wijze van geldschieting op aandelen,
   — association d'assurance mutuelle / onderlinge verzekeringsmaatschappij,
   — Société coopérative / coöperatieve vennootschap;
2. *in Denmark*
   — aktieselskaber,
   — gensidige selskaber;
3. *in Germany*
   — Aktiengesellschaft,
   — Versicherungsverein auf Gegenseitigkeit,
   — Öffentlich-rechtliche Wettbewerbs-Versicherungsunternehmen;
4. *in France*
   — société anonyme,
   — société à forme mutuelle,
   — mutuelle,
   — union de mutuelles;
5. *in Spain*
   — sociedad anónima,
   — sociedad mutua,
   — sociedad cooperativa;
6. *in Greece*
   — Ανώνυμος Εταιρία,
   — Αλληλασφαλιστικός Συνεταιρισμός;
7. *in Ireland*
   — incorporated companies limited by shares or by guarantee or unlimited;
8. *in Italy*
   — società per azioni,
   — società cooperativa,
   — mutua di assicurazione;
9. *in Luxembourg*
   — société anonyme,
   — société en commandite par actions,
   — association d'assurances mutuelles,
   — société coopérative;

10. *in the Netherlands*

— naamloze vennootschap,

— onderlinge waarborgmaatschappij;

11. *in Portugal*

— sociedade anónima,

— mútua de seguros;

12. *in the United Kingdom*

— incorporated companies limited by shares or by guarantee or unlimited,

— societies registered under the Industrial and Provident Societies Acts,

— societies registered under the Friendly Societies Act,

— the association of underwriters known as Lloyd's.

ANNEX 4

PARTICULAR PROVISIONS FOR CERTAIN MEMBER STATES OF THE COMMUNITY

By way of derogation from the provisions of this Agreement, the following special provisions shall apply in certain Member States of the Community:

1. **in Denmark**

   re Article 15:

   Denmark may retain in force its legislation restricting the free disposal of assets built up by insurance undertakings to cover pensions payable under compulsory insurance against industrial accidents;

2. **in Germany**

   re paragraph 8.2:

   Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance with other classes;

   re Article 15:

   Germany may maintain, with respect to health insurance within the meaning of paragraph 2.3 of Protocol No 1, the restrictions imposed on the free disposal of assets in so far as the free disposal of assets covering mathematical reserves is subject to the agreement of a 'Treuhänder';

3. **in Luxembourg**

   re paragraphs 20.1 and 20.3:

   Luxembourg may retain the system of guarantees for technical reserves existing at the time of entry into force of this Agreement;

4. **in the United Kingdom**

   re paragraph 10.1 (c):

   with regard to the association of underwriters known as Lloyd's, submission of the balance sheet and the profit and loss account shall be replaced by the compulsory presentation of overall annual trading accounts covering the insurance operations, and accompanied by an affidavit certifying that auditors' certificates have been supplied in respect of each insurer and showing that the liabilities incurred as a result of those operations are wholly covered by the assets. These documents must allow the supervisory authorities to form a comparable view of the state of solvency of the Association;

   re paragraph 10.1 (d):

   with regard to the association of underwriters known as Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, insured persons must not be less favourably treated than if the litigation had been brought against a business of a more conventional type. The authorized agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

ANNEX 5

METHODS OF CALCULATING THE EQUALIZATION RESERVE FOR THE CREDIT INSURANCE CLASS AND CONDITIONS GOVERNING EXEMPTION FROM THE OBLIGATION TO SET UP SUCH A RESERVE

A. Methods

Method No 1

1.1. In respect of the risks listed under class 14 in Part A of Annex 1 (credit insurance), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

1.2. Such reserve shall in each financial year receive 75 % of any technical surplus arising on credit insurance business, subject to a limit of 12 % of the net premiums or contributions until the reserve has reached 150 % of the highest annual amount of net premiums or contributions received during the previous five financial years.

Method No 2

2.1. In respect of the risks listed under class 14 in Part A of Annex 1 (credit insurance), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

2.2. The minimum amount of the equalization reserve shall be 134 % of the average of the premiums or contributions received annually during the previous five financial years after subtraction of the cessions and addition of the reinsurance acceptances.

2.3. Such reserve shall in each of the successive financial years receive 75 % of any technical surplus arising in that class until the reserve is at least equal to the minimum calculated in accordance with point 2.2 of this Annex.

2.4. The Contracting Parties may lay down special rules for the calculation of the amount of the reserve and/or the amount of the annual levy in excess of the minimum amounts laid down in points 2.2 and 2.3 of this Annex.

Method No 3

3.1. An equalization reserve shall be formed for class 14 in Part A of Annex 1 (credit insurance) for the purpose of offsetting any above average claims ratio for a financial year in that class of insurance.

3.2. The equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached, or is restored to, the required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The required amount shall be equal to six times the standard deviation of the claims ratios in the reference period from the average claims ratio, multiplied by the earned premium for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

Irrespective of claims experience, 3,5 % of the required amount of the equalization reserve shall be first placed to that reserve each financial year until its required amount has been reached or restored.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

The required amount of the equalization reserve and the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin.

Method No 4

4.1. An equalization reserve shall be formed for class 14 in Part A of Annex 1 (credit insurance) for the purpose of offsetting any above average claims ratio for a financial year in that class of insurance.

4.2. This equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached the maximum required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The maximum required amount shall be equal to six times the standard deviation of the claims ratio in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve until it has reached the minimum required amount. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The minimum required amount shall be equal to three times the standard deviation of the claims ratio in the reference period from the average claims ratio multiplied by the earned premiums for the financial year.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

Both required amounts of the equalization reserve and the amount to be placed to it or the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin and that safety margin is more than one and a half times the standard deviation of the claims ratio in the reference period. In such a case the amounts in question shall be multiplied by the quotient of one and a half times the standard deviation and the safety margin.

B. **Exemption**

Each Contracting Party may exempt head offices, agencies or branches from the obligation to set up an equalization reserve for credit insurance business where the premiums or contributions receivable in respect of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than ECU 2 500 000.

The relationship between the ecu and the Swiss franc and the procedures necessary for defining that relationship for the purposes of this Annex are laid down in Protocol No 3.

PROTOCOL No 1

SOLVENCY MARGIN

Article 1

Definition of the solvency margin

The solvency margin shall correspond to the assets of the undertaking, free of all foreseeable liabilities, less any intangible items. In particular the following shall be considered:

— the paid up share capital or, in the case of a mutual concern, the effective initial fund,

— one half of the share capital or the initial fund which is not yet paid up, once the paid up part reaches 25 % of this capital or fund,

— reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities,

— any carry forward of profits,

— in the case of a mutual or mutual type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to an overriding limit of 50 % of the margin,

— at the request of, and upon proof being shown by the undertaking, and with the agreement of the concerned supervisory authorities of the Contracting Parties in whose territory the undertaking carries on its business, any hidden reserves resulting from under-estimation of assets or over-estimation of liabilities in the balance sheet, in so far as such hidden reserves are not of an exceptional nature.

Over-estimation of technical reserves shall be determined in relation to their amount calculated by the undertaking in conformity with national rules; however, an amount equivalent to 75 % of the difference between the amount of the reserve for outstanding risks calculated at a flat rate by the undertaking by application of a minimum percentage in relation to premiums and the amount that would have been obtained by calculating the reserve contract by contract where the national law in question gives an option between the two methods, can be taken into account in the solvency margin up to 20 %.

Article 2

Relationship between the solvency margin and the amount of premiums or the burden of claims

2.1. The solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years. In the case, however, of undertakings which essentially underwrite only one or more of the risks of credit, storm, hail and frost, the last seven years shall be taken as the period of reference for the average burden of claims.

2.2. Subject to the provisions of Article 3 of this Protocol, the amount of the solvency margin shall be equal to the higher of the following two results:

First Result (premium basis):

— the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of all direct business in the last financial year for all financial years, shall be aggregated,

— to this aggregate there shall be added the amount of premiums accepted for all reinsurance in the last financial year,

— from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to ECU 10 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The first result shall be obtained by multiplying the sum so calculated by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the undertaking after deduction of transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

Second result (claims basis):

— the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionnaires) in the periods specified in paragraph 2.1 of this Protocol shall be aggregated,

— to this aggregate there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods,

— to this sum there shall be added the amount of provisions or reserves for outstanding claims established at the end of the last financial year both for direct business and for reinsurance acceptances,

— from this sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 2.1 of this Protocol,

— from the sum then remaining, there shall be deducted the amount of provisions or reserves for outstanding claims established at the commencement of the second financial

year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in paragraph 2.1 of this Protocol, shall be divided into two portions, the first extending up to ECU 7 million, and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The second result shall be obtained by multiplying the sum so obtained by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the business after transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

2.3. The fractions applicable to the portions referred to in paragraph 2.2 of this Protocol shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if

— the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance,

— a reserve is set up for increasing age,

— an additional premium is collected in order to set up a safety margin of an appropriate amount,

— the insurer may only cancel the contract before the end of the third year of insurance at the latest,

— the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

2.4. In the case of the association of underwriters known as Lloyd's, the calculation of the first result in respect of premiums, referred to in paragraph 2.2 of this Protocol, shall be made on the basis of net premiums, which shall be multiplied by a flat rate percentage fixed annually by the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated. This flat rate percentage must be calculated on the basis of the most recent statistical data on commissions paid.

The details, together with the relevant calculations, shall be sent to the supervisory authority of Switzerland if the association of underwriters known as Lloyd's is established there.

2.5. In the case of the risks listed under class 18 in Part A of Annex 1, the amount of claims paid used to calculate the second result (claims basis) shall be the costs borne by the undertaking in respect of assistance given. Such costs shall be calculated in accordance with the provisions of the Contracting Party in whose territory the head office of the undertaking is situated.

Article 3

Guarantee fund

3.1. One-third of the solvency margin shall constitute the guarantee fund.

3.2. The guarantee fund may not, however, be less than:

— ECU 1 400 000 in the case where all or some of the risks included in the class listed in Part A of Annex 1 under No 14 are covered. This provision shall apply to every undertaking for which the annual amount of premiums or contributions due in this class for each of the last three financial years exceeded ECU 2 500 000 or 4 % of the total amount of premiums or contributions receivable by the undertaking concerned,

— ECU 400 000 in the case where all or some of the risks included in one of the classes listed in Part A of Annex 1 under Nos 10, 11, 12, 13 and 15 and, in so far as the first indent does not apply, No 14, are covered,

— ECU 300 000 in the case where all or some of the risks included in one of the classes listed in Part A of Annex 1 under Nos 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 are covered,

— ECU 200 000 in the case where all or some of the risks included in one of the classes listed in Part A of Annex 1 under Nos 9 and 17 are covered.

3.3. If the business carried on by the undertaking covers several classes or several risks, only that class or risk for which the highest amount is required shall be taken into account.

3.4. Each Contracting Party may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual type associations.

3.5. Where an undertaking has, in accordance with the first indent of paragraph 3.2 of this Protocol, to increase the guarantee fund to ECU 1 400 000, the Contracting Party in question shall allow such undertaking:

— a period of three years in which to bring the fund up to ECU 1 000 000,

— a period of five years in which to bring the fund up to ECU 1 200 000,

— a period of seven years in which to bring the fund up to ECU 1 400 000.

These periods shall run from the date from which the conditions referred to in the first indent of paragraph 3.2 of this Protocol are fulfilled.

Article 4

Relationship between the ecu and the Swiss franc

The relationship between the ecu and the Swiss franc and the procedures necessary for defining that relationship for the purposes of this Protocol are laid down in Protocol No 3.

PROTOCOL No 2

SCHEME OF OPERATIONS

Article 1

Content

The scheme of operations of the agency or branch shall contain the following particulars or proofs concerning:

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

(b) the general and special policy conditions which it proposes to use;

(c) the scales of premiums which the undertaking proposes to apply or each category of business;

(d) the guiding principles as to reinsurance;

(e) the state of the solvency margin of the undertaking, referred to in Protocol No 1;

(f) estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them, and, where the risks to be covered are listed under class 18 in Part A of Annex No 1, the resources available to the undertaking for providing the promised assistance; and, in addition, for the first three financial years,

(g) estimates relating to expenses of management;

(h) estimates relating to premiums or contributions and to claims in respect of the new business;

(i) the forecast balance sheet for the agency for branch.

Article 2

Exceptions

2.1. The particulars referred to in (b) and (c) of Article 1 of this Protocol shall not be required with regard to the following risks (large risks):

(a) risks listed under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex 1;

(b) risks listed under classes 14 and 15 in Part A of Annex No 1, 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;

(c) risks listed under classes 8, 9, 13 and 16 in Part A of Annex 1 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: ECU 12,4 million,

— net turnover: ECU 24 million,

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

Second stage: from 1 January 1993:

— balance sheet total: ECU 6,2 million,

— net turnover: ECU 12,8 million,

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

If the policy holder belongs to a group of undertakings for which consolidated accounts are drawn up in accordance with the law in force in the Contracting Party to whose jurisdiction the group is subject, the criteria mentioned above shall be applied on the basis of the consolidated accounts.

Each Contracting Party may add to the category mentioned under (c) risks insured by professional associations, joint ventures or temporary groupings.

2.2. However, in Switzerland the particulars referred to in (b) and (c) of Article 1 of this Protocol may be required with regard to the risks listed under No 12 in Part A of Annex 1 where the vessels involved are lake or river vessels.

PROTOCOL No 3

RELATIONSHIP BETWEEN THE ECU AND THE SWISS FRANC

Article 1

Ecu

For the purposes of this Agreement, 'ecu' means the ecu as defined by the competent Community authorities.

Article 2

Relationship between national currencies and the ecu

2.1. In so far as amounts expressed in ecus in this Agreement have to be converted into national currencies to enable the supervisory authorities to apply the Agreement's provisions directly, the conversion shall be effected in accordance with the provisions of paragraphs 2.2 and 2.3 of this Protocol.

2.2. With regard to the conversion of amounts expressed in ecus into the national currencies of the Member States of the Community, the rules laid down by the competent Community authorities shall apply.

2.3. With regard to the equivalent in Swiss francs of amounts expressed in ecus, the exchange value of one ecu shall, for the purposes of this Agreement, be . . . . . Swiss francs.

Article 3

Alteration of the relationship between the ecu and the Swiss franc

3.1. The relationship between the ecu and the Swiss franc referred to in paragraph 2.3 shall be reviewed annually on the basis of the following: where the exchange value of the ecu in terms of Swiss francs as fixed by the Swiss National Bank for the last working day in October differs by more than 10 % on either side of the value in force for the purposes of this Agreement, that value shall be adjusted accordingly with effect from 1 January of the following year.

3.2. The Joint Committee referred to in Article 37 may make such other adjustments as may be necessary.

PROTOCOL No 4

AGENCIES AND BRANCHES OF UNDERTAKINGS WHOSE HEAD OFFICE IS SITUATED OUTSIDE THE TERRITORIES TO WHICH THIS AGREEMENT APPLIES

Article 1

Conditions for authorization

Each Contracting Party may grant to an undertaking whose head office is situated outside the territories to which this Agreement applies under Article 43 thereof, authorization to open an agency or branch in its territory, if the applicant undertaking fulfils at least the following conditions:

(a) it is entitled to undertake insurance business under its national law;

(b) it establishes an agency or branch in the territory of the Contracting Party in question;

(c) it undertakes to establish at the place of management of the agency or branch accounts specific to the business which it undertakes there, and to keep there all the records relating to the business transacted;

(d) it designates an authorized agent, to be approved by the supervisory authority;

(e) it possesses in the country in which it carries on its business assets of an amount equal to at least one-half of the minimum amount prescribed in paragraph 3.2 of Protocol No 1, in respect of the guarantee fund, and deposits one-quarter of the minimum amount as security;

(f) it undertakes to keep a solvency margin in accordance with Article 3 of this Protocol;

(g) it submits a scheme of operations in accordance with the provisions of paragraph 10.1 (c) of the Agreement and Protocol No 2. Each Contracting Party may, if the legal provisions in force therein so permit, require an undertaking which has been in existence for fewer than three financial years to supply the balance sheet and profit and loss account which must accompany the scheme of operations only in respect of the financial years which have closed.

Article 2

Technical reserves

Under this Protocol, each Contracting Party shall apply to agencies or branches set up in its territory rules regarding technical reserves which may not be more favourable than those provided for in Articles 19, 20 and 21. By way of derogation from the second sentence of paragraph 20.1 it shall require assets representing technical reserves to be localized in the territory in which the supervisory authority of the Contracting Party concerned is competent.

Article 3

Solvency margin

3.1. Under this Protocol, each Contracting Party shall require for agencies or branches established in its territory a solvency margin consisting of assets free of all foreseeable liabilities, less any intangible items. The solvency margin shall be calculated in accordance with paragraphs 2.2 and 2.3 of Protocol No 1. However, for the purpose of calculating this margin, account shall be taken only of the premiums or contributions and claims pertaining to the business effected by the agency or branch concerned.

3.2. One-third of the solvency margin shall constitute the guarantee fund. The guarantee fund may not be less than one-half of the minimum required under paragraph 3.2 of Protocol No 1. The initial security lodged in accordance with paragraph 1 (e) of this Protocol shall be counted towards such guarantee fund.

3.3. The assets representing the solvency margin shall be localized in the territory in which the supervisory authority of the Contracting Party concerned is competent.

3.4. The Community may allow these rules to be relaxed in the case of undertakings with agencies or branches in various Member States in order to facilitate their supervision.

Article 4

Verification and restoration of financial situation

The provisions of paragraph 17.3 and Article 18 shall apply *mutatis mutandis* in relation to agencies and branches of undertakings to which this Protocol applies.

Article 5

Agreements with third countries

Each Contracting Party may, by means of agreements concluded with one or more third countries, agree to the application of provisions different from those provided for in this Protocol on condition that its insured persons are adequately protected under conditions of reciprocity.

EXCHANGE OF LETTERS No 1

Principle of non-discrimination

Delegation of the Commission
of the European Communities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to confirm that the obligation of non-discrimination referred to in Article 5 thereof exclusively concerns the taking up and pursuit of the activity of direct insurance in the territory in which the supervisory authority which grants authorization is competent and also applies to the Member States of the Community in the exercise of their power to legislate in the areas covered by the said Agreement.

I would ask you to take note of this communication, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart, Esq.
State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to confirm that the obligation of non-discrimination referred to in Article 5 thereof exclusively concerns the taking up and pursuit of the activity of direct insurance in the territory in which the supervisory authority which grants authorization is competent and also applies to the Member States of the Community in the exercise of their power to legislate in the areas covered by the said Agreement.'

I have taken note of this communication, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation
(s. Franz BLANKART)

Geoffrey Fitchew, Esq.
Director General

Head of the Delegation of the Commission of the European Communities

Brussels

EXCHANGE OF LETTERS No 2

Scope of authorization

Delegation of the Commission
of the European Comunities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that paragraph 8.1 does not affect the provisions in force in each Contracting Party concerning the possibility for an insurance undertaking to cover risks situated outside the territory in which the supervisory authority which granted it authorization is competent.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart, Esq.
State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that paragraph 8.1 does not affect the provisions in force in each Contracting Party concerning the possibility for an insurance undertaking to cover risks situated outside the territory in which the supervisory authority which granted it authorization is competent.'

I have taken note of this communication, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation
(s. Franz BLANKART)

Geoffrey Fitchew, Esq.
Director General

Head of the Delegation
of the Commission of the European Communities

Brussels

EXCHANGE OF LETTERS No 3

Authorized agent

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state that it does not preclude the authorized agent referred to in paragraphs 10.1 (d) and 11.4 thereof and in paragraph 1 (d) of Protocol No 4 being required to assume effective management of the agency or branch in respect of all the business activities the latter intends carrying on in the territory in which the supervisory authority from which authorization is sought is competent.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert, Esq.
Director

Head of the Delegation
of the Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state that it does not preclude the authorized agent referred to in paragraphs 10.1 (d) and 11.4 thereof and in paragraph 1 (d) of Protocol No 4 being required to assume effective management of the agency or branch in respect of all the business activities the latter intends carrying on in the territory in which the supervisory authority from which authorization is sought is competent.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(s. Gérard IMBERT)

Franz Blankart, Esq. Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 4

Assignment to the Swiss Securities Fund of immovable property directly owned by insurance undertakings

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland reserves the right, with regard to the assignment to the securities fund of immovable property directly owned by insurance undertakings, to have the said immovable property registered in the securities fund register maintained by the undertaking and to have included in the land register a note relating there to restricting the right to dispose freely of such property which, under Swiss law, does not constitute registration of a mortgage.

I would ask you to confirm that you are also of the opinion that such a procedure is not contrary to paragraphs 11.2 and 20.3 of the said Agreement.

Please accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(Franz BLANKART)

Gérard Imbert, Esq.

Director
Head of the Delegation of the Commission
of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland reserves the right, with regard to the assignment to the securities fund of immovable property directly owned by insurance undertakings, to have the said immovable property registered in the securities fund register maintained by the undertaking and to have included in the land register a note relating thereto restricting the right to dispose freely of such property which, under Swiss law, does not constitute registration of a mortgage.'

I hereby confirm that I am also of the opinion that such a procedure is not contrary to paragraphs 11.2 and 20.3 of the said Agreement.

Please accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(Gérard IMBERT)

Franz Blankart, Esq. Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 5

Principles governing investment

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state with regard to the assets referred to in Article 15 that the said Agreement does not preclude the supervisory authority from taking action in specific cases where the choice of assets is likely to place the financial security of an undertaking in serious jeopardy or diminish its degree of liquidity.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert, Esq.
Director

Head of the Delegation
of the Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

> 'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state with regard to the assets referred to in Article 15 that the said Agreement does not preclude the supervisory authority from taking action in specific cases where the choice of assets is likely to place the financial security of an undertaking in serious jeopardy or diminish its degree of liquidity.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(s. Gérard IMBERT)

Franz Blankart, Esp.
Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 6

Swiss List of classes of insurance

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland will continue to apply to head office, agencies and branches established in its territory its 'List of classes of insurance' for the purposes of submission of accounts and statistics. This will also be the case with regard to the report of the Federal Office for Private Insurance on 'Private insurance undertakings in Switzerland'. However, the 'Classification of risks according to classes of insurance', set out in Part A of Annex 1 to the said Agreement, will apply for the purposes of the specification of classes in applications for authorization and assessment of the need to approve the general and special conditions of insurance policies and scales of premiums.

This does not preclude examination by Switzerland, at a later date, of the possibility of applying the abovementioned 'Classification' in its entirety. A decision to that effect would be notified to the Community through diplomatic channels.

Is it agreed that the scope of the 'List of classes of insurance' is the same as that of the 'Classification of risks according to classes of insurance'. Comparability as between the two types of classification is as follows:

Swiss list of classes of insurance	Classes of insurance according to the classification in Annex 1
1. Accident	A. 1
2. Liability	A. 10, 11, 12, 13
3. Fire and natural forces	A. 8
4. Transport	A. 4, 6, 7
5. Vehicles	A. 3, 5
6. Hail	A. 9
7. Animals	
8. Theft	
9. Breakage of glass	
10. Damage by water	
11. Machinery	
12. Jewellery	
13. Suretyship	A. 15
14. Credit	A. 14
15. Legal expenses	A. 17
16. Health	A. 2
17. Rain	A. 16, 18
18. Special policies	

I would ask you to take note of this communication, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert
Head of the Delegation of the
Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to inform you that Switzerland will continue to apply to head offices, agencies and branches established in its territory its "List of classes of insurance" for the purposes of submission of accounts and statistics. This will also be the case with regard to the report of the Federal Office for Private Insurance on "Private insurance undertakings in Switzerland". However, the "Classification of risks according to classes of insurance", set out in Part A of Annex No 1 to the said Agreement, will apply for the purposes of the specification of classes in applications for authorization and assessment of the need to approve the general and special conditions of insurance policies and scales of premiums.

This does not preclude examination by Switzerland, at a later date, of the possibility of applying the abovementioned "Classification" in its entirety. A decision to that effect would be notified to the Community through diplomatic channels.

It is agreed that the scope of the "List of classes of insurance" is the same as that of the "Classification of risks according to classes of insurance". Comparability as between the two types of classification is as follows:

Swiss list of classes of insurance	Classes of insurance according to the classification in Annex 1
1. Accident	A. 1
2. Liability	A. 10, 11, 12, 13
3. Fire and natural forces	A. 8
4. Transport	A. 4, 6, 7
5. Vehicles	A. 3, 5
6. Hail	A. 9
7. Animals	
8. Theft	
9. Breakage of glass	
10. Damage by water	
11. Machinery	
12. Jewellery	
13. Suretyship	A. 15
14. Credit	A. 14
15. Legal expenses	A. 17
16. Health	A. 2
17. Rain	A. 16, 18.'.
18. Special policies	

I have taken note of this communication, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Gérard IMBERT)

Franz Blankart
Ambassador
Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 7

The capital of insurance undertakings

Swiss Delegation

Berne, 25 June 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to remind you of our understanding that the provisions concerning the minimum solvency margin calculated in accordance with paragraph 2.2 of Protocol No 1, and the minimum guarantee fund, referred to in paragraph 3.2 of that Protocol, have no bearing on the laws or practices of the Contracting Parties regarding the requirements relating to the capital of undertakings.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Gérard Imbert, Esq. Director

Head of the Delegation
of the Commission of the European Communities

Brussels

Delegation of the Commission
of the European Communities

Brussels, 25 June 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

> 'With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to remind you of our understanding that the provisions concerning the minimum solvency margin calculated in accordance with paragraph 2.2 of Protocol No 1, and the minimum guarantee fund, referred to in paragraph 3.2 of that Protocol, have no bearing on the laws or practices of the Contracting Parties regarding the requirements relating to the capital of undertakings.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities

(s. Gérard IMBERT)

Franz Blankart, Esq. Ambassador

Head of the Swiss Delegation

Berne

EXCHANGE OF LETTERS No 8

Transitional arrangements for assistance

Delegation of the Commission
of the European Communities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that the Member States of the Community may allow undertakings which, on 12 December 1984, provided only assistance in their territory a period of five years from that date in order to comply with the requirements set out in Article 16 of this Agreement.

The Member States of the Community may allow any undertakings referred to above which, upon expiry of the five year period, have not fully established the solvency margin a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 18 of this Agreement, submitted for the approval of the supervisory authority the measures which they propose to take for that purpose.

Any undertaking referred to above which wishes to extend its business to other classes or, in the case referred to in paragraph 8.1 of this Agreement, to another part of the territory, may do so only on condition that it complies forthwith with this Agreement.

Moreover, until 12 December 1992, the condition specified in point 5 of Part B of Annex 2 to this Agreement, namely that the accident or breakdown must have happened in the territory of the Contracting Party in which the undertaking providing cover is established, shall not apply to the operations referred to in the third indent of the abovementioned point where these operations are carried out by the ELPA (Automobile and Touring Club of Greece).

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart Esq. State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that the Member States of the Community may allow undertakings which, on 12 December 1984, provided only assistance in their territory a period of five years from that date in order to comply with the requirements set out in Article 16 of the Agreement.

The Member States of the Community may allow any undertakings referred to above which, upon expiry of the five year period, have not fully established the solvency margin a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 18 of this Agreement, submitted for the approval of the supervisory authority the measures which they propose to take for that purpose.

Any undertaking referred to above which wishes to extend its business to other classes or, in the case referred to in paragraph 8.1 of this Agreement, to another part of the territory, may do so only on condition that it complies forthwith with this Agreement.

Moreover, until 12 December 1992, the condition specified in point 5 of Part B of Annex 2 to this Agreement, namely that the accident or breakdown must have happened in the territory of the Contracting Party in which the undertaking providing cover is established, shall not apply to the operations referred to in the third indent of the abovementioned point where these operations are carried out by the ELPA (Automobile and Touring Club of Greece).'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Geoffrey Fitchew, Esq. Director General

Head of the Delegation
of the Commission of the European Communities

Brussels

EXCHANGE OF LETTERS No 9

Transitional arrangements for the large risks referred to in paragraph 2.1 of Protocol No 2

Delegation of the Commission
of the European Communities

Brussels, 26 July 1989

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that Greece, Ireland, Portugal and Spain benefit from the following transitional arrangements in respect of the large risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement:

(a) until 31 December 1992, they may apply, to all risks, the regime other than that for risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement;

(b) from 1 January 1993 to 31 December 1994, the regime for large risks shall apply to risks referred to in paragraph 2.1 (a) and (b) of Protocol No 2 to this Agreement; for risks referred to under (c) of the same paragraph, these Member States shall fix the thresholds to apply therefor;

(c) Spain:

— from 1 January 1995 to 31 December 1996, the thresholds of the first stage fixed in paragraph 2.1 (c) of Protocol No 2 to this Agreement shall apply,

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

(d) Greece, Ireland and Portugal:

— from 1 January 1995 to 31 December 1998, the thresholds of the first stage fixed in paragraph 2 1 (c) of Protocol No 2 to this Agreement 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 in Part A of Annex 1 situated exclusively in one of the four Member States of the Community benefiting from these provisions.

I would ask you to kindly confirm the above, and to accept, Sir, the assurance of my high consideration.

Head of the Delegation of the
Commission of the European Communities
(s. Geoffrey FITCHEW)

Franz Blankart, Esq. State Secretary

Head of the Swiss Delegation

Berne

Swiss Delegation

Berne, 26 July 1989

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

'With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to remind you of our understanding that Greece, Ireland, Portugal and Spain benefit from the following transitional arrangements in respect of the large risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement:

(a) until 31 December 1992, they may apply, to all risks, the regime other than that for risks referred to in paragraph 2.1 of Protocol No 2 to this Agreement;

(b) from 1 January 1993 to 31 December 1994, the regime for large risks shall apply to risks referred to in paragraph 2.1 (a) and (b) of Protocol No 2 to this Agreement; for risks referred to under (c) of the same paragraph, these Member States shall fix the thresholds to apply therefor;

(c) Spain:

— from 1 January 1995 to 31 December 1996, the thresholds of the first stage fixed in paragraph 2.1 (c) of Protocol No 2 to this Agreement shall apply,

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

(d) Greece, Ireland and Portugal:

— from 1 January 1995 to 31 December 1998, the thresholds of the first stage fixed in paragraph 2.1 (c) of Protocol No 2 to this Agreement 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 in Part A of Annex No 1 situated exclusively in one of the four Member States of the Community benefiting from these provisions.'

I hereby confirm the above, and in turn ask you to accept, Sir, the assurance of my high consideration.

Head of the Swiss Delegation

(s. Franz BLANKART)

Geoffrey Fitchew, Esq. Director General

Head of the Delegation
of the Commission of the European Communities

Brussels