

# ARCHIVES HISTORIQUES DE LA COMMISSION

COLLECTION RELIEE DES  
DOCUMENTS "COM"

COM (73)2030

Vol. 1973/0361

### ***Disclaimer***

Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

# COMMISSION OF THE EUROPEAN COMMUNITIES

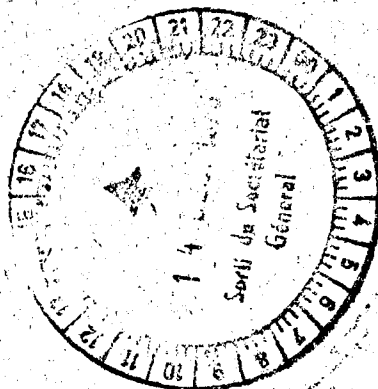
COM(73) 2030 final

Strasbourg, 12 December 1973

Proposal for a first Council Directive  
on the coordination of laws, regulations and  
administrative provisions relating to the taking-up and pursuit  
of the business of direct life assurance

---

(submitted to the Council by the Commission)



COM(73) 2030 final

EXPLANATORY MEMORANDUMI. Reasons for and objections of coordination

1. The General Programme <sup>1</sup> for the abolition of restrictions on freedom of establishment, adopted by the Council on 18 December 1961 pursuant to Article 54(1) of the Treaty establishing the EEC, stipulates in Title IV that the following measures of coordination and liberalization must be introduced in the insurance sector in the order given below:
  - A. In respect of direct insurance undertakings other than life assurance undertakings:
    - 1 - Coordination of the conditions for the taking up and pursuit thereof;
    - 2 - Removal of restrictions on the establishment of agencies and branches;
  - B. In respect of direct life assurance undertakings:
    - 3 - Coordination of the conditions for the taking up and pursuit thereof;
    - 4 - Removal of restrictions on the establishment of agencies and branches.

The Council put the first part of this programme into effect by adopting on 24 July 1973 the two directives<sup>2</sup> on, respectively, the coordination of laws and the abolition of restrictions in the field of indemnity insurance.

The purpose of this directive is to initiate the same process as regards the coordination of laws in the life assurance field. This explains the many similarities between the two texts.

./.

---

<sup>1</sup>OJ No 2, 15 January 1962, p. 36/62.

<sup>2</sup>OJ No 223, 16 August 1973, p. 3 and p. 20.

2. The legal basis is the same, namely Article 57(2) of the EEC Treaty, which lays down that the European Parliament must be consulted in connection with a directive of this nature, while consultation of the Economic and Social Committee is optional. Both these institutions were consulted concerning the coordinating directive on indemnity insurance<sup>1</sup>.
3. The aim is the same, namely to achieve an initial coordination of the provisions governing the various classes of direct insurance, in this case life assurance, in order to make possible the removal of restrictions on the freedom of establishment of life assurance undertakings. A second draft directive is being submitted to the Council on this subject.
4. The objective of coordination is the same, namely to establish a common market in insurance, this time in life assurance. Any insurance undertaking having its head office within the Community may set up an agency or a branch in any other State of the Community under conditions of admission which are identical in the nine States. Moreover, identical conditions for the exercise of this business are also provided for both in respect of head offices and in respect of agencies and branches. Many rules identical to those for indemnity insurance have been laid down. Control of a mainly financial nature is exercised by the supervisory authority of the country where the head office is situated, with the assistance of the supervisory authority of the country or countries where the agencies and branches are situated. All insurance undertakings, apart from several clearly defined exceptions, are subject to this supervision, which extends to the undertaking's entire business.
5. This directive differs from the corresponding directive on indemnity insurance in two main respects. Firstly, it settles the problem, which was left open by the preceding directive, of whether an undertaking may handle both life assurance and indemnity insurance and, secondly, it

./.

---

<sup>1</sup> Opinion of European Parliament delivered on 13 March 1968 and published in OJ No C 27 of 28 March 1968 and Opinion of the Economic and Social Committee delivered on 28 April 1967 and published in OJ No 158 of 18 July 1967.

introduces different rules for calculation and constitution of the financial guarantees required of undertakings from those laid down in respect of indemnity insurance. This is because of the techniques peculiar to each type of insurance.

This explanatory memorandum deals only with those aspects which are specific to life assurance and in particular with these two important questions.

## II. Titles and Articles of the Directive

### TITLE I : General provisions

- Art. 1 : Scope of the directive
- Art. 2 : Classes of insurance and operations not covered
- Art. 3 : Mutual associations not covered
- Art. 4 : Body not covered
- Art. 5 : Definitions

### TITLE II : Rules applicable to undertakings whose head offices are situated within the Community

#### Section A : Conditions of admission

- Art. 6 : Official authorization
- Art. 7 : Scope of authorization
- Art. 8 : Conditions of authorization in the country where the head office is situated
- Art. 9 : Scheme of operations in the country where the head office is situated
- Art. 10 : Conditions of authorization in other countries
- Art. 11 : Scheme of operations in other countries
- Art. 12 : Principles of specialization and separate management
- Art. 13 : Rules on separate management
- Art. 14 : Refusal of authorization and right to apply to the courts

#### Section B : Conditions for exercise of business

- Art. 15 : Principle of supervision
- Art. 16 : Supervision of entire business by the supervisory authority of the country where the head office is situated
- Art. 17 : Technical reserves
- Art. 18 : Principle and constituents of the solvency margin
- Art. 19 : Size of the solvency margin
- Art. 20 : Guarantee fund
- Art. 21 : Free disposal of assets
- Art. 22 : Reinsurance
- Art. 23 : Accounts
- Art. 24 : Measures to restore financial position
- Art. 25 : Assignment of portfolio

Section C : Withdrawal of authorization

Art. 26 : Conditions and procedure

TITLE III : Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community

Art. 27 : Conditions of authorization

Art. 28 : Technical reserves

Art. 29 : Solvency margin and guarantee fund

Art. 30 : Special rules in the case of business carried on in several Member States

Art. 31 : Analogy with certain rules in Title II

Art. 32 : Agreements with third countries

TITLE IV : Transitional and other provisions

Art. 33 : In respect of Community undertakings

Art. 34 : In respect of non-Community undertakings

Art. 35 : In the framework of agreements with third countries

TITLE V : Final provisions

Art. 36 : Cooperation between the Commission and national authorities

Art. 37 : Review clause

Art. 38 : Timetable for implementing the directive

Art. 39 : Communication of changes in national legislation

Art. 40 : Classification of risks according to classes of insurance

Art. 41 : Addressees

ANNEX : Classification of risks according to classes of insurance

### III. Notes on the Titles and principal articles

#### Title I - General provisions (Article 1 to 5)

##### Article 1. Scope of the directive

The national supervisory legislation at present existing in Member States varies considerably in scope. Although life assurance is subject to supervision in all Member States, the classes of insurance which are subject to supervision differ and are defined differently, in different countries.

Article 1 defines in precise terms the field of application of the directive in order, firstly, to guarantee equal protection for all policyholders and beneficiaries whichever country they are in and, secondly, to avoid a distortion of competition in favour of bodies which might evade the requirements of the directive while engaging in operations similar to those it covers.

##### Article 2. Classes of insurance and operations not covered

Social security insurance is excluded from the field of application of the directive because it is usually subject to public law and involves a different financial technique from life assurance.

#### Title II - Rules applicable to undertakings whose head offices are situated within the Community (articles 6 to 26)

##### Section A : Conditions of admission

The provisions in this section lay down that the taking up of the business of life assurance is subject to an official authorization similar to that provided for in the coordinating directive on indemnity insurance. They lay down the conditions for this authorization, organize the supervision exercised by the administrative authorities over authorized undertakings and regulate the withdrawal of authorization.

./.

Articles 12 and 13. Specialization and separate management

Germany, France, Ireland and the Netherlands apply the specialization system. Under this system, undertakings dealing in life assurance are forbidden to handle indemnity insurance. These two classes of business may only be carried on by separate legal persons. Danish law and Italian regulations encourage undertakings to adopt this system, but do not expressly require existing undertakings handling more than one class of business to split up.

The United Kingdom, Belgium and Luxemburg do not have this system and undertakings are free either to specialize or to deal in more than one class of insurance. In the latter case, however, they are subject to rules on accounting and management which are designed to safeguard the rights of life policyholders.

The solution adopted in this directive may be summarized as follows:

1. Undertakings set up after the entry into force of the directive will be required to specialize. Specialization is considered to offer the best protection to life policyholders by ensuring that the assets of the life assurer and those of the indemnity insurer are legally separate and thus preventing life policyholders from suffering as a result of losses in indemnity business.
2. Existing undertakings which deal in more than one kind of insurance will be able to continue to do so, on condition that they adopt strict rules on separate management and accounting. Provision is made, in particular, for the assets of the insurer to be divided into a "life" portion and an "indemnity" portion, in order to provide life policyholders with guarantees which, if not identical, are at least as nearly as equivalent as possible to those enjoyed under the specialization system.

By adopting this solution, the Commission shows its preference for the specialization system, while proving its concern not to upset the status quo.

Moreover, the solution proposed is in line with the resolution (Doc. 1325/61/ES 23 of 26 October 1961) issued by the Council of Ministers when the general programmes for the abolition of restrictions on freedom of establishment and freedom to provide services were adopted. The Council called upon the Commission to find a solution to the problem of the difference between the systems in force by encouraging undertakings handling more than one class of business to keep apart as far as possible everything relating to life assurance on the one hand and to indemnity insurance on the other by establishing a separate account comprising, generally speaking, all the assets relating to life assurance transactions.

#### Section B : Conditions for exercise of business

##### Article 18. Principle and constituents of the solvency margin

The provisions concerning the solvency margin are the most important in the directive. On them is based the whole system which the directive is designed to introduce into the legislation of Member States. An undertaking must prove that it possesses, in addition to technical reserves, a supplementary reserve called a solvency margin, which is intended to enable the undertaking to meet its liabilities if the technical reserves prove to be insufficient.

Although the principle is the same as in the directive on indemnity insurance, the constituents of the solvency margin are different. They may be either explicit or implicit.

The explicit items appear in the balance sheet and are the subject of Article 18(1) and (2). They comprise the undertaking's assets, free of all foreseeable liabilities, in particular the paid up share capital.

The implicit items are not shown in the balance sheet. They are listed in Article 18(3).

Article 19. Size of the solvency margin

The liabilities contracted by life assurance undertakings vis-à-vis policyholders and beneficiaries are usually on a long-term basis and the undertakings are obliged to evaluate their future liabilities by means of extrapolation on the basis of more or less recent data. Business success therefore depends on the assumptions made and on the ability of the undertakings to meet the insured risks. For this reason the mathematical reserves, which correspond to the assessment of liabilities in respect of current contracts, must be evaluated by reference to the foreseeable trend of the various factors which form the basis for calculating premiums and mathematical reserves, namely, the death rate, the return on investments and overheads.

In fixing the solvency margin it is necessary to take into account the effect of any variations in each of these factors.

The margin must not be too large, for this would lead either directly or indirectly to an unwarranted increase in the amount of the premiums required of policyholders.

In the main classes of life assurance the solvency margin is calculated by reference, firstly, to the mathematical reserves against investment risks and, secondly, to the capital at risk against the risk of death and the operating risk. This is dealt with in Article 19(a).

On the other hand, in the classes of insurance and operations dealt with in Article 19(c), where the main risk is an investment risk, the solvency margin depends solely on the reserves.

In the classes of insurance and operations covered by Article 19(d) the operating risk predominates and the margin depends solely on the capital administered.

The supplementary classes covered in Article 19(b) employ the same technique as indemnity insurance and, as in the latter case, the solvency margin depends on the amount of the premiums, which represent the best criterion for assessing the risk incurred by the insurer. The margin is calculated in the same way for temporary assurance for a period not exceeding 5 years on death (Article 19(b)).

#### Article 20. Guarantee fund

The provisions of this Article meet the requirements of undertakings to have at their disposal:

1. at the time when they are set up, guarantees amounting to a minimum of 600 000 units of account, which must be constituted solely of explicit items,
2. during their operation, a minimum of guarantees proportional to their volume of business. This minimum represents a third of the solvency margin and at least 50 % must be composed of explicit items.

Title III - Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community (Articles 27 to 32)

---

Title IV - Transitional and other provisions (Articles 33 to 35)

./.

Title V - Final provisions (Articles 36 to 41)

The provisions of these three Titles are almost identical with those of the corresponding directive on indemnity insurance.

However, attention should be drawn to Article 33(5), under which undertakings handling both life assurance and indemnity insurance have 5 years from notification of the directive to comply with the rules on separate management.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the General Programme (1) for the abolition of restrictions  
on freedom of establishment, and in particular Title IV D thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas under the General Programme the removal of restrictions on the  
establishment of agencies and branches is, in the case of direct life  
insurance undertakings, dependent on the coordination of the conditions  
for the taking up and pursuit thereof; whereas such coordination should  
be effected after that relating to direct insurance other than life assurance,  
which was the subject of a Directive (2) adopted by the Council on  
24 July 1973;

Whereas in order to facilitate the taking up and pursuit of the business of  
insurance, it is essential to eliminate certain divergences which exist  
between national supervisory legislation; whereas, in order to achieve this  
objective and at the same time ensure adequate protection for insured persons  
and beneficiaries in all Member States, it is desirable to coordinate, in  
particular, the provisions relating to the financial guarantees required of  
life assurance undertakings;

./.

---

(1) O.J. No 2, 15 January 1962, p. 36/62.

(2) Directive 73/239/EEC: O.J. No L 228, 16 August 1973, p. 3.

Whereas a classification of risks in the different classes of insurance is necessary in order to determine, in particular, the activities subject to compulsory authorization;

Whereas it is desirable to exclude from the application of this Directive mutual associations which, by virtue of their legal status, fulfil appropriate conditions as to security and financial guarantees;

Whereas the Member States have different regulations and practices as to the simultaneous handling of life assurance and indemnity insurance; whereas new undertakings should not be allowed to handle these two classes of business simultaneously but existing undertakings which are handling these two classes of business simultaneously at the time of entry into force of the Directive should be allowed to continue to do so both in the country in which their head office is situated and in other Member States, on condition that each class of business is controlled by a separate management; whereas special rules are laid down in this Directive as regards separate managements so as not to place the insured persons in a less favourable position than if they were insured with an undertaking dealing exclusively in life assurance; whereas these rules will be incorporated and supplemented in a Directive on the coordination of legislation relating to the winding up of direct insurance undertakings;

Whereas life assurance is subject in each Member State to official authorization and supervision, but it is necessary to define the conditions for the granting or withdrawal of such authorization; whereas provision must be made for a right to apply to the courts should an authorization be refused or withdrawn;

Whereas, as regards technical reserves, the same rules may be adopted as in the case of indemnity insurance, namely, they must be located in the country where business is carried on and the rules of that country shall govern the method of calculation, the determination of investment categories and the valuation of assets; whereas, although it is desirable that these various subjects should be coordinated, it is not essential for the purposes of this Directive and may be carried out subsequently;

Whereas it is necessary that insurance undertakings should possess, over and above technical reserves of sufficient amount to meet their underwriting commitments, a supplementary reserve, to be known as the solvency margin, and represented by free assets and by other firm securities, in order to provide against business fluctuations; whereas, in order to ensure that the requirements imposed for such purposes are determined according to objective criteria by which undertakings of the same size will be placed on an equal footing as regards competition, it is desirable to provide that such margin shall be related to the overall volume of business of the undertaking and to the nature and gravity of the risks presented by the various activities falling within the scope of the Directive; whereas this margin should vary according to whether the risks concern investments, death or management only; whereas it should be determined either in terms of mathematical reserves and of the capital which an undertaking has at risk, or of premiums or contributions received, or in terms of reserves only, or of capital managed by the undertaking;

Whereas it is desirable to require a minimum guarantee fund, in order to ensure both that undertakings possess adequate resources when they are set up and that in the subsequent course of business the solvency margin shall in no event fall below a minimum of security;

Whereas it is necessary to make provision for the case where the financial condition of the undertaking becomes such that it is difficult for it to meet its underwriting commitments;

Whereas the coordinated rules concerning the taking-up and pursuit of the business of direct insurance within the Community should, in principle, apply to all undertakings entering the market and, consequently, also to agencies and branches where the head office of the undertaking is situated outside the Community; whereas it is, nevertheless, desirable as regards the methods of supervision to make special provision with respect to such

agencies or branches, in view of the fact that the assets of the undertakings to which they belong are situated outside the Community;

Whereas it is desirable to provide for the conclusion of reciprocal agreements with one or more non-member countries in order to permit the relaxation of such special conditions, while observing the principle that such agencies and branches should not obtain more favourable treatment than undertakings within the Community;

Whereas certain transitional provisions are required in order, in particular, to permit small and medium-sized undertakings already in existence to adapt themselves to the requirements which, subject to Article 53 of the Treaty, are to be introduced by the Member States in pursuance of this Directive;

Whereas it is important to guarantee the uniform application of the coordinated rules and to provide, in this respect, for close collaboration between the Commission and the Member States in this field;

HAS ADOPTED THIS DIRECTIVE:

Title I : General Provisions

Article 1

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

1. The following kinds of insurance where they are on a contractual basis:
  - (a) Life assurance, that is to say, the branch 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 an earlier death, life assurance with return of premiums, marriage assurance, and birth assurance;
  - (b) Annuities;
  - (c) Supplementary insurance carried on by life-assurance undertakings, that is to say, in particular, insurance against personal injury, including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;
  - (d) The type of insurance existing in Ireland and the United Kingdom known as "permanent health insurance not subject to cancellation".
2. The following operations, where they are on a contractual basis, are subject to supervision by the competent administrative authorities for the supervision of private insurance and are authorized in the country concerned:
  - (a) Tontines, that is to say, operations based on actual mortality whereby the whole of the fund accumulated or an annuity is distributed among the survivors or paid to the last survivor of a group of persons;

./.

- (b) Capital redemption operations, that is to say, operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken; included in these operations are "prêts hypothécaires par intervention".
  - (c) Management of group pension funds, that is to say, operations the purpose of which is the making of payment on survival which are not at all times wholly covered by mathematical reserves, and operations which consist in assurance undertakings' managing the investments and capitalizing the reserves of the bodies that effect the payments aforesaid.
3. Where the national law of a Member State so allows, operations relating to human life which are prescribed by or provided for in that State's social-insurance legislation, when these are effected by assurance undertakings, except where they concern compulsory insurance cover.

#### Article 2

This Directive does not apply to:

- 1. Subject to the application of Article 1 (1)(c) of this Directive, the classes designated in the Annex to the first Directive for coordinating the laws, regulations and administrative provisions concerning the taking up and pursuit of activities in direct insurance other than life assurance, adopted by the Council on 24 July 1973, hereinafter referred to as "the first coordinating directive (indemnity insurance)". (1)
- 2. The operations of provident and mutual-benefit institutions which provide benefits varying with the resources available and require their members to contribute at a flat rate.

./.

---

(1) O.J. of the European Communities No L 228, 16 August 1973, p. 3.

3. Subject to further coordination, operations, other than those referred to in paragraph 4 below, for the purpose of providing benefits in respect of paid employees or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or of discontinuance or curtailment of activity.
4. Operations relating to compulsory cover under a membership scheme whether compulsory (including benefits provided in respect of optional or voluntary membership of such scheme) or optional according to the provisions of the law on social insurance, other than the operations referred to in Article 1(3).

### Article 3

This Directive does not apply to:

1. Institutions which undertake to provide benefits in the event of death only, where the amount of such benefits is less than 300 u.a.
2. Mutual associations, where
  - their statutes permit them to call up additional contributions, or to reduce their benefits or to claim assistance from other persons who have undertaken to provide it; and
  - the annual amount of the subscription collected in respect of activities covered by this Directive does not exceed 500.000 units of account.

./.

Article 4

This Directive shall not apply to the "Versorgungsverband deutscher Wirtschaftsorganisationen" unless their statutes are amended as regards capacity.

Article 5

For the purposes of this Directive:

- (a) "Unit of account" means that unit which is defined in Article 4 of the Statute of the European Investment Bank;
- (b) "Matching assets" means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency;
- (c) "Localization of assets" means the existence of assets, whether movable or immovable, within a Member State but shall not be construed as involving a requirement that movable property be deposited or that immovable property be subjected to restrictive measures such as the registration of mortgages. Assets represented by claims against debtors shall be regarded as situated in the Member State where they are to be liquidated.
- (d) "Capital at risk" means the amount payable on death less the mathematical reserve defined in the main contract.

Title II : Rules applicable to undertakings whose head offices are situated within the Community

Section A : Conditions of admission

Article 6

1. Each Member State shall make the taking-up of the activities referred to in this Directive in its territory subject to official authorization.
2. Such authorization shall be sought from the competent authority of the Member State in question by:
  - (a) Any undertaking which establishes its head office in the territory of such state;
  - (b) Any undertaking whose head office is situated in another Member State and which opens a branch or agency in the territory of the Member State in question;
  - (c) Any undertaking which, having received the authorization required under (a) or (b) above, extends its business in the territory of such State to other classes;
  - (d) Any undertaking which, having obtained in accordance with Article 7 (1) an authorization for a part of the national territory, extends its business beyond such part.
3. Member States shall not make an authorization subject to the lodging of a deposit or the provision of security.

Article 7

1. An authorization shall be valid for the entire national territory unless, and in so far as the national legislation permits, the applicant seeks permission to carry out his business only in a part of the national territory.

2. An authorization shall be given for a particular class of insurance.  
It shall cover the entire class, unless the applicant desires to cover only part of the risks pertaining to such class.
3. It shall be open to each Member State to authorize two or more of the classes listed in the Annex, where the national law permits such classes to be dealt in simultaneously.

#### Article 8

1. Each Member State shall require that any undertaking set up in its territory for which an authorization is sought shall:

(a) Adopt one of the following forms:

- in the case of the Kingdom of 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/cooperative vennootschap";

- in the case of Denmark:

"Aktieselskaber" (joint stock companies), "gensidige selskaber" (mutuals);

- in the case of the Federal Republic of Germany:

"Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit",  
"Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen";

- in the case of the French Republic:

for classes I, II, III, V and VI of the Annex, "société anonyme",  
"société à forme mutuelle à cotisations fixes", and for class IV  
of the Annex, "société à forme tontinière";

- in the case of Ireland:

"incorporated companies limited by shares or by guarantee or unlimited";

./.

- in the case of the Italian Republic:

"società per azioni", "società cooperativa", "mutua di assicurazione";  
and public-law institutions within the meaning of Article 1883 of  
the Civil Code;

- in the case of the Grand Duchy of Luxembourg:

"société anonyme", "société en commandite par actions", "association  
d'assurances mutuelles", "société coopérative";

- in the case of the Kingdom of the Netherlands:

"naamloze vennootschap", "onderlinge waarborgmaatschappij",  
"coöperatieve vereniging";

- in the case of the United Kingdom:

"incorporated companies limited by shares or by guarantee or  
unlimited", "societies registered under the Industrial and Provident  
Societies Acts", "societies registered under the Friendly Societies  
Act", Lloyd's underwriters.

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

- (b) Limit its business activities to the activities referred to in this  
Directive and operations directly arising therefrom to the exclusion  
of all other commercial business;
  - (c) Submit a scheme of operations in accordance with the provisions of  
Article 9;
  - (d) Possess the minimum guarantee fund provided for in Article 20 (2).
2. An undertaking seeking an authorization to extend its business to other  
classes or, in the case referred to in Article 6(2)(d), to another part  
of the territory, shall be required to submit a scheme of operations in  
accordance with the provisions of Article 9 as regards such other classes  
or other part of the territory.

./.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 19 and the minimum guarantee fund referred to in Article 20(2)(a).

3. These coordinating measures do not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the approval of the Memorandum or articles of association, general and special policy conditions, technical bases for calculating in particular premiums and mathematical reserves and any other documents necessary for the normal exercise of supervision.
4. The abovementioned provisions may not require that any application for an authorization shall be dealt with in the light of the economic requirements of the market.

#### Article 9

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

- (a) The nature of the risks which the undertaking proposes to cover; the general and special policy conditions which it proposes to use;
  - (b) The technical bases that the undertaking proposes to employ for each type of transaction, including the data needed to calculate premiums and mathematical reserves;
  - (c) The guiding principles as to reinsurance;
  - (d) The items constituting the minimum guarantee fund;
  - (e) Estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them;
  - (f) Forecast annual balance-sheets up to the point where the results of each year's operations cease to show a deficit;
- and, furthermore, for the first four financial years:

./.

- (g) The estimated annual debit and credit items in the profit and loss account, net of transfers and retrocessions for reinsurance but including acceptances for reinsurance and allowing for annual variations in the intangible asset items;
- (h) the estimated funds to cover commitments and the solvency margin.

Article 10

1. Each Member State shall require that an undertaking having its head office in the territory of another Member State and seeking an authorization to open an agency or branch shall:
  - (a) Submit its memorandum and articles of association and a list of its directors and managers;
  - (b) Produce a certificate issued by the competent authorities of the head office country, attesting the classes of insurance which the undertaking is entitled to carry on and that it possesses the minimum guarantee fund or, if higher, the minimum solvency margin calculated in accordance with Article 19, and stating the nature of the risks which it actually covers and the financial resources referred to in Article 11(1)(e);
  - (c) Submit a scheme of operations in accordance with Article 11;
  - (d) Designate an authorized agent having his permanent residence and abode in the host country, and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in its relations with the authorities and courts of the host country; if the agent has a legal personality, it must have its head office in the host country and it must in its turn designate an individual to represent it who complies with the above conditions. The designated agent shall not be refused by the Member State except on grounds relating to repute or technical qualifications such as apply to directors of undertakings whose head offices are situated in the territory of the State in question.

With regard to Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, assured persons must not be more unfavourably treated than if the litigation had been brought against businesses 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.

2. Each Member State shall require that for the purpose of extending the business of the agency or branch, either to other classes or to other parts of the national territory in the case provided for in Article 6 (2)(d), the applicant for the authorization shall submit a scheme of operations in accordance with Article 11 and comply with the conditions contained in (1)(b) above.
3. These coordinating measures do not prevent Member States from enforcing provisions requiring, for all insurance undertakings, approval of the general and special policy conditions, technical bases for calculating premiums and mathematical reserves in particular, and by other documents necessary for the normal exercise of supervision.
4. The abovementioned provisions may not require that any application for an authorization shall be examined in the light of the economic requirements of the market.

#### Article 11

1. The scheme of operations of the agency or branch referred to in Article 10(1)(c) and in 10(2) shall contain the following particulars or proofs concerning:
  - (a) The nature of the commitments which the undertaking proposes to undertake in the host country; the general and special policy conditions which it proposes to use;
  - (b) The technical bases which the undertaking proposes to employ for each type of transaction including the data needed to calculate premiums and mathematical reserves;

- (c) The guiding principles as to reinsurance;
- (d) The state of the solvency margin of the undertaking, referred to in Articles 18 to 20;
- (e) Estimates relating to the expenses of installing the administrative services and the organization for securing business and the financial resources intended to cover them;
- (f) The annual forecast balance sheet until the results of each years' operations cease to show a deficit;
- (g) and, furthermore, for the first four financial years, the estimated annual debit and credit items in the profit and loss account, net of transfers and retrocessions for reinsurance but including acceptances for reinsurance and allowing for annual variations in the intangible asset items.

2. The scheme of operations shall be accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years. If, however, it has not yet been in business for three financial years it shall be required to furnish them only for the financial years completed.

With regard to Lloyd's, the publication of the balance sheet and the profit and loss account shall be replaced by the compulsory presentation of 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 responsibilities incurred as a result of these operations are wholly covered by the assets. These documents must allow authorities to form a view of the state of solvency of the Association.

3. The scheme of operations, together with the observations of the authorities competent to issue authorizations, shall be forwarded to the competent authorities of the head office country. The latter authorities shall communicate their Opinion to the former within three months from the receipt of the documents; if their Opinion has not been communicated upon the expiry of this time, it shall be deemed to be favourable.

Article 12

1. An undertaking which sets up in a Member State may not carry on simultaneously the activities referred to in the Annex to the first directive on the coordination of indemnity insurance and the activities listed in the Annex to this Directive.
2. Any undertaking which, at the time of the entry into force of this Directive, is handling both life assurance and indemnity insurance must, where these activities are being carried out within the Community, provide separate management for each class of insurance in accordance with Article 13.
3. Such an undertaking may extend its activities, within the meaning of Article 10, while handling both classes of insurance, on condition that it complies with Article 13.

Article 13

1. The separate management referred to in Article 12(2) must be organized so that:
  - the simultaneous handling of life assurance and indemnity insurance does not prejudice the interests of the life policyholders;
  - profit on the life assurance side accrue to the benefit of the life policyholders to the extent provided for in the memorandum and articles of association, the general and special policy conditions and the scheme of operations.
2. Separate accounts shall be kept in respect of life assurance and other insurance business, and, particularly, separate balance sheets and separate profit and loss accounts so that the cover for the undertaking's commitments to its life policyholders is readily distinguishable.

./.

Profits, commission for intermediaries and expenditure incurred by the undertaking shall be broken down according to the class of business to which they are attributable and items common to both classes of business shall be entered in accordance with rules for apportionment to be approved by the competent supervisory authority.

3. (a) The assets of the undertaking shall be divided into two portions, the life portion and the indemnity portion, each comprising the assets representing the respective technical reserves, solvency margin and guarantee fund.
- (b) The assets representing the life portion shall be entered daily in a register which shall be subject to supervision by the competent authorities. These assets may be replaced by others of equal value. Each transfer of assets from the life portion to the indemnity portion must be approved a posteriori by the supervisory authority.
- (c) In the event of execution being levied at the suit of one or more individual creditors to enforce claims arising out of life assurance business, the assets representing the life portion shall be applied exclusively in satisfaction of those creditors, and in the event of a winding-up these assets shall be applied in priority to all other claims in satisfaction of all creditors whose claims arise out of life assurance business.

#### Article 14

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

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

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

Section B : Conditions for exercise of business

Article 15

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings.

Article 16

The supervisory authority of the Member State in whose territory the head office of the undertaking is situated must verify the state of solvency of the undertaking with respect to its entire business. The supervisory authorities of the other Member States shall provide the former with all the information necessary to enable such verification to be effected.

Article 17

1. Each Member State in whose territory business is carried on shall require the undertaking to establish sufficient technical reserves, including mathematical reserves.

The amount of such reserves shall be determined according to the rules fixed by the State, or, in the absence of such rules, according to the established practices in such State.

2. Technical reserves, including mathematical reserves, shall be required to be covered by equivalent and matching assets localised in each country where business is carried on. Member States may, however, permit relaxations in the rules as to matching assets and the localization of assets.

Having regard to its special position, the Grand Duchy of Luxemburg may, pending coordination of legislation on the winding-up of undertakings, retain the system of guarantees for technical reserves including mathematical reserves existing at the time of entry into force of this Directive.

.../...

The regulations of the country where the business is carried on shall determine the nature of such assets and, where appropriate, the extent to which they may be used for the purpose of covering the technical reserves, including mathematical reserves, and shall also determine the rules for valuing such assets.

3. If a Member State allows any technical reserves, including mathematical reserves, to be covered by claims against reinsurers, it shall fix the percentage so allowed. In such case, it may not require the assets representing such claims to be localized in its territory, notwithstanding the provisions of paragraph 2.
4. The supervisory authority of the Member State in whose territory the head office of an undertaking is situated shall verify that its balance sheet shows in respect of the technical reserves, including mathematical reserves, assets equivalent to the underwriting liabilities assumed in all the countries where it undertakes business.

#### Article 18

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

The solvency margin shall correspond :

1. 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;
2. to profit reserves appearing in the balance sheet insofar as these reserves may be used to cover any losses which may arise;

.../...

3. upon application, with appropriate supporting evidence by the undertaking:
- a) where the mathematical reserves are calculated on the basis of margins which, allowing for future prospects, are higher than those considered necessary, to an amount equal to the difference between the mathematical reserves calculated on the higher basis and on the basis of margins considered to be necessary ; the latter shall be uniformly fixed by the supervisory authority for all undertakings carrying on business in its territory ; it shall communicate them to the supervisory authorities of other Member States ;
  - b) to an amount equal to 50% of the current value of future profits of the undertaking ; the current value of future profits is obtained by multiplying the estimated annual profit by a factor which represents the average residual duration of the contracts and takes account of their importance ; the estimated annual profit is the average of the profits for the last five years ;
  - c) where Zillmerizing is not practised or where Zillmerizing fails to reach the cost of writing policies included in the premium, to the difference between the mathematical reserve where Zillmerizing is either not practised or only partially practised and a mathematical reserve Zillmerized at a rate equal to the cost of writing policies included in the premium ; however, this difference may not exceed 3.5% where Zillmerization is not practised, or 3.5% less the rate of Zillmerization used, where there is partial Zillmerization, of capital at risk and it shall be reduced, should the occasion arise, by the amount of the undepreciated costs of writing policies appearing in the balance sheet ;
  - d) to any hidden appreciation resulting from under-valuation of asset items and over-valuation of liability items other than mathematical reserves insofar as such appreciation is not exceptional in character.

.../...

Article 19

Subject to the provisions of Article 20 the solvency margin shall be determined as shown below according to the class of insurance practised.

a) For insurance in Class I of the Annex to this Directive, other than that referred to in subparagraphs b) and c) below, it shall be equal to the sum of the following two results :

- first result :

-  $\frac{1}{4}\%$  of the mathematical reserves relating to direct business and reinsurance acceptances ;

- second result :

the figure representing  $3\%$  of the capital at risk for which the undertaking is responsible multiplied by the ratio existing in respect of the last financial year between the amount of capital at risk for which the undertaking remains responsible after transfers and retrocessions for reinsurance and the amount of capital at risk without deducting reinsurance; this ratio may in no case be less than  $50\%$ .

b) For assurance on death, which is temporary or for a period not exceeding five years, referred to in Class I of the Annex to this Directive and for supplementary insurance referred to in Class III, it shall be equal to the result of the following calculation :

- 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 10 million units of account, the second comprising the excess ; 18% and 16% of these portions respectively shall be calculated and added together.

The sum so calculated shall be multiplied 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 and retrocessions for reinsurance and the gross amount of claims ; this ratio may in no case be less than 50%.

- c) For permanent health insurance not subject to cancellation existing in the United Kingdom and Ireland, referred to in Class I of the Annex to this Directive, and for capital redemption operations in Class V, it shall be equal to 4% of the mathematical reserves relating to this type of insurance or operation.
- d) For insurance connected with investment funds referred to in Class II, tontines referred to in Class IV and group pension funds referred to in Class VI, it shall be equal to 1% of the capital managed.

#### Article 20

1. One third of the solvency margin shall constitute the guarantee fund. It shall consist, to the extent of at least 50%, of items listed in Article 18 (1) and (2).
2. a) The guarantee fund may not, however, be less than 600,000 units of account in the case where all or some of the risks are included in one of the classes listed in the Annex.  
b) The minimum guarantee fund referred to in a) should consist of the items listed in Article 18 (1) and (2).

.../...

Article 21

1. Member States shall not prescribe any rules as to the choice of the assets in excess of those representing the technical reserves referred to in Article 17.
2. Subject to the provisions of Article 17 (2), Article 24 (1) and (3) and Article 26 (1) last subparagraph, Member States shall not restrain the free disposal of the assets, whether movable or immovable property, forming part of the assets of authorized businesses.

The Federal Republic of Germany and the Kingdom shall make all necessary provisions to prevent the existence of "Treuhänder" in the former country and "Tillismand" in the latter from restricting the effect of the aforementioned subparagraph.

3. These provisions shall not preclude any measures which Member States, while observing the rules prevailing in the country where the business is carried on, as required under Article 17 (2), and while safeguarding the interests of the insured, are entitled to take as owners or members or associates of the undertakings in question.

Article 22

1. Member States shall gradually reduce the scope of the obligation imposed on undertakings to effect partial reinsurance, in respect of business covered by Article 1, with one or more of the agencies designated by national rules, so as to bring about the complete disappearance of such obligation at the end of the transitional period referred to in Article 33.

.../...

2. The ratio currently in force shall be reduced by 25% forthwith.
3. Moreover, where, for the purpose of determining the proportion of business to be compulsorily reinsured, account is taken of the period of time for which the agency or branch has been established in the host country, account shall also be taken of the financial years during which the undertaking has been carrying on the classes of insurance referred to in Article 1 in the Member State in which the head office is situated. The supervisory authority in that State shall then issue a certificate, of the same kind as that referred to in Article 10 (1) b), in respect of the entire period during which the undertaking has carried on the classes of insurance concerned.

#### Article 23

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation and solvency.
2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.

#### Article 24

1. If an undertaking does not comply with the provisions of Article 17, the supervisory authority of the country where it carries on its business may prohibit the free disposal of assets in that country after having informed the supervisory authorities of the country where the head office is situated of its intention.

.../...

2. For the purposes of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under Article 19, the supervisory authority of the head-office country shall require a plan for the restoration of a sound financial position to be submitted for its approval.
3. If the solvency margin falls below the guarantee fund as defined in Article 20, the supervisory authority of the head-office country shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the authorities of other Member States in whose territories the undertaking is authorized of any measures and the latter shall, at the request of the former, take the same measures.

4. The competent supervisory authorities may further take all measures necessary to safeguard the interests of the insured in the cases provided for in (1) and (3).
5. The supervisory authorities of other Member States in whose territory the undertaking in question has also been authorized shall collaborate for the purpose of implementing the provisions referred to in (1) to (4).

#### Article 25

1. Each Member State shall make it possible for an undertaking to assign all or part of its portfolio of policies if the assignees possess the necessary solvency margin, due account being taken of the assignment.

The supervisory authorities concerned shall consult each other before approving such assignment.

2. Once approved by the competent national authority, such assignment may automatically be relied upon against the subscribers concerned.

.../...

3. Where an undertaking is simultaneously handling life assurance and indemnity insurance, each Member State shall ensure that, in the event of an assignment of all or part of its portfolio, such assignment does not prejudice the interests of the life policy-holders and that in particular the assets and liabilities be transferred separately for each of the classes of insurance concerned.

Section C : Withdrawal of authorization

Article 26

1. The authorization granted by the competent authority of the Member State in whose territory the head office is situated may be withdrawn by such authority if the undertaking :
  - a) no longer fulfils the conditions of admission ;
  - b) has been unable, within the time allowed, to take the measures contained in the restoration plan or finance scheme referred to in Article 24 ;
  - c) fails seriously in its obligations under the national regulations.

In the event of the withdrawal of the authorization, the supervisory authority of the head-office country shall notify such withdrawal to the supervisory authorities of other Member States which have issued an authorization to the undertaking ; they shall, thereupon, also withdraw their authorizations. The supervisory authority of the head-office country shall, in conjunction with such other authorities, take all necessary measures to safeguard the interests of the insured and, in particular, shall restrict the free disposal of the assets of the undertaking if such restriction has not been already imposed in accordance with the provisions of Article 24 (1) and (3), subparagraph 2.

2. An authorization granted to an agency or branch of an undertaking whose head office is situated in another Member State may be withdrawn if the agency or branch :
  - a) no longer fulfils the conditions for admission ;
  - b) fails seriously in its obligations under the regulations of the country where it carries on its business, with respect in particular to the establishment of technical reserves as defined in Article 17.

Before withdrawing the authorization the supervisory authorities of the country where business is carried on shall consult the supervisory authority of the country where the head office is situated. If they deem it necessary to suspend the business of such agency or branch before consultation is concluded, they shall immediately advise the supervisory authority of the country where the head office is situated.

3. Any decision to withdraw an authorization or suspend business shall be supported by precise reasons and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts against such a decision.

Title III : Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community

---

Article 27

1. Each Member State shall make access to the businesses referred to in Article 1 by any undertaking whose head office is outside the Community subject to an official authorization.
2. A Member State may grant an authorization if the 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 such Member State;
  - 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 competent authorities;
  - e) It possesses in the country where it carries on its business assets of an amount equal to at least one half of the minimum amount prescribed in Article 20 (2), in respect of the guarantee fund, and deposits one-fourth of the minimum amount, as security;
  - f) It undertakes to keep a margin of solvency in accordance with the requirements referred to in Article 29;
  - g) It submits a scheme of operations in accordance with the provisions of Article 11 (1) and (2).

Article 28

Member States shall require undertakings to establish adequate technical reserves to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency, or branch covers such technical reserves, including mathematical reserves, by means of assets which are equivalent to such reserves and are, to the extent fixed by the State in question, matching assets.

The law of the Member States shall be applicable to the calculation of technical reserves, the determination of categories of investments, and the valuation of assets.

The Member State in question shall require that the assets representing the technical reserves shall be localized in its territory.

Article 29

1. Each Member State 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 the provisions of Article 19. However, for the purpose of calculating this margin, account shall be taken only of the premiums or contributions, mathematical reserves and capital at risk pertaining to the business effected by the agency or branch concerned.
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 Article 20 (2) a). The initial deposit lodged in accordance with Article 27 (2) e) shall be counted towards such guarantee fund.

.../...

3. The assets representing the solvency margin must be kept within the country where the business is carried on up to the amount of the guarantee fund, and the excess, within the Community.

#### Article 30

1. Any undertaking which, having obtained an authorization from one Member State, obtains an authorization from one or more other Member States to establish other agencies or branches therein may apply for one or more of the following advantages :
  - a) That the solvency margin referred to in Article 29 be calculated in relation to the entire business which it undertakes within the Community; in such case, account shall be taken of the premiums or contributions, mathematical reserves and capital at risk relating to the business effected by all the agencies or branches established within the Community;
  - b) That it be dispensed from lodging the deposit required under Article 27 (2) e), in such States also;
  - c) That the assets representing the guarantee fund be kept in any one of the Member States in which it carries out business.
2. Should at least two of the Member States in question approve the application in whole or in part, the competent authority of the Member State in whose territory the oldest establishment of the applicant is situated shall verify the state of solvency of the undertaking with respect to the entire business carried on by it within the Member States which approve the application. However, at the request of the undertaking and with the unanimous approval

.../...

of the Member States concerned, such verification may be carried out by the competent authority of another Member State. The authority carrying out the verification shall obtain from the other Member States the necessary information regarding the agencies or branches established in their territories.

3. The advantages conferred by this Article may be withdrawn upon the initiative of one or more of the Member States concerned.

#### Article 31

1. Agencies and branches of undertakings referred to in this Title which are established in the territory of a Member State after the entry into force of this Directive in that Member State, shall limit their business either to life assurance or to indemnity insurance.

However, agencies and branches which, at the time of entry into force of this Directive, are handling both classes of business simultaneously, may continue to do so but must comply with Article 13.

2. The provisions of Articles 23 and 24 shall also apply in relation to agencies and branches of undertakings to which this Title applies.

As regards the application of Article 24, the supervisory authority of the oldest establishment or the one that carries out in its place the verification of the overall solvency of branches or agencies shall be assimilated to the authority of the territory in which the head office of a Community undertaking is situated.

.../...

3. In the case of a withdrawal of authorization by the authority referred to in Article 30 (2), this authority shall notify the authorities of the other Member States where the undertaking operates and the latter supervisory authorities shall take the appropriate measures. If the reason for the withdrawal of the authorization is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 30, the Member States which gave their approval shall also withdraw their authorizations.

#### Article 32

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

#### Title IV : Transitional and other provisions

#### Article 33

1. Member States shall allow undertakings referred to in Title II which at the entry into force of the implementing measures to this Directive provide insurance in their territories in one or more of the classes referred to in Article 1 a period of five years, commencing with the date of notification of this Directive, in order to comply with the requirements of Articles 18 to 20.
2. Furthermore, Member States may :
  - a) allow any undertakings referred to in (1), which upon the expiry of the five-year period have not fully established the margin of solvency, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 24, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose;

.../...

- b) exempt undertakings referred to in (1) whose annual premium or contribution income upon the expiry of the period of five years falls short of six times the amount of the minimum guarantee fund required under Article 20 (2) a), from the requirement to establish such minimum guarantee fund before the end of the financial year in respect of which the premium or contribution income is as much as six times such minimum guarantee fund.

The maximum period thus granted to these undertakings to establish a minimum guarantee fund shall in no case exceed ten years from the date of notification of this Directive.

3. Undertakings desiring to extend their operations within the meaning of Article 8 (2) or Article 10 (2) may not do so unless they comply immediately with the rules of this Directive.
4. A company having a structure different from any of those listed in Article 8 may continue, for a period of three years from the notification of this Directive, to carry on its present business in the legal form in which it is constituted at the time of such notification. Undertakings set up in the United Kingdom 'by Royal Charter' or 'by private Act' or 'by special public Act' may continue to carry on their business in their present form for an unlimited period.

Undertakings in Belgium which, in accordance with their objects, carry on the business of life assurance, intervention mortgage loans or savings operations in accordance with No.4 of Article 15 of the provisions relating to the supervision of private savings banks, coordinated by the 'arrêté royal' of 23 June 1967, may continue to undertake such business, excluding savings operations which must cease no later than three years from the date of notification of this Directive.

.../...

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

5. The insurance undertakings referred to in Article 12 (2) shall have five years from the date of notification of this Directive in which to comply with Article 13.
6. At the request of undertakings which fulfil the obligations contained in Articles 17 to 20, Member States shall abolish restrictive measures such as mortgages, deposits or securities established under the current rules.

#### Article 34

Member States shall allow agencies or branches referred to in Title III which, at the entry into force of the implementing measures to this Directive, are undertaking one or more classes referred to in Article 1 and do not extend their business within the meaning of Article 10 (2) a maximum period of five years, from the date of notification of this Directive, in order to comply with the conditions of Article 29.

#### Article 35

During a period which terminates at the time of the entry into force of an agreement concluded with a third country pursuant to Article 32 and at the latest upon the expiry of a period of four years after the notification of this Directive, each Member State may retain in favour of undertakings of that country established in its territory the rules applied to them on 1 January 1973 in respect of matching assets and the localization of technical reserves, provided that notification is given to the other Member States and the Commission and that the limits of relaxations granted pursuant to Article 17 (2) in favour of the undertakings of Member States established in its territory are not exceeded.

Title V : Final provisions

Article 36

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community and of examining any difficulties which may arise in the application of this Directive.

Article 37

1. The Commission shall submit to the Council, within six years from the date of notification of this Directive, a report on the effects of the financial requirements imposed by this Directive on the situation on the insurance markets of the Member States.
2. The Commission shall, as and when necessary, submit interim reports to the Council before the end of the transitional period provided for in Article 33 (1).

Article 38

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

The provisions thus amended shall, subject to Articles 33 to 35, be applied within 30 months from the date of notification.

.../...

Article 39

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

Article 40

The Annex shall form an integral part of this Directive.

Article 41

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

A N N E X

Classification of risks according to  
classes of insurance

- I. Life
- II. Insurance connected with investment funds
- III. Supplementary insurance
- IV. Tontines
- V. Capital redemption operations
- VI. Management of group pension funds