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Amended Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the taking-up and pursuit of the business of Insurance and Reinsurance**

**(SOLVENCY II)**

**(recast)**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

## EXPLANATORY MEMORANDUM

### 1. GENERAL COMMENTS

On 10 July 2007, the Commission adopted Proposal COM (2007)361 (Solvency II Directive Proposal). This proposal consists of a recast of 13 existing Directives in the insurance and reinsurance sector and new solvency provisions (so-called Solvency II).

In the meantime, Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector<sup>1</sup> has been published in the Official Journal and has entered into force on 21 September 2007, i.e. after the date on which the recast proposal was submitted to the legislative authority. Directive 2007/44/EC introduced changes in some Articles of Directives 92/49/EEC, 2002/83/EC and 2005/68/EC. As a consequence, clear discrepancies exist between the texts of Directives 92/49/EEC, 2002/83/EC and 2005/68/EC and the corresponding parts of the recast part of the Solvency II Directive Proposal.

Furthermore, in December 2007, a political agreement was reached in Council and European Parliament on the so-called Rome I Regulation which deals with the law applicable on contractual obligations. This affects the provisions on applicable law and conditions of direct insurance contracts in the recast part of the Solvency II Directive Proposal.

In view of the above the Commission decided to adopt an amended proposal to the Solvency II Directive Proposal adopted in July 2007.

### 2. LEGISLATIVE APPROACH AND LEGAL BASIS

#### a) Legislative approach

The following 14 Directives in the area of life and non-life insurance, reinsurance, insurance groups and winding up were recast into a single text at the occasion of the new Solvency II amendments to be made:

- Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession<sup>2</sup>;
- First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>3</sup>;
- Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance<sup>4</sup>;
- Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>5</sup>;

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<sup>1</sup> OJ L 247, 21.9.2007, p. 1.

<sup>2</sup> OJ 56, 4.4.1964, p. 878. Directive as amended by the Act of Accession 1972.

<sup>3</sup> OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

<sup>4</sup> OJ L 228, 16.8.1973, p. 20.

<sup>5</sup> OJ L 189, 13.7.1976, p. 13.

- Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance<sup>6</sup>;
- Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>7</sup>;
- Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance<sup>8</sup>;
- Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC<sup>9</sup>;
- Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)<sup>10</sup>;
- Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group<sup>11</sup>;
- Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings<sup>12</sup>;
- Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>13</sup>;
- Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance<sup>14</sup>;
- Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector<sup>15</sup>.

As a complete rewrite of the existing Directives would have gone beyond a recast, the recast follows the structure of the existing (re)insurance Directives. The new Solvency II provisions are therefore introduced in different Chapters and Titles of the draft Directive and are shown in grey character. No substantive changes have been made to the existing Directives that have

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<sup>6</sup> OJ L 151, 7.6.1978, p. 25.

<sup>7</sup> OJ L 339, 27.12.1984, p. 21.

<sup>8</sup> OJ L 185, 4.7.1987, p. 77.

<sup>9</sup> OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2005/14/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 14).

<sup>10</sup> OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

<sup>11</sup> OJ L 330, 5.12.1998, p. 1. Directive as last amended by Directive 2005/68/EC (OJ L 323, 9.12.2005, p. 1).

<sup>12</sup> OJ L 110, 20.4.2001, p. 28.

<sup>13</sup> OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

<sup>14</sup> OJ L 323, 9.12.2005, p. 1. Directive as amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

<sup>15</sup> OJ L 247, 21.9.2007, p. 1.

been recast except for those changes that are necessary in order to introduce a new solvency regime.

The proposal applies the 're-casting technique' (Inter-institutional Agreement 2002/C 77/01) which enables substantive amendments to existing legislation without a self-standing amending directive. The recast reduces complexity and makes the EU legislation more accessible and comprehensible. Amendments of a non-substantive nature have been made to a large number of provisions of the existing Directives in order to improve the drafting and readability. Articles or parts of Articles which have become obsolete have been deleted. All changes are clearly marked in the text.

The new solvency provisions are principles based and follow the 4 level structure of the Lamfalussy financial services architecture. The principles will be further developed through implementing measures. The new Lamfalussy architecture will enable the new solvency regime to keep pace with future market and technological developments as well as international developments in accounting and (re)insurance regulation.

#### **b) Legal Basis**

The proposal is based on Articles 47(2) and 55 of the Treaty, which is the legal basis to adopt Community measures aimed at achieving an internal market in financial services. The chosen instrument is a Directive as this is the most appropriate legal instrument to achieve the objectives. The proposed new provisions do not go beyond what it is necessary to achieve the objectives pursued.

### **3. SCOPE OF APPLICATION**

The scope of application of the present Directives has not been changed. The proposal therefore applies to all life and non-life insurance undertakings and reinsurance undertakings. However, the present exclusion of small mutual undertakings has been extended to all small insurance undertakings defined in Article 4, regardless of their legal form. The Directive does not apply to pension funds covered by Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003<sup>16</sup> on the activities and supervision of institutions for occupational retirement provision. A review of this Directive will take place in 2008. At that time, the Commission will examine whether and how suitable solvency requirements can or should be developed for pension funds. Similarly the Directive does not change the regime applicable to financial conglomerates. However, if any issues are identified they will be addressed in the course of the review of the Financial Conglomerates Directive (2002/87/EC) which will take place in 2008.

### **4. COMMENTS ON THE ARTICLES**

The comments only relate to those Articles which are new or which have changed as a result of the introduction of the new solvency rules as well as those relating to changes introduced by the amended proposal as compared to the Solvency II Directive Proposal adopted 10 July 2007.

## **SOLVENCY II**

### **1. Qualitative Requirements and supervision**

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<sup>16</sup> OJ L 235, 23.9.2003, p. 10.

The qualitative requirements and rules on supervision applicable to (re)insurance undertakings ("Pillar II" of the Solvency II framework) are laid down in 2 sections, Supervisory Authorities and General Rules and System of Governance.

### **Supervisory Authorities and General Rules - Articles 27 to 38**

#### *Main objective of supervision – Article 27*

The main objective of (re)insurance regulation and supervision is adequate policyholder protection. Other objectives such as financial stability and fair and stable markets should also be taken into account but should not undermine that main objective.

#### *General principles of supervision – Article 28*

Supervision shall be based on a prospective and risk-oriented approach. Solvency II therefore adopts an economic risk-based approach which allows for a system that reflects the true risk profile of (re)insurance undertakings. That system should rely on sound economic principles and make optimal use of the information provided by financial markets.

Particular care has been taken to ensure that the new solvency regime is not too burdensome for small and medium-sized (re)insurance undertakings. Importance is therefore attached to the principle of proportionality, which applies to all requirements of this Directive but which is particularly relevant for the application of the quantitative and qualitative requirements of the solvency regime and the rules on supervision. It will be further specified in the implementing measures.

#### *Transparency and accountability – Article 30*

Transparency and accountability contributes to the legitimacy and integrity of the supervisory authorities and the credibility of the system of supervision. This Article therefore lays down that supervisory authorities shall conduct their tasks in a transparent and accountable manner. Disclosures foster transparency and allow a meaningful comparison of the approaches adopted by Member States. An important aspect of transparency and accountability is to provide for transparent procedures regarding the appointment and dismissal of the members of the board or managing body of the supervisory authorities.

### *Supervisory powers – Article 34*

In order to ensure the efficiency of supervision, the supervisory authorities must be fully empowered to carry out their tasks. Article 34 therefore sets out that Member States must ensure that supervisory authorities have the power to take any measure necessary to ensure that undertakings comply with the regulatory requirements set by this Directive as well as to prevent and remedy any irregularities. In this context, it is particularly important that supervisory powers are also available with regard to outsourced and sub-outsourced activities. All supervisory powers shall be applied in a timely and proportionate manner.

In order to ensure effective supervision, it is essential that supervision is carried out both on-site and off-site; supervisory authorities are therefore given the power to conduct on-site inspections at the premises of an insurer or reinsurer.

### *Supervisory Review Process – Article 36*

A failure to comply with the qualitative and quantitative requirements may have severe consequences for the financial soundness of an insurer or reinsurer. The supervisory review therefore aims to identify institutions with financial, organisational or other features susceptible to producing a higher risk profile.

Under the Supervisory Review Process (SRP), the supervisory authorities review and evaluate the strategies, processes and reporting procedures established by insurers and reinsurers to comply with this Directive as well as the risks the undertaking faces or may face and its ability to assess those risks. The review also comprises an assessment of the adequacy of the undertakings' methods and practices to identify possible events or future changes in economic conditions that could have unfavourable effects on its overall financial standing. In order to ensure the efficiency of the SRP, it is important that supervisory authorities are given the power to remedy the weaknesses and deficiencies identified in the supervisory review including a follow-up process of their findings.

It is moreover essential that supervisory authorities have appropriate monitoring tools that enable deteriorating financial conditions to be identified and remedied. The results of the SRP are very useful for the supervisory authorities in prioritising future work, to ensure an appropriate degree of consistency in supervisory approaches between supervisory authorities and to provide feedback to the undertaking.

### *Capital add-ons – Article 37*

The starting point for the adequacy of the quantitative requirements in the (re)insurance sector is the solvency capital requirement. Supervisory authorities may therefore require (re)insurance undertakings only under strictly defined exceptional circumstances to have more capital following the Supervisory Review Process. Even though the standard formula aims at capturing the risk profile of most (re)insurance undertakings in the Community, there may be some cases where the standardised approach might not entirely reflect the very specific risk profile of an undertaking.

In case of material deficiencies in the full or partial internal model (see below point 4.) or material governance failures it is essential that the supervisory authorities ensure that the undertaking concerned makes all efforts to remedy the deficiencies that led to the imposition of the capital add-on for the sake of policyholder protection. The supervisory authority is obliged to examine the undertaking's progress in addressing its deficiencies at least once a year. Only in case the deviation of such an undertaking's risk profile is material and the development of a partial or full internal model is inefficient, the capital add-on may have a permanent character.

The more harmonised and economic approach adopted for the (re)insurance sector as compared to the Capital Requirements Directive duly justifies the more harmonised approach of capital increases.

#### *Responsibility of the administrative or management body – Article 40*

(Re)insurance undertakings will be required to meet principles rather than rules, which puts more responsibility on management than is presently the case.

The Directive states clearly that the administrative or management body of the (re)insurance undertaking has the ultimate responsibility for the undertaking's compliance with this Directive.

#### **System of Governance - Articles 41 to 49**

##### *Governance system and general requirements - Article 41*

Consistency of governance requirements across the banking, securities and (re)insurance sectors is essential to ensure cross-sectoral consistency. The governance requirements set out in this Directive aim at achieving this objective.

Robust governance requirements are a pre-requisite for an efficient solvency system. Some risks may only be addressed through governance requirements rather than by setting quantitative requirements. A robust governance system is hence of key importance for the adequate management of the insurer and critical to the effectiveness of the supervisory system.

The governance system includes compliance with the requirements on fit and proper, risk management, the own risk and solvency assessment, internal control, internal audit, the actuarial function and outsourcing. The implementing measures on the governance requirements will specify the proportionality principle.

The identification of governance functions in the Directive should help undertakings in deciding how to implement the governance system. A function is an administrative capacity to undertake particular tasks. The identification of a particular function does not prevent the undertaking from freely deciding how to organise this function in practice unless this is otherwise specified in this Directive. This should not lead to unduly burdensome requirements because account should be taken of the nature, scale and complexity of the operations of the undertaking. The governance functions can therefore be staffed by own staff or can rely on advice from outside experts or can be outsourced to experts within the limits set by this Directive. Furthermore, in smaller and less complex undertakings, more than one function can be carried out by one person or organisational unit.

In order to make the governance system work well, undertakings are required to have written policies in place which clearly set out how they deal with internal control, internal audit, risk management and, where relevant, with outsourcing. It is essential that the administrative or management body is actively involved in the governance system. The written policies should therefore be approved by the administrative or management body and be revised at least annually or before any significant change is implemented in the system. The amendment of the policies prior to the system change is essential because the undertaking would otherwise already be in non-compliance with its internal strategies and processes. It is the role of the supervisory authority in the SRP to review and evaluate the governance system.



### *Own Risk and Solvency Assessment (ORSA) – Article 44*

As part of their risk management system, all (re)insurance undertakings should have, as an integral part of their business strategy, a regular practice of assessing their overall solvency needs with a view to their specific risk profile.

The ORSA has a twofold nature. It is an internal assessment process within the undertaking and is as such embedded in the strategic decisions of the undertaking. It is also a supervisory tool for the supervisory authorities, which must be informed about the results of the own risk and solvency assessment of the undertaking.

The ORSA does not require an undertaking to develop or apply a full or partial internal model. However, if the undertaking already uses an approved full or partial internal model for the calculation of the SCR, the output of the model should be used in the ORSA. The ORSA does not create a third solvency capital requirement. The ORSA should not be overly burdensome on small or less complex undertakings. The supervisory authority reviews the own risk and solvency assessment as part of the supervisory review process of the undertaking. The results of each ORSA conducted shall be reported to the supervisory authority as part of the information to be provided for supervisory purposes under Article 35.

### *Outsourcing – Articles 38 and 48*

As outsourcing is becoming more and more relevant, it is important to adopt a more consistent approach in this area. In order to ensure effective supervision of outsourced activities, it is essential that the supervisory authorities of the outsourcing undertaking have a right to access all relevant data held by the outsourcing service provider as well as the right to conduct on-site inspections of the outsourced activity at the premises of the outsourcing service provider, regardless of whether the latter is a regulated or unregulated entity. In case the activity is outsourced to a service provider in a third country, it is necessary that the supervisory authority of the outsourcing undertaking has the right to access all relevant data held by the outsourcing service provider regardless of whether the latter is a regulated or unregulated entity. Outsourcing also comprises sub-outsourcing.

One way of achieving this, especially if the service provider is an unregulated entity, is paying particular attention to the contract between the outsourcing undertaking and the outsourcing service provider. Supervisory authorities must be informed in an adequate and timely manner prior to the outsourcing of important activities or to any subsequent material changes therein.

The requirements laid down in this Directive take into account the work of the Joint Forum and are consistent with the current rules and practices in the banking sector and the Markets in Financial Instruments Directive (2004/39/EC) and its application to credit institutions.

## **2. Supervisory reporting and public disclosure**

Supervisory reporting and public disclosure constitute "Pillar III" of the Solvency II framework.

### *Information to be provided for supervisory purposes - Article 35*

The proposal essentially maintains the current philosophy of the *acquis*, imposing on undertakings a general requirement to submit any information necessary for the purposes of supervision. However, in line with the Lamfalussy approach, the proposal introduces a number of key principles with which supervisory reporting must comply and allows the adoption of implementing measures with a view to ensuring convergence as appropriate.

### *Public Disclosure - Articles 50 to 55*

The proposal requires undertakings to disclose annually a report covering essential and concise information on their solvency and financial condition. An exception is possible for individual capital add-ons for a transitional period. Undertakings are required to update the information disclosed where appropriate (specific provisions address cases of non compliance with Minimum Capital Requirement or Solvency Capital Requirement), and they are allowed to disclose additional information on a voluntary basis. Undertakings are required to have a policy on public disclosure, and must obtain approval from their administrative or management body on the solvency and financial condition report before publication. Finally, the proposal allows the adoption of implementing measures with a view to ensuring convergence as appropriate.

### **3. Promotion of supervisory convergence – Article 70**

The Financial Service Committee identified the fostering of convergence of supervisory practices as one of the major challenges in the years to come. Even though a common regulatory framework is the basis a true level playing field can only be achieved through more consistent and common decision-making and enforcement practices among supervisors. Supervisory convergence includes in particular common and uniform day-to-day application of Community legislation and enhancing day-to-day consistent supervision and enforcement of the Single Market. Peer reviews and mediation mechanisms can play an important role in the fostering of supervisory convergence.

CEIOPS has a particular role in contributing to the consistent application of this Directive and to the convergence of supervisory practices throughout the Community. This Article therefore sets out that Member States must take the necessary measures to ensure that the supervisory authorities actively engage themselves in the activities of CEIOPS.

### **4. Quantitative requirements**

The quantitative requirements applicable to (re)insurance undertakings ("Pillar I" of the Solvency II framework) are laid down in six sections: valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement, and investments. The Pillar I requirements are based on an economic total balance sheet approach. This approach relies on an appraisal of the whole balance-sheet of insurance and reinsurance undertakings, on an integrated basis, where assets and liabilities are valued consistently. Such an approach implies that the amount of available financial resources of insurance and reinsurance undertakings should cover its overall financial requirements, i.e. the sum of un-subordinated liabilities and capital requirements. As a consequence of this approach, eligible own funds (see below) must be higher than the Solvency Capital Requirement.

#### *Valuation of assets and liabilities – Article 74*

Article 74 introduces valuation standards for all assets and liabilities, based upon the current IFRS definition of fair value. Implementing measures will be developed setting out how the fair value of specific balance-sheet items should be calculated, in order to ensure that these items are valued consistently across all Member States. With respect to liabilities, valuation standards do not take account of own credit standing, whilst with respect to assets, these standards take account of current credit and liquidity characteristics.

### *Technical provisions – Articles 75 to 85*

Technical provisions need to be established in order for the undertaking to fulfil its (re)insurance obligations towards policyholders and beneficiaries. Their calculation will be based on the general provisions set out in Article 75:

- In particular, the calculation of technical provisions will be based on their current exit value. The current exit value reflects the amount an insurance or reinsurance undertaking would expect to have to pay today if it transferred its contractual rights and obligations immediately to another undertaking. The use of current exit value should not be intended to imply that an (re)insurance undertaking could, would or should actually transfer those obligations.
- The calculation of technical provisions must be market-consistent and undertaking-specific information will only be used in the calculation of technical provisions in so far as that information enables (re)insurance undertakings to better capture the characteristics of the underlying insurance portfolio.

Articles 76 to 79 and 81 to 85 describe the calculation of technical provisions. They will be calculated as the sum of a best estimate and a risk margin, except in the case of hedgeable risks arising from (re)insurance obligations (see below):

- The best estimate corresponds to the expected present value of future cash flows, taking into account all the cash in and out flows (adjusted for inflation), required to settle the (re)insurance obligations over their lifetime, including all expenses, future discretionary bonuses, embedded financial guarantees and contractual options. The calculation of the best estimate is to be based on sound actuarial techniques and good quality data and regularly checked against actual experience.
- The risk margin ensures that the overall value of the technical provisions is equivalent to the amount (re)insurance undertakings would expect to have to pay today if it transferred its contractual rights and obligations immediately to another undertaking; or alternatively, the additional cost, above the best estimate, of providing capital to support the (re)insurance obligations over the lifetime of the portfolio.

With respect to hedgeable risks – i.e. a risk that can be effectively neutralised by buying or selling financial instruments – the value of technical provisions is calculated directly, as a whole, and derived using the values of those financial instruments (see Article 76(4)).

With respect to non-hedgeable risks, the risk margin is calculated using the so-called cost-of-capital method (see Article 76(5)). In this case, the cost-of-capital rate used is the same for all undertakings (e.g. fixed percentage) and corresponds to the spread above the risk-free interest rate that a BBB-rated (re)insurance undertaking would be charged to raise eligible own funds.

### *Own funds – Articles 86 to 99*

Own funds correspond to a (re)insurance undertakings' available financial resources which can serve as a buffer against risks and absorb financial losses, where necessary. The determination of the amounts of own funds eligible to cover the two capital requirements is based on a three-step process. Each step corresponds to a subsection: determination of own funds, classification of own funds, eligibility of own funds.

**In a first step**, the amounts of available own funds must be identified. Own funds are the sum of:

- items on the balance-sheet, or "basic own fund items" (see Article 87);

- items not on the balance-sheet, or "ancillary own fund items" (see Article 88).

Basic own funds comprise the economic capital (i.e. the excess of assets over liabilities, valued in accordance with Sections 1 and 2) and subordinated liabilities (as those liabilities can serve as capital, for instance in the case of winding-up).

Ancillary own funds comprise commitments that undertakings can call upon in order to increase their financial resources, such as members' calls and letters of credit. As those ancillary own funds do not fall under the valuation standards provided for in Sections 1 and 2, the determination of their amounts is subject to prior supervisory approval.

**In a second step**, as own fund items possess different qualities and provide for different levels of absorption of losses, those own fund items will be classified into three tiers, depending on their nature and the extent to which they meet five key criteria (i.e. subordination, loss-absorbency, permanence, perpetuity and absence of servicing costs), as set out in Article 93.

The classification of own funds into tiers relies on qualitative criteria to be further specified through implementing measures (see Article 97); however, in order to facilitate that classification, a list of pre-classified items will also be laid down in those implementing measures.

<b>Quality \ Nature</b>	<b>On the balance-sheet (basic own funds)</b>	<b>Off the balance-sheet (ancillary own funds)</b>
<b>High</b>	Tier 1	Tier 2
<b>Medium</b>	Tier 2	Tier 3
<b>Low</b>	Tier 3	–

**In a third step**, as Tier 2 and Tier 3 items do not provide for full absorption of any losses in all circumstances, it seems necessary to limit their recognition for supervisory purposes. As set out in Article 98, two sets of limits apply to available own funds, in order to determine the amounts eligible for supervisory purposes:

- With respect to the Solvency Capital Requirement, the proportion of Tier 1 in the eligible own funds should reach at least 1/3, and the proportion of Tier 3 should be no higher than 1/3.
- With respect to the Minimum Capital Requirement, ancillary own fund items are not eligible, and the proportion of eligible Tier 2 items should be limited to ½.

#### *Solvency Capital Requirement – Articles 100 to 125*

Section 4 on the Solvency Capital Requirement is divided in three parts: the general presentation of that capital requirement, the Solvency Capital Requirement standard formula, and the use of internal models for solvency purposes.

### *General provisions for the Solvency Capital Requirement, using the standard formula or an internal model*

The Solvency Capital Requirement corresponds to the economic capital a (re)insurance undertaking needs to hold in order to limit the probability of ruin to 0.5%, i.e. ruin would occur once every 200 years (see Article 101). The Solvency Capital Requirement is calculated using Value-at-Risk techniques, either in accordance with the standard formula, or using an internal model: all potential losses, including adverse revaluation of assets and liabilities, over the next 12 months are to be assessed. The Solvency Capital Requirement reflects the true risk profile of the undertaking, taking account of all quantifiable risks, as well as the net impact of risk mitigation techniques.

The Solvency Capital Requirement is to be calculated at least once a year, monitored on a continuous basis, and recalculated as soon as the risk profile of the undertaking deviates significantly; the Solvency Capital Requirement is to be covered by an equivalent amount of eligible own funds (see Article 100).

### *Solvency Capital Requirement standard formula*

Articles 103 to 109 describe the objectives, architecture and overall calibration of the Solvency Capital Requirement standard formula. The "modular" architecture, based on linear aggregation techniques, is further specified in Annex IV of the Directive. The risks captured in the various modules and sub-modules of the standard formula are defined in Articles 13, 104 and 105. The detailed specifications of those modules and sub-modules will be adopted through implementing measures, as they are likely to evolve over time.

The Solvency Capital Requirement standard formula aims at achieving the right balance between risk-sensitivity and practicality. It allows both for the use of undertaking-specific parameters, where appropriate (see Article 104(7)), and standardised simplifications for SMEs (see Article 108).

As the new valuation standards take due account of credit and liquidity characteristics of assets, as the Solvency Capital Requirement captures all quantifiable risks, and as all investments are subject to the "prudent person" principle, quantitative investment limits and asset eligibility criteria will not be maintained. However, in the light of market developments, if new risks emerge which are not covered by the Solvency Capital Requirement standard formula, Article 109(2) enables the Commission to adopt temporary implementing measures laying down investment limits and asset eligibility criteria whilst the formula is being updated.

### *Internal models*

Articles 110 to 125 describe the requirements applying to (re)insurance undertakings using or wishing to use a full or partial internal model in the calculation of the Solvency Capital Requirement. Before approval by the supervisory authorities is given to use an internal model, (re)insurance undertakings must submit an application (see Article 110) approved by the administrative or management body of the undertaking (see Article 114), demonstrating that they meet the use test, statistical quality standards, calibration standards, validation standards, and documentation standards (see Articles 118 to 123). Supervisory authorities must decide whether to accept or reject the application within six months of receipt of a complete application from an (re)insurance undertaking.

With respect to the use of partial internal models additional requirements are introduced that are designed to prevent cherry-picking by (re)insurance undertakings (see Article 111). In addition, Article 112 enables the Commission to adopt implementing measures adapting the

standards, set out in Articles 118 to 123, with respect to partial internal models in order to take account of the limited scope of those models.

Article 117 gives supervisory authorities the power to require an (re)insurance undertaking calculating the Solvency Capital Requirement using the standard formula, to develop a partial or full internal model in the event that the Solvency Capital Requirement standard formula does not accurately capture the risk profile of that undertaking.

#### *Minimum Capital Requirement – Articles 126 to 129*

The Minimum Capital Requirement represents a level of capital below which policyholders' interests would be seriously endangered if the undertaking were allowed to continue to operate. In the event that the Minimum Capital Requirement is breached ultimate supervisory action is triggered, i.e. authorisation is withdrawn (see Articles 127 and 137). Undertakings are therefore required to hold eligible basic own funds to cover the Minimum Capital Requirement (see Article 126). As ultimate supervisory action may require authorisation by national courts, the Minimum Capital Requirement needs to be calculated quarterly, in accordance with a simple and robust formula, on the basis of auditable data.

Article 127 on the specific design and calibration of the Minimum Capital Requirement includes a short list of general principles. Pending the results of QIS3, an open approach has been adopted, as no final decision has been reached regarding the Minimum Capital Requirement.

In particular, the text enables the two following approaches to be tested:

- the Minimum Capital Requirement calculated using a simplified version of the standard formula (modular approach) taking account of life underwriting risk, non life underwriting risk and market risk, and calibrated to a one-year 90% Value-at-Risk;
- Minimum Capital Requirement calculated as a percentage of the Solvency Capital Requirement (compact approach), calibrated to 1/3 of the Solvency Capital Requirement.

For example, Article 127(1) point (c) enables the Minimum Capital Requirement to be calibrated to a confidence level between 80% (as 1/3 of an Solvency Capital Requirement calibrated to a 99.5% VaR is equivalent to a 80% VaR, assuming a normal distribution) and 90% (the level used in the modular approach being tested).

So as to smooth the transition to the new regime (see Article 129), (re)insurance undertakings that comply with Solvency I at the date of entry into force of this Directive, but do not comply with the Minimum Capital Requirement, have one year in order to bring themselves into compliance with the new regime.

#### *Investments – Articles 130 to 133*

All investments held by (re)insurance undertakings (i.e. assets covering technical provisions, plus assets covering Solvency Capital Requirement and free assets) must be invested, managed and monitored in accordance with the "prudent person" principle laid down in Article 130. The prudent person principle requires (re)insurance undertakings to invest assets in the best interest of policyholders, adequately match investments and liabilities, and pay due attention to financial risks, such as liquidity and concentration risk.

## 5. GROUP SUPERVISION - ARTICLES 210 TO 268

### *Introduction*

The way (re)insurance groups will be supervised is a crucial factor for the success of the single market and the Solvency II regime. The proposal therefore seeks to find appropriate ways of streamlining the supervision of (re)insurance groups in the EU.

### *Main Improvements Applicable to All (Re)insurance Groups*

- **Group supervisor – identification and appointment:** the proposal introduces the concept of "group supervisor". For each group, a single authority will be appointed with concrete coordination and decision powers. The criteria retained are inspired by the Financial Conglomerates Directive, but the proposal introduces more flexibility where appropriate.
- **Group supervisor – rights and duties:** the group supervisor is given primary responsibility for all key aspects of group supervision (group solvency, intragroup transactions, risk concentration, risk management and internal control). Such responsibility must be exercised in cooperation and consultation with local supervisors. In addition, for each group, coordination arrangements must be established between all supervisors involved.
- **Other key measures to ensure efficient group supervision:** the proposal introduces, in line with the Financial Conglomerates Directive, a complete set of provisions obliging all supervisors involved to exchange information automatically (essential information) or on request (relevant information), to consult each other prior to important decisions, and to handle properly requests for verification of information.
- **Group solvency – choice of method:** with a view to ensuring as much as possible that groups will benefit from diversification effects, the proposal expresses a strong preference for the consolidation method.
- **Group solvency – group internal model:** the proposal allows a group to apply for the permission to use an internal model for the calculation of the group Solvency Capital Requirement and the solo Solvency Capital Requirement of related entities. The procedure is much inspired by the Capital Requirements Directive (2006/48/EC - Article 129). CEIOPS can be consulted at the request of the parent undertaking or of any of the supervisors involved.
- **Supervision of subgroups:** with a view to limiting the burden for groups, the proposal essentially states a) that group supervision should normally be carried out only at the top level in the EU, and b) that Member States may allow their supervisory authorities to carry out group supervision at the top level in a Member State. In practice, this should reduce the number of levels of supervision to a maximum of 3 (EU group, national subgroups, solo entities), which is in line with the Capital Requirements Directive.
- **Implementing measures:** with a view to ensuring as much as possible convergence in decisions and practices of group supervisors, the proposal contains for several key provisions a reference to further implementing measures.

### *Additional Improvements Applicable to Groups Using Group Support*

The proposal introduces an innovative regime which seeks to facilitate capital management by groups, essentially by a) allowing under certain conditions a parent undertaking to use declarations of group support to meet part of the Solvency Capital Requirement of its subsidiaries, and b) introducing derogations to some Articles on solo supervision, where

appropriate. The proposal allows the adoption of implementing measures, and provides for a review of the whole system five years after the transposition of the Directive.

#### *General Observation: Group Supervision Not only Supplementary*

The current EU acquis considers group supervision as merely supplementary to solo supervision (solo supervision is carried out in the same way on all entities, whether or not they are part of a group, and group supervision is merely added to solo supervision). The proposal changes substantially that philosophy: the group text contains many provisions which will directly influence the way in which solo supervision is carried out on entities belonging to a group. With a view to reflecting explicitly that fundamental development, the word "supplementary" has been deleted from all places (including the title).

#### **DIRECTIVE 2007/44/EC**

The changes introduced by Directive 2007/44/EC were introduced in the recast of the Solvency II Directive Proposal, taking into account the new regulatory procedure of scrutiny for the respective comitology provision. The following recital, Articles and Annexes of the Solvency II Directive Proposal have therefore been amended: recital 91, Articles 13, 24, 56-62, 310 – 312 and Annexes VI and VII. Moreover Article 305 and recitals 47 and 48 were introduced.

#### **DRAFT ROME I REGULATION**

In December 2007, a political agreement was reached in Council and European Parliament on the so-called Rome I Regulation which deals with the law applicable on contractual obligations. This draft Regulation is foreseen to be adopted in spring 2008. In order to take account of these latest developments, the provisions on applicable law and conditions of direct insurance contracts in Chapter I of TITLE II were deleted. A cross-reference was added in Article 176 to the draft Rome I Regulation setting out that any Member State not subject to that Regulation shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of the Regulation. Moreover, recital 60 was added.

#### **OTHER CHANGES**

At the occasion of preparing an amended proposal some technical improvements to the recast suggested by the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission, provided for by the above mentioned Inter-institutional Agreement, were taken up in order to take account of better regulation principles. As a consequence, minor changes have been made in recitals 29, 45, 51 and 76 as well as the following Articles and Annexes: 2, 6, 13, 14, 18, 23, 24, 26, 29, 32, 37, 39, 53, 61, 64, 66, 68, 69, 71, 73, 117, 137, 138, 139, 140, 141, 148, 150, 153, 154, 156, 157, 160, 162, 163, 164, 166, 173, 175, 177, 183, 188, 198, 200, 202, 204, 208, 214, 216, 236, 238, 239, 249, 262, 264, 273, 278, 281, 283, 289, 290, 291, 303, text between Articles 304 and 305, 306, 309, text in TITLE IV, Annexes I, II, III and VII.

The following Articles and Annex of the repealed Directives remain unchanged as compared to the current legal situation: 3, 5, 9, 11, 12, 16, 19-22, 24-26, 32, 33, 56-57, 60, 62-65, 68, 69, 72, 145, 147, 149, 151, 152, 154, 155, 157-159, 166-169, 172-174, 177, 178-187, 189, 191-194, 196-207, 269-279, 281, 282, 284-297, 300-302, 305, 307, 309 and Annex I.

## **6. IMPLEMENTING MEASURES**

The Directive confers implementing powers on the Commission. The cases in which implementing powers have been conferred are specifically listed in each relevant Article. In



exercising these implementing powers, the Commission will be assisted by the European Insurance and Occupational Pensions Committee set up by Commission Decision 2004/9/EC. The measures to be adopted by the Commission will be subject to the advisory procedure or the regulatory procedure with scrutiny laid down in Articles 3, 5(a)(1) to (4), and 7 of Decision 1999/468/EC.

The implementing measures will be used to further define the principles set out in this Directive so as to enhance harmonisation and supervisory convergence. They will be developed on the basis of mandates given by the Commission to CEIOPS and will be subject to consultation with stakeholders and to an impact assessment.

Amended Proposal for a

**DIRECTIVE .../.../EC OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**of [...]**

~~concerning life assurance~~ ☒ **on the taking-up and pursuit of the business of Insurance  
and Reinsurance** ☒

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty establishing the European Community, and in particular  
Articles 47(2) and 55 thereof,  
Having regard to the proposal from the Commission<sup>17</sup>,  
Having regard to the opinion of the European Economic and Social Committee<sup>18</sup>,  
After consulting the Committee of the Regions<sup>19</sup>,  
Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>20</sup>,  
Whereas:

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↓ new

(1) A number of substantial changes are to be made to the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>21</sup>, Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance<sup>22</sup>, Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance<sup>23</sup>, the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct

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<sup>17</sup> OJ C [...].

<sup>18</sup> OJ C [...].

<sup>19</sup> OJ C [...].

<sup>20</sup> OJ C [...].

<sup>21</sup> OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

<sup>22</sup> OJ L 151, 7.6.1978, p. 25.

<sup>23</sup> OJ L 185, 4.7.1987, p. 77.

insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC<sup>24</sup>, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)<sup>25</sup>, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group<sup>26</sup>, Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings<sup>27</sup>, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>28</sup>, Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC<sup>29</sup> and Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluating criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector<sup>30</sup>. In the interests of clarity those Directives should be recast.

- (2) In order to facilitate the taking up and pursuit of the activities of insurance and reinsurance, it is necessary to eliminate the most serious differences between the laws of the Member States as regards the rules to which insurance and reinsurance undertakings are subject. A legal framework should therefore be provided for insurance and reinsurance undertakings to conduct insurance business throughout the internal market thus making it easier for insurance and reinsurance undertakings with head offices in the Community to cover commitments and risks situated therein
- (3) It is in the interests of the proper functioning of the internal market that coordinated rules be established relating to the supervision of insurance groups and, with a view to the protection of creditors, to the reorganisation and winding-up proceedings in respect of insurance undertakings.
- (4) It is appropriate that certain undertakings which provide insurance services are not covered by the system established by this Directive due to their size, their legal status, their nature - as being closely linked to public insurance systems- or the specific services they offer. It is further desirable to exclude certain institutions in several Member States whose business covers a very limited sector only and is restricted by law to a specific territory or to specified persons.

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<sup>24</sup> OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2005/14/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 14).

<sup>25</sup> OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

<sup>26</sup> OJ L 330, 5.12.1998, p. 1. Directive as last amended by Directive 2005/68/EC (OJ L 323, 9.12.2005, p. 1).

<sup>27</sup> OJ L 110, 20.4.2001, p. 28.

<sup>28</sup> OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

<sup>29</sup> OJ L 323, 9.12.2005, p. 1. Directive as amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

<sup>30</sup> OJ L 247, 21.9.2007, p. 1.

- (5) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability<sup>31</sup>, the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts<sup>32</sup>, the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles<sup>33</sup>, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC<sup>34</sup> and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>35</sup> lay down general rules in the fields of accounting, motor insurance liability, financial instruments and credit institutions and provide for definitions in those areas. It is appropriate that certain of those definitions apply for the purposes of this Directive.
- (6) The taking up of insurance or of reinsurance activities should be subject to prior authorisation. It is therefore necessary to lay down the conditions and the procedure for the granting of that authorisation as well as for any refusal.
- (7) Since this Directive constitutes an essential instrument for the achievement of the internal market insurance and reinsurance undertakings authorised in their home Member States should be allowed to carry on, throughout the Community, any or all of their activities by establishing branches or by providing services. It is therefore appropriate to bring about such harmonisation as is necessary and sufficient to achieve the mutual recognition of authorisations and supervisory systems, and thus a single authorisation which is valid throughout the Community and which allows the supervision of an undertaking to be carried out by the home Member State.
- (8) Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive)<sup>36</sup> lays down rules on the appointment of claims representatives. Those rules should apply for the purposes of this Directive.
- (9) Reinsurance undertakings should limit their objects to the business of reinsurance and related operations. Such a requirement should not prevent a reinsurance undertaking from carrying on activities such as the provision of statistical or actuarial advice, risk analysis or research for its clients. It may also include a holding company function and

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<sup>31</sup> OJ L 103, 2.5.1972, p. 1. Directive as last amended by Directive 2005/14/EC (OJ L 149, 11.6.2005, p. 14).

<sup>32</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

<sup>33</sup> OJ L 8, 11.1.1984, p. 17. Directive as last amended by Directive 2005/14/EC (OJ L 149, 11.6.2005, p. 14).

<sup>34</sup> OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

<sup>35</sup> OJ L 177, 30.6.2006, p. 1. Directive amended by Commission Directive 2007/18/EC (OJ L 87, 28.3.2007, p. 9).

<sup>36</sup> OJ L 181, 20.7.2000, p. 65. Directive as last amended by Directive 2005/14/EC(OJ L 149, 11.6.2005, p. 14).

activities with respect to financial sector activities within the meaning of Article 2 (8) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council<sup>37</sup>. In any case, this requirement does not allow the carrying on of unrelated banking and financial activities.

- (10) The protection of policyholders presupposes that insurance and reinsurance undertakings are subject to effective solvency requirements. In light of market developments the current system is no longer adequate. It is therefore necessary to introduce a new regulatory framework.
- (11) In line with the latest developments in risk management, in the context of the International Association of Insurance Supervisors, the International Accounting Standards Board and the International Actuarial Association and with recent developments in other financial sectors an economic risk-based approach should be adopted which provides incentives for insurance and reinsurance undertakings to properly measure and manage their risks. Harmonisation should be increased by providing specific rules for the valuation of assets and liabilities, including technical provisions.
- (12) The new solvency regime should not be too burdensome for small and medium-sized insurance undertakings.
- (13) The main objective of insurance and reinsurance regulation and supervision is adequate policyholder protection. Financial stability and fair and stable markets are other objectives of insurance and reinsurance regulation and supervision which should also be taken into account but should not undermine the main objective.
- (14) The supervisory authorities of the Member States should therefore have at their disposal all means necessary to ensure the orderly pursuit of business by insurance and reinsurance undertakings throughout the Community whether carried on under the right of establishment or the freedom to provide services. In order to ensure the effectiveness of the supervision all actions taken by the supervisory authorities should be proportionate to the nature and the complexity of the risks inherent to the business of an insurance or reinsurance undertaking, regardless of the importance of the undertaking concerned for the over-all financial stability for the market.
- (15) Supervisory authorities should be able to obtain from insurance and reinsurance undertakings the information which is necessary for the purposes of supervision.
- (16) The supervisory authorities of the home Member State should be responsible for monitoring the financial health of insurance and reinsurance undertakings. To this end they should carry out regular reviews and evaluations.
- (17) The starting point for the adequacy of the quantitative requirements in the insurance sector is the Solvency Capital Requirement. Supervisory authorities should therefore impose a capital add-on to the Solvency Capital Requirement only under strictly defined exceptional circumstances following the supervisory review process. The Solvency Capital Requirement standard formula is intended to reflect the risk profile

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<sup>37</sup> OJ L 35, 11.2.2003, p. 1. Directive as amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

of most insurance and reinsurance undertakings. However, there may be some cases where the standardised approach does not adequately reflect the very specific risk profile of an undertaking. When such a deviation of an undertaking's risk profile is material and the development of a partial or full internal model is inefficient, the capital add-on may have a permanent character. In case of material deficiencies in the full or partial internal model or material governance failures the supervisory authorities should ensure that the undertaking concerned makes all efforts to remedy the deficiencies that led to the imposition of the capital add-on.

- (18) Some risks may only be properly addressed through governance requirements rather than through the quantitative requirements reflected in the Solvency Capital Requirement. An effective governance system is therefore essential for the adequate management of the insurance undertaking and for the regulatory system.
- (19) All insurance and reinsurance undertakings should have, as an integrated part of their business strategy, a regular practice of assessing their over-all solvency needs with a view to their specific risk profile. The results of each assessment should be reported to the supervisory authority as part of the information to be provided for supervisory purposes.
- (20) In order to ensure effective supervision of outsourced activities, it is essential that the supervisory authorities of the outsourcing insurance or reinsurance undertaking have access to all relevant data held by the outsourcing service provider regardless of whether the latter is a regulated or unregulated entity as well as the right to conduct on-site inspections. In order to take account of market developments and to ensure that the conditions for outsourcing continue to be complied with, the supervisory authorities should be informed prior to the outsourcing of important activities. These requirements take into account the work of the Joint Forum and are consistent with the current rules and practices in the banking sector and the Markets in Financial Instruments Directive and its application to credit institutions.
- (21) In order to guarantee transparency insurance and reinsurance undertakings should disclose at least annually essential information on their solvency and financial condition. Undertakings should be allowed to disclose additional information on a voluntary basis.
- (22) Provision should be made for exchanges of information between the supervisory authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. It is therefore necessary to specify the conditions under which those exchanges of information should be possible. Moreover, where information may be disclosed only with the express agreement of the supervisory authorities, those authorities should be enabled, where appropriate, to make their agreement subject to compliance with strict conditions.
- (23) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC<sup>38</sup> should play an important role in this respect and report regularly on the progress made.

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<sup>38</sup> OJ L 3, 7.1.2004, p. 30.

- (24) In order to limit the administrative burden and avoid duplication of tasks, supervisory authorities and national statistical authorities should cooperate and exchange information.
- (25) For the purposes of strengthening the supervision of insurance and reinsurance undertakings and the protection of policyholders, the statutory auditors within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC<sup>39</sup> should have a duty to report promptly, any facts which are likely to have a serious effect on the financial situation or the administrative organisation of an insurance or a reinsurance undertaking.
- (26) Insurance undertakings pursuing both life and non-life activities should manage those activities separately, in order to protect the interests of life policyholders. In particular, those undertakings should be subject to the same capital requirements as those applicable to an equivalent insurance group, made up of a life insurance undertaking and a non-life undertaking, taking into account the increased transferability of capital in the case of composite insurance undertakings.
- (27) The assessment of the financial position of insurance and reinsurance undertakings should rely on sound economic principles and make optimal use of the information provided by financial markets, as well as generally available data on insurance technical risks.
- (28) Valuation standards for supervisory purposes should be compatible with international accounting developments, to the extent possible, so as to limit the administrative burden on insurance or reinsurance undertakings.
- (29) In accordance with that approach, capital requirements should be covered by own funds, whether on or off the balance-sheet items. Since all financial resources do not provide full absorption of losses in the case of winding-up and on a going-concern basis, own fund items should be classified in accordance with quality criteria, and the eligible amount of own funds to cover capital requirements should be limited accordingly. The limits applicable to own fund items should only apply to determine the solvency standing of insurance and reinsurance undertakings, and should not further restrict the freedom of those undertakings with respect to their internal capital management.
- (30) In order to allow insurance and reinsurance undertakings to meet their commitments towards policyholders and beneficiaries, Member States should require those undertakings to establish adequate technical provisions. The calculation of those technical provisions should be harmonised throughout the Community in order to achieve better comparability and transparency.
- (31) The calculation of technical provisions should be consistent with the valuation of assets and other liabilities, market consistent and in line with international developments in accounting and supervision.
- (32) The amount of technical provisions should reflect the characteristics of the underlying insurance portfolio. Undertaking-specific information should therefore only be used in

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<sup>39</sup> OJ L 157, 9.6.2006, p. 87.

their calculation insofar as that information enables insurance and reinsurance undertakings to better reflect the characteristics of the underlying insurance portfolio.

- (33) It is necessary that the expected present value of insurance liabilities is calculated on the basis of current and credible information and realistic assumptions, taking account of financial guarantees and options in insurance or reinsurance contracts, to deliver an economic valuation of insurance or reinsurance obligations. The use of effective and harmonised actuarial techniques should be required.
- (34) In order to reflect the specific situation of small and medium sized undertakings, simplified approaches to the calculation of technical provisions should be provided for.
- (35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policyholders.
- (36) The Solvency Capital Requirement should reflect a level of eligible own funds that enables insurance and reinsurance undertakings to absorb significant losses and that gives reasonable assurance to policyholders and beneficiaries that payments will be made as they fall due.
- (37) In order to promote good risk management, and align regulatory capital requirements with industry practices, the Solvency Capital Requirement should be determined as the economic capital to be held by insurance and reinsurance undertakings in order to ensure that ruin occurs no more often than once every 200 years. That economic capital should be calculated on the basis of the true risk profile of those undertakings, taking account of the impact of possible risk mitigation techniques, as well as diversification effects.
- (38) Provision should be made to lay down a standard formula for the calculation of the Solvency Capital Requirement, to enable all insurance and reinsurance undertakings to assess their economic capital. For the structure of the standard formula, a modular approach should be adopted, which means that the individual exposure to each risk category should be assessed in a first step and then aggregated in a second step. Where the use of undertaking-specific parameters allows for the true underwriting risk profile of the undertaking to be better reflected, this should be allowed, provided such parameters are derived using a standardised methodology.
- (39) In order to reflect the specific situation of small and medium sized undertakings, simplified approaches to the calculation of the Solvency Capital Requirement in accordance with the standard formula should be provided for.
- (40) In accordance with the risk-oriented approach to the Solvency Capital Requirement it should be possible, in specific circumstances, to use partial or full internal models for the calculation of that requirement instead of the standard formula. In order to provide policyholders and beneficiaries with an equivalent level of protection, such internal models should be subject to prior supervisory approval on the basis of harmonised processes and standards.
- (41) As a matter of principle, the new risk-based approach does not comprise the concept of quantitative investment limits and asset eligibility criteria. It should however be



possible to introduce investment limits and asset eligibility criteria to address risks which are not adequately covered by a sub-module of the standard formula.

- (42) When the amount of eligible basic own funds falls below the Minimum Capital Requirement, the authorisation of insurance and reinsurance undertakings should be withdrawn, if those undertakings are unable to re-establish the amount of eligible basic own funds at the level of the Minimum Capital Requirement within a short period of time.
- (43) It is necessary that the Minimum Capital Requirement is calculated in accordance with a simple formula, on the basis of data which can be audited.
- (44) Insurance and reinsurance undertakings should have assets of sufficient quality to cover their overall financial requirements. All investments held by insurance and reinsurance undertakings should be managed in accordance with the "prudent person" principle.
- (45) Member States should not require insurance and reinsurance undertakings to invest their assets in particular categories of assets, as such a requirement could be incompatible with the liberalisation of capital movements provided for in Article 56 of the Treaty.
- (46) It is necessary to prohibit any provisions enabling Member States to require pledging of assets covering the technical provisions of an insurance or reinsurance undertaking, whatever form this requirement might take, when the insurer is reinsured by an insurance or reinsurance undertaking authorised pursuant to this Directive, or by a third-country undertaking where the supervisory regime of that third country has been deemed equivalent.
- (47) The legal framework has so far provided neither detailed criteria for a prudential assessment of a proposed acquisition nor a procedure for their application. A clarification of the criteria and the process of prudential assessment is therefore needed to provide the necessary legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof. These criteria and procedures have been introduced by Directive 2007/44/EC. As regards insurance and reinsurance these provisions should therefore be codified and integrated into this Directive.
- (48) Maximum harmonisation throughout the Community of these procedures and prudential assessments is therefore critical. However, the provisions on qualifying holdings should not prevent the Member States from requiring that the supervisory authorities are to be informed of acquisitions of holdings below the thresholds laid down in those provisions, so long as a Member State imposes no more than one additional threshold below 10 % for this purpose. Nor should it prevent the supervisory authorities from providing general guidance as to when such holdings would be deemed to result in significant influence.
- (49) In view of the increasing mobility of European citizens, motor liability insurance is increasingly being offered on a cross-border basis. To ensure the continued proper functioning of the green card system and the agreements between the national bureaux of motor insurers, it is appropriate that Member States are able to require insurance undertakings providing motor liability insurance in their territory by way of provision of services to join and participate in the financing of the national bureau as well as of the guarantee fund set up in that Member State. The Member State of provision of services should require undertakings which provide motor liability insurance to

appoint a representative in its territory to collect all necessary information in relation to claims and to represent the undertaking concerned.

- (50) Within the framework of an internal market it is in the interest of policyholders that they should have access to the widest possible range of insurance products available in the Community. The Member State of the commitment or the Member State in which the risk is situated should therefore ensure that there is nothing to prevent the marketing within its territory of all the insurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in that Member State and in so far as the general good is not safeguarded by the rules of the home Member State.
- (51) Provision should be made for a system of sanctions to be imposed when, in the Member State of the commitment or in which the risk is situated, an insurance undertaking does not comply with any applicable provisions protecting the general good.
- (52) In an internal market for insurance, consumers have a wider and more varied choice of contracts. If they are to benefit fully from this diversity and from increased competition, they should be provided with whatever information is necessary before the conclusion of the contract and throughout the term of the contract to enable them to choose the contract best suited to their needs.
- (53) An insurance undertaking offering assistance contracts should possess the means necessary to provide the benefits in kind which it offers within an appropriate period of time. Special provisions should be laid down for calculating the Solvency Capital Requirement and the absolute floor of the Minimum Capital Requirements which such undertaking should possess.
- (54) The effective pursuit of Community co-insurance business for activities which are by reason of their nature or their size likely to be covered by international co-insurance should be facilitated by a minimum of harmonisation in order to prevent distortion of competition and differences in treatment. In this context, the leading insurance undertaking should assess claims and fix the amount of technical provisions. Moreover, special co-operation should be provided for in the Community co-insurance field both between the supervisory authorities of the Member States and between those authorities and the Commission.
- (55) In the interest of the protection of insured persons, national law concerning legal expenses insurance should be harmonised. Any conflicts of interest arising, in particular from the fact that the insurance undertaking is covering another person or is covering a person in respect of both legal expenses and any other class of insurance should be precluded as far as possible or be able to be resolved. To this end, a suitable level of protection of policyholders can be achieved by different means. Whichever solution is adopted, the interest of persons having legal expenses cover should be protected by equivalent safeguards.
- (56) Conflicts between insurance undertakings covering legal expenses and insured persons should be settled in the fairest and speediest manner possible. It is therefore appropriate that Member States provide for an arbitration procedure or a procedure offering comparable guarantees.
- (57) In some Member States, private or voluntary health insurance serves as a partial or complete alternative to health cover provided for by the social security systems. The particular nature of such health insurance, distinguishes it from other classes of

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

- (58) To this end some Member States have adopted specific legal provisions. To protect the general good, it should be possible to adopt or maintain such legal provisions in so far as they do not unduly restrict the right of establishment or the freedom to provide services, it being understood that such provisions should apply in an identical manner. Those legal provisions may differ in nature according to the conditions in each Member State. The objective of protecting the general good may also be achieved by requiring undertakings offering private health cover or health cover taken out on a voluntary basis to offer standard policies in line with the cover provided by statutory social security schemes at a premium rate at or below a prescribed maximum and to participate in loss compensation schemes. As a further possibility, it may be required that the technical basis of private health cover or health cover taken out on a voluntary basis be similar to that of life insurance.
- (59) Host Member States should be able to require any insurance undertaking which offers, within their territories, compulsory insurance against accidents at work at its own risk to comply with the specific provisions laid down in their national law on such insurance. However, such a requirement should not apply to the provisions concerning financial supervision, which should remain the exclusive responsibility of the home Member State.
- (60) Whereas those Member States not subject to the application of Regulation [ROME I] should apply the provisions of that Regulation in order to determine the law applicable to contracts of insurance falling within the scope of Article 7 of the Regulation.
- (61) Appropriate rules should be provided for special purpose vehicles which assume risks from insurance and reinsurance undertakings without being an insurance or reinsurance undertaking. Recoverable amounts from a special purpose vehicle should be considered as amounts deductible under reinsurance or retrocession contracts.
- (62) Due to the special nature of finite reinsurance activities, Member States should ensure that insurance and reinsurance undertakings concluding finite reinsurance contracts or pursuing finite reinsurance activities can properly identify measure and control the risks arising from those contracts or activities.
- (63) In order to take account of the international aspects of reinsurance, provision should be made to enable the conclusion of international agreements with a third country aimed at defining the means of supervision over reinsurance entities which conduct business in the territory of each contracting party. Moreover, a flexible procedure should be provided for to make it possible to assess prudential equivalence with third countries on a Community basis, so as to improve liberalisation of reinsurance services in third countries, be it through establishment or cross-border provision of services.

- (64) Measures concerning the supervision of insurance and reinsurance undertakings in a group should enable the authorities supervising an insurance or reinsurance undertaking to form a more soundly based judgment of its financial situation.
- (65) Such group supervision should take into account insurance holding companies and mixed-activity insurance holding companies to the extent necessary. However, this Directive should not in any way imply that Member States are required to apply supervision to those undertakings considered individually.
- (66) Whilst the supervision of individual insurance and reinsurance undertakings remains the essential principle of insurance supervision it is necessary to determine which undertakings fall under the scope of supervision at group level.
- (67) Group supervision should apply in any case at the level of the ultimate participating undertaking which has its head office in the Community. Member States should however be able to allow their supervisory authorities to apply group supervision at a limited number of lower levels, where they deem it necessary.
- (68) It is necessary to calculate solvency at group level for insurance and reinsurance undertakings forming part of a group.
- (69) Insurance and reinsurance undertakings belonging to a group should be able to apply for the approval of an internal model to be used for the solvency calculation at both group and individual levels.
- (70) It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. In order to assess the need for and prepare any possible future revision of the group support regime, the Commission should report on the rules of the Member States and the practices of the supervisory authorities in this field.
- (71) The solvency of a subsidiary insurance or reinsurance undertaking of an insurance holding company, third-country insurance or reinsurance undertaking may be affected by the financial resources of the group of which it is a part and by the distribution of financial resources within that group. The supervisory authorities should therefore be provided with the means of exercising group supervision and of taking appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is or may be jeopardised.
- (72) Risk concentrations and intra-group transactions can affect the financial position of insurance or reinsurance undertakings. The supervisory authorities should therefore be able to exercise general supervision over certain types of such risk concentrations and intra-group operations and take appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is or may be jeopardised.
- (73) Insurance and reinsurance undertakings within a group should have appropriate governance systems which should be subject to supervisory review.
- (74) All insurance or reinsurance groups subject to group supervision should have a group supervisor appointed from among the supervisory authorities involved. The rights and

duties of the group supervisor should comprise appropriate coordination and decision-making powers. The authorities involved in the supervision of insurance and reinsurance undertakings belonging to the same group should establish coordination arrangements.

- (75) The supervisory authorities should have access to all the information relevant to the exercise of group supervision. Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.
- (76) Insurance and reinsurance undertakings which are part of a group, the head of which is outside the Community should be subject to equivalent and appropriate group supervisory arrangements. It is therefore necessary to provide for transparency of rules and exchange of information with third-country authorities in all relevant circumstances.
- (77) Since national legislation concerning reorganisation measures and winding-up proceedings is not harmonised it is appropriate, in the framework of the Internal Market, to ensure the mutual recognition of reorganisation measures and winding-up legislation of the Member States concerning insurance undertakings as well as the necessary cooperation taking into account the need for unity, universality, coordination and publicity for such measures and the equivalent treatment and protection of insurance creditors.
- (78) It should be ensured that reorganisation measures which were adopted by the competent authority of a Member State in order to preserve or restore the financial soundness of an insurance undertaking and to prevent as much as possible a winding-up situation, produce full effects throughout the Community. However, the effects of any such reorganisation measures as well as winding-up proceedings vis-à-vis third countries should not be affected.
- (79) A distinction should be made between the competent authorities for the purposes of reorganisation measures and winding-up proceedings and the supervisory authorities of the insurance undertakings.
- (80) The definition of “branch” for insolvency purposes, should, in accordance with existing insolvency principles, take account of the single legal personality of the insurance undertaking. However, the legislation of the home Member State should determine the manner in which the assets and liabilities held by independent persons who have a permanent authority to act as agent for an insurance undertaking are to be treated in the winding-up of that insurance undertaking.
- (81) Conditions should be laid down under which winding-up proceedings which, without being founded on insolvency, involve a priority order for the payment of insurance claims, fall within the scope of this Directive. Claims by the employees of an insurance undertaking arising from employment contracts and employment relationships should be capable of being subrogated to a national wage guarantee scheme. Such subrogated claims should benefit from the treatment determined by the home Member State's law (*lex concursus*).
- (82) Reorganisation measures do not preclude the opening of winding-up proceedings. Winding-up proceedings should therefore be able to be opened in the absence of, or following, the adoption of reorganisation measures and they may terminate with composition or other analogous measures, including reorganisation measures.

- (83) Only the competent authorities of the home Member State should be empowered to take decisions on winding-up proceedings concerning insurance undertakings. The decisions should produce their effects throughout the Community and should be recognised by all Member States. The decisions should be published in accordance with the procedures of the home Member State and in the Official Journal of the European Union. Information should also be made available to known creditors who are resident in the Community who should have the right to lodge claims and submit observations.
- (84) All the assets and liabilities of the insurance undertaking should be taken into consideration in the winding-up proceedings.
- (85) All the conditions for the opening, conduct and closure of winding-up proceedings should be governed by the law of the home Member State.
- (86) In order to ensure coordinated action amongst the Member States the supervisory authorities of the home Member State and those of all the other Member States should be informed as a matter of urgency of the opening of winding-up proceedings.
- (87) It is of utmost importance that insured persons, policyholders, beneficiaries and any injured party having a direct right of action against the insurance undertaking on a claim arising from insurance operations be protected in winding-up proceedings, it being understood that such protection does not include claims which arise not from obligations under insurance contracts or insurance operations but from civil liability caused by an agent in negotiations for which, according to the law applicable to the insurance contract or operation, the agent himself is not responsible under such insurance contract or operation. In order to achieve that objective, Member States should be provided with a choice between equivalent methods to ensure special treatment for insurance creditors, neither of those methods impeding a Member State from establishing a ranking between different categories of insurance claims. Furthermore, an appropriate balance should be ensured between the protection of insurance creditors and other privileged creditors protected under the legislation of the Member State concerned.
- (88) The opening of winding-up proceedings should involve the withdrawal of the authorisation to conduct business granted to the insurance undertaking unless this has already occurred.
- (89) Creditors should have the right to lodge claims or to submit written observations in winding-up proceedings. Claims by creditors resident in a Member State other than the home Member State should be treated in the same way as equivalent claims in the home Member State without any discrimination on the grounds of nationality or residence.
- (90) In order to protect legitimate expectations and the certainty of certain transactions in Member States other than the home Member State, it is necessary to determine the law applicable to the effects of reorganisation measures and winding-up proceedings on pending lawsuits and on individual enforcement actions arising from lawsuits.
- (91) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the

procedures for the exercise of implementing powers conferred on the Commission<sup>40</sup>. In particular power should be conferred on the Commission to adopt measures concerning the adaptation of Annexes and measures specifying in particular the supervisory powers and actions to be taken and laying down more detailed requirements in areas such as the governance system, public disclosure, assessment criteria in relation to qualifying holdings, calculation of technical provisions and capital requirements, investment rules and group supervision. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, and to supplement it by the addition of new non-essential elements they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

- (92) Since the objectives of the action to be taken cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (93) The provisions of Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession<sup>41</sup>, Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life insurance<sup>42</sup>, Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>43</sup> and Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life<sup>44</sup> have become obsolete and should therefore be repealed.
- (94) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (95) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VI, Part B,

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<sup>40</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

<sup>41</sup> OJ 56, 4.4.1964, p. 878. Directive as amended by the Act of Accession 1972.

<sup>42</sup> OJ L 228, 16.8.1973, p. 20.

<sup>43</sup> OJ L 189, 13.7.1976, p. 13.

<sup>44</sup> OJ L 339, 27.12.1984, p. 21.

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↓ 2002/83/EC (adapted)

HAVE ADOPTED THIS DIRECTIVE:

## TITLE I

### ⊗ GENERAL RULES ON THE TAKING-UP AND PURSUIT OF DIRECT INSURANCE AND REINSURANCE ⊗

#### CHAPTER I

### ⊗ SUBJECT MATTER, SCOPE AND ⊗ DEFINITIONS ~~AND SCOPE~~

#### SECTION 1 - SUBJECT MATTER AND SCOPE

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↓ 2002/83/EC Art. 2 (adapted)

#### Article 1

##### ⊗ Subject matter ⊗

This Directive ~~concerns~~ ⊗ lays down rules concerning the following: ⊗

- (1) ~~the taking-up and pursuit~~ ⊗, within the Community, ⊗ of the self-employed ~~activity~~ ⊗ activities ⊗ of direct insurance ~~carried on by undertakings which are established in a Member State or wish to become established there in the form of the activities defined below~~ ⊗ and reinsurance; ⊗
  - ⊗ (2) the ~~supplementary~~ supervision in the case of insurance and reinsurance groups; ⊗
  - ⊗ (3) the reorganisation and winding-up of direct insurance undertakings. ⊗
- 

↓ 84/641/EEC Art. 1 and  
2002/83/EC Art. 2 (adapted)

#### Article 2

##### ⊗ Scope ⊗

1. This Directive ~~concerns the taking-up and pursuit of the self-employed activity of~~ ⊗ shall apply to ⊗ direct ⊗ life and non-life ⊗ insurance, ~~including the provision of assistance referred to in paragraph 2, carried on by~~ undertakings which are established in the territory of a Member State or which wish to become established there.



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↓ 2005/68/EC Art. 1 (adapted)

~~1. This Directive lays down rules for the taking up and pursuit of the self-employed activity of~~ ☒ It shall also apply to ☒ reinsurance ~~carried on by reinsurance undertakings,~~ which conduct only reinsurance activities, and which are established in ☒ the territory of ☒ a Member State or ☒ which ☒ wish to become established there~~in~~ ☒ with the exception of Title IV ☒ .

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↓ 84/641/EEC Art. 1 (adapted)

2. ☒ For the purposes of the first subparagraph of paragraph 1 non-life insurance shall include ☒ ~~the assistance activity shall be the~~ ☒ which is ☒ assistance provided for persons who get into difficulties while travelling, while away from home or while away from their ~~permanent~~ ☒ habitual ☒ 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 benefits in kind may also be effected by means of the staff and equipment of the person providing them.

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

- ~~3. The classification by classes of the activity referred to in this Article appears in the Annex.~~
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↓ 2002/83/EC (adapted)

⇒ new

- ☒ 3. As far as life insurance is concerned this Directive shall apply to the following: ☒
- (a) ~~the following kinds of assurance~~ ☒ life insurance activities ☒ where they are on a contractual basis:
- (~~ai~~) life ~~assurance~~ ☒ insurance ☒ , ~~that is to say, the class of assurance which comprises, in particular,~~ assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;
  - (~~bi~~) annuities;
  - (~~eiii~~) supplementary insurance ☒ underwritten in addition to life 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;~~

- (~~iv~~) the ~~type of~~ ☒ permanent health ☒ insurance ☒ not subject to cancellation currently ☒ existing in Ireland and the United Kingdom ~~known as permanent health insurance not subject to cancellation~~;
- (b) ~~2~~ the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the ~~administrative~~ authorities responsible for the supervision of private insurance:
- (~~ai~~) ~~tontines~~ ☒ operations ☒ whereby associations of subscribers are set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased ☒ (tontines) ☒ ;
- (~~aii~~) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;
- (~~aiii~~) management of group pension funds, ~~i.e. operations consisting, for the undertaking concerned, in managing~~ ☒ comprising ☒ the ☒ management of ☒ investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
- (~~div~~) the operations referred to in point (~~aiii~~) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;
- (~~ev~~) the operations carried out by ~~assurance~~ ☒ life insurance ☒ undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French «Code des assurances»~~;~~
- ~~3~~ (c) ~~O~~ Operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, ~~when~~ ☒ in so far as ☒ they are effected or managed ☒ by life insurance undertakings ☒ at their own risk ~~by assurance undertakings~~ in accordance with the laws of a Member State.

↓ 73/239/EEC Art. 2(1)(d) and  
2002/83/EC Art. 3(4) (adapted)  
⇒ new

## ☒ SECTION 2 - EXCLUSIONS FROM SCOPE ☒

### ☒ SUBSECTION 1 - GENERAL ☒

#### Article 3

##### ☒ Statutory systems ☒

~~subject to the application of~~ ☒ Without prejudice to point (c) of ☒ Article 2(3), ☒ this Directive shall not apply to ☒ insurance forming part of a statutory system of social security;

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↓ new

## Article 4

### Exclusion from scope due to size

1. Without prejudice to Articles 5 to 10 this Directive shall not apply to insurance undertakings whose annual premium income does not exceed EUR 5 million.
  2. If the amount set out in paragraph 1 is exceeded for three consecutive years this Directive shall apply from the fourth year.
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↓ 73/239/EEC Art. 2 (adapted)

## ☒ SUBSECTION 2 – NON – LIFE ☒

### Article 5

#### ☒ Operations ☒

☒ For non-life insurance undertakings, ☒ ~~the~~ this Directive ~~does~~ ☒ shall ☒ not apply to

~~1. The following kinds of insurance:~~

~~(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, tontines, marriage assurance, and birth assurance;~~

~~(b) Annuities;~~

~~(c) 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;~~

~~(e) The type of insurance existing in Ireland and the United Kingdom known as «permanent health insurance not subject to cancellation».~~

~~2. The following operations:~~

- ~~(a1)~~ ~~€~~capital redemption operations, as defined by the law in each Member State;
- ~~(b2)~~ ~~€~~operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;
- ~~(e3)~~ ~~€~~operations carried out by organizations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

↓ 87/343/EEC Art. 1.1 (adapted)

~~(4)~~ ~~Pending further coordination,~~ export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

↓ 84/641/EEC Art. 2 (adapted)

⇒ new

## Article 6

### ⊗ Assistance ⊗

⊗ 1. This Directive shall not apply to ⊗ ~~The~~ assistance activity ⊗ which fulfils all the following conditions: ⊗

~~(a) in which liability is limited to the following operations~~ ⊗ the assistance is ⊗ provided in the event of an accident or breakdown involving a road vehicle ~~which normally~~ ⊗ when the accident or breakdown ⊗ occurs in the territory of the Member State of the undertaking providing cover;

⊗ (b) the liability for the assistance is limited to the following operations: ⊗

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

(ii) 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;

(iii) if provided for by the Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State;

(c) ~~unless such operations are~~ ⊗ the assistance is not ⊗ carried out by an undertaking subject to this Directive.

2. In the cases referred to in ~~the first two indents~~ points (i) and (ii) of paragraph 1(b), the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover ~~(a)~~ shall not apply where the ~~latter is a body of which the~~ beneficiary is a member ⊗ of the body providing cover ⊗ 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 country concerned on the basis of a reciprocal agreement; ~~(b) shall not preclude the provision of such assistance in~~ ⊗ or, in the case of ⊗ Ireland and the United Kingdom ⊗, where the assistance operations are provided ⊗ by a single body operating in both States.

⊗ 3. This Directive shall not apply in the case of operations as ⊗ ~~In the circumstances~~ referred to in ~~the third indent~~ point (iii) of paragraph 1(b), 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, ~~and~~ ~~the~~ vehicle, possibly accompanied by the driver and passengers, ~~may be~~ ~~is~~ conveyed to their home, point of departure or original destination within either territory.

4. ~~Moreover, the~~ This ~~Directive does~~ shall ~~not concern~~ apply to ~~assistance operations carried out~~ by the Automobile Club of the Grand Duchy of Luxembourg where the ~~on the occasion of an~~ accident ~~to~~ or the breakdown of a road vehicle ~~has occurred outside the territory of the Grand Duchy of Luxembourg~~ and ~~consisting~~ the assistance consists ~~in conveying the vehicle which has been involved in an~~ that ~~accident or~~ breakdown ~~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 this Directive may engage in the activity referred to under this point only if they have received authorization for class 18 in point A of the Annex without prejudice to point C of the said Annex. In that event this Directive shall apply to the operations in question.~~

↓ 2002/13/EC Art. 1.1 (adapted)

~~This Directive shall not apply to undertakings which fulfil all the following conditions:~~

~~the undertaking does not pursue any activity falling within the scope of this Directive other than the one described in class 18 in point A of the Annex;~~

~~this 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 EUR 200000.~~

## Article 7

### ~~and~~ Mutual undertakings ~~and~~

1. ~~This Directive shall not apply to mutual associations which fulfil all the following conditions:~~

~~(a) the articles of association must contain provisions for calling up additional contributions or reducing their benefits;~~

~~(b) their business does not cover liability risks unless these constitute ancillary cover within the meaning of point C of the Annex I or credit and suretyship risks;~~

~~(c) the annual contribution income for the activities covered by this Directive must not exceed EUR 5 million; and~~

~~(d) at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association.~~

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↓ 73/239/EEC Art. 3 (adapted)

~~2.~~ This Directive shall not, ~~moreover,~~ apply to mutual ~~associations~~  undertakings carrying on non-life insurance activities and  which have concluded with other ~~associations of this nature~~  mutual undertakings  an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the ~~concessionary~~  accepting  undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the ~~concessionary~~  accepting  undertaking shall be subject to the rules of this Directive.

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↓ 73/239/EEC Art. 4 (adapted)

## Article 8

### Institutions

This Directive shall not apply to the following institutions  carrying on non-life insurance activities  unless their statutes or the law are amended as regards capacity:

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↓ 84/641/EEC Art. 4 (adapted)

(~~1~~) *In Denmark,* ~~Falcks Redningskorps A/S, København~~  Danmark  ;

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↓ 73/239/EEC Art. 4 (adapted)

(~~2~~) *In Germany,*

~~The following institutions under public law enjoying a monopoly (Monopolanstalten):~~

~~1. Badische Gebäudeversicherungsanstalt, Karlsruhe,~~

~~2. Bayerische Landesbrandversicherungsanstalt, Munich,~~

~~3. Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, Munich,~~

~~4. Braunschweigische Landesbrandversicherungsanstalt, Brunswick,~~

~~5. Hamburger Feuerkasse, Hamburg,~~

~~6. Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt,~~

~~7. Hessische Brandversicherungsanstalt, Kassel,~~

~~8. Hohenzollernsche Feuerversicherungsanstalt, Sigmaringen,~~

~~9. Lippische Landesbrandversicherungsanstalt, Detmold,~~

~~10. Nassauische Brandversicherungsanstalt, Wiesbaden,~~

~~11. Oldenburgische Landesbrandkasse, Oldenburg,~~

~~12. Ostfriesische Landschaftliche Brandkasse, Aurich,~~

~~13. Feuersozietät Berlin, Berlin,~~

~~14. Württembergische Gebäudebrandversicherungsanstalt, Stuttgart.~~

~~However, territorial capacity shall not be regarded as modified in the case of a merger between such institutions which has the effect of maintaining for the benefit of the new institution the territorial capacity of the institutions which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these institutions takes over in respect of the same territory one or more of the classes of another such institution.~~

~~The following semi-public institutions:~~

~~1.(a) Postbeamtenkrankenkasse,~~

~~2.(b) Krankenversorgung der Bundesbahnbeamten;~~

~~(b) In France~~

~~The following institutions:~~

~~1. Caisse départementale des incendies des Ardennes,~~

~~2. Caisse départementale des incendies de la Côte d'Or,~~

~~3. Caisse départementale des incendies de la Marne,~~

~~4. Caisse départementale des incendies de la Meuse,~~

~~5. Caisse départementale des incendies de la Somme,~~

~~6. Caisse départementale grêle du Gers,~~

~~7. Caisse départementale grêle de l'Hérault;~~

~~(e3) In Ireland,  the  Voluntary Health Insurance Board;~~

↓ Act of Accession of Spain and Portugal Art. 26 and Annex I, p. 156 (adapted)  
⇒ new

~~(e4) In Spain,~~

~~The following institutions:~~

~~1. Comisaría de Seguro Obligatorio de Viajeros,~~

~~2.  the  Consorcio de Compensación de Seguros;~~

~~3. Fondo Nacional de Garantía de Riesgos de la Circulación.~~

↓ 73/239/EEC Art. 4

~~(e5) In Italy,~~

~~The Cassa di Previdenza per l'assicurazione degli sportivi (Sportass) ~~is~~~~

~~(e) In the United Kingdom, The Crown Agents;~~

### ⊠ SUBSECTION 3 - LIFE ⊠

#### Article 9

##### ⊠ Operations and ⊠ ~~Activities and bodies excluded~~

⊠ As far as life insurance undertakings are concerned, ⊠ ~~this Directive shall not concern~~  
⊠ apply to the following operations and activities ⊠ :

~~1. subject to the application of Article 2(1)(c), the classes designated in the Annex to Directive 73/239/EEC;~~

- (1) ~~2.~~ operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;
- (2) ~~3.~~ operations carried out by organisations other than undertakings referred to in Article 2, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;
- (3) ~~8.~~ the pension activities of pension insurance undertakings prescribed in the Employees Pension Act (~~TEEL~~TyEL) and other related Finnish legislation provided that:

(a) pension insurance companies which already under Finnish law are obliged to have separate accounting and management systems for their pension activities ~~will furthermore, as from the date of accession~~ ⊠ 1 January 1995 ⊠ , set up separate legal entities for carrying out these activities;

(b) the Finnish authorities ~~shall~~ allow in a non-discriminatory manner all nationals and companies of Member States to perform according to Finnish legislation the activities specified in Article 2 related to this exemption whether by means of ~~the~~ ownership or participation in an existing insurance company or group ~~or~~ ⊠ or by means of ⊠ creation or participation of new insurance companies or groups, including pension insurance companies ~~;~~

~~(c) the Finnish authorities will submit to the Commission for approval a report within three months from the date of accession, stating which measures have been taken to separate TEL activities from normal insurance activities carried out by Finnish insurance companies in order to conform to all the requirements of this Directive.~~

#### Article 10

##### ⊠ Organisations, undertakings and institutions ⊠

⊠ As far as life insurance is concerned this Directive shall not apply to the following organisations, undertakings and institutions: ⊠



- (1) ~~§~~ organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;

~~6. mutual associations, where:~~

~~the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and~~

~~the annual contribution income for the activities covered by this Directive does not exceed EUR 5 million for three consecutive years; If this amount is exceeded for three consecutive years this Directive shall apply with effect from the fourth year.~~

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

- (2) ~~7.~~ the «Versorgungsverband deutscher Wirtschaftsorganisationen» in Germany unless its statutes are amended as regards the scope of its ~~activities~~ ⇨ capacity ⇨ ~~...~~

↓ 2005/68/EC Art. 1 (adapted)

## ☒ SUBSECTION 4 - REINSURANCE ☒

### Article 11

#### ☒ Reinsurance ☒

~~2.~~ ☒ As far as reinsurance is concerned ☒ ~~this~~ Directive shall not apply to ~~the following:~~

- ~~(a) insurance undertakings to which Directives 73/239/EEC or 2002/83/EC apply;~~
- ~~(b) activities and bodies referred to in Articles 2 and 3 of Directive 73/239/EEC;~~
- ~~(c) activities and bodies referred to in Article 3 of Directive 2002/83/EC;~~

(d) the activity of reinsurance conducted or fully guaranteed by the government of a Member State when this is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

↓ 2005/68/EC Art. 62 (adapted)

### Article 12

#### Reinsurance undertakings closing their activity

1. Reinsurance undertakings which by 10 December 2007 have ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to this Directive.
2. Member States shall draw up ~~the~~ ☒ a ☒ list of the reinsurance undertakings concerned and ~~they shall~~ communicate that list to all the other Member States.

↓ 98/78/EC Art. 1 and  
2001/17/EC Art. 2 (adapted)

### SECTION 3 - DEFINITIONS

#### Article 13

#### Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) ~~insurance undertaking~~ means a direct life or non-life insurance undertaking which has received official authorisation in accordance with Article 14 ~~6~~ of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;

↓ 98/78/EC Art. 1 (b) (adapted)  
⇒ new

(b) ~~non-member~~ third-country insurance undertaking means an insurance undertaking which would require authorisation in accordance with Article 14 ~~6~~ of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC if it had its registered head office in the Community;

↓ 2005/68/EC Art. 2(1)(c) and  
Art. 59(2)(a) (adapted)

(c) ~~reinsurance undertaking~~ means an undertaking which has received official authorisation in accordance with Article 14 ~~3~~ of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 to carry on reinsurance activities;

↓ 2005/68/EC Art. 59(2)(b)  
(adapted)

(d) ~~non-member~~ third-country reinsurance undertaking means a reinsurance undertaking which would require authorisation in accordance with Article 14 ~~3~~ of Directive 2005/68/EC if it had its head office in the Community;

↓ 2005/68/EC Art. 2(1) (adapted)

(e) ~~reinsurance~~ means either of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking;

(b) in the case of the association of underwriters known as Lloyd's, ~~reinsurance also means~~ the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

~~(e) «establishment» means the head office or a branch of a reinsurance undertaking, account being taken of point (d);~~

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↓ 92/49/EEC Art. 1 (c) (adapted)

~~(e)~~ (e) ~~home Member State shall mean~~ ☒ means any of the following: ☒

☒ (a) for non-life insurance, ☒ the Member State in which the head office of the insurance undertaking covering ☒ the ☒ risk is situated;

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↓ 2002/83/EC Art. 1(1)(e)  
(adapted)

~~(e)~~ (e) ~~«home Member State» shall mean~~ ☒ for life insurance, ☒ the Member State in which the head office of the ~~assurance~~ ☒ insurance ☒ undertaking covering the commitment is situated;

---

↓ 2005/68/EC Art. 2(1)(f)  
(adapted)

~~(f)~~ (f) ~~«home Member State» means~~ ☒ for reinsurance, ☒ the Member State in which the head office of the reinsurance undertaking is situated;

---

↓ 92/49/EEC Art. 1(d) and (e)  
(adapted)

~~(d) Member State of the branch shall mean the Member State in which the branch covering a risk is situated;~~

~~(e) Member State of the provision of services shall mean the Member State in which a risk is situated, as defined in Article 2 (d) of Directive 88/357/EEC, if it is covered by an insurance undertaking or a branch situated in another Member State;~~

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↓ 2005/68/EC Art. 2(1) (adapted)

~~(g) «Member State of the branch» means the Member State in which the branch of a reinsurance undertaking is situated;~~

~~(h)~~ (h) ~~«host Member State»~~ means the Member State ☒ other than the home Member State ☒ in which ☒ an insurance or ☒ a reinsurance undertaking has a branch or provides services;

---

↓ 2005/68/EC Art. 59(2)(a)  
(adapted)

~~(k)~~ (k) ~~competent~~ ☒ ~~supervisory~~ ☒ ~~authorities~~ means the national authorities which are empowered by law or regulation to supervise insurance ~~undertakings~~ or reinsurance undertakings;

↓ 2002/83/EC Art. 1(1) (adapted)

~~(b) «branch» shall mean an agency or branch of an assurance undertaking;~~

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

↓ 2005/68/EC Art. 2(1) (adapted)

(49) «branch» means an agency or a branch of a  an insurance or  reinsurance undertaking  which is located in the territory of a Member State other than the home Member State  ;

↓ 92/49/EEC Art. 1 (adapted)

~~(b) «branch» shall mean an agency or branch of an insurance undertaking, having regard to Article 3 of Directive 88/357/EEC;~~

↓ 2001/17/EC Art. 2 (adapted)

~~(b) «branch» means any permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which carries out insurance business;~~

↓ 88/357/EEC Art. 2 (adapted)

⇒ new

~~(a) «first Directive» means:~~

~~Directive 73/239/EEC;~~

~~(b) «undertaking»:~~

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

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

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

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

~~(c) «establishment»:~~

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

(10) ~~«Member State where the risk is situated»~~ means  any of the following  ⇒ as of the date of conclusion of the non-life insurance contract ⇐ :

- (a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
- (b) the Member State of registration, where the insurance relates to vehicles of any type;
- (c) the Member State where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;
- (d)  in all cases not explicitly covered by points (a), (b) or (c),  the Member State ~~where~~  in which either of the following is situated: 
  - (i) the habitual residence of  the policyholder; ~~has his habitual residence or,~~
  - (ii) if the policyholder is a legal person, the ~~Member State where the latter's~~ establishment, to which the contract relates, ~~is situated, in all cases not explicitly covered by the foregoing indents;~~

~~(e) «Member State of establishment» means:~~

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

~~(f) «Member State of provision of services» means:~~

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

↓ 2002/83/EC Art. 1(1) (adapted)  
⇒ new

~~(e) «establishment» shall mean the head office, an agency or a branch of an undertaking;~~

~~(d) «commitment» shall mean a commitment represented by one of the kinds of insurance or operations referred to in Article 2;~~

~~(f) «Member State of the branch» shall mean the Member State in which the branch covering the commitment is situated;~~

(§11) ~~«Member State of the commitment» shall mean~~ means the Member State  in which any of the following is situated  ⇒ as of the date of conclusion of the life insurance contract: ⇐

(a) ~~where the policyholder has his/her~~ habitual residence  of the policyholder;  ~~or;~~

(b) if the policyholder is a legal person, the ~~Member State where the latter's~~ establishment, to which the contract relates, ~~is situated;~~

~~(h) «Member State of the provision of services» shall mean the Member State of the commitment, if the commitment is covered by an assurance undertaking or a branch situated in another Member State;~~

---

↓ 98/78/EC Art. 1(d)

(~~12~~) *parent undertaking* means a parent undertaking within the meaning of Article 1 of Council Directive 83/349/EEC<sup>45</sup> ~~and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;~~

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↓ 98/78/EC Art. 1(e) (adapted)

(~~13~~) *subsidiary undertaking* means ~~any~~  a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC  , including subsidiaries thereof  ~~and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the parent undertaking which is at the head of those undertakings;~~

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↓ 92/49/EEC Art. 1(f),  
2002/83/EC Art. 1(1)(i) and  
2005/68/EC Art. 2(1) (i) (adapted)

(~~14~~) *«control»* means the relationship between a parent undertaking and a subsidiary, as ~~defined~~  set out  in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

---

↓ 95/26/EC Art. 2(1) and  
2002/83/EC Art. 1(1)(r) (adapted)

(~~15~~) *«close» links shall mean* means a situation in which two or more natural or legal persons are linked by ~~any~~  control or

(i) participation, ~~which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;~~ or

(ii) control, ~~which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.~~

~~A~~ A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship ~~shall also be regarded as constituting a close link between such persons;~~

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<sup>45</sup> OJ L 193, 18.7.1983, p. 1.

↓ 2005/68/EC Art. 2(1)(n)(i)  
(adapted)

~~(n) «close links» means a situation in which two or more natural or legal persons are linked by:~~

(16) ~~participation, which shall mean~~ means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking; ~~or~~

~~(ii) control, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC or a similar relationship between any natural or legal person and an undertaking;~~

↓ 92/49/EEC Art. 1(g),  
2002/83/EC Art. 1(1)(j) and  
2005/68/EC Art. 2(1)(j) (adapted)

(17) ~~«qualifying holding»~~ means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of ~~the~~  that  undertaking ~~in which a holding subsists;~~

↓ 2002/83/EC Art. 1(1)(m)  
(adapted)

(18) ~~«regulated market» shall mean~~ means  either of the following  :

(a) in the case of a market situated in a Member State, a regulated market as defined in Article ~~1(13)~~ 4(1)(14) of Directive ~~93/22/EEC, and~~ 2004/39/EC of the European Parliament and of the Council<sup>46</sup>;

(b) in the case of a market situated in a third country, a financial market  which fulfils the following conditions:

(i)  it is  recognised by the home Member State of the ~~assurance~~  insurance  undertaking ~~which~~  and  meets ~~comparable~~ requirements ~~comparable~~ to those under Directive 2004/39/EC;

(ii) ~~Any~~  the  financial instruments dealt in on that market ~~must be~~  are  of a quality comparable to that of the instruments dealt in on the regulated market or markets of the  home  Member State ~~in question;~~

↓ 76/580/EEC Art. 1(1) and Art.  
1(2) (adapted)

~~(a) «Unit of account» means the European unit of account (EUA) as defined by Commission Decision 3289/75/ECSC<sup>47</sup>. Wherever this Directive refers to the unit of~~

<sup>46</sup> OJ L 145, 30.4.2004, p. 1.

<sup>47</sup> OJ No L 327, 19.12.1975, p. 4.

account, the conversion value in national currency to be adopted shall, as from 31 December of each year, be that of the last day of the preceding month of October for which ECU conversion values are available in all the Community currencies;

↓ 73/239/EEC Art.5(b)

~~(b) «Matching assets» means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency;~~

↓ 90/618/EEC Art. 1 (adapted)

~~(a) "vehicle" means a vehicle as defined in Article 1 (1) of Directive 72/166/EEC;~~

~~(19) ≡ ☒ national ☒ bureau<sup>48</sup> means a national insurers' bureau as defined in Article 1(3) of Council Directive 72/166/EEC<sup>48</sup>;~~

~~(20) ≡ ☒ national ☒ guarantee fund<sup>49</sup> means the body referred to in Article 1(4) of Council Directive 84/5/EEC<sup>49</sup>;~~

↓ 2002/83/EC Art. 1(1)(q)

~~(q) capital at risk shall mean the amount payable on death less the mathematical provision for the main risk;~~

↓ 2005/68/EC Art. 2(1) (adapted)

~~(21) «financial undertaking» means ~~one~~ ☒ any ☒ of the following entities:~~

~~(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article ~~4~~(5) and (21) of Directive ~~2000/12/EC~~<sup>50</sup>; ~~2006/48/EC~~ of the European Parliament and of the Council<sup>51</sup>;~~

~~(b) an insurance undertaking, ☒ or ☒ a reinsurance undertaking or an insurance holding company within the meaning of ~~point (e) of Article 1(i) of Directive 98/78/EC~~; 210(1);~~

~~(c) an investment firm or a financial institution within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC<sup>52</sup>;~~

~~(d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council<sup>52</sup>;~~

<sup>48</sup> OJ L 103, 2.5.1972, p. 1.

<sup>49</sup> OJ L 8, 11.1.1984, p. 17.

<sup>50</sup> ~~Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1). Directive as last amended by Directive 2005/1/EC.~~

<sup>51</sup> OJ L 177, 30.6.2006, p. 1.

<sup>52</sup> OJ L 35, 11.2.2002, p. 1.



↓ 2005/68/EC Art. 59.2(b)  
(adapted)

~~(1) non-member country reinsurance undertaking means an undertaking which would require authorisation in accordance with Article 3 of Directive 2005/68/EC if it had its head office in the Community.~~

↓ 2005/68/EC Art. 2(1)(p)  
(adapted)

p(22) ~~«special purpose vehicle» means any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or some  any  other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the reinsurance obligations of such a vehicle  an undertaking~~  ;

↓ 2005/68/EC Art. 2(1)(b)

~~(b) captive reinsurance undertaking means a reinsurance undertaking owned either by a financial undertaking other than an insurance or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which Directive 98/78/EC applies, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive reinsurance undertaking is a member;~~

↓ new

(23) *Outsourcing* means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

(24) *Underwriting risk* means the risk of loss, or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

(25) *Market risk* means the risk of loss, or of adverse change in the financial situation, resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

(26) *Credit risk* means the risk of loss, or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

(27) *Operational risk* means the risk of loss arising from inadequate or failed internal processes, or from personnel and systems, or from external events;

- (28) *Liquidity risk* means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;
- (29) *Concentration risk* means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings;
- (30) *Risk mitigation techniques* means all techniques, which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;
- (31) *Diversification effects* means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;
- (32) *Probability distribution forecast* means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;
- (33) *Risk measure* means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

↓ 2005/68/EC Art. 2

~~2. For the purposes of paragraph 1(a) of this Article, the provision of cover by a reinsurance undertaking to an institution for occupational retirement provision falling under the scope of Directive 2003/41/EC<sup>53</sup> where the law of the institution's home Member State permits such provision, shall also be considered as an activity falling under the scope of this Directive.~~

~~For the purposes of paragraph 1(d), any permanent presence of a reinsurance undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.~~

~~For the purposes of paragraph 1(j) of this Article, and in the context of Articles 12 and 19 to 23 and of the other levels of holding referred to in Article 19 to 23, the voting rights referred to in Article 92 of Directive 2001/34/EC<sup>54</sup> shall be taken into account.~~

~~For the purposes of paragraph 1(l), any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the undertaking which is those undertakings' ultimate parent undertaking.~~

~~For the purposes of paragraph 1(n):~~

~~any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary of the parent undertaking which is at the head of those undertakings;~~

<sup>53</sup> Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

<sup>54</sup> Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1). Directive as last amended by Directive 2005/1/EC.

~~a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.~~

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↓ 2002/83/EC Art. 1(2) and  
2005/68/EC Art. 2

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

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↓ 2002/83/EC (adapted)

## ~~TITLE~~ **CHAPTER II - THE TAKING UP OF THE BUSINESS OF LIFE ASSURANCE**

### Article 14

#### Principle of authorisation

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↓ 92/49/EEC Art. 4 (adapted)

1. ~~The taking up of the business of direct insurance~~ ☒ or of reinsurance covered by this Directive ☒ shall be subject to prior ~~official~~ authorisation.
  2. ~~Such~~ ☒ The ☒ authorisation ☒ referred to in paragraph 1 ☒ shall be sought from the ~~competent~~ ☒ supervisory ☒ authorities of the home Member State by ☒ the following ☒:
    - (a) any undertaking which ~~establishes~~ ☒ is establishing ☒ its head office within the territory of that State;
    - (b) any ☒ insurance ☒ undertaking which, having received ~~the~~ ☒ an ☒ authorisation ~~referred to in the first subparagraph~~ ☒ pursuant to paragraph 1 ☒, ☒ wishes to ☒ extend its business to ~~an entire class or to other~~ ☒ insurance ☒ classes ☒ other than those already authorised; ☒ =
- 

↓ new

- - 
  - (c) any reinsurance undertaking which, having received an authorisation pursuant to paragraph 1, wishes to extend its business to reinsurance activities, other than those already authorised.
- 

↓ 2002/13/EC Art. 1(1) (adapted)  
⇒ new

- 
- 
3. ~~Nevertheless, the provisions of this Article~~ ⇒ 4 ⇐ shall not prevent a ~~mutual insurance~~ any undertaking from applying, or continuing, to be ~~licensed~~ ☒ authorised ☒ under this Directive.

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↓ 2002/83/EC Art. 5 (adapted)

## Article 15

### Scope of authorisation

1. ~~An~~  ~~A~~ authorisation  pursuant to Article 14  shall be valid for the entire Community. It shall permit ~~an assurance undertaking~~  insurance and reinsurance undertakings  to carry on business there, ~~under either~~  that authorisation covering also  the right of establishment ~~or~~  and the  freedom to provide services.
2.  Subject to Article 14,  ~~A~~ authorisation shall be granted for a particular class of ~~assurance~~  direct insurance  as listed in point A of Annex I or in Annex II. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

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↓ 73/239/EEC Annex, pt. A

The risks included in a class may not be included in any other class except in the cases referred to in ~~point C~~ Article 16(1).

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↓ 2002/83/EC Art. 5(2) (adapted)

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

---

↓ 92/49/EEC Art. 5(2) (adapted)

~~However:~~

~~(a)3.~~  As far as non-life insurance is concerned,  Member States may grant authorisation for the groups of classes listed in point B of ~~the Annex I~~ the Annex I ~~attaching to them the appropriate denominations specified therein.~~

~~(b) authorization granted for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions imposed in point C of the Annex are fulfilled.~~

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↓ 2002/83/EC Art. 5(2) (adapted)

The ~~competent~~  supervisory  authorities may ~~restrict~~  limit  authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Article ~~7~~ 23.

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↓ 84/641/EEC Art. 2 (adapted)

4. Undertakings subject to this Directive may engage in the activity referred to ~~under this point~~  in Article 6  only if they have received authorisation for class 18 in

point A of ~~the Annex I~~ without prejudice to ~~point C of the said Annex~~ Article 16(1). In that event this Directive shall apply to the operations in question.

↓ 2005/68/EC Art. 4 (adapted)

25. ~~As far as reinsurance is concerned, an authorisation shall be granted for non-life reinsurance activities activity, life reinsurance activities reinsurance activity or all kinds of reinsurance activity activities, according to the request made by the applicant.~~

~~The application shall be considered in the light of the scheme of operations to be submitted pursuant to point (c) of Articles 6(b) and 11 18(1) and the fulfilment of the conditions laid down for authorisation by the Member State from which the authorisation is sought.~~

↓ 73/239/EEC Annex, pt. C  
(adapted)

### Article 16

#### Ancillary risks

1. An insurance undertaking ~~obtaining~~ which has obtained an authorisation for a principal risk belonging to one class or a group of classes as set out in Annex I may also insure risks included in another class without the need to obtain an authorisation ~~being necessary for them if they~~ in respect of such risks provided that the risks fulfil all the following conditions :

- (a) they are connected with the principal risk;
- (b) they concern the object which is covered against the principal risk; ~~and~~
- (c) they are covered by the contract insuring the principal risk.

↓ 87/344/EEC Art. 9 (adapted)

2. ~~However~~ By way of derogation from paragraph 1, the risks included in classes 14, 15 and 17 in point A of Annex I may not be regarded as risks ancillary to other classes.

~~Nonetheless~~ However, the risk included in class 17 (legal expenses insurance) as set out in class 17 may be regarded as an ancillary risk of ancillary to class 18, where the conditions laid down in the first subparagraph 1 and either of the following are fulfilled:

- (a) ~~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 habitual residence;
- (b) ~~Legal expenses~~ the insurance may also be regarded as an ancillary risk ~~under the conditions set out in the first subparagraph where it~~ concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

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↓ 2005/68/EC Art. 5 (adapted)

## Article 17

Form of the  insurance or  reinsurance undertaking

1. The home Member State shall require every ~~reinsurance~~ undertaking for which authorisation is sought  under Article 14  to adopt one of the forms set out in Annex ~~III~~.
2. Member States may, ~~where appropriate,~~ set up undertakings in any public-law form provided that such bodies have as their objects  insurance or  reinsurance operations under conditions equivalent to those under which private-law undertakings operate.

---

↓ 2002/83/EC Art. 64 (adapted)

3. The Commission may adopt implementing measures relating to the extension of the forms set out in Annex III .

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↓ new

Those implementing measures designed to amend non-essential elements of this Directive inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

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↓ 2005/68/EC Art. 6 (adapted)

## Article 18

Conditions  for authorisation

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

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↓ 92/49/EEC Art. 6 (adapted)

(~~a~~)  as far as insurance undertakings are concerned,  limit ~~its~~  their  objects to the business of insurance and  related  operations arising directly therefrom, to the exclusion of all other commercial business;

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↓ 2005/68/EC Art. 6 (adapted)

(~~a~~)  as far as reinsurance undertakings are concerned,  limit ~~its~~  their  objects to the business of reinsurance and related operations; this requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2  (8)  ~~point (8)~~ of Directive 2002/87/EC;

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↓ 2002/83/EC Art. 6(1)  
⇒ new

- (c) submit a scheme of operations in accordance with Article ~~7~~ 23;
- (d) ~~possess the minimum guarantee fund~~ ⇒ hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement ⇐ provided for in point (d) of Article ~~29(2)~~ 127(1);
- 

↓ new

- (e) show evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in Article 100, going forward;
- (f) show evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, as provided for in Article 126, going forward;
- 

↓ 2002/83/EC Art. 6(1),  
92/49/EEC Art. 6(e) and  
2005/68/EC Art. 6(d)  
⇒ new

- (~~eg~~) ⇒ provide information on the structure of the governance system referred to in Chapter IV, Section 2, ⇐ ~~be effectively run by persons of good repute with appropriate professional qualifications or experience.~~
- 

↓ 2000/26/EC Art. 8(a) (adapted)

- (~~h~~) ☒ as far as non-life insurance is concerned ☒ communicate the name and address of ~~the~~ ☒ all ☒ claims ~~representative~~ ☒ representatives ☒ appointed ☒ pursuant to Article 4 of Directive 2000/26/EC of the European Parliament and of the Council<sup>55</sup> ☒ in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of ~~the~~ Annex I, other than carrier's liability.
- 

↓ 92/49/EEC Art. 6 (adapted)  
⇒ new

2. An ☒ insurance ☒ undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article ~~9~~ 23.
- It shall, ~~furthermore~~ ☒ in addition ☒, be required to show proof that it possesses the ~~solvency margin~~ ⇒ eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement ⇐ provided for in Articles ~~16~~ 16
- 

<sup>55</sup> OJ L 181, 20.7.2000, p. 65.

~~100(1) and 126. and, if with regard to such other classes Article 17 (2) requires a higher minimum guarantee fund than before, that it possesses that minimum.~~

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↓ new

3. Without prejudice to paragraph 2, an insurance undertaking carrying on life activities, and seeking authorisation to extend its business to the risks listed in classes 1 or 2 in point A of Annex I as referred to in Article 72, shall demonstrate the following:

(a) that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in point (d) of Article 127(1);

(b) that it undertakes to cover the minimum financial obligations referred to in Article 73

(3), going forward.

4. Without prejudice to paragraph 2, an insurance undertaking carrying on non-life activities for the risks listed in classes 1 or 2 in point A of Annex I, and seeking authorisation to extend its business to life insurance risks as referred to in Article 72, shall demonstrate that the following:

(a) that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in point (d) of Article 127(1);

(b) that it undertakes to cover the minimum financial obligations referred to in Article 73(3) going forward.

---

↓ 2005/68/EC Art. 7 (adapted)

## Article 19

### Close links

~~1.~~ Where close links exist between the  insurance undertaking or  reinsurance undertaking and other natural or legal persons, the ~~competent~~  supervisory  authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

~~2.~~ The ~~competent~~  supervisory  authorities shall refuse authorisation if the laws, regulations or administrative provisions of a ~~non-member~~  third  country governing one or more natural or legal persons with which the  insurance or  reinsurance undertaking has close links, or difficulties involved in their enforcement  of those laws  , prevent the effective exercise of their supervisory functions.

~~3.~~ The ~~competent~~  supervisory  authorities shall require reinsurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in the first paragraph ~~1~~ on a continuous basis.



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↓ 2005/68/EC Art. 8 (adapted)

Article 20

Head office of the  insurance or  reinsurance undertaking

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

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↓ 2005/68/EC Art. 9

Article 21

Policy conditions and scales of premiums

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↓ 2002/83/EC Art. 6(5) (adapted)

~~1.~~ Member States shall not ~~adopt provisions requiring~~  require  the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which an ~~assurance~~ undertaking intends to use in its dealings with policyholders  or ceding or retro-ceding undertakings .

~~Notwithstanding the first subparagraph,~~  However, for life insurance and  for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, ~~without~~ ~~†~~ That requirement ~~constituting~~  shall not constitute  a prior condition for an ~~assurance~~  the authorisation of a life insurance  undertaking ~~to carry on its business.~~

---

↓ 92/49/EEC Art. 6 (adapted)

~~2.~~ Member States ~~may~~  shall  not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

~~3.~~ ~~Nothing in this Directive shall prevent~~ Member States ~~from~~  may  subjecting undertakings seeking or having obtained authorisation for class 18 in point A of ~~the~~ Annex I 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 such undertakings to meet their commitments arising out of ~~this~~  that  class of insurance.

~~34.~~ ~~Nothing in this Directive shall prevent~~ Member States ~~from~~  may  maintaining in force or ~~introducing~~  introduce  laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and

communication of any other documents necessary for the normal exercise of supervision.

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↓ 2005/68/EC Art. 10 (adapted)

## Article 22

### Economic requirements of the market

Member States ~~may~~ ☒ shall ☒ not require that any application for authorisation be considered in the light of the economic requirements of the market.

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↓ 2005/68/EC Art. 11 (adapted)  
⇒ new

## Article 23

### Scheme of operations

1. The scheme of operations referred to in point (c) of Article 6(b) ~~18(1)~~ shall include particulars or evidence of ☒ the following ☒ :
    - (a) the nature of the risks ☒ or commitments ☒ which the ☒ insurance or ☒ reinsurance undertaking ☒ concerned ☒ proposes to cover;
    - (b) the kinds of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
    - (c) the guiding principles as ☒ to reinsurance and ☒ to retrocession;
    - (d) the ⇒ basic own fund ⇐ items constituting the ⇒ absolute floor of the Minimum Capital Requirement ⇐ ~~minimum guarantee fund~~ ;
- 

↓ 92/49/EEC Art. 7 (adapted)

- ~~(de)~~ estimates of the costs of setting up the administrative services and the organization for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in point A of the Annex I, the resources at the ~~undertaking's~~ disposal ☒ of the insurance undertaking ☒ for the provision of the assistance promised.
- 

↓ 2005/68/EC Art. 11 (adapted)

2. In addition to the requirements ☒ set out ☒ in paragraph 1, ~~the scheme of operations shall~~ for the first three financial years ~~contain~~ ☒ the scheme shall include the following ☒ :
  - ~~(a) estimates of management expenses other than installation costs, in particular current general expenses and commissions;~~
  - ~~(b) estimates of premiums or contributions and claims;~~
  - (ea) a forecast balance sheet;

---

↓ new

- (b) estimates of the future Solvency Capital Requirement, as provided for in Chapter VI, Section 4, Subsection 1, on the basis of the forecast balance sheet referred to in point (a), as well as the method of calculation used to derive those estimates;
- (c) estimates of the future Minimum Capital Requirement, as provided for in Articles 126 and 127, on the basis of the forecast balance sheet referred to in point (a), as well as the method of calculation used to derive those estimates;
- 

↓ 2005/68/EC Art. 11

⇒ new

- (d) estimates of the financial resources intended to cover ⇒ technical provisions, the Minimum Capital Requirement ⇐ ~~underwriting liabilities~~ and the ⇒ Solvency Capital Requirement ⇐ ~~solvency margin~~.
- 

↓ 92/49/EEC Art. 7 (adapted)

~~and (c) in addition~~ ☒ for non-life insurance and reinsurance also the following ☒ ;  
~~for the first three financial years:~~

- (~~e~~) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
- (~~f~~) estimates of premiums or contributions and claims;
- 

↓ 2002/83/EC Art. 7 (adapted)

- (f) ~~in addition,~~ ☒ for life insurance also ☒ , ~~for the first three financial years:~~  
(~~e~~) a plan setting out detailed estimates of income and expenditure in respect of direct business, ☒ reinsurance ☒ ~~reinsurance~~ acceptances and ☒ reinsurance ☒ ~~reinsurance~~ cessions;
- (~~f~~) ~~a forecast balance sheet;~~
- (~~g~~) ~~estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.~~
- 

↓ 2005/68/EC Art. 12 (adapted)

## Article 24

### Shareholders and members with qualifying holdings

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

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

---

↓ 2007/44/EC Art. 1(1), Art. 2(1) and Art. 4(1) (adapted)

2. For the purposes of ~~this definition paragraph 1, in the context of Articles 8 and 15 and of the other levels of holding referred to in Article 15,~~ the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of the acquisition".

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↓ 73/239/EEC Art. 12, 2002/83/EC Art. 9, and 2005/68/EC Art. 13 (adapted)

## Article 25

### Refusal of authorisation

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

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↓ 73/239/EEC Art. 12, 2002/83/EC Art. 9 and 2005/68/EC Art. 13 (adapted)

Each Member State shall make provision for a right to apply to the courts ~~should there be any refusal~~ ☒ where an authorisation is refused ☒.

---

↓ 73/239/EEC Art. 12, 2002/83/EC Art. 9, and 2005/68/EC Art. 13 (adapted)

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

---

↓ 2005/68/EC Art. 60(2)  
(adapted)

Article 26

Prior consultation with the ~~competent~~  supervisory  authorities of other Member States

1. The ~~competent~~  supervisory  authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to ~~a life insurance~~  an  undertaking, which is  any of the following .
- 

↓ 2005/68/EC Art. 14, Art. 57(1)  
and Art. 60(2) (adapted)

- (a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State; ~~or~~
  - (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State; ~~or~~
  - (c)  an undertaking  controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.
- 

↓ 2005/68/EC Art. 60(2)  
(adapted)

2. The ~~competent authority~~  authorities  of a Member State ~~involved~~  which are  responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to ~~a life insurance~~  an insurance  undertaking which is  any of the following .
- 

↓ 2005/68/EC Art. 14, Art. 57.1  
and Art. 60.2 (adapted)

- (a) a subsidiary of a credit institution or investment firm authorised in the Community; ~~or~~
- (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; ~~or~~
- (c)  an undertaking  controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

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↓ 2002/87/EC Art. 22(1), and  
2005/68/EC Art. 14 and Art. 60(2)  
(adapted)  
⇒ new

3. The relevant ~~competent~~ authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the ⇒ fit and proper requirements of all persons who effectively run the undertaking or have other key functions ⇐ ~~reputation and experience of directors~~ involved in the management of another entity of the same group.

They shall inform each other of any information regarding the suitability of shareholders and the ⇒ fit and proper requirements of all persons who effectively run the undertaking or have other key functions ⇐ ~~reputation and experience of directors~~ which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

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↓ 2002/83/EC (adapted)

### ~~TITLE III~~

## ~~CONDITIONS GOVERNING THE BUSINESS OF ASSURANCE~~

### ~~CHAPTER 1 III~~

## ~~PRINCIPLES AND METHODS OF FINANCIAL SUPERVISION~~

### ~~⊗ SUPERVISORY AUTHORITIES AND GENERAL RULES ⊗~~

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↓ new

#### Article 27

##### Main objective of supervision

Member States shall ensure that the supervisory authorities are provided with the necessary means to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

#### Article 28

##### General principles of supervision

1. Supervision shall be based on a prospective and risk-oriented approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.

2. Supervision shall be carried out both off-site and on-site.
3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking.

↓ 2005/68/EC Art. 15 (adapted)  
and 2002/83/EC Art. 10 (adapted)  
⇒ new

## Article 29

~~Competent~~ ☒ Supervisory ☒ authorities and ~~object~~ ☒ scope ☒ of supervision

1. The financial supervision of a ☒ insurance and ☒ reinsurance ~~undertaking~~ ☒ undertakings ☒, including that of the business ~~it carries~~ ☒ they carry ☒ on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.

~~If the competent authorities of the host Member State have reason to consider that the activities of a reinsurance undertaking might affect its financial soundness, they shall inform the competent authorities of the reinsurance undertaking's home Member State. The latter authorities shall determine whether the reinsurance undertaking is complying with the prudential rules laid down in this Directive.~~

2. ~~The~~ financial supervision pursuant to paragraph 1 shall include verification, with respect to the ~~reinsurance undertaking's~~ entire business ☒ of the insurance and reinsurance undertaking ☒, of its state of solvency, of the establishment of technical provisions and of the ⇒ eligible own funds ⇐ ~~assets covering them~~, in accordance with the rules laid down or practices followed in the ~~home~~ Member State under provisions adopted at Community level.

↓ 92/49/EEC Art. 9 (adapted)

Where the ☒ insurance ☒ undertaking ~~in question~~ ☒ concerned ☒ is authorised to cover the risks classified in class 18 in point A of ~~the~~ Annex I, supervision shall extend to monitoring of the technical resources which the ☒ insurance ☒ undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.

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

↓ 2002/83/EC Art. 10(1)  
(adapted)

- ~~4~~3. If the ~~competent~~ ☒ supervisory ☒ authorities of the Member State ☒ where the risk is situated or ☒ of the commitment have reason to consider that the activities of an ~~assurance~~ ☒ insurance or reinsurance ☒ undertaking might affect its financial

soundness, they shall inform the ~~competent~~  supervisory  authorities of the ~~undertaking's~~ home Member State  of that undertaking .

The ~~latter~~  supervisory  authorities  of the home Member State  shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

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↓ new

## Article 30

### Transparency and accountability

1. The supervisory authorities shall conduct their tasks in a transparent and accountable manner with due respect for the protection of confidential information.
2. Member States shall ensure that the following information is disclosed:
  - (a) the texts of laws, regulations, administrative rules and general guidance in the field of insurance regulation;
  - (b) the general criteria and methods used in the supervisory review process as set out in Article 36;
  - (c) aggregate statistical data on key aspects of the application of the prudential framework;
  - (d) the manner of exercise of the options and discretions provided for in this Directive
  - (e) the objectives of the supervision and its main functions and activities.

The disclosure, provided for in the first subparagraph shall be sufficient to enable a comparison of the supervisory approaches adopted by the supervisory authorities of the different Member States.

The disclosure shall be made in a common format and be updated regularly. It shall be accessible at a single electronic location in each Member State.

3. Member States may provide for transparent procedures regarding the appointment and dismissal of the members of the governing and managing bodies of their supervisory authorities.
4. The Commission shall adopt implementing measures relating to paragraph 2 specifying the key aspects on which aggregate statistical data are to be disclosed, and the format, structure, contents list and publication date of the disclosures.

Those measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).



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↓ 2005/68/EC Art. 60(3)  
(adapted)  
⇒ new

⊗ Article 31

Prohibition of refusal of reinsurance contracts or retrocession contracts ⊗

1. ~~\_\_\_\_\_~~ The home Member State of ~~the~~ ⊗ an ⊗ insurance undertaking shall not refuse a reinsurance contract concluded by ~~the~~ ⊗ an ⊗ insurance undertaking with a reinsurance undertaking ~~authorised in accordance with Directive 2005/68/EC~~ or an insurance undertaking authorised in accordance with ~~Directive 73/239/EEC or this Directive~~ Article 14 on grounds directly related to the financial soundness of ~~the~~ ⊗ that ⊗ reinsurance undertaking or ~~the~~ ⊗ that ⊗ insurance undertaking.

---

↓ 2005/68/EC Art. 15 (adapted)

~~32.~~ The home Member State of the reinsurance undertaking shall not refuse a retrocession contract concluded by ~~the~~ ⊗ a ⊗ reinsurance undertaking with a reinsurance undertaking ~~authorised in accordance with this Directive~~ or an insurance undertaking authorised in accordance with ~~Directives 73/239/EEC or 2002/83/EC~~ Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.

~~4. \_\_\_\_\_~~ ~~The competent authorities of the home Member State shall require every reinsurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.~~

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↓ 2005/68/EC Art. 16 (adapted)

Article 32

Supervision of branches established in another Member State

~~The Member State of the branch~~ ⊗ States ⊗ shall provide that, where a ⊗ an insurance or ⊗ reinsurance undertaking authorised in another Member State carries on business through a branch, the ~~competent~~ ⊗ supervisory ⊗ authorities of the home Member State may, after having ~~first~~ informed the ~~competent~~ ⊗ supervisory ⊗ authorities of the ⊗ host ⊗ Member State ~~of the branch~~ ⊗ concerned ⊗, carry out themselves, or through the intermediary of persons ~~they appoint~~ ⊗ appointed ⊗ for that purpose, ~~on the spot verification~~ ⊗ on-site verifications ⊗ of the information necessary to ensure the financial supervision of the undertaking.

The authorities of the ⊗ host ⊗ Member State ~~of the branch~~ ⊗ concerned ⊗ may participate in ~~that verification~~ ⊗ those verifications ⊗.

---

↓ 2002/83/EC Art. 13 (adapted)

Article 33

Accounting, prudential and statistical information ~~supervisory powers~~

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↓ 84/641/EEC Art. 11 (adapted)

1. ~~Each Member State~~ ☒ States ☒ shall require every ☒ insurance and reinsurance ☒ undertaking whose head office is situated in ~~its~~ ☒ their ☒ territory to produce an annual account, covering all types of operation, of its financial situation, solvency and, as regards cover for risks listed in class ~~under No~~ 18 in point A of ~~the~~ Annex I, other resources available to them for meeting their liabilities, where ~~its~~ ☒ their ☒ laws provide for supervision of such resources.
- 

↓ 87/343/EEC Art. 1.7 (adapted)

12. In respect of credit insurance, the ☒ non-life insurance ☒ undertaking shall make available to the supervisory ~~authority~~ ☒ authorities ☒ accounts showing both the technical results and the technical ☒ provisions ☒ ~~reserves~~ relating to that business.
- 

↓ 2005/68/EC Art. 17 (adapted)

23. Member States shall require ☒ insurance and ☒ reinsurance undertakings ~~with~~ ☒ whose ☒ head offices ☒ is situated ☒ ~~within~~ their territories to ~~render~~ ☒ submit ☒ periodically the returns, together with statistical documents, which are necessary for the purposes of supervision.

The ~~competent~~ ☒ supervisory ☒ authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

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↓ 2002/83/EC Art. 13 (adapted)

⇒ new

☒ Article 34

General Supervisory powers ☒

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↓ new

1. Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.
2. The supervisory authorities shall have the power to take any measures, including where appropriate, those of an administrative or financial nature, with regard to

insurance or reinsurance undertakings, and the members of their administrative or management body or the persons who control that body.

3. Member States shall ensure that supervisory authorities have the power to require all information necessary to conduct supervision in accordance with Article 35.

4. Member States shall ensure that supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where appropriate, quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall require that such tests are performed by the undertakings.

↓ 2002/83/EC Art. 13 (adapted)

⊗ 5. The supervisory authorities shall have the power to carry out on-site inspections at the premises of the insurance and reinsurance undertakings. ⊗

↓ new

6. Supervisory powers shall be applied in a timely and proportionate manner.

↓ new

7. The powers with regard to insurance and reinsurance undertakings referred to in paragraphs 1 to 5 shall be available with regard to out-sourced activities of insurance and reinsurance undertakings.

↓ 2002/83/EC Art. 13 (adapted)

~~8.(e) ensure that those~~ ⊗ The ⊗ measures ⊗ set out in paragraphs 1 to 5 and 7 shall be ⊗ are carried out, ~~if need be by enforcement~~, where appropriate, through judicial channels.

↓ 2002/83/EC Art. 13 (adapted)

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

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

~~(a) make detailed enquiries regarding the assurance undertaking's situation and the whole of its business, inter alia, by~~

~~gathering information or requiring the submission of documents concerning its assurance business,~~

~~— carrying out on the spot investigations at the assurance undertaking's premises;~~

~~(b) take any measures, with regard to the assurance undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that the undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of the assured persons;~~

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↓ new

## Article 35

### Information to be provided for supervisory purposes

1. Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision. That information shall include at least the information necessary for the following when performing the process referred to in Article 36:
  - (a) to assess the system of governance applied by the undertakings, the business they are carrying on, the valuation principles applied for solvency purposes, the risks faced and the risk management systems, and their capital structure, needs and management;
  - (b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.
2. Member States shall ensure that the supervisory authorities have the following powers:
  - (a) to determine the nature, the scope and the format of the information referred to in paragraph 1 which they require insurance and reinsurance undertakings to submit at the following points in time:
    - (i) at predefined periods;
    - (ii) upon occurrence of predefined events;
    - (iii) during enquiries regarding the situation of an insurance or reinsurance undertaking;
  - (b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties;
  - (c) to require information from external experts, such as auditors and actuaries.
3. The information referred to in paragraphs 1 and 2 shall comprise the following:
  - (a) qualitative or quantitative elements, or any appropriate combination thereof;
  - (b) historic, current or prospective elements, or any appropriate combination thereof;

(c) data from internal or external sources, or any appropriate combination thereof.

4. The information referred to in paragraphs 1 and 2 shall comply with the following principles:

(a) it must reflect the nature, scale and complexity of the business of the undertaking concerned;

(b) it must be accessible, complete in all material respects, comparable and consistent over time;

(c) it must be relevant, reliable and comprehensible.

5. Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 4 as well as a written policy, approved by the administrative or management body of the insurance or reinsurance undertaking, ensuring the on-going appropriateness of the information submitted.

6. The Commission shall adopt implementing measures specifying the information referred to in paragraphs 1 to 5, with a view to ensuring to the appropriate extent convergence of supervisory reporting.

Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

↓ 2002/83/EC Art. 13 and  
2005/68/EC Art. 17(4) (adapted)

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

↓ new

## Article 36

### Supervisory review process

1. Member States shall ensure that the supervisory authorities review and evaluate the strategies, processes and reporting procedures which are established by the insurance and reinsurance undertakings to comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.

That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment the undertakings are operating in.

2. The supervisory authorities shall in particular review and evaluate compliance with the following:

(a) the system of governance as set out in Chapter IV, Section 2;

- (b) the technical provisions as set out in Chapter VI, Section 2;
- (c) the capital requirements as set out in Chapter VI, Sections 4 and 5;
- (d) the investment rules as set out in Chapter VI, Section 6;
- (e) the quality and quantity of own funds as set out in Chapter VI, Section 3;
- (f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in Chapter VI, Section 4, Subsection 3.

3. The supervisory authorities shall have in place appropriate monitoring tools that enable them to identify deteriorating financial conditions in an insurance or reinsurance undertaking and to monitor how that deterioration is remedied.

4. The supervisory authorities shall assess the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

The supervisory authorities shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions.

5. The supervisory authorities shall have the necessary powers to require insurance and reinsurance undertakings to remedy weaknesses or deficiencies identified in the supervisory review process.

6. The review and evaluation shall be conducted regularly.

The supervisory authorities shall establish the minimum frequency and scope of the reviews, evaluations and assessments referred to in paragraphs 1, 2 and 4 having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

## Article 37

### Capital add-on

1. Following the supervisory review process supervisory authorities may in exceptional circumstances set, a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall only exist in the following cases:

(a) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Chapter VI, Section 4, Subsection 2 and the request under Article 117 has proven inefficient or while a partial or full internal model is being developed in accordance with that Article;

(b) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Chapter VI, Section 4, Subsection 3, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

(c) the supervisory authority concludes that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Chapter IV, Section 2, that those deviations prevent it from being able to properly assess and manage the risks that it is or could be exposed to and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe.

2. In the cases set out in points (a) and (b) of paragraph 1 the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 101(3).

3. In the cases set out in points (b) and (c) of paragraph 1 the supervisory authority shall ensure that the insurance or reinsurance undertaking makes all efforts to remedy the deficiencies that led to the imposition of the capital add-on.

4. The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the supervisory authority and be removed when the undertaking has remedied the deficiencies which led to its imposition.

The capital add-on may have a permanent character only where the conditions set out in point (a) of paragraph 1 continue to apply because the risk profile of the undertaking concerned continues to deviate significantly from the assumptions underlying the Solvency Capital Requirement, as calculated in accordance with Chapter VI, Section 4, Subsection 2.

5. The Solvency Capital Requirement including the capital add-on imposed according to points (a) and (b) of paragraph 1 shall replace the inadequate Solvency Capital Requirement.

The Solvency Capital Requirement including the capital add-on shall in any case replace the inadequate Solvency Capital Requirement for the purposes of establishing the non-compliance with the Solvency Capital Requirement referred to in Article 136.

6. The Commission shall adopt implementing measures laying down further specifications for the circumstances under which a capital add-on may be imposed and the calculation thereof.

Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## Article 38

### Supervision of outsourced activities

1. Member States shall ensure that insurance or reinsurance undertakings which outsource an activity, in accordance with Article 48, provide for the following:

(a) the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced activity;

(b) the insurance and reinsurance undertakings, their auditors and the relevant supervisory authorities must have effective access to data related to the outsourced activities, as well as to the business premises of the service

provider, where those premises are located within the Community, and the supervisory authorities must be able to exercise those rights of access.

2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site-inspections at the premises of the service provider, after having first informed its own appropriate authorities. In the case of a non supervised entity the appropriate authority shall be the supervisory authority.

The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.

↓ 2002/83/EC Art. 14 (adapted)  
⇒ new

## Article 39

### Transfer of portfolio

1. Under the conditions laid down by national law, ~~each Member State~~  States  shall authorise ~~assurance~~  insurance and reinsurance  undertakings with head offices within ~~its~~  their  territory to transfer all or part of their portfolios of contracts, concluded  either  under ~~either~~ the right of establishment or the freedom to provide services, to an accepting ~~office~~  undertaking  established within the Community. 2

Such transfer may only be authorised  if the ~~competent~~  supervisory  authorities of the home Member State of the accepting  undertaking  ~~office~~ certify that after taking the transfer into account, the ~~latter~~  accepting undertaking  possesses the necessary  eligible own funds to cover the Solvency Capital Requirement referred to in Article 100 subparagraph 1  ~~solvency margin~~.

2. In the case of insurance undertakings paragraphs 3 to 6 shall apply.

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

34. In the circumstances referred to in paragraphs 1 and 23, the  supervisory  authorities of the home Member State of the transferring ~~assurance~~  insurance  undertaking shall authorise the transfer after obtaining the agreement of the ~~competent~~  supervisory  authorities  of the Member States in which the risks are situated, or  of the Member States of the commitment.

45. The ~~competent~~  supervisory  authorities of the Member States consulted shall give their opinion or consent to the ~~competent~~  supervisory  authorities of the home Member State of the transferring ~~assurance~~  insurance  undertaking within three months of receiving a request  for consultation.  3

¶The absence of any response within that period from the authorities consulted shall be considered ~~equivalent to a favourable opinion or~~  as  tacit consent.



~~56.~~ A transfer authorised in accordance with ~~this Article~~ paragraphs 1 to 5 shall be published as laid down by national law  in the Member State in which the risk is situated, or  in the Member State of the commitment.

Such transfers shall automatically be valid against policyholders, the ~~assured~~  insured  persons and any other person having rights or obligations arising out of the contracts transferred.

↓ 92/49/EEC Art. 12 and  
2002/83/EC Art. 14 (adapted)

~~This provision~~ The first and second subparagraphs of this paragraph shall not affect  the right of  the Member States' ~~rights~~ to give policyholders the option of cancelling contracts within a fixed period after a transfer.

## ~~TITLE III~~ **CHAPTER IV - CONDITIONS GOVERNING THE BUSINESS OF ASSURANCE**

↓ new

### **SECTION 1 – RESPONSIBILITY OF THE ADMINISTRATIVE OR MANAGEMENT BODY**

↓ new

#### Article 40

##### Responsibility of the administrative or management body

Member States shall ensure that the administrative or management body of the insurance or reinsurance undertaking has the ultimate responsibility for the compliance, by the undertaking concerned, with the laws, regulations and administrative provisions adopted pursuant to this Directive.

↓ new

### **SECTION 2 - SYSTEM OF GOVERNANCE**

#### Article 41

##### General governance requirements

1. Member States shall require all insurance and reinsurance undertakings to have in place an effective system of governance which provides for sound and prudent management of the business.

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective

system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 42 to 48.

The system of governance shall be subject to regular internal review.

2. The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing. They shall ensure that those policies are implemented.

Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative or management body and be adapted in view of any significant change in the system or area concerned.

4. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.

The Member States shall ensure that the supervisory authorities have the powers necessary to request that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 42 to 48.

#### Article 42

Fit and proper requirements for persons who effectively run the undertaking or have other key functions

1. Insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have other key functions meet at all times the following requirements:

(a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit);

(b) they are of the highest repute and integrity (proper).

2. Insurance and reinsurance undertakings shall notify the supervisory authority of any changes to the identity of the persons who effectively run the undertaking or have other key functions, along with all information needed to assess whether any new persons appointed to manage the undertaking are fit and proper.

3. Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons mentioned in paragraphs 1 and 2 have been replaced because they no longer fulfil the requirements referred to in point (b) of paragraph 1.

#### Article 43

##### Risk Management

1. Insurance and reinsurance undertakings shall have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to monitor, manage and report, on a continuous basis the risks, on an

individual and aggregated level, to which they are or could be exposed, and their interdependencies.

That risk management system shall be well integrated into the organisational structure of the insurance or reinsurance undertaking. It shall contain contingency plans.

2. The risk management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 101(4) as well as the risks which are not or not fully included in the calculation thereof.

It shall cover at least the following areas:

- (a) underwriting and reserving;
- (b) asset – liability management;
- (c) investment, in particular derivatives and similar commitments;
- (d) liquidity and concentration risk management;
- (e) reinsurance and other risk mitigation techniques.

The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (e) of the second subparagraph of this paragraph.

3. As regards investment risk insurance and reinsurance undertakings shall demonstrate that they comply with Chapter VI, Section 6.
4. Insurance and reinsurance undertakings shall provide for a risk management function which shall be structured in such a way as to facilitate the implementation of the risk management system.
5. For insurance and reinsurance undertakings using a partial or full internal model approved in accordance with Articles 110 and 111 the risk management function shall cover the following additional tasks:
  - (a) to design and implement the internal model;
  - (b) to test and validate the internal model;
  - (c) to document the internal model and any subsequent changes made to it;
  - (d) to inform the administrative or management body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses;
  - (e) to analyse the performance of the internal model and to produce summary reports thereof.

#### Article 44

##### Own risk and solvency assessment

1. As part of its risk management system every insurance or reinsurance undertaking shall conduct its own risk and solvency assessment.

That assessment shall include at least the following:

- (a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

- (b) the compliance, on a continuous basis, with the capital requirements, as laid down in Chapters VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2.
  - (c) the extent to which the risk profile of the undertaking concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement as laid down in Article 101 (3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.
2. For the purposes of point (a) of paragraph 1, the undertaking concerned shall have in place processes which enable it to properly identify and measure the risks it faces in the short and the long term and also to identify possible events or future changes in economic conditions that could have unfavourable effects on its overall financial standing. The undertaking shall demonstrate the methods used to determine its overall solvency needs.
  3. In the case referred to in point (c) of paragraph 1 when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.
  4. The own risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an ongoing basis in the strategic decisions of the undertaking.
  5. Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 regularly and without any delay following any significant change in their risk profile.
  6. The insurance and reinsurance undertakings shall inform the supervisory authorities of the results of each own risk and solvency assessment as part of the information reported under Article 35.

## Article 45

### Internal Control

1. Insurance and reinsurance undertakings shall have in place an effective internal control system.  
That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a permanent compliance function.
2. The compliance function shall include advising the administrative or management body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Directive. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

## Article 46

### Internal Audit

1. Insurance and reinsurance undertakings shall provide for an effective and permanent internal audit function.
2. The internal audit function shall include the examination of the compliance of the activities of an insurance and reinsurance undertaking with all its internal strategies, processes and reporting procedures.  
The internal audit function shall also include an evaluation of whether the internal control system of the undertaking remains sufficient and appropriate for its business.
3. The internal audit function shall be objective and independent from the operational functions.
4. Any findings and recommendations of the internal audit shall be reported to the administrative or management body which shall ensure compliance with the internal audit findings and recommendations.

## Article 47

### Actuarial Function

1. Insurance and reinsurance undertakings shall provide for an effective actuarial function to undertake the following :
  - (a) to coordinate the calculation of technical provisions;
  - (b) to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;
  - (c) to assess the sufficiency and quality of the data used in the calculation of technical provisions;
  - (d) to compare best estimates against experience;
  - (e) to inform the administrative or management body of the reliability and adequacy of the calculation of technical provisions;
  - (f) to oversee the calculation of technical provisions in the cases set out in Article 81;
  - (g) to express an opinion on the overall underwriting policy;
  - (h) to express an opinion on the adequacy of reinsurance arrangements;
  - (i) to contribute to the effective implementation of the risk management system referred to in Article 43, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapter VI, Sections 4 and 5 and the assessment referred to in Article 44.
2. The actuarial function shall be carried out by persons with sufficient knowledge of actuarial and financial mathematics and able where appropriate, to demonstrate their relevant experience and expertise with applicable professional and other standards.

## Article 48

### Outsourcing

1. Member States shall ensure that, when insurance and reinsurance undertakings outsource critical or important operational functions or any insurance or reinsurance activities, the undertakings remain fully responsible for discharging all of their obligations under this Directive.
2. Outsourcing of important operational activities shall not be undertaken in such a way as to lead to any of the following:
  - (a) impairing materially the quality of the governance system of the undertaking concerned;
  - (b) increasing unduly the operational risk;
  - (c) impairing the ability of the supervisory authorities to monitor the compliance of the undertaking with its obligations;
  - (d) undermining continuous and satisfactory service to policyholders.
3. Insurance and reinsurance undertakings shall, in a timely manner, notify the supervisory authorities prior to the outsourcing of important activities as well as of any subsequent material developments with respect to those activities.

## Article 49

### Implementing measures

The Commission shall adopt implementing measures to further specify the following:

- (1) the elements of the systems referred to in Articles 41, 43, 45 and 46, and in particular the areas to be covered by the asset – liability management and investment policy, as referred to in Article 43(2), of insurance and reinsurance undertakings;
- (2) the functions referred to in Articles 43, 45, 46 and 47;
- (3) the requirements set out in Article 42 and the functions subject thereto;
- (4) the conditions under which outsourcing may be performed.

Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## **SECTION 3 – PUBLIC DISCLOSURE**

### Article 50

#### Report on Solvency and financial condition: contents

1. Member States shall, taking into account the principles set out in paragraphs 3 and 4 of Article 35, require insurance and reinsurance undertakings to publicly disclose, on an annual basis, a report on their solvency and financial condition.

That report shall contain the following information, either in full or by way of references to equivalent information disclosed publicly under other legal or regulatory requirements:

- (a) a description of the business and the performance of the undertaking;
- (b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;
- (c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
- (d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;
- (e) a description of the capital management, including at least the following:
  - (i) the structure and amount of own funds, and their quality;
  - (ii) the amounts of the Minimum Capital Requirement and of the Solvency Capital Requirement;
  - (iii) information allowing a proper understanding of the main differences between the standard formula and any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
  - (iv) the amount of any non compliance with the Minimum Capital Requirement or any significant non compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

2. The description referred to in point (e)(i) of paragraph 1 shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in point (e)(ii) of paragraph 1 shall show separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37, together with concise information on its justification by the supervisory authority concerned.

However, and without prejudice to any disclosure mandatory under any other legal or regulatory requirements, Member States may provide that the capital add-on need not be separately disclosed during a transitional period not exceeding five years after the date referred to in Article 310.

The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

#### Article 51

## Information for and reports by the Committee of European Insurance and Occupational Pensions Supervisors

- 1 Member States shall require the supervisory authorities to provide the following information to the Committee of European Insurance and Occupational Pensions Supervisors on an annual basis:
  - (a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the supervisory authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:
    - (i) for all insurance and reinsurance undertakings together;
    - (ii) for life insurance undertakings;
    - (iii) for non-life insurance undertakings and reinsurance undertakings;
  - (b) for each of the disclosures set out in point (a), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.
2. The Committee of European Insurance and Occupational Pensions Supervisors shall publicly disclose, on an annual basis, the following information:
  - (a) the total distribution of capital add-ons throughout the Community, measured as a percentage of the Solvency Capital Requirement, for each of the following:
    - (i) all insurance and reinsurance undertakings;
    - (ii) life insurance undertakings;
    - (iii) non-life insurance undertakings and reinsurance undertakings;
  - (b) for each of the disclosures referred to in point (a), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.

In addition, that Committee shall disclose on an annual basis the following information:

  - (a) the distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, covering all insurance and reinsurance undertakings in each Member State;
  - (b) for the disclosure referred to in point (a), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.
3. The Committee of European Insurance and Occupational Pensions Supervisors shall provide the information referred to in paragraph 2 to the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States.

## Article 52

### Report on Solvency and financial condition: applicable principles

1. Supervisory authorities shall permit insurance and reinsurance undertakings not to disclose information in the following cases:



- (a) if, by disclosing such information, the competitors of the undertaking gain significant undue advantage;
  - (b) if there are obligations to policyholders or other counterparty relationships binding an undertaking to secrecy or confidentiality.
2. Where non disclosure of information is approved by the supervisory authority, undertakings shall state this in the report on solvency and financial condition and explain the reasons.
3. Supervisory authorities shall permit insurance and reinsurance undertakings, to make use of – or refer to - public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under Article 50 in both their nature and scope.
4. Paragraphs 1 and 2 shall not apply to the information referred to in point (e) of Article 50(1).

### Article 53

#### Report on solvency and financial condition: updates and additional voluntary information

1. In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 50 and 52, insurance and reinsurance undertakings shall disclose appropriate information on its nature and effects.

For the purposes of the first subparagraph, at least the following shall be regarded as major developments:

- (a) where non compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a viable recovery plan or do not obtain such a plan within one month;
- (b) where a significant non compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a recovery plan which they consider viable within two months.

In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a recovery plan initially considered to be viable, a non compliance with the Minimum Capital Requirement has not been resolved two months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken.

In the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the Solvency Capital Requirement has not been resolved four months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken.

2. Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 50 and 52 and paragraph 1.

#### Article 54

##### Report on Solvency and financial condition: policy and approval

1. Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in Articles 50, 52 and 53(1), as well as to have a written policy ensuring the on-going appropriateness of any information disclosed in accordance with Articles 50, 52 and 53.
2. The solvency and financial condition report shall be subject to approval by the administrative or management body of the insurance or reinsurance undertaking and be published only after that approval.

#### Article 55

##### Solvency and financial condition report: implementing measures

The Commission shall adopt implementing measures further specifying the information which must be disclosed and the means by which this is to be achieved.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

↓ 2002/83/EC Art. 15 (adapted)

### SECTION 4 - QUALIFYING HOLDINGS

#### Article 56

⊗ Acquisitions ⊗

↓ 2007/44/EC Art. 1(2)(a), Art. 2(2)(a) and Art. 4(2) (adapted)

1. Member States shall require any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance ⊗ or reinsurance ⊗ undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance ⊗ or reinsurance ⊗ undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the insurance ⊗ or reinsurance ⊗ undertaking would become its subsidiary (hereinafter referred to as the proposed acquisition), first to notify in writing the ~~competent~~ ⊗ supervisory ⊗ authorities of the insurance ⊗ or reinsurance ⊗ undertaking in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant

information, as referred to in Article ~~15b(4)~~ 58(4). Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

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↓ 2007/44/EC Art. 1(2)(c), Art. 2(2)(c) and Art. 4(5) (adapted)

2. Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance  or reinsurance  undertaking first to notify in writing the ~~competent~~  supervisory  authorities of the home Member State, indicating the size of his intended holding. Such a person shall likewise notify the ~~competent~~  supervisory  authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance  or reinsurance  undertaking would cease to be his subsidiary. Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

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↓ 2007/44/EC Art. 1(3), Art. 2(3) and Art. 4(2) (adapted)

## Article 57

### Assessment period

1. The ~~competent~~  supervisory  authorities shall, promptly and in any event within two working days following receipt of the notification required under Article ~~15(1)~~ 56(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 ~~of this Article~~, acknowledge receipt thereof in writing to the proposed acquirer.

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↓ 2007/44/EC Art. 4(2) (adapted)

~~2. The competent authorities shall, promptly and in any event within two working days following receipt of the notification, as well as following the possible subsequent receipt of the information referred to in paragraph 3, acknowledge receipt thereof in writing to the proposed acquirer.~~

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↓ 2007/44/EC Art. 1(3), Art. 2(3) and Art. 4(2) (adapted)

The ~~competent~~  supervisory  authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article ~~15b(4)~~ 58 (4) (hereinafter referred to as the assessment period), to carry out the assessment provided for in Article ~~58~~ ~~15b(1)~~ 58(1) (hereinafter referred to as the assessment).

The ~~competent~~  supervisory  authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

2. The ~~competent~~ ☒ supervisory ☒ authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the ~~competent~~ ☒ supervisory ☒ authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the ~~competent~~ ☒ supervisory ☒ authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

3. The ~~competent~~ ☒ supervisory ☒ authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is:

- (a) situated or regulated outside the Community; or
- (b) a natural or legal person not subject to supervision under this Directive or Directives 85/611/EEC<sup>56</sup>, ~~2002/83/EC~~, 2004/39/EC, ~~2005/68/EC~~ or 2006/48/EC.

4. If the ~~competent~~ ☒ supervisory ☒ authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the ~~competent~~ ☒ supervisory ☒ authority to make such disclosure in the absence of a request by the proposed acquirer.

5. If the ~~competent~~ ☒ supervisory ☒ authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

6. The ~~competent~~ ☒ supervisory ☒ authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

7. Member States may not impose requirements for the notification to and approval by the ~~competent~~ ☒ supervisory ☒ authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

↓ 2007/44/EC Art. 2(4), Art. 4(6),  
Art. 1(4) (adapted)  
⇒ new

8. ⇒ The Commission shall adopt implementing measures further specifying the ⇐ adjustments of the criteria set out in Article ~~15b(1)~~ 58 (1), in order to take account of future developments and to ensure the uniform application of ~~this Directive~~ ☒ Articles 56 to 62 ☒.

⇒ Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3). ⇐

<sup>56</sup> OJ L 375, 31.12.1985, p. 3.

## Article 58

### Assessment

1. In assessing the notification provided for in Article ~~15(1)~~ 56(1) and the information referred to in Article ~~57~~ ~~15a(2)~~ (2), the ~~competent~~ ☒ supervisory ☒ authorities shall, in order to ensure the sound and prudent management of the ☒ insurance or reinsurance ☒ undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the ☒ insurance or reinsurance ☒ undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- (a) the reputation of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the ☒ insurance or reinsurance ☒ undertaking as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the ☒ insurance or reinsurance ☒ undertaking in which the acquisition is proposed;
- (d) whether the insurance ☒ or reinsurance ☒ undertaking will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directives ~~73/239/EEC, 98/78/EC, 2002/13/EC~~ and 2002/87/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the ~~competent~~ ☒ supervisory ☒ authorities and determine the allocation of responsibilities among the ~~competent~~ ☒ supervisory ☒ authorities;
- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The ~~competent~~ ☒ supervisory ☒ authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their ~~competent~~ ☒ supervisory ☒ authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the ~~competent~~ ☒ supervisory ☒ authorities at the time of notification referred to in Article ~~15(1)~~ 56(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article ~~57~~ ~~15a(1), (2) and (3)~~ (1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same  insurance or reinsurance  undertaking have been notified to the ~~competent~~  supervisory  authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

## Article 59

### Acquisitions by regulated financial undertakings

1. The relevant ~~competent~~  supervisory  authorities shall work in full consultation with each other when carrying out the assessment if the proposed acquirer is one of the following:

- (a) a credit institution, ~~assurance undertaking,~~ insurance  or reinsurance  undertaking, ~~reinsurance undertaking,~~ investment firm or management company within the meaning of Article 1a, point 2 of Directive 85/611/EEC (hereinafter referred to as the "UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, ~~assurance undertaking,~~ insurance  or reinsurance  undertaking, ~~reinsurance undertaking,~~ investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
- (c) a natural or legal person controlling a credit institution, ~~assurance undertaking,~~ insurance  or reinsurance  undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. The ~~competent~~  supervisory  authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the ~~competent~~  supervisory  authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the ~~competent~~  supervisory  authority that has authorised the insurance  or reinsurance  undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the ~~competent~~  supervisory  authority responsible for the proposed acquirer.

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↓ 2005/68/EC Art. 21 (adapted)

## ~~Article 58~~

### ~~Disposals~~

~~Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in a reinsurance undertaking first to inform the competent authorities of the home Member States, indicating the size of his intended holding.~~

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↓ 2002/83/EC, 92/49/EEC Art. 15 and 2005/68/EC Art. 22 (adapted)

## Article 60

Information to the ~~competent~~ ☒ supervisory ☒ authority by the insurance ☒ or reinsurance ☒ undertaking

On becoming aware of them, ☒ insurance or ☒ reinsurance undertakings shall inform the ~~competent~~ ☒ supervisory ☒ authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause ☒ those ☒ holdings to exceed or fall below any of the thresholds referred to in Articles ~~19~~ 56 and 57 (1) to (7).

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↓ 2002/83/EC, 92/49/EEC Art. 15 and 2005/68/EC Art. 22 (adapted)

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

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↓ 2005/68/EC Art. 23 (adapted)  
⇒ new

#### Article 61

Qualifying holdings, powers of the ~~competent~~ ☒ supervisory ☒ authority

Member States shall require that, where the influence exercised by the persons referred to in Article ~~19~~ 56 and 57 (1) to (7) is likely to operate against the prudent and sound management of a ☒ an insurance or ☒ reinsurance undertaking, the ~~competent~~ ☒ supervisory ☒ authorities of the home Member State ☒ of that undertaking in which a qualifying holding is sought or increased ☒ shall take appropriate measures to put an end to that situation. Such measures may consist, ~~for example,~~ in injunctions, ~~penalties~~ ⇒ sanctions ⇐ against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the ☒ notification ☒ obligation ~~to provide prior information imposed pursuant to~~ ☒ referred to in ☒ Article ~~19~~ 56 and 57 (1) to (7).

If a holding is acquired despite the opposition of the ~~competent~~ ☒ supervisory ☒ authorities, the Member States shall, regardless of any other ~~penalties~~ ⇒ sanctions ⇐ to be adopted, provide ~~either~~ for ☒ any of the following: ☒

- (1) ☒ the suspension of the ☒ exercise of the corresponding voting rights; ~~to be suspended,~~
- (2) ~~or for~~ the nullity of ☒ any ☒ votes cast or ~~for~~ the possibility of their annulment.

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↓ 2007/44/EC Art. 1(1), Art. 2(1) and Art. 4(1) (adapted)

Article 62

⊗ Voting rights ⊗

For the purposes of this ~~definition Section, in the context of Articles 8 and 15 and of the other levels of holding referred to in Article 15;~~ the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

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↓ 2007/44/EC Art. 6

~~Article 6~~

~~Review~~

~~By 21 March 2011, the Commission shall, in cooperation with the Member States, review the application of this Directive and submit a report to the European Parliament and the Council, together with any appropriate proposals.~~

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↓ 2005/68/EC Art. 24 (adapted)

**SECTION 35 - PROFESSIONAL SECRECY, AND EXCHANGES OF INFORMATION**  
**⊗ AND PROMOTION OF SUPERVISORY CONVERGENCE ⊗**

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↓ 2005/68/EC Art. 24 (adapted)

Article 63

Obligation

~~±~~ Member States shall provide that all persons ⊗ who are ⊗ working or who have worked for the ~~competent~~ ⊗ supervisory ⊗ authorities, as well as auditors and experts acting on behalf of ~~the competent~~ ⊗ those ⊗ authorities, are bound by ~~an~~ ⊗ the ⊗ obligation of professional secrecy.

~~Pursuant to that obligation, and w~~ Without prejudice to cases covered by criminal law, ~~no~~ ⊗ any ⊗ confidential information ~~which they may receive while~~ ⊗ received by such persons whilst ⊗ performing their duties may ⊗ not ⊗ be divulged to any person or



authority whatsoever, except in summary or aggregate form, such that individual  insurance and  reinsurance undertakings cannot be identified.

~~2.~~ However, where  an insurance or  reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

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↓ 2005/68/EC Art. 25 (adapted)

#### Article 64

Exchange of information between ~~competent~~  supervisory  authorities of Member States

Article ~~24~~63 shall not ~~prevent the competent~~  preclude the exchange of information between supervisory  authorities of different Member States ~~from exchanging information in accordance with the Directives applicable to reinsurance undertakings~~. Such information shall be subject to the ~~conditions~~  obligation  of professional secrecy laid down in Article ~~24~~63.

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↓ 2005/68/EC Art. 26 (adapted)

#### Article 65

Cooperation agreements with third countries

Member States may conclude cooperation agreements providing for  the  exchange of information with the ~~competent~~  supervisory  authorities of third countries or with authorities or bodies of third countries as defined in Article ~~28~~67 (1) and (2) only if the information  to be  disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Section. Such exchange of information ~~shall~~  must  be intended for the performance of the supervisory task of ~~the~~  those  authorities or bodies ~~mentioned~~.

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↓ 2002/83/EC, 2000/64/EC Art. 2 and 2005/68/EC Art. 26 (adapted)

Where the information  to be disclosed by a Member State to a third country  originates in another Member State, it may not be disclosed without the express agreement of the ~~competent~~  supervisory  authorities ~~which have disclosed it~~  of that Member State  and, where appropriate, solely for the purposes for which those authorities gave their agreement.

## Article 66

### Use of confidential information

~~Competent~~ ☒ Supervisory ☒ authorities ~~receiving~~ ☒ which receive ☒ confidential information under Articles ~~24 63 and~~ ☒ or ☒ ~~25 64~~ may use it only in the course of their duties ☒ and for the following purposes ☒ :

- (~~a~~1) to check that the conditions governing the taking up of the business of ☒ insurance or ☒ reinsurance are met and to facilitate ☒ the ☒ monitoring of the conduct of such business, especially with regard to the monitoring of ☒ the ☒ technical provisions, ⇒ the Minimum Capital Requirement, the Solvency Capital Requirement ⇐ ~~solvency margins~~, ⇒ and the governance system ⇐ ~~administrative and accounting procedures and internal control mechanisms~~;
- (~~b~~2) to impose ~~penalties~~ ⇒ sanctions ⇐;
- (~~e~~3) in administrative appeals against decisions of the ~~competent~~ ☒ supervisory ☒ authorities; ~~or~~
- (~~d~~4) in court proceedings ~~initiated under Article 53 or under special provisions provided for in this Directive and other Directives adopted in the field of insurance and reinsurance undertakings.~~

## Article 67

### Exchange of information with other authorities

1. Articles ~~24 63 and 27 66~~ shall not preclude ☒ any of the following: ☒
  - (~~a~~) the exchange of information ~~within a Member State, where there are two or more competent~~ ☒ between several supervisory ☒ authorities in the same Member State, ☒ in the discharge of their supervisory functions; ☒
  - (~~b~~) ~~or, between Member States~~ ☒ the exchange of information, in the discharge of their supervisory functions ☒, between ~~competent~~ ☒ supervisory ☒ authorities and ☒ any of the following which are situated in the same Member State ☒ :
    - (~~ai~~) authorities responsible for the ~~official~~ supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;⇐
    - (~~bi~~) bodies involved in the liquidation and bankruptcy of insurance ☒ undertakings, ☒ ~~and~~ reinsurance undertakings and in other similar procedures; ~~and~~

(~~ei~~iii) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions~~s~~;

(c) ~~in the discharge of their supervisory functions, or~~ the disclosure to bodies which administer compulsory winding-up proceedings or guarantee schemes of information necessary to the performance of their duties.

The exchange of information referred to in point (b) of the first subparagraph may also take place between different Member States.

The information received by those authorities, bodies and persons shall be subject to the ~~conditions~~  obligation  of professional secrecy laid down in Article ~~24~~ 63.

↓ 2005/68/EC Art. 28 (adapted)

2. ~~Notwithstanding~~ Articles ~~24~~ 63 to ~~27~~ 66,  shall not preclude  Member States ~~may authorise~~  from authorising  exchanges of information between the ~~competent~~  supervisory  authorities and  any of the following  :

(a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance  undertakings,  ~~re~~ reinsurance undertakings and other similar procedures~~s~~; ~~or~~

(b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance  undertakings,  ~~re~~ reinsurance undertakings, credit institutions, investment firms and other financial institutions~~s~~; ~~or~~

(c) independent actuaries of insurance  undertakings  or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which ~~have recourse to the option provided for in~~  apply  the first subparagraph shall require at least that the following conditions are met:

(a) ~~this exchange of~~  the  information ~~shall~~  must  be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph;

(b)  the  information received ~~in this context shall~~  must  be subject to the ~~conditions~~  obligation  of professional secrecy ~~imposed~~  laid down  in Article ~~24~~ 63;

(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the ~~competent~~  supervisory  authorities  from  which ~~have disclosed~~ it  originates  and, where appropriate, ~~may only be disclosed~~  solely  for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to ~~this paragraph~~ the first and second subparagraphs.

3. ~~Notwithstanding~~ Articles ~~24~~ 63 to ~~27~~ 66,  shall not preclude  Member States ~~may~~  from authorising  , with the aim of strengthening the stability, ~~including~~  the  and  integrity~~s~~ of the financial system, ~~authorise~~ the exchange of

information between the ~~competent~~  supervisory  authorities and the authorities or bodies responsible ~~under the law~~ for the detection and investigation of breaches of company law.

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↓ 2002/83/EC Art. 16(5),  
92/49/EEC Art. 16(5)(b) and  
2005/68/EC Art. 28(3) (adapted)  
⇒ new

Member States which ~~have recourse to the option provided for in~~  apply  the first subparagraph shall require  that  at least ~~that~~ the following conditions are met:

- (a) the information ~~shall~~  must  be  intended  for the purpose of ~~performing the task~~  detection and investigation as  referred to in the first subparagraph;
- (b) information received ~~in this context shall~~  must  be subject to the ~~conditions~~  obligation  of professional secrecy ~~imposed~~  laid down  in Article ~~24~~ 63;
- (c) where the information originates in another Member State, it may not be disclosed without the express agreement of the ~~competent~~  supervisory  authorities  from  which ~~have disclosed~~ it  originates  and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid  of persons appointed  , in view of their specific competence, ~~of persons appointed~~ for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions ~~laid down~~  set out  in the second subparagraph.

In order to implement point (c) of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the ~~competent~~  supervisory  authorities  from  which ~~have disclosed~~ the information  originates  the names and precise responsibilities of the persons to whom it is to be sent.

4. Member States shall communicate to the Commission and to the other Member States the names of the authorities  , persons  or bodies which may receive information pursuant to ~~this~~ paragraph 3.
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↓ 2002/83/EC Art. 16(7)  
(adapted)

~~Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.~~

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↓ 2005/68/EC Art. 60(5)(b)

~~8. Paragraphs 1 to 7 shall not prevent a competent authority from transmitting~~

~~(a) to central banks and other bodies with a similar function in their capacity as monetary authorities,~~

~~(b) where appropriate, to other public authorities responsible for overseeing payment systems,~~

~~information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.~~

↓ 2005/68/EC Art. 30 (adapted)

## Article 68

Disclosure of information to government administrations responsible for financial legislation

~~Notwithstanding~~ Articles ~~24~~ 63 and ~~27~~ 66, ~~it~~ shall not preclude ~~it~~ Member States ~~may~~ ~~it~~ from authorising ~~it~~, under provisions laid down by law, ~~authorise~~ the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments.

~~However,~~ ~~s~~Such disclosures may be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Articles ~~25~~ 64 and ~~28~~ 67 (1) and ~~that~~ ~~it~~ information ~~it~~ obtained by means of the ~~on-the-spot verification~~ ~~it~~ on-site verification ~~it~~ referred to in Article ~~16~~ 32 may ~~never~~ ~~it~~ only ~~it~~ be disclosed ~~in the cases referred to in this Article except~~ with the express consent of the ~~competent~~ ~~it~~ supervisory ~~it~~ authorities ~~it~~ from ~~it~~ which ~~disclosed~~ the information ~~it~~ originated ~~it~~ or of the ~~competent~~ ~~it~~ supervisory ~~it~~ authorities of the Member State in which ~~on-the-spot verification~~ ~~it~~ the on-site verification ~~it~~ was carried out.

↓ 2005/68/EC Art. 29 (adapted)

## Article 69

Transmission of information to central banks and monetary authorities

~~it~~ Without prejudice to ~~it~~ ~~this Section shall not prevent~~ a ~~competent~~ ~~it~~ supervisory ~~it~~ authority ~~from~~ ~~it~~ may ~~it~~ transmitting ~~it~~ information intended for the performance of their tasks ~~it~~ to ~~it~~ the following: ~~it~~

- ~~(1)~~ central banks and other bodies with a similar function in their capacity as monetary authorities, ~~and~~
- ~~(2)~~ where appropriate, ~~to~~ other public authorities responsible for overseeing payment systems, ~~information intended for the performance of their task.~~

~~Nor shall it prevent~~ ~~s~~Such authorities or bodies ~~from communicating~~ ~~it~~ may also communicate ~~it~~ to the ~~competent~~ ~~it~~ supervisory ~~it~~ authorities such information as they may need for the purposes of Article ~~27~~ 66. Information received in this context shall be subject to the ~~conditions~~ ~~it~~ obligation ~~it~~ of professional secrecy imposed in this Section.

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↓ new

Article 70

Supervisory convergence

Member States shall ensure that the supervisory authorities participate in the activities of the Committee of European Insurance and Occupational Pensions Supervisors pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC<sup>57</sup>.

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↓ 2005/68/EC Art. 31 (adapted)

**SECTION 46- DUTIES OF AUDITORS**

Article 71

Duties of auditors

1. Member States shall provide at least that ~~any person~~ ☒ persons ☒ authorised ~~in accordance with~~ ☒ within the meaning of Council ☒ Directive 84/253/EEC<sup>58</sup>, ☒ who ☒ performing in a ☒ an insurance or ☒ reinsurance undertaking the ~~task described~~ ☒ statutory audit referred to ☒ in Article 51 of Council Directive 78/660/EEC<sup>59</sup>, Article 37 of Council Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the ~~competent~~ ☒ supervisory ☒ authorities any fact or decision concerning that undertaking of which ~~he/she has~~ ☒ they have ☒ become aware while carrying out that task ☒ and ☒ which is liable to ☒ bring about any of the following ☒ :
- (a) ~~constitute~~ a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance ~~or~~ ☒ and ☒ reinsurance undertakings; ~~or~~
  - (b) ~~affect~~ ☒ the impairment of ☒ the continuous functioning of the ☒ insurance or ☒ reinsurance undertaking; ~~or~~
  - (c) ~~lead to~~ ☒ the ☒ refusal to certify the accounts or to the expression of reservations; ~~or~~
- 

↓ new

- (d) the non-compliance with the Solvency Capital Requirement;
- (e) the non-compliance with the Minimum Capital Requirement.

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<sup>57</sup> OJ L 3, 7.1.2004, p. 30.

<sup>58</sup> OJ L 126, 12.5.1984, p. 20.

<sup>59</sup> OJ L 222, 14.8.1978, p. 11.

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↓ 2005/68/EC Art. 31 (adapted)

~~That person~~ ☒ The persons referred to in the first subparagraph ☒ shall ~~also~~ ☒ likewise ☒ have a duty to report any facts and decisions of which ~~he/she~~ ☒ they have ☒ becomes aware in the course of carrying out a task as described in the first subparagraph in an undertaking ~~having~~ ☒ which has ☒ close links resulting from a control relationship with the ☒ insurance or ☒ reinsurance undertaking within which ~~he/she is~~ ☒ they are ☒ carrying out ~~the above-mentioned~~ ☒ that ☒ task.

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↓ 95/26/EC Art. 5 (adapted)

2. The disclosure in good faith to the ~~competent~~ ☒ supervisory ☒ authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract ~~of~~ ☒ or ☒ by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.
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↓ 2002/83/EC Art. 18 (adapted)

## ☒ CHAPTER V - PURSUIT OF LIFE AND NON-LIFE INSURANCE ACTIVITY ☒

### Article 72

Pursuit of life ~~assurance~~ and non-life insurance ~~activities~~ ☒ activity ☒

1. ~~Without prejudice to paragraphs 3 and 7, no undertaking may be authorised both pursuant to this Directive and pursuant to Directive 73/239/EEC.~~ ☒ Insurance undertakings may not be authorised to carry on life and non-life insurance activities simultaneously. ☒
2. By way of derogation from paragraph 1, Member States may provide ~~that~~ ☒ the following ☒ :
- (a) undertakings authorised ~~pursuant to this Directive~~ ☒ to carry on life insurance activity ☒ may also obtain authorisation, ~~in accordance with Article 6 of Directive 73/239/EEC~~ ☒ for non-life insurance activities ☒ for the risks listed in classes 1 and 2 in point A of the Annex to that Directive ~~I~~;
  - (b) undertakings authorised ~~pursuant to Article 6 of Directive 73/239/EEC~~ solely for the risks listed in classes 1 and 2 in point A of the Annex to that Directive ~~I~~ may obtain authorisation ~~pursuant to this Directive~~ ☒ to carry on life insurance activity ☒ .
- ☒ However, each activity shall be separately managed in accordance with Article 73 ☒
43. Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing ~~assurance~~ ☒ life insurance ☒

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

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

35. ~~Subject to paragraph 6, u~~Undertakings referred to in paragraph 2 and those which on  the following dates carried on simultaneously both life and non-life insurance activities covered by this Directive may continue to carry on those activities simultaneously, provided that each activity is separately managed in accordance with Article 73  :

(a) 1 January 1981 for undertakings authorised in Greece<sub>;</sub>

(b) 1 January 1986 for undertakings authorised in Spain and Portugal<sub>;</sub>

↓ 2004/66/EC Art. 1 and Annex

(c) 1 January 1995 for undertakings authorised in Austria, Finland and Sweden<sub>;</sub>

↓ 2006/101/EC Art. 1 and Annex pt. 3(b) (adapted)

(d) 1 May 2004 for undertakings authorised in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, ~~Slovenia and Slovakia;~~  and Slovenia;

↓ 2006/101/EC Art. 1 and Annex pt. 3(c) (adapted)

(e) 1 January 2007 for undertakings authorised in Bulgaria and Romania<sub>;</sub> ~~and~~

↓ 2002/83/EC (adapted)

(f) 15 March 1979 for all other undertakings<sub>;</sub>

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

6. Any  The home  Member State may require assurance  insurance  undertakings ~~whose head offices are situated in its territory~~ to cease, within a period



to be determined by ~~the~~ that Member State concerned, the simultaneous pursuit of life and non-life insurance activities in which they were engaged on the dates referred to in ~~paragraph 2~~ the first subparagraph.

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

↓ 2002/83/EC Art. 19 (adapted)

## Article 73

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

1. The separate management referred to in Article ~~72~~ ~~18(2)~~ must shall be organised in such a way that the ~~activities covered by this Directive are~~ life insurance activity is distinct from ~~the activities covered by Directive 73/239/EEC~~ in order that non-life insurance activity.

¶The respective interests of life policy holders and non-life policyholders are may not be prejudiced and, in particular, that profits from life assurance insurance shall benefit life policyholders as if the life insurance undertaking only carried on the activity of life insurance.

↓ new

2. Without prejudice to Articles 100 and 126, the insurance undertakings referred to in Article 72(2) and (5) shall calculate both of the following:
  - (a) a notional life Minimum Capital Requirement with respect to their life insurance or reinsurance activity, calculated as if the undertaking concerned only carried on that activity, on the basis of the separate accounts referred to in paragraph 6;
  - (b) a notional non-life Minimum Capital Requirement with respect to their non-life insurance or reinsurance activity, calculated as if the undertaking concerned only carried on that activity, on the basis of the separate accounts referred to in paragraph 6.
3. As a minimum, the insurance undertakings referred to in Article 72(2) and (5) shall cover the following by an equivalent amount of eligible basic own fund items:
  - (a) the notional life Minimum Capital Requirement, in respect of the life activity;
  - (b) the notional non-life Minimum Capital Requirement, in respect of the non-life activity.

↓ 2002/83/EC Art. 19 (adapted)  
⇒ new

¶The minimum financial obligations referred to in the first subparagraph particular solvency margins, in respect of one or other of the two activities, namely

~~an activity under this Directive and an activity under Directive 73/239/EEC, are~~  
~~the life insurance activity and the non-life insurance activity, may~~ not  
~~be~~ borne by the other activity.

4. ~~However, as~~ As long as the minimum financial obligations referred to in paragraph 3 are fulfilled ~~under the conditions laid down in the second indent of the first subparagraph and,~~ provided the competent supervisory authority is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in Article 100, these explicit eligible own fund items of the solvency margin which are still available for one or the other activity.

5. The competent supervisory authorities shall analyse the results in both life and non-life insurance activities so as to ensure that the provisions of this paragraphs 1 to 5 are is complied with.

56. ~~(a) Accounts shall be drawn up in such a manner~~ so as to show the sources of the results for ~~each of the two activities, life assurance and non-life insurance~~ separately. ~~To this end~~ All income, (in particular premiums, payments by re-insurers and investment income), and expenditure, (in particular insurance settlements, additions to technical provisions, reinsurance premiums, and operating expenses in respect of insurance business), shall be broken down according to origin. Items common to both activities shall be entered in the accounts in accordance with methods of apportionment to be accepted by the competent supervisory authority.

~~(b) Assurance~~ Insurance undertakings must shall, on the basis of the accounts, prepare a statement clearly identifying in which the eligible basic own fund items making up each solvency margin covering each notional Minimum Capital Requirement as referred to in paragraph 2 are clearly identified, in accordance with Article 27 of this Directive and Article 16(1) of Directive 73/239/EEC98(5).

37. If one of the solvency margins the amount of eligible basic own fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in first subparagraph of paragraph 3, the competent supervisory authorities shall apply to the deficient activity the measures provided for in the relevant this Directive, whatever the results in the other activity.

By way of derogation from ~~the second indent of the first~~ second subparagraph of paragraph ~~1 of this Article~~ 3, these those measures may involve the authorisation of a transfer of explicit eligible basic own fund items from one activity to the other.

## **CHAPTER VI - RULES RELATING TO THE VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENT RULES**

### **SECTION 1 - VALUATION OF ASSETS AND LIABILITIES**

#### **Article 74**

##### **Valuation of assets and liabilities**

1. Member States shall ensure that, unless otherwise stated, insurance and reinsurance undertakings value assets and liabilities as follows:
  - (a) assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
  - (b) liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

When valuing liabilities, no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made.

2. The Commission shall adopt, implementing measures to set out the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

### **SECTION 2 - RULES RELATING TO TECHNICAL PROVISIONS**

#### **Article 75**

##### **General provisions**

1. Member States shall ensure that insurance and reinsurance undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policyholders and beneficiaries of insurance or reinsurance contracts.
2. The calculation of technical provisions shall be based on their current exit value.
3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on insurance and reinsurance technical risks (market consistency).
4. Technical provisions shall be calculated in a prudent, reliable and objective manner.

## Article 76

### Calculation of technical provisions

1. The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in paragraphs 2 and 3.

2. The best estimate shall be equal to the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure.

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate actuarial methods and statistical techniques.

The cash-flow projection used in the calculation of the best estimate shall take account of all the cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof.

The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. Those amounts shall be calculated separately, in accordance with Article 80.

3. The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount insurance and reinsurance undertakings would be expected to require in order to take over and meet the insurance and reinsurance obligations.

4. Insurance and reinsurance undertakings shall value the best estimate and the risk margin separately.

However, where the future cash flows associated with insurance or reinsurance obligations can be replicated using financial instruments for which a market value is directly observable, the value of technical provisions shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

5. Where insurance and reinsurance undertakings value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof.

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and reinsurance undertakings.

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking holding an amount of eligible own funds, as set out in Section 3, equal to the Solvency Capital Requirement would incur to hold those funds.

## Article 77

### Other elements to be taken into account in the calculation of technical provisions

In addition to Article 76, when calculating technical provisions, insurance and reinsurance undertakings shall take account of the following:

- (1) all expenses that will be incurred in servicing insurance and reinsurance obligations;
- (2) inflation, including expenses and claims inflation;
- (3) all payments to policyholders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make, whether or not these payments are contractually guaranteed, unless those payments fall under Article 90.

## Article 78

### Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts

When calculating technical provisions, insurance and reinsurance undertakings shall take account of the value of financial guarantees and any contractual options included in insurance and reinsurance policies.

Any assumptions made by insurance and reinsurance undertakings with respect to the likelihood that policyholders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. The assumptions shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

## Article 79

### Segmentation

Insurance and reinsurance undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

## Article 80

### Recoverables from reinsurance contracts and special purpose vehicles

The calculation by insurance and reinsurance undertakings of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with Articles 75 to 79.

When calculating amounts recoverable from reinsurance contracts and special purpose vehicles, insurance and reinsurance undertakings shall take account of the time difference between recoveries and direct payments.

The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting therefrom (loss-given-default).

## Article 81

### Data quality and application of a case-by-case approach for technical provisions

Member States shall ensure that insurance and reinsurance undertakings have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

If insurance and reinsurance undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, a case-by-case approach may be taken with respect to the calculation of the best estimate.

## Article 82

### Comparison against experience

Insurance and reinsurance undertakings shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

Where the comparison identifies systematic deviation between experience and the best estimate calculations of insurance or reinsurance undertakings, the undertaking concerned shall make appropriate adjustments to the actuarial methods being used or the assumptions being made.

## Article 83

### Appropriateness of the level of technical provisions

Upon request from the supervisory authorities, insurance and reinsurance undertakings shall demonstrate the appropriateness of the level of their technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

## Article 84

### Increase of technical provisions

To the extent that the calculation of technical provisions of insurance and reinsurance undertakings does not comply with Articles 75 to 82, the supervisory authorities may require insurance and reinsurance undertakings to increase the amount of technical provisions so that they correspond to the level determined pursuant to those Articles.

## Article 85

### Implementing measures

The Commission shall adopt implementing measures laying down the following:

- (a) actuarial methods and statistical techniques to calculate the best estimate referred to in Article 76(2);

- (b) the relevant risk-free interest rate term structure to be used to calculate the best estimate referred to in Article 76(2);
- (c) the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole;
- (d) the methods and assumptions to be used in the calculation of the risk margin, including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the Cost-of-Capital rate;
- (e) the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions;
- (f) the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the situations in which it would be appropriate to use a case-by-case approach to calculate technical provisions;
- (g) the methods to be used when calculating the counterparty default adjustment referred to in Article 80 designed to capture expected losses due to default of the counterparty;
- (h) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial methods and statistical techniques referred to in point (a) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in of Article 304 (3).

### **SECTION 3 - OWN FUNDS**

#### ***SUBSECTION 1 - DETERMINATION OF OWN FUNDS***

##### **Article 86**

##### **Own funds**

Own funds shall comprise the sum of basic own funds, referred to in Article 87 and ancillary own funds referred to in Article 88.

##### **Article 87**

##### **Basic own funds**

Basic own funds shall consist of the following items:

- (1) the excess of assets over liabilities, valued in accordance with Article 74 and Section 2 ;
- (2) subordinated liabilities.

The excess amount referred to in point (1) shall be reduced by the amount of own shares directly held by the insurance or reinsurance undertaking.

## Article 88

### Ancillary own funds

1. Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

Ancillary own funds may comprise the following items to the extent that they are not basic own fund items:

- (a) unpaid share capital or initial fund that has not been called up, as referred to in Article 91;
- (b) letters of credit;
- (c) any other commitments received by insurance and reinsurance undertakings.

In the case of a mutual or mutual-type association with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the financial year concerned.

2. Where an ancillary own fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own fund items.

## Article 89

### Supervisory approval of ancillary own funds

1. The amounts of ancillary own fund items to be taken into account when determining own funds shall be subject to prior supervisory approval.

2. For each ancillary own fund item, supervisory authorities shall base their approval on an assessment of the following:

- (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
- (b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully called up;
- (c) any information on the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds.

3. The amount of each ancillary own fund item shall be equal to its nominal value unless either of the following conditions are fulfilled:

- (a) the item does not have a nominal value or has a maximum nominal value;
- (b) the nominal value does not reflect the loss-absorbency of the item.

In those cases, the amount of the item to be taken into account for the determination of ancillary own funds shall be based upon prudent and realistic assumptions.

4. Supervisory authorities shall approve either of the following:



- (a) a monetary amount for each ancillary own fund item;
- (b) a method to determine the amount of each ancillary own fund item, in which case supervisory approval of the amount determined in accordance with that method shall be granted for a specified period of time.

#### Article 90

#### Surplus funds

In so far as authorised under national law, realised profits appearing as surplus funds in the statutory annual accounts shall not be considered as insurance and reinsurance liabilities, to the extent that these surplus funds may be used to cover any losses which may arise and where they have not been made available for distribution to policyholders and beneficiaries.

#### Article 91

#### Unpaid share capital or initial fund

Where unpaid share capital or initial fund has been called up, it shall be treated as an asset.

Where unpaid share capital or initial fund has not been called up, it shall be treated as a commitment and shall fall under Article 88.

#### Article 92

#### Implementing measures

1. The Commission shall adopt implementing measures specifying the following :
  - (a) the criteria for granting supervisory approval in accordance with Article 89;
  - (b) the treatment of participations, within the meaning of the third subparagraph of Article 210(2), in financial and credit institutions with respect to the determination of own funds.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).
2. Participations in financial and credit institutions as referred to in point (b) of paragraph 1 shall comprise the following:
  - (a) participations which insurance and reinsurance undertakings hold in:
    - (i) credit institutions and financial institutions within the meaning of Article 4(1) and (5) of Directive 2006/48/EC,
    - (ii) investment firms within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC;
  - (b) subordinated claims and instruments referred to in Article 63 and Article 64(3) of Directive 2006/48/EC which insurance and reinsurance undertakings hold in respect of the entities defined in point (a) of this paragraph in which they hold a participation.

## ***SUBSECTION 2 - CLASSIFICATION OF OWN FUNDS***

### **Article 93**

#### **Characteristics used to classify own funds into tiers**

Own fund items shall be classified into three tiers on the basis of the following characteristics:

- (1) in the case of winding-up, the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts, have been met (subordination);
- (2) the total amount of the item, rather than only part of it, is available to absorb losses in the case of winding-up (loss-absorbency);
- (3) the item is available, or can be called up on demand, to absorb losses on a going-concern basis, as well as in the case of winding-up (permanence);
- (4) the item is not dated, or has a duration which is sufficient taking into account the duration of the insurance and reinsurance obligations of the undertaking (perpetuality);
- (5) the item is free from mandatory fixed charges and requirements or incentives to redeem the nominal sum, and is clear of any encumbrances (absence of mandatory servicing costs).

### **Article 94**

#### **Main criteria for the classification into tiers**

1. Basic own fund items shall be classified in Tier 1 where they possess the characteristics set out in points (1), (2) and (3) of Article 93, and, to a substantial degree, those set out in points (4) and (5) thereof.
2. Basic own fund items shall be classified in Tier 2 where they possess the characteristics set out in points (1) and (2) of Article 93, and to a substantial degree those set out in points (4) and (5) thereof.  

Ancillary own fund items shall be classified in Tier 2 where they possess the characteristics set out in points (1), (2) and (3) of Article 93, and, to a substantial degree those set out in (4) and (5) thereof.
3. Any basic and ancillary own fund items, which do not fall under paragraphs 1 and 2 shall be classified in Tier 3.

### **Article 95**

#### **Classification of own funds into tiers**

Member States shall ensure that insurance and reinsurance undertakings classify their own fund items on the basis of the criteria laid down in Article 94.

For that purpose, insurance and reinsurance undertakings shall refer to the list of own funds referred to in point (c) of Article 97(1), where applicable.

Where an own fund item is not covered by that list, it shall be assessed and classified by insurance and reinsurance undertakings, in accordance with the first paragraph. This assessment shall be approved by the supervisory authority.

#### Article 96

##### Classification of specific insurance own fund items

Without prejudice to Article 95 and point (c) of Article 97(1), for the purposes of this Directive the following classifications shall be applied:

- (1) surplus funds falling under Article 90 shall be classified in Tier 1;
- (2) letters of credit and guarantees, provided by credit institutions authorised in accordance with Directive 2006/48/EC, and held in trust for the benefit of insurance creditors by an independent trustee shall be classified in Tier 2;
- (3) any future claims which Protection and Indemnity Associations may have against their members by way of a call for supplementary contributions, within the financial year, shall be classified in Tier 2.

#### Article 97

##### Implementing measures

1. The Commission shall adopt implementing measures laying down the following:
  - (a) where it is necessary to ensure the overall quality of own funds and cross-sectoral consistency, the division of tiers into sub-tiers;
  - (b) the criteria used to classify own fund items into the sub-tiers referred to in point (a) based on the characteristics set out in Article 93;
  - (c) a list of own fund items deemed to meet the criteria, set out in Article 94 and in point (b) of this paragraph, which contains for each own fund item a precise description of the features which determined its classification;
  - (d) the methods to be used by supervisory authorities, when approving the assessment and classification of own fund items which are not covered by the list referred to in point (c).

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

2. The Commission shall regularly review and, where appropriate, update the list referred to in point (c) of paragraph 1 in the light of market developments.

### ***SUBSECTION 3 - ELIGIBILITY OF OWN FUNDS***

#### Article 98

##### Eligibility and limits applicable to Tier 1, Tier 2 and Tier 3

1. As far as the Solvency Capital Requirement is concerned, the amounts of Tier 2 and Tier 3 items shall be subject to the following limits:

- (a) in order to ensure that the proportion of Tier 1 items in the eligible own funds is higher than one third of the total eligible own funds, the eligible amount of Tier 2 together with the eligible amount of Tier 3 shall be limited to twice the total amount of Tier 1 items;
- (b) in order to ensure that the proportion of Tier 3 items in the eligible own funds is less than one third of the total eligible own funds, the eligible amount of Tier 3 shall be limited to half the total amount of Tier 1 and eligible amount of Tier 2 items.
2. As far as the Minimum Capital Requirement is concerned, in order to ensure that the proportion of Tier 1 items in the eligible basic own funds shall be higher than one half of the total eligible basic own funds, the amount of basic own fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be limited to the total amount of Tier 1 items.
3. Where sub-tiers have been introduced, in accordance with point (a) of Article 97 (1), specific limits shall apply to the amount of own fund items classified in those sub-tiers.
4. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.
5. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 126 shall be equal to sum of the amount of Tier 1 and the eligible amount of basic own fund items classified in Tier 2.

#### Article 99

##### Implementing measures

The Commission shall adopt implementing measures laying down the specific limits applicable to sub-tiers, where sub-tiers have been introduced.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## **SECTION 4 - SOLVENCY CAPITAL REQUIREMENT**

### ***SUBSECTION 1 - GENERAL PROVISIONS FOR THE SOLVENCY CAPITAL REQUIREMENT USING THE STANDARD FORMULA OR AN INTERNAL MODEL***

#### Article 100

##### General provisions

Member States shall ensure that insurance and reinsurance undertakings hold eligible own funds covering the Solvency Capital Requirement.

The Solvency Capital Requirement shall be calculated, either in accordance with the standard formula in Subsection 2 or using an internal model, as set out in Subsection 3.

## Article 101

### Calculation of the Solvency Capital Requirement

1. The Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 5:
2. The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will carry on its business as a going concern.
3. The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance or reinsurance undertaking is exposed are taken into account. With respect to existing business, it shall cover unexpected losses.

It shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99.5% over a one-year period.

4. The Solvency Capital Requirement shall cover at least the following risks:

- (a) non-life underwriting risk;
- (b) life underwriting risk;
- (c) health underwriting risk;
- (d) market risk;
- (e) credit risk;
- (f) operational risk.

Operational risk as referred to in point (f) of the first subparagraph shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

5. When calculating the Solvency Capital Requirement, insurance and reinsurance undertakings shall take account of the effect of risk mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

## Article 102

### Frequency of calculation

1. Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the supervisory authorities.

Insurance and reinsurance undertakings shall ensure that they hold eligible own funds which cover the last reported Solvency Capital Requirement.

Insurance and reinsurance undertakings shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an on-going basis.

If the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the supervisory authorities.

2. Where there is evidence to suggest that the risk profile of the insurance or reinsurance undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the supervisory authorities may require the undertaking concerned to recalculate the Solvency Capital Requirement.

## ***SUBSECTION 2 - SOLVENCY CAPITAL REQUIREMENT – STANDARD FORMULA***

### **Article 103**

#### **Structure of the standard formula**

1. The Solvency Capital Requirement shall be the sum of the following items:
  - (a) the Basic Solvency Capital Requirement, as laid down in Article 104;
  - (b) the capital requirement for operational risk, as laid down in Article 106;
  - (c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Article 107.
2. For the purposes of the calculation of the Solvency Capital Requirement the Commission shall adopt implementing measures defining a standard formula in accordance with the principles set out in Articles 104 to 108.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

### **Article 104**

#### **Design of the Basic Solvency Capital Requirement**

1. The Basic Solvency Capital Requirement shall comprise individual risk modules, which are aggregated in accordance with point 1 of Annex IV.

It shall consist of at least the following risk modules:

  - (a) non-life underwriting risk;
  - (b) life underwriting risk;
  - (c) special health underwriting risk;
  - (d) market risk,
  - (e) counterparty default risk.
2. For the purposes of points (a), (b) and (c) of paragraph 1, insurance or reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.
3. The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in Article 101.
4. Each of the risk modules referred to in paragraph 1 shall be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one year period.

Where appropriate, diversification effects shall be taken into account in the design of each risk module.

5. The same design and specifications for the risk modules shall be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Article 108.
6. With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and special health underwriting risk modules.
7. Subject to approval by the supervisory authorities, insurance and reinsurance undertakings may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking concerned when calculating the life, non-life and special health underwriting risk modules.

Such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardised methods.

When granting supervisory approval, supervisory authorities shall verify the completeness, accuracy and appropriateness of the data used.

## Article 105

### Calculation of the Basic Solvency Capital Requirement

1. The Basic Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 6:
2. The non-life underwriting risk module shall reflect the risk arising from the underwriting of non-life insurance contracts, in relation to the perils covered and the processes used in the conduct of business.

It shall take account of the uncertainty in the results of insurance and reinsurance undertakings related to the existing insurance and reinsurance obligations.

It shall be calculated, in accordance with point 2 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

- (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk);
  - (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).
3. The life underwriting risk module shall reflect the risk arising from the underwriting of life insurance contracts, in relation to the perils covered and the processes used in the conduct of business.

It shall be calculated, in accordance with point 3 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

- (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where

an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);

- (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);
- (c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk);
- (d) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life expense risk);
- (e) the risk of loss, or of adverse change in the value of insurance liabilities resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);
- (f) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, and surrenders (lapse risk);
- (g) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life catastrophe risk).

4. Where health insurance is pursued on a similar technical basis to that of life insurance as referred to in Article 204, the special health underwriting risk module shall reflect the risk arising from the underwriting of health insurance contracts, following from both the perils covered and the processes used in the conduct of business.

It shall be calculated, in accordance with point 4 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

- (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (health expense risk);
- (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning (health premium and reserve risk);
- (c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances (health epidemic risk).

5. The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. It shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.



It shall be calculated, in accordance with point 5 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

- (a) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);
- (b) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);
- (c) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);
- (d) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);
- (e) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk).
- (f) additional risks to an insurance or reinsurance undertaking stemming, either from lack of diversification in the asset portfolio, or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

6. The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of insurance and reinsurance undertakings over the next twelve months. The counterparty default risk module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module.

For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance or reinsurance undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

## Article 106

### Capital requirement for operational risk

1. The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 104. That requirement shall be calibrated in accordance with Article 101(3).
2. With respect to life insurance contracts where the investment risk is borne by the policyholders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.
3. With respect to insurance and reinsurance operations other than those referred to in paragraph 2, the calculation of the capital requirement for operational risk shall take

account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

#### Article 107

##### Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes

The adjustment referred to in point (c) paragraph 1 of Article 103 for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions and deferred taxes.

That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of life insurance contracts, to the extent insurance and reinsurance undertakings can establish that a reduction in such benefits may be used to cover any unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to these future discretionary benefits.

For the purpose of the second paragraph, the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

#### Article 108

##### Simplifications in the standard formula

Insurance and reinsurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

Simplified calculations shall be calibrated in accordance with Article 101(3).

#### Article 109

##### Implementing measures

1. In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the Solvency Capital Requirement on the basis of the standard formula, or to take account of market developments, the Commission shall adopt implementing measures laying down the following:

- (a) any sub-modules necessary for covering more precisely the risks which fall under the respective risk modules referred to in Article 104 as well as any subsequent updates;
- (b) the methods, assumptions and standard parameters to be used, when calculating each of the risk modules or sub-modules of the Basic Solvency Capital Requirement laid down in Articles 104 and 105;
- (c) the correlation parameters;

- (d) where insurance and reinsurance undertakings use risk mitigation techniques, the methods and assumptions to be used to assess the changes in the risk profile of the undertaking concerned and adjust the calculation of the Solvency Capital Requirement;
- (e) the qualitative criteria that the risk mitigation techniques referred to in point (d) must meet in order to ensure that the risk has been effectively transferred to a third party;
- (f) the methods and parameters to be used when assessing the capital requirement for operational risk set out in Article 106;
- (g) the method to be used when calculating the adjustment for the loss-absorbing capacity of technical provisions, as laid down in Article 107;
- (h) the subset of standard parameters in the life, non-life and special health underwriting risk modules that may be replaced by undertaking-specific parameters as set out in Article 104(7);
- (i) the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (h), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given;
- (j) the simplified calculations provided for specific sub-modules and risk modules, as well as the criteria that insurance and reinsurance undertakings shall be required to meet in order to be entitled to use each of these simplifications, as set out in Article 108.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

2. The Commission may adopt implementing measures laying down quantitative limits and asset eligibility criteria in order to address risks which are not adequately covered by a sub-module. Such implementing measures shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policyholders.

Those measures designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

### ***SUBSECTION 3 - SOLVENCY CAPITAL REQUIREMENT – FULL AND PARTIAL INTERNAL MODELS***

#### **Article 110**

##### **General provisions for the approval of full and partial internal models**

1. Member States shall ensure that insurance or reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the supervisory authorities.

2. Insurance and reinsurance undertakings may use partial internal models for the calculation of one or more of the following:
  - (a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in Articles 104 and 105;
  - (b) the capital requirement for operational risk as laid down in Article 106;
  - (c) the adjustment referred to in Article 107.In addition, partial modelling may be applied to the whole business of insurance and reinsurance undertakings, or only to one or more major business units.
3. In any application for approval, insurance and reinsurance undertakings shall submit, as a minimum, documentary evidence that the internal model meets the requirements set out in Articles 118 to 123.

Where the application for that approval relates to a partial internal model, the requirements set out in Articles 118 to 123 shall be adapted to take account of the limited scope of the application of the model.
4. The supervisory authorities shall decide on the application within six months from the receipt of the complete application.
5. Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking concerned for monitoring and managing risk are adequate and in particular, that the internal model complies with the requirements referred to in paragraph 3.
6. Any decision by the supervisory authorities to reject the application for the use of an internal model shall be accompanied by the reasons therefore.
7. For a period of two years after having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings shall provide supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.

#### Article 111

##### Specific provisions for the approval of partial internal models

1. In the case of a partial internal model, supervisory approval shall only be given if that model complies with the requirements set out in Article 110 and the following additional conditions:
  - (a) the reason for the limited scope of application of the model is properly justified by the undertaking;
  - (b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular meets the principles set out in Subsection 1;
  - (c) its design is consistent with the principles set out in Subsection 1 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement Standard Formula.
2. When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of

an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, supervisory authorities may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model.

The transitional plan shall set out the manner in which insurance and reinsurance undertakings plan to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

## Article 112

### Implementing measures

The Commission shall adopt implementing measures setting out following:

- (1) the procedure to be followed for the approval of an internal model;
- (2) the adaptations to be made to the standards set out in Articles 118 to 123 in order to take account of the limited scope of the application of the partial internal model.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## Article 113

### Policy for changing the full and partial internal models

As part of the initial approval process of their internal model, insurance and reinsurance undertakings shall agree with the supervisory authorities on a policy for changing the model. Insurance and reinsurance undertakings may change their internal model in accordance with that policy

The policy shall include a specification of minor and major changes to the internal model.

Major changes to the internal model, as well as changes to the policy, shall always be subject to prior supervisory approval, as laid down in Article 110.

Minor changes to the internal model shall not be subject to prior supervisory approval, insofar as they are developed in accordance with the policy.

## Article 114

### Responsibilities of the administrative and management bodies

The administrative or management bodies of the insurance and reinsurance undertakings shall approve the application to the supervisory authorities for approval of the internal model referred to in Article 110, as well as the application for approval of any subsequent major changes made to that model.

The administrative or management body shall have responsibility for putting in place systems which ensure that the internal model operates properly on a continuous basis.

## Article 115

### Reversion to the standard formula

After having received approval in accordance with Article 110, insurance and reinsurance undertakings shall not revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, except in duly justified circumstances and subject to the approval of the supervisory authorities.

## Article 116

### Non-compliance of the internal model

1. If, after having received approval from the supervisory authorities to use an internal model, insurance and reinsurance undertakings cease to comply with the requirements set out in Articles 118 to 123, they shall, either present to the supervisory authorities a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.
2. In the event that insurance and reinsurance undertakings fail to implement the plan referred to in paragraph 1, the supervisory authorities may require insurance and reinsurance undertakings to revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2.

## Article 117

### Significant deviations from the assumptions underlying the Solvency Capital Requirement

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement, the supervisory authorities may, by a decision stating the reasons, require the undertakings concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules of thereof.

## Article 118

### Use test

Insurance and reinsurance undertakings shall demonstrate that the internal model is widely used in and plays an important role in the following:

- (1) their system of governance, referred to in Articles 41 – 49, in particular
  - (a) their risk-management system as laid down in Article 43 and their decision-making processes;
  - (b) their economic and solvency capital assessment and allocation processes, including the assessment referred to in Article 44.

In addition, insurance and reinsurance undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by the first paragraph.

The administrative or management body shall be responsible for ensuring the on-going appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance and reinsurance undertakings concerned.

## Article 119

### Statistical quality standards

1. The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in paragraphs 2 to 9.

2. The methods used to calculate the probability distribution forecast shall be based on adequate actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions.

Insurance and reinsurance undertakings shall be able to justify the assumptions underlying their internal model to the supervisory authorities.

3. Data used for the internal model shall be accurate, complete and appropriate.

Insurance and reinsurance undertakings shall update the data sets used in the calculation of the probability distribution forecast at least once a year.

4. No particular method for the calculation of the probability distribution forecast shall be prescribed.

Regardless of the method of calculation chosen, the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the system of governance of insurance and reinsurance undertakings, in particular their risk-management system and decision-making processes, and capital allocation in accordance with Article 118.

The internal model shall cover all of the material risks to which insurance and reinsurance undertakings are exposed. As a minimum, full internal models shall cover the risks set out in Article 101(4).

5. As regards diversification effects, insurance and reinsurance undertakings may take account in their internal model of dependencies within risk categories, as well as across risk categories, provided that supervisory authorities are satisfied that the system used for measuring those diversification effects is adequate.

6. Insurance and reinsurance undertakings may take full account of the effect of risk mitigation techniques in their internal model, as long as credit risk and other risks arising from the use of risk mitigation techniques are properly reflected in the internal model.

7. Insurance and reinsurance undertakings shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policyholder options and contractual options for insurance and reinsurance undertakings. For this purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

8. In their internal model, insurance and reinsurance undertakings may take account of future management actions that they would reasonably expect to carry out in specific circumstances.

In the case set out in the first subparagraph, the undertaking concerned shall make allowance for the time necessary to implement such actions.

9. In their internal model, insurance and reinsurance undertakings shall take account of all payments to policy holders and beneficiaries which they expect to make, whether or not these payments are contractually guaranteed.

## Article 120

### Calibration standards

1. Insurance and reinsurance undertakings may use a different time period or risk measure than that set out in Article 101(3) for internal modelling purposes as long as the outputs of the internal model can be used by those undertakings to calculate the Solvency Capital Requirement in a manner that provides policyholders and beneficiaries with a level of protection equivalent to that set out in Article 101.

2. Where practicable, insurance and reinsurance undertakings shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model of those undertakings, using the Value-at-Risk measure set out in Article 101(3).

3. Where insurance and reinsurance undertakings cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the supervisory authorities may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as those undertakings can demonstrate to the supervisory authorities that policyholders are provided with a level of protection equivalent to that set out in Article 101.

4. Supervisory authorities may require insurance and reinsurance undertakings to run their internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

## Article 121

### Profit and loss attribution

Insurance and reinsurance undertakings shall review, at least annually, the causes and sources of profits and losses for each major business unit.

They shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the insurance and reinsurance undertakings.



## Article 122

### Validation standards

Insurance and reinsurance undertakings shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the on-going appropriateness of its specification, and testing its results against experience.

The model validation process shall include an effective statistical process for validating the internal model which enables the insurance and reinsurance undertakings to demonstrate to their supervisory authorities that the resulting capital requirements are appropriate.

The statistical methods applied shall not only test the appropriateness of the probability distribution forecast compared to loss experience, but also to all new data and information relating thereto.

The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

## Article 123

### Documentation standards

Insurance and reinsurance undertakings shall document the design and operational details of their internal model.

The documentation shall demonstrate compliance with Articles 118 to 122.

The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical basis underlying the internal model.

The documentation shall indicate any circumstances under which the internal model does not work effectively.

Insurance and reinsurance undertakings shall document all major changes to their internal model, as set out in Article 113.

## Article 124

### External models and data

The use of a model or data obtained from a third-party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in Articles 118 to 123.

## Article 125

### Implementing measures

The Commission shall, in order to ensure a harmonised approach to the use of internal models throughout the Community and to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings, adopt implementing measures with respect to Articles 118 to 124.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

## SECTION 5 - MINIMUM CAPITAL REQUIREMENT

## Article 126

### General provisions

Member States shall ensure that insurance and reinsurance undertakings hold eligible basic own funds, to cover the Minimum Capital Requirement.

## Article 127

### Calculation of the Minimum Capital Requirement

1. The Minimum Capital Requirement shall be calculated in accordance with the following principles:
  - (a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
  - (b) the Minimum Capital Requirement shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations;
  - (c) the level of the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level in the range of 80% to 90% over a one-year period;
  - (d) it shall have an absolute floor of 1 000 000 EUR for non-life insurance and reinsurance undertakings and 2 000 000 EUR for life insurance undertakings.
2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

## Article 128

### Implementing measures

The Commission shall adopt implementing measures specifying the calculation of the Minimum Capital Requirement, referred to in Articles 126 and 127.

Those measures designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

## Article 129

### Transitional arrangements regarding compliance with the Minimum Capital Requirement

By way of derogation from Article 137, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16 a of Directive 73/239/EC or Articles 37, 38 or 39 of Directive 2005/68/EC respectively on the date set out in Article 310(1) but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 126 within one year from the date as set out in Article 310(1).

If the undertaking concerned fails to comply with Article 126 within the period set out in the first paragraph, the authorisation of the undertaking shall be withdrawn, subject to the applicable processes provided for in the national legislation.

## SECTION 6 - INVESTMENTS

### Article 130

#### "Prudent person" principle

1. Member States shall ensure that insurance and reinsurance undertakings invest all their assets in accordance with the "prudent person" principle, as specified in paragraphs 2,3 and 4.
2. With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly monitor, manage and control.

All assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of policyholders and beneficiaries;

In the case of a conflict of interest, insurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policyholders and beneficiaries.

3. Without prejudice to paragraph 2, with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policyholders, the second, third and fourth subparagraphs of this paragraph shall apply.

Where the benefits provided by a contract are directly linked to the value of units in an UCITS as defined in Directive 85/611/EEC, or to the value of assets contained in an internal fund held by the insurance undertakings, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

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

Where the benefits referred to in the second and third subparagraphs include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions shall be subject to paragraph 4.

4. Without prejudice to paragraph 2, with respect to other assets than those covered by paragraph 3, the second to fifth subparagraphs of this paragraph shall apply.

The use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management.

Investment in assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels.

Assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulations of risk in the portfolio as a whole.

Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertakings to excessive risk concentration.

#### Article 131

##### Freedom of investment

1. Member States shall not require insurance and reinsurance undertakings to invest in particular categories of assets.
2. Member States shall not subject the investment decisions of an insurance or reinsurance undertaking or its investment manager to any kind of prior approval or systematic notification requirements.

#### Article 132

##### Localisation of assets and prohibition of pledging of assets

1. With respect to insurance risks situated in the Community, Member States shall ensure that the assets held to cover the technical provisions related to those risks are localised within the Community. Member States shall not require insurance undertakings to localise those assets in any particular Member States.

However, with respect to recoverables from reinsurance contracts against undertakings authorised in accordance with this Directive or having their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 170, Member States shall not require the localisation within the Community of the assets representing those recoverables.

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↓ 2002/83/EC Art1(1) (adapted)

~~⊗~~ The requirement concerning the localisation ~~⊗~~ ~~«localisation of assets» shall mean the existence of assets whether movable or immovable, within a Member State~~ ~~but~~ ~~⊗~~ as referred to in the first paragraph ~~⊗~~ shall not be construed as involving a requirement that movable assets be deposited or that immovable assets be subjected to restrictive measures such as the registration of mortgages. ~~⊗~~ Assets represented by claims against debtors shall be regarded as situated in the Member State where they are realisable.

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↓ 2005/68/EC Art. 32(2)  
(adapted)

2. Member States shall not retain or introduce ~~⊗~~ for the establishment of technical provisions ~~⊗~~ a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the ~~reinsurer~~ ~~⊗~~ reinsuring undertaking ~~⊗~~ is ~~⊗~~ an insurance or ~~⊗~~ reinsurance undertaking authorised in accordance with this Directive ~~or an insurance undertaking authorised in accordance with Directives 73/239/EEC or 2002/83/EC.~~
- 

↓ new

## Article 133

### Implementing measures

In order to ensure the uniform application of this Directive, the Commission may adopt implementing measures specifying the following:

- (a) the identification, measurement and control of risks arising from investments in relation to the first subparagraph of Article 130(2);
- (b) the identification, measurement and control of risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 130(4);

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

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↓ 2002/83/EC

~~CHAPTER 2~~

~~RULES RELATING TO TECHNICAL PROVISIONS AND THEIR  
REPRESENTATION~~

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↓ 92/49/EEC Art. 17

~~Article 15~~

~~1. The home Member State shall require every insurance undertaking to establish adequate technical provisions in respect of its entire business.~~

~~The amount of such technical provisions shall be determined in accordance with the rules laid down in Directive 91/674/EEC.~~

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↓ 2005/68/EC Art. 57.3

~~2. The home Member State shall require every insurance undertaking to cover the technical provisions and the equalisation reserve referred to in Article 15a of this Directive by matching assets in accordance with Article 6 of Directive 88/357/EEC. In respect of risks situated within the Community, those assets must be localised within the Community. Member States shall not require insurance undertakings to localise their assets in any particular Member State. The home Member State may, however, allow the rules on the localisation of assets to be relaxed.~~

~~3. Member States shall not retain or introduce for the establishment of technical provisions a system of gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions by the reinsurer, when the reinsurer is a reinsurance undertaking authorised in accordance with Directive 2005/68/EC or an insurance undertaking authorised in accordance with this Directive or Directive 2002/83/EC.~~

~~When the home Member State allows any technical provisions to be covered by claims against a reinsurer which is neither a reinsurance undertaking authorised in accordance with Directive 2005/68/EC nor an insurance undertaking authorised in accordance with this Directive or Directive 2002/83/EC, it shall set the conditions for accepting such claims.~~

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↓ 2002/83/EC

~~CHAPTER 2~~

~~RULES RELATING TO TECHNICAL PROVISIONS AND THEIR  
REPRESENTATION~~

~~Article 20~~

~~Establishment of technical provisions~~

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

↓ 2002/83/EC

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

~~A.~~

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

~~all guaranteed benefits, including guaranteed surrender values,~~

~~bonuses to which policy holders are already either collectively or individually entitled, however those bonuses are described as vested, declared or allotted,~~

~~all options available to the policy holder under the terms of the contract,~~

~~expenses, including commissions,~~

~~taking credit for future premiums due;~~

~~(ii) the use of a retrospective method is allowed, if it can be shown that the resulting technical provisions are not lower than would be required under a sufficiently prudent prospective calculation or if a prospective method cannot be used for the type of contract involved;~~

~~(iii) a prudent valuation is not a «best estimate» valuation, but shall include an appropriate margin for adverse deviation of the relevant factors;~~

~~(iv) the method of valuation for the technical provisions must not only be prudent in itself, but must also be so having regard to the method of valuation for the assets covering those provisions;~~

~~(v) technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalisations is allowed, however, where they are likely to give approximately the same result as individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualised;~~

~~(vi) where the surrender value of a contract is guaranteed, the amount of the mathematical provisions for the contract at any time shall be at least as great as the value guaranteed at that time;~~

~~B. the rate of interest used shall be chosen prudently. It shall be determined in accordance with the rules of the competent authority in the home Member State, applying the following principles:~~

~~(a) for all contracts, the competent authority of the assurance undertaking's home Member State shall fix one or more maximum rates of interest, in particular in accordance with the following rules:~~

~~(i) when contracts contain an interest rate guarantee, the competent authority in the home Member State shall set a single maximum rate of interest. It may differ according to the currency in which the contract is denominated, provided that it is not more than 60 % of the rate on bond issues by the State in whose currency the contract is denominated.~~

~~If a Member State decides, pursuant to the second sentence of the first subparagraph, to set a maximum rate of interest for contracts denominated in another Member State's currency, it shall first consult the competent authority of the Member State in whose currency the contract is denominated;~~

~~(ii) however, when the assets of the assurance undertaking are not valued at their purchase price, a Member State may stipulate that one or more maximum rates may be calculated taking into account the yield on the corresponding assets currently held, minus a prudential margin and, in particular for contracts with periodic premiums, furthermore taking into account the anticipated yield on future assets. The prudential margin and the maximum rate or rates of interest applied to the anticipated yield on future assets shall be fixed by the competent authority of the home Member State;~~

~~(b) the establishment of a maximum rate of interest shall not imply that the assurance undertaking is bound to use a rate as high as that;~~

~~(c) the home Member State may decide not to apply paragraph (a) to the following categories of contracts:~~

~~unit-linked contracts;~~

~~single premium contracts for a period of up to eight years;~~

~~without profits contracts, and annuity contracts with no surrender value.~~

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

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

~~(d) the Member State shall require an assurance undertaking to set aside in its accounts a provision to meet interest rate commitments vis-à-vis policy holders if the present or foreseeable yield on the undertaking's assets is insufficient to cover those commitments;~~

~~(e) the Commission and the competent authorities of the Member States which so request shall be notified of the maximum rates of interest set under (a);~~

~~C. the statistical elements of the valuation and the allowance for expenses used shall be chosen prudently, having regard to the State of the commitment, the type of policy and the administrative costs and commissions expected to be incurred;~~

~~D. in the case of participating contracts, the method of calculation for technical provisions may take into account, either implicitly or explicitly, future bonuses of all~~



~~kinds, in a manner consistent with the other assumptions on future experience and with the current method of distribution of bonuses;~~

~~E. allowance for future expenses may be made implicitly, for instance by the use of future premiums net of management charges. However, the overall allowance, implicit or explicit, shall be not less than a prudent estimate of the relevant future expenses;~~

~~F. the method of calculation of technical provisions shall not be subject to discontinuities from year to year arising from arbitrary changes to the method or the bases of calculation and shall be such as to recognise the distribution of profits in an appropriate way over the duration of each policy.~~

~~2. Assurance undertakings shall make available to the public the bases and methods used in the calculation of the technical provisions, including provisions for bonuses.~~

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

↓ 2005/68/EC Art. 60.6

~~4. Member States shall not retain or introduce for the establishment of technical provisions a system of gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions by the reinsurer, authorised in accordance with Directive 2005/68/EC when the reinsurer is a reinsurance undertaking or an insurance undertaking authorised in accordance with Directive 73/239/EEC or this Directive.~~

↓ 2005/68/EC Art. 60.6

~~When the home Member State allows any technical provisions to be covered by claims against a reinsurer which is neither a reinsurance undertaking authorised in accordance with Directive 2005/68/EC nor an insurance undertaking authorised in accordance with Directive 73/239/EEC or this Directive, it shall set the conditions for accepting such claims.~~

↓ 92/49/EEC Art. 18

#### ~~Article 15a~~

~~1. Member States shall require every insurance undertaking with a head office within their territories which underwrites risks included in class 14 in point A of the Annex (hereinafter referred to as «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 in any financial year.~~

~~2. The equalization reserve shall be calculated in accordance with the rules laid down by the home Member State in accordance with one of the four methods set out in point D of the Annex, which shall be regarded as equivalent.~~

~~3. Up to the amount calculated in accordance with the methods set out in point D of the Annex, the equalization reserve shall be disregarded for the purpose of calculating the solvency margin.~~

~~4. Member States may exempt insurance undertakings with head offices within their territories from the obligation to set up equalization reserves 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 2500000.~~

↓ 2002/83/EC

#### ~~Article 22~~

##### ~~Assets covering technical provisions~~

~~The assets covering the technical provisions shall take account of the type of business carried on by an assurance undertaking in such a way as to secure the safety, yield and marketability of its investments, which the undertaking shall ensure are diversified and adequately spread.~~

↓ 92/49/EEC Art. 20

~~The assets covering the technical provisions shall take account of the type of business carried on by an undertaking in such a way as to secure the safety, yield and marketability of its investments, which the undertaking shall ensure are diversified and adequately spread.~~

↓ 2002/83/EC

#### ~~Article 23~~

##### ~~Categories of authorised assets~~

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

↓ 2005/68/EC Art. 58.3(a)

~~1. The home Member State may not authorise insurance undertakings to cover their technical provisions and equalisation reserves with any assets other than those in the following categories:~~

↓ 2002/83/EC and 92/49/EEC Art. 21

##### ~~A. investments~~

~~(a) debt securities, bonds and other money and capital market instruments;~~

~~(b) loans;~~

~~(c) shares and other variable yield participations;~~

~~(d) units in undertakings for collective investment in transferable securities (UCITS) and other investment funds;~~

~~(e) land, buildings and immovable property rights;~~

~~B. debts and claims~~

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↓ 2005/68/EC Art. 58.3(b) and  
Art. 60.7(a)

~~(f) debts owed by reinsurers, including reinsurers' shares of technical provisions, and by special purpose vehicles referred to in Article 46 of Directive 2005/68/EC;~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 21

~~(g) deposits with and debts owed by ceding undertakings;~~

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↓ 2002/83/EC

~~(h) debts owed by policy holders and intermediaries arising out of direct and reinsurance operations;~~

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↓ 92/49/EEC Art. 21

~~(h) debts owed by policyholders and intermediaries arising out of direct and reinsurance operations;~~

~~(i) claims arising out of salvage and subrogation;~~

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↓ 2002/83/EC

~~(i) advances against policies;~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 21

~~(j) tax recoveries;~~

~~(k) claims against guarantee funds;~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 21

~~C. others~~

~~(l) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortisation;~~

~~(m) cash at bank and in hand, deposits with credit institutions and any other body authorised to receive deposits;~~

~~(n) deferred acquisition costs;~~

~~(o) accrued interest and rent, other accrued income and prepayments;~~

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↓ 2002/83/EC

~~(p) reversionary interests.~~

~~2. In the case of the association of underwriters known as «Lloyd's», asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 2000/12/EC of the European Parliament and of the Council<sup>60</sup> or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.~~

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↓ 92/49/EEC

~~In the case of the association of underwriters known as Lloyd's, asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 77/780/EEC<sup>61</sup> or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.~~

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↓ 2005/68/EC Art. 58.3(c) and  
Art. 60.7(b)

~~3. The inclusion of any asset or category of assets listed in paragraph 1 shall not mean that all these assets should automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules setting the conditions for the use of acceptable assets.~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 21

~~In the determination and the application of the rules which it lays down, the home Member State shall, in particular, ensure that the following principles are complied with:~~

~~(i) assets covering technical provisions shall be valued net of any debts arising out of their acquisition;~~

~~(ii) all assets must be valued on a prudent basis, allowing for the risk of any amounts not being realisable. In particular, tangible fixed assets other than land and buildings may be accepted as cover for technical provisions only if they are valued on the basis of prudent amortisation;~~

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↓ 2002/83/EC

~~(iii) loans, whether to undertakings, to a State or international organisation, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these~~

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<sup>60</sup> OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

<sup>61</sup> OJ No L 322, 17. 12. 1977, p. 30. Last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

~~are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by assurance undertakings or other forms of security;~~

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↓ 92/49/EEC Art. 21

~~(iii) loans, whether to undertakings, to State authorities or international organizations, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by insurance undertakings or other forms of security;~~

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↓ 2002/83/EC and 92/49/EEC Art. 21

~~(iv) derivative instruments such as options, futures and swaps in connection with assets covering technical provisions may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;~~

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↓ 2002/83/EC

~~(v) transferable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realised in the short term or if they are holdings in credit institutions, in assurance undertakings, within the limits permitted by Article 6, or in investment undertakings established in a Member State;~~

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↓ 92/49/EEC Art. 21

~~(v) transferable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realized in the short term;~~

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↓ 2002/83/EC and 92/49/EEC Art. 21

~~(vi) debts owed by and claims against a third party may be accepted as cover for technical provisions only after deduction of all amounts owed to the same third party;~~

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↓ 2002/83/EC

~~(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realisable. In particular, debts owed by policy holders and intermediaries arising out of assurance and reinsurance operations may be accepted only in so far as they have been outstanding for not more than three months;~~

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↓ 92/49/EEC Art. 21

~~(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realizable. In particular, debts owed by policyholders and intermediaries arising out of insurance and reinsurance operations may be accepted only in so far as they have been outstanding for not more than three months;~~

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↓ 2002/83/EC

~~(viii) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;~~

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↓ 92/49/EEC Art. 21

~~(viii) where the assets held include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;~~

~~(ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that that is consistent with the calculation of the technical provision for unearned premiums;~~

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↓ 2002/83/EC

~~(ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that this is consistent with the calculation of the mathematical provisions;~~

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

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↓ 92/49/EEC Art. 21

~~2. Notwithstanding paragraph 1, in exceptional circumstances and at an insurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 20.~~

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↓ 2002/83/EC

~~Article 24~~

**~~Rules for investment diversification~~**

~~1. As regards the assets covering technical provisions, the home Member State shall require every assurance undertaking to invest no more than:~~

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↓ 2005/68/EC Art. 58.4

~~1. As regards the assets covering technical provisions and equalisation reserves, the home Member State shall require every insurance undertaking to invest no more than:~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 22

~~(a) 10 % of its total gross technical provisions in any one piece of land or building, or a number of pieces of land or buildings close enough to each other to be considered effectively as one investment;~~

~~(b) 5 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money and capital market instruments from the same undertaking, or in loans granted to the same borrower, taken together, the loans being loans other than those granted to a State, regional or local authority or to an international organization of which one or more Member States are members. This limit may be raised to 10 % if an undertaking does not invest more than 40 % of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 % of its assets;~~

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↓ 2002/83/EC

~~(e) 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertakings — in so far as Article 6 allows it — and investment undertakings established in a Member State. The limits may be raised to 8 % and 2 % respectively by a decision taken on a case-by-case basis by the competent authority of the home Member State;~~

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↓ 92/49/EEC Art. 22

~~(e) 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertaking — in so far as Article 8 of Directive 73/239/EEC allows it — and investment undertakings established in a Member State;~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 22

~~(d) 3 % of its total gross technical provisions in the form of cash in hand;~~

~~(e) 10 % of its total gross technical provisions in shares, other securities treated as shares and debt securities which are not dealt in on a regulated market.~~

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

~~(i) assets covering technical provisions must be diversified and spread in such a way as to ensure that there is no excessive reliance on any particular category of asset, investment market or investment;~~

~~(ii) investment in particular types of asset which show high levels of risk, whether because of the nature of the asset or the quality of the issuer, must be restricted to prudent levels;~~

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↓ 2002/83/EC

~~(iii) limitations on particular categories of asset must take account of the treatment of reinsurance in the calculation of technical provisions;~~

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↓ 92/49/EEC Art. 22

~~(iii) limitations on particular categories of asset must take account of the treatment of reinsurance in the calculation of technical provisions;~~

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↓ 2002/83/EC

~~(iv) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;~~

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↓ 92/49/EEC Art. 22

~~(iv) where the assets held include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;~~



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↓ 2002/83/EC and 92/49/EEC  
Art. 22

~~(v) the percentage of assets covering technical provisions which are the subject of non-liquid investments must be kept to a prudent level;~~

~~(vi) where the assets held include loans to or debt securities issued by certain credit institutions, the home Member State may, when applying the rules and principles contained in this Article, take into account the underlying assets held by such credit institutions. This treatment may be applied only where the credit institution has its head office in a Member State, is entirely owned by that Member State and/or that State's local authorities and its business, according to its memorandum and articles of association, consists of extending, through its intermediaries, loans to, or guaranteed by, States or local authorities or of loans to bodies closely linked to the State or to local authorities.~~

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

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↓ 2002/83/EC

~~any loan unaccompanied by a bank guarantee, a guarantee issued by an assurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral;~~

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↓ 92/49/EEC Art. 22

~~any loan unaccompanied by a bank guarantee, a guarantee issued by an insurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral;~~

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↓ 2002/83/EC and 92/49/EEC  
Art. 22

~~UCITS not coordinated within the meaning of Directive 85/611/EEC and other investment funds, as compared with UCITS coordinated within the meaning of that Directive;~~

~~securities which are not dealt in on a regulated market, as compared with those which are;~~

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↓ 2002/83/EC

~~bonds, debt securities and other money and capital market instruments not issued by States, local or regional authorities or undertakings belonging to zone A as defined in Directive 2000/12/EC or the issuers of which are international organisations not numbering at least one Community Member State among their members, as compared with the same financial instruments issued by such bodies.~~

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↓ 92/49/EEC Art. 22

~~bonds, debt securities and other money and capitalmarket instruments not issued by States, local or regional authorities or undertakings belonging to Zone A as defined in Directive 89/647/EEC<sup>62</sup>, or the issuers of which are international organizations not numbering at least one Community Member State among their member, as compared with the same financial instruments issued by such bodies.~~

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↓ 2002/83/EC and 92/49/EEC Art. 22

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

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↓ 92/49/EEC Art. 1

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

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↓ 92/49/EEC Art. 22

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

~~6. Notwithstanding paragraph 1, in exceptional circumstances and at an insurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1 (a) to (c), subject to Article 20.~~

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↓ 2002/83/EC

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

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<sup>62</sup> OJ No L 386, 30. 12. 1989, p. 14.

## CHAPTER 3

### RULES RELATING TO THE SOLVENCY MARGIN AND TO THE GUARANTEE FUND

#### Article 27

##### Available solvency margin

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

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↓ 2002/13/EC Art. 1.2

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

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↓ 2002/83/EC

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

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↓ 2002/13/EC Art. 1.2

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

~~(a) the paid-up share capital or, in the case of a mutual insurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:~~

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↓ 2002/83/EC

~~(a) the paid-up share capital or, in the case of a mutual assurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:~~

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↓ 2002/83/EC and 2002/13/EC  
Art. 1(2)

~~(i) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the available solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;~~

~~(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual~~

~~termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;~~

~~(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);~~

↓ 2002/83/EC

~~(b) reserves (statutory and free) not corresponding to underwriting liabilities;~~

↓ 2005/68/EC Art. 57.4(a)

~~(b) reserves (statutory and free reserves) which neither correspond to underwriting liabilities nor are classified as equalisation reserves;~~

↓ 2002/83/EC and 2002/13/EC  
Art. 1(2)

~~(c) the profit or loss brought forward after deduction of dividends to be paid;~~

↓ 2002/83/EC

~~(d) in so far as authorised under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to policy holders.~~

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

↓ 2002/13/EC Art. 1.2

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

~~For those insurance undertakings which discount or reduce their technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings<sup>63</sup>, the available solvency margin shall be reduced by the difference between the undiscounted technical provisions or technical provisions before deductions as disclosed in the notes on the accounts, and the discounted or technical provisions after deductions. This adjustment shall be made for all risks listed in point A of the Annex, except for risks listed under classes 1 and 2. For classes other than 1 and 2, no adjustment need be made in respect of the discounting of annuities included in technical provisions.~~

<sup>63</sup> OJL 374, 31.12.1991, p. 7.

~~The available solvency margin shall also be reduced by the following items:~~

~~(a) participations which the assurance undertaking holds, in:~~

~~insurance undertakings within the meaning of Article 4 of this Directive, Article 6 of Directive 73/239/EEC, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group<sup>64</sup>;~~

~~reinsurance undertakings within the meaning of Article 3 of Directive 2005/68/EC or a non-member country reinsurance undertakings within the meaning of Article 1(1) of Directive 98/78/EC;~~

~~insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC;~~

~~credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>65</sup>;~~

~~investment firms and financial institutions within the meaning of Article 1(2) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>66</sup> and of Articles 2(4) and 2(7) of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>67</sup>;~~

~~(b) each of the following items which the assurance undertaking holds in respect of the entities defined in point (a) in which it holds a participation:~~

~~instruments referred to in paragraph 3;~~

~~instruments referred to in Article 16(3) of Directive 73/239/EEC;~~

~~subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.~~

~~Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points (a) and (b) of the third subparagraph.~~

~~As an alternative to the deduction of the items referred to in (a) and (b) of the third subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of~~

<sup>64</sup> OJ L 330, 5.12.1998, p. 1. Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

<sup>65</sup> OJ L 126, 26.5.2000, p. 1. Directive as last amended by Directive 2005/1/EC.

<sup>66</sup> OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC (OJ L 35, 11.2.2003, p. 1).

<sup>67</sup> OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 2005/1/EC.

~~credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>68</sup>; Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.~~

~~Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the third subparagraph of this Article which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision. For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.~~

↓ 2005/68/EC Art. 57.4(b)

~~The available solvency margin shall also be reduced by the following items:~~

~~(a) participations which the insurance undertaking holds in:~~

~~insurance undertakings within the meaning of Article 6 of this Directive, Article 4 of Directive 2002/83/EC, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council,~~

~~reinsurance undertakings within the meaning of Article 3 of Directive 2005/68/EC or non-member country reinsurance undertakings within the meaning of Article 1(1) of Directive 98/78/EC,~~

~~insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,~~

~~credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council,~~

~~investment firms and financial institutions within the meaning of Article 1(2) of Council Directive 93/22/EEC and of Article 2(4) and (7) of Council Directive 93/6/EEC;~~

↓ 2002/87/EC Art. 22.2

~~(b) each of the following items which the insurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:~~

~~instruments referred to in paragraph 3,~~

~~instruments referred to in Article 18(3) of Directive 79/267/EEC,~~

~~subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.~~

<sup>68</sup> J.L. 35, 11.2.2003, p. 1. Directive as last amended by Directive 2005/1/EC.

~~Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to under (a) and (b) of the fourth subparagraph.~~

~~As an alternative to the deduction of the items referred to in (a) and (b) of the fourth subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>69</sup>. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner overtime.~~

~~Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the fourth subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.~~

~~For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.~~

↓ 2002/83/EC

~~3. The available solvency margin may also consist of:~~

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

~~Subordinated loan capital must also fulfil the following conditions:~~

~~(i) only fully paid-up funds may be taken into account;~~

~~(ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date, the assurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at~~

<sup>69</sup> OJL 35, 11.2.2003.

~~least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing assurance undertaking and its available solvency margin will not fall below the required level;~~

~~(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the assurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the assurance undertaking's available solvency margin will not fall below the required level;~~

~~(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;~~

~~(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;~~

~~(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:~~

~~(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;~~

~~(ii) the contract of issue must enable the assurance undertaking to defer the payment of interest on the loan;~~

~~(iii) the lender's claims on the assurance undertaking must rank entirely after those of all non-subordinated creditors;~~

~~(iv) the documents governing the issue of the securities must provide for the loss absorption capacity of the debt and unpaid interest, while enabling the assurance undertaking to continue its business;~~

~~(v) only fully paid-up amounts may be taken into account.~~

↓ 2002/13/EC Art. 1.2

~~3. The available solvency margin may also consist of:~~

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



~~Subordinated loan capital must also fulfil the following conditions:~~

~~(i) only fully paid-up funds may be taken into account;~~

~~(ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the insurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing insurance undertaking and its available solvency margin will not fall below the required level;~~

~~(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the insurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the insurance undertaking's available solvency margin will not fall below the required level;~~

~~(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the insurance undertaking, the debt will become repayable before the agreed repayment dates;~~

~~(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;~~

~~(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:~~

~~(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;~~

~~(ii) the contract of issue must enable the insurance undertaking to defer the payment of interest on the loan;~~

~~(iii) the lender's claims on the insurance undertaking must rank entirely after those of all non-subordinated creditors;~~

~~(iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurance undertaking to continue its business;~~

~~(v) only fully paid-up amounts may be taken into account.~~

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

~~(a) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available solvency margin and the required solvency margin;~~

~~(b) in the case of 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 a limit of 50 % of the lesser of the available solvency margin and the required solvency margin. The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;~~

~~(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature.~~

~~5. Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin, shall be adopted in accordance with the procedure laid down in Article 2 of Council Directive 91/675/EEC<sup>70</sup>.~~

↓ 2002/83/EC

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

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

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

~~(i) when an actuarial report is submitted to the competent authorities substantiating the likelihood of emergence of these profits in the future; and~~

~~(ii) in so far as that part of future profits emerging from hidden net reserves referred to in point (c) has not already been taken into account;~~

~~(b) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium. This figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;~~

<sup>70</sup> L 374, 31.12.1991, p. 32.

~~(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;~~

~~(d) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available and required solvency margin.~~

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

↓ 2002/13/EC Art. 1.3

~~Article 16a~~

~~1. The required 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 insurance undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.~~

~~2. Subject to Article 17, the amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4.~~

~~3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.~~

~~Premiums or contributions in respect of the classes 11, 12 and 13 listed in point A of the Annex shall be increased by 50 %.~~

~~The premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the last financial year shall be aggregated.~~

~~To this sum 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 EUR 50 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.~~

↓ 2005/68/EC Art. 57.5(a)

~~The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under reinsurance and the gross amount of claims; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the insurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from special purpose vehicles referred to in Article 46 of Directive 2005/68/EC may be deducted as reinsurance.~~

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↓ 2002/13/EC Art. 1.3

~~With the approval of the competent authorities, statistical methods may be used to allocate the premiums or contributions in respect of the classes 11, 12 and 13.~~

~~4. The claims basis shall be calculated, as follows, using in respect of the classes 11, 12 and 13 listed in point A of the Annex, claims, provisions and recoveries increased by 50 %.~~

~~The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph 1 shall be aggregated.~~

~~To this sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding 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 1.~~

~~From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding 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. If the period of reference established in paragraph 1 equals seven years, the amount of provisions for claims outstanding established at the commencement of the sixth financial year preceding the last financial year for which there are accounts shall be deducted.~~

~~One third, or one seventh, of the amount so obtained, according to the period of reference established in paragraph 1, shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.~~

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↓ 2005/68/EC Art. 57.5(b)

~~The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under reinsurance and the gross amount of claims; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the insurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from special purpose vehicles referred to in Article 46 of Directive 2005/68/EC may be deducted as reinsurance.~~

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↓ 2002/13/EC Art. 1.3

~~With the approval of the competent authorities, statistical methods may be used to allocate the claims, provisions and recoveries in respect of the classes 11, 12 and 13. In the case of the risks listed under class 18 in point A of the Annex, the amount of claims paid used to calculate the claims basis shall be the costs borne by the insurance undertaking in respect of assistance given. Such costs shall be calculated in accordance with the national provisions of the home Member State.~~

~~5. If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least~~

~~equal to the required solvency margin of the year before multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of reinsurance but the ratio may in no case be higher than 1.~~

~~6. The fractions applicable to the portions referred to in the sixth subparagraph of paragraph 3 and the sixth subparagraph of paragraph 4 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~~

~~(a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;~~

~~(b) a provision is set up for increasing age;~~

~~(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;~~

~~(d) the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;~~

~~(e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.~~

↓ 2002/83/EC

#### ~~Article 28~~

#### **Required solvency margin**

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

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

↓ 2005/68/EC Art. 60.9(a)

~~(a) first result:~~

~~a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, for the last financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions. That ratio may in no case be less than 85 %. Upon application, with supporting evidence, by the insurance undertaking to the competent authority of the home Member State and with agreement of that authority, amounts recoverable from the special purpose vehicles referred to in Article 46 of Directive 2005/68/EC may be deducted as reinsurance;~~

↓ 2005/68/EC Art. 60.9(b)

~~(b) second result:~~

~~for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the assurance undertaking shall be multiplied by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the insurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from the special purpose vehicles referred to in Article 46 of Directive 2005/68/EC may be deducted as reinsurance.~~

↓ 2002/83/EC

~~For temporary assurance on death of a maximum term of three years the fraction shall be 0,1 %. For such assurance of a term of more than three years but not more than five years the above fraction shall be 0,15 %.~~

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

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

~~(a) a 4 % fraction of the mathematical provisions, calculated in compliance with paragraph 2(a) of this Article; plus~~

~~(b) the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive. However, the condition contained in Article 16a(6)(b) of that Directive that a provision be set up for increasing age may be replaced by a requirement that the business be conducted on a group basis.~~

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

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

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

~~(a) in so far as the assurance undertaking bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;~~

~~(b) in so far as the undertaking bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;~~

~~(c) in so far as the undertaking bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the last financial year's net administrative expenses pertaining to such business;~~

~~(d) in so far as the assurance undertaking covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 2(b) of this Article.~~

↓ 2005/68/EC Art. 60.10

#### ~~Article 28a~~

#### ~~Solvency margin for assurance undertakings conducting reinsurance activities~~

~~1. Each Member State shall apply to insurance undertakings whose head office is situated within its territory, the provisions of Articles 35 to 39 of Directive 2005/68/EC in respect of their reinsurance acceptance activities, where one of the following conditions is met:~~

~~(a) the reinsurance premiums collected exceed 10 % of their total premium;~~

~~(b) the reinsurance premiums collected exceed EUR 50000000;~~

~~(c) the technical provisions resulting from their reinsurance acceptances exceed 10 % of their total technical provisions.~~

~~2. Each Member State may choose to apply to assurance undertakings referred to in paragraph 1 of this Article and whose head office is situated within its territory the provisions of Article 34 of Directive 2005/68/EC in respect of their reinsurance acceptance activities, where one of the conditions laid down in the said paragraph 1 is met.~~

~~In that case, the respective Member State shall require that all assets employed by the assurance undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be ring-fenced, managed and organised separately from the direct assurance activities of the assurance undertaking, without any possibility of transfer. In such a case, and only as far as their reinsurance acceptance activities are concerned, assurance undertakings shall not be subject to Articles 22 to 26.~~

~~Each Member State shall ensure that their competent authorities verify the separation provided for in the second subparagraph.~~

↓ 2002/83/EC

#### ~~Article 29~~

#### ~~Guarantee fund~~

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

↓ 2002/13/EC Art. 1.4

~~1. One third of the required solvency margin as specified in Article 16a shall constitute the guarantee fund. This fund shall consist of the items listed in Article 16(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(c).~~

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↓ 2002/83/EC

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

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↓ 2002/13/EC Art. 1.4

~~2. The guarantee fund may not be less than EUR 2 million. Where, however, all or some of the risks included in one of the classes 10 to 15 listed in point A of the Annex are covered, it shall be EUR 3 million.~~

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

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↓ 2002/83/EC

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

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↓ 2005/68/EC Art. 57.6

#### ~~Article 17b~~

~~1. Each Member State shall require that an insurance undertaking whose head office is situated within its territory and which conducts reinsurance activities establishes, in respect of its entire business, a minimum guarantee fund in accordance with Article 40 of Directive 2005/68/EC, where one of the following conditions is met:~~

~~(a) the reinsurance premiums collected exceed 10 % of its total premium;~~

~~(b) the reinsurance premiums collected exceed EUR 50000000;~~

~~(c) the technical provisions resulting from its reinsurance acceptances exceed 10 % of its total technical provisions.~~

~~2. Each Member State may choose to apply to such insurance undertakings as are referred to in paragraph 1 of this Article and whose head office is situated within its territory the provisions of Article 34 of Directive 2005/68/EC in respect of their reinsurance acceptance activities, where one of the conditions laid down in the said paragraph 1 is met.~~

~~In that case, the relevant Member State shall require that all assets employed by the insurance undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be ring-fenced, managed and organised separately from the direct insurance activities of the insurance undertaking, without any possibility of transfer. In such a case, and only as far as their reinsurance acceptance activities are concerned, insurance undertakings shall not be subject to Articles 20, 21 and 22 of Directive 92/49/EEC<sup>71</sup> and Annex I to Directive 88/357/EEC.~~

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<sup>71</sup> Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1). Directive as last amended by Directive 2005/1/EC.



~~Each Member State shall ensure that their competent authorities verify the separation provided for in the second subparagraph.~~

~~3. If the Commission decides, pursuant to Article 56(e) of Directive 2005/68/EC to increase the amounts used for the calculation of the required solvency margin provided for in Article 37(3) and (4) of that Directive, each Member State shall apply to such insurance undertakings as are referred to in paragraph 1 of this Article the provisions of Articles 35 to 39 of that Directive in respect of their reinsurance acceptance activities.~~

↓ 2002/83/EC

### ~~Article 30~~

#### ~~Review of the amount of the guarantee fund~~

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

↓ 2002/13/EC Art. 1.5

~~1. The amounts in euro as laid down in Article 16a (3) and (4) and Article 17(2) shall be reviewed annually starting 20 September 2003 in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.~~

↓ 2002/83/EC

~~The amount shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between 20 March 2002 and the review date and rounded up to a multiple of EUR 100000.~~

↓ 2002/13/EC Art. 1.5

~~The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of this Directive and the review date and rounded up to a multiple of EUR 100000.~~

↓ 2002/83/EC

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

↓ 2002/13/EC Art. 1.5

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

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

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↓ 2002/83/EC

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

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↓ 2002/83/EC

~~Article 31~~

~~Assets not used to cover technical provisions~~

~~1. Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 20.~~

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↓ 92/49/EEC Art. 26

~~1. Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 15.~~

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↓ 2002/83/EC

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

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↓ 92/49/EEC Art. 26

~~2. Subject to Article 15 (2), Article 20 (1), (2), (3) and (5) and the last subparagraph of Article 22 (1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorized insurance undertakings.~~

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

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↓ 2002/83/EC

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

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↓ 2002/83/EC (adapted)

## CHAPTER ~~5~~ VII - ~~ASSURANCE~~ INSURANCE AND REINSURANCE UNDERTAKINGS IN DIFFICULTY OR IN AN IRREGULAR SITUATION

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↓ 2002/83/EC Art. 37 (adapted)

### ~~Assurance undertakings in difficulty~~

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↓ new

#### Article 134

##### Identification and notification of deteriorating financial conditions by the insurance and reinsurance undertaking

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and notify the supervisory authorities when such deterioration occurs.

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↓ 2002/83/EC Art. 37 (adapted)  
⇒ new

#### Article 135

##### Non-Compliance with technical provisions

If an ~~assurance~~  insurance or reinsurance  undertaking does not comply with ~~Article 20 Chapter VI, Section 2~~, the ~~competent authority~~  supervisory authorities  of its home Member State may prohibit the free disposal of its assets after having communicated ~~its~~  their  intention  s  to the ~~competent~~  supervisory  authorities of the  host  Member States ~~of commitment~~. ⇒ The supervisory authorities of the home Member State shall designate the assets to be covered by such measures. ⇐

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↓ new

#### Article 136

##### Non-Compliance with the Solvency Capital Requirement

1. Insurance and reinsurance undertakings shall inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

2. Within two months from the observation of the non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.
3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of the non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The supervisory authority may, if appropriate, extend that period by three months.

↓ 2005/68/EC Art. 42 (adapted)

⇒ new

~~2. For the purposes of restoring the financial situation of a reinsurance undertaking the solvency margin of which has fallen below the minimum required under Articles 37, 38 and 39, the competent authority of the home Member State shall require that a plan for the restoration of a sound financial situation be submitted for its approval.~~

4. In exceptional circumstances, if the ~~competent~~ ☒ supervisory ☒ authority is of the opinion that the financial situation of the ~~reinsurance~~ ☒ undertaking ☒ concerned ☒ will deteriorate further, it may also restrict or prohibit the free disposal of the ~~reinsurance undertaking's~~ ☒ assets ☒ of that undertaking ☒. # ☒ That supervisory authority ☒ shall inform the ☒ supervisory ☒ authorities of ~~other~~ ☒ the host ☒ Member States ~~within the territories of which the reinsurance undertaking carries on business~~ of any measures it has taken, ~~and the latter~~ ☒ Those authorities ☒ shall, at the request of the ~~former~~ ☒ supervisory authority of the home Member State ☒, take the same measures. ⇒ The supervisory authority of the home Member State shall designate the assets to be covered by such measures. ⇐

~~3. If the solvency margin falls below the guarantee fund as defined in Article 40, the competent authority of the home Member State shall require the reinsurance undertaking to submit a short-term finance scheme for its approval.~~

↓ new

## Article 137

### Non-Compliance with the Minimum Capital Requirement

1. Insurance and reinsurance undertakings shall inform the supervisory authority as soon as they observe that the Minimum Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the coming three months.
2. Within one month from the observation of the non-compliance with the Minimum Capital Requirement the insurance or reinsurance undertaking concerned shall submit, for approval by the supervisory authority, a short-term realistic finance scheme to restore, within three months from that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement..

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↓ 2002/83/EC Art. 37 (adapted)  
⇒ new

3. ~~It~~ The supervisory authority of the home Member State may also restrict or prohibit the free disposal of the ~~assurance undertaking's~~ assets of the insurance or reinsurance undertaking. It shall inform the supervisory authorities of ~~other~~ the host Member States ~~within the territories of which the assurance undertaking carries on business~~ accordingly, and the latter. Those authorities shall, at the request of the ~~former~~ supervisory authority of the home Member State, take the same measures. ⇒ The supervisory authority of the home Member State shall designate the assets to be covered by such measures. ⇐

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↓ 2002/83/EC Art. 37 (adapted)  
⇒ new

#### Article 138

Prohibition of free disposal of assets located within the territory of a Member State

~~§ Each~~ Member State shall take the measures necessary to be able, in accordance with ~~its~~ national law, to prohibit the free disposal of assets located within ~~its~~ their territory at the request, in the cases provided for in Articles 135, 136, 137, 142 (2) ⇒ and 240(1) ⇐ ~~paragraphs 1, 2 and 3~~, of the undertaking's home Member State, which shall designate the assets to be covered by such measures.

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↓ 2002/83/EC Art. 37 (adapted)

#### Article 139

Supervisory powers in deteriorating financial conditions

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↓ 2002/83/EC Art. 37

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

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↓ new

Notwithstanding Articles 136 and 137 if the solvency position of the undertaking continues to deteriorate, the supervisory authorities shall have the power to take all measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

Those measures shall reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

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↓ 2002/83/EC Art. 38 and  
2005/68/EC Art. 43  
⇒ new

Article 140

Recovery plan ⇒ and finance scheme ⇐

~~1. Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those insurance undertakings where competent authorities consider that policy holders' rights are threatened.~~

~~The financial recovery plan must as a minimum include particulars or proof concerning for the next three financial years.~~

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↓ new

1. The recovery plan referred to in Article 136(2) and the finance scheme referred to in Article 137(2) shall, at least include particulars or evidence concerning the following:

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↓ 2002/83/EC Art. 38,  
2002/13/EC Art. 1(7) and  
2005/68/EC Art. 43

(a) estimates of management expenses, in particular current general expenses and commissions;

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↓ 2002/83/EC Art. 38

(b) ~~a plan setting out detailed~~ estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

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↓ 2002/83/EC Art. 38,  
2002/13/EC Art. 1(7) and  
2005/68/EC Art. 43  
⇒ new

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover the ⇒ technical provisions ⇐ ~~underwriting liabilities~~ and the ⇒ Solvency Capital Requirement and the Minimum Capital Requirement ⇐ ~~required solvency margin~~.

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↓ 2002/83/EC Art. 38 and  
2002/13/EC Art. 1(7) 2005/68/EC  
Art. 43(2)(e)

~~(e) the overall reinsurance policy.~~

↓ 2005/68/EC Art. 60(11)

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

~~(a) the nature or quality of reinsurance contracts has changed significantly since the last financial year;~~

~~(b) there is no, or a limited, risk transfer under the reinsurance contracts.~~

↓ 2002/83/EC Art. 38 and  
2005/68/EC Art. 43

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

↓ 2002/83/EC Art. 38,  
2002/13/EC Art. 1(7) and  
2005/68/EC Art. 43 (adapted)  
⇒ new

~~32.~~ Member States shall ensure that the ~~competent~~  supervisory  authorities have the power to revalue downwards all  own funds items eligible to cover  elements eligible for the  Solvency Capital Requirement  available solvency margin, in particular, where there has been a significant change in the market value of these elements since the end of the last financial year.

↓ 2002/83/EC Art. 38

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

↓ 2002/83/EC Art. 38 and  
2005/68/EC Art. 57(7)

~~(a) the nature or quality of reinsurance contracts has changed significantly since the last financial year;~~

↓ 2005/68/EC Art. 57(7)

~~(b) there is no, or a limited, risk transfer under the reinsurance contracts.~~

↓ 2005/68/EC Art. 43 (adapted)  
⇒ new

63. If the ~~competent~~ ☒ supervisory ☒ authorities have required a ~~financial~~ recovery plan ⇒ referred to in Article 136(2) or a finance scheme referred to in Article 137(2) ⇐ ~~for the reinsurance undertaking~~ in accordance with paragraph 1 ~~of this Article~~, they shall refrain from issuing a certificate in accordance with Article ~~18, 39~~ ☒ for ☒ as long as they consider that ~~its~~ ☒ the rights of the policyholders, or the contractual ☒ obligations arising out of ☒ the ☒ reinsurance ☒ undertaking ☒ ~~contracts~~ are threatened ~~within the meaning of the said paragraph 1.~~

↓ new

## Article 141

### Implementing measures

The Commission may adopt implementing measures laying down further specifications with respect to the recovery plan referred to in Article 136(2) and the finance scheme referred to in Article 137(2).

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

↓ 73/239/EEC

### ~~Article 21~~

~~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 supervisory authority, such assignment shall affect directly the policy holders or insured concerned.~~

↓ 2002/83/EC Art. 39 (adapted)  
⇒ new

## Article 142

### Withdrawal of authorisation

1. ~~Authorisation granted to an assurance undertaking by~~ The competent ☒ supervisory ☒ authority of ~~its~~ ☒ the ☒ home Member State ⇒ shall ⇐ ~~may be withdrawn by that authority if that~~ ☒ an authorisation granted to an insurance or reinsurance ☒ undertaking ☒ in the following cases ☒ :



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↓ 2002/83/EC Art. 39, 92/49/EEC Art. 14 and 2005/68/EC Art. 44 (adapted)

- (a) ☒ the undertaking concerned ☒ does not make use of the authorisation within 12 months, expressly renounces it or ceases to carry on business for more than six months, unless the Member State concerned has made provision for authorisation to lapse in such cases;
- (b) ☒ the undertaking concerned ☒ no longer fulfils the conditions for admission ☒ authorisation ☒ ;

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↓ new

- (c) the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or, the undertaking concerned fails to comply with the approved scheme within three months from the observation of the non-compliance with the Minimum Capital Requirement.

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↓ 2002/83/EC Art. 39

- ~~(e) has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 37;~~

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↓ 2002/83/EC Art. 39, 92/49/EEC Art. 14 and 2005/68/EC Art. 44 (adapted)

- (d) ☒ the undertaking concerned ☒ fails seriously in its obligations under the regulations to which it is subject.

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↓ 92/49/EEC Art. 14 (adapted)

2. In the event of the withdrawal or lapse of authorisation, the ~~competent~~ ☒ supervisory ☒ authority of the home Member State shall notify the ~~competent~~ ☒ supervisory ☒ authorities of the other Member States accordingly, and ~~they~~ ☒ those authorities ☒ shall take appropriate measures to prevent the ☒ insurance or reinsurance ☒ undertaking from commencing new operations within their territories, ~~under either the right of establishment or the freedom to provide services.~~

The ~~home Member State's competent~~ ☒ supervisory ☒ authority ☒ of the home Member State ☒ shall, ~~in conjunction~~ ☒ together ☒ with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the ~~undertaking's~~ assets ☒ of the insurance undertaking ☒ in accordance with Article ~~13820 (1), (2), second subparagraph, or (3), second subparagraph.~~

23. Any decision to withdraw authorisation shall  contain  ~~be supported by precise~~  detailed  reasons and  be  communicated to the  insurance or reinsurance  undertaking ~~in question~~  concerned .
- 

↓ 2002/83/EC Art. 40 (adapted)

## ~~TITLE IV~~ CHAPTER VIII - PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

### SECTION 1 - ESTABLISHMENT BY INSURANCE UNDERTAKINGS

#### Article 143

##### Conditions for branch establishment

1.  Member States shall ensure that  ~~An~~ an insurance  insurance  undertaking ~~that~~  which  proposes to establish a branch within the territory of another Member State ~~shall notify~~  notifies  the ~~competent~~  supervisory  authorities of its home Member State.
- 

↓ 88/357/EEC Art. 3 (adapted)

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

---

↓ 92/49/EEC Art. 32 (adapted)

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

↓ 2002/83/EC Art. 40 and  
92/49/EEC Art. 32  
⇒ new

- (a) the Member State within the territory of which it proposes to establish a branch;
- (b) a scheme of operations setting out, ~~inter alia~~ ⇒ at least ⇐ , the types of business envisaged and the structural organisation of the branch;

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↓ 2002/83/EC Art. 40 (adapted)

~~(dc) the name of the branch's authorised agent,  a person  who must possess  possesses  sufficient powers to bind, the assurance undertaking in relation to third parties, and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to  the insurance undertaking or, in the case of  Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the assured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorised agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned  and to represent it or them in relations with the authorities and courts of the host Member State ( hereinafter "authorised agent");~~

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↓ 2002/83/EC Art. 40 and  
92/49/EEC Art. 32 (adapted)  
⇒ new

~~(ed) the address in the  host  Member State of the branch from which documents may be obtained and to which they may be delivered, it being understood that that address shall be the one to which~~ ⇒ including ⇐ all communications to the authorised agent ~~are sent~~;

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↓ 92/49/EEC Art. 32 (adapted)

~~the name of the branch's authorized agent, who must possess sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the  host  Member State of the branch arising out of underwritten commitments, the insured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorized agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned.~~

3. Where ~~the~~  a non-life insurance  undertaking intends its branch to cover risks in class 10 ~~of in~~ point A of ~~the~~ Annex I, not including carrier's liability, it must produce a declaration that it has become a member of the national bureau and the national guarantee fund of the  host  Member State ~~of the branch~~.

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↓ 92/49/EEC Art. 32 (adapted)

64. In the event of a change in any of the particulars communicated under points (b), (c) or (d) of paragraph 2 ~~(b), (c) or (d)~~, an insurance undertaking shall give written notice of the change to the ~~competent~~  supervisory  authorities of the home Member State and of the Member State ~~of the branch~~  where that branch is situated  at least one month before making the change so that the ~~competent~~  supervisory  authorities of the home Member State and the

~~competent~~ supervisory authorities of the Member State of the branch where that branch is situated may fulfil their respective roles under paragraphs 3 and 4 Article 144 (1), (2) and subparagraph 1 of paragraph (3).

↓ 2002/83/EC Art. 40

## Article 144

### Communication of information

↓ 92/49/EEC Art. 32 and  
2002/83/EC Art.40 (adapted)  
⇒ new

31. Unless the ~~competent~~ supervisory authorities of the home Member State have reason to doubt the adequacy of the ~~administrative structure~~ ⇒ governance system or the financial situation of the insurance undertaking ~~or the good repute and professional qualifications or experience of the directors or managers~~ or the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in ~~paragraph 2~~ Article 143(2), communicate that information to the ~~competent~~ supervisory authorities of the host Member State of the branch and shall inform the insurance undertaking concerned ~~accordingly~~ thereof.

The ~~competent~~ supervisory authorities of the home Member State shall also attest that the insurance undertaking ~~has the minimum solvency margin~~ ⇒ covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles ~~16~~ ⇒ 100 and ⇒ 127 ~~17~~.

2. Where the ~~competent~~ supervisory authorities of the home Member State refuse to communicate the information referred to in ~~paragraph 2~~ Article 143(2) to the ~~competent~~ supervisory authorities of the host Member State of the branch they shall give the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

That refusal or failure to act may be subject to a right to apply to the courts in the home Member State.

43. Before the branch of an insurance undertaking starts business, the ~~competent~~ supervisory authorities of the host Member State of the branch shall, where applicable, within two months of receiving the information referred to in paragraph 31, inform the ~~competent~~ supervisory authority of the home Member State, ~~if appropriate~~, of the conditions under which, in the interest of the general good, that business must be carried on in the host Member State of the branch. ⇒ The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned. ←

↓ 2002/83/EC Art.40 and  
92/49/EEC Art. 32 (adapted)

~~5. On receiving a communication from~~ ☒ The insurance undertaking may establish the branch and start business as from the date upon which ☒ the ~~competent authorities~~ ☒ supervisory authority ☒ of the ☒ home ☒ Member State ~~of the branch~~ ☒ has received such a communication ☒ or, if no communication is received ~~from them~~, on expiry of the period provided for in the first subparagraph ~~4, the branch may be established and start business.~~

↓ 2002/83/EC Art. 41 and  
92/49/EEC Art. 34 (adapted)

## SECTION 2 - FREEDOM TO PROVIDE SERVICES: ☒ BY INSURANCE UNDERTAKINGS ☒

### ☒ SUBSECTION 1 - GENERAL PROVISIONS ☒

#### Article 145

##### pPrior notification to the home Member State

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

↓ 2002/83/EC Article 42 and  
92/49/EEC Art.35 (adapted)  
⇒ new

#### Article 146

##### ~~Freedom to provide services:~~ nNotification by the home Member State

1. Within one month of the notification provided for in Article ~~41~~145, the ~~competent~~ ☒ supervisory ☒ authorities of the home Member State shall communicate ☒ the following ☒ to the Member State or ~~Member~~ States within the ~~territory~~ ☒ territories ☒ of which ~~the assurance~~ ☒ an insurance ☒ undertaking intends to carry on business ~~by way of~~ ☒ under ☒ the freedom to provide services:
  - (a) a certificate attesting that the ~~assurance~~ ☒ insurance ☒ undertaking ⇒ covers the Solvency Capital Requirement and Minimum Capital Requirement ⇐ ~~has the minimum solvency margin~~ calculated in accordance with Articles ⇒ 100 and 127 ⇐ ~~28 and 29~~;
  - (b) the classes ☒ of insurance ☒ which the ~~assurance~~ ☒ insurance ☒ undertaking has been authorised to offer;

- (c) the nature of the  risks or  commitments which the  insurance  ~~assurance~~ undertaking proposes to cover in the  host  Member State ~~of the provision of services.~~

At the same time, ~~they~~  the supervisory authorities of the home Member State  shall inform the ~~assurance~~  insurance  undertaking concerned ~~accordingly~~  of that communication .

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↓ 92/49/EEC Art.35 (adapted)

2. ~~Each Member State~~  States  within the territory of which an  non-life insurance  undertaking intends, under the freedom to provide services, to cover risks in class 10 ~~of in~~ point A of ~~the Annex I to Directive 73/239/EEC~~ other than carrier's liability may require that ~~the~~  insurance  undertaking  to submit the following  :

- (a) ~~communicate~~ the name and address of the representative referred to in point (h) of Article ~~12a(4)~~ 18(1) of this Directive,
- (b) ~~produce~~ a declaration that ~~the undertaking~~  it  has become a member of the national bureau and national guarantee fund of the  host  Member State ~~of the provision of services.~~

23. Where the ~~competent~~  supervisory  authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down  therein  , they shall give the reasons for their refusal to the  insurance  undertaking within that same period.

That refusal  or failure to act  shall be subject to a right to apply to the courts in the home Member State.

34. The  insurance  undertaking may start business ~~on~~  as from  the ~~certified~~ date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

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↓ 2002/83/EC Article 43 and  
92/49/EEC Art.36 (adapted)

## Article 147

~~Freedom to provide services: e~~Changes in the nature of  the risks or  commitments

Any change which an ~~assurance~~  insurance  undertaking intends to make to the information referred to in Article ~~41~~ 145 shall be subject to the procedure provided for in Articles ~~41~~ 145 and ~~42~~ 146.

⊗ SUBSECTION 2 - THIRD PARTY MOTOR VEHICLE LIABILITY ⊗

Article 148

⊗ Compulsory insurance on third party motor vehicle liability ⊗

1. ~~This Article shall apply to~~ Where an ⊗ non-life insurance ⊗ undertaking, through ~~an establishment~~ situated in a ⊗ one ⊗ Member State, covers a risk, other than carrier's liability, classified under class 10 ~~of in~~ point A of ~~the Annex I to Directive 73/239/EEC~~ which is situated in another Member State~~.~~  
~~The~~ ⊗ host ⊗ Member State ~~of provision of services~~ shall require the ⊗ that ⊗ undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.
2. ~~The undertaking shall not, however, be required to make any payment or~~ ⊗ financial ⊗ contribution ~~to the bureau and fund of the Member State of provision of services~~ ⊗ referred to in paragraph 1 shall only be made ⊗ in respect of ⊗ relation to ⊗ risks ~~covered by way of provision of services other than one calculated on the same basis as for undertakings covering risks,~~ other than carrier's liability, in class 10 ⊗ point A of Annex I covered by way of provision of services. That contribution shall be calculated on the same basis as for non-life insurance undertakings covering those risks, ⊗ through an establishment situated in that Member State~~.~~  
⊗ The calculation shall be made ⊗ by reference to ~~its~~ ⊗ the insurance undertakings' ⊗ premium income from that class in ~~that~~ ⊗ the host ⊗ Member State or the number of risks in that class covered there.
3. ~~This Directive shall not prevent an~~ ⊗ The host Member State may require an ⊗ insurance undertaking providing services ~~from being required~~ to comply with the rules in ~~the~~ ⊗ that ⊗ Member State ~~of provision of services~~ concerning the cover of aggravated risks, insofar as they apply to ~~established~~ ⊗ non-life insurance ⊗ undertakings ⊗ established in that State ⊗ .

Article 149

⊗ Non-discrimination of persons pursuing claims ⊗

4. The ⊗ host ⊗ Member State ~~of provision of services~~ shall require the ⊗ non-life insurance ⊗ undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, in class 10 in point A of Annex I by way of provision of services rather than through ~~an establishment~~ ⊗ branch ⊗ situated in that State.

## Article 150

### ☒ Representative ☒

1. For ~~this purpose~~ ☒ the purposes referred to in Article 149 ☒, the ☒ host ☒ Member State ~~of provision of services~~ shall require the ☒ non-life insurance ☒ undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims.

The representative may also be required to represent the ☒ non-life insurance ☒ undertaking before the ~~competent~~ ☒ supervisory ☒ authorities of the ☒ host Member ☒ State ~~of provision of services~~ with regard to checking the existence and validity of motor vehicle liability insurance policies.

2. The ☒ host ☒ Member State ~~of provision of services~~ may not require that ~~appointed~~ ☒ representative ☒ to undertake activities on behalf of the ☒ non-life insurance ☒ undertaking which appointed him other than those set out in ~~the second and third subparagraphs~~ 1.

3. The appointment of the representative shall not in itself constitute the opening of a branch ~~or agency~~ for the purpose of Article ~~6 (2) (b) of Directive 73/239/EEC 143~~ and the representative shall not be an establishment within the meaning of Article ~~2 (e) of this Directive~~.

↓ 2000/26/EC Art. 9 (adapted)

4. ~~If~~ ~~the~~ insurance undertaking ~~has failed to appoint a representative,~~ ☒ may, subject to the approval of the home ☒ Member States ~~may give their approval to~~ ☒ appoint ☒ the claims representative ~~appointed~~ ☒ referred to ☒ in ~~accordance with~~ Article 4 of Directive 2000/26/EC ~~of the European Parliament and of the Council~~<sup>72</sup> ~~assuming~~ ☒ to assume ☒ the function of the representative ~~appointed according to~~ ☒ referred to in ☒ ~~to this~~ paragraph 1.

<sup>72</sup> OJ L 181, 20.7.2000, p. 65.



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↓ 2002/83/EC Article 44  
(adapted)

⊗ SECTION 3 - COMPETENCIES OF THE SUPERVISORY AUTHORITIES OF THE  
HOST MEMBER STATE ⊗

⊗ SUBSECTION 1 - INSURANCE ⊗

Article 151

Language

The ~~competent~~ ⊗ supervisory ⊗ authorities of the ⊗ host ⊗ Member State ~~of the branch or the Member State of the provision of services~~ may require ~~that~~ the information which they are authorised ~~under this Directive~~ to request with regard to the business of ~~assurance~~ ⊗ insurance ⊗ undertakings operating in the territory of that ⊗ Member ⊗ State ~~shall~~ ⊗ to ⊗ be supplied to them in the official language or languages of that State.

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↓ 92/49/EEC Art. 39 (adapted)

Article 152

⊗ Prior notification and prior approval ⊗

- 2.1 The ⊗ host ⊗ Member State ~~of the branch or of the provision of services~~ shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, ⊗ or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, ⊗ or ⊗ the ⊗ forms and other ~~printed~~ documents which an ⊗ insurance ⊗ undertaking intends to use in its dealings with policyholders.
- ~~2.~~ ~~It~~ ⊗ The host Member State ⊗ may only require an ⊗ insurance ⊗ undertaking that proposes to carry on insurance business within its territory, ~~under the right of establishment or the freedom to provide services~~, to effect non-systematic notification of ~~those~~ policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an ⊗ insurance ⊗ undertaking's ⊗ to ⊗ carrying on its business.
3. The ⊗ host ⊗ Member State ~~of the branch or of the provision of services~~ may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

↓ 2002/83/EC Art. 46 (adapted)  
→<sub>1</sub> 2005/1/EC Art. 8.1  
⇒ new

## Article 153

### ~~Assurance~~ ☒ Insurance ☒ undertakings not complying with the legal provisions

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

32. If the ~~assurance~~ ☒ insurance ☒ undertaking ~~in question~~ ☒ concerned ☒ fails to take the necessary action, the ~~competent~~ ☒ supervisory ☒ authorities of the Member State concerned shall inform the ~~competent~~ ☒ supervisory ☒ authorities of the home Member State accordingly.

The ~~latter~~ ☒ supervisory ☒ authorities ☒ of the home Member State ☒ shall, at the earliest opportunity, take all appropriate measures to ensure that the ~~assurance~~ ☒ insurance ☒ undertaking concerned remedies that irregular situation.

The ~~nature of those measures shall be communicated to the competent~~ ☒ supervisory ☒ authorities of the ☒ home ☒ Member State ~~concerned~~ ☒ shall inform the supervisory authorities of the host Member State of the measures taken ☒ .

43. If, despite the measures taken by the home Member State ~~or because those measures prove inadequate or are lacking in that State~~, the ~~assurance~~ ☒ insurance ☒ undertaking persists in violating the legal provisions in force in the ☒ host ☒ Member State ~~concerned~~ ☒ or because those measures prove inadequate ☒, the ~~latter~~ ☒ supervisory authorities of the host Member State ☒ may, after informing the ~~competent~~ ☒ supervisory ☒ authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new ~~assurance~~ ☒ insurance ☒ contracts within ~~its~~ territory ☒ of the host Member State ☒ .

Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on ~~assurance~~ ☒ insurance ☒ undertakings.

54. Paragraphs 21, 32 and 43 shall not affect the ~~emergency~~ power of the Member States concerned to take appropriate ☒ emergency ☒ measures to prevent or penalise irregularities ~~committed~~ within their territories. ~~This~~ ☒ That power ☒ shall include the possibility of preventing ~~assurance~~ ☒ insurance ☒ undertakings from continuing to conclude new ~~assurance~~ ☒ insurance ☒ contracts within their territories.

65. Paragraphs 21, 32 and 43 shall not affect the power of the Member States to penalise infringements within their territories.

76. If an ~~assurance~~ ☒ insurance ☒ undertaking which has committed an infringement has an ~~establishment~~ ☒ branch ☒ or possesses property in the Member State

concerned, the ~~competent~~ ☒ supervisory ☒ authorities of ~~the latter~~ ☒ that Member State ☒ may, in accordance with national law, apply the ☒ national ☒ administrative ~~penalties~~ ⇒ sanctions ⇐ prescribed for that infringement by way of enforcement against that ~~establishment~~ ☒ branch ☒ or property.

~~87.~~ Any measure adopted under paragraphs ~~32~~ to ~~76~~ involving ~~penalties~~ ⇒ sanctions ⇐ or restrictions on the conduct of ~~assurance~~☒ insurance ☒ business must be properly reasoned and communicated to the ~~assurance~~☒ insurance ☒ undertaking concerned.

~~18.~~ ~~Any assurance undertaking carrying on business under the right of establishment or the freedom to provide services~~ ☒ Insurance undertakings ☒ shall submit to the ~~competent~~☒ supervisory ☒ authorities of the ☒ host ☒ Member State ~~of the branch and/or of the Member State of the provision of services~~ ⇒ at their request ⇐ all documents requested of ~~it~~☒ them ☒ for the purposes of ~~this Article paragraphs 1 to 7 in so far as assurance~~☒ to the extent that insurance ☒ undertakings the head office of which is in ~~those~~ ☒ that ☒ Member States are also obliged to do so.

9. ☒ Member States shall inform the Commission of the number and types of cases which led to refusals under Articles 144 and 146 in which measures have been taken under paragraph 4. ☒

~~Every two years,~~ ☒ On the basis of that information ☒ →<sub>1</sub> the Commission shall inform the European Insurance and Occupational Pensions Committee of ~~cases in which, in each Member State, authorisation has been refused pursuant to Articles 40 or 42 or measures have been taken under paragraph 4 of this Article. Member States shall cooperate with the Commission by providing it with the information required for that report~~ ☒ , every two years ☒ .

---

↓ 2002/83/EC Art. 47 (adapted)

#### Article 154

#### Advertising

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

---

↓ 2002/83/EC Art. 50 (adapted)

#### Article 155

#### Taxes on premiums

1. Without prejudice to any subsequent harmonisation, every ~~assurance~~☒ insurance ☒ contract shall be subject exclusively to the indirect taxes and parafiscal charges on ~~assurance~~☒ insurance ☒ premiums in the Member State of ☒ in which the risk is situated or ☒ the commitment ☒ is covered ☒.

---

↓ 92/49/EEC Art. 46 (adapted)

~~In derogation from the first indent of Article 2 (d) of Directive 88/357/EEC, and for~~ the purposes of ~~this~~ the first subparagraph, ~~moveable~~ property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be  considered as  a risk situated in that Member State, even if the building and its contents are not covered by the same insurance policy.

---

↓ 2002/83/EC Art. 50 (adapted)

~~and also, with regard to~~  In the case of  Spain,  an insurance contract shall also be subject  to the surcharges legally established in favour of the Spanish «Consortio de Compensación de Seguros» for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

2. The law applicable to the contract ~~pursuant to~~  under  Articles ~~32176 to 182 and 184 to 187~~ shall not affect the fiscal arrangements applicable.
  3. ~~Pending future harmonisation, e~~ Each Member State shall apply  its own national provisions  to those ~~assurance~~  insurance  undertakings which cover  risks or  commitments situated within its territory ~~its own national provisions~~ for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.
- 

↓ 2005/68/EC Art. 47 (adapted)

⇒ new

## SUBSECTION 2 - REINSURANCE

### Article 156

#### Reinsurance undertakings not complying with the legal provisions

1. If the ~~competent~~  supervisory  authorities of ~~the host~~  a  Member State establish that a reinsurance undertaking with a branch or carrying on business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that  Member  State, they shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the ~~competent~~  supervisory  authority of the home Member State.
2. ~~If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in infringing~~  violating  the legal provisions applicable to it in the host Member State  or because such measures prove inadequate  , the ~~latter~~  supervisory authorities of the host Member State  may, after informing the ~~competent~~  supervisory  authority of the home Member State, take appropriate measures to prevent or penalise further ~~infringements~~  irregularities  , including, insofar as is strictly necessary, preventing that reinsurance undertaking

from continuing to conclude new reinsurance contracts within ~~its~~  the  territory  of the host Member State .

Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on reinsurance undertakings.

23. Any measure adopted under paragraphs 1 and 2 involving ~~penalties~~  ~~sanctions~~  or restrictions on the conduct of reinsurance business shall be properly reasoned and communicated to the reinsurance undertaking concerned.

↓ 2002/83/EC Art. 49 (adapted)

## SECTION 4 - STATISTICAL INFORMATION

### Article 157

#### Statistical information on cross-border activities

↓ 92/49/EEC Art. 44 (adapted)

2. Every insurance undertaking shall inform the competent  supervisory  authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, ~~by Member State~~  and  as follows:

(a) for non-life insurance  by group of classes  as set out in point B of Annex I;

(b) for life insurance by each of classes I to IX, as set out in Annex II.

~~and also a~~ As regards class 10 ~~of in~~ point A of ~~the Annex I to Directive 73/239/EEC~~, not including carrier's liability,  the undertaking concerned shall also inform that supervisory authority of  the frequency and average cost of claims.

The ~~competent~~  supervisory  authority of the home Member State shall forward ~~that~~  the  information  referred to in the first and second subparagraphs  within a reasonable time and in aggregate form to the ~~competent~~  supervisory  authorities of each of the Member States concerned ~~which so~~  upon their  request.

↓ 2002/83/EC Art. 48 (adapted)

## SECTION 5 - TREATMENT OF CONTRACTS OF BRANCHES IN WINDING-UP PROCEEDINGS

### Article 158

#### Winding-up of insurance undertakings

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

~~the other assurance~~ insurance contracts of that undertaking, without distinction as to nationality as far as the ~~lives assured~~ persons insured and the beneficiaries are concerned.

---

↓ 2005/68/EC Art. 48 (adapted)

#### Article 159

#### Winding-up of reinsurance undertakings

~~In the event of~~ Where a reinsurance undertaking is being wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of ~~that undertaking's~~ the other reinsurance contracts of that undertaking.

---

↓ 2002/83/EC Art. 51 (adapted)

### ~~TITLE V~~ CHAPTER IX

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

### SECTION 1 – TAKING UP OF BUSINESS

#### Article 160

Principles ~~and conditions~~ of authorisation and conditions

1. ~~Each Member State~~ States shall make access to the ~~activities~~ business referred to in the first subparagraph of Article 2(1) by any undertaking whose head office is outside the Community subject to an official authorisation.
- 

↓ 2002/83/EC Art. 51 and  
73/239/EEC Art. 23

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

↓ 73/239/EEC Art. 23 (adapted)

- (a) it is entitled to ~~undertake~~ carry on insurance business under its national law;

---

↓ 2002/83/EC Art. 51 and  
73/239/EEC Art. 23 (adapted)

- (b) it establishes ~~an agency or~~ a branch in the territory of such Member State;
- 

↓ 73/239/EEC Art. 23 (adapted)

- (c) it undertakes to ~~establish~~  set up  at the place of management of the ~~agency or~~ branch accounts specific to the business which it ~~undertakes~~  carries on  there, and to keep there all the records relating to the business transacted;
- (d) it designates ~~an authorized agent~~  a general representative , to be approved by the ~~competent~~  supervisory  authorities;
- 

↓ 2002/83/EC Art. 51 (adapted)  
⇒ new

- ~~(d) it designates a general representative, to be approved by the competent authorities;~~
- (e) it possesses in the Member State where it carries on ~~an activity~~  its business  assets of an amount equal ~~in value~~ to at least one half of the  absolute floor  ~~minimum amount~~ prescribed in point (d) of Article 127(1) 29(2), first subparagraph, in respect of the  Minimum Capital Requirement  ~~guarantee fund~~ and deposits one ~~quarter~~  fourth  of the ~~minimum amount~~  that absolute floor  as security;
- 

↓ 73/239/EEC Art. 23  
⇒ new

- (f) it undertakes to  cover the Solvency Capital Requirement and the Minimum Capital Requirement  ~~keep a margin of solvency~~ in accordance with the requirements referred to in Articles ~~25~~  100 and 126 .
- 

↓ 2000/26/EC Art. 8.b

- ~~(hg)~~ (hg) it communicates the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A ~~of the in~~ Annex I, other than carrier's liability.
- 

↓ 73/239/EEC Art. 23

- ~~(gh)~~ (gh) it submits a scheme of operations in accordance with the provisions ~~of in~~ Article ~~11(1) and (2)~~ 161;

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↓ new

(i) it fulfills the governance requirements laid down in Chapter IV, Section 2.

---

↓ 2002/83/EC Art 51(1) and  
73/239/EEC Art 23 (adapted)  
⇒ new

13. ~~Each~~ ⇒ For the purposes of this Chapter “branch” means any permanent presence in the territory of a ⇐ Member State ~~shall make access to the business referred to in Article 1 by~~ ⇒ of ⇐ any ⇒ insurance ⇐ undertaking ⇒ referred to in paragraph 1, ⇐ ~~whose head office is outside the Community subject to an official~~ ⇒ which receives ⇐ authorisation ⇒ in that Member State and which carries out insurance business ⇐.

---

↓ 2002/83/EC (adapted)

#### Article 161

⊗ Scheme of operations of the branch ⊗

31. The scheme of operations of the ~~agency or~~ branch referred to in paragraph 2(g) point (h) of Article 160(2) shall contain the following ~~particulars or evidence of~~:

- (a) the nature of the ⊗ risks or ⊗ commitments which the undertaking proposes to cover;
  - (b) the guiding principles as to reinsurance;
- 

↓ new

- (c) estimates of the future Solvency Capital Requirement, as laid down in Chapter VI, Section 4, on the basis of a forecast balance sheet, as well as the method of calculation used to derive those estimates;
  - (d) estimates of the future Minimum Capital Requirement, as laid down in Chapter VI, Section 5, on the basis of a forecast balance sheet, as well as the method of calculation used to derive those estimates;
- 

↓ 2002/83/EC (adapted)  
⇒ new

- (ee) the state of the ~~undertaking's~~ ⇒ eligible own funds and eligible basic own funds ⇐ ~~solvency margin and guarantee fund~~ ⊗ of the undertaking ⊗ ⇒ with respect to the Solvency Capital Requirement and Minimum Capital Requirement as ⇐ referred to in Articles 55 Chapter VI, Sections 4 and 5;
- (ef) estimates ~~relating to~~ ⊗ of ⊗ the cost of setting up the administrative services and the organisation for securing business, ~~and~~ the financial resources intended to meet those costs ⊗ and, if the risks to be covered are classified in class 18



in point A of Annex I, the resources available for the provision of the assistance  ;

↓ new

(g) information on the structure of the governance system.

↓ 2002/83/EC (adapted)

⇒ new

~~and, 2.~~ 2. In addition  to the requirements set out in paragraph 1, the scheme of operations  shall include  the following  , for the first three financial years:

~~(e) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;~~

~~(fa)~~ a forecast balance sheet;

~~(gb)~~ estimates ~~relating to~~  of  the financial resources intended to cover ~~underwriting liabilities~~ ⇒ technical provisions, the Minimum Capital Requirement ⇐ and the ⇒ Solvency Capital Requirement ⇐ ~~solvency margin~~,

(c)  for non-life insurance also the following:

(i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

~~(d)~~  for life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

43. ~~Member State~~  States  may require  life insurance undertakings to submit  systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for ~~an insurance~~  that  undertaking to carry on its business.

↓ 2002/83/EC Art. 53 (adapted)

⇒ new

## Article 162

### Transfer of portfolio

1. Under the conditions laid down by national law, ~~each~~ Member State  States  shall authorise ~~agencies and~~ branches set up within ~~its~~  their  territory and covered by this ~~Title Chapter~~ to transfer all or part of their portfolios of contracts to an accepting office  undertaking  established in the same Member State if the ~~competent~~  supervisory  authorities of that Member State or, ~~if~~  where  appropriate, ~~those~~ of the Member State referred to in Article ~~56~~ 165, certify that after taking the transfer into account the accepting office  undertaking  possesses the necessary ⇒ eligible own funds to cover the Solvency Capital Requirement referred to in Article 100 subparagraph 1 ⇐ ~~solvency margin~~.

2. Under the conditions laid down by national law, ~~each Member State~~  States  shall authorise ~~agencies and~~ branches set up within ~~its~~  their  territory and covered by this Title Chapter to transfer all or part of their portfolios of contracts to an insurance undertaking with a head office in another Member State if the ~~competent~~  supervisory  authorities of that Member State certify that after taking the transfer into account the accepting ~~office~~  undertaking  possesses the necessary  eligible own funds to cover the Solvency Capital Requirement referred to in Article 100 subparagraph 1 ~~← solvency margin~~.
3. If under the conditions laid down by national law a Member State authorises ~~agencies and~~ branches set up within its territory and covered by this Title Chapter to transfer all or part of their portfolios of contracts to an ~~agency or~~ branch covered by this Title Chapter and set up within the territory of another Member State, it shall ensure that the ~~competent~~  supervisory  authorities of the Member State of the accepting ~~office~~  undertaking  or, if appropriate, of the Member State referred to in Article ~~26-165~~ certify  the following: 
  - (a) that after taking the transfer into account the accepting ~~office~~  undertaking  possesses the necessary  eligible own funds to cover the Solvency Capital Requirement ~~← solvency margin~~;
  - (b) that the law of the Member State of the accepting ~~office~~  undertaking  permits such a transfer;
  - (c) ~~and that that~~  Member  State has agreed to the transfer.
4. In the circumstances referred to in paragraphs 1, 2 and 3, the Member State in which the transferring ~~agency or~~ branch is situated shall authorise the transfer after obtaining the agreement of the ~~competent~~  supervisory  authorities of the Member State in which the risks are situated,  or the Member State of the commitment,  where different from the Member State in which the transferring ~~agency or~~ branch is situated.
5. The ~~competent~~  supervisory  authorities of the Member States consulted shall give their opinion or consent to the ~~competent~~  supervisory  authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request. ~~‡~~ The absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.
6. A transfer authorised in accordance with ~~this Article~~ paragraphs 1 to 5 shall be published as laid down by national law in the Member State in which the risk is situated  or the Member State of the commitment .

Such transfers shall automatically be valid against policyholders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

↓ 2002/83/EC and 92/49/EEC  
Art. 53 (adapted)

~~This provision~~ ~~The first and second subparagraphs~~ shall not affect the ~~Member States'~~ right  of the Member States  to give policyholders the option of cancelling contracts within a fixed period after a transfer.

↓ 2002/83/EC Art. 54 (adapted)  
⇒ new

## Article 163

### Technical provisions

Member States shall require undertakings to establish  adequate technical  provisions, ~~referred to in Article 20,~~ adequate to cover the ~~underwriting liabilities~~  insurance and reinsurance obligations  assumed in their territories  calculated in accordance with Chapter VI, Section 2. Member States shall require undertakings to value assets and liabilities in accordance with Chapter VI, Section 1 and determine own funds in accordance with Chapter VI, Section 3 . ~~Member States shall see that the agency or branch covers such provisions by means of assets which are equivalent to such provisions and matching assets in accordance with Annex II.~~

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

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

↓ 2002/83/EC Art. 55 (adapted)  
⇒ new

## Article 164

~~Solvency margin~~  Solvency Capital Requirement  and  Minimum Capital Requirement  ~~guarantee fund~~

1. Each Member State shall require ~~of agencies or~~  for  branches  which are  set up in its territory an  amount of eligible own funds  ~~solvency margin~~ consisting of the items ~~listed~~  referred to  in Article ~~27~~  98(4) .

The ~~minimum solvency margin~~  Solvency Capital Requirement and the Minimum Capital Requirement  shall be calculated in accordance with  the provisions of   Chapter VI, Sections 4 and 5  ~~Article 28~~.

However, for the purpose of calculating ~~this margin~~  the Solvency Capital Requirement and the Minimum Capital Requirement , account shall be taken  of the following:

- ⊗ (a) for non-life insurance, only of the business carried on by the branch concerned; ⊗
- (b) ⊗ for life insurance, ⊗ only of the operations effected by the ~~agency or~~ branch concerned.

2. ~~One third of the minimum solvency margin shall constitute the guarantee fund. However, the amount of this fund may not be less than one half of the minimum required under Article 29(2) first subparagraph. The initial deposit lodged in accordance with Article 51(2)(c) shall be counted towards such guarantee fund.~~
- The ⇒ eligible amount of basic own funds required to cover the Minimum Capital Requirement ⇐ ~~guarantee fund~~ and the ⇒ absolute floor ⇐ ~~minimum~~ of such ⊗ that ⊗ ~~fund~~ ⇒ Minimum Capital Requirement ⇐ shall be constituted in accordance with ⇒ Article 98(5) ⇐ ~~Article 29~~.

↓ 73/239/EEC Art. 25 (adapted)  
⇒ new

- 2.3. ~~One third of the solvency margin shall constitute the guarantee fund. The~~ ~~guarantee fund~~ ⇒ eligible amount of basic own funds ⇐ may not be less than one-half of the ~~minimum~~ ⇒ absolute floor ⇐ required under point (d) of Article 17(2) 127(1).
- The ~~initial~~ deposit lodged in accordance with point (e) of Article 23(2)(e) 160(2) shall be counted towards such ~~guarantee fund~~ ⇒ eligible basic own funds to cover the Minimum Capital Requirement ⇐ .

↓ 2002/83/EC Art. 55 (adapted)  
⇒ new

- 3.4. The assets representing the ~~minimum~~ ⇒ Solvency Capital Requirement ⇐ ~~solvency margin~~ must be kept within the Member State where ⊗ the ⊗ activities are carried on up to the amount of the ~~guarantee fund~~ ⇒ Minimum Capital Requirement ⇐ and the excess within the Community.

↓ 2002/83/EC Art. 56 and  
84/641/EEC Art. 12

## Article 165

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

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

↓ 2002/83/EC Art. 56 (adapted)  
⇒ new

- (a) the ~~solvency margin~~ ⇒ Solvency Capital Requirement ⇐ referred to in Article ~~55~~ 164 shall be calculated in relation to the entire business which it carries on

within the Community; ~~in such case, account shall be taken only of the operations effected by all the agencies or branches established within the Community for the purposes of this calculation;~~

- (b) the deposit required under point (e) of Article 51(2)(e) 160(2) shall be lodged in only one of those Member States;
- (c) the assets representing the ~~guarantee fund~~ ⇒ Minimum Capital Requirement ⇐ shall be localised ☒, in accordance with Article 132, ☒ in any one of the Member States in which it carries on its activities.

☒ In the cases referred to in point (a) of the first subparagraph, account shall be taken only of the operations effected by all the branches established within the Community for the purposes of this calculation. ☒

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

The deposit ☒ referred to in point (e) of Article 160(2) ☒ shall be lodged with that Member State.

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↓ 84/641/EEC Art. 12 (adapted)

- 3. The advantages provided for in paragraph 1 may only be granted if the ~~competent~~ ☒ supervisory ☒ authorities of all Member States in which an application has been made agree to them.

They shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the ~~agencies or~~ branches within the Community.

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

- 4. At the request of one or more of the Member States concerned, the advantages granted under ~~this Article~~ paragraphs 1, 2 and 3 shall be withdrawn simultaneously by all Member States concerned.

---

↓ 2002/83/EC Art. 52 (adapted)

## Article 166

~~Rules applicable to branches of third-country undertakings~~ ☒ Accounting, prudential and statistical information and undertakings in difficulty ☒

2. ☒ For the purposes of this Section ☒ Articles ~~13 and 37~~ 33, 34, 137(3), 138 and 139 shall apply ~~mutatis mutandis~~ to agencies and branches referred to in this title.

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

---

↓ 84/641/EEC Art. 13 (adapted)

As regards the application of Articles ~~20~~ 135, 136 and 137, where an undertaking qualifies for the advantages provided for in Article ~~26 (1)~~ 165(1), (2) and (3), the  supervisory  authority responsible for verifying the solvency of agencies or branches established within the Community with respect to their entire business shall be treated in the same way as the  supervisory  authority of the  Member  State in the territory of which the head office of a Community undertaking is situated.

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↓ 2002/83/EC Art. 52 (adapted)

### Article 167

#### Separation of non-life and life business

1. ~~(a) Subject to point (b), agencies and b~~Branches referred to in this Title Section may not simultaneously carry on  life and non-life insurance activities  in a  the same  Member State ~~the activities referred to in the Annex to Directive 73/239/EEC and those covered by this Directive.~~
- ~~(b)2.~~ (b)2. Subject to point (e),  By way of derogation from paragraph 1  Member States may provide that agencies and branches referred to in this Title Section which, on the relevant date referred to in the first subparagraph of Article 18(3) 72(5), carried on both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article ~~1973~~.
- ~~(c)3.~~ (c)3. Any Member State which under the second subparagraph of Article 18(6) 72(5) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they were engaged on the relevant date referred to in the first subparagraph of Article 18(3) 72(5) must also impose this requirement on agencies and branches referred to in this Title Section which are established in its territory and simultaneously carry on both activities there.
- ~~(d)~~ Member States may provide that agencies and branches referred to in this Title Section whose head office simultaneously carries on both activities and which on the dates referred to in the first subparagraph of Article 18(3) 72(5) carried on in the territory of a Member State solely ~~the~~  life insurance  activity ~~covered by this Directive~~ may continue their activity there. If the undertaking wishes to carry on ~~the~~  non-life insurance  activity ~~referred to in Directive 73/239/EEC~~ in that territory it may only carry on ~~the~~  life insurance  activity ~~covered by this Directive~~ through a subsidiary.

## Article 168

⊗ Withdrawal of authorisation for undertakings authorised in more than one Member State ⊗

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↓ 73/239/EEC Art. 28 (adapted)

In the case of a withdrawal of authorisation by the authority referred to in Article ~~26(2)~~ 165(2) ~~this~~ ⊗ that ⊗ authority shall notify the ⊗ supervisory ⊗ authorities of the other Member States where the undertaking operates and ~~the latter supervisory~~ ⊗ those ⊗ authorities shall take the appropriate measures.

If the reason for ~~the~~ ⊗ that ⊗ 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 ~~26~~ 165, the Member States which gave their approval shall also withdraw their authorisations.

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↓ 2002/83/EC Art. 57

## Article 169

### Agreements with third countries

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↓ 73/239/EEC Art. 29 and  
2002/83/EC Art. 57 (adapted)

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 Section, for the purpose of ensuring, under conditions of reciprocity, adequate protection for ⊗ policyholders and ⊗ insured persons in the Member States.

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↓ new

## SECTION 2 – REINSURANCE

### Article 170

#### Equivalence

1. The Commission shall, in accordance with the advisory procedure referred to in Article 304(2), adopt decisions, as to whether the solvency regime of a third-country applied to re-insurance activities of undertakings with their head office in that third-country is equivalent to that laid down in this Directive.

Those Decisions shall be regularly reviewed.

2. Where in accordance with paragraph 1 the solvency regime of a third country has been deemed to be equivalent to this Directive, reinsurance contracts concluded with undertakings having their head office in those third countries shall be treated in the

same manner as reinsurance contracts concluded with an undertaking which is authorised in accordance with this Directive.

↓ 2005/68/EC Art. 32 (adapted)  
⇒ new

## Article 171

### ⊗ Prohibition of pledging of assets ⊗

2 Member States shall not retain or introduce ⊗ for the establishment of technical provisions ⊗ a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsurer ⊗ reinsuring undertaking ⊗ is a ⊗ an insurance or ⊗ reinsurance undertaking ~~authorised in accordance with this Directive or an insurance undertaking authorised in accordance with Directives 73/239/EEC or 2002/83/EC~~ ⇒ having its head office in a third country whose solvency regime is deemed to be equivalent to that laid down in this Directive in accordance with Article 170 ⇐ .

↓ 2005/68/EC Art. 49 (adapted)

## Article 172

### Principle and conditions for conducting reinsurance ~~business~~ ⊗ activity ⊗

A Member State shall not apply to ⊗ third country ⊗ reinsurance undertakings ~~having their head offices outside the Community and commencing~~ ⊗ taking up ⊗ or carrying out ⊗ on ⊗ reinsurance ~~activities~~ ⊗ activity ⊗ in its territory provisions which result in a ~~treatment~~ more favourable ⊗ treatment ⊗ than that ~~accorded~~ ⊗ granted ⊗ to reinsurance undertakings ~~having~~ ⊗ which have ⊗ their head office in that Member State.

↓ 2005/68/EC Art. 50 (adapted)

## Article 173

### Agreements with third countries

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over ⊗ the following ⊗ :
  - (a) ⊗ third country ⊗ reinsurance undertakings which ~~have their head offices situated in a third country, and~~ conduct reinsurance business in the Community;
  - (b) ⊗ Community ⊗ reinsurance undertakings which ~~have their head offices in the Community and~~ conduct reinsurance business in the territory of a third country.



2. The agreements referred to in paragraph 1 shall in particular seek to ensure, under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance. They shall also seek to ensure ~~that~~  the following  :
- (a)  that  the ~~competent~~  supervisory  authorities of the Member States are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated in the Community and conduct business in the territory of third countries concerned;
  - (b)  that  the ~~competent~~  supervisory  authorities of third countries are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated within their territories and conduct business in the Community.
3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall with the assistance of the European Insurance and Occupational Pensions Committee examine the outcome of the negotiations referred to in paragraph 1 of this Article and the resulting situation.

↓ 2002/83/EC (adapted)

## ~~TITLE VI~~ CHAPTER X

### ~~RULES APPLICABLE TO SUBSIDIARIES OF PARENT~~ INSURANCE AND REINSURANCE UNDERTAKINGS GOVERNED BY THE LAWS OF A THIRD COUNTRY AND ~~TO THE ACQUISITIONS OF HOLDINGS BY SUCH PARENT~~ UNDERTAKINGS

↓ 2005/1/EC Art. 8(2) (adapted)

#### Article 174

##### Information from Member States to the Commission

The ~~competent~~  supervisory  authorities of the Member States shall inform the Commission and the ~~competent~~  supervisory  authorities of the other Member States ~~of~~  of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the laws of a third country ~~;~~ .

That information shall also contain an indication of the structure of the group concerned.

~~(b) Whenever such a parent~~  an  undertaking  governed by the law of a third country  acquires a holding in ~~a Community insurance~~  an insurance or reinsurance  undertaking  authorised in the Community  which would turn ~~the latter~~  that insurance or reinsurance undertaking  into ~~its~~  a  subsidiary  of that third country

undertaking the supervisory authorities of the home Member State shall inform the Commission and the supervisory authorities of the other Member States  .

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

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↓ 2005/68/EC Art. 52 (adapted)

## Article 175

### Third-country treatment of Community insurance and reinsurance undertakings

1. Member States shall inform the Commission of any general difficulties encountered by their  insurance or  reinsurance undertakings in establishing themselves and operating in a third country or carrying on activities in a third country.
2. The Commission shall, periodically, ~~draw up~~  submit  a report  to the Council  examining the treatment accorded to Community reinsurance undertakings in third countries,  to insurance or reinsurance undertakings authorised in the Community  ~~in the terms referred to in paragraph 3~~, as regards  the following: 
  - (a) the establishment ~~of Community reinsurance undertakings~~ in third countries  of insurance or reinsurance undertakings authorised in the Community ;
  - (b) the acquisition of holdings in third-country  insurance or  reinsurance undertakings;
  - (c) the carrying on of  insurance or  reinsurance activities by such established undertakings;
  - (d) ~~and~~ the cross-border provision of  insurance or  reinsurance activities from the Community to third countries.

The Commission shall submit those reports to the Council, together with any appropriate proposals or recommendations.

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↓ 90/618/EEC Art. 4

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

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↓ 2002/83/EC

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

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↓ 2005/68/EC Art. 52

~~3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community reinsurance undertakings effective market access, the Commission may submit recommendations to the Council for the appropriate mandate for negotiation with a view to obtaining improved market access for Community reinsurance undertakings.~~

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↓ 2002/83/EC

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

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↓ 90/618/EEC Art. 4

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

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↓ 2005/1/EC Art. 4(2)

~~In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure referred to in Article 5 of Decision 1999/468/EC<sup>72</sup> and in compliance with Article 7(3) and Article 8 thereof that the competent authorities of the Member States must limit or suspend their decisions regarding the following:~~

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<sup>73</sup> OJL 184, 17.7.1999, p. 23.

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↓ 2002/83/EC

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

~~— regarding requests pending at the moment of the decision or future requests for authorisations, and~~

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↓ 2005/1/EC Art. 4(2)

~~(a) requests for authorisation, whether pending at the moment of the decision or submitted thereafter;~~

~~(b) the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question.~~

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↓ 2002/83/EC

~~— regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.~~

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↓ 2002/83/EC and 90/618/EEC  
Art. 4

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

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↓ 2002/83/EC

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

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↓ 90/618/EEC Art. 4

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

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

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↓ 2002/83/EC

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

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↓ 2002/83/EC and 90/618/EEC  
Art. 4

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

~~(a) of any request for the authorisation of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;~~

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↓ 2002/83/EC

~~(b) of any plans for such an undertaking to acquire a holding in a Community assurance undertaking such that the latter would become the subsidiary of the former.~~

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↓ 90/618/EEC Art. 4

~~(b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.~~

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

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

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↓ 2002/83/EC

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

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↓ 2005/68/EC Art. 51

~~The competent authorities of the Member States shall inform the Commission and the competent authorities of the other Member States:~~

~~(a) of any authorisation of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of a third country;~~

~~(b) whenever such a parent undertaking acquires a holding in a Community reinsurance undertaking which would turn the latter into its subsidiary.~~

~~When an authorisation as referred to in point (a) is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the laws of a third country, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.~~

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↓ 2002/83/EC

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

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↓ 2005/68/EC Art. 52

~~4. Measures taken under this Article shall comply with the Community's obligations under any international agreements, in particular in the World Trade Organisation.~~

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↓ 90/618/EEC Art. 4 (adapted)

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

## **TITLE II - ☒ SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE ☒**

### **☒ CHAPTER I - APPLICABLE LAW AND CONDITIONS OF DIRECT INSURANCE CONTRACTS ☒**

#### **☒ SECTION 1 - APPLICABLE LAW ☒**

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↓ new

Article 176

Applicable Law

Any Member State not subject to the application of Regulation [Rome I] shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of that Regulation.

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↓ 88/357/EEC Art. 7

~~Article 7~~

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

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

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

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

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

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

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↓ 92/49/EEC Art. 27

~~(f) In the case of the risks referred to in Article 5 (d) of Directive 73/239/EEC, the parties to the contract may choose any law.~~

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↓ 88/357/EEC Art. 5  
→ 90/618/EEC Art. 2

~~(d) «large risks» means:~~

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

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

~~(iii) risks classified under classes 3, 8, 9, 10, 13 and 16 of point A of the Annex in so far as the policy holder exceeds the limits of at least two of the following three criteria:~~

~~first stage: until 31 December 1992:~~

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

~~— net turnover: 24 million ECU,~~

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

~~second stage: from 1 January 1993:~~

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

~~— net turnover: 12,8 million ECU~~

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

~~If the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC (7) are drawn up, the criteria mentioned above shall be applied on the basis of the consolidated accounts.~~

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

↓ 88/357/EEC Article 7

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

~~(h) The choice referred to in the preceding subparagraphs must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.~~

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

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

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

~~2. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.~~

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



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

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

↓ 88/357/EEC Art. 8

#### ~~Article 8~~

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

↓ 92/49/EEC Art. 30(1)

~~4. (a) Subject to subparagraph (c), the third subparagraph of Article 7 (2) shall apply where the insurance contract provides cover in two or more Member States, at least one of which makes insurance compulsory.~~

↓ 88/357/EEC Art. 8

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

↓ 88/357/EEC (adapted)

### ☒ SECTION 2 – COMPULSORY INSURANCE ☒

## ~~CONTRACT LAW AND CONDITIONS OF ASSURANCE~~

### Article 177

#### ☒ Related Obligations ☒

↓ 88/357/EEC Art. 8 (adapted)

- ~~1. Under the conditions set out in this Article, ☒ Non-life ☒ insurance undertakings may offer and conclude compulsory insurance contracts in accordance with the rules of this Directive and of the first Directive ☒ under the conditions set out in this Article ☒.~~
- ~~2. When a Member State imposes an obligation to take out insurance, the ☒ an insurance ☒ contract shall not satisfy that obligation unless it is in accordance with~~

☒ complies with ☒ the specific provisions relating to that insurance laid down by that Member State.

~~3(d)~~ Where a Member State imposes compulsory insurance and the ~~insurer must~~ ☒ insurance undertaking is required to ☒ notify the ~~competent~~ ☒ supervisory ☒ authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down ~~in the legislation of~~ ☒ by ☒ that ☒ Member ☒ State.

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

~~(a)~~ the specific legal provisions relating to that insurance;

~~(b)~~ the particulars which must be given in the certificate which an ~~insurer~~ ☒ non life insurance undertaking ☒ must issue to an insured person where that ☒ Member ☒ State requires proof that the obligation to take out insurance has been complied with. ~~A~~ ☒ including, if the ☒ Member State ~~may require that those particulars include~~ ☒ so requires, ☒ a declaration by the ~~insurer~~ ☒ insurance undertaking ☒ to the effect that the contract complies with the specific provisions relating to that insurance.

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

~~5. (e)~~ ~~A Member State~~ ☒ States ☒ shall accept, as proof that the insurance obligation has been fulfilled, a ☒ the ☒ certificate, ~~the content of which is~~ ☒ referred to ☒ in conformity with the second indent of point (b) of subparagraph (a)4.

↓ 2002/83/EC Art. 32

## CHAPTER 4

### CONTRACT LAW AND CONDITIONS OF ASSURANCE

#### Article 32

##### Law applicable

~~1. The law applicable to contracts relating to the activities referred to in this Directive shall be the law of the Member State of the commitment.~~

~~However, where the law of that State so allows, the parties may choose the law of another country.~~

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

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

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

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

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

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

↓ 2002/83/EC Art. 33 (adapted)

### ⊗ SECTION 3 - GENERAL GOOD ⊗

Article 178

General good

The ⊗ Member State in which a risk is situated, or the ⊗ Member State of the commitment shall not prevent a policyholder from concluding a contract with an ~~assurance~~ ⊗ insurance ⊗ undertaking authorised under the conditions of Article ~~14~~ 4 as long as that ⊗ conclusion of contract ⊗ does not conflict with legal provisions protecting the general good ⊗ in the Member State in which the risk is situated, or ⊗ in the Member State of the commitment.

↓ 92/49/EEC Art. 29 (adapted)

### ⊗ SECTION 4 - CONDITIONS OF INSURANCE CONTRACTS AND SCALES OF PREMIUMS ⊗

⊗ Article 179

Non-life insurance ⊗

1. Member States shall not ~~adopt provisions requiring~~ ⊗ require ⊗ the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policyholders.

~~They~~ ⊗ Member States ⊗ may only require non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with national provisions concerning insurance contracts. ~~and that requirement~~ ⊗ Those requirements ⊗ may not constitute a prior condition for an ⊗ insurance ⊗ undertaking~~s~~ ⊗ to ⊗ carry ~~ing~~ on ~~its~~ business.

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↓ 92/49/EEC Art. 30 (adapted)

2. ~~Notwithstanding any provision to the contrary, a~~ Member State which makes insurance compulsory may require that  insurance undertakings communicate to its supervisory authority  the general and special conditions of ~~the compulsory~~  such  insurance ~~be communicated to its competent authority before being circulated~~  circulating them .
- 

↓ 92/49/EEC Art. 29 (adapted)

3. Member States may not retain or introduce  an obligation of  prior notification or approval of proposed increases in premium rates except as part of general price-control systems.
- 

↓ 2002/83/EC Art. 34 (adapted)

## Article 180

### ~~Rules relating to conditions of assurance and scales of premiums~~ Life insurance

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

~~Notwithstanding the first subparagraph~~  However, the home Member State may , for the sole purpose of verifying compliance with national provisions concerning actuarial principles, ~~the home Member State may~~ require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions, ~~without that requirement constituting a prior condition for an assurance undertaking to carry on its business.~~  Those requirements may not constitute a prior condition for an insurance undertaking to carry on business.

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

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↓ 92/49/EEC Art 31 (adapted)

## SECTION 5 - INFORMATION FOR POLICYHOLDERS

### SUBSECTION 1 - NON-LIFE INSURANCE

#### Article 181

##### General Information for policyholders

1. Before an  non-life  insurance contract is concluded the  non-life  insurance undertaking shall inform the policyholder of  the following  :

- (a) the law applicable to the contract, where the parties do not have a free choice;
- (b) ~~or~~ the fact that the parties are free to choose the law applicable and, ~~in the latter case,~~ the law the insurer proposes to choose.

☒ The insurance undertaking shall also inform the policyholder of ☒ the arrangements for handling ~~policyholders'~~ complaints ☒ of policyholders ☒ concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the ~~policyholders's~~ right ☒ of the policyholder ☒ to take legal proceedings.

2. The obligations referred to in paragraph 1 shall apply only where the policyholder is a natural person.
3. The ☒ detailed ☒ rules for implementing ~~this Article paragraphs 1 and 2~~ shall be ~~determined in accordance with the law of~~ ☒ laid down by ☒ the Member State in which the risk is situated.

↓ 92/49/EEC Art. 43 (adapted)

#### ☒ Article 182

Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services ☒

21. Where ☒ non-life ☒ insurance is offered under the right of establishment or the freedom to provide services, the policyholder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents issued to the policyholder must convey the information referred to in the first subparagraph.

The obligations imposed in the first ~~two~~ and ~~second~~ subparagraphs ~~of this paragraph~~ shall not apply to ~~the~~ ☒ large ☒ risks referred to in Article 7 (2) of Regulation [ROME I] ~~5 (d) of Directive 73/239/EEC~~.

32. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policyholder, ~~must~~ ☒ shall ☒ state the address of the head office, or, where appropriate, of the branch of the ☒ non-life ☒ insurance undertaking which grants the cover.

~~Each~~ ☒ The ☒ Member State ☒ States ☒ may require that the name and address of the representative of the ☒ non-life ☒ insurance undertaking referred to in point (a) of Article 146(2) ~~12 a (4) of Directive 88/357/EEC~~ also appear in the documents referred to in the first subparagraph of this paragraph.

⊗ **SUBSECTION 2 - LIFE INSURANCE** ⊗

Article 183

Information for policyholders

1. Before the ~~assurance~~ ⊗ life insurance ⊗ contract is concluded, at least the information ~~listed in Annex III(A)~~ set out in paragraphs 2 and 3 shall be communicated to the policyholder.<sup>5</sup>

~~A. BEFORE CONCLUDING THE CONTRACT~~

2. ⊗ The following ⊗ information about the ⊗ life insurance ⊗ ~~assurance~~ undertaking ⊗ shall be communicated: ⊗
- (a) 1 ~~1~~ the name of the undertaking and its legal form;
  - (~~ab~~) 2 ~~1~~ the name of the Member State in which the head office and, where appropriate, the ~~agency or~~ branch concluding the contract is situated;
  - (~~ac~~) 3 ~~1~~ the address of the head office and, where appropriate, of the ~~agency or~~ branch concluding the contract.
3. ⊗ The following ⊗ information about the commitment ⊗ shall be communicated: ⊗
- (~~aa~~) 4 Definition of each benefit and each option;
  - (~~ab~~) 5 Term of the contract;
  - (~~ac~~) 6 Means of terminating the contract;
  - (~~ad~~) 7 Means of payment of premiums and duration of payments;
  - (~~ae~~) 8 Means of calculation and distribution of bonuses;
  - (~~af~~) 9 Indication of surrender and paid-up values and the extent to which they are guaranteed;
  - (~~ag~~) 10 Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;
  - (~~ah~~) 11 For unit-linked policies, definition of the units to which the benefits are linked;
  - (~~ai~~) 12 Indication of the nature of the underlying assets for unit-linked policies;
  - (~~aj~~) 13 Arrangements for application of the cooling-off period;
  - (~~ak~~) 14 General information on the tax arrangements applicable to the type of policy;

- (~~el~~) ~~15~~ The arrangements for handling complaints concerning contracts by policyholders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;
- (~~em~~) ~~16~~ Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose.

↓ 2002/83/EC Art. 36 (adapted)

~~24.~~ The policyholder shall be kept informed throughout the term of the contract of any change concerning the  following  information; ~~listed in Annex III(B).~~

↓ 2002/83/EC Annex III (adapted)

~~ANNEX III~~

~~Information for policy holders~~

~~**B. DURING THE TERM OF THE CONTRACT**~~

- (a) ~~In addition to the policy conditions, both general and special; the policy holder must receive the following information throughout the term of the contract.~~

~~Information about the assurance undertaking~~

- (b) ~~Any change in the name of the  life insurance  undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract;~~

~~Information about the commitment~~

- (~~bc~~) ~~2~~ ~~All the information listed in points (d) to (j) of paragraph 3 (a)(4) to (a)(12) of A in the event of a change in the policy conditions or amendment of the law applicable to the contract;~~

- (~~bd~~) ~~3~~ ~~Every year, information on the state of bonuses.~~

~~5.~~ The following information, which is to be communicated to the policy holder before the contract is concluded (A) or during the term of the contract (B), must  referred to in paragraphs 2, 3 and 4 shall  be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policyholder so requests and the law of the Member State so permits or the policyholder is free to choose the law applicable.

↓ 2002/83/EC Art. 36 (adapted)

~~6.~~ The Member State of the commitment may require ~~assurance~~  life insurance  undertakings to furnish information in addition to that listed in paragraphs 2, 3 and 4 ~~in Annex III~~ only if it is necessary for a proper understanding by the policyholder of the essential elements of the commitment.

47.. The detailed rules for implementing ~~this Article~~ paragraphs 1 to 6 and Annex III shall be laid down by the Member State of the commitment.

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↓ 2002/83/EC Art. 35 (adapted)

## Article 184

### Cancellation period

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

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

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

2. The Member States ~~need~~  may choose  not  to  apply paragraph 1  in the following cases:

(a) where a  ~~to~~ contracts  has a duration  of six months' ~~duration~~ or less;

(b) ~~not~~ where, because of the status of the policyholder or the circumstances in which the contract is concluded, the policyholder does not need ~~this~~ special protection.

Where  Member States  make use of the option set out in the first subparagraph they  shall specify  that fact  in their  law  ~~rules where paragraph 1 is not applied.~~

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↓ 88/357/EEC Art. 4 (adapted)

## CHAPTER II - PROVISIONS SPECIFIC TO NON-LIFE INSURANCE

### SECTION 1 - GENERAL PROVISIONS

## Article 185

### Policy Conditions

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



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↓ 92/49/EEC Art. 3 (adapted)

Article 186

⊗ Abolition of monopolies ⊗

~~Notwithstanding Article 2(2),~~ Member States shall ~~take every step to~~ ensure that monopolies in respect of the taking up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in ~~Article 8 4 of Directive 73/239/EEC~~, are abolished ~~by 1 July 1994~~.

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↓ 92/49/EEC Art. 45 (adapted)

Article 187

⊗ Participation in national guarantee schemes ⊗

~~2. Nothing in this Directive shall affect the~~ ⊗ Host ⊗ Member States' right to ⊗ may ⊗ require ⊗ non-life insurance ⊗ undertakings ~~carrying on business within their territories under the right of establishment or the freedom to provide services~~ to join and participate, on the same terms as ⊗ non-life insurance ⊗ undertakings authorised ~~there~~ ⊗ in their territories ⊗ , in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

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↓ 78/473/EEC Art. 1 (adapted)

⊗ SECTION 2 - COMMUNITY CO-INSURANCE ⊗

Article 188

⊗ Community co-insurance operations ⊗

1. This ~~Directive~~ Section shall apply to Community co-insurance operations ~~referred to in Article 2 which relate to risks classified under point A. 4, 5, 6, 7, 8, 9, 11, 12, 13 and 16 of the Annex to the First Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>74</sup>; hereinafter called the «first Coordination Directive».~~
  2. ~~This Directive shall apply to risks referred to in the first subparagraph of paragraph 1 which by reason of their nature or size call for the participation of several insured for their coverage.~~
- ~~Any difficulties which may arise in implementing this principle shall be examined pursuant to Article 8.~~

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<sup>74</sup> OJ No L 228, 16. 8. 1973, p. 3.

↓ 78/473/EEC Art. 2 (adapted)

- ~~1. This Directive shall apply only to those Community co-insurance operations~~ ☒ which shall be those co-insurance operations which relate to one or more risks classified in classes 3 to 16 of point A of Annex I and ☒ which satisfy the following conditions:
- ☒ (a) the risk is a large risk as referred to in Article 7 (2) of Regulation [ROME I]; ☒
  - ~~(ab)~~ the risk, ~~within the meaning of Article 1 (1)~~, is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings, ~~hereinafter referred to as «co-insurers»~~, each for its own part, ☒ as 'co-insurers', ☒ one of ~~these undertakings shall be~~ ☒ them being ☒ the leading insurer ☒ insurance undertaking ☒ ;
  - ~~(bc)~~ the risk is situated within the Community;
  - ~~(ed)~~ for the purpose of covering ~~this~~ ☒ the ☒ risk, the leading insurer ~~is authorized in accordance with the conditions laid down in the First Coordination Directive, i.e. he~~ ☒ insurance undertaking ☒ is treated as if ~~he~~ ☒ it ☒ were the insurer ☒ insurance undertaking ☒ covering the whole risk;
  - ~~(de)~~ at least one of the co-insurers participates in the contract ~~by means of~~ ☒ through ☒ a head office, ~~agency~~ or a branch established in a Member State other than that of the leading insurer ☒ insurance undertaking ☒ ;
  - ~~(ef)~~ the leading insurer ☒ insurance undertaking ☒ fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

↓ 78/473/EEC Art. 1(1) (adapted)

- ☒ 2. This section ☒ ~~it~~ shall not apply, ~~however~~, to Community co-insurance operations covering ☒ those ☒ risks classified ~~under in class 13 in point A, 13 of Annex I~~ which concern damage arising from nuclear sources or from medicinal products. ~~The exclusion of insurance against damage arising from medicinal products shall be examined by the Council within five years of the notification of this Directive.~~

↓ new

3. Articles 145 to 150 shall apply only to the leading insurance undertaking.

↓ 78/473/EEC Art. 2 (adapted)

⇒ new

- ~~2.4. These eCo-insurance operations which do not satisfy the conditions set out in paragraph 1 or which cover risks other than those specified in Article 1 shall remain subject to the national laws operative at the time when ☒ provisions of ☒ this Directive comes into force~~ ⇒ except those of this Section ⇐.

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↓ 78/473/EEC Art. 3 (adapted)

Article 189

⊗ Participation in Community co-insurance ⊗

The right of ⊗ insurance ⊗ undertakings ~~which have their head office in a Member State and which are subject to and satisfy the requirements of the First Coordination Directive to participate in Community co-insurance may~~ ⊗ shall ⊗ not be made subject to any provisions other than those of this Directive Section.

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↓ 78/473/EEC Art. 4 (adapted)  
⇒ new

Article 190

⊗ Technical provisions ⊗

The amount of the technical ~~reserves~~ ⊗ provisions ⊗ shall be determined by the different co-insurers according to the rules fixed by ~~the~~ ⊗ their home ⊗ Member State ~~where they are established~~ or, in the absence of such rules, according to customary practice in that State.

However, the ~~reserve for outstanding claims~~ ⇒ technical provisions ⇐ shall be at least equal to ~~that~~ ⊗ those ⊗ determined by the leading insurer according to the rules ~~or practice of the~~ ⊗ its home Member ⊗ State ~~where such insurer is established~~.

~~2. The technical reserves established by the different co-insurers shall be represented by matching assets.~~

~~However, relaxation of (The matching assets rule may be granted by the Member States in which the co-insurers are established in order to take account of the requirements of sound management of insurance undertakings.~~

~~Such assets shall be localized either in the Member States in which the co-insurers are established or in the Member State in which the leading insurer is established, whichever the insurer chooses.~~

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↓ 78/473/EEC Art. 5 (adapted)

Article 191

⊗ Statistical data ⊗

~~The~~ ⊗ Home ⊗ Member States shall ensure that co-insurers ~~established in their territory~~ keep statistical data showing the extent of Community co-insurance operations ⊗ in which they participate ⊗ and the ~~countries~~ ⊗ Member States ⊗ concerned.

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↓ 78/473/EEC Art. 7 (adapted)

Article 192

⊗ Treatment of co-insurance contracts in winding up proceedings ⊗

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under ⊗ the ⊗ ~~that undertaking's~~ other insurance contracts ⊗ of that undertaking ⊗ without distinction as to the nationality of the insured and of the beneficiaries.

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↓ 78/473/EEC Art. 6 (adapted)

Article 193

⊗ Exchange of information between supervisory authorities ⊗

⊗ For the purposes of the implementation of this Section ⊗ ~~the~~ supervisory authorities of the Member States ~~shall cooperate closely in the implementation of this Directive and shall~~ ⊗ , in the framework of the cooperation referred to in Title I, Chapter IV, Section 5, ⊗ provide each other with all the information necessary ~~to this end.~~

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↓ 78/473/EEC Art. 8 (adapted)

Article 194

⊗ Cooperation on implementation ⊗

The Commission and the ~~competent~~ ⊗ supervisory ⊗ authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this ~~Directive~~ Section.

In the course of this cooperation they shall examine in particular any practices which might indicate ~~that the purpose of the provisions of this Directive and in particular of Article 1 (2) and Article 2 are being misused either in~~ that the leading ~~insurer~~ ⊗ insurance undertaking ⊗ does not assume the ~~leader's~~ role ⊗ of the leader ⊗ in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

⊠ SECTION 3 - ASSISTANCE ⊠

Article 195

⊠ Activities similar to tourist assistance ⊠

~~Any Member State~~ ⊠ States ⊠ may, ~~in its territory,~~ make the provision of assistance to persons who get into difficulties in circumstances other than those referred to in Article ~~12~~ 2 (2) subject to ~~the arrangements introduced by the First~~ this Directive.

If a Member State makes use of this possibility it shall, ~~for the purposes of applying these arrangements,~~ treat such activity as if it were ⊠ classified ⊠ ~~listed~~ in class 18 in point A of ~~the Annex I to the First Directive~~ without prejudice to point C thereof.

The ~~preceding~~ ⊠ second ⊠ paragraph shall in no way affect the possibilities for classification laid down in ~~the Annex I to the First Directive~~ for activities which obviously come under other classes.

~~It shall not be possible to refuse authorization to an agency or branch solely on the grounds that the activity covered by this Article is classified differently in the Member State in the territory of which the head office of the undertaking is situated.~~

⊠ SECTION 4 – LEGAL EXPENSES INSURANCE ⊠

*Article 1*

~~The purpose of this Directive is to coordinate the provisions laid down by law, regulation or administrative action concerning legal expenses insurance as referred to in paragraph 17 of point A of the Annex to Council Directive 73/239/EEC in order to facilitate the effective exercise of freedom of establishment and preclude as far as possible any conflict of interest arising in particular out of the fact that the insurer is covering another person or is covering a person in respect of both legal expenses and any other class in that Annex and, should such a conflict arise, to enable it to be resolved.~~

Article 196

⊠ Scope of this Section ⊠

1. This ~~Directive~~ Section shall apply to legal expenses insurance, ~~Such consists in~~ ⊠ referred to in class 17 in point A of Annex I whereby an insurance ⊠ undertaking ⊠ promises ⊠, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to ⊠ the following ⊠ :

- (a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;
- (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against ~~him~~ that person.

2. This ~~Directive~~ Section shall not, ~~however~~, apply to any of the following:

- (a) legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;
- (b) the activity pursued by ~~the insurer~~ an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings if that activity is at the same time pursued in ~~the insurer's~~ the own interest of that insurance undertaking under such cover;
- (c) where a Member State so chooses, the activity of legal expenses insurance undertaken by an assistance insurer ~~where~~ which complies with the following conditions:
  - (i) ~~this~~ the activity is carried out in a Member State other than the one ~~in which~~ the habitual residence of the insured person ~~normally resides~~ is situated;
  - (ii) ~~where it~~ the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their ~~permanent~~ habitual residence.

In ~~this event~~ the case referred to in point (c) of the first subparagraph the contract ~~must~~ shall clearly state that the cover ~~in question~~ concerned is limited to the circumstances referred to in ~~the foregoing sentence~~ that point and is ancillary to the assistance.

↓ 87/344/EEC Art. 3 (adapted)

#### Article 197

##### Separate contracts

Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

#### Article 198

##### Management of claims

21. ~~Each~~ The home Member State shall ~~take the necessary measures to ensure that the~~ insurance undertakings ~~established within its territory~~ adopt, in accordance with the option ~~imposed~~ chosen by the Member State, or at their

own choice, if the Member State so agrees, at least one of the ~~following solutions, which are alternatives:~~  methods for the management of claims set out in paragraphs 2, 3 and 4.

Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Directive Section.

~~(a)2 the undertaking~~  Insurance undertakings  shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof carries on at the same time a similar activity ~~if the undertaking is a composite one, for another class transacted by it, irrespective of whether the undertaking is a composite or a specialized one,~~ in another  undertaking  having financial, commercial or administrative links with the first  insurance  undertaking and carrying on one or more of the other classes of insurance set out in Directive 73/239/EEC Annex I.

Composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof carries on at the same time a similar activity for another class transacted by them.

~~(b)3. The~~  insurance  undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in ~~paragraph 1~~  Article 197 .

If the undertaking having separate legal personality has links with an  insurance  undertaking which carries on one or more of the ~~other~~ classes of insurance referred to in point A of ~~the Annex to Directive 73/239/EEC I,~~ members of the staff of the undertaking  having separate legal personality  who are concerned with the ~~processing~~  management  of claims or with legal advice connected with such ~~processing~~  management  may not pursue the same or a similar activity in the other  insurance  undertaking at the same time. ~~In addition,~~ Member States may impose the same requirements on the members of the  administrative or  management body.

~~(c)4. the undertaking shall,~~ ~~in the contract,~~ ~~afford~~  the insurance undertaking shall grant  the insured ~~person~~  persons  the right to entrust the defence of ~~his~~  their  interests, from the moment that ~~he~~  they have  ~~has~~ the right to claim from ~~his~~  their  insurer under the policy, to a lawyer of ~~his~~  their  choice or, to the extent that national law so permits, any other appropriately qualified person.

↓ 87/344/EEC Art. 4 (adapted)

## Article 199

Free choice of lawyer

1. Any contract of legal expenses insurance shall expressly ~~recognize that~~  provide the following  :

- (a)  that,  where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;
- (b)  that  the insured ~~person~~  persons  shall be free to choose a lawyer or, if ~~he~~  they  so prefer~~s~~ and to the extent that national law so permits, any other appropriately qualified person, to serve ~~his~~  their  interests whenever a conflict of interests arises.
2.  For the purposes of this Section  "lawyer" means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC<sup>75</sup> ~~of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.~~

↓ 87/344/EEC Art. 5 (adapted)

## Article 200

### Exception to the free choice of lawyer

1. ~~Each Member State~~  States  may provide exemption from ~~the application of Article 199(1) 4(1)~~ for legal expenses insurance if all the following conditions are fulfilled:
- (a) the insurance is limited to cases arising from the use of road vehicles in the territory of the Member State concerned;
- (b) the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;
- (c) neither the legal expenses ~~insurer~~  insurance undertaking  nor the assistance insurer carries out any class of liability insurance;
- (d) measures are taken so that the legal counsel and representation of each of the parties to a dispute is effected by completely independent lawyers when these parties are insured for legal expenses by the same ~~insurer~~  insurance undertaking .
2. ~~The~~  An  exemption granted ~~by a Member State to an undertaking~~ pursuant to paragraph 1 shall not affect the application of Article 198 ~~3(2)~~.

↓ 87/344/EEC Art. 6 (adapted)

## Article 201

### Arbitration

Member States shall ~~adopt all appropriate measures to ensure that~~,  for the settlement of any dispute between the legal expenses insurance undertaking and the insured and  without

<sup>75</sup> OJ L 78, 26.3.1977, p. 17.



prejudice to any right of appeal to a judicial body which might be provided for by national law,  provide for  an arbitration or other procedure offering comparable guarantees of objectivity ~~is provided for whereby, in the event of a difference of opinion between a legal expenses insurer and his insured, a decision can be taken on the attitude to be adopted in order to settle the dispute.~~

The insurance contract ~~must mention~~  shall provide for  the right of the insured person to have recourse to such a procedure.

↓ 87/344/EEC Art. 7 (adapted)

#### Article 202

##### Conflict of interest

Whenever a conflict of interests arises or there is disagreement over the settlement of the dispute, the legal expenses insurer or, where appropriate, the claims settlement office shall inform the person insured of the right referred to in Article ~~4~~ 199 (1)  and  the possibility of having recourse to the procedure referred to in Article ~~6~~ 201.

↓ 87/344/EEC Art. 8 (adapted)

#### Article 203

##### Abolition of specialisation of legal expenses insurance

Member States shall abolish all provisions which prohibit an ~~insurer~~  insurance undertaking  from carrying ~~out~~  on  within their territory legal expenses insurance and other classes of insurance at the same time.

↓ 92/49/EEC Art. 54 (adapted)

### SECTION 5 - HEALTH INSURANCE

#### Article 204

##### Health insurance as an alternative to social security

1. ~~Notwithstanding any provision to the contrary, a Member State~~  States  in which contracts covering the risks in class 2 ~~of in~~ point A of ~~the Annex to Directive 73/239/EEC~~ I may serve as a partial or complete alternative to health cover provided by the statutory social security system may require  the following: 
  - (a) that those contracts comply with the specific legal provisions adopted by that Member State to protect the general good in that class of insurance;
  - (b) ~~and~~ that the general and special conditions of that insurance be communicated to the ~~competent~~  supervisory  authorities of that Member State before use.

2. Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life ~~assurance~~ insurance where ~~the~~ all the following conditions are fulfilled:

- (a) the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance;
- (b) a reserve is set up for increasing age;
- (c) the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated;
- (d) the contract provides that premiums may be increased or payments reduced, even for current contracts;
- (e) the contract provides that the ~~policyholder~~ policyholders may change ~~his~~ their existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of ~~his~~ their acquired rights.

In ~~particular~~ the case referred to in point (e) of the first subparagraph, account ~~must~~ shall be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

~~In that event,~~ The ~~competent~~ supervisory authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in point (a) of the first subparagraph and transmit them to the ~~competent~~ supervisory authorities of the home Member State.

The premiums must be sufficient, on reasonable actuarial assumptions, for insurance undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require ~~that~~ the technical basis for the calculation of premiums to be communicated to its ~~competent~~ supervisory authorities before the product is circulated.

~~This~~ The third and fourth subparagraphs shall also apply where existing contracts are modified.

↓ 92/49/EEC Art. 55 (adapted)

## SECTION 6 – INSURANCE AGAINST ACCIDENTS AT WORK

### Article 205

#### Compulsory insurance against accidents at work

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

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↓ 2002/83/EC Art. 12 (adapted)

## ⊗ CHAPTER III - PROVISIONS SPECIFIC TO LIFE INSURANCE ⊗

### Article 206

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

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

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↓ 2002/83/EC Art. 21 (adapted)

### Article 207

#### Premiums for new business

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

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

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↓ 2002/83/EC

### ~~Article 25~~

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

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

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

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

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

#### ~~Article 26~~

#### ~~Matching rules~~

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

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

↓ 2005/68/EC (adapted)

⇒ new

## CHAPTER ~~2~~ IV - Rules relating ~~to~~ specific ~~to~~ technical provisions ~~to~~ reinsurance ~~to~~

#### ~~Article 32~~

#### ~~Establishment of technical provisions~~

~~1. The home Member State shall require every reinsurance undertaking to establish adequate technical provisions in respect of its entire business.~~

~~The amount of such technical provisions shall be determined in accordance with the rules laid down in Directive 91/674/EEC. Where applicable, the home Member State may lay down more specific rules in accordance with Article 20 of Directive 2002/83/EC.~~

~~2. Member States shall not retain or introduce a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsurer is a reinsurance undertaking authorised in accordance with this Directive or an insurance undertaking authorised in accordance with Directives 73/239/EEC or 2002/83/EC.~~

~~3. When the home Member State allows any technical provisions to be covered by claims against reinsurers who are not authorised in accordance with this Directive or insurance undertakings which are not authorised in accordance with Directives 73/239/EEC or 2002/83/EC, it shall set the conditions for accepting such claims.~~

#### ~~Article 33~~

#### ~~Equalisation reserves~~

~~1. The home Member State shall require every reinsurance undertaking which reinsures risks included in class 14 listed in point A of the Annex to Directive 73/239/EEC to set up an equalisation reserve for the purpose of offsetting any technical deficit or above average claims ratio arising in that class in any financial year.~~

~~2. The equalisation reserve for credit reinsurance shall be calculated in accordance with the rules laid down by the home Member State in accordance with one of the four methods set out in point D of the Annex to Directive 73/239/EEC, which shall be regarded as equivalent.~~

~~3. The home Member State may exempt reinsurance undertakings from the obligation to set up equalisation reserves for reinsurance of credit insurance business where the premiums or contributions receivable in respect of reinsurance of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than EUR 2500000.~~

~~4. The home Member State may require every reinsurance undertaking to set up equalisation reserves for classes of risks other than credit reinsurance. The equalisation reserves shall be calculated according to the rules laid down by the home Member State.~~

#### *Article 34*

##### **Assets covering technical provisions**

~~1. The home Member State shall require every reinsurance undertaking to invest the assets covering the technical provisions and the equalisation reserve referred to in Article 33 in accordance with the following rules:~~

~~(a) the assets shall take account of the type of business carried out by a reinsurance undertaking, in particular the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments;~~

~~(b) the reinsurance undertaking shall ensure that the assets are diversified and adequately spread and allow the undertaking to respond adequately to changing economic circumstances, in particular developments in the financial markets and real estate markets or major catastrophic events. The undertaking shall assess the impact of irregular market circumstances on its assets and shall diversify the assets in such a way as to reduce such impact;~~

~~(c) investment in assets which are not admitted to trading on a regulated financial market shall in any event be kept to prudent levels;~~

~~(d) investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They shall be valued on a prudent basis, taking into account the underlying assets, and included in the valuation of the institution's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;~~

~~(e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any one particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the undertaking to excessive risk concentration.~~

~~Member States may decide not to apply the requirements referred to in point (e) to investment in government bonds.~~

~~2. Member States shall not require reinsurance undertakings situated in their territory to invest in particular categories of assets.~~

~~3. Member States shall not subject the investment decisions of a reinsurance undertaking situated in their territory or its investment manager to any kind of prior approval or systematic notification requirements.~~

~~4. Notwithstanding paragraphs 1 to 3, the home Member State may, for every reinsurance undertaking whose head office is situated in its territory, lay down the following quantitative rules, provided that they are prudentially justified:~~

~~(a) investments of gross technical provisions in currencies other than those in which technical provisions are set should be limited to 30 %;~~

~~(b) investments of gross technical provisions in shares and other negotiable securities treated as shares, bonds and debt securities which are not admitted to trading on a regulated market should be limited to 30 %;~~

~~(c) the home Member State may require every reinsurance undertaking to invest no more than 5 % of its gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money and capital market instruments from the same undertaking, and no more than 10 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money and capital market instruments from undertakings which are members of the same group.~~

~~5. Furthermore, the home Member State shall lay down more detailed rules setting the conditions for the use of amounts outstanding from a special purpose vehicle as assets covering technical provisions pursuant to this Article.~~

### ~~CHAPTER 3~~

## ~~RULES RELATING TO THE SOLVENCY MARGIN AND TO THE GUARANTEE FUND~~

### ~~SECTION 1~~

#### ~~AVAILABLE SOLVENCY MARGIN~~

##### ~~Article 35~~

##### ~~General rule~~

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

##### ~~Article 36~~

##### ~~Eligible items~~

~~1. The available solvency margin shall consist of the assets of the reinsurance undertaking free of any foreseeable liabilities, less any intangible items, including:~~

~~(a) the paid-up share capital or, in the case of a mutual reinsurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:~~

~~(i) the memorandum and articles of association shall stipulate that payments may be made from those accounts to members only in so far as this does not cause the available solvency margin to fall below the required level, or, after~~

~~the dissolution of the undertaking, if all the undertaking's other debts have been settled;~~

~~(ii) the memorandum and articles of association shall stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;~~

~~(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);~~

~~(b) statutory and free reserves which neither correspond to underwriting liabilities nor are classified as equalisation reserves;~~

~~(c) the profit or loss brought forward after deduction of dividends to be paid;~~

~~2. The available solvency margin shall be reduced by the amount of own shares directly held by the reinsurance undertaking.~~

~~For those reinsurance undertakings which discount or reduce their non-life technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of Directive 91/674/EEC, the available solvency margin shall be reduced by the difference between the undiscounted technical provisions or technical provisions before deductions as disclosed in the notes on the accounts, and the discounted or technical provisions after deductions. This adjustment shall be made for all risks listed in point A of the Annex to Directive 73/239/EEC, except for risks listed under classes 1 and 2 of point A of that Annex. For classes other than 1 and 2 listed in point A of that Annex, no adjustment need be made in respect of the discounting of annuities included in technical provisions.~~

~~In addition to the deductions in the first and second subparagraphs, the available solvency margin shall be reduced by the following items:~~

~~(a) participations which the reinsurance undertaking holds in the following entities:~~

~~(i) insurance undertakings within the meaning of Article 6 of Directive 73/239/EEC, Article 4 of Directive 2002/83/EC, or Article 1(b) of Directive 98/78/EC;~~

~~(ii) reinsurance undertakings within the meaning of Article 3 of this Directive or non-member country reinsurance undertakings within the meaning of Article 1(l) of Directive 98/78/EC;~~

~~(iii) insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC;~~

~~(iv) credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC;~~

~~(v) investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC<sup>76</sup> and of Article 2(4) and (7) of Directive 93/6/EEC<sup>77</sup>;~~

<sup>76</sup> Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

~~(b) each of the following items which the reinsurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:~~

~~(i) instruments referred to in paragraph 4,~~

~~(ii) instruments referred to in Article 27(3) of Directive 2002/83/EC,~~

~~(iii) subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.~~

~~Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to under (a) and (b) of the third subparagraph.~~

~~As an alternative to the deduction of the items referred to in (a) and (b) of the third subparagraph which the reinsurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their reinsurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.~~

~~Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, reinsurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC need not deduct the items referred to in (a) and (b) of the third subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.~~

~~For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.~~

~~3. The available solvency margin may also consist of:~~

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

~~Subordinated loan capital shall also fulfil the following conditions:~~

~~(i) only fully paid-up funds may be taken into account;~~

~~(ii) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date the reinsurance~~

<sup>77</sup> Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L 141, 11.6.1993, p. 1). Directive as last amended by Directive 2005/1/EC.



~~undertaking shall submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided that application is made by the issuing reinsurance undertaking and that its available solvency margin will not fall below the required level;~~

~~(iii) loans the maturity of which is not fixed shall be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the reinsurance undertaking shall notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the reinsurance undertaking's available solvency margin will not fall below the required level;~~

~~(iv) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the reinsurance undertaking, the debt will become repayable before the agreed repayment dates;~~

~~(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;~~

~~(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those referred to in point (a), up to 50 % of the available solvency margin or the required solvency margin, whichever is the smaller, for the total of such securities and the subordinated loan capital referred to in point (a) provided that they fulfil the following:~~

~~(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;~~

~~(ii) the contract of issue shall enable the reinsurance undertaking to defer the payment of interest on the loan;~~

~~(iii) the lender's claims on the reinsurance undertaking shall rank entirely after those of all non-subordinated creditors;~~

~~(iv) the documents governing the issue of the securities shall provide for the loss absorption capacity of the debt and unpaid interest, while enabling the reinsurance undertaking to continue its business;~~

~~(v) only fully paid-up amounts may be taken into account.~~

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

~~(a) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the available solvency margin or the required solvency margin, whichever is the smaller;~~

~~(b) in the case of a non-life 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 a limit of 50 % of the available solvency margin or the required solvency margin, whichever is the smaller. The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;~~

~~(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature.~~

~~5. In addition, with respect to life reinsurance activities, the available solvency margin may, upon application, with supporting evidence, by the reinsurance undertaking to the competent authority of the home Member State and with the agreement of that competent authority, consist of:~~

~~(a) until 31 December 2009, an amount equal to 50 % of the undertaking's future profits, but not exceeding 25 % of the available solvency margin or the required solvency margin, whichever is the smaller; the amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies; the factor used may not exceed six; the estimated annual profit shall not exceed the arithmetical average of the profits made over the last five financial years in the activities listed in Article 2(1) of Directive 2002/83/EC.~~

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

~~(i) when an actuarial report is submitted to the competent authorities substantiating the likelihood of emergence of these profits in the future; and~~

~~(ii) insofar as that part of future profits emerging from hidden net reserves referred to in paragraph 4(c) has not already been taken into account;~~

~~(b) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium; this figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life reinsurance activities and the mathematical provisions for all policies for which Zillmerising is possible; the difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.~~

~~6. Amendments to paragraphs 1 to 5 of this Article to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin shall be adopted in accordance with the procedure laid down in Article 55(2).~~

## ~~SECTION 2~~

### ~~REQUIRED SOLVENCY MARGIN~~

#### ~~Article 37~~

##### ~~Required solvency margin for non-life reinsurance activities~~

~~1. The required 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.~~

~~However, in the case of reinsurance undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.~~

~~2. Subject to Article 40, the amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4 of this Article.~~

~~3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.~~

~~Premiums or contributions in respect of the classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC shall be increased by 50 %.~~

~~Premiums or contributions in respect of classes other than classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC may be increased by up to 50 %, for specific reinsurance activities or contract types, in order to take account of the specificities of these activities or contracts, in accordance with the procedure referred to in Article 55(2) of this Directive. The premiums or contributions, inclusive of charges ancillary to premiums or contributions, due in respect of reinsurance business in the last financial year shall be aggregated.~~

~~From that 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 EUR 50000000, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.~~

~~The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the reinsurance undertaking after deduction of amounts recoverable under retrocession and the gross amount of claims; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the reinsurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from special purpose vehicles as referred to in Article 46 may also be deducted as retrocession.~~

~~With the approval of the competent authorities, statistical methods may be used to allocate the premiums or contributions.~~

~~4. The claims basis shall be calculated, as follows, using in respect of the classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, claims, provisions and recoveries increased by 50 %.~~

~~Claims, provisions and recoveries in respect of classes other than classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, may be increased by up to 50 %, for specific reinsurance activities or contract types, in order to take account of the specificities of those activities or contracts, in accordance with the procedure referred to in Article 55(2) of this Directive.~~

~~The amounts of claims paid, without any deduction of claims borne by retrocessionaires, in the periods specified in paragraph 1 shall be aggregated.~~

~~To that sum there shall be added the amount of provisions for claims outstanding established at the end of the last financial year.~~

~~From that sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.~~

~~From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts. If the reference period established in paragraph 1 equals seven years, the amount of provisions for claims outstanding established at the commencement of the sixth financial year preceding the last financial year for which there are accounts shall be deducted.~~

~~One third, or one seventh, of the amount so obtained, according to the reference period established in paragraph 1, shall be divided into two portions, the first extending up to EUR 35000000 and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.~~

~~The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under retrocession and the gross amount of claims; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the reinsurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from special purpose vehicles as referred to in Article 46 may also be deducted as retrocession.~~

~~With the approval of the competent authorities, statistical methods may be used to allocate claims, provisions and recoveries.~~

~~5. If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least equal to the required solvency margin of the year before multiplied by the ratio between the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of retrocession but the ratio may in no case be higher than 1.~~

~~6. The fractions applicable to the portions referred to in the fifth subparagraph of paragraph 3 and the seventh subparagraph of paragraph 4 shall each be reduced to a third in the case of reinsurance of health insurance practised on a similar technical basis to that of life insurance, if:~~

~~(a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;~~

~~(b) a provision is set up for increasing age;~~

~~(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;~~

~~(d) the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;~~

~~(e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.~~

#### ~~Article 38~~

##### ~~Required solvency margin for life reinsurance activities~~

~~1. The required solvency margin for life reinsurance activities shall be determined in accordance with Article 37.~~

~~2. Notwithstanding paragraph 1 of this Article, the home Member State may provide that for reinsurance classes of assurance business covered by Article 2(1)(a) of Directive 2002/83/EC linked to investment funds or participating contracts and for the operations referred to in Article 2(1)(b), 2(2)(b), (c), (d) and (e) of Directive 2002/83/EC, the required solvency margin is to be determined in accordance with Article 28 of Directive 2002/83/EC.~~

#### ~~Article 39~~

##### ~~Required solvency margin for a reinsurance undertaking simultaneously conducting non-life and life reinsurance~~

~~1. The home Member State shall require every reinsurance undertaking conducting both non-life and life reinsurance business to have an available solvency margin to cover the total sum of required solvency margins in respect of both non-life and life reinsurance activities which shall be determined in accordance with Articles 37 and 38 respectively.~~

~~2. If the available solvency margin does not reach the level required in paragraph 1 of this Article, the competent authorities shall apply the measures provided for in Articles 42 and 43.~~

### ~~SECTION 3~~

#### ~~GUARANTEE FUND~~

#### ~~Article 40~~

##### ~~Amount of the guarantee fund~~

~~1. One third of the required solvency margin as specified in Articles 37, 38 and 39 shall constitute the guarantee fund. This fund shall consist of the items listed in Article 36(1), (2) and (3) and, with the agreement of the competent authority of the home Member State, in Article 36(4)(e).~~

~~2. The guarantee fund shall not be less than a minimum of EUR 3000000.~~

~~Any Member State may provide that as regards captive reinsurance undertakings, the minimum guarantee fund shall not be not less than EUR 1000000.~~

#### ~~Article 41~~

##### ~~Review of the amount of the guarantee fund~~

~~1. The amounts in euro as laid down in Article 40(2) shall be reviewed annually as from 10 December 2007 in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.~~

~~The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of this Directive and the review date and rounded up to a multiple of EUR 100000.~~

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

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

↓ 2005/68/EC Art. 45

## Article 208

### Finite reinsurance

↓ new

1. Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or carry on finite reinsurance activities are able to properly monitor, manage, control and report the risks arising from those contracts or activities.

2. In order to ensure that a harmonised approach is adopted with respect to finite reinsurance activities, the Commission may adopt implementing measures specifying the provisions of paragraph 1 with respect to the monitoring, management and control of risks arising from finite reinsurance activities.

Those implementing measures designed to amend non-essential elements of this Directive inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

↓ 2005/68/EC Art. 45

~~1. The home Member State may lay down specific provisions concerning the pursuit of finite reinsurance activities regarding:~~

~~mandatory conditions for inclusion in all contracts issued;~~

~~sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements;~~

~~accounting, prudential and statistical information requirements;~~

~~the establishment of technical provisions to ensure that they are adequate, reliable and objective;~~

~~investment of assets covering technical provisions in order to ensure that they take account of the type of business carried on by the reinsurance undertaking, in particular the nature, amount and duration of the expected claims payments, in such a~~

~~way as to secure the sufficiency, liquidity, security, profitability and matching of its assets;~~

~~rules relating to the available solvency margin, required solvency margin and the minimum guarantee fund that the reinsurance undertaking shall maintain in respect of finite reinsurance activities.~~

↓ 2005/68/EC Art. 2(1)(q)  
(adapted)

~~(e)~~ 3. ~~For the purposes of paragraphs 1 and 2~~ ~~finite reinsurance~~ means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following ~~two~~ features:

- (~~a~~) explicit and material consideration of the time value of money;
- (~~b~~) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

↓ 2005/68/EC Art. 45

~~2. In the interests of transparency, Member States shall communicate the text of any measures laid down by their national law for the purposes of paragraph 1 to the Commission without delay.~~

↓ 2005/68/EC Art. 46 (adapted)  
⇒ new

## Article 209

### Special purpose vehicles

1. ~~Where a Member State~~ ~~States~~ ~~decides to~~ shall allow the establishment within ~~its~~ ~~their~~ ~~territory~~ of special purpose vehicles ~~within the meaning of this Directive,~~ subject to ~~it shall require~~ prior supervisory approval ~~official authorisation thereof.~~

~~2. The Member State where the special purpose vehicle is established shall lay down the conditions under which the activities of such an undertaking shall be carried on. In particular, that Member State shall lay down rules regarding:~~

⇒ 2. In order to ensure that a harmonised approach is adopted with respect to special purpose vehicles, the Commission may adopt implementing measures laying down the following:

- (a) scope of authorisation;
- (b) mandatory conditions ~~for inclusion~~ to be included in all contracts issued;

- (c) the ~~⇒~~ fit and proper requirements as referred to in Article 42 ~~⇐~~ ~~good repute and appropriate professional qualifications~~ of ~~⊗~~ the ~~⊗~~ persons running the special purpose vehicle;
- (d) fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;
- (e) sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements;
- (f) accounting, prudential and statistical information requirements;
- (g) the solvency requirements ~~of special purpose vehicles~~.

Those implementing measures designed to amend non-essential elements of this Directive inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

↓ 2005/68/EC Art. 46

~~3. In the interests of transparency, Member States shall communicate the text of any measures laid down by their national law for the purposes of paragraph 2, to the Commission without delay.~~

↓ 98/78/EC

#### ~~Article 4~~

#### ~~Definitions~~

~~For the purposes of this Directive:~~

~~(a) insurance undertaking means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;~~

~~(b) non-member country insurance undertaking means an undertaking which would require authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC if it had its registered office in the Community;~~

↓ 2005/68/EC Art. 59.2(a)

~~(c) reinsurance undertaking means an undertaking, which has received official authorisation in accordance with Article 3 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance<sup>78</sup>;~~

↓ 98/78/EC

~~(d) parent undertaking means a parent undertaking within the meaning of Article 1 of Directive 83/349/EEC<sup>79</sup> and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;~~

<sup>78</sup> OJ L 323, 9.12.2005, p. 1.



~~(c) *subsidiary undertaking* means a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the parent undertaking which is at the head of those undertakings;~~

~~(f) *participation* means participation within the meaning of Article 17, first sentence, of Directive 78/660/EEC<sup>80</sup> or the holding, directly or indirectly, of 20 % or more of the voting rights or capital of an undertaking;~~

↓ 2002/87/EC Art. 28.1

~~(g) *participating undertaking* shall mean an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;~~

~~(h) *related undertaking* shall mean either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;~~

↓ 2005/68/EC Art. 59.2(a)

~~(i) *insurance holding company* means a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, reinsurance undertakings or non-member country insurance undertakings or non-member country reinsurance undertakings, at least one of such subsidiary undertakings being an insurance undertaking, or a reinsurance undertaking and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>81</sup>;~~

~~(j) *mixed activity insurance holding company* means a parent undertaking, other than an insurance undertaking, a non-member country insurance undertaking, a reinsurance undertaking, a non-member country reinsurance undertaking, an insurance holding company or a mixed financial holding company within the meaning of Directive 2002/87/EC, which includes at least one insurance undertaking or a reinsurance undertaking among its subsidiary undertakings;~~

~~(k) *competent authorities* means the national authorities which are empowered by law or regulation to supervise insurance undertakings or reinsurance undertakings;~~

<sup>79</sup> ~~Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1). Directive as last amended by the 1994 Act of Accession.~~

<sup>80</sup> ~~Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by the 1994 Act of Accession.~~

<sup>81</sup> ~~OJ L 35, 11.2.2003, p. 1. Directive as amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).~~

↓ 2005/68/EC Art. 59.2(b)

~~(1) non-member country reinsurance undertaking means an undertaking which would require authorisation in accordance with Article 3 of Directive 2005/68/EC if it had its head office in the Community.~~

↓ 2005/68/EC Art. 59.3

#### ~~Article 2~~

### ~~Cases of application of supplementary supervision of insurance undertakings and reinsurance undertakings~~

~~1. In addition to the provisions of Directive 73/239/EEC, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>82</sup> and Directive 2005/68/EC, which lay down the rules for the supervision of insurance undertakings and reinsurance undertakings, Member States shall provide supervision of any insurance undertaking or any reinsurance undertaking, which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, non-member country insurance undertaking or non-member country reinsurance undertaking, shall be supplemented in the manner prescribed in Articles 5, 6, 8 and 9 of this Directive.~~

~~2. Every insurance undertaking or reinsurance undertaking the parent undertaking of which is an insurance holding company, a non-member country insurance or a non-member country reinsurance undertaking shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), 6, 8 and 10.~~

~~3. Every insurance undertaking or reinsurance undertaking the parent undertaking of which is a mixed-activity insurance holding company shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), 6 and 8.~~

#### ~~Article 3~~

### ~~Scope of supplementary supervision~~

~~1. The exercise of supplementary supervision in accordance with Article 2 shall in no way imply that the competent authorities are required to play a supervisory role in relation to the non-member country insurance undertaking, the non-member country reinsurance undertaking, insurance holding company or mixed-activity insurance holding company taken individually.~~

~~2. The supplementary supervision shall take into account the following undertakings referred to in Articles 5, 6, 8, 9 and 10:~~

~~— related undertakings of the insurance undertaking or of the reinsurance undertaking,~~

~~— participating undertakings in the insurance undertaking or in the reinsurance undertaking,~~

~~— related undertakings of a participating undertaking in the insurance undertaking or in the reinsurance undertaking.~~

<sup>82</sup> OJL 345, 19.12.2002, p. 1. Directive as last amended by Directive 2005/1/EC.

~~3. Member States may decide not to take into account in the supplementary supervision referred to in Article 2 undertakings having their registered office in a non-member country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Annex I, point 2.5, and of Annex II, point 4.~~

~~Furthermore, the competent authorities responsible for exercising supplementary supervision may in the cases listed below decide on a case by case basis not to take an undertaking into account in the supplementary supervision referred to in Article 2:~~

~~— if the undertaking which should be included is of negligible interest with respect to the objectives of the supplementary supervision of insurance undertakings or reinsurance undertakings;~~

~~— if the inclusion of the financial situation of the undertaking would be inappropriate or misleading with respect to the objectives of the supplementary supervision of insurance undertakings or reinsurance undertakings.~~

#### ~~Article 4~~

##### **Competent authorities for exercising supplementary supervision**

~~1. Supplementary supervision shall be exercised by the competent authorities of the Member State in which the insurance undertaking or the reinsurance undertaking has received official authorisation under Article 6 of Directive 73/239/EEC or Article 4 of Directive 2002/83/EC or Article 3 of Directive 2005/68/EC.~~

~~2. Where insurance undertakings or reinsurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, non-member country insurance undertaking, non-member country reinsurance undertaking or mixed activity insurance holding company, the competent authorities of the Member States concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision.~~

~~3. Where a Member State has more than one competent authority for the prudential supervision of insurance undertakings and reinsurance undertakings, such Member State shall take the requisite measures to organise coordination between those authorities.~~

↓ 98/78/EC

#### ~~Article 5~~

##### **Availability and quality of information**

↓ 2005/68/EC Art. 59.4

~~1. Member States shall prescribe that the competent authorities are to require that every insurance undertaking or reinsurance undertaking subject to supplementary supervision shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of such supplementary supervision.~~

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↓ 98/78/EC

~~2. Member States shall take the appropriate steps to ensure that there are no legal impediments within their jurisdiction preventing the undertakings that are subject to the supplementary supervision and their related undertakings and participating undertakings from exchanging among themselves any information relevant for the purposes of such supplementary supervision.~~

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↓ 2005/68/EC Art. 59.5

~~Article 6~~

~~Access to information~~

~~1. Member States shall provide that their competent authorities responsible for exercising supplementary supervision are to have access to any information which would be relevant for the purpose of supervision of an insurance undertaking or a reinsurance undertaking subject to such supplementary supervision. The competent authorities may address themselves directly to the relevant undertakings referred to in Article 3(2) to obtain the necessary information only if such information has been requested from the insurance undertaking or the reinsurance undertaking and has not been supplied by it.~~

~~2. Member States shall provide that their competent authorities may carry out within their territory, themselves or through the intermediary of persons whom they appoint for that purpose, on-the-spot verification of the information referred to in paragraph 1 at:~~

~~the insurance undertaking subject to supplementary supervision,~~

~~the reinsurance undertaking subject to supplementary supervision,~~

~~subsidiary undertakings of that insurance undertaking,~~

~~subsidiary undertakings of that reinsurance undertaking,~~

~~parent undertakings of that insurance undertaking,~~

~~parent undertakings of that reinsurance undertaking,~~

~~subsidiary undertakings of a parent undertaking of that insurance undertaking,~~

~~subsidiary undertakings of a parent undertaking of that reinsurance undertaking.~~

~~3. Where, in applying this Article, the competent authorities of one Member State wish in specific cases to verify important information concerning an undertaking situated in another Member State which is a related insurance undertaking, a related reinsurance undertaking, a subsidiary undertaking, a parent undertaking or a subsidiary of a parent undertaking of the insurance undertaking or of the reinsurance undertaking subject to supplementary supervision, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must act on it within the limits of their jurisdiction by carrying out the verification themselves, by allowing the authorities making the request to carry it out or by allowing an auditor or expert to carry it out.~~

~~The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.~~

## ~~Article 7~~

### ~~Cooperation between competent authorities~~

~~1. Where insurance undertakings or reinsurance undertakings established in different Member States are directly or indirectly related or have a common participating undertaking, the competent authorities of each Member State shall communicate to one another on request all relevant information which may allow or facilitate the exercise of supervision pursuant to this Directive and shall communicate on their own initiative any information which appears to them to be essential for the other competent authorities.~~

~~2. Where an insurance undertaking or a reinsurance undertaking and either a credit institution as defined in Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>82</sup> or an investment firm as defined in Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>84</sup>, or both, are directly or indirectly related or have a common participating undertaking, the competent authorities and the authorities with public responsibility for the supervision of those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular within the framework of this Directive.~~

~~3. Information received pursuant to this Directive and, in particular, any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy defined in Article 16 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)<sup>85</sup> and Article 16 of Directive 2002/83/EC and Articles 24 to 30 of Directive 2005/68/EC.~~

## ~~Article 8~~

### ~~Intra-group transactions~~

~~1. Member States shall provide that the competent authorities exercise general supervision over transactions between:~~

~~(a) an insurance undertaking or a reinsurance undertaking and:~~

~~(i) a related undertaking of the insurance undertaking or of the reinsurance undertaking;~~

~~(ii) a participating undertaking in the insurance undertaking or in the reinsurance undertaking;~~

~~(iii) a related undertaking of a participating undertaking in the insurance undertaking or in the reinsurance undertaking;~~

~~(b) an insurance undertaking or a reinsurance undertaking and a natural person who holds a participation in:~~

<sup>83</sup> OJ L 126, 26.5.2000, p. 1. Directive as last amended by Directive 2005/1/EC.

<sup>84</sup> OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC.

<sup>85</sup> OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2005/1/EC.

~~(i) the insurance undertaking, the reinsurance undertaking or any of its related undertakings;~~

~~(ii) a participating undertaking in the insurance undertaking or in the reinsurance undertaking;~~

~~(iii) a related undertaking of a participating undertaking in the insurance undertaking or in the reinsurance undertaking.~~

~~These transactions concern in particular:~~

~~loans;~~

~~guarantees and off balance sheet transactions;~~

~~elements eligible for the solvency margin;~~

~~investments;~~

~~reinsurance and retrocession operations;~~

~~agreements to share costs.~~

~~2. Member States shall require insurance undertakings and reinsurance undertakings to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions as provided for in paragraph 1 appropriately. Member States shall also require at least annual reporting by insurance undertakings and reinsurance undertakings to the competent authorities of significant transactions. These processes and mechanisms shall be subject to overview by the competent authorities.~~

~~If, on the basis of this information, it appears that the solvency of the insurance undertaking or the reinsurance undertaking is, or may be, jeopardised, the competent authority shall take appropriate measures at the level of the insurance undertaking or of the reinsurance undertaking.~~

↓ 98/78/EC

#### ~~Article 9~~

#### ~~Adjusted solvency requirement~~

~~1. In the case referred to in Article 2(1), Member States shall require that an adjusted solvency calculation be carried out in accordance with Annex I.~~

~~2. Any related undertaking, participating undertaking or related undertaking of a participating undertaking shall be included in the calculation referred to in paragraph 1.~~

↓ 2005/68/EC Art. 59.6

~~3. If the calculation referred to in paragraph 1 demonstrates that the adjusted solvency is negative, the competent authorities shall take appropriate measures at the level of the insurance undertaking or the reinsurance undertaking in question.~~

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↓ 98/78/EC

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~~Article 10~~

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↓ 2005/68/EC Art. 59.7(a)

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~~Insurance holding companies, non-member country insurance undertakings and non-member country reinsurance undertakings~~

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↓ 98/78/EC

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~~1. In the case referred to in Article 2(2), Member States shall require the method of supplementary supervision to be applied in accordance with Annex II.~~

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↓ 2005/68/EC Art. 59.7(b)

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~~2. In the case referred to in Article 2(2), the calculation shall include all related undertakings of the insurance holding company, the non-member country insurance undertaking or the non-member country reinsurance undertaking, in the manner provided for in Annex II.~~

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~~3. If, on the basis of that calculation, the competent authorities conclude that the solvency of a subsidiary insurance undertaking or a reinsurance undertaking of the insurance holding company, the non-member country insurance undertaking or the non-member country reinsurance undertaking is, or may be, jeopardised, they shall take appropriate measures at the level of that insurance undertaking or reinsurance undertaking.~~

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↓ 2002/87/EC Art. 28.4

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~~Article 10a~~

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~~Cooperation with third countries' competent authorities~~

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~~1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision over:~~

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~~(a) insurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office situated in a third country; and~~

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↓ 2005/68/EC Art. 59.8(a)

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~~(b) reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office situated in a third country;~~

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~~(c) non-member country insurance undertakings or non-member country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office in the Community.~~

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↓ 2005/68/EC Art. 59.8(b)

~~2. The agreements referred to in paragraph 1 shall in particular seek to ensure both:~~

~~(a) that the competent authorities of the Member States are able to obtain the information necessary for the supplementary supervision of insurance undertakings and reinsurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and~~

~~(b) that the competent authorities of third countries are able to obtain the information necessary for the supplementary supervision of insurance undertakings and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.~~

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↓ 2005/1/EC Art. 7.1

~~3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.~~

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↓ 2002/87/EC Art. 28.4

~~Article 10b~~

~~The Member States shall require that persons who effectively direct the business of an insurance holding company are of sufficiently good repute and have sufficient experience to perform these duties.~~

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↓ new

**TITLE III**

**SUPERVISION OF INSURANCE AND REINSURANCE  
UNDERTAKINGS IN A GROUP**

**CHAPTER I – GROUP SUPERVISION: DEFINITIONS, CASES  
OF APPLICATION, SCOPE AND LEVELS**

**SECTION 1 - DEFINITIONS**

Article 210

Definitions

1. For the purposes of this Title, the following definitions shall apply:



- (a) "participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
- (b) "related undertaking" means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
- (c) "group" means a group of undertakings, which consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
- (d) "group supervisor" means the supervisory authority responsible for group supervision, determined in accordance with Article 251;
- (e) "insurance holding company" means a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC;
- (f) "mixed-activity insurance holding company" means a parent undertaking, other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company within the meaning of Directive 2002/87/EC, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings.

2. For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking.

They shall also consider as a subsidiary undertaking any undertaking over which, in the opinion of the supervisory authorities, a parent undertaking effectively exercises a dominant influence.

They shall also consider as participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the supervisory authorities, a significant influence is effectively exercised.

## **SECTION 2 - CASES OF APPLICATION AND SCOPE**

### **Article 211**

#### **Cases of application of group supervision**

1. Member States shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, in accordance with this Title.

The provisions of this Directive, which lay down the rules for the supervision of insurance and reinsurance undertakings taken individually, shall continue to apply to such undertakings, except where otherwise provided under this Title.

2. Member States shall ensure that supervision at the level of the group applies as follows:
  - (a) to insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 216 to 262;
  - (b) to insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company which has its head office in the Community, in accordance with Articles 216 to 262;
  - (c) to insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company having its head office outside the Community or a third-country insurance or reinsurance undertaking, in accordance with Articles 263, 264 and 265;
  - (d) to insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 267.
3. In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company which has its head office in the Community is a related undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consultation with the other supervisory authorities concerned, decide not to carry out at the level of that participating insurance or reinsurance undertaking or that insurance holding company the supervision of risk concentration referred to in Article 248 or the supervision of intra-group transactions referred to in Article 249 or both.

## Article 212

### Scope of group supervision

1. The exercise of group supervision in accordance with Article 211 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 261 as far as insurance holding companies are concerned.
2. In the following cases, the group supervisor may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 211:
  - (a) if the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 227;
  - (b) if the undertaking which should be included is of negligible interest with respect to the objectives of group supervision;
  - (c) if the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

In the case mentioned in point (c) of the first subparagraph, the group supervisor shall, except in cases of urgency, consult the other supervisory authorities concerned before taking a decision.

Where the group supervisor does not include an insurance or reinsurance undertaking in the group supervision under one of the cases provided for in points (b) and (c) of the first subparagraph, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

### SECTION 3 - LEVELS

#### Article 213

##### Ultimate participating undertaking at Community level

1. Where the participating insurance or reinsurance undertaking or the insurance holding company referred to in points (a) and (b) of Article 211(2) is itself a related undertaking of another participating insurance or reinsurance undertaking or of another parent insurance holding company which has its head office in the Community, Articles 216 to 262 shall apply only at the level of the ultimate participating insurance or reinsurance undertaking or insurance holding company which has its head office in the Community.
2. Where the ultimate participating insurance or reinsurance undertaking or insurance holding company which has its head office in the Community, referred to in paragraph 1, is a related undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consultation with the other supervisory authorities concerned, decide not to carry out at the level of that ultimate participating undertaking the supervision of risk concentration referred to in Article 248 or the supervision of intra-group transactions referred to in Article 249 or both.

#### Article 214

##### Ultimate participating undertaking at national level

1. Where the participating insurance or reinsurance undertaking or the insurance holding company which has its head office in the Community, referred to in points (a) and (b) of Article 211(2), does not have its head office in the same Member State as the ultimate participating undertaking at Community level referred to in Article 213, Member States may allow their supervisory authorities to decide, after consultation with the group supervisor and that ultimate participating undertaking at Community level, to subject to group supervision the ultimate participating insurance or reinsurance undertaking or insurance holding company at national level.

In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate participating undertaking at Community level.

Articles 216 to 262 shall apply *mutatis mutandis*, subject to the provisions set out in paragraphs 2 to 6.

2. The supervisory authority may restrict group supervision of the ultimate participating undertaking at national level to one or several sections of Chapter II.
3. Where the supervisory authority decides to apply to the ultimate participating undertaking at national level Chapter II, Section 1, the choice of method made in accordance with Article 218 by the group supervisor in respect of the ultimate participating undertaking at Community level referred to in Article 213 shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.
4. Where the supervisory authority decides to apply to the ultimate participating undertaking at national level Chapter II, Section 1, and where the ultimate participating undertaking at Community level referred to in Article 213 has obtained, in accordance with Articles 229 or 231(5), the permission to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, that decision shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

In such a situation, where the supervisory authority considers that the risk profile of the ultimate participating undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, that supervisory authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

The supervisory authority shall explain such decisions to both the undertaking and the group supervisor.

5. Where the supervisory authority decides to apply to the ultimate participating undertaking at national level Chapter II, Section 1, that undertaking shall not be allowed to introduce, in accordance with Articles 234 or 247, an application for permission to subject any of its subsidiaries to Articles 236 to 241.
6. Where Member States allow their supervisory authorities to make the decision referred to in paragraph 1, they shall provide that no such decisions can be made or maintained where the ultimate participating undertaking at national level is a subsidiary of the ultimate participating undertaking at Community level referred to in Article 213 and the latter has obtained in accordance with Articles 235 or 247 permission for that subsidiary to be subject to Articles 236 to 241.
7. The Commission may adopt implementing measures specifying the circumstances under which the decision referred to in paragraph 1 can be made.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## Article 215

### Participating undertaking covering several Member States

1. Where Member States allow their supervisory authorities to make the decision referred to in Article 214, they shall also allow them to decide to conclude an agreement with supervisory authorities in other Member States where another related ultimate participating undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

Where the supervisory authorities concerned have concluded an agreement as referred to in the first subparagraph of this paragraph, group supervision shall not be carried out at the level of any ultimate participating undertaking referred to in Article 214 present in Member States other than the Member State where the subgroup referred to in the first subparagraph of this paragraph is located.

2. The provisions set out in Article 214(2) to (6) shall apply *mutatis mutandis*.
3. The Commission shall adopt implementing measures specifying the circumstances under which the decision referred to in paragraph 1 can be made.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## CHAPTER II - FINANCIAL POSITION

### SECTION 1 - GROUP SOLVENCY

#### *SUBSECTION 1 - GENERAL PROVISIONS*

## Article 216

### Supervision of group solvency

1. Supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3, Article 250 and Chapter III.
2. In the case referred to in point (a) of Article 211(2), Member States shall require the participating insurance or reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsections 2, 3 and 4.
3. In the case referred to in point (b) of Article 211(2), Member States shall require insurance and reinsurance undertakings in a group to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsection 5.
4. The requirements referred to in paragraphs 2 and 3 shall be subject to supervisory review by the group supervisor in accordance with Chapter III. The provisions set out in Article 134 and in paragraphs 1, 2 and 3 of Article 136 shall apply by analogy.

## Article 217

### Frequency of calculation

1. The group supervisor shall ensure that the calculations referred to in Article 216(2) and (3) are carried out at least once a year, either by the insurance or reinsurance undertakings or by the insurance holding company.

The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking, or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or by the undertaking in the group identified by the group supervisor after consultation with the other supervisory authorities concerned and with the group itself.

2. Insurance and reinsurance undertakings and insurance holding companies shall monitor the group Solvency Capital Requirement on an on-going basis. If the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.

### ***Subsection 2 – Choice of calculation method and general principles***

## Article 218

### Choice of method

1. The calculation of the solvency at the level of the group of the insurance and reinsurance undertakings referred to in point (a) of Article 211(2) shall be carried out in accordance with the technical principles and one of the methods set out in Articles 219 to 231.
2. Member States shall provide that the calculation of the solvency at the level of the group of insurance and reinsurance undertakings referred to in point (a) of Article 211(2) shall be carried out according to method 1 described in Subsection 4.

However, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, after consultation with the other supervisory authorities concerned and the group itself, to apply to that group method 2 described in Subsection 4 or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

## Article 219

### Proportionality

1. The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.

For the purposes of the first subparagraph, the proportional share shall comprise either of the following:

- (a) where method 1 is used, the percentages used for the establishment of the consolidated accounts;
- (b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

However, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

Where in the opinion of the supervisory authorities, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

2. The group supervisor shall determine, after consultation with the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:
  - (a) where there are no capital ties between some of the undertakings in a group;
  - (b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking.

## Article 220

### Elimination of double use of eligible own funds

1. The double use of own funds eligible for the Solvency Capital Requirement among the different insurance or reinsurance undertakings taken into account in that calculation shall not be allowed.

For that purpose, when calculating the group solvency and where the methods described in Subsection 4 do not provide for it, the following amounts shall be excluded:

- (a) the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;
- (b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;
- (c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirements of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

2. Without prejudice to paragraph 1, the following may only be included in the calculation in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

(a) profit reserves and future profits arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated;

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

However, the following shall in any case be excluded from the calculation:

(a) any subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

(b) any subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking;

(c) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

3. If the supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

4. The sum of the own funds referred to in paragraphs 2 and 3 may not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

5. Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority in accordance with Article 89 may only be included in the calculation in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

## Article 221

### Elimination of the intra-group creation of capital

1. When calculating group solvency, no account shall be taken of any own funds eligible for the solvency capital requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following:

(a) a related undertaking;

(b) a participating undertaking;



- (c) another related undertaking of any of its participating undertakings.
2. When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated when the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.
3. Reciprocal financing shall be deemed to exist at least when an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertakings.

#### Article 222

##### Valuation

The value of the assets and liabilities shall be assessed in accordance with Article 74.

### ***SUBSECTION 3 – APPLICATION OF THE CALCULATION METHODS***

#### Article 223

##### Related insurance and reinsurance undertakings

Where the insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation shall be carried out by including each of these related insurance or reinsurance undertakings.

Member States may provide that where the related insurance or reinsurance undertaking has its head office in a Member State other than that of the insurance or reinsurance undertaking for which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

#### Article 224

##### Intermediate insurance holding companies

1. When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company, the situation of such an insurance holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3, in respect of own funds eligible for the Solvency Capital Requirement.

2. In cases where an intermediate insurance holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company, which would require prior authorisation from the supervisory authority in accordance with Article 89 if they were held by an insurance or reinsurance undertaking, may only be included in the calculation of the group solvency in so far as they have been duly authorised by the group supervisor.

## Article 225

### Related third-country insurance and reinsurance undertakings

1. When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter shall be treated solely for the purposes of the calculation as a related insurance or reinsurance undertaking.

However, where the third-country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation shall take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third-country concerned.

2. The verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor, at the request of the participating undertaking or on its own initiative.

The group supervisor shall consult the other supervisory authorities concerned, and the Committee of European Insurance and Occupational Pensions Supervisors, before taking a decision on equivalence.

3. The Commission shall adopt, after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 304(2), a decision as to whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI.

These decisions shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country.

4. When a decision adopted by the Commission in accordance with paragraph 3 concludes as to the equivalence of the solvency regime in a third country, paragraph 2 shall not apply.

When a decision adopted by the Commission in accordance with paragraph 3 concludes that the solvency regime in a third country is not equivalent, the option referred to in the second subparagraph of paragraph 1 to take into account the Solvency Capital Requirement and eligible own funds as laid down by the third country concerned shall not be applicable and the third-country insurance or

reinsurance undertaking shall be treated exclusively in accordance with the first subparagraph of paragraph 1.

#### Article 226

##### Related credit institutions, investment firms and financial institutions

When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, Member States shall allow their participating insurance and reinsurance undertakings to apply *mutatis mutandis* methods 1 or 2 set out in Annex I to Directive 2002/87/EC. However, method 1 set out in that Annex shall be applied only if the group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States shall however allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in the first paragraph from the own funds eligible for the group solvency of the participating undertaking.

#### Article 227

##### Non-availability of the necessary information

Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third-country, is not available to the supervisory authorities concerned, the book value of that undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency.

In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

### ***SUBSECTION 4 – CALCULATION METHODS***

#### Article 228

##### Method 1 (Default method): Accounting consolidation-based method

1. The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:

- (a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;
- (b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

The rules laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 shall apply for the calculation

of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

2. The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, Subsections 1 and 2 and Title I, Chapter VI, Section 4, Subsections 1 and 3.

The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

- (a) the minimum capital requirement (Minimum Capital Requirement) as referred to in Article 127 of the participating insurance or reinsurance undertaking;
- (b) the proportional share of the Minimum Capital Requirement of the related insurance or reinsurance undertakings.

That minimum shall be covered by eligible own funds as determined in Article 98(5).

For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 219 to 227 shall apply *mutatis mutandis*. The provisions set out in paragraphs 1 and 2 of Article 137 shall apply by analogy.

## Article 229

### Group internal model

1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the group supervisor.

The group supervisor shall inform the other supervisory authorities concerned without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

3. During the period referred to in paragraph 2, the group supervisor shall, at the request of the participating undertaking, or of any of the other supervisory authorities concerned, consult the Committee of European Insurance and Occupational Pensions Supervisors. The group supervisor may consult the Committee on its own initiative.

When the Committee is consulted, the period referred to in paragraph 2 shall be extended by two months.

4. Where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the supervisory authorities concerned shall duly consider such advice before taking their joint decision.

The group supervisor shall provide to the applicant the joint decision referred to in paragraph 2 in a document containing the fully reasoned decision and an explanation of any significant deviation from the positions adopted by the Committee of European Insurance and Occupational Pensions Supervisors.

That joint decision shall be recognised as determinative and applied by the supervisory authorities concerned.

5. In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly take into account the following:

- (a) any views and reservations of the other supervisory authorities concerned expressed during the applicable period;
- (b) where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the advice of that Committee.

The decision shall be set out in a document containing the fully reasoned decision and an explanation of any significant deviation from the positions adopted by the Committee of European Insurance and Occupational Pensions Supervisors.

The group supervisor shall transmit the decision to the applicant and the other supervisory authorities concerned.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

6. Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2.

The supervisory authority shall explain any decision referred to in the first and second subparagraphs to both the insurance or reinsurance undertaking and the group supervisor.

## Article 230

### Group capital add-on

In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the group supervisor shall pay particular attention to the following:

- (a) any specific risks existing at group level which would not be sufficiently covered by the standard formula or the internal model used, because they are difficult to quantify;
- (b) any capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings imposed by the supervisory authorities concerned, in accordance with Articles 37 and 229(6).

If the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed.

The consolidated group Solvency Capital Requirement including the capital add-on shall replace the inadequate consolidated group Solvency Capital Requirement for the purposes of determining whether on compliance with the group Solvency Capital Requirement occurs.

## Article 231

### Method 2 (Alternative method): Deduction and aggregation method

1. The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:
  - (a) the aggregated group eligible own funds, as provided for in paragraph 2;
  - (b) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.
2. The aggregated group eligible own funds are the sum of the following:
  - (a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;
  - (b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.
3. The aggregated group Solvency Capital Requirement is the sum of the following:
  - (a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;
  - (b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.
4. Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in points (b) of the second and third

paragraphs shall include the corresponding proportional shares of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings, respectively.

5. In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, Article 229 shall apply *mutatis mutandis*.
6. In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph 3, appropriately reflects the risk profile of the group, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

If the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed.

The aggregated group Solvency Capital Requirement including the capital add-on shall replace the inadequate aggregated group Solvency Capital Requirement for the purposes of determining whether non compliance with the group Solvency Capital Requirement occurs.

## Article 232

### Implementing measures

The Commission may adopt implementing measures specifying the technical principles and methods set out in Articles 218 to 227 and the application of Articles 228 to 231 to ensure uniform application within the Community.

Those measures designed to amend non-essential elements of this directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## ***SUBSECTION 5 – SUPERVISION OF GROUP SOLVENCY FOR INSURANCE AND REINSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY***

## Article 233

### Group solvency of an insurance holding company

Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company applying Articles 218(2) to 231.

For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 as regards the Solvency Capital Requirement and subject to

the same conditions as laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 as regards the own funds eligible for the Solvency Capital Requirement.

## ***SUBSECTION 6 – GROUP SUPPORT***

### **Article 234**

#### **Subsidiaries of an insurance or reinsurance undertaking: conditions**

Member States shall provide that the rules laid down in Articles 236 to 241 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking, on request of the latter, where all of the following conditions are satisfied:

- (a) the subsidiary, in relation to which the group supervisor has not made any decision under Article 212(2), is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;
- (b) the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;
- (c) the parent undertaking has declared, in writing and in a legally binding document accepted by the group supervisor in accordance with Article 237, that it guarantees that own funds eligible under Article 98(5) will be transferred where necessary and up to the limit resulting from the application of Article 237;
- (d) an application for permission to be subject to Articles 236 to 241 has been introduced by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 235.

### **Article 235**

#### **Subsidiaries of an insurance or reinsurance undertaking: decision on the application**

1. In the case of applications for permission to be subject to the rules laid down in Articles 236 to 241, the supervisory authorities concerned shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the group supervisor. The group supervisor shall inform the other supervisory authorities concerned without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be transmitted to the applicant by the group supervisor. The joint decision referred to above shall be recognised as determinative and applied by the supervisory authorities in the Member States concerned.



3. In the absence of a joint decision between the supervisory authorities concerned within six months, the group supervisor shall make its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other supervisory authorities concerned expressed within a six months period. The decision shall be provided to the applicant and the other supervisory authorities concerned by the group supervisor. That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

#### Article 236

##### Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement

1. By way of derogation from Articles 37 and 229, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 3 and 4.
2. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 229 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to the group supervisor to impose a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall communicate the grounds for such proposals to both the subsidiary and the group supervisor.
3. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to the group supervisor to impose a capital add-on to the Solvency Capital Requirement of that subsidiary.

The supervisory authority shall communicate the grounds for such proposal to both the subsidiary and the group supervisor.

4. Where the supervisory authority and the group supervisor disagree, or in the absence of a decision from the group supervisor within one month from the proposal of the supervisory authority, the matter shall be referred for consultation to the Committee of European Insurance and Occupational Pensions Supervisors, which shall give its advice within two months.

The group supervisor shall duly consider such advice before taking its final decision. The decision shall be submitted to the subsidiary and the supervisory authority by the group supervisor.

In the absence of a final decision from the group supervisor within one month from the date of the advice of the Committee of European Insurance and Occupational

Pensions Supervisors, the proposal from the supervisory authority shall be deemed to have been accepted.

#### Article 237

##### Subsidiaries of an insurance or reinsurance undertaking: coverage of the Solvency Capital Requirement

1. By way of derogation from Article 98(4), any difference between the Solvency Capital Requirement and the minimum capital requirement of the subsidiary shall be covered by either own funds eligible under Article 98(4) or group support, or any combination thereof.

The group support shall, for the purposes of the classification of own funds into tiers in accordance with Articles 93 to 96, be treated as ancillary own funds.

2. The group support shall take the form of a declaration to the group supervisor, expressed in a legally binding document and constituting a commitment to transfer own funds eligible under Article 98(5).
3. Before accepting the declaration referred to in paragraph 2, the group supervisor shall verify the following:
  - (a) that the group has sufficient eligible own funds to cover its consolidated group Solvency Capital Requirement;
  - (b) that there is no current or foreseeable material practical or legal impediment to the prompt transfer of the eligible own funds referred to in paragraph 2;
  - (c) that the document containing the declaration of group support meets all requirements existing under the law of the parent undertaking to be recognised as a legal commitment, and that any recourse before a legal or administrative body shall not have suspensive effect.

#### Article 238

##### Subsidiaries of an insurance or reinsurance undertaking: monitoring of the Solvency Capital Requirement

1. By way of derogation from Article 136, the supervisory authority having authorised the subsidiary shall not be responsible for enforcing its Solvency Capital Requirement by taking measures at the level of the subsidiary.

That supervisory authority shall however continue to monitor the Solvency Capital Requirement of the subsidiary as set out in paragraphs 2 and 3.

2. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared in accordance with Article 237, but the own funds eligible under Article 98(5) are sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.
3. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group

support declared in accordance with Article 237, and the own funds eligible under Article 98(5) are not sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to transfer own funds eligible under Article 98(5) to the extent necessary to ensure that the minimum capital requirement is again covered, and to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.

4. Before accepting any new declaration referred to in paragraphs 2 or 3, the group supervisor shall verify that the conditions laid down in Article 237 are met.

Where the parent undertaking does not provide the new declaration requested, or where the new declaration provided is not accepted, the derogations provided for in Articles 236 and 237 and in paragraph 1 shall cease to apply.

The supervisory authority having authorised the subsidiary shall regain full responsibility for setting the Solvency Capital Requirement of the subsidiary and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitment resulting from the most recent declaration accepted.

#### Article 239

##### Subsidiaries of an insurance or reinsurance undertaking: winding-up

When the subsidiary is being wound up and found to be insolvent, the supervisory authority having authorised the subsidiary shall, on its own initiative or at the request of any other authority competent for the winding-up procedure by application of TITLE IV, call on the parent undertaking to transfer eligible own funds to the subsidiary, in so far as they are necessary to meet policyholder liabilities, up to the limit of the group support resulting from the most recent declaration accepted.

#### Article 240

##### Subsidiaries of an insurance or reinsurance undertaking: transfer of own funds

1. In the cases referred to in Articles 238 and 239, the supervisory authority shall address its request to the parent undertaking and immediately inform the group supervisor.

Where the parent undertaking does not rapidly transfer eligible own funds to the subsidiary, the group supervisor shall use all powers available, including the power available under Article 142, to ensure that the group provides the requested transfer as soon as is practicable.

2. Group support may be provided from eligible own funds present in the parent undertaking or in any subsidiary, subject to that subsidiary, where it is an insurance or reinsurance undertaking, having eligible own funds in excess of its minimum capital requirement. The supervisory authority having authorised that subsidiary shall not prevent the transfer of such excess eligible own funds.

However, where such transfer would lead to the Solvency Capital Requirement of that subsidiary being no longer complied with, it shall be subject to a declaration by

the parent undertaking of the necessary level of group support and acceptance by the group supervisor.

3. Before accepting any new declaration made in accordance with paragraph 2, the group supervisor shall verify that the conditions laid down in Article 237 are met. However, where any transfer is carried out in accordance with paragraph 1, the group supervisor shall verify that the group continues to have sufficient eligible own funds to cover its group Solvency Capital Requirement. Where this requirement is no longer satisfied, the group supervisor shall take appropriate measures to ensure that the necessary actions are taken by the group within an acceptable period of time.

#### Article 241

##### Subsidiaries of an insurance or reinsurance undertaking: disclosure

The existence of declarations of group support, and any use thereof, shall be publicly disclosed by both the parent undertaking and the subsidiary concerned.

#### Article 242

##### Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary

1. The derogations provided for in Articles 236, 237 and 238 shall cease to apply in the following cases:
  - (a) the condition referred to in Article 234(a) is no longer complied with;
  - (b) the condition referred to in Article 234(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time.

In the case referred to in point (a) of the first subparagraph, where the group supervisor decides no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned.

For the purposes of point (b) of the first subparagraph, the parent undertaking shall be responsible for ensuring that the condition is complied with on an on-going basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the third subparagraph, the group supervisor shall verify at least once a year, on its own initiative, that the condition referred to in Article 234(b) continues to be complied with. The group supervisor shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with this condition. Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

If the group supervisor determines that the plan referred to in the third or fourth subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the condition referred to in Article 234(b) is no longer complied with and it shall immediately inform the supervisory authority concerned.

2. When the derogations provided for in Articles 236, 237 and 238 cease to apply, the supervisory authority having authorised the subsidiary shall regain full responsibility for setting the Solvency Capital Requirement of the subsidiary and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 237, 238 and 240.

#### Article 243

##### Subsidiaries of an insurance or reinsurance undertaking: end of derogations for all subsidiaries

1. In addition to the cases referred to in Article 242, the derogations provided for in Articles 236, 237 and 238 shall cease to apply in the following cases:
  - (a) any of the conditions referred to in the third paragraph of Article 237 are no longer complied with and compliance is not restored within an appropriate period of time as set out in paragraph 2;
  - (b) the group no longer has sufficient eligible own funds to cover the minimum consolidated group Solvency Capital Requirement referred to in Article 228(2).

2. In the case referred to in point (a) of paragraph 1, the parent undertaking shall be responsible for ensuring that all conditions are complied with on an on-going basis. In the event of non-compliance with any of these conditions, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the first subparagraph, the group supervisor shall verify at least once a year, on its own initiative, that the conditions referred to in the third paragraph of Article 237 continue to be complied with. Where the verification performed identifies deficiencies, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

If the group supervisor determines that the plan referred to in the first or second subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in the third paragraph of Article 237 are no longer complied with and it shall immediately inform the other supervisory authorities concerned.

In the case referred to in point (b) of the first paragraph, the group supervisor shall immediately inform the other supervisory authorities concerned.

3. When the derogations provided for in Articles 236, 237 and 238 cease to apply, the supervisory authorities having authorised any subsidiary to which the rules laid down in Articles 236 to 241 apply shall regain full responsibility for setting the Solvency Capital Requirement of these subsidiaries and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 237, 238 and 240.
4. Where the group has restored sufficient eligible own funds to cover the minimum consolidated group Solvency Capital Requirement referred to in Article 228(2), the

derogations provided for in Articles 236, 237 and 238 shall be applicable only if the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 235.

#### Article 244

##### Subsidiaries of an insurance or reinsurance undertaking: reduction of group supports

1. Where several requests to transfer eligible own funds are addressed to the parent undertaking and the group supervisor in accordance with Articles 238 or 239, and the group does not have sufficient eligible own funds to meet all of those together, the amounts resulting from the most recent declarations accepted shall be reduced where necessary.

The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary is subject to the same ratio between the sum of its available assets and any transfer from the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.

2. Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 236 to 241.

#### Article 245

##### Subsidiaries of an insurance or reinsurance undertaking: implementing measures

In order to ensure the uniform application of Articles 234 to 244, the Commission shall adopt implementing measures relating to the following:

- (a) specifying the criteria to be applied when assessing whether the conditions stated in Article 234 are satisfied;
- (b) specifying the criteria to be applied when verifying that the requirements stated in Article 237 are met;
- (c) specifying the means to be used when disclosing the information referred to in Article 241;
- (d) specifying the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 235 to 240 and Articles 242, 243 and 244.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

#### Article 246

##### Subsidiaries of an insurance or reinsurance undertaking: review

The Commission shall submit to the European Insurance and Occupational Pensions Committee, at the latest five years after the date referred to in Article 310(1), a report on

Member States' rules and supervisory authorities' practices adopted pursuant to this Subsection.

This report shall address in particular the appropriate level of own funds which a subsidiary is required to hold where it belongs to a group fulfilling the conditions of this subsection, the form which group support is required to take, the allowable amount of group support and the level of own funds at which the derogations provided for in Articles 236, 237 and 238 shall cease to apply.

#### Article 247

##### Subsidiaries of an insurance holding company

Articles 234 to 246 shall apply *mutatis mutandis* to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company.

## SECTION 2 - RISK CONCENTRATION AND INTRA-GROUP TRANSACTIONS

#### Article 248

##### Supervision of risk concentration

1. Supervision of the risk concentration at group level shall be exercised in accordance with paragraphs 2 and 3, Article 250 and Chapter III.
2. The Member States shall require insurance and reinsurance undertakings or insurance holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company or by the insurance or reinsurance undertaking in the group identified by the group supervisor after consultation with the other supervisory authorities concerned and with the group.

The risk concentrations shall be subject to supervisory review by the group supervisor.

3. The group supervisor, after consultation with the other supervisory authorities concerned and the group, shall identify the type of risks insurance and reinsurance undertakings in a particular group shall report in all circumstances.

When defining or giving their opinion about the type of risks, the group supervisor and the other supervisory authorities concerned shall take into account the specific group and risk management structure of the group.

In order to identify significant risk concentration to be reported, the group supervisor, after consultation of the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on solvency capital or technical provisions or both.

When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

4. The Commission may adopt implementing measures, as regards the definition and identification of a significant risk concentration and the reporting on such a risk concentration, for the purposes of paragraphs 2 and 3.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## Article 249

### Supervision of intra-group transactions

1. Supervision of intra-group transactions shall be exercised in accordance with paragraphs 2 and 3, Article 250 and Chapter III.
2. The Member States shall require insurance and reinsurance undertakings or insurance holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group.

In addition, Member States shall require reporting of very significant intra-group transactions as soon as is practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or by the insurance or reinsurance undertaking in the group identified by the group supervisor after consultation with the other supervisory authorities concerned and with the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.

3. The group supervisor, after consultation with the other supervisory authorities concerned and the group, shall identify the type of intra-group transactions insurance and reinsurance undertakings in a particular group must report in all circumstances. Article 248(3) shall apply by analogy.
4. The Commission may adopt implementing measures, as regards the definition and identification of a significant intra-group transaction and the reporting on such an intra-group transaction, for the purposes of paragraphs 2 and 3.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## SECTION 3 - RISK MANAGEMENT AND INTERNAL CONTROL

### Article 250

#### Supervision of the system of governance

1. The requirements set out in TITLE I, Chapter IV, Section 2 shall apply *mutatis mutandis* at the level of the group.



Without prejudice to the first subparagraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to points (a) and (b) of Article 211(2) so that those systems and reporting procedures can be controlled at the level of the group.

2. Without prejudice to paragraph 1, the group internal control mechanisms shall include at least the following:
  - (a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;
  - (b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.
3. The systems and reporting procedures referred to in paragraphs 1 and 2 shall be subject to supervisory review by the group supervisor, in accordance with the rules laid down in Chapter III.
4. Member States shall require the participating insurance or reinsurance undertaking or the insurance holding company to undertake at the level of the group the assessment required by Article 44. The own risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the participating insurance or reinsurance undertaking or the insurance holding company so decides, and subject to the agreement of the group supervisor, it may undertake any assessments required by Article 44 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

Where the group exercises the option provided in the second subparagraph, it shall submit the document to all supervisory authorities concerned at the same time. Exercising this option shall not remove from the subsidiaries concerned the obligation to ensure that the requirements of Article 44 are met.

## **CHAPTER III - MEASURES TO FACILITATE GROUP SUPERVISION**

### **Article 251**

#### **Group Supervisor**

1. A single supervisor, responsible for coordination and exercise of group supervision, shall be designated from among the supervisory authorities of the Member States concerned (hereinafter “group supervisor”).
2. Where the same supervisory authority is competent for all insurance and reinsurance undertakings in a group, the task of group supervisor shall be exercised by that supervisory authority.

In all other cases and subject to paragraph 3, the task of group supervisor shall be exercised by the following:

- (a) where a group is headed by an insurance or reinsurance undertaking, by the supervisory authority which has authorised that undertaking;

- (b) where a group is not headed by an insurance or reinsurance undertaking, by the supervisory authority identified in accordance with the following:
- (i) where the parent of an insurance or reinsurance undertaking is an insurance holding company, by the supervisory authority which has authorised that insurance or reinsurance undertaking;
  - (ii) where more than one insurance or reinsurance undertaking with a head office in the Community have as their parent the same insurance holding company, and one of these undertakings has been authorised in the Member State in which the insurance holding company has its head office, by the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State;
  - (iii) where the group is headed by more than one insurance holding company with a head office in different Member States and there is an insurance or reinsurance undertaking in each of these States, by the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total;
  - (iv) where more than one insurance or reinsurance undertaking with a head office in the Community have as their parent the same insurance holding company and none of these undertakings has been authorised in the Member State in which the insurance holding company has its head office, by the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total;
  - (v) where the group is a group without a parent undertaking, or in any other case, by the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.

3. In particular cases, the supervisory authorities concerned may derogate from the criteria set out in paragraph 2 if their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings activities in different countries, and designate a different supervisory authority as group supervisor.

For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more than once a year.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

4. In the absence of a joint decision within three months, the task of group supervisor shall be exercised by the supervisory authority of the Member State where the group has its most important insurance and reinsurance activities.

However, where that result is opposed by a majority of the other supervisory authorities concerned, the designation of the group supervisor shall be referred within one month following the default designation for final decision to the Committee of European Insurance and Occupational Pensions Supervisors, which shall render its decision within one month following the referral.

5. The Committee of European Insurance and Occupational Pensions Supervisors shall inform the Commission, at least once a year, of any major difficulties with the application of paragraphs 2, 3 and 4.
6. Where a Member State has more than one supervisory authority for the prudential supervision of insurance and reinsurance undertakings, such Member State shall take the necessary measures to ensure coordination between those authorities.

## Article 252

### Rights and duties of the group supervisor – Coordination arrangements

1. The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:
  - (a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
  - (b) supervisory review and assessment of the financial situation of the group;
  - (c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 216 to 249;
  - (d) assessment of the system of governance of the group, as set out in Article 250, and of whether the members of the administrative or management body of the participating undertaking meet the requirements set out in Article 42 and Article 261;
  - (e) planning and coordination, through regular meetings or other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned;
  - (f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 229 and 231 and leading the process for permitting group support as set out in Article 235.
2. In order to facilitate group supervision, the group supervisor and the other supervisory authorities concerned shall have coordination arrangements in place.

Those coordination arrangements may entrust additional tasks to the group supervisor and may specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Articles 211(3), 212(2), 213(2), 214, 215, 217, 218(2), 219(2), 225(2), 236, 248, 249, 251 (3) and (4), 254, 263 and 264 and for cooperation with other supervisory authorities.
3. The Commission shall adopt implementing measures for the coordination of group supervision for the purposes of paragraphs 1 and 2.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## Article 253

### Cooperation and exchange of information between supervisory authorities

1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, including in cases where an insurance or reinsurance undertaking encounters financial difficulties.

Without prejudice to their respective responsibilities, those authorities, whether or not established in the same Member State, shall provide one another with any essential or relevant information which may allow or facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In this regard, the supervisory authorities concerned and the group supervisor shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

Information referred to in the second subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of an insurance or reinsurance undertaking.

2. The Commission shall adopt implementing measures determining the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.

The Commission shall adopt implementing measures specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

The measures referred to in the first and second subparagraphs designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## Article 254

### Consultation between supervisory authorities

1. The supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other with regard to the following items:

- (a) changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;

- (b) major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 37 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Title I, Chapter VI, Section 4, Subsection 3.

For the purposes of point (b), the group supervisor shall always be consulted.

In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.

2. A supervisory authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In that case, the supervisory authority shall, without delay, inform the other supervisory authorities concerned.

#### Article 255

##### Requests from the group supervisor to other supervisory authorities

The group supervisor may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Article 251, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 252, and to transmit that information to the group supervisor.

The group supervisor shall, when it needs information referred to in Article 258(2) which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

#### Article 256

##### Cooperation with authorities responsible for credit institutions and investment firms

Where an insurance or reinsurance undertaking and either a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Council Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the supervisory authorities concerned and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular as set out in this Title.

#### Article 257

##### Professional secrecy and confidentiality

Member States shall authorise the exchange of the information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 253 to 256.

Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in Article 297.

## Article 258

### Access to information

1. Member States shall ensure that the natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, are able to exchange any information which could be relevant for the purposes of group supervision.
2. Member States shall provide that their authorities responsible for exercising group supervision shall have access to any information relevant for the purposes of that supervision regardless of the nature of the undertaking concerned. Article 35 shall apply *mutatis mutandis*.

The supervisory authorities concerned may only address themselves directly to the undertakings in the group to obtain the necessary information, if such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

## Article 259

### Verification of information

1. Member States shall ensure that their supervisory authorities may carry out within their territory, either directly or through the intermediary of persons whom they appoint for that purpose, on-site verification of the information referred to in Article 258 on the premises of any of the following:
  - (a) the insurance or reinsurance undertaking subject to group supervision;
  - (b) related undertakings of that insurance or reinsurance undertaking;
  - (c) parent undertakings of that insurance or reinsurance undertaking;
  - (d) related undertakings of a parent undertaking of that insurance or reinsurance undertaking.
2. Where supervisory authorities wish in specific cases to verify the information concerning an undertaking, whether or not regulated, which is part of a group and is situated in another Member State, they shall ask the supervisory authorities of that other Member State to have the verification carried out.

The authorities which receive such a request shall, within the framework of their competences, act upon that request either by carrying out the verification directly, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The group supervisor shall be informed of the action taken.

The supervisory authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification directly.

## Article 260

### Group solvency and financial condition report

1. Member States shall require participating insurance and reinsurance undertakings or insurance holding companies to publicly disclose, on an annual basis, a report on the solvency and financial condition at the level of the group. Articles 50 and 52 to 54 shall apply *mutatis mutandis*.
2. Where a participating insurance or reinsurance undertaking or an insurance holding company so decides, and subject to the agreement of the group supervisor, it may provide a single solvency and financial condition report which shall comprise the following:
  - (a) the information at the level of the group which must be disclosed in accordance with paragraph 1;
  - (b) the information for any of the subsidiaries within the group which must be disclosed in accordance with Articles 50 and 52 to 54.
3. Where the report referred to in paragraph 2 fails to include information which the supervisory authority having authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary concerned to disclose the necessary additional information.

## Article 261

### Administrative or management body of insurance holding companies

Member States shall require that all persons who effectively run the insurance holding company are fit and proper to perform their duties.

The provisions set out in Article 42 shall apply by analogy.

## Article 262

### Enforcement measures

1. If the insurance or reinsurance undertakings in a group do not comply with the requirements referred to in Articles 216 to 250 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, the following shall require the necessary measures in order to rectify the situation as soon as possible:
  - (a) the group supervisor with respect to the insurance holding company;
  - (b) the supervisory authorities with respect to the insurance and reinsurance undertakings.

Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies.

The supervisory authorities concerned, including the group supervisor, shall where appropriate coordinate their enforcement measures.

2. Without prejudice to their criminal law provisions, Member States shall ensure that sanctions or measures may be imposed on insurance holding companies which infringe laws, regulations or administrative provisions enacted to implement this Title, or on the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, especially when the central administration or main establishment of an insurance holding company is not located at its head office.

3. The Commission may adopt implementing measures for the coordination of enforcement measures referred to in paragraphs 1 and 2.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

## **CHAPTER IV - THIRD COUNTRIES**

### **Article 263**

#### **Parent undertakings outside the Community: verification of equivalence**

1. In the case referred to in point (c) of Article 211(2), the supervisory authorities concerned shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Community, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Title on the supervision at the level of the group of insurance and reinsurance undertakings referred to in points (a) and (b) of Article 211(2).

The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 251(2) were to apply, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Community or on its own initiative. That supervisory authority shall consult the other supervisory authorities concerned, and the Committee of European Insurance and Occupational Pensions Supervisors, before taking a decision.

2. The Commission may adopt, after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 304(2), a decision as to whether the prudential regime in a third country for the supervision of groups is equivalent to that laid down in this Title. Those decisions shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title and to the prudential regime in the third country for the supervision of groups.



When a decision has been adopted by the Commission, in accordance with the first subparagraph, in respect of a third country, that decision shall be recognised as determinative for the purposes of the verification referred to in paragraph 1.

## Article 264

### Parent undertakings outside the Community: absence of equivalence

1. In the absence of equivalent supervision referred to in Article 263, Member States shall apply to the insurance and reinsurance undertakings either Articles 216 to 262, by analogy and with the exception of Articles 234 to 247, or one of the methods set out in paragraph 2.

The general principles and methods set out in Articles 216 to 262 shall apply at the level of the insurance holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in TITLE I, Chapter VI, Section 3, Subsections 1, 2 and 3 as regards the own funds eligible for the Solvency Capital Requirement and to either of the following:

- (a) a Solvency Capital Requirement determined in accordance with the principles of Article 224 where it is an insurance holding company;
- (b) a Solvency Capital Requirement determined in accordance with the principles of Article 225, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. These methods must be agreed by the group supervisor, after consultation with the other supervisory authorities concerned.

The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Community, and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.

## Article 265

### Parent undertakings outside the Community: levels

Where the parent undertaking referred to in Article 263 is itself a subsidiary of an insurance holding company having its head office outside the Community or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 263 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

However, Member States shall allow their supervisory authorities to decide, in the absence of equivalent supervision referred to in Article 263, to carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether a third-country insurance holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

In such a case, the supervisory authority referred to in the second subparagraph of Article 263(1) shall explain its decision to the group.

Article 264 shall apply *mutatis mutandis*.

## Article 266

### Cooperation with third countries supervisory authorities

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising group supervision over:
  - (a) insurance or reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 211 which have their head office situated in a third country; and
  - (b) third-country insurance undertakings or third-country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 211 which have their head office in the Community.
2. The agreements referred to in paragraph 1 shall in particular seek to ensure both:
  - (a) that the supervisory authorities of the Member States are able to obtain the information necessary for the supervision at the level of the group of insurance and reinsurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and
  - (b) that the supervisory authorities of third countries are able to obtain the information necessary for the supervision at the level of the group of third-country insurance and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.
3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1.

## CHAPTER V - MIXED-ACTIVITY INSURANCE HOLDING COMPANIES

### Article 267

#### Intra-group transactions

1. Member States shall ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the supervisory authorities responsible for the supervision of these

insurance or reinsurance undertakings exercise general supervision over transactions between these insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

2. Articles 249, 253 to 259 and 262 shall apply *mutatis mutandis*.

## Article 268

### Cooperation with third countries

As concerns cooperation with third countries, Article 266 shall apply *mutatis mutandis*.

↓ 2001/17/EC Art. 1 (adapted)

## TITLE IV - REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

### CHAPTER I - SCOPE AND DEFINITIONS

#### Article 269

##### Scope of this Title

This ~~Directive applies~~  Title shall apply  to reorganisation measures and winding-up proceedings concerning  the following:

- (1) insurance undertakings;
- (2) ~~This Directive also applies, to the extent provided for in Article 30, to reorganisation measures and winding-up proceedings concerning~~ branches  situated  in the territory of the Community of insurance undertakings ~~having~~  which have  their head office outside the Community.

↓ 2001/17/EC Art. 2 (adapted)

#### Article 270

##### Definitions

1. For the purpose of this ~~Directive~~  Title the following definitions shall apply  :
  - (~~ga~~) “*competent authorities*” means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
  - (a) ~~«insurance undertaking» means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;~~
  - (b) “*branch*” means any permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which carries ~~out~~  on  insurance ~~business~~  activities .

- (c) *"reorganisation measures"* means measures involving any intervention by ~~administrative bodies or judicial~~  the competent  authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
- (d) *"winding-up proceedings"* means collective proceedings involving ~~realising~~  the realisation of  the assets of an insurance undertaking and ~~distributing~~  the distribution of  the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the ~~administrative or the judicial~~  competent  authorities ~~of a Member State~~, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;
- ~~(e) «home Member State» means the Member State in which an insurance undertaking has been authorised in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;~~
- ~~(f) «host Member State» means the Member State other than the home Member State in which an insurance undertaking has a branch;~~
- ~~(h) «supervisory authorities» means the competent authorities within the meaning of Article 1(k) of Directive 92/49/EEC and of Article 1(l) of Directive 92/96/EEC;~~
- ~~(ie) "administrator" means any person or body appointed by the competent authorities for the purpose of administering reorganisation measures;~~
- ~~(if) "liquidator" means any person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking, as appropriate, for the purpose of administering winding-up proceedings;~~
- ~~(kg) "insurance claims" means any amount which is owed by an insurance undertaking to insured persons, policyholders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in points (b) and (c) of Article 1(2) and (3), of Directive 79/267/EEC 2(3) in direct insurance business, including amounts set aside for the aforementioned  those  persons, when some elements of the debt are not yet known.~~

The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of ~~these~~ insurance contracts and operations  referred to in point (g) of the first subparagraph  in accordance with the law applicable to such contracts or operations before the opening of the winding-up proceedings shall also be considered insurance claims.

↓ 2001/17/EC Art. 30 (adapted)

12. ~~Notwithstanding the definitions laid down in Article 2(e), (f) and (g) and #For the purpose of applying the provisions of this Directive Title to the reorganisation measures and winding-up proceedings concerning a branch situated in a Member~~

State of an insurance undertaking whose head office is located outside the Community  the following definitions shall apply  :

- (a) *"home Member State"* means the Member State in which the branch ~~has been~~  was  granted authorisation according to Articles ~~23 of Directive 73/239/EEC and Article 27 of Directive 79/267/EEC~~, 143 to 147; and
- (b) *"supervisory authorities"* ~~and «competent authorities» mean such~~  means the supervisory  authorities of the Member State in which the branch was authorised;
- (c) *"competent authorities"* means the competent authorities of the Member State in which the branch was authorised.

## **CHAPTER II - REORGANISATION MEASURES**

### ~~Article 3~~

#### **Scope**

~~This Title applies to the reorganisation measures defined in Article 2(c).~~

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↓ 2001/17/EC Art. 4 (adapted)

### Article 271

#### Adoption of reorganisation measures — Applicable law

1. Only the competent authorities of the home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches ~~in other Member States~~.
2. The reorganisation measures shall not preclude the opening of winding-up proceedings by the home Member State.
3. The reorganisation measures shall be governed by the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in Articles ~~19 to 26~~ 287 to 294.
34. ~~The~~ Reorganisation measures  taken in accordance with the legislation of the home Member State  shall be fully effective throughout the Community ~~in accordance with the legislation of the home Member State~~ without any further formalities, including against third parties in other Member States, even if the legislation of those other Member States does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.
45. The reorganisation measures shall be effective throughout the Community once they become effective in the  home  Member State ~~where they have been taken~~.

Article 272

Information to the supervisory authorities

The competent authorities of the home Member State shall inform as a matter of urgency the ~~home Member State's~~ supervisory authorities  of that Member State  of their decision on any reorganisation measure, where possible before the adoption of such a measure and failing that immediately thereafter.

The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to adopt reorganisation measures including the possible practical effects of such measures.

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Article 273

Publication  of decisions on reorganisation measures

1. Where an appeal is possible in the home Member State against a reorganisation measure, the competent authorities of the home Member State, the administrator or any person entitled to do so in the home Member State shall make public ~~is~~  the  decision on a reorganisation measure in accordance with the publication procedures provided for in the home Member State and, furthermore, publish in the *Official Journal of the European ~~Communities~~ Union* at the earliest opportunity an extract from the document establishing the reorganisation measure.

The supervisory authorities of ~~all~~ the other Member States which have been informed of the decision on a reorganisation measure pursuant to Article ~~5~~ 272 may ensure the publication of such decision within their territory in the manner they consider appropriate.

2. The publications provided for in paragraph 1 shall ~~also~~ specify the competent authority of the home Member State, the applicable law as provided in Article ~~4(2)~~ 271(3) and the administrator appointed, if any. They shall be ~~carried out~~  made  in the official language or in one of the official languages of the Member State in which the information is published.
3. The reorganisation measures shall apply regardless of the provisions concerning publication set out in paragraphs 1 and 2 and shall be fully effective as against creditors, unless the competent authorities of the home Member State or the law of that  Member  State provide otherwise.
4. ~~When~~  Where  reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, ~~this Article paragraphs 1, 2 and 3 shall not apply unless the law applicable to these~~ reorganisation measures provides otherwise.

The competent authorities shall determine the manner in which the ~~interested~~ parties affected by such reorganisation measures shall  referred to in the first

subparagraph are to ~~be~~ informed in accordance with the ~~relevant legislation~~ applicable law .

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↓ 2001/17/EC Art. 7 (adapted)

#### Article 274

##### Information to known creditors - Right to lodge claims

1. Where the ~~legislation~~ law of the home Member State requires ~~lodgement of a claim with a view to its recognition~~ to be lodged in order for it to be recognised or provides for compulsory notification of a reorganisation measure to creditors who have their ~~normal place of~~ habitual residence, domicile or head office in that State, the competent authorities of the home Member State or the administrator shall also inform known creditors who have their ~~normal place of~~ habitual residence, domicile or head office in another Member State, in accordance with ~~the procedures laid down in~~ Articles ~~15 and 17(1)~~ 283 and 285(1).
  2. Where the ~~legislation~~ law of the home Member State provides for the right of creditors who have their ~~normal place of~~ habitual residence, domicile or head office in that Member State to lodge claims or to submit observations concerning their claims, creditors who have their ~~normal place of~~ habitual residence, domicile or head office in another Member State shall have the same right ~~to lodge claims or submit observations~~ in accordance with ~~the procedures laid down in~~ Articles ~~16 and 17(2)~~ 284 and 285(2).
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↓ 2001/17/EC Art. 8 (adapted)

## ~~TITLE~~ CHAPTER III - WINDING-UP PROCEEDINGS

#### Article 275

##### Opening of winding-up proceedings — Information to the supervisory authorities

1. Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.
2. A decision ~~adopted according to the home Member State's legislation~~ concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, ~~adopted~~ adopted in accordance with the legislation of the home Member State shall be recognised without further formality ~~within the territory of all other Member States~~ throughout the Community and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.
3. The ~~supervisory~~ competent authorities of the home Member State shall ~~be~~ informed as a matter of urgency the supervisory authorities of that Member State of the decision to open winding-up proceedings, if possible before the proceedings are opened and failing that immediately thereafter.

The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

↓ 2001/17/EC Art. 9 (adapted)

## Article 276

### Applicable law

1. The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the laws, ~~regulations and administrative provisions~~ applicable in its  the  home Member State unless otherwise provided in Articles ~~19 to 26~~ 287 to 294.
2. The law of the home Member State shall determine ~~in particular~~  at least the following  :
  - (a) the assets which form part of the estate and the treatment of assets acquired by, or devolving ~~on~~  to  , the insurance undertaking after the opening of the winding-up proceedings;
  - (b) the respective powers of the insurance undertaking and the liquidator;
  - (c) the conditions under which set-off may be invoked;
  - (d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;
  - (e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending ~~as provided for~~  referred to  in Article ~~26~~ 294;
  - (f) the claims which are to be lodged against the ~~insurance undertaking's~~ estate  of the insurance undertaking  and the treatment of claims arising after the opening of winding-up proceedings;
  - (g) the rules governing the lodging, verification and admission of claims;
  - (h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right *in rem* or through a set-off;
  - (i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;
  - (j) ~~creditors'~~ rights  of the creditors  after the closure of winding-up proceedings;
  - (k)  the party  who is to bear the cost and expenses incurred in the winding-up proceedings;
  - (l) the rules relating to the ~~voidness~~  nullity  , voidability or unenforceability of legal acts detrimental to all the creditors.



Article 277

Treatment of insurance claims

1. Member States shall ensure that insurance claims take precedence over other claims on the insurance undertaking ~~according to~~  in  one or both of the following ~~methods~~  ways  :
    - (a) ~~insurance claims shall~~, with respect to assets representing the technical provisions,  insurance claims shall  take absolute precedence over any other claim on the insurance undertaking;
    - (b) ~~insurance claims shall~~, with respect to the whole of the ~~insurance undertaking's~~ assets  of the insurance undertaking, insurance claims shall  take precedence over any other claim on the insurance undertaking with the only ~~possible~~ exception of  the following  :
      - (i) claims by employees arising from employment contracts and employment relationships~~s~~;
      - (ii) claims by public bodies on taxes~~s~~;
      - (iii) claims by social security systems~~s~~;
      - (iv) claims on assets subject to rights *in rem*.
  2. Without prejudice to paragraph 1, Member States may provide that the whole or a part of the expenses arising from the winding-up procedure, as ~~defined~~  determined  by their national ~~legislation~~  law  , shall take precedence over insurance claims.
  3. Member States which have ~~opted for the method~~  chosen the option  provided for in point (a) of paragraph 1 ~~(a)~~ shall require ~~that~~ insurance undertakings  to  establish and keep up to date a special register in ~~line~~  accordance  with ~~the provisions set out in the Annex~~ Article 278.
- 

Article 278

Special register ~~referred to in Article 10(3)~~

1. Every insurance undertaking ~~must~~  shall  keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with  law of  the home Member State's ~~rules~~.
2. Where an insurance undertaking ~~transacts~~  carries on  both non-life and life ~~business~~  activities  , it ~~must~~  shall  keep at its head office separate registers for each type of business.

However, where a Member State authorises insurance undertakings to cover life and the risks listed in ~~points~~  classes  1 and 2 of point A of Annex A to Directive

~~73/239/EEC~~ I, it may provide that those insurance undertakings must keep a single register for the whole of their activities.

3. The total value of the assets entered, valued in accordance with the ~~rules~~ law applicable in the home Member State, ~~must~~ shall at no time be less than the value of the technical provisions.
4. Where an asset entered in the register is subject to a right *in rem* in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact ~~is~~ shall be recorded in the register and the amount not available ~~is~~ shall not be included in the total value referred to in ~~point~~ paragraph 3.
5. In the following cases the treatment of an asset in the case of the winding-up of the insurance undertaking with respect to the option provided for in point (a) of Article 277 (1) shall be determined by the legislation of the home Member State, except where Articles 288, 289 and 300 apply to that asset:
  - (a) ~~Where an~~ the asset ~~employed~~ used to cover technical provisions is subject to a right *in rem* in favour of a creditor or a third party, without meeting the conditions ~~of point set out in paragraph 4~~;
  - (b) ~~or~~ where such an asset is subject to a reservation of title in favour of a creditor or of a third party;
  - (c) ~~or~~ where a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking, ~~the treatment of such asset in case of the winding-up of the insurance undertaking with respect to the method provided for in Article 10(1)(a) shall be determined by the legislation of the home Member State except where Articles 20, 21 or 22 apply to that asset.~~
6. Once winding-up proceedings have been opened, ~~the~~ composition of the assets entered in the register in accordance with ~~points~~ paragraphs 1 to 5, ~~at the time when winding-up proceedings are opened, must~~ shall not thereafter be changed and no alteration other than the correction of purely clerical errors ~~must~~ shall be made in the registers, except with the authorisation of the competent authority.

~~7. Notwithstanding point 6~~ However, the liquidators ~~must~~ shall add to ~~the said~~ those assets the yield therefrom and the value of the pure premiums received in respect of the class of ~~business~~ insurance concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.
- ~~§7.~~ If the product of the realisation of assets is less than their estimated value in the registers, the liquidators ~~must be required to~~ shall justify this to the supervisory authorities of the home Member States' ~~competent authorities~~.
- ~~9.~~ ~~The supervisory authorities of the Member States must take appropriate measures to ensure full application by the insurance undertakings of the provisions of this Annex.~~

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↓ 2001/17/EC Art. 11

Article 279

Subrogation to a guarantee scheme

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of ~~Article 10(1)~~ 277(1).

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↓ 2001/17/EC Art. 12 (adapted)

Article 280

Representation of preferential claims by assets

~~By way of derogation from Article 18 of Directive 73/239/EEC and Article 21 of Directive 79/267/EEC, Member States which apply the method  choose the option  set out in point (b) of Article 10(1)(b) of this Directive 277(1) shall require every insurance undertaking to represent, at any moment and independently from a possible winding-up,  ensure that  the claims which may take precedence over insurance claims pursuant to point (b) of Article 10(1)(b) 277(1) and which are registered in the insurance undertaking's accounts  are represented, at any moment and independently from a possible winding-up  , by assets: mentioned in Article 21 of Directive 92/49/EEC and Article 21 of Directive 92/96/EEC.~~

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↓ 2001/17/EC Art. 13 (adapted)

Article 281

Withdrawal of the authorisation

1. Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of ~~the insurance~~  that  undertaking shall be withdrawn  in accordance with the procedure laid down in Article 142  , except to the extent necessary for the purposes of paragraph 2, ~~in accordance with the procedure laid down in Article 22 of Directive 73/239/EEC and Article 26 of Directive 79/267/EEC, if the authorisation has not been previously withdrawn.~~
2. The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person ~~entrusted~~  appointed  by the competent authorities from carrying on some of the ~~insurance undertakings'~~ activities  of the insurance undertakings  in so far as that is necessary or appropriate for the purposes of winding-up.

The home Member State may provide that such activities shall be carried on with the consent and under the supervision of the supervisory authorities of ~~the home~~  that  Member State.

Article 282

Publication ☒ of decisions on winding-up procedures ☒

1. The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the *Official Journal of the European ~~Communities~~ Union*.

The supervisory authorities of all ~~the~~ other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article ~~8(2)~~ 275(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.

2. The publication ~~of the decision to open winding-up proceedings provided for~~ ☒ referred to ☒ in paragraph 1 shall ~~also~~ specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official language or in one of the official languages of the Member State in which the information is published.

Article 283

Information to known creditors

1. When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor who has his ~~normal place of~~ ☒ habitual ☒ residence, domicile or head office in another Member State ~~thereof~~.

2. The notice referred to in paragraph 1 shall ~~in particular deal with~~ ☒ cover ☒ time limits, the ~~penalties~~ ☒ sanctions ☒ laid down with regard to those time limits, the body or authority empowered to accept the ~~lodgement~~ ☒ lodging ☒ of claims or observations relating to claims and ~~the~~ ☒ any ☒ other measures ~~laid down~~.

The notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need to lodge their claims.

In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Article 284

Right to lodge claims

1. Any creditor  , including public authorities of Member States, whose  ~~who has his normal place of~~  habitual  residence, domicile or head office  is situated  in a Member State other than the home Member State, ~~including Member States' public authorities,~~ shall have the right to lodge claims or to submit written observations relating to claims.
2. The claims of all creditors ~~who have their normal place of residence, domicile or head office in a Member State other than the home Member State, including the aforementioned authorities,~~  referred to in paragraph 1  shall be treated in the same way and ~~accorded~~  given  the same ranking as claims of an equivalent nature ~~lodged~~  which may be lodged  by creditors who have their ~~normal place of~~  habitual  residence, domicile or head office in the home Member State.
3. Except in cases where the law of the home Member State allows otherwise, a creditor shall send  to the competent authority  copies of  any  supporting documents, ~~if any,~~ and shall indicate  the following: 
  - (a) the nature  and the amount  of the claim;<sub>2</sub>
  - (b) the date on which ~~it~~  the claim  arose ~~and the amount;~~
  - (c) whether he alleges preference, security *in rem* or reservation of title in respect of the claim;<sub>2</sub>
  - (d) ~~and~~  where appropriate,  what assets are covered by his security.

The precedence granted to insurance claims by Article ~~10~~ 277 need not be indicated.

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Article 285

Languages and form

1. The information in the notice referred to in Article ~~15~~ 283(1) shall be provided in the official language or one of the official languages of the home Member State.  
For that purpose a form shall be used bearing ~~the heading~~  one of the following headings in all the official languages of the European Union: 
  - (a) «Invitation to lodge a claim; time limits to be observed»;<sub>2</sub>
  - (b) ~~or,~~ where the law of the home Member State provides for the submission of observations relating to claims, «Invitation to submit observations relating to a claim; time limits to be observed», ~~in all the official languages of the European Union.~~

However, where a known creditor is a holder of an insurance claim, the information in the notice referred to in Article ~~15~~ 283(1) shall be provided in the official language or one of the official languages of the Member State in which the creditor has his ~~normal place of~~  habitual  residence, domicile or head office.

- ~~Any creditor~~  Creditors  who  have their  ~~has his normal place of~~  habitual  residence, domicile or head office in a Member State other than the home Member State may lodge ~~his claim~~  their claims  or submit observations relating to ~~his claim~~  claims  in the official language or one of the official languages of that other Member State.

However, in that ~~event~~  case,  the ~~lodgement~~  lodging  of ~~his claim~~  their claims  or the submission of observations on ~~his claim~~  their claims , as appropriate, shall bear the heading «Lodgement of claim» or «Submission of observations relating to claims», as appropriate, in the official language or one of the official languages of the home Member State.

↓ 2001/17/EC Art. 18 (adapted)

#### Article 286

##### Regular information to the creditors

- Liquidators shall ~~keep creditors regularly informed~~, in an appropriate manner,  keep creditors regularly informed on  ~~in particular regarding~~ the progress of the winding-up.
- The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.

↓ 2001/17/EC Art. 19 (adapted)

## ~~TITLE CHAPTER IV -~~ COMMON PROVISIONS ~~COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS~~

#### Article 287

##### Effects on certain contracts and rights

~~By way of derogation from~~  Without prejudice to  Articles 4 271 and 9 276 the effects of the opening of reorganisation measures or of winding-up proceedings ~~on the contracts and rights specified below~~ shall be governed by the following rules  as follows  :

- ~~(1a)~~  in the case of  employment contracts and employment relationships, ~~shall be governed~~ solely by the law of the Member State applicable to the employment contract or employment relationship;
- ~~(2b)~~ ~~a contract~~  in the case of contracts  conferring the right to make use of or acquire immovable property, ~~shall be governed~~ solely by the law of the Member State in whose territory the immovable property is situated;

- (3e) ~~in the case of~~ rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register, ~~shall be governed by the law of the Member State under whose authority the register is kept.~~
- 

↓ 2001/17/EC Art. 20 (adapted)

## Article 288

### ~~Third parties'~~ Rights in rem of third parties

1. The opening of reorganisation measures or winding-up proceedings shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — which belong to the insurance undertaking and which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.
  2. The rights referred to in paragraph 1 shall at least ~~in particular mean~~ include:
    - (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
    - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
    - (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
    - (d) a right ~~in rem~~ to the beneficial use of assets.
  3. ~~The~~ A right under which a right within the meaning of paragraph 1 may be obtained, shall be considered to be a right *in rem* if it is recorded in a public register and enforceable against third parties, ~~under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.~~
  4. Paragraph 1 shall not preclude actions for ~~voidness~~ nullity, voidability or unenforceability referred to in point (1) of Article 276(2).
- 

↓ 2001/17/EC Art. 21 (adapted)

## Article 289

### Reservation of title

1. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the ~~seller's~~ rights of a seller which are based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than the Member State in which such measures or proceedings were opened.

2. The opening  , after delivery of the asset,  of reorganisation measures or winding-up proceedings against an insurance undertaking  which is  selling an asset, ~~after delivery of the asset,~~ shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures or proceedings were opened.
  3. Paragraphs 1 and 2 shall not preclude actions for ~~voidness~~  nullity  , voidability or unenforceability referred to in point (1) of Article ~~9(2)(1)~~ 276(2).
- 

↓ 2001/17/EC Art. 22 (adapted)

#### Article 290

##### Set-off

1. The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the ~~insurance undertaking's~~ claim  of the insurance undertaking  .
  2. Paragraph 1 shall not preclude actions for ~~voidness~~  nullity  , voidability or unenforceability referred to in point (1) of Article ~~9(2)(1)~~ 276(2).
- 

↓ 2001/17/EC Art. 23 (adapted)

#### Article 291

##### Regulated markets

1. Without prejudice to Article ~~20288~~ the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.
  2. Paragraph 1 shall not preclude any action for ~~voidness~~  nullity  , voidability, or unenforceability referred to in point (1) of Article ~~9(2)(1)~~ 276(2) which may be taken to set aside payments or transactions under the law applicable to that market.
- 

↓ 2001/17/EC Art. 24 (adapted)

#### Article 292

##### Detrimental acts

Point (1) of Article ~~9(2)(1)~~ 276(2) shall not apply where a person who has benefited from a legal act  which is  detrimental to all the creditors provides proof that: ~~(a) the said~~  that  act is subject to the law of a Member State other than the home Member State; and ~~(b)~~ that law does not allow any means of challenging that act in the relevant case.



Article 293

Protection of third-party purchasers

☒ The following law shall be applicable ☒ ~~W~~where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for a consideration, of ☒ any of the following ☒ :

- (1~~a~~) ☒ in the case of ☒ an immovable asset, ☒ the law of the Member State in whose territory the immovable asset is localised; ☒
- (2~~b~~) ☒ in the case of ☒ a ship or an aircraft subject to registration in a public register, ~~or~~ ☒ the law of the Member State under whose authority the register is kept; ☒
- (3~~e~~) ☒ in the case of ☒ transferable or other securities whose existence or transfer presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State, ☒ the law of the Member State under whose authority the register, account or system is kept. ☒

~~the validity of that act shall be governed by the law of the Member State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept.~~

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Article 294

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

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Article 295

Administrators and liquidators

1. The ~~administrator's or liquidator's~~ appointment ☒ of the administrator or the liquidator ☒ shall be evidenced by a certified copy of the original decision ~~appointing him~~ ☒ of appointment ☒ or by any other certificate issued by the competent authorities of the home Member State.

☒ The Member State within whose territory the administrator or liquidator wishes to act may require ☒ ~~A~~a translation into the official language or one of the official languages of ~~the~~ ☒ that ☒ Member State ~~within the territory of which the administrator or liquidator wishes to act may be required.~~ No ~~legalisation~~ ☒ formal authentication of that translation ☒ or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State.

Persons to assist or, ~~where appropriate,~~ represent administrators and liquidators may be appointed, ~~according to~~  in accordance with the law of  the home Member State's ~~legislation,~~ in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in ~~the host Member~~  that  State.

3. In exercising ~~his~~  their  powers according to  the law of  the home Member State's ~~legislation,~~ an administrator  s  or liquidator  s  shall comply with the law of the Member States within whose territory ~~he~~  they  wishes to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.

Those powers ~~may~~  shall  not include the use of force or the right to rule on legal proceedings or disputes.

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↓ 2001/17/EC Art. 28 (adapted)

## Article 296

### Registration in a public register

1. The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in ~~the land register, the trade register and any other~~  relevant  public register kept in the other Member States.

However, if a Member State ~~prescribes~~  provides for  mandatory registration, the authority or person referred to in the first subparagraph 1 shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

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↓ 2001/17/EC Art. 29 (adapted)

## Article 297

### Professional secrecy

All persons required to receive or divulge information in connection with the procedures ~~of communication~~ laid down in Articles ~~5~~ 272, ~~8~~ 275 and ~~30~~ 298 shall be bound by professional secrecy, ~~in the same manner~~ as laid down in Articles 63 to 68 ~~16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC~~, with the exception of any judicial authorities to which existing national provisions apply.

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↓ 2001/17/EC Art. 30 (adapted)

Article 298

⊗ Treatment of ⊗ ~~B~~branches of third country insurance undertakings

~~2. When~~ ⊗ Where ⊗ an insurance undertaking whose head office is outside the Community has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this ~~Directive~~ Title.

The competent authorities and the supervisory authorities of ~~the~~se Member States shall endeavour to coordinate their actions.

Any administrators or liquidators shall likewise endeavour to coordinate their actions.

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↓ 88/357/EEC

~~Article 6~~

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

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↓ 92/49/EEC

~~Article 36~~

~~Any change which an undertaking intends to make to the information referred to in Article 14 shall be subject to the procedure provided for in Articles 14 and 16.~~

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↓ 88/357/EEC

~~Article 26~~

~~1. The risks which may be covered by way of Community co-insurance within the meaning of Directive 78/473/EEC shall be those defined in Article 5 (d) of the first Directive.~~

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

## TITLE V - ~~⊗~~ OTHER PROVISIONS ~~⊗~~

### Article 299

Proof of ~~⊗~~ fulfilment of fit and proper requirements ~~⊗~~ ~~good-repute~~

1. Where a Member State requires of its own nationals proof of ~~⊗~~ ~~good-repute~~ and proof of no previous bankruptcy, or proof of either of these, that ~~⊗~~ Member ~~⊗~~ State shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the «judicial record» or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the home Member State or the Member State from which the foreign national comes showing that these requirements have been met.
2. Where the home Member State or the Member State from which the foreign national concerned comes does not issue the document referred to in paragraph 1, it may be replaced by a declaration on oath — or in ~~⊗~~ Member ~~⊗~~ States where there is no provision for declaration on oath by a solemn declaration — made by the ~~person~~ ~~⊗~~ foreign national ~~⊗~~ concerned before a competent judicial or administrative authority or, where appropriate, a notary in the home Member State or the Member State from which that ~~person~~ ~~⊗~~ foreign national ~~⊗~~ comes.  
~~⊗~~ Such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.  
The declaration ~~⊗~~ referred to in the first subparagraph ~~⊗~~ in respect of no previous bankruptcy may also be made before a competent professional or trade body in the ~~⊗~~ Member State concerned ~~⊗~~ ~~said country~~.
3. ~~⊗~~ The ~~⊗~~ ~~D~~documents ~~issued in accordance with~~ ~~⊗~~ and certificates referred to in ~~⊗~~ paragraphs 1 and 2 ~~must~~ ~~⊗~~ shall ~~⊗~~ not be ~~produced~~ ~~⊗~~ presented ~~⊗~~ more than three months after their date of issue.
4. Member States shall designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.

Each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in ~~this Article~~ paragraphs 1 and 2 are to be submitted in support of an application to carry on in the territory of this Member State the activities referred to in Article 2.

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↓ 2005/68/EC Art. 53 (adapted)

Article 300

Right to apply to the courts

Member States shall ensure that decisions taken in respect of  an insurance or  a reinsurance undertaking under laws, regulations and administrative provisions implementing this Directive are subject to the right to apply to the courts.

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↓ 2002/83/EC Art. 62

Article 301

Cooperation between the Member States and the Commission

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↓ 2005/68/EC Art. 54 (adapted)

1.  The  Member States shall cooperate with each other for the purpose of facilitating the supervision of  insurance and  reinsurance within the Community and the application of this Directive.
  2. The Commission and the ~~competent~~  supervisory  authorities of the Member States shall collaborate closely  with each other  for the purpose of facilitating the supervision of  insurance and  reinsurance within the Community and of examining any difficulties which may arise in the application of this Directive.
- 

↓ 2002/83/EC Art. 62 (adapted)

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

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

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

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↓ 88/357/EEC Art. 30 (adapted)

Article 302

☒ Euro ☒

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

~~Article 2 of Directive 76/580/EEC<sup>86</sup> shall apply only to Articles 3, 16 and 17 of the first Directive.~~

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↓ 2002/83/EC Art. 68 (adapted)

⇒ new

Article 303

Review of amounts expressed in euro

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

~~21. The Council, acting on a proposal from~~ ☒ As far as life insurance is concerned, every two years from the entry into force of this Directive, ☒ the Commission, shall every two years examine and, where appropriate, revise ⇒ submit to the European Parliament and to the Council a review ⇐ of the amounts expressed in euro in this Directive, in the light of how ☒ taking into account the evolution of ☒ the Community's economic and monetary situation has evolved ☒ of the Community accompanied, where appropriate, by the necessary proposals ☒ .

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↓ 88/357/EEC Art. 31 (adapted)

⇒ new

~~2. ☒ As far as non-life insurance is concerned, ☒ Every five years ☒ from the entry into force of this Directive ☒ , the Council, acting on a proposal from the Commission, shall ⇒ submit to the European Parliament and to the Council ⇐ a review and if necessary amend any ☒ of the ☒ amounts expressed in ~~ECU~~ euro in this Directive, taking into account changes in the economic and monetary situation of the Community ☒ accompanied, where appropriate, by the necessary proposals ☒ .~~

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<sup>86</sup> OJ No L 189, 13. 9. 1976, p. 13.

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↓ 2002/83/EC (adapted)

~~Article 63~~

~~Reports on the development of the market under the freedom to provide services~~

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

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↓ 88/357/EEC (adapted)

~~Article 29~~

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

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↓ 2005/1/EC Art. 7.2

~~5. Not later than 1 January 2006 the Commission shall issue a report on the application of this Directive and, if necessary, on the need for further harmonisation.~~

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↓ 2002/83/EC Art. 65

Article 304

Committee procedure

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↓ 2005/1/EC Art. 8.3 and  
2005/68/EC Art. 55

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC<sup>87</sup>.

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↓ new

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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<sup>87</sup> OJ L 3, 7.1.2004, p. 34.

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↓ 2002/83/EC Art. 65 and  
2005/68/EC Art. 55 (adapted)  
⇒ new

3. Where reference is made to this paragraph, Articles ~~5 and 7~~ ⇒ 5a(1) to (4) ⇐ of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

~~3. The Committee shall adopt its Rules of Procedure.~~

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↓ 2002/83/EC Art. 64 (adapted)

~~Article 64~~

~~Technical adjustment~~

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

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

↓ 2005/68/EC Art. 56 (adapted)

~~The following implementing measures to this Directive shall be adopted in accordance with the procedure referred to in Article 55(2):~~

- ~~(a) extension of the legal forms provided for in Annex I,~~
- ~~(b) clarification of the items constituting the solvency margin listed in Article 36 to take account of the creation of new financial instruments,~~



~~(c) increase by up to 50 % of the premiums or claims amounts used for the calculation of the required solvency margin provided for in Article 37(3) and (4), in classes other than classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, for specific reinsurance activities or contract types, to take account of the specificities of those activities or contracts;~~

~~(d) alteration of the minimum guarantee fund provided for in Article 40(2) to take account of economic and financial developments;~~

~~(e) clarification of the definitions in Article 2 in order to ensure uniform application of this Directive throughout the Community.~~

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↓ 2007/44/EC Art. 8 (adapted)

## Article 305

~~Entry into force~~ ☒ Notifications submitted prior to entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 56 to 62 ☒

~~2~~ The assessment procedure applied to proposed acquisitions for which notifications referred to in Articles ~~1(2), 2(2), 3(2), 4(2) and 5(2)~~ 56 have been submitted to the competent authorities prior to the entry into force of the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ Articles 56 to 62, shall be carried out in accordance with the national law of Member States in force at the time of notification.

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↓ 2002/83/EC Art. 60 (adapted)

## ~~TITLE VII~~ TRANSITIONAL AND ~~OTHER~~ ☒ FINAL ☒ PROVISIONS

### ☒ CHAPTER I - TRANSITIONAL PROVISIONS ☒

#### ☒ SECTION 1 - INSURANCE ☒

## Article 306

### Derogations and abolition of restrictive measures

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↓ 73/239/EEC Art. 30 (adapted)  
⇒ new

~~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 16 and 17.~~

~~21.~~ 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 20, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose;~~

~~(b) exempt  non-life insurance  undertakings referred to in (1)  which on 31 January 1975 did not comply with the requirements of Articles 16 and 17 of Directive 73/239/EEC  whose annual premium or contribution income upon the expiry of the period of five years falls  on 31 July 1978 fell  short of six times the amount of the minimum guarantee fund required under Article 17 (2)  of Directive 73/239/EEC  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. After considering the results of the examination provided for under Article ~~33~~ 301(2), the Council shall unanimously decide, on a proposal from the Commission, when this exemption is to be abolished by Member States.~~

~~3. Undertakings desiring to extend their operations within the meaning of Article 8 (2) or Article 10 may not do so unless they comply immediately with the rules of this Directive. However, the undertakings referred to in paragraph (2) (b) which within the national territory extend their business to other classes of insurance or to other parts of such territory may be exempted for a period of ten years from the date of notification of the Directive from the requirement to constitute the minimum guarantee fund referred to in Article 17 (2).~~

~~42. An undertaking having a structure different from any of those listed in Article 8 may continue, for a period of three years from the notification of the Directive, to carry on their present business in the legal form in which they are constituted at the time of such notification.  Non-life insurance  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  in which they were constituted on 31 July 1973  for an unlimited period.~~

~~Undertakings in Belgium which, in accordance with their objects, carry on the business of 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 «arrête royal» of 23 June 1967, may continue to undertake such business for a period of 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.~~

↓ 2002/83/EC Art. 60 (adapted)

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

The United Kingdom shall draw up a list of ~~such~~  the  undertakings  referred to in the first and second subparagraphs  and communicate it to the other Member States and the Commission.

~~23.~~ The societies registered in the United Kingdom under the Friendly Societies Acts may continue the activities of life ~~assurance~~  insurance  and savings operations which, in accordance with their objects, they were carrying on ~~on~~  as of  15 March 1979.

↓ 73/239/EEC Art. 30 (5)  
(adapted)

~~54.~~ At the request of  non-life insurance  undertakings which comply with the requirements of Title I, Chapter VI, Sections 2, 4 and 5 ~~Articles 15, 16 and 17~~, Member States shall cease to apply restrictive measures such as those relating to mortgages, deposits and securities ~~established under present regulations~~.

↓ 2002/83/EC Art. 66 (adapted)

#### Article 307

Rights acquired by existing branches and ~~assurance~~  insurance  undertakings

1. Branches which started business, in accordance with the provisions in force in the Member State ~~of the branch~~  where that branch is situated  , before 1 July 1994 shall be presumed to have been subject to the procedure laid down in Article ~~40(1) to (5)~~ 143 and 144.

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

2. Articles ~~41~~ 145 and ~~42~~ 146 shall not affect rights acquired by ~~assurance~~  insurance  undertakings carrying on business under the freedom to provide services before 1 July 1994.

↓ 73/239/EEC (adapted)

#### ~~Article 31~~

~~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 25.~~

#### ~~Article 32~~

~~During a period which terminates at the time of the entry into force of an agreement concluded with a third country pursuant to Article 29 and at the latest upon the expiry of a period of four years after the notification of the 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 15 (2) in favour of the undertakings of Member States established in its territory are not exceeded.~~

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↓ 73/239/EEC (adapted)

*Article 34*

~~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 30 (1).~~

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↓ 92/49/EEC (adapted)

*Article 51*

~~The following technical adjustments to be made to Directives 73/239/EEC and 88/357/EEC and to this Directive shall be adopted in accordance with the procedure laid down in Directive 91/675/EEC:~~

- ~~– extension of the legal forms provided for in Article 8 (1) (a) of Directive 73/239/EEC,~~
- ~~– amendments to the list set out in the Annex to Directive 73/239/EEC, or adaptation of the terminology used in that list to take account of the development of insurance markets,~~
- ~~– clarification of the items constituting the solvency margin listed in Article 16 (1) of Directive 73/239/EEC to take account of the creation of new financial instruments,~~
- ~~– alteration of the minimum guarantee fund provided for in Article 17 (2) of Directive 73/239/EEC to take account of economic and financial developments,~~
- ~~– amendments, to take account of the creation of new financial instruments, to the list of assets acceptable as cover for technical provisions set out in Article 21 of this Directive and to the rules on the spreading of investments laid down in Article 22,~~
- ~~– changes in the relaxations in the matching rules laid down in Annex 1 to Directive 88/357/EEC, to take account of the development of new currency hedging instruments or progress made towards economic and monetary union,~~
- ~~– clarification of the definitions in order to ensure uniform application of Directives 73/239/EEC and 88/357/EEC and of this Directive throughout the Community.~~

*Article 52*

~~1. Branches which have started business, in accordance with the provisions in force in their Member State of establishment, before the entry into force of the provisions adopted in implementation of this Directive shall be presumed to have been subject to the procedure laid down in Article 10 (1) to (5) of Directive 73/239/EEC. They shall be governed, from the date of that entry into force, by Articles 15, 19, 20 and 22 of Directive 73/239/EEC and by Article 40 of this Directive.~~

~~2. Articles 34 and 35 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before the entry into force of the provisions adopted in implementation of this Directive.~~

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↓ 2002/83/EC Art. 71

~~Article 71~~

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

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

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

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↓ 2005/68/EC Art. 63 (adapted)

⊗ SECTION 2 - REINSURANCE ⊗

Article 308

Transitional period for Articles 57(3) and 60(6) of Directive 2005/68/EC

A Member State may postpone the application of the provisions of Article 57(3) of ~~this~~ Directive 2005/68/EC amending Article 15(3) of Directive 73/239/EEC and of the provision of Article 60(6) of ~~this~~ Directive 2005/68/EC until 10 December 2008.

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↓ 2005/68/EC Art. 61 (adapted)

Article 309

Right acquired by existing reinsurance undertakings

1. Reinsurance undertakings subject to this Directive which were authorised or entitled to conduct reinsurance business in accordance with the provisions of the Member States in which they have their head offices before 10 December 2005 shall be deemed to be authorised in accordance with Article ~~3~~ 14.

However, they shall be obliged to comply with the provisions of this Directive concerning the carrying on of the business of reinsurance and with the requirements set out in points (b), and (d) to (g) of Article 6(a), (c), (d) 18(1), Articles 7, 8 and 12 19, 20 and 24 and Articles 32 to 41 Title I Chapter VI, Sections 2, 3 and 4 as from 10 December 2007.

2. Member States may allow reinsurance undertakings referred to in paragraph 1 which at 10 December 2005 ⊗ did ⊗ ~~do~~ not comply with point (b) of Articles 6(a), 7, 8 18(1), Articles 19 and 20 and 32 to 40 Title I Chapter VI, Sections 2, 3 and 4 a period until 10 December 2008 in order to comply with such requirements.

## CHAPTER II - FINAL PROVISIONS

### Article 310

#### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4, 6-8, 10, 13, 14, 18, 23, 26-31, 34-54, 66, 67, 70, 71, 73-140, 142, 144, 146, 150, 160-165, 170, 171, 176, 188, 190, 208-268, 280, 299, 306 and Annex III, IV and V by 31 October 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### Article 311

#### Repeal

1. Directives 73/239/EEC, 78/473/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC, 2005/68/EC and 2007/44/EC, as amended by the Directives listed in Annex VI, Part A, are repealed with effect from the day after the date set out in Article 310 (1), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex VI, Part B.

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

2. Directives 64/225/EEC, 73/240/EEC, 76/580/EEC, 84/641/EEC and 87/344/EEC are repealed as amended by the Directives listed in Annex VI, Part A, with effect from the day after the date set out in Article 310 (1), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex VI, Part B.

### Article 312

#### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 1-3, 5, 9, 11, 12, 15-17, 19-22, 24-25, 32, 33, 55-65, 68, 69, 72, 141, 143, 145, 147-149, 151-159, 166-169, 172-175, 177-187, 189, 191-207, 269-279, 281-298, 300-305, 307-313 and Annexes I and II, V, VI and VII shall apply from 1. November 2012.

Article 313

Addressees

This Directive is addressed to the Member States.

ANNEX I

⊗ CLASSES OF NON-LIFE INSURANCE ⊗

**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 the 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 benefits;
- 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.

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↓ 84/641/EEC Art. 14 (adapted)

## 18. Assistance

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

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↓ 73/239/EEC (adapted)

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

## B. DESCRIPTION OF AUTHORIZATIONS GRANTED FOR MORE THAN ONE CLASS OF INSURANCE

~~Where the authorization~~  The following names shall be given to authorisations which  simultaneously covers  the following classes  :

- (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 be named~~ at the choice of the Member ~~State in question~~  States  , which shall notify the other Member States and the Commission of ~~its~~  their  choice.

## ~~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 in point A 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 are fulfilled, 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 where it concerns disputes or risks arising out of, or in connection with, the use of seagoing vessels.~~

**ANNEX II**

**CLASSES OF ~~ASSURANCE~~ ☒ LIFE INSURANCE ☒**

- I. The ~~assurance~~ ☒ life insurance ☒ referred to in points (a) (i),(ii) and (iii) of Article 2(1)(a), (b) and (c) 2(3) excluding those referred to in II and III;
- II. Marriage assurance, birth assurance;
- III. The ~~assurance~~ ☒ insurance ☒ referred to in points (a) (i) and (ii) of Article 2(1)(a) and (b) 2(3), which are linked to investment funds;
- IV. Permanent health insurance, referred to in point (a)(iv) of Article 2(1)(d) 2(3);
- V. Tontines, referred to in point (b) (i) of Article 2(2)(a) 2(3);
- VI. Capital redemption operations, referred to in point (b) (ii) of Article 2(3);
- VII. Management of group pension funds, referred to in point (b) (iii) and (iv) of Article 2(2)(c) and (d) 2(3);
- VIII. The operations referred to in point (b) (iii) of Article 2(2)(e) 2(3);
- IX. The operations referred to in point (c) of Article 2(3);

**~~D. METHODS OF CALCULATING THE EQUALISATION RESERVE FOR THE CREDIT INSURANCE CLASS~~**

**~~Method No 1~~**

~~1. In respect of the risks included in the class of insurance in point A No 14 (hereinafter referred to as «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. 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~~**

~~1. In respect of the risks included in the class of insurance listed in point A No 14 (hereinafter referred to as «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. 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.~~

~~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 paragraph 2.~~

~~4. Member States 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 this Directive.~~

### ~~Method No 3~~

~~1. An equalization reserve shall be formed for class 14 in point A (hereinafter referred to as «credit insurance») for the purpose of offsetting any above average claims ratio for a financial year in that class of insurance.~~

~~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 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. 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~~

~~1. An equalization reserve shall be formed for class 14 in point A (hereinafter referred to as «credit insurance») for the purpose of offsetting any above average claims ratio for a financial year in that class of insurance.~~

~~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 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 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 or one and a half times the standard deviation and the safety margin.~~

↓ 88/357/EEC Annex 1

#### **ANNEX 1**

#### **MATCHING RULES**

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

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

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

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

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

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

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

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

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

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

~~However:~~

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

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

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

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

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

↓ 2002/83/EC Annex II

~~3. Member States may choose not to require assurance undertakings to apply the matching principle where commitments are payable in a currency other than the currency of one of the Member States, if investments in that currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, it is not suitable for covering technical provisions.~~

↓ 92/49/EEC Art. 23

~~8. Insurance undertakings may hold non-matching assets to cover an amount not exceeding 20 % of their commitments in a particular currency.~~

↓ 2002/83/EC Annex II

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

↓ 92/49/EEC Art. 23

~~9. A Member State may provide that when under the preceding procedures a commitment must be covered by assets expressed in a Member State's currency that requirement shall also be considered as satisfied when the assets are expressed in ecus.~~

↓ 88/357/EEC

**ANNEX 2A**

**Underwriting account**

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

**ANNEX 2B**

**Underwriting account**

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

↓ 2002/83/EC (adapted)

**ANNEX III**

**Information for policy holders**

~~The following information, which is to be communicated to the policy holder before the contract is concluded (A) or during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment. However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.~~

**A. BEFORE CONCLUDING THE CONTRACT**

<del>Information about the assurance undertaking</del>	<del>Information about the commitment</del>
<del>(a)1 The name of the undertaking and its legal form</del>	<del>(a)4 Definition of each benefit and each option</del>
<del>(a)2 The name of the</del>	<del>(a)5 Term of the contract</del>
	<del>(a)6 Means of terminating the contract</del>



<p><del>Member State in which the head office and, where appropriate, the agency or branch concluding the contract is situated</del></p> <p><del>(a)3 The address of the head office and, where appropriate, of the agency or branch concluding the contract</del></p>	<p><del>(a)7 Means of payment of premiums and duration of payments</del></p> <p><del>(a)8 Means of calculation and distribution of bonuses</del></p> <p><del>(a)9 Indication of surrender and paid-up values and the extent to which they are guaranteed</del></p> <p><del>(a)10 Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate</del></p> <p><del>(a)11 For unit-linked policies, definition of the units to which the benefits are linked</del></p> <p><del>(a)12 Indication of the nature of the underlying assets for unit-linked policies</del></p> <p><del>(a)13 Arrangements for application of the cooling-off period</del></p> <p><del>(a)14 General information on the tax arrangements applicable to the type of policy</del></p> <p><del>(a)15 The arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings</del></p> <p><del>(a)16 Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose</del></p>
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## **~~B. DURING THE TERM OF THE CONTRACT~~**

~~In addition to the policy conditions, both general and special, the policy holder must receive the following information throughout the term of the contract.~~

Information about the assurance undertaking	Information about the commitment
<p><del>(b)1 Any change in the name of the undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract</del></p>	<p><del>(b)2 All the information listed in points (a)(4) to (a)(12) of A in the event of a change in the policy conditions or amendment of the law applicable to the contract</del></p> <p><del>(b)3 Every year, information on the state of bonuses</del></p>

## **ANNEX IV**

### **~~1. PROFESSIONAL SECRECY~~**

~~Until 17 November 2002, Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 16 of this Directive.~~

## ~~2. ACTIVITIES AND BODIES EXCLUDED FROM THIS DIRECTIVE~~

~~Until 1 January 2004, this Directive shall not concern mutual associations, where:~~

- ~~– the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it, and~~
- ~~– the annual contribution income for the activities covered by this Directive does not exceed EUR 500000 for three consecutive years. If this amount is exceeded for three consecutive years this Directive shall apply with effect from the fourth year.~~

## ~~3. UNTIL 1 JANUARY 2004, MEMBER STATES SHALL APPLY THE FOLLOWING PROVISIONS:~~

### ~~A. Solvency margin~~

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

~~The solvency margin shall consist of:~~

~~1. the assets of the assurance undertaking free of any foreseeable liabilities, less any intangible items. In particular the following shall be included:~~

- ~~– the paid-up share capital or, in the case of a mutual assurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:~~

~~(a) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;~~

~~(b) the memorandum and articles of association must stipulate, with respect to any such payments for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;~~

~~(c) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in (a) and (b);~~

- ~~– one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund;~~
- ~~– reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities;~~
- ~~– any profits brought forward;~~
- ~~– cumulative preferential share capital and subordinated loan capital may be included but, if so, only up to 50 % of the margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed term cumulative preferential share capital, if the following minimum criteria are met:~~

~~(a) in the event of the bankruptcy or liquidation of the assurance undertaking, binding agreements must exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.~~

~~Subordinated loan capital must also fulfil the following conditions:~~

~~(b) only fully paid-up funds may be taken into account;~~

~~(c) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date, the assurance undertaking must submit to the competent authorities for their approval a plan showing how the solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing assurance undertaking and its solvency margin will not fall below the required level;~~

~~(d) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the assurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the actual and required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the assurance undertaking's solvency margin will not fall below the required level;~~

~~(e) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;~~

~~(f) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;~~

~~– securities with no specified maturity date and other instruments that fulfil the following conditions, including cumulative preferential shares other than those mentioned in the fifth indent, up to 50 % of the margin for the total of such securities and the subordinated loan capital referred to in the fifth indent:~~

~~(a) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;~~

~~(b) the contract of issue must enable the assurance undertaking to defer the payment of interest on the loan;~~

~~(c) the lender's claims on the assurance undertaking must rank entirely after those of all non-subordinated creditors;~~

~~(d) the documents governing the issue of the securities must provide for the loss absorption capacity of the debt and unpaid interest, while enabling the assurance undertaking to continue its business;~~

~~(e) only fully paid-up amounts may be taken into account.~~

~~2. in so far as authorised under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to policy holders;~~

~~3. upon application, with supporting evidence, by the undertaking to the competent authority of the Member State in the territory of which its head office is situated and with the agreement of that authority:~~

~~(a) an amount equal to 50 % of the undertaking's future profits; the amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies; the factor used may not exceed 10; the estimated annual profit shall be the arithmetical average of the profits made over the last five years in the activities listed in Article 2 of this Directive.~~

~~The bases for calculating the factor by which the estimated annual profit is to be multiplied and the items comprising the profits made shall be defined by common agreement by the competent authorities of the Member States in collaboration with the Commission. Pending such agreement, those items shall be determined in accordance with the laws of the home Member State.~~

~~When the competent authorities have defined the concept of profits made, the Commission shall submit proposals for the harmonisation of this concept by means of a Directive on the harmonisation of the annual accounts of insurance undertakings and providing for the coordination set out in Article 1(2) of Directive 78/660/EEC;~~

~~(b) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium; this figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical provisions for all policies for which Zillmerising is possible; the difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;~~

~~(c) where approval is given by the competent authorities of the Member States concerned in which the assurance undertaking is carrying on its activities any hidden reserves resulting from the underestimation of assets and overestimation of liabilities other than mathematical provisions in so far as such hidden reserves are not of an exceptional nature.~~

## ~~**B. Minimum solvency margin**~~

~~Subject to section C, the minimum solvency margin shall be determined as shown below according to the classes of assurance underwritten:~~

~~(a) For the kinds of assurance referred to in Article 2(1)(a) and (b) of this Directive other than assurance linked to investment funds and for the operations referred to in~~

~~Article 2(3) of this Directive, it must be equal to the sum of the following two results:~~

~~– first result:~~

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

~~– second result:~~

~~for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the assurance undertaking shall be multiplied by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance; that ratio may in no case be less than 50 %.~~

~~For temporary assurance on death of a maximum term of three years the above fraction shall be 0,1 %; for such assurance of a term of more than three years but not more than five years the above fraction shall be 0,15 %.~~

~~(b) For the supplementary insurance referred to in Article 2(1)(c) of this Directive, 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 direct business in the last financial year in respect of 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 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 extending up to EUR 10 million and the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.~~

~~The 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 assurance undertaking after deduction of transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.~~

~~In the case of the association of underwriters known as Lloyd's, the calculation of the solvency margin shall be made on the basis of net premiums, which shall be multiplied by flat rate percentage fixed annually by the competent authority of the head office Member State. 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 competent authorities of the countries in whose territory Lloyd's is established.~~

~~(c) For permanent health insurance not subject to cancellation referred to in Article 2(1)(d) of this Directive, and for capital redemption operations referred to in Article 2(2)(b) thereof, it shall be equal to a 4 % fraction of the mathematical provisions~~

~~calculated in compliance with the conditions set out in the first result in (a) of this section.~~

~~(d) For tontines, referred to in Article 2(2)(a) of this Directive, it shall be equal to 1 % of their assets.~~

~~(e) For assurance covered by Article 2(1)(a) and (b) of this Directive linked to investment funds and for the operations referred to in Article 2(2)(e), (d) and (e) of this Directive it shall be equal to:~~

- ~~– a 4 % fraction of the mathematical provisions, calculated in compliance with the conditions set out in the first result in (a) of this section in so far as the assurance undertaking bears an investment risk, and a 1 % fraction of the provisions calculated in the same way, in so far as the undertaking bears no investment risk provided that the term of the contract exceeds five years and the allocation to cover management expenses set out in the contract is fixed for a period exceeding five years, plus~~
- ~~– a 0,3 % fraction of the capital at risk calculated in compliance with the conditions set out in the first subparagraph of the second result of (a) of this section in so far as the assurance undertaking covers a death risk.~~

### **~~C. Guarantee fund~~**

~~1. One third of the required solvency margin as specified in section B shall constitute the guarantee fund. Subject to paragraph 2 of this section, at least 50 % of this fund shall consist of the items listed in section A(1) and (2).~~

~~2.~~

~~(a) (a) The guarantee fund may not, however, be less than a minimum of EUR 800000.~~

~~(b) Any Member State may provide for the minimum of the guarantee fund to be reduced to EUR 600000 in the case of mutual associations and mutual-type associations and tontines.~~

~~(c) For mutual associations referred to in the second sentence of the second indent of Article 3(6) of this Directive, as soon as they come within the scope of this Directive, and for tontines, any Member State may permit the establishment of a minimum of the guarantee fund of EUR 100000 to be increased progressively to the amount fixed in (b) of this section by successive tranches of EUR 100000 whenever the contributions increase by EUR 500000.~~

~~(d) The minimum of the guarantee fund referred to in (a), (b) and (c) of this section must consist of the items listed in section A(1) and (2).~~

~~3. Mutual associations wishing to extend their business within the meaning of Article 6(4) or Article 40 of this Directive may not do so unless they comply immediately with the requirements of paragraph 2(a) and (b) of this section.~~

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↓ 2005/68/EC (adapted)

**ANNEX I III**

**⊗ LEGAL FORMS OF UNDERTAKINGS ⊗**

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↓ 92/49/EEC Art. 6 (adapted)

~~1. The home Member State shall require every~~ ⊗ A. Forms of non-life ⊗ insurance undertakings for which authorization is sought to:

~~(a) adopt one of the following forms:~~

(1) in the case of the Kingdom of Belgium: «société anonyme —naamloze vennootschap» — , «société en commandite par actions —commanditaire vennootschap op aandelen» — ,«association d'assurance mutuelle —onderlinge verzekeringsvereniging» — ,«société coopérative —coöperatieve vennootschap»;

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↓ 2006/101/EC Art. 1 and Annex pt 1

(2) in the case of the Republic of Bulgaria: "акционерно дружество";

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↓ Art. 20 and Annex II, p. 335

(3) in the case of the Czech Republic: «akciová společnost», «družstvo»;

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↓ 92/49/EEC Art. 6

(4) in the case of the Kingdom of Denmark: «aktieselskaber», «gensidige selskaber»;

(5) in the case of the Federal Republic of Germany: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit», «Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen»;

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↓ Art. 20 and Annex II, p. 335

(6) in the case of the Republic of Estonia: «aktsiaselts»;

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↓ 92/49/EEC Art. 6

(7) in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;

(8) in the case of the Hellenic Republic: «ανώνυμη εταιρία», «αλληλασφαλιστικός συνεταιρισμός»;

(9) in the case of the Kingdom of Spain: «sociedad anónima», «sociedad mutua», «sociedad cooperativa»;

(10) in the case of the French Republic: «société anonyme», «société d'assurance mutuelle», «institution de prévoyance régie par le code de la sécurité sociale», «institution de prévoyance régie par le code rural» and «mutuelles régies par le code de la mutualité»;

(11) in the case of the Italian Republic: «società per azioni», «società cooperativa», «mutua di assicurazione»;

↓ Art. 20 and Annex II, p. 335  
(adapted)

(12) in the case of the Republic of Cyprus: «Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης χωρίς μετοχικό κεφάλαιο»;

(13) in the case of the Republic of Latvia: «apdrošināšanas akciju sabiedrība», «savstarpējās apdrošināšanas kooperatīvā biedrība»;

(14) in the case of the Republic of Lithuania: «~~akcinės bendrovės~~», «~~uždaroji~~  
⊗ uždaroji ⊗ akcinės bendrovės»;

↓ 92/49/EEC Art. 6

(15) in the case of the Grand Duchy of Luxembourg: «société anonyme», «société en commandite par actions», «association d'assurances mutuelles», «société coopérative»;

↓ Art. 20 and Annex II, p. 335  
⇒ new

(16) in the case of the Republic of Hungary: «biztosító részvénytársaság», «biztosító szövetkezet», «biztosító egyesület», «külföldi székhelyű biztosító magyarországi fióktelepe»;

(17) in the case of the Republic of Malta: «~~kumpanija pubblika~~», «~~kumpanija privata~~», «~~fergha~~», «~~Korp ta' l-Assikurazzjoni Rikonnexxut~~» ⇒ «limited liability company/kumpanija b` responsabbilta` limitata» ⇐;

↓ 92/49/EEC Art. 6

(18) in the case of the Kingdom of the Netherlands: «naamloze vennootschap», «onderlinge waarborgmaatschappij»;

↓ Act of Accession of Austria,  
Sweden and Finland Art. 29 and  
Annex I, p. 197

(19) in the case of the Republic of Austria: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit»;



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↓ Art. 20 and Annex II, p. 335

(20) in the case of the Republic of Poland: «*spółka akcyjna*», «*towarzystwo ubezpieczeń wzajemnych*»;

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↓ 92/49/EEC Art. 6

(21) in the case of the Portuguese Republic: «*sociedade anónima*», «*mútua de seguros*»;

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↓ 2006/101/EC Art. 1 and Annex  
pt 1

(22) in the case of Romania: "*societăți pe acțiuni*", "*societăți mutuale*";

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↓ Art. 20 and Annex II, p. 335

(23) in the case of the Republic of Slovenia: «*delniška družba*», «*družba za vzajemno zavarovanje*»;

(24) in the case of the Slovak Republic: «*akciová spoločnosť*»;

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↓ Act of Accession of Austria,  
Sweden and Finland Art. 29 and  
Annex I, p. 197

(25) in the case of the Republic of Finland: «*keskinäinen vakuutusyhtiö — ömsesidigt försäkringsbolag*» — , «*vakuutusosakeyhtiö — försäkringsaktiebolag*» — , «*vakuutusyhdistys — försäkringsförening*»;

(26) in the case of the Kingdom of Sweden: «*försäkringsaktiebolag*», «*ömsesidiga försäkringsbolag*», «*understödsföreningar*»;

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↓ 92/49/EEC Art. 6

(27) 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 Acts, the association of underwriters known as Lloyd's.

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↓ 92/49/EEC Art. 6 (adapted)

(28) ~~An insurance undertaking may also adopt~~  in any case and as an alternative to the forms listed in points (1) to (27),  the form of a European Company (SE) ~~when that has been established~~  as defined in Council Regulation (EC) No 2157/2001 <sup>88</sup>.

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<sup>88</sup> OJ L 294, 10.11.2001, p. 1.

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↓ 2002/83/EC Art. 6 (adapted)

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

~~B. (a) adopt one of the following forms~~  of life insurance undertakings  :

(1) in the case of the Kingdom of Belgium: «société anonyme/naamloze vennootschap», «société en commandite par actions/commanditaire vennootschap op aandelen», «association d'assurance mutuelle/onderlinge verzekeringsvereniging», «société coopérative/coöperatieve vennootschap»;

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↓ 2006/101/EC Art. 1 and Annex  
pt 3

(2) in the case of the Republic of Bulgaria: "акционерно дружество", "взаимозастрахователна кооперация";

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↓ 2004/66/EC Art. 1 and Annex

(3) in the case of the Czech Republic: «akciová společnost», «družstvo»;

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↓ 2002/83/EC

(4) in the case of the Kingdom of Denmark: «aktieselskaber», «gensidige selskaber», «pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)»;

(5) in the case of the Federal Republic of Germany: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit», «öffentlich-rechtliches Wettbewerbsversicherungsunternehmen»;

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↓ 2004/66/EC Art. 1 and Annex

(6) in the case of the Republic of Estonia: «aktsiaselts»;

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↓ 2002/83/EC

(7) in the case of Ireland: «incorporated companies limited by shares or by guarantee or unlimited», «societies registered under the Industrial and Provident Societies Acts» and «societies registered under the Friendly Societies Acts»;

(8) in the case of the Hellenic Republic: «ανώνυμη εταιρία»;

(9) in the case of the Kingdom of Spain: «sociedad anónima», «sociedad mutua», «sociedad cooperativa»;

(10) in the case of the French Republic: «société anonyme», «société d'assurance mutuelle», «institution de prévoyance régie par le code de la sécurité sociale», «institution de prévoyance régie par le code rural» and «mutuelles régies par le code de la mutualité»;

(11) in the case of the Italian Republic: «società per azioni», «società cooperativa», «mutua di assicurazione»;

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↓ 2004/66/EC Art. 1 and Annex  
(adapted)

(12) in the case of the Republic of Cyprus: «Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης με εγγύηση»;

(13) in the case of the Republic of the Latvia: «apdrošināšanas akciju sabiedrība», «savstarpējās apdrošināšanas kooperatīvā biedrība»;

(14) in the case of the Republic of Lithuania: «~~akcinės bendrovės~~», «~~uždarosios~~  
⊗ *uždaroji* ⊗ *akcinės bendrovės*»;

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↓ 2002/83/EC

(15) in the case of the Grand Duchy of Luxembourg: «société anonyme», «société en commandite par actions», «association d'assurances mutuelles», «société coopérative»;

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↓ 2004/66/EC Art. 1 and Annex  
⇒ new

(16) in the case of the Republic of Hungary: «biztosító részvénytársaság», «biztosító szövetkezet», «biztosító egyesület», «külföldi székhelyű biztosító magyarországi fióktelepe»;

(17) in the case of the Republic of Malta: «~~kumpanija pubblika~~», «~~kumpanija privata~~», «~~fergħa~~», «~~Korp ta' l-Assikurazzjoni Rikonnexxut~~» ⇒ «limited liability company/kumpanija b` responsabbilta` limitata» ⇐;

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↓ 2002/83/EC

(18) in the case of the Kingdom of the Netherlands: «naamloze vennootschap», «onderlinge waarborgmaatschappij»;

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↓ 2002/83/EC

(19) in the case of the Republic of Austria: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit»;

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↓ 2004/66/EC Art. 1 and Annex

(20) in the case of the Republic of Poland: «spółka akcyjna», «towarzystwo ubezpieczeń wzajemnych»;

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↓ 2002/83/EC

(21) in the case of the Portuguese Republic: «sociedade anónima», «mútua de seguros»;

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↓ 2006/101/EC Art. 1 and Annex  
pt 3

(22) in the case of Romania: "societăți pe acțiuni", "societăți mutuale";

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↓ 2004/66/EC Art. 1 and Annex

(23) in the case of the Republic of Slovenia: «delniška družba», «družba za vzajemno zavarovanje»;

(24) in the case of the Slovak Republic: «akciová spoločnosť»;

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↓ 2002/83/EC (adapted)

(25) in the case of the Republic of Finland: «keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag», «vakuutusosakeyhtiö/försäkringsaktiebolag», «vakuutusyhdistys/försäkringsförening»;

(26) in the case of Kingdom of Sweden: «försäkringsaktiebolag», «ömsesidiga försäkringsbolag», «understödsföreningar»;

(27) in the case of the United Kingdom: «incorporated companies limited by shares or by guarantee or unlimited», «societies registered under the Industrial and Provident Societies Acts», «societies registered or incorporated under the Friendly Societies Acts», «the association of underwriters known as Lloyd's».

(28) ~~An assurance undertaking may also adopt~~  in any case and as an alternative to the forms listed in points (1) to (27), ~~<~~  the form of a European company ~~when that has been established~~  (SE) as defined in Regulation (EC) No 2157/2001 ~~>~~ .

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↓ 2005/68/EC

#### ANNEX I

##### C. Forms of reinsurance undertakings:

(1) in the case of the Kingdom of Belgium: «société anonyme/naamloze vennootschap», «société en commandite par actions/commanditaire vennootschap op aandelen», «association d'assurance mutuelle/onderlinge verzekeringsvereniging», «société coopérative/coöperatieve vennootschap»;

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↓ new

(2) in the case of the Republic of Bulgaria "акционерно дружество";

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↓ 2005/68/EC

(3) in the case of the Czech Republic: «akciová společnost»;

(4) in the case of the Kingdom of Denmark: «aktieselskaber», «gensidige selskaber»;

- (5) in the case of the Federal Republic of Germany: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit», «Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen»;
- (6) in the case of the Republic of Estonia: «aktsiaselts»;
- (7) in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;
- (8) in the case of the Hellenic Republic: «ανώνυμη εταιρία», «αλληλασφαλιστικός συνεταιρισμός»;
- (9) in the case of the Kingdom of Spain: «sociedad anónima»;
- (10) in the case of the French Republic: «société anonyme», «société d'assurance mutuelle», «institution de prévoyance régie par le code de la sécurité sociale», «institution de prévoyance régie par le code rural» and «mutuelles régies par le code de la mutualité»;
- (11) in the case of the Italian Republic: «società per azioni»;
- (12) in the case of the Republic of Cyprus: «Εταιρεία Περιορισμένης Ευθύνης με μετοχές» ή «Εταιρεία Περιορισμένης Ευθύνης με εγγύηση»;
- (13) in the case of the Republic of Latvia: «akciju sabiedrība», «sabiedrība ar ierobežotu atbildību»;
- (14) in the case of the Republic of Lithuania: «akcinė bendrovė», «uždaroji akcinė bendrovė»;
- (15) in the case of the Grand Duchy of Luxembourg: «société anonyme», «société en commandite par actions», «association d'assurances mutuelles», «société coopérative»;
- (16) in the case of the Republic of Hungary: «biztosító részvénytársaság», «biztosító szövetkezet», «harmadik országbeli biztosító magyarországi fióktelepe»;
- (17) in the case of the Republic of Malta: «limited liability company/kumpannija ta' responsabbiltà limitata»;
- (18) in the case of the Kingdom of the Netherlands: «naamloze vennootschap», «onderlinge waarborgmaatschappij»;
- (19) in the case of the Republic of Austria: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit»;
- (20) in the case of the Republic of Poland: «spółka akcyjna», «towarzystwo ubezpieczeń wzajemnych»;
- (21) in the case of the Portuguese Republic: «sociedade anónima», «mútua de seguros»;

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↓ new

(22) in the case of Romania «societate pe actiuni»;

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↓ 2005/68/EC (adapted)

(23) in the case of the Republic of Slovenia: «delniška družba»;

- (24) in the case of the Slovak Republic: «akciová spoločnosť»;
- (25) in the case of the Republic of Finland: «keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag», «vakuutusosakeyhtiö/försäkringsaktiebolag», «vakuutusyhdistys/försäkringsförening»;
- (26) in the case of the Kingdom of Sweden: «försäkringsaktiebolag», «ömsesidigt försäkringsbolag»;
- (27) in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered or incorporated under the Friendly Societies Acts, «the association of underwriters known as Lloyd's».
- (28) in any case and as an alternative to the forms listed in points (1) to (27), the form of a European Company (SE) as defined in Regulation (EC) No 2157/2001.

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~~SPECIAL REGISTER REFERRED TO IN ARTICLE 10(3)~~

- ~~1. Every insurance undertaking must keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the home Member State's rules.~~
- ~~2. Where an insurance undertaking transacts both non-life and life business, it must keep at its head office separate registers for each type of business. However, where a Member State authorises insurance undertakings to cover life and the risks listed in points 1 and 2 of Annex A to Directive 73/239/EEC, it may provide that those insurance undertakings must keep a single register for the whole of their activities.~~
- ~~3. The total value of the assets entered, valued in accordance with the rules applicable in the home Member State, must at no time be less than the value of the technical provisions.~~
- ~~4. Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact is recorded in the register and the amount not available is not included in the total value referred to in point 3.~~
- ~~5. Where an asset employed to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions of point 4, or where such an asset is subject to a reservation of title in favour of a creditor or of a third party or where a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking, the treatment of such asset in case of the winding-up of the insurance undertaking with respect to the method provided for in Article 10(1)(a) shall be determined by the legislation of the home Member State except where Articles 20, 21 or 22 apply to that asset.~~
- ~~6. The composition of the assets entered in the register in accordance with points 1 to 5, at the time when winding-up proceedings are opened, must not thereafter be changed and no alteration other than the correction of purely clerical errors must be made in the registers, except with the authorisation of the competent authority.~~
- ~~7. Notwithstanding point 6, the liquidators must add to the said assets the yield therefrom and the value of the pure premiums received in respect of the class of business concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.~~
- ~~8. If the product of the realisation of assets is less than their estimated value in the registers, the liquidators must be required to justify this to the home Member States' competent authorities.~~
- ~~9. The supervisory authorities of the Member States must take appropriate measures to ensure full application by the insurance undertakings of the provisions of this Annex.~~

**ANNEX I**

**CALCULATION OF THE ADJUSTED SOLVENCY OF INSURANCE UNDERTAKINGS  
AND REINSURANCE UNDERTAKINGS WITH RESPECT TO TITLE IV**

**1. CHOICE OF CALCULATION METHOD AND GENERAL PRINCIPLES**

~~A. Member States shall provide that the calculation of the adjusted solvency of insurance undertakings and reinsurance undertakings referred to in Article 2(1) shall be carried out according to one of the methods described in point 3. A Member State may, however, provide for the competent authorities to authorise or impose the application of a method set out in point 3 other than that chosen by the Member State.~~

~~*B. Proportionality*~~

~~The calculation of the adjusted solvency of an insurance undertaking or a reinsurance undertaking shall take account of the proportional share held by the participating undertaking in its related undertakings.~~

~~«Proportional share» means either, where method 1 or method 2 described in point 3 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking or, where method 3 described in point 3 is used, the percentages used for the establishment of the consolidated accounts.~~

~~However, whichever method is used, when the related undertaking is a subsidiary undertaking and has a solvency deficit, the total solvency deficit of the subsidiary has to be taken into account.~~

~~However, where, in the opinion of the competent authorities, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, such competent authorities may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.~~

~~Where there are no capital ties between some of the undertakings in an insurance group or a reinsurance group, the competent authority shall determine which proportional share will have to be taken account of.~~

~~*C. Elimination of double use of solvency margin elements*~~

~~*C.1. General treatment of solvency margin elements*~~

~~Regardless of the method used for the calculation of the adjusted solvency of an insurance undertaking or a reinsurance undertaking, the double use of elements eligible for the solvency margin among the different insurance undertakings or reinsurance undertakings taken into account in that calculation must be eliminated.~~

~~For that purpose, when calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking and where the methods described in point 3 do not provide for it, the following amounts shall be eliminated:~~



~~the value of any asset of that insurance undertaking or reinsurance undertaking which represents the financing of elements eligible for the solvency margin of one of its related insurance undertakings or related reinsurance undertakings,~~

~~the value of any asset of a related insurance undertaking or a related reinsurance undertaking of that insurance undertaking or reinsurance undertaking which represents the financing of elements eligible for the solvency margin of that insurance undertaking or reinsurance undertaking,~~

~~the value of any asset of a related insurance undertaking or related reinsurance undertaking of that insurance undertaking or reinsurance undertaking which represents the financing of elements eligible for the solvency margin of any other related insurance undertaking or related reinsurance undertaking of that insurance undertaking or reinsurance undertaking.~~

### ~~C.2. Treatment of certain elements~~

~~Without prejudice to the provisions of Section C.1:~~

~~profit reserves and future profits arising in a related life assurance undertaking or a related life reinsurance undertaking of the insurance undertaking or reinsurance undertaking for which the adjusted solvency is calculated, and~~

~~any subscribed but not paid-up capital of a related insurance undertaking or a related reinsurance undertaking of the insurance undertaking or of reinsurance undertaking for which the adjusted solvency is calculated,~~

~~may only be included in the calculation in so far as they are eligible for covering the solvency margin requirement of that related undertaking. However, any subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking shall be entirely excluded from the calculation.~~

~~Any subscribed but not paid-up capital of the participating insurance undertaking or the participating reinsurance undertaking which represents a potential obligation on the part of a related insurance undertaking or of a related reinsurance undertaking shall also be excluded from the calculation.~~

~~Any subscribed but not paid-up capital of a related insurance undertaking or a reinsurance undertaking which represents a potential obligation on the part of another related insurance undertaking or reinsurance undertaking of the same participating insurance undertaking or reinsurance undertaking shall be excluded from the calculation.~~

### ~~C.3. Transferability~~

~~If the competent authorities consider that certain elements eligible for the solvency margin of a related insurance undertaking or a related reinsurance undertaking other than those referred to in Section C.2 cannot effectively be made available to cover the solvency margin requirement of the participating insurance undertaking or the participating reinsurance undertaking for which the adjusted solvency is calculated, those elements may be included in the~~

~~calculation only in so far as they are eligible for covering the solvency margin requirement of the related undertaking.~~

~~C.4. The sum of the elements referred to in Sections C.2 and C.3 may not exceed the solvency margin requirement of the related insurance undertaking or the related reinsurance undertaking.~~

#### ~~D. Elimination of the intra-group creation of capital~~

~~When calculating adjusted solvency, no account shall be taken of any element eligible for the solvency margin arising out of reciprocal financing between the insurance undertaking or the reinsurance undertaking and:~~

~~a related undertaking,~~

~~a participating undertaking,~~

~~another related undertaking of any of its participating undertakings.~~

~~Furthermore, no account shall be taken of any element eligible for the solvency margin of a related insurance undertaking or a related reinsurance undertaking of the insurance undertaking or reinsurance undertaking for which the adjusted solvency is calculated when the element in question arises out of reciprocal financing with any other related undertaking of that insurance undertaking or reinsurance undertaking.~~

~~In particular, reciprocal financing exists when an insurance undertaking or a reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds an element eligible for the solvency margin of the first undertakings.~~

~~E. The competent authorities shall ensure that the adjusted solvency is calculated with the same frequency as that laid down by Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC for calculating the solvency margin of insurance undertakings or reinsurance undertakings. The value of the assets and liabilities shall be assessed in accordance with the relevant provisions of Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC.~~

## ~~2. APPLICATION OF THE CALCULATION METHODS~~

### ~~2.1. Related insurance undertakings and related reinsurance undertakings.~~

~~The adjusted solvency calculation shall be carried out in accordance with the general principles and methods set out in this Annex.~~

~~In the case of all methods, where the insurance undertaking or reinsurance undertaking has more than one related insurance undertaking or related reinsurance undertaking the adjusted solvency calculation shall be carried out by integrating each of these related insurance undertakings or related reinsurance undertakings.~~

~~In cases of successive participations (for example, where an insurance undertaking or a reinsurance undertaking is a participating undertaking in another insurance undertaking or reinsurance undertaking which is also a participating undertaking in an insurance undertaking or a reinsurance undertaking), the adjusted solvency calculation shall be carried out at the level of each participating insurance undertaking or reinsurance undertaking which has at least one related insurance undertaking or one related reinsurance undertaking.~~

~~Member States may waive calculation of the adjusted solvency of an insurance undertaking or a reinsurance undertaking:~~

~~if the insurance undertaking or reinsurance undertaking is a related undertaking of another insurance undertaking or a reinsurance undertaking authorised in the same Member State, and that related undertaking is taken into account in the calculation of the adjusted solvency of the participating insurance undertaking or reinsurance undertaking, or~~

~~if the insurance undertaking or the reinsurance undertaking is a related undertaking of an insurance holding company which has its registered office in the same Member State as the insurance undertaking or the reinsurance undertaking, and both the holding insurance company and the related insurance undertaking or the related reinsurance undertaking are taken into account in the calculation carried out.~~

~~Member States may also waive calculation of the adjusted solvency of an insurance undertaking or reinsurance undertaking if it is a related insurance undertaking or a related reinsurance undertaking of another insurance undertaking, a reinsurance undertaking or an insurance holding company which has its registered office in another Member State, and if the competent authorities of the Member States concerned have agreed to grant exercise of the supplementary supervision to the competent authority of the latter Member State.~~

~~In each case, the waiver may be granted only if the competent authorities are satisfied that the elements eligible for the solvency margins of the insurance undertakings or the reinsurance undertakings included in the calculation are adequately distributed between those undertakings.~~

~~Member States may provide that where the related insurance undertaking or the related reinsurance undertaking has its registered office in a Member State other than that of the insurance undertaking or the reinsurance undertaking for which the adjusted solvency calculation is carried out, the calculation shall take account, in respect of the related undertaking, of the solvency situation as assessed by the competent authorities of that other Member State.~~

## ~~2.2. Intermediate insurance holding companies~~

~~When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a non-member country insurance undertaking or a non-member country reinsurance undertaking, through an insurance holding company, the situation of the intermediate insurance holding company is taken into account. For the sole purpose of that calculation, to be undertaken in accordance with the general principles and methods described in this Annex, this insurance holding company shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to a zero solvency requirement and were subject to the same conditions as are laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC or in Article 36 of Directive 2005/68/EC, in respect of elements eligible for the solvency margin.~~

## ~~2.3. Related non-member country insurance undertakings and related non-member country reinsurance undertakings~~

~~When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which is a participating undertaking in a non-member country insurance undertaking or in a non-member country reinsurance undertaking, the latter shall be treated solely for the purposes of the calculation, by analogy with a related insurance undertaking or a related reinsurance undertaking, by applying the general principles and methods described in this Annex.~~

~~However, where the non-member country in which that undertaking has its registered office makes it subject to authorisation and imposes on it a solvency requirement at least comparable to that laid down in Directives 73/239/EEC, 2002/83/EC or 2005/68/EC, taking into account the elements of cover of that requirement, Member States may provide that the calculation shall take into account, as regards that undertaking, the solvency requirement and the elements eligible to satisfy that requirement as laid down by the non-member country in question.~~

#### ~~2.4. Related credit institutions, investment firms and financial institutions~~

~~When calculating the adjusted solvency of an insurance undertaking or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the rules laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC and in Article 36 of Directive 2005/68/EC, on the deduction of such participations shall apply *mutatis mutandis*, as well as the provisions on the ability of Member States under certain conditions to allow alternative methods and to allow such participations not to be deducted.~~

#### ~~2.5. Non-availability of the necessary information~~

~~Where information necessary for calculating the adjusted solvency of an insurance undertaking or reinsurance undertaking, concerning a related undertaking with its registered office in a Member State or a non-member country, is not available to the competent authorities, for whatever reason, the book value of that undertaking in the participating insurance undertaking or reinsurance undertaking shall be deducted from the elements eligible for the adjusted solvency margin. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the adjusted solvency margin.~~

### **3. CALCULATION METHODS**

#### *Method 1: Deduction and aggregation method*

~~The adjusted solvency situation of the participating insurance undertaking or the participating reinsurance undertaking is the difference between:~~

~~(i) the sum of:~~

~~(a) the elements eligible for the solvency margin of the participating insurance undertaking or the participating reinsurance undertaking, and~~

~~(b) the proportional share of the participating insurance undertaking or the participating reinsurance undertaking in the elements eligible for the solvency margin of the related insurance undertaking or the related reinsurance undertaking,~~

~~and~~

~~(ii) the sum of:~~

~~(a) the book value in the participating insurance undertaking or the participating reinsurance undertaking of the related insurance undertaking or the related reinsurance undertaking, and~~

~~(b) the solvency requirement of the participating insurance undertaking or the participating reinsurance undertaking, and~~

~~(c) the proportional share of the solvency requirement of the related insurance undertaking or the related reinsurance undertaking.~~

~~Where the participation in the related insurance undertaking or the related reinsurance undertaking consists, wholly or in part, of an indirect ownership, then item (ii)(a) shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and items (i)(b) and (ii)(c) shall include the corresponding proportional shares of the elements eligible for the solvency margin of the related insurance undertaking or the related reinsurance undertaking.~~

#### ~~Method 2: Requirement deduction method~~

~~The adjusted solvency of the participating insurance undertaking or the participating reinsurance undertaking is the difference between:~~

~~(i) the sum of the elements eligible for the solvency margin of the participating insurance undertaking or the participating reinsurance undertaking,~~

~~and~~

~~(ii) the sum of:~~

~~(a) the solvency requirement of the participating insurance undertaking or the participating reinsurance undertaking, and~~

~~(b) the proportional share of the solvency requirement of the related insurance undertaking or the related reinsurance undertaking.~~

~~When valuing the elements eligible for the solvency margin, participations within the meaning of this Directive are valued by the equity method, in accordance with the option set out in Article 59(2)(b) of Directive 78/660/EEC.~~

#### ~~Method 3: Accounting consolidation-based method~~

~~The calculation of the adjusted solvency of the participating insurance undertaking or the participating reinsurance undertaking shall be carried out on the basis of the consolidated accounts. The adjusted solvency of the participating insurance undertaking or the participating reinsurance undertaking is the difference between the elements eligible for the solvency margin calculated on the basis of consolidated data, and:~~

~~(a) either the sum of the solvency requirement of the participating insurance undertaking or the participating reinsurance undertaking and of the proportional shares of the solvency requirements of the related insurance undertakings or the related reinsurance undertaking, based on the percentages used for the establishment of the consolidated accounts,~~

~~(b) or the solvency requirement calculated on the basis of consolidated data.~~

~~The provisions of Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC shall apply for the calculation of the elements eligible for the solvency margin and of the solvency requirement based on consolidated data.~~

## ANNEX II

### SUPPLEMENTARY SUPERVISION FOR INSURANCE UNDERTAKINGS AND REINSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY, A NON-MEMBER COUNTRY INSURANCE UNDERTAKING OR A NON-MEMBER COUNTRY REINSURANCE UNDERTAKING

~~1. In the case of two or more insurance undertakings or reinsurance undertakings referred to in Article 2(2) which are the subsidiaries of an insurance holding company, a non-member country insurance undertaking or a non-member country reinsurance undertaking and which are established in different Member States, the competent authorities shall ensure that the method described in this Annex is applied in a consistent manner.~~

~~The competent authorities shall exercise the supplementary supervision with the same frequency as that laid down by Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC for calculating the solvency margin of insurance undertakings and reinsurance undertakings.~~

~~2. Member States may waive the calculation provided for in this Annex with regard to an insurance undertaking or a reinsurance undertaking:~~

~~if that insurance undertaking or reinsurance undertaking is a related undertaking of another insurance undertaking or reinsurance undertaking and if it is taken into account in the calculation provided for in this Annex carried out for that other undertaking;~~

~~if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in the same Member State have as their parent undertaking the same insurance holding company, non-member country insurance undertaking, or non-member country reinsurance undertaking, and the insurance undertaking or reinsurance undertaking is taken into account in the calculation provided for in this Annex carried out for one of these other undertakings;~~

~~if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in other Member States have as their parent undertaking the same insurance holding company, non-member country insurance undertaking or non-member country reinsurance undertaking, and an agreement granting exercise of the supplementary supervision covered by this Annex to the supervisory authority of another Member State has been concluded in accordance with Article 4(2).~~

~~In the case of successive participations (for example: an insurance holding company or a non-member country insurance or reinsurance undertaking, which is itself owned by another insurance holding company or a non-member country insurance or reinsurance undertaking), Member States may apply the calculations provided for in this Annex only at the level of the ultimate parent undertaking of the insurance undertaking or reinsurance undertaking which is an insurance holding company, a non-member country insurance undertaking or a non-member country reinsurance undertaking.~~

~~3. The competent authorities shall ensure that calculations analogous to those described in Annex I are carried out at the level of the insurance holding company, non-member country insurance undertaking or non-member country reinsurance undertaking.~~

~~The analogy shall consist in applying the general principles and methods described in Annex I at the level of the insurance holding company, non-member country insurance undertaking or non-member country reinsurance undertaking.~~

~~For the sole purpose of that calculation, the parent undertaking shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to:~~

~~— a zero solvency requirement where it is an insurance holding company,~~

~~— a solvency requirement determined in accordance with the principles of Section 2.3 of Annex I, where it is a non-member country insurance undertaking or a non-member country reinsurance undertaking,~~

~~and is subject to the same conditions as laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC and in Article 36 of Directive 2005/68/EC as regards the elements eligible for the solvency margin.~~

#### ~~4. Non-availability of the necessary information~~

~~Where information necessary for the calculation provided for in this Annex, concerning a related undertaking with its registered office in a Member State or a non-member country, is not available to the competent authorities, for whatever reason, the book value of that undertaking in the participating undertaking shall be deducted from the elements eligible for the calculation provided for in this Annex. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the calculation.~~

**ANNEX IV**

**SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA**

1. Calculation of the Basic Solvency Capital Requirement

The Basic Solvency Capital Requirement set out in Article 104(1) shall be equal to the following:

$$Basic\ SCR = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where  $SCR_i$  denotes the risk module  $i$  and  $SCR_j$  denotes the risk module  $j$ , and where " $i,j$ " means that the sum of the different terms should cover all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  are replaced by the following:

- $SCR_{non-life}$  denotes the non-life underwriting risk module;
- $SCR_{life}$  denotes the life underwriting risk module;
- $SCR_{special\ health}$  denotes the special health underwriting risk module;
- $SCR_{market}$  denotes the market risk module;
- $SCR_{default}$  denotes the counterparty default risk module.



The factor  $Corr_{i,j}$  denotes the item set out in row  $i$  and in column  $j$  of the following correlation matrix:

$i \backslash j$	Market	Default	Life	Special health	Non-life
Market	1	0.25	0.25	0.25	0.25
Default	0.25	1	0.25	0.25	0.5
Life	0.25	0.25	1	0.25	0
Special health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

## 2. Calculation of the non-life underwriting risk module

The non-life underwriting risk module set out in Article 105(2) shall be equal to the following:

$$SCR_{non-life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where  $SCR_i$  denotes the sub-module  $i$  and  $SCR_j$  denotes the sub-module  $j$ , and where " $i,j$ " means that the sum of the different terms should cover all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  are replaced by the following:

- $SCR_{nl\ premium\ and\ reserve}$  denotes the non-life premium and reserve risk sub-module;
- $SCR_{nl\ catastrophe}$  denotes the non-life catastrophe risk sub-module.

## 3. Calculation of the life underwriting risk module

The life underwriting risk module set out in Article 105(3) shall be equal to the following:

$$SCR_{life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where  $SCR_i$  denotes the sub-module  $i$  and  $SCR_j$  denotes the sub-module  $j$ , and where " $i,j$ " means that the sum of the different terms should cover all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  are replaced by the following:

- $SCR_{mortality}$  denotes the mortality risk sub-module;
- $SCR_{longevity}$  denotes the longevity risk sub-module;
- $SCR_{disability}$  denotes the disability - morbidity risk sub-module;
- $SCR_{life\ expense}$  denotes the life expense risk sub-module;
- $SCR_{revision}$  denotes the revision risk sub-module;
- $SCR_{lapse}$  denotes the lapse risk sub-module;

–  $SCR_{life\ catastrophe}$  denotes the life catastrophe risk sub-module.

#### 4. Calculation of the special health underwriting risk module

The special health underwriting risk module set out in Article 105(4) shall be equal to the following:

$$SCR_{special\ health} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where  $SCR_i$  denotes the sub-module  $i$  and  $SCR_j$  denotes the sub-module  $j$ , and where " $i,j$ " means that the sum of the different terms should cover all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  are replaced by the following:

–  $SCR_{health\ premium\ and\ reserve}$  denotes the health premium and reserve risk sub-module;

–  $SCR_{health\ expense}$  denotes the health expense risk sub-module;

–  $SCR_{health\ epidemic}$  denotes the health epidemic risk sub-module.

#### 5. Calculation of the market risk module

The market risk module, set out in Article 105(5) shall be equal to the following:

$$SCR_{market} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where  $SCR_i$  denotes the sub-module  $i$  and  $SCR_j$  denotes the sub-module  $j$ , and where " $i,j$ " means that the sum of the different terms should cover all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  are replaced by the following:

–  $SCR_{interest\ rate}$  denotes the interest rate risk sub-module;

–  $SCR_{equity}$  denotes the equity risk sub-module;

–  $SCR_{property}$  denotes the property risk sub-module;

–  $SCR_{spread}$  denotes the spread risk sub-module;

–  $SCR_{concentration}$  denotes the market risk concentrations sub-module;

–  $SCR_{currency}$  denotes the currency risk sub-module.

**ANNEX V**

**⊗ GROUPS OF NON-LIFE INSURANCE CLASSES FOR THE PURPOSES OF ARTICLE 157 ⊗**

~~The groups of classes are hereby defined as follows:~~

1. Accident and sickness (classes 1 and 2 of Annex I),
2. motor (classes 3, 7 and 10 of Annex I, the figures for class 10, excluding carriers' liability, being given separately),
3. fire and other damage to property (classes 8 and 9 of Annex I),
4. aviation, marine and transport (classes 4, 5, 6, 7, 11 and 12 of Annex I),
5. general liability (class 13 of Annex I),
6. credit and suretyship (classes 14 and 15 of Annex I),
7. other classes (classes 16, 17 and 18 of Annex I).



## ANNEX VI

### Part A

#### Repealed Directives with list of their successive amendments (referred to in Article 312)

Council Directive 64/225/EEC

(OJ 56, 4.4.1964, p. 878)

Annex I, Point III(G)(1) of the 1973 Act of  
Accession

(OJ L 236, 23.9.2003, p. 342)

First Council Directive 73/239/EEC

(OJ L 228, 16.8.1973, p. 3)

Council Directive 76/580/EEC

(OJ L 189, 13.7.1976, p. 13)

only Article 1

Council Directive 84/641/EEC

(OJ L 339, 27.12.1984, p. 21)

only Articles 1 to 14

Council Directive 87/343/EEC

(OJ L 185, 4.7.1987, p. 72)

Council Directive 87/344/EEC

(OJ L 185, 4.7.1987, p. 77)

only Article 9

Second Council Directive 88/357/EEC

(OJ L 172, 4.7.1988, p. 1)

only Articles 9, 10 and 11

Council Directive 90/618/EEC

(OJ L 330, 29.11.1990, p. 44)

only Articles 2, 3 and 4

Council Directive 92/49/EEC

(OJ L 228, 11.8.1992, p. 1)

only Articles 4, 5, 6, 7, 9,  
10, 11, 13, 14, 17, 18, 24,  
32, 33 and 53

European Parliament and Council Directive  
95/26/EEC

(OJ L 168, 18.7.1995, p. 7)

only Article 2(2), third  
indent, and Article 3(1)

Directive 2000/26/EC of the European Parliament  
and of the Council

only Article 8

(OJ L 181, 20.7.2000, p. 65)

Directive 2002/13/EC of the European Parliament  
and of the Council

(OJ L 77, 20.3.2002, p. 17)

Directive 2002/87/EC of the European Parliament  
and of the Council only Article 22

(OJ L 35, 11.2.2003, p. 1)

Directive 2005/1/EC of the European Parliament and  
of the Council only Article 4

(OJ L 79, 24.3.2005, p. 9)

Directive 2005/68/EC of the European Parliament  
and of the Council only Article 57

(OJ L 323, 9.12.2005, p. 1)

Directive 2006/101/EC of the European Parliament  
and of the Council only Point I of the Annex

(OJ L 363, 20.12.2006, p. 238)

Council Directive 73/240/EEC

(OJ L 228, 16.8.1973, p. 20)

Council Directive 76/580/EEC

(OJ L 189, 13.7.1976, p. 13)

Council Directive 78/473/EEC

(OJ L 151, 7.6.1978, p. 25)

Council Directive 84/641/EEC

(OJ L 339, 27.12.1984, p. 21)

Council Directive 87/344/EEC

(OJ L 185, 4.7.1987, p. 77)

Second Council Directive 88/357/EEC

(OJ L 172, 4.7.1988, p. 1)

Council Directive 90/618/EEC only Articles 5 to 10

(OJ L 330, 29.11.1990, p. 44)

Council Directive 92/49/EEC only Articles 12(1), 19, 23,  
(OJ L 228, 11.8.1992, p. 1) 27, 30, 34, 35, 36, 37, 39,  
40, 42, 43, 44, 45 and 46

Directive 2000/26/EC of the European Parliament and of the Council only Article 9  
(OJ L 181, 20.7.2000, p. 65)

Directive 2005/14/EC of the European Parliament and of the Council only Article 3  
(OJ L 149, 11.6.2005, p. 14)

Council Directive 92/49/EEC  
(OJ L 228, 11.8.1992, p. 1)

European Parliament and Council Directive 95/26/EEC only Article 2(1), first indent, Article 4(1), (3) and (5), and Article 5, second indent  
(OJ L 168, 18.7.1995, p. 7)

Directive 2000/64/EC of the European Parliament and of the Council only Article 2  
(OJ L 290, 17.11.2000, p. 27)

Directive 2002/87/EC of the European Parliament and of the Council only Article 24  
(OJ L 35, 11.2.2003, p. 1)

Directive 2005/1/EC of the European Parliament and of the Council only Article 6  
(OJ L 79, 24.3.2005, p. 9)

Directive 2005/68/EC of the European Parliament and the Council only Article 58  
(OJ L 323, 9.12.2005, p. 1)

Directive 2007/44/EC of the European Parliament and of the Council only Article 1  
(OJ L 247, 21.9.2007, p. 1))

Directive 98/78/EC of the European Parliament and of the Council  
(OJ L 330, 5.12.1998, p. 1)

Directive 2002/87/EC of the European Parliament and of the Council only Article 28  
(OJ L 35, 11.2.2003, p. 1)

Directive 2005/1/EC of the European Parliament and of the Council only Article 7

(OJ L 79, 24.3.2005, p. 9)

Directive 2005/68/EC of the European Parliament and of the Council only Article 59

(OJ L 323, 9.12.2005, p. 1)

Directive 2001/17/EC of the European Parliament and of the Council

(OJ L 110, 20.4.2001, p. 28)

Directive 2002/83/EC of the European Parliament and of the Council

(OJ L 345, 19.12.2002, p. 1)

Council Directive 2004/66/EC only Point II of the Annex

(OJ L 168, 1.5.2004, p. 35)

Directive 2005/1/EC of the European Parliament and of the Council only Article 8

(OJ L 79, 24.3.2005, p. 9)

Directive 2005/68/EC of the European Parliament and of the Council only Article 60

(OJ L 323, 9.12.2005, p. 1)

Directive 2006/101/EC of the European Parliament and of the Council only Point III of the Annex

(OJ L 363, 20.12.2006, p. 238)

Directive 2007/44/EC of the European Parliament and the Council only Article 2

(OJ L 247, 21.9.2007, p. 1)

Directive 2005/68/EC of the European Parliament and of the Council

(OJ L 323, 9.12.2005, p. 1)

Directive 2007/44/EC of the European Parliament and the Council only Article 4

(OJ L 247, 21.9.2007, p. 1)

Directive 2007/44/EC of the European Parliament and the Council

(OJ L 247, 21.9.2007, p. 1)

## Part B

### List of time-limits for transposition into national law (referred to in Article 312)

Directive	Time-limit for transposition	Time-limit for application
64/225/EEC	17 November 2002	
73/239/EEC	31 January 1975	
73/240/EEC	31 December 1976	
76/580/EEC	31 December 1976	
78/473/EEC	3 December 1979	3 June 1980
84/641/EEC	30 June 1987	1 January 1988
87/343/EEC	1 January 1990	1 July 1990
87/344/EEC	1 January 1990	1 July 1990
88/357/EEC	30 December 1989	30 June 1990
90/618/EEC	20 May 1992	20 November 1992
92/49/EEC	31 December 1993	1 July 1994
95/26/EEC	18 July 1996	18 July 1996
98/78/EC	5 June 2000	
2000/26/EC	17 November 2002	17 November 2002
2000/64/EC	17 November 2002	17 November 2002
2001/17/EC	20 April 2003	
2002/13/EC	20 September 2003	
2002/83/EC	20 September 2003	
2004/66/EC	1 May 2004	
2002/87/EC	10 August 2004	
2005/1/EC	13 May 2005	



2005/14/EC	11 May 2005	
2005/68/EC	10 December 2007	
2006/101/EC	1 January 2007	
2007/44/EC	21 March 2009	



**ANNEX VII**  
**CORRELATION TABLE**

Directive 73/239/EEC	Directive 78/473/EEC	Directive 87/344/EEC	Directive 88/357/EEC	Directive 92/49/EEC	Directive 98/78/EEC	Directive 2001/17/EC	Directive 2002/83/EC	Directive 2005/68/EC	Directive 2007/44/EC	This Directive
Article 1 (1)				Article 2		Article 1(1)	Article 2 1 <sup>st</sup> sentence	Article 1(1)		Articles 1 and 2(2), 269
Article 1(2)										Article 2(2)
Article 1(3)										---
Article 2(1),(a) to (c)										---
Article 2(1)(d)							Article 3(4)			Article 3
Article 2(1)(e)										---
Article 2(2)(a)										Article 5(1)
Article 2(2)(b)										Article 5(2)
Article 2(2)(c)										Article 5(3)
Article 2(2)(d)										Article 5(4)
Article 2(3), subparagraphs 1-4										Article 6

Article 2(3), subparagraph 5										Article 15 (4)
Article 3 (1), subparagraphs 1 and 2										---
Article 3 (1), subparagraph 3										Article 14(3)
Article 3(2)										Article 7
Article 4, 1 <sup>st</sup> sentence										Article 8, 1 <sup>st</sup> sentence
Article 4 (a)										Article 8 (2)
Article 4 (b)										---
Article 4 (c)										Article 8 (3)
Article 4 (d)										Article 8 (5)
Article 4 (e)										---
Article 4 (f)										Article 8 (1)
Article 4 (g)										Article 8 (4)
Article 5 (a)										---
Article 5(b)							Article 1(1)(o)			---
Article 5(c)							Article 1(1)(p)			Article 132 (1), subparagraph 3

Article 5(d)										---
Article 6				Article 4			Article 4	Article 3		Article 14 (1), (2) (a) and (b)
Article 7(1) and (2), subparagraph 1				Article 5 (1) and (2), subparagraph 1			Article 5(1) and (2), subparagraph 1			-Article 15 (1) and (2), subparagraph 1
Article 7(2), subparagraph 2 (a)				Article 5 (2), subparagraph 2 (a)						-Article 15(3), subparagraph 1
Article 7(2), subparagraph 2 (b)				Article 5(2) subparagraph 2 (b)						---
Article 8(1) (a)				Article 6 (1) (a)			Article 6(1)(a)	Annex I		Annex IIIA and B
Article 8(1) (a), last paragraph										Article 17 (2)
Article 8(1) (b)				Article 6 (1) (b)			Article 6(1)(b)	Article 6(a)		Article 18(1)(a)
Article 8(1)(c)				Article 6 (1) (c)			Article 6(1)(c)	Article 6(b)		Article 18(1)(c)
Article 8(1)(d)				Article 6 (1) (d)			Article 6(1)(d)	Article 6(c)		Article 18(1)(d)
Article 8(1)(e)				Article 6 (1) (e)			Article 6(1)(e)	Article 6(d)		Article 18(g)
Article 8(1)(f)										Article 18(h)

Article 8(1), subparagraphs 2-4							Article 6(2)	Article 7		Article 19
Article 8(1a)							Article 6(3)	Article 8		Article 20
Article 8(2)				Article 6 (2)			Article 6(4)			Article 18(2)
Article 8(3), subparagraph 1				Article 6 (3), subparagraph 1			Article 6 (5), subparagraph 3	Article 9(1)		Article 21(4)
Article 8(3), subparagraph 2				Article 6 (3) subparagraph 2 and Article 29 subparagraph 1, 1 <sup>st</sup> sentence			Article 6 (5), subparagraph 1	Article 9(2)		Articles 21(1) subparagraph 1
Article 8(3), subparagraph 3				Article 6 (3) subparagraph 3 and Article 29 subparagraph 2						Article 21(2)
Article 8(3), subparagraph 4				Article 6 (3) subparagraph 4						Article 21(3)
Article 8(4)				Article 6 (4)			Article 6(6)	Article 10		Article 22
Article 9 (a)-(d)				Article 7 (a) – (d)			Article 7 (a)-(d)	Article 11(1) (a), (c), (d) and (e)		Article 23 (1) (a), (c), (d) and (e)
Article 9(e) and (f)				Article 7 (e) and (f)				Article 11(2)(a) and (b)		Article 23 (2) (e)

Article 9(g) and (h)				Article 7 (g) and (h)			Article 7(f) and (g)	Article 11(2)(c) and (d)		Article 23 (2) (a) and (d)
Article 10(1)				Article 32 (1)			Article 40(1)			Article 143 (1), subparagraph 1
Article 10(2), subparagraph 1				Article 32 (2) 1 <sup>st</sup> subparagraph			Article 40(2)			Article 143 (2)
Article 10(2), subparagraph 2				Article 32 (2) 2 <sup>nd</sup> subparagraph						Article 143 (3)
Article 10(3)				Article 32 (3)			Article 40(3)			Article 144 (1) and (2)
Article 10(4)				Article 32 (4)			Article 40(4)			Article 144(3), subparagraph 1
Article 10(5)				Article 32 (5)			Article 40(5)			Article 144(3), subparagraph 2
Article 10(6)				Article 32 (6)			Article 40(6)			Article 143 (4)-
Article 11				Article 33						---
Article 12				Article 56			Article 9	Article 13		Article 25
Article 12a							Article 9a	Articles 14 and 60 (2)		Article 26
Article 13(1) and (2), subparagraph 1				Article 9 (1) and (2) ,1 <sup>st</sup> subparagraph			Article 10(1) and (2), subparagraph 1	Article 15(1) and (2)		Article 29(1), (2), subparagraph 1 and (3)
Article 13(2), subparagraph				Article 9 (2) 2 <sup>nd</sup>						Article 29 (2), subparagraph 2

2				subparagraph						
Article 13(2), subparagraph 3							Article 10(2) subparagraph 2	Article 60 (3)		Article 31 (1)
Article 13(3)				Article 9 (3)			Article 10(3)	Article 15(4)		---
Article 14				Article 10			Article 11	Article 16		Article 32
Article 15(1), (2) and (3), subparagraph 2				Article 17			Article 20(1)-(3) and (4) subparagraph 2	Article 32(1)and (3)		Articles 75 to 85
Article 15(3), subparagraph 1							Article 20(4), subparagraph 1	Article 32(2)		Articles 132(2) and 171
Article 15a				Article 18				Article 33		---
Article 16							Articles 27	Articles 35, 36, 60 (8)		Articles 86-99
Article 16a							Article 28	Articles 37-39, 60 (9)		Articles 100-125
Article 17(1);							Article 29(1)	Article 40(1)		Articles 126 and 127(1) points (a) to (c) and (2)
Article 17 (2)							Article 29(2)	Article 40(2)		Article 127 (1) point (d)
Article 17a							Article 30	Article 41		---
Article 17b							Articles 28 and 28(a)	Article 60 (10)		---
Article 18							Article 31			---

Article 19(1)							Article 13(1)	Article 17(1)		Article 33(1)
Article 19(1a)										Article 33(2)
Article 19(2)				Article 11 (2)			Article 13(2)	Article 17(2)		Article 33(3)
Article 19(3), subparagraphs 1 and 2 (a) and (b)			Article 10	Article 11 (3) subparagraphs 1 and 2 (a) and (b)			Article 13(3), subparagraphs 1 and 2 (a) and (b)	Article 17(3) and (4), subparagraph 1 (a) and (b)		Article 34 (1)-(3), (5), (6) and (7)
Article 19(3), subparagraph 2 (c)			Article 10	Article 11 (3) subparagraph 2 (c)			Article 13(3), subparagraph 2 (c)	Article 17(4), subparagraph 1 (c)		Article 34 (8)
Article 19(3), subparagraph 3			Article 10	Article 11 (3) subparagraph 3			Article 13(3), subparagraph 3	Article 17(4) subparagraph 2		Article 35 (2)(b)
Article 20 (1)							Article 37 (1)	Article 42 (1)		Article 135
Article 20 (2), subparagraph 1				Article 13 (2) subparagraph 1			Article 37 (2), subparagraph 1	Article 42 (2), subparagraph 1		---
Article 20(2), subparagraph 2				Article 13 (2) subparagraph 2			Article 37 (2), subparagraph 2	Article 42 (2), subparagraph 2		Article 136(4)
Article 20(3), subparagraph 1				Article 13 (3) subparagraph 1			Article 37 (3), subparagraph 1	Article 42 (3), subparagraph 1		---
Article 20(3), subparagraph 2				Article 13 (3) subparagraph 2			Article 37 (3), subparagraph 2	Article 42 (3), subparagraph 2		Article 137(3)
Article 20(4)				Article 13 (4)						---



Article 20 (5)				Article 13 (5)			Article 37(5)	Article 42 (4)		Article 138
Article 20a(1), subparagraph 1, 1 <sup>st</sup> sentence							Article 38(1), 1 <sup>st</sup> sentence	Article 43(1)		Article 136(2), 137(2)
Article 20a(1), subparagraph 1, 2 <sup>nd</sup> sentence (a)-(d)							Article 38(1), 2 <sup>nd</sup> sentence (a)-(d)	Article 43(2) (a)-(d)		Article 140(1)
Article 20a(1), subparagraph 1, 2 <sup>nd</sup> sentence (e)							Article 38(1), 2 <sup>nd</sup> sentence (e)	Article 43(2) (e)		---
Article 20a(2)							Article 38(2)			---
Article 20a(3)							Article 38(3)	Article 43(4)		Article 140(2)
Article 20a(4)							Article 38(4)	Article 43(5)		---
Article 20a(5)							Article 38(5)	Article 43(6)		Article 140(3)
Article 21			Article 11 (1)							---
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