

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 106 final.

Brussels, 28 February 1983.

Proposal for a
COUNCIL DECISION

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

Proposal for a
COUNCIL DIRECTIVE

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

(submitted to the Council by the Commission)

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Proposal for a Council Decision
on the conclusion of the Agreement
between the Swiss Confederation and
the European Economic Community
concerning direct insurance other
than life assurance

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Whereas it is desirable to conclude the Agreement with Switzerland concerning direct insurance other than life assurance, signed at ...
on ;

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance is hereby approved on behalf of the Community.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council shall take the measures necessary for the exchange of instruments provided for in Article 42 of the Agreement¹.

Done at Brussels,

For the Council,

The President

¹The date of the entry into force of the Agreement will be published in the Official Journal of the European Communities by the General Secretariat of the Council.

AGREEMENT
BETWEEN THE
SWISS CONFEDERATION
AND THE
EUROPEAN ECONOMIC COMMUNITY
ON DIRECT INSURANCE OTHER THAN LIFE
ASSURANCE

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

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P R E A M B L E

THE SWISS CONFEDERATION
of the one part

THE EUROPEAN ECONOMIC COMMUNITY
of the other part

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

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

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

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

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

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

THE SWISS CONFEDERATION

Mr.

THE EUROPEAN ECONOMIC COMMUNITY

Mr.

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

Section 1: BASIC PROVISIONS

Article 1: Object

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

Article 2: Scope of Agreement

The classes of insurance which are subject to this Agreement are set out in Annex No 1.

Article 3: Exceptions

The kinds of insurance, operations and undertakings which are not subject to this Agreement are listed in Annex No 2.

Article 4: Principle of non-discrimination

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

Article 5: Supervisory authority

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

Section 2: CONDITIONS GOVERNING ADMISSION

Article 6: Compulsory authorization

- 6.1 Each Contracting Party shall make the taking-up of the business of direct insurance in its territory by an undertaking which establishes its head office there subject to authorization by the supervisory authority.
- 6.2 Each Contracting Party shall, furthermore, make the opening in its territory of an agency or branch of an undertaking whose head office is situated in the territory of the other Contracting Party subject to authorization by the supervisory authority.
- 6.3 In addition, it shall make the opening in its territory of an agency or branch of an undertaking whose head office is situated outside the territories to which this Agreement applies, as laid down in Article 41, subject to authorization by the supervisory authority.

Article 7: Scope of authorization

- 7.1 An authorization shall be valid for the entire territory for which the supervisory authority of the Contracting Party in question is responsible unless, and in so far as the legislation applicable permits, the applicant seeks permission to carry on his business only in a part of that territory.

7.2 Authorization shall be granted in respect of a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only part of the risks pertaining to such class, as classified under Part A of Annex No 1.

However:

- it shall be open to the supervisory authority to grant authorization for any group of classes classified under Part B of Annex No 1, provided that it attaches to such authorization the appropriate denomination specified therein;
- authorization granted for one class or group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified under Part C of Annex No 1 are fulfilled.

Article 8: Legal form

The legal forms which may be assumed by an undertaking whose head office is situated in the territory of a Contracting Party are listed in Annex No 3.

Article 9: Conditions of authorization

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

- a) It shall submit its statutes and a list of its directors and managers;
- b) It shall produce a certificate issued by the supervisory authority of the Contracting Party in whose territory its head office is situated, attesting:
 - that the applicant undertaking is constituted in one of the legal forms listed in Annex No 3;

- that the applicant undertaking limits its business activities to the business of insurance and to operations directly arising therefrom to the exclusion of all other commercial business;
 - the classes of insurance which the undertaking is entitled to transact;
 - that it possesses the minimum guarantee fund referred to in Paragraph 3.2 of Protocol No 1, or, where appropriate, the minimum solvency margin calculated in accordance with Paragraph 2.2 of Protocol No 1 if the minimum solvency margin is higher than the minimum guarantee fund;
 - the risks which it actually covers;
 - the existence of the financial resources referred to in Article 1(f) of Protocol No 2.
- c) It shall submit a scheme of operations drawn up in accordance with Protocol No 2, accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years.

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

- it is a new undertaking created as a result of a merger between existing undertakings; or if
 - it is a new undertaking created by one or more existing undertakings for the purpose of transacting a specific class of insurance previously pursued by one of the undertakings in question.
- d) It shall designate an authorized agent having his permanent residence and abode in the territory for which the supervisory authority of the Contracting Party in question is responsible, and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of that Contracting Party.

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

9.2 This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring for all insurance undertakings, at the time of granting of the authorization, approval of the general and special policy conditions, tariffs and any other documents necessary in the normal course of events for the exercise of supervision. However, such approval shall be subject to the derogations provided for in Article 2 of Protocol No 2.

Article 10: Granting of authorization

- 10.1 Each Contracting Party undertakes to grant authorization provided the conditions laid down in Article 9 are met and on condition that its provisions concerning matters other than insurance supervision, in particular the denomination of legal persons, are observed.
- 10.2 The Contracting Parties shall not make authorization subject to the lodging of a deposit or the provision of security.
- 10.3 The Contracting Parties undertake furthermore that no application for an authorization shall be examined in the light of the economic requirements of the market.
- 10.4 The designated authorized agent may be challenged by the supervisory authority only on grounds relating to his good repute or technical qualifications.

Article 11: Extension of the scope of an authorization

- 11.1 Each Contracting Party shall make any extension of the business for which an initial authorization was granted pursuant to Articles 6 and 7 subject to a new authorization.
- 11.2 Each Contracting Party shall require that for the purpose of extending the business of an agency or branch either to other classes or in the case referred to in Paragraph 7.1, the applicant for the authorization shall submit a scheme of operations in accordance with Protocol No 2 and to produce the certificate referred to in Paragraph 9.1 b).

Article 12: Authorization procedure

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

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

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

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

This period of six months may, in exceptional circumstances, be extended by three months. In that event, the circumstances in question and the extension shall be notified to the applicant undertaking.

Article 13: Refusal of authorization

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

13.2 Each Contracting Party shall make provision for a right of recourse to the courts in the event of any refusal of authorization. Provision shall also be made for such right in regard to cases where the supervisory authority has not given a decision on an application for authorization upon the expiry of a period of six months from the date of its receipt, save where the applicant undertaking has been notified in accordance with the second subparagraph of Paragraph 12.3. In such case the right of recourse to the courts shall apply where the supervisory authority has not taken a decision on an application for authorization on the expiry of the period notified.

Section 3: CONDITIONS GOVERNING THE PURSUIT OF BUSINESS

Article 14: Choice of assets

The Contracting Parties shall not prescribe any rules as to the choice of assets in excess of those representing the technical reserves referred to in Articles 18 to 22. Subject to the provisions of Paragraph 17.2 and Articles 19, 20 and 22, the Contracting Parties shall not restrict the free disposal of movable or immovable property forming part of the assets of undertakings.

Article 15: Establishment of solvency margin

- 15.1 Each Contracting Party shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.
- 15.2 The definition of the solvency margin and the manner in which it is to be calculated and represented, and the minimum guarantee fund fixed, are set out in Protocol No 1.

Article 16: Verification of the state of solvency

- 16.1 The supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated shall verify the state of solvency of the undertaking with respect to its entire business.
- 16.2 The supervisory authority of the other Contracting Party shall, where it has granted the said undertaking authorization to open an agency or branch, provide the above-mentioned authority with all the information necessary to enable such verification to be carried out.
- 16.3 Each Contracting Party shall require undertakings whose head office is situated in its territory to produce an annual account, covering all their transactions of their financial situation and solvency.

Article 17: Restoration of financial situation

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

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

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

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

Article 18: Establishment of technical reserves

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

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

Article 19: Matching assets and localization of assets constituting technical reserves

- 19.1 Technical reserves shall be represented by equivalent and matching assets localized in the territory for which the supervisory authority of each Contracting Party is respectively responsible. Each Contracting Party may, however, permit relaxations of the rules on matching assets and the localization of assets.
- 19.2 "Matching assets" means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency.
- 19.3 "Localization of assets" means the existence of movable or immovable assets within a Contracting Party, but shall not be construed as involving a requirement that movable property be deposited or that immovable property be made subject to restrictive measures such as the registration of a mortgage. Assets represented by claims against debtors shall be regarded as localized in the Contracting Party where they are to be realized.
- Subject to the above, localization shall be governed by the respective laws of the Contracting Parties.

Article 20: Nature of technical reserves

- 20.1 The law of the Contracting Party in question shall determine the nature of the assets and, where appropriate, the extent to which they may be used for the purpose of representing the technical reserves, and shall also determine the rules for valuing such assets.

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

20.3 If a Contracting Party allows any technical reserves to be represented by claims against re-insurers, it shall fix the percentage so allowed. In such case, notwithstanding the provisions of Paragraph 19.1, it may not require the assets representing such claims to be localized.

Article 21: Balance sheet

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

Article 22: Non-compliance with the requirements relating to technical reserves

If an agency or branch does not comply with the provisions laid down in Articles 18 to 20, the supervisory authority of the Contracting Party in whose territory it carries on business may prohibit the free disposal of assets localized in its territory after having informed the supervisory authority of the Contracting Party in whose territory the head office is situated that it intends to take such action.

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

Article 23: Assignment of portfolio

23.1 The Contracting Parties shall allow authorized undertakings to assign all or part of their portfolios of policies if the assignee will, after the assignment, possess the necessary solvency margin.

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

23.2 Once approved by the competent supervisory authority, such assignment shall affect directly the insured persons concerned.

Article 24: Approval of conditions and tariffs

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

Article 25: Documentation

The Contracting Parties shall require undertakings carrying on business in their territory to produce the documents, including statistical documents, necessary for the exercise of supervision.

Section 4: WITHDRAWAL OF AUTHORIZATION

Article 26: Withdrawal conditions

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

- a) no longer fulfils the conditions for admission; or
- b) fails seriously to fulfil its obligations under the rules applicable to it, in particular with respect to the establishment of technical reserves.

Article 27: Withdrawal procedure

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

If the former authority deems it necessary to suspend the business of the agency or branch referred to in Article 26 before consultation is concluded, it shall immediately advise the latter authority thereof.

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

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

Article 28: Withdrawal of the authorization granted to the
head office

- 28.1 Where the supervisory authority of a Contracting Party in whose territory the head office is situated withdraws the authorization which it has granted to the undertaking, it shall notify such action to the supervisory authority of the other Contracting Party if the latter has granted the undertaking authorization to open an agency or branch. The latter authority shall also withdraw its authorization.
- 28.2 In the case referred to in Paragraph 28.1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall, in conjunction with the supervisory authority of the other Contracting Party, take all measures necessary to safeguard the interests of insured persons and shall, in particular, restrict the free disposal of the assets of the undertaking pursuant to Paragraph 17.2 and Article 22.
- 28.3 Paragraphs 28.1 and 28.2 shall also apply where the undertaking surrenders of its own accord the authorization granted to it.

Section 5: COLLABORATION BETWEEN SUPERVISORY AUTHORITIES

Article 29: Conditions of collaboration

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

Article 30: Objectives of collaboration

The supervisory authorities shall collaborate in verifying the provision by undertakings of financial guarantees as defined in Articles 15 and 18 to 20 and, in particular, in applying the measures provided for in Articles 17 and 21.

Article 31: Exchange of information

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

Article 32: Secrecy

32.1 Articles 29 to 31 shall in no circumstances be interpreted as requiring any supervisory authority to furnish information which would disclose commercial secrets of an undertaking or information the communication of which would be contrary to public policy.

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

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

Section 6: GENERAL AND FINAL PROVISIONS

Article 33: Particular provisions and undertakings of third countries

- 33.1 Particular provisions applicable to Switzerland and certain Member States of the Community are set out in Annex No 4.
- 33.2 The provisions applicable to agencies and branches of undertakings whose head office is situated outside the territories to which this Agreement applies pursuant to Article 41 thereof are set out in Protocol No 4.

Article 34: Integral parts of the agreement

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

Article 35: Failure to fulfil obligations

- 35.1 The Contracting Parties shall refrain from taking any measures which might jeopardize the attainment of the objectives of this Agreement.
- 35.2 They shall take all general or special measures necessary to ensure fulfilment of the obligations arising from this Agreement.

If either Contracting Party considers that the other Contracting Party has failed to fulfil an obligation arising from this Agreement, the procedure referred to in Article 36 shall apply.

Article 36: Administration of the Agreement

- 36.1 This Agreement shall be administered by the Contracting Parties through diplomatic channels.
- 36.2 If a dispute arises between the Contracting Parties concerning the operation of this Agreement and in particular its interpretation or implementation and such dispute cannot be resolved through collaboration between the supervisory authorities referred to in Section 5, the Contracting Parties shall consult each other through diplomatic channels.

Each Contracting Party may on such an occasion request the other Contracting Party to convene a meeting of experts with a view to examining the problems raised and adopting by mutual agreement and on the basis of the existing Agreement appropriate solutions.

Article 37: Arbitration

- 37.1 If a dispute arises between the Contracting Parties concerning the operation of this Agreement and in particular its interpretation or implementation and the Parties agree that it has not been possible to resolve such dispute by means of the procedure provided for in Paragraph 36.2, it shall be referred, at the request of either of the Parties, to an arbitration tribunal consisting of three members. Reference may be made to this tribunal at the earliest after a period of two years following the first meeting of experts referred to in the said Paragraph, unless the Parties agree jointly to refer their dispute to the said tribunal before the end of that period. Each Party shall appoint an arbitrator. The two arbitrators appointed shall appoint an umpire who shall be a national of a third country.
- 37.2 Where one of the Contracting Parties does not appoint its arbitrator and has not complied with the request made by the other Party to make such appointment within two months, the arbitrator shall be appointed, at the request of the former Party, by the President of the International Court of Justice.
- 37.3 Where after a period of two months following their appointment the two arbitrators are unable to agree on the choice of an umpire, the latter shall be appointed at the request of one of the Parties by the President of the International Court of Justice.

- 37.4 Where, in the cases provided for in Paragraphs 37.2 and 37.3, the President of the International Court of Justice is unable to act, or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If the latter is unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the oldest member of the Court who is not a national of either of the Parties.
- 37.5 Save as otherwise provided by the Contracting Parties, the tribunal shall lay down its own rules of procedure. It shall take its decisions by majority vote.
- 37.6 The decisions of the tribunal shall be binding on the Contracting Parties.

Articles 38: Revision of the Agreement

- 38.1 If a Contracting Party wishes that this Agreement be revised, it shall request the other Contracting Party to open negotiations to that end. Such request shall be made through diplomatic channels.
- 38.2 Amendments to this Agreement shall enter into force and shall be implemented in accordance with the procedure set out in Article 42.
- 38.3 Nevertheless, amendments to the Annexes, Protocols and Exchanges of Letters annexed to this Agreement may be defined and implemented by exchanges of letters between the Contracting Parties who shall determine jointly the date of the simultaneous implementation of the above-mentioned amendments and the national law relating thereto.

Article 39: Matters not covered by the Agreement

- 39.1 Where a Contracting Party considers that it would be useful in the interests of both Contracting Parties to develop the relations established by this Agreement by extending them to private insurance activities not covered thereby, it shall propose to the other Contracting Party that negotiations be opened to that end.
- 39.2 Agreements resulting from negotiations referred to in Paragraph 39.1 shall be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 40: Denunciation

- 40.1 Either Contracting Party may denounce this Agreement at any time by notifying the other Contracting Party to that effect. The agreement shall cease to be in force twelve months after the date of such notification.
- 40.2 In the event of denunciation, the Contracting Parties shall jointly agree on rules governing the situation of undertakings which have obtained authorization in accordance with Paragraph 10.1. In the absence of agreement upon expiry of the period of twelve months referred to in Paragraph 40.1, those undertakings shall be made subject to the rules applicable to those of third countries. Nevertheless, the Contracting Parties hereby undertake not to examine the authorization obtained in accordance with Paragraph 10.1 in the light of the economic requirements of the market for a period of at least five years from the date on which this Agreement ceases to be in force.

Article 41: Territorial scope of Agreement

This Agreement shall apply on the one hand to the territory of the Swiss Confederation and on the other hand to the territories to which the Treaty establishing the European Economic Community applies, in the manner provided therein.

Article 42: Entry into force

42.1 This Agreement was negotiated in French and drawn up in two originals in the Danish, Dutch, English, French, German, Greek and Italian languages, each of these texts being equally authentic.

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

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

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

Udfaerdiget i , den

Geschehen zu , am

Done at , on this ... day of ... in the year

Έγινε τήν

Fait à , le

Fatto a , il

Gedaan te , de

Für die Schweizerische Eidgenossenschaft

Pour la Confédération suisse

Per la Confederazione svizzera

.....

På Rådet for De europæiske Fællesskabers vegne

Im Namen des Rates der Europäischen Gemeinschaften

In the name of the Council of the European Communities

Γιά τό Συμβούλιο τῶν Εὐρωπαϊκῶν Κοινοτήτων

Au nom du Conseil des Communautés européennes

A nome del Consiglio delle Comunità Europee

Namens de Raad van de Europese Gemeenschappen

.....

ANNEX No 1: Classes of insurance subject to the Agreement

A. Classification of risks according to classes of insurance

1 Accident (including industrial injury and occupational diseases)

- fixed pecuniary benefits
- benefits in the nature of indemnity
- combinations of the two
- injury to passengers

2 Sickness

- fixed pecuniary benefits
- benefits in the nature of indemnity
- combinations of the two

3 Land vehicles (other than railway rolling stock)

All damage to or loss of:

- land motor vehicles
- land vehicles other than motor vehicles

4 Railway rolling stock

All damage to or loss of railway rolling stock

5 Aircraft

All damage to or loss of aircraft

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

All damage to or loss of:

- river and canal vessels
- lake vessels
- sea vessels

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

All damage to or loss of goods in transit or baggage, irrespective of the means 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 profits
- continuing general expenses
- unforeseen trading expenses
- loss of market value
- loss of rent or revenue
- indirect trading losses other than those mentioned above
- other financial loss (non-trading)
- other forms of financial loss

17 Legal expenses

Legal expenses and costs of litigation

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

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

Where the authorization simultaneously covers:

- a) classes Nos 1 and 2, it shall be named "Accident and Health Insurance";
- b) classes Nos 1 (fourth indent), 3, 7 and 10, it shall be named "Motor Insurance";
- c) classes Nos 1 (fourth indent), 4, 6, 7 and 12, it shall be named "Marine and Transport Insurance";
- d) classes Nos 1 (fourth indent), 5, 7 and 11, it shall be named "Aviation Insurance";
- e) classes Nos 8 and 9, it shall be named "Insurance against Fire and other Damage to Property";
- f) classes Nos 10, 11, 12 and 13, it shall be named "Liability Insurance";
- g) classes Nos 14 and 15, it shall be named "Credit and Suretyship Insurance";
- h) all classes, it shall be named at the choice of the Contracting Party in question, which shall notify the other Contracting Party of its 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 and 15 may not be regarded as risks ancillary to other classes.

ANNEX No 2: Kinds of insurance, operations and undertakings
not subject to the Agreement

A. Kinds of insurance excluded

This Agreement does not apply to:

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

2 annuities;

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

4 in Switzerland

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

in the Community

insurance forming part of a statutory system of social security;

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

B. Operations excluded

This Agreement does not apply to:

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

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

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

4 export credit insurance operations for the account of or supported by the State.

C. Exclusion of undertakings occupying special positions

This Agreement does not apply:

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

Undertakings whose annual premium income for the activities covered by the agreement does not exceed the sum of three million Swiss francs at the date of entry into force of this Agreement and whose activities extend only to Swiss territory for such time as they satisfy these conditions. Once it has become subject to the rules of the Agreement an undertaking may not rely on this exception even if it satisfies the two above-mentioned conditions.

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

Mutual associations insofar as they fulfil all the following conditions:

- the articles of association contain provisions for calling up additional contributions or reducing their benefits,
- their business does not cover liability risks - unless the latter constitute ancillary cover within the meaning of Part C of Annex No 1 - or credit and suretyship risks,
- the annual contribution income for the activities covered by this Agreement does not exceed one million units of account,
and
- at least half of the contribution income from the activities covered by this Agreement comes from persons who are members of the mutual association.

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

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

D. Exclusion of specific undertakings

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

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

1 in Switzerland

the following cantonal institutions under public law:

- a) Aargau: Aargauisches Versicherungsamt, Aarau
- b) Appenzell Ausser-Rhoden: Brand- und Elementarschadenversicherung Appenzell AR, Herisau
- c) Basel-Land: Basellandschaftliche Gebäudeversicherung, Liestal
- d) Basel-Stadt: Gebäudeversicherung des Kantons Basel-Stadt, Basel
- e) Bern/Berne: Gebäudeversicherung des Kantons Bern, Bern/
Assurance immobilière du canton de Berne, Berne
- f) Fribourg/Freiburg: Etablissement cantonal d'assurance des bâtiments du canton de Fribourg, Fribourg/Kantonale Gebäudeversicherungsanstalt Freiburg, Freiburg

- g) Glarus: Kantonale Sachversicherung Glarus, Glarus
- h) Graubünden/Grigioni/Grischun: Gebäudeversicherungsanstalt des Kantons Graubünden, Chur/Istituto d'assicurazione fabbricati del cantone dei Grigioni, Coira/Institut dil cantun Grischun per assicuranzas da baghetgs, Cuera
- i) Jura: Assurance immobilière de la République et canton du Jura, Saignelégier
- j) Luzern: Gebäudeversicherung des Kantons Luzern, Luzern
- k) Neuchâtel: Etablissement cantonal d'assurance immobilière contre l'incendie, Neuchâtel
- l) Nidwalden: Kantonale Brandversicherungsanstalt Nidwalden, Stans
- m) Schaffhausen: Gebäudeversicherung des Kantons Schaffhausen, Schaffhausen
- n) Solothurn: Solothurnische Gebäudeversicherung, Solothurn
- o) St. Gallen: Gebäudeversicherungsanstalt des Kantons St. Gallen, St. Gallen
- p) Thurgau: Gebäudeversicherung des Kantons Thurgau, Frauenfeld
- q) Vaud: Etablissement d'assurance contre l'incendie et les éléments naturels du canton de Vaud, Lausanne
- r) Zug: Gebäudeversicherung des Kantons Zug, Zug
- s) Zürich: Gebäudeversicherung des Kantons Zürich, Zürich

2 in the Community

a) in Germany

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

- aa) Badische Gebäudeversicherungsanstalt, Karlsruhe
- bb) Bayerische Landesbrandversicherungsanstalt, München
- cc) Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, München
- dd) Braunschweigische Landesbrandversicherungsanstalt, Braunschweig

- ee) Hamburger Feuerkasse, Hamburg
 - ff) Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt
 - gg) Hessische Brandversicherungsanstalt, Kassel
 - hh) Lippische Landesbrandversicherungsanstalt, Detmold
 - ii) Nassauische Brandversicherungsanstalt, Wiesbaden
 - jj) Oldenburgische Landesbrandkasse, Oldenburg
 - kk) Ostfriesische Landschaftliche Brandkasse, Aurich
 - ll) Feuersozietät Berlin, Berlin
 - mm) Württembergische Gebäudebrandversicherungsanstalt, Stuttgart
- the following semi-public institutions:
- nn) Postbeamtenkrankenkasse
 - oo) Krankenversorgung der Bundesbahnbeamten

b) in France

the following institutions:

- aa) Caisse départementale des incendiés des Ardennes
- bb) Caisse départementale des incendiés de la Côte-d'Or
- cc) Caisse départementale des incendiés de la Marne
- dd) Caisse départementale des incendiés de la Meuse
- ee) Caisse départementale des incendiés de la Somme

c) in Ireland

Voluntary Health Insurance Board

d) in Italy

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

e) in the United Kingdom

the Crown Agents

ANNEX No 3: Acceptable legal forms

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

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

A. In Switzerland

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

B. In the Community

1 in Belgium

- société anonyme / naamloze vennootschap
- société en commandite par actions / vennootschap bij wijze van geldschieting op aandelen
- association d'assurance mutuelle / onderlinge verzekeringsmaatschappij
- société coopérative / coöperatieve vennootschap

2 in Denmark

- aktieselskaber
- gensidige selskaber

3 in Germany

- Aktiengesellschaft
- Versicherungsverein auf Gegenseitigkeit
- Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen

4 in France

- société anonyme
- société à forme mutuelle
- mutuelle
- union de mutuelles

5 in Greece

- 'Ανώνυμος 'Εταιρία
- 'Αλληλασφαλιστικός Συνεταιρισμός

6 in Ireland

- incorporated companies limited by shares or by guarantee or unlimited

7 in Italy

- società per azioni
- società cooperativa
- mutua di assicurazione

8 in Luxemburg

- société anonyme
- société en commandite par actions
- association d'assurances mutuelles
- société coopérative

9 in the Netherlands

- naamloze vennootschap
- onderlinge waarborgmaatschappij
- coöperative vereniging

10 in the United Kingdom

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

ANNEX No 4: Particular provisions for Switzerland and certain Member States of the Community

By way of derogation from the provisions of this Agreement, the following special provisions shall apply:

1 in Switzerland

re Paragraph 7.2:

Switzerland may maintain the provision prohibiting the simultaneous undertaking in its territory of insurance in respect of recourse against third parties and legal defence and other classes.

2 in certain Member States of the Community

21 in Denmark

re Article 14:

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

22 in Germany

re Paragraph 7.2:

Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes.

re Article 14:

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

23 in Luxemburg

re Paragraph 19.1:

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

24 in the United Kingdom

re Paragraph 9.1 c):

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

re Paragraph 9.1 d):

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

PROTOCOL No 1: Solvency margin

Article 1: Definition of the solvency margin

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

- the paid-up share capital or, in the case of a mutual concern, the effective initial fund;
- one-half of the share capital or the initial fund which is not yet paid up, once the paid-up part reaches 25% of this capital or fund;
- reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities;
- any carry-forward of profits;
- in the case of a mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one-half of the difference between the maximum contributions and the contributions actually called in, and subject to an over-riding limit of 50% of the margin;
- at the request of, and upon proof being shown by the undertaking, and with the agreement of the concerned supervisory authorities of the Contracting Parties in whose territory the undertaking carries on its business, any hidden reserves resulting from under-estimation of assets or over-estimation of liabilities in the balance sheet, in so far as such hidden reserves are not of an exceptional nature.

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

Article 2: Relationship between the solvency margin and the amount of premiums or the burden of claims

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

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

first result (premium basis):

- the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of all direct business in the last financial year for all financial years, shall be aggregated,
- to this aggregate there shall be added the amount of premiums accepted for all reinsurance in the last financial year,
- from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to 30 million Swiss francs in respect of undertakings whose head office is situated in Switzerland or 10 million units of account in respect of undertakings whose head office is situated in the Community, the second comprising the excess; 18% and 16% of these portions respectively shall be calculated and added together.

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

second result (claims basis):

- the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionnaires) in the periods specified in Paragraph 2.1 of this Protocol shall be aggregated,
- to this aggregate there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods,
- to this sum there shall be added the amount of provisions or reserves for outstanding claims established at the end of the last financial year both for direct business and for reinsurance acceptances,
- from this sum there shall be deducted the amount of claims paid during the periods specified in Paragraph 2.1 of this Protocol,
- from the sum then remaining, there shall be deducted the amount of provisions or reserves for outstanding claims established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in Paragraph 2.1 of this Protocol, shall be divided into two portions, the first extending up to 21 million Swiss francs in respect of undertakings whose head office is situated in Switzerland or 7 million units of account in respect of undertakings whose head office is situated in the Community and the second comprising the excess; 26% and 23% of these portions respectively shall be calculated and added together.

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

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

- the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance,
- a reserve is set up for increasing age,
- an additional premium is collected in order to set up a safety margin of an appropriate amount,
- the insurer may only cancel the contract before the end of the third year of insurance at the latest,
- the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

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

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

Article 3: Guarantee fund

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

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

- 1 200 000 Swiss francs in respect of undertakings whose head office is situated in Switzerland or 400 000 units of account in respect of undertakings whose head office is situated in the Community where all or some of the risks included in one of the classes listed in Part A of Annex No 1 under Nos 10, 11, 12, 13, 14 and 15 are covered,
- 900 000 Swiss francs in respect of undertakings whose head office is situated in Switzerland or 300 000 units of account in respect of undertakings whose head office is situated in the Community where all or some of the risks included in one of the classes listed in Part A of Annex No 1 under Nos 1, 2, 3, 4, 5, 6, 7, 8 and 16 are covered,
- 600 000 Swiss francs in respect of undertakings whose head office is situated in Switzerland or 200 000 units of account in respect of undertakings whose head office is situated in the Community where all or some of the risks included in one of the classes listed in Part A of Annex No 1 under Nos 9 and 17 are covered.

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

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

Article 4: Relationship between the Swiss franc and the unit
of account

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

PROTOCOL No 2: Scheme of operations

Article 1: Content

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

- a) the nature of the risks which the undertaking proposes to cover,
- b) the general and special policy conditions which it proposes to use,
- c) the tariffs which the undertaking proposes to apply for each category of business,
- d) the guiding principles as to reinsurance,
- e) the state of the solvency margin of the undertaking, referred to in Protocol No 1,
- f) estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them,

and in addition, for the first three financial years:

- g) estimates relating to expenses of management,
- h) estimates relating to premiums or contributions and to claims in respect of the new business,
- i) the forecast balance sheet for the agency or branch.

Article 2: Exceptions

- 2.1 The particulars referred to in a), b) and c) of Article 1 of this Protocol shall not be required with regard to the risks classified under Nos 4, 5, 6, 7 and 12 of Part A of Annex No 1, nor shall those referred to in c) be required with regard to the risks classified under Nos 14 and 14 of Part A of Annex No 1. Furthermore, the particulars referred to in a), b) and c) need not be required in the case of risks classified under No 11 of Part A of Annex No 1.
- 2.2 However, in Switzerland the particulars referred to in a), b) and c) of Article 1 of this Protocol may be required with regard to the risks classified under No 12 of Part A of Annex No 1 where the vessels involved are lake or river vessels.

PROTOCOL No 3: Relationship between the Swiss franc
and the unit of account

Article 1: Unit of account

For the purposes of this Agreement, "unit of account" means the European unit of account as defined and calculated by the competent Community authorities.

Article 2: Alteration of the relationship

- 2.1 Where one Contracting Party wishes to alter those amounts set out in Articles 2 and 3 of Protocol No 1 which are required in its territory, it shall take the initiative of entering into consultations with the other Contracting Party in accordance with the procedure provided for in Article 36 with a view to reaching, if possible, agreement with regard to its intentions.
- 2.2 Following the said consultation, the Contracting Party in question shall notify the other Contracting Party of those alterations which it has made autonomously to the amounts referred to in Paragraph 2.1 of this Protocol.

PROTOCOL No 4: Agencies and branches of undertakings whose head office is situated outside the territories to which this Agreement applies

Article 1: Conditions for authorization

Each Contracting Party may grant to an undertaking whose head office is situated outside the territories to which this Agreement applies under Article 41 thereof, authorization to open an agency or branch in its territory, if the applicant undertaking fulfils at least the following conditions:

- a) it is entitled to undertake insurance business under its national law;
- b) it establishes an agency or branch in the territory of the Contracting Party in question;
- c) it undertakes to establish at the place of management of the agency or branch accounts specific to the business which it undertakes there, and to keep there all the records relating to the business transacted;
- d) it designates an authorized agent, to be approved by the supervisory authority;
- e) it possesses in the country in which it carries on its business assets of an amount equal to at least one half of the minimum amount prescribed in Paragraph 3.2 of Protocol No 1, in respect of the guarantee fund, and deposits one quarter of the minimum amount as security;
- f) it undertakes to keep a solvency margin in accordance with Article 3 of this Protocol;
- g) it submits a scheme of operations in accordance with the provisions of Paragraph 9.1 c) of the Agreement and Article 1 of Protocol No 2. Each Contracting Party may, if its law so permits, require an undertaking which has been in existence for fewer than three financial years, to supply the balance sheet and profit and loss account which must accompany the scheme of operations only in respect of the financial years which have closed.

Article 2: Technical reserves

Under this Protocol, each Contracting Party shall apply to agencies or branches set up in its territory rules regarding technical reserves which may not be more favourable than those provided for in Articles 18, 19 and 20. By way of derogation from the second sentence of Paragraph 19.1 it shall require assets representing technical reserves to be localised in its territory.

Article 3: Solvency margin

- 3.1 Under this Protocol, each Contracting Party shall require for agencies or branches established in its territory a solvency margin consisting of assets free of all foreseeable liabilities, less any intangible items. The solvency margin shall be calculated in accordance with Paragraph 2.2 of Protocol No 1. However, for the purpose of calculating this margin, account shall be taken only of the premium or contributions and claims pertaining to the business effected by the agency or branch concerned.
- 3.2 One-third of the solvency margin shall constitute the guarantee fund. The guarantee fund may not be less than one-half of the minimum required under Paragraph 3.2 of Protocol No 1. The initial security lodged in accordance with Article 1 e) of this Protocol shall be counted towards such guarantee fund.
- 3.3 The assets representing the solvency margin shall be localised in the territory of the Contracting Party concerned.
- 3.4 The Community may allow these rules to be relaxed in the case of undertakings with agencies or branches in various Member States in order to facilitate their supervision.

Article 4: Verification and restoration of financial situation

The provisions of Paragraph 16.3 and Article 17 shall apply mutatis mutandis in relation to agencies and branches of undertakings to which this Protocol applies.

Article 5: Agreements with third countries

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

EXCHANGE OF LETTERS No 1: Principle of non-discrimination

Delegation of the Commission
of the European Communities

Brussels, 25th June, 1982

Sir,

With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to confirm that the obligation of non-discrimination referred to in Article 4 thereof also applies to the Member States of the Community in the exercise of their power to legislate in the areas covered by the said Agreement.

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

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

Franz Blankart, Esq.
Ambassador
Head of the Swiss Delegation

B e r n e

Swiss Delegation

Berne, 25th June, 1982

Sir,

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

"With reference to the Agreement between the Community and Switzerland, initialled today, I have the honour to confirm that the obligation of non-discrimination referred to in Article 4 thereof also applies to the Member States of the Community in the exercise of their power to legislate in the areas covered by the said Agreement."

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

Franz Blankart

Head of the Swiss Delegation

Gérard Imbert, Esq.
Director
Head of the Delegation of the Commission
of the European Communities

B r u s s e l s

Delegation of the Commission
of the European Communities

Brussels, 25th June, 1982

Sir,

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

"With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state that it does not preclude the authorized agent referred to in Paragraphs 9.1 d) and 10.4 thereof and in Article 1 d) of Protocol No 4 being required to assume effective management of the agency or branch in respect of all the business activities the latter intends carrying on in the territory for which the supervisory authority from which authorization is sought is possible."

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

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

Franz Blankart, Esq.
Ambassador
Head of the Swiss Delegation

B e r n e

EXCHANGE OF LETTERS No 3: Assignment to the Swiss Securities
Fund of immovable property directly
owned by insurance undertakings

Swiss Delegation

Berne, 25th June, 1982

Sir,

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

I would ask you to confirm that you are also of the opinion that such a procedure is not contrary to Paragraphs 10.2 and 19.3 of the said Agreement,

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

Franz Blankart

Head of the Swiss Delegation

Gérard Imbert, Esq.
Director
Head of the Delegation of the Commission
of the European Communities

B r u s s e l s

Delegation of the Commission
of the European Communities

Brussels, 25th June, 1982

Sir,

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

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

I hereby confirm that I am also of the opinion that such a procedure is not contrary to Paragraphs 9.2 and 19.3 of the said Agreement.

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

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

Franz Blankart, Esq.
Ambassador
Head of the Swiss Delegation

B e r n e

EXCHANGE OF LETTERS No 4: Principles governing investment

Swiss Delegation

Berne, 25th June, 1982

Sir,

With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state with regard to the assets referred to in Article 14 that the said Agreement does not preclude the supervisory authority from taking action in specific cases where the choice of assets is likely to place the financial security of an undertaking in serious jeopardy or diminish its degree of liquidity.

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

Franz Blankart

Head of the Swiss Delegation

Gérard Imbert, Esq.
Director
Head of the Delegation of the Commission
of the European Communities

B r u s s e l s

Delegation of the Commission
of the European Communities

Brussels, 25th June, 1982

Sir,

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

"With reference to the Agreement between Switzerland and the Community, initialled today, I have the honour to state with regard to the assets referred to in Article 14 that the said Agreement does not preclude the supervisory authority from taking action in specific cases where the choice of assets is likely to place the financial security of an undertaking in serious jeopardy or diminish its degree of liquidity."

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

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

Franz Blankart, Esq.
Ambassador
Head of the Swiss Delegation

B e r n e

EXCHANGE OF LETTERS No 5: Swiss List of classes of insurance

Swiss Delegation

Berne, 25th June, 1982

Sir,

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

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

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

Gérard Imbert, Esq.
Director
Head of the Delegation of the Commission
of the European Communities
B r u s s e l s

Swiss list of classes
of insurance

Classes of insurance according
to the classification in
Annex No 1

1 Accident	A. 1
2 Liability	A. 10, 11, 12, 13
3 Fire and natural forces	A. 8
4 Transport	A. 4, 6, 7
5 Vehicles	A. 3, 5
6 Hail)
7 Animals)
8 Theft)
9 Plate glass) A. 9
10 Damage by water)
11 Machinery)
12 Jewellery)
13 Suretyship	A. 15
14 Credit	A. 14
15 Legal defence	A. 17
16 Health	A. 2
17 Rain)
18 Special policies) A. 16

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

Franz Blankart
Head of the Swiss Delegation

Delegation of the Commission
of the European Communities

Brussels, 25th June, 1982

Sir,

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

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

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

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

Franz Blankart, Esq.
Ambassador
Head of the Swiss Delegation
B e r n e

Swiss list of classes of insurance	Classes of insurance according to the classification in Annex No 1
1 Accident	A. 1
2 Liability	A. 10, 11, 12, 13
3 Fire and natural forces	A. 8
4 Transport	A. 4, 6, 7
5 Vehicles	A. 3, 5
6 Hail)
7 Animals)
8 Theft)
9 Plate glass) A. 9
10 Damage by water)
11 Machinery)
12 Jewellery)
13 Suretyship	A. 15
14 Credit	A. 14
15 Legal defence	A. 17
16 Health	A. 2
17 Rain)
18 Special policies) A. 16"

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

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

EXCHANGE OF LETTERS No 6: The capital of insurance
undertakings

Swiss Delegation

Berne, 25th June, 1982

Sir,

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

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

Franz Blankart
Head of the Swiss Delegation

Gérard Imbert, Esq.
Director
Head of the Delegation of the Commission
of the European Communities

B r u s s e l s

Delegation of the Commission
of the European Communities

Brussels, 25th June, 1982

Sir,

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

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

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

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

Franz Blankart, Esq.
Ambassador
Head of the Swiss Delegation

B e r n e

Joint declaration by the Contracting Parties
concerning the period between the date of signature
and the date of entry into force of the Agreement

During the period between the date of signature and the date of entry into force of this Agreement, referred to in Paragraph 42.3 thereof, each Contracting Party hereby declares that it will not introduce any new provisions on supervision which are liable to be repealed under this Agreement concerning agencies and branches belonging to undertakings whose head office is situated in the territory of the other Contracting Party and which wish to become established in its territory, or are established there, for the purpose of taking up or pursuing the self-employed activity of direct insurance other than life assurance.

The Contracting Parties further undertake to initiate without delay the procedures necessary to amend their national laws in accordance with this Agreement.

FINAL ACT

The representatives of

THE SWISS CONFEDERATION

AND THE EUROPEAN ECONOMIC COMMUNITY,

assembled in on

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

have, at the time of signature of this Agreement,

- taken note of the exchanges of letters annexed to the above-mentioned Agreement:

Exchange of letters No 1: Principle of non-discrimination

Exchange of letters No 2: Authorized agent

Exchange of letters No 3: Assignment to the Swiss Securities Fund of immovable property directly owned by insurance undertakings

Exchange of letters No 4: Principles governing investment

Exchange of letters No 5: Swiss list of classes of insurance

Exchange of letters No 6: The capital of insurance undertakings

- adopted the following declaration which is annexed to the above Agreement:

Joint Declaration by the Contracting Parties concerning the period between the date of signature and the date of entry into force of the Agreement

Udfaerdiget i , den

Geschehen zu , am

Done at , on this ... day of ... in the year

Έγινε τήν

Fait à , le

Fatto a , il

Gedaan te , de

Für die Schweizerische Eidgenossenschaft

Pour la Confédération suisse

Per la Confederazione svizzera

.....

På Rådet for De europæiske Fællesskabers vegne

Im Namen des Rates der Europäischen Gemeinschaften

In the name of the Council of the European Communities

Γιά τό Συμβούλιο τών Εύρωπαϊκών Κοινοτήτων

Au nom du Conseil des Communautés européennes

A nome del Consiglio delle Comunità Europee

Namens de Raad van de Europese Gemeenschappen

.....

PROPOSAL FOR A COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

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

Whereas an Agreement between the Swiss Confederation and the European Economic Community concerning direct

insurance other than life assurance was signed at ... on ... ;¹

Whereas one of the effects of that Agreement is to impose, in relation to insurance undertakings which have their head offices in the Swiss Confederation, legal rules different from those applicable, under Title III of 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 direct insurance other than life assurance,² to agencies and branches established within the Community of undertakings whose head offices are outside the Community;

Whereas the coordinated rules relating to the pursuit of these activities within the Community by the Swiss undertakings subject to the provisions of the Agreement of ... must take effect on the same date in all the Member States of the Community; whereas this Agreement will not come into force until the first day of the calendar year following the date on which the instruments of approval are exchanged,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall amend their national provisions to comply with the Agreement of ... between the Swiss Confederation and the European Economic Community within a period of six months following the notification of this Directive, and shall immediately inform the Commission thereof.

Article 2

The Member States shall specify in their national provisions that the amendments thereto made pursuant to the Agreement shall not come into force until the date on which the Agreement enters into force.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

(1) OJ No

(2) OJ No L 228 of 16.8.1973, p. 3.

Commission staff Paper

Survey of the points at which the draft Agreement with Switzerland derogates from the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions of the Member States relating to indemnity insurance

1. The prime objective of the draft Agreement is to enable agencies and branches of indemnity insurance undertakings having their head offices in the Community or in Switzerland to carry on their activities in the territory of the other Contracting Party under the same conditions as those established by the first Coordination Directive 73/239/EEC of 24 July 1973 within the Community in respect of the activities of agencies and branches in other Member States. In order to attain this objective, it was necessary for Switzerland to adopt to a large extent the Community mechanism set up under that Directive, and in particular those provisions relating to the financial guarantees (solvency margin, guarantee fund) to be provided at the head office of an undertaking.

Switzerland declared its readiness from the commencement of the negotiations to incorporate practically all of the provisions of that Directive, with minor derogations (see 2.), into its legislation. The result is an extensive degree of uniformity in Community and Swiss laws relating to State supervision of indemnity insurance undertakings.

2. The main differences of substance by comparison with the Directive concern the following points :

a) The second sentence of Article 9.1(c) of the Agreement

This provision takes no account of the concession in Article 11(2) of the Directive whereby an undertaking which has not been in existence for three years may, when submitting its scheme of operations, depart from the rule under which the profit and loss account for the last three financial years must be produced. Switzerland insisted on the strict observation of this three year rule in order to prevent undertakings from being set up in the Community with the sole objective of establishing branches in Switzerland. However, the Agreement departs from this three year rule in two cases, viz :

- where a new undertaking is set up as a result of the merger of already existing undertakings;
- where a new undertaking is set up by one or more existing undertakings in order to become active in a particular class of insurance.

(b) Article 14 of the Agreement

This provision, like Article 18(1) and (2) of the Directive, stipulates that the contracting parties shall not prescribe any rules as to the choice of the assets in excess of those representing the technical reserves, and that the free placement of the assets, whether movable or immovable, of an undertaking shall not be restrained, except in certain precisely defined cases.

Switzerland was categorically opposed to too extensive an interpretation of this provision, by the insurance industry. It considers that supervision must cover an undertaking's practice relating to choice of assets in its entirety.

It had accordingly originally insisted on the following text of Article 14(2):

"Nevertheless, this Agreement shall not, in respect of those assets, prevent undertakings from being required by the Party in whose territory the head office is situated to develop their financial guarantees so as to be able to assure suitable protection to the insured and third parties and to seek maximum security and return, according to the nature of their particular businesses and structures, when investing their funds, while still ensuring that adequate liquid assets are available at all times and that risks are spread appropriately".

In the Commission's view, which in this connection is shared by both the European Insurance Committee and, as was clear from the meeting of the Council Working Party on Economic Questions held on 10 November 1977, the majority of government experts, a provision of this kind would run counter to the Directive. The Commission referred Switzerland to the Council's comments on Article 18 of the Directive, which were as follows:

"It is clear to the Council that the supervisory authorities, notwithstanding Article 18', are still able to intervene in particular cases where the choice of assets might seriously endanger the financial security of the undertaking or reduce its degree of liquidity".

In the Commission's view, the incorporation of these comments by the Council in the Agreement (in the form of an exchange of letters) would take sufficient account of the objections on the part of Switzerland. The Commission drew Switzerland's attention to the fact that these comments by the Council were regarded at the time as a satisfactory compromise by the Member States, which hitherto had used varying procedures for supervising the choice of assets of their insurance undertakings.

Switzerland has finally agreed to the Commission proposal (Exchange of letters, No 4).

(c) Article 19.3 of the Agreement

There are no objections to the last subparagraph of this provision, which is not contained in the Directive (Article 5(c)). Switzerland wishes, by means of this provision, to take account of the introduction in the future of a register designed to protect the interests of insured persons or third parties should an insurance undertaking be wound up (see Exchange of Letters No 3)

(d) Article 20.2. of the Agreement

This clause, the insertion of which was proposed by Switzerland, merely provides clarification of the rule contained in paragraph 1 of this provision under which the contracting parties are entitled, as regards the investment of the technical reserves of an undertaking, to retain their own rules. This paragraph does not represent a derogation from the Directive.

(e) Article 31 of the Agreement

This provision, which governs exchanges of information between the insurance supervisory authorities, also does not represent a derogation from the Directive. Switzerland considers it desirable to take part in the Conference of supervisory authorities of the Member States of the European Communities when questions relating to the Agreement are involved. In view of the special nature of this Conference of European insurance supervisory authorities, the Commission rejected the idea of including in the Agreement itself rules relating to the question of participation by the Swiss supervisory authority. The Conference of European supervisory authorities will itself lay down rules relating to the participation of the Swiss supervisory authority.

(f) Article 32 of the Agreement

This provision, which places an obligation on the supervisory authorities to maintain secrecy and which was included at the request of Switzerland gives rise to no objections on the part of the Commission, since it incorporates the principles already developed by the OECD.

(g) Annex 1 and corresponding exchange of letters

Switzerland indicated that it would take as a basis the classification of classes of indemnity insurance contained in Annex 1 as regards authorization procedure and approval of the general and special insurance conditions and tariffs. However, it is compelled, on technical grounds, to use for the time being the list of classes of insurance currently valid in Switzerland as regards the submission of the balance sheets and statistics relating to undertakings authorized in Switzerland and as regards the annual report of the Swiss Insurance Supervisory Office. It stated that the possibility of switching subsequently to the Community list would be examined. The Commission expressed its agreement with this, and approved the exchange of letters proposed by Switzerland.

(h) Annex 2, A(4) of the Agreement

This provision differs from Article 2(1)(d) of the Directive in that in the case of Switzerland,

the Agreement applies also to "authorized" insurance undertakings working within a social security system.

(i) Annex 2, B(4) of the Agreement

This provision anticipates an amendment to Article 2(2)(d) of the Directive which was already intended. Export credit transactions for the account of the State or with a State "guarantee" (instead of "support") are excluded.

(j) Annex 2, C of the Agreement

Point 2 of this provision corresponds to Article 3 of the Directive. Since other small undertakings exist in Switzerland, mainly at cantonal level, which, in addition to the mutual associations referred to under point 2, ought also to be excluded, it was necessary to include in point 1 a single exclusion criterion for Switzerland. All small Swiss undertakings whose annual premium income does not exceed SF 3 000 000 and whose activities extend only to Swiss territory are excluded. However, once a Swiss undertaking has become subject to the provisions of the Agreement it can not claim this exclusion.

(k) Annex 2, D(1) of the Agreement

Switzerland was unable, for constitutional reasons, to amend the list of the numerous monopolistic cantonal building insurance institutions. The Commission is aware that this goes beyond Article 4 of the Directive, which provides for the exclusion of only a few monopolistic institutions governed by public law, and that as a result, practically all fire insurance in Switzerland will be excluded from the scope of the Agreement.

Nevertheless, the Commission considers that, in view of the overriding advantages attaching to the conclusion of this Agreement, it must accept such an imbalance. Moreover, it indicated to Switzerland that it regarded the list of Swiss monopolistic institutions in point 1 as definitive. Switzerland shares this view, although it points out that in certain circumstances, where particular cantons are reorganized (problem of the Canton of the Jura) this list may be amended as a result of splitting up or merging individual institutions while maintaining their coverage of the same territorial area. The introduction to Annex 2 D takes account of this possibility.

(l) Annex 4 to the Agreement

Point 2 of this provision corresponds to Article 7(2)(c), 10(1)(d), 11(2), 15(2) and 18(2) of the Directive but, as a result of the nature of the Agreement, does not refer to any subsequent coordination process.

Point 1 of the provision takes account of the specialization in relation to legal expenses insurance which exists also in Switzerland.

(m) Protocol No 1 to the Agreement

As regards the definition of the solvency margin (Article 1, Article 2.1 of the Protocol) and of the guarantee fund (Article 3.1 of the Protocol), there are no derogations from the Directive (Article 16(1) and Article 17). As regards the amounts to be applied when calculating the solvency margin and guarantee fund, a distinction had to be drawn, in view of the nature of the ratio between the Swiss franc and the European unit of account, between the amounts necessary in respect of Swiss undertakings, which are expressed in Swiss francs, and the amounts to be laid down in respect of Community undertakings, which are expressed in European units of account pursuant to the Directive. This distinction is drawn in Article 2.2 and Article 3.2 of Protocol No 1.

(n) Article 2.2 of Protocol No 2 to the Agreement

There is a derogation from the last paragraph of Article 11(1) of the Directive inasmuch as in Switzerland, when the scheme of operations of an undertaking is submitted, supervision of the general and special conditions and tariffs is possible also in the case of the class of insurance comprising liability for ships (sea, lake and river and canal vessels) (Annex 1A(12) of the Directive) in respect of sea and river-going vessels. This type of insurance is governed in Switzerland by statute as compulsory insurance.

(o) Protocol No 3 to the Agreement

The definition of the European unit of account is incorporated under Article 1 of this provision. Article 2 governs the procedure applicable where the amounts are altered at the instigation of one of the contracting parties.

(p) Protocol No 4 to the Agreement

Switzerland and the Commission were in agreement that a provision should be included in the Agreement corresponding to Title III of that Directive and governing those agencies and branches whose head office is not situated in the territory of either of the contracting parties to ensure that the minimum requirements to be applied to those undertakings correspond to those laid down in Title III of the Directive. This appeared necessary in order to ensure equal conditions of competition between such undertakings and undertakings in the territory of the contracting parties.

Article 5 of Protocol No 4, like Article 29 of the Directive, allows the contracting parties to conclude additional agreements with countries not party to the Agreement. This ensures that the Community remains free, pursuant to Article 29 of the Directive, to reach agreement with non-member States other than Switzerland on the adoption of provisions derogating from this Agreement.

Annex

Comparative table of the provisions of the Agreement corresponding
to those of Directive 73/239/EEC

<u>Article of the Agreement</u>	<u>Corresponding Article of the Directive</u>
1 to 5	new
6(1)	6(1) and (2) (a)
6(2)	6(2) (b)
6(3)	23(1)
6(4)	new
7	7(with the exception of 7(2)(c))
8	new
9(1)(a)	10(1) (a) and 8(1)(a) and (b)
10(1)(c)	10(1)(c) and 11(2)
10(1)	new
10(2)	6(3)
10(3)	10(4)
10(4)	10(1)(d)
11 (1)	6(2)(c)
11 (2)	10(2)
12 (1)	new(corresponds to 6(2)(b))
12 (2)	11(3)
12 (3), 1st paragraph	12
12 (3), 2nd paragraph	new
13 (1)	12 (1)
13 (2)	12, (2) and (3)
14	18(1) and (2), 1st paragraph
15 (1)	16(1) 1st paragraph
15 (2) (Protocol No. 1)	16(1) 2nd paragraph

<u>Article of the Agreement</u>	<u>Corresponding Article of the Directive</u>
16(1) and (2)	14
16(3)	19(1)
17(1)	20(2)
17(2)	20(3) and (4)
18(2)	15(1)
19(1)	15(2)
19(2)	5(b)
19(3)	5(c)
20(1)	15(2) and (3)
20(2)	new
20(3)	15(3)
21	15(4)
22	20(1) and (4)
23	21
24	new
25	19(2)
26	22(2)
27(1)	22(2)
27(2) and (3)	22(3)
28	22(1)
29	13
30	20(5) and 19(2) 2nd sentence
31	new
32	new
33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43.	new
<u>Annex 1 and corresponding exchange of Letters</u>	Annex
Annex 2 A	2(1)
Annex 2 B	2(2)
Annex 2 c, point 1	new
point 2	3
Annex 2 D, point 1	new
" point 2	4

<u>Article of the Agreement</u>	<u>Corresponding Article of the Directive</u>
Annex 3 A	new
Annex 3 B	8(1)(a)
Annex 4 point 1	new
point 2.21	7(2)(c) and 18(2) 2nd paragraph
point 2.22	18(2) 3rd paragraph
point 2.23	15(2) 2nd paragraph
point 2.24	11(2) 2nd paragraph and 10 (d)
<u>Protocol No. 1</u>	
Art. 1	16(1) 2nd paragraph
2.1	16(2)
2.2	16(3)
2.3	16(4)
2.4	16(5)
Art. 3	17
<u>Protocol No. 2</u>	
Art. 1	11(1)
2.1	11(1)
2.2	new
<u>Protocol No. 3</u>	new
<u>Protocol No. 4</u>	
Art. 1	23(2)
Art. 2	24
Art. 3	25
Art. 4	27 1st paragraph
Art. 5	29