European Communities

EUROPEAN PARLIAMENT

Working Documents

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Report

drawn up on behalf of the Legal Affairs Committee

on the proposals from the Commission of the European Communities to the Council for:

– a first directive on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance (Doc. 313/73)

– a directive abolishing restrictions of freedom of establishment in the business of direct life assurance (Doc. 351/73)

Rapporteur: Mr J.B. BROEKSZ

PE 37.566/fin.

English Edition

By letters of 3 January 1974 and 1 February 1974 the Secretary-General of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for:

- a first directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (Doc. 313/73).
- a directive abolishing restrictions on freedom of establishment in the business of direct life assurance (Doc. 351/73)

On 15 January 1974 the President of the European Parliament referred the first proposal to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion. On 11 February the second proposal was also referred by the European Parliament to the same committees.

The Legal Affairs Committee appointed Mr BROEKSZ rapporteur on 8 March 1974.

It considered these proposals at its meetings of 10 May, 21 June, 3/4 July and 13 September 1974.

At the last of these meetings the committee unanimously adopted the motion for a resolution and the explanatory statement.

The following were present: Mr Schuijt, chairman; Mr Jozeau-Marigné and Mr Bermani, vice-chairmen; Mr Broeksz, rapporteur; Mr Brugger, Mr Lautenschlager, Lord Mansfield, Mr Oüters, Sir Derek Walker-Smith and Mr Yeats.

The opinion of the Committee on Economic and Monetary Affairs is attached.

C O N T E N T S

A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities for

I. a first directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance

II. a directive abolishing restrictions on freedom of establishment in the business of direct life assurance

The European Parliament,

- having regard to the proposals from the Commission of the European Communities to the Council[1],
- having been consulted by the Council pursuant to Article 57(2) and Article 54(2) of the EEC Treaty (Doc. 313/73 and Doc. 351/73),
- having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Economic and Monetary Affaris (Doc. 254/74),

1. Notes that the present proposals are very similar to the directives adopted by the Council on 24 July 1973

- on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance;
- abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance[2], both of which concern the business of indemnity insurance;

2. Recalls that it adopted a resolution on 13 March 1968 on the basis of a report by the Committee on Economic Affairs embodying Parliament's opinion on the abovementioned directives on the business of indemnity insurance which have meanwhile been adopted; for the sake of completeness the resolution is attached to the present report;

3. Does not, however, see any purpose in reiterating in the present resolution the recommendations made in paragraphs 3, 4, 7, 8 and 10 of the abovementioned resolution as they are no longer valid;

[1] OJ No. C35, 28.3.1974, p.9 and OJ No. C27, 15.3.1974, p.7

[2] OJ No. L228 of 16.8.1973

4. Notes that the most important point on which the present proposal for a coordination directive has been supplemented in comparison with the coordination directive of 24.7.1973 is in the introduction of the 'specialization system' by which the life assurance business and indemnity insurance business are to be carried out by separate legal persons;

5. Considers that this system offers the most effective protection for life policy holders since they will consequently not suffer as a result of possible losses in the indemnity insurance sector;

6. Understands, however, that according to the present Commission proposal the specialization system is only to apply to undertakings established after the entry into force of the directive and that existing undertakings already simultaneously engaged at that date in the two types of business ('indemnity' and 'life') may continue to carry out both kinds of business simultaneously, provided they maintain separate management and separate book-keeping, and provided in particular that the guarantees intended to cover obligations incurred are kept separate;

7. Considers that this solution as proposed by the Commission is a fully acceptable compromise between the present enforcement in four of the Member States of the 'specialization system' for all the undertakings concerned and the complete freedom of choice existing in this respect for undertakings in five other Member States;

8. Gives its approval to both proposed directives on the understanding that the specialization system should not be jeopardized in practice by the per se lawful, even in accordance with the present coordination directive, operations of existing multi-branch undertakings from countries which have them;

9. Requests the Commission , nevertheless, to incorporate the following amendments into its proposal for a coordination directive, pursuant to Article 149, second paragraph, of the EEC Treaty;

10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES [1]	AMENDED TEXT
Proposal for a first directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance.	
Preamble and recitals unchanged	
Article 1	Article 1
This Directive concerns the taking up of the self-employed activity of direct insurance carried on by insurance undertakings established in a Member State or which wish to become established there, and the pursuit thereof in the form of the activities defined below:	This Directive concerns the taking up of the self-employed activity of direct insurance carried on by insurance undertakings established in a Member State or which wish to become established there. For the purpose of this Directive, the following branches of insurance shall be deemed to constitute the business of life assurance:
1. The following kinds of insurance where they are on a contractual basis:	1. The following kinds of insurance where they are on a contractual basis:
(a) Life assurance, that is to say the branch of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or an earlier death, life assurance with return of premiums, marriage assurance, and birth assurance;	(a) Life assurance, that is to say the branch of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or an earlier death, life assurance with return of premiums, marriage assurance, birth assurance and annuities;

[1] For complete text see OJ No. C35 of 28 March 1974

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
(b) Annuities;	(b) delete
(c) Supplementary insurance carried on by life-assurance undertakings, that is to say, in particular, insurance against personal injury, including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;	(c) unchanged
(d) The type of insurance existing in Ireland and the United Kingdom known as 'permanent health insurance not subject to cancellation'.	(d) unchanged
2. The following operations, where they are on a contractual basis, are subject to supervision by the competent administrative authorities for the supervision of private insurance and are authorized in the country concerned:	2. unchanged
(a) Tontines, that is to say, operations based on actual mortality whereby the whole of the fund accumulated or an annuity is distributed among the survivors or paid to the last survivor of a group of persons;	
(b) Capital redemption operations, that is to say, operations based on actuarial calculation whereby, in return for single or periodic	

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
payments agreed in advance, commitments of specified duration and amount are undertaken; included in these operations are 'prêts hypothécaires par intervention'.	
(c) Management of group pension funds, that is to say, operations the purpose of which is the making of payment on survival which are not at all times wholly covered by mathematical reserves, and operations which consist in assurance undertakings managing the investments and capitalizing the reserves of the bodies that effect the payments aforesaid.	
3. Where the national law of a Member State so allows, operations relating to human life which are prescribed by or provided for in that State's social-insurance legislation, when these are effected by assurance undertakings, except where they concern compulsory insurance cover.	3. unchanged
Article 2	Article 2
This Directive does not apply to:	
1. Subject to the application of Article 1(1) (c) of this Directive, the classes designated in the Annex to the first Directive for co-ordinating the laws, regulations and administrative provisions concerning the taking up and pursuit of activitiesin direct insurance other than life assurance, adopted by the Council on 24 July 1973,[1] hereinafter referred to as 'the first coordinating directive (indemnity insurance)'.	1. unchanged

[1] OJ No L 228 of 16.8.1973

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
2. The operations of provident and mutual-benefit institutions which provide benefits varying with the resources available and require their members to contribute at a flat rate.	2. unchanged
3. Subject to further coordination, operations, other than those referred to in paragraph 4 below, for the purpose of providing benefits in respect of paid employees or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or of discontinuance or curtailment of activity.	3. Subject to coordination within four years, operations, other than those referred to in paragraph 4 below, for the purpose of providing benefits in respect of paid employees or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or of discontinuance or curtailment of activity.
4. Operations relating to compulsory cover under a membership scheme, whether compulsory (including benefits provided in respect of optional or voluntary membership of such scheme) or optional according to the provisions of the law on social insurance, other than the operations referred to in Article 1(3).	4. unchanged
Article 3	Article 3
This Directive does not apply to:	
1. Institutions which undertake to provide benefits in the event of death only, where the amount of such benefits is less than 300 u.a.	1. Institutions which undertake to provide benefits in the event of death only, where the amount of such benefits is less than 800 u.a.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
2. Mutual associations, where - their statutes permit them to call up additional contributions, or to reduce their benefits or to claim assistance from other persons who have undertaken to provide it; and - the annual amount of the subscription collected in respect of activities covered by this Directive does not exceed 500.000 units of account.	2. unchanged
Articles 4 to 7 unchanged	
Article 8	Article 8
1. Each Member State shall require that any undertaking set up in its territory for which an authorization is sought shall:	1. Each Member State shall require that any undertaking set up pursuant to Article 6(1) in its territory for which an authcrization is sought shall:
(a) Adopt one of the following forms: - in the case of the Kingdom of Belgium: 'société anonyme/naamloze vennootschap', 'société en commandite par actions/vennootschap bij wijze van geldschieting op aandelen', 'association d'assurance mutuelle/onderlinge verzekering-smaatschappij', 'société coopérative/coöperative vennootschap'; - in the case of Denmark: 'Aktieselskaber' (joint stock companies), 'gensidige selskaber' (mutuals); - in the case of the Federal Republic of Germany:	(a) unchanged

'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit', 'Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehemen';

- in the case of the French Republic: for classes I, II, III, V and VI of the Annex, 'société anonyme', 'société à forme mutuelle à cotisations fixes', and for class IV of the Annex, 'société à forme tontinière';

- in the case of Ireland: 'incorporated companies limited by shares or by guarantee or unlimited';

- in the case of the Italian Republic: 'società per azioni', 'società cooperativa', 'mutua di assicurazione'; and public-law institutions within the meaning of Article 1883 of the Civil Code;

- in the case of the Grand Duchy of Luxembourg: 'société anonyme', 'société en commandite par actions', 'association d'assurances mutuelles', 'société coopérative';

- in the case of the Kingdom of the Netherlands: 'naamloze vennootschap', 'onderlinge waarborgmaatschappij', 'coöperatieve vereniging';

- in the case of the United Kingdom: 'incorporated companies limited by shares or by guarantee or unlimited', 'societies registered under the Industrial and Provident Societies Acts', 'societies registered under

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
the Friendly Societies Act', Lloyd's underwriters.	
Furthermore, Member States may set up, where appropriate, undertakings in any form available under public law provided that such institutions have as their object insurance operations in conditions equivalent to those undertakings under private law;	
(b) Limit its business activities to the activities referred to in this Directive and operations directly arising therefrom to the exclusion of all other commercial business;	(b) Limit its business activities to the activities referred to in this Directive and operations directly arising therefrom <u>including reinsurance commitments</u> to the exclusion of all other commercial business;
(c) Submit a scheme of operations in accordance with the provisions of Article 9;	(c) unchanged
(d) Possess the minimum guarantee fund provided for in Article 20 (2).	(d) unchanged
2. An undertaking seeking an authorization to extend its business to other classes or, in the case referred to in Article 6(2) (d), to another part of the territory, shall be required to submit a scheme of operations in accordance with the provisions of Article 9 as regards such other classes or other part of the territory.	2. unchanged
It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 19 and the minimum guarantee fund referred to in Article 20(2) (a).	

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
3. These coordinating measures do not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the approval of the memorandum or articles of association, general and special policy conditions, technical bases for calculating in particular premiums and mathematical reserves and any other documents necessary for the normal exercise of supervision.	3. <u>This directive does</u> not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the approval of the memorandum or articles of association, general and special policy conditions, technical bases for calculating in particular premiums and mathematical reserves and any other documents necessary for the normal exercise of supervision.
4. The above mentioned provisions may not require that any application for an authorization shall be dealt with in the light of the economic requirements of the market.	4. unchanged
Article 9 unchanged	
<u>Article 10</u>	<u>Article 10</u>
1. Each Member State shall require that an undertaking having its head office in the territory of another Member State and seeking an authorization to open an agency or branch shall:	1. unchanged
(a) Submit its memorandum and articles of association and a list of its directors and managers;	
(b) Produce a certificate issued by the competent authorities of the head office country, attesting the classes of insurance which the undertaking	

is entitled to carry on and that it possesses the minimum guarantee fund or, if higher, the minimum solvency margin calculated in accordance with Article 19, and stating the nature of the risks which it actually covers and the financial resources referred to in Article 11(1)(e);

(c) Submit a scheme of operations in accordance with Article 11;

(d) Designate an authorized agent having his permanent residence and abode in the host country, and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the host country; if the agent has a legal personality, it must have its head office in the host country and it must in its turn designate an individual to represent it who complies with the above conditions. The designated agent shall not be refused by the Member State except on grounds relating to repute or technical qualifications such as apply to directors of undertakings whose head offices are situated in the territory of the State in question.

With regard to Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, assured persons must not be more

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
unfavourably treated than if the litigation had been brought against businesses of a more conventional type. The authorized agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.	
2. Each Member State shall require that for the purpose of extending the business of the agency or branch, either to other classes or to other parts of the national territory in the case provided for in Article 6(2)(d), the applicant for the authorization shall submit a scheme of operations in accordance with Article 11 and comply with the conditions contained in (1)(b) above.	2. unchanged
3. These coordinating measures do not prevent Member States from enforcing provisions requiring, for all insurance undertakings, approval of the general and special policy conditions, technical bases for calculating premiums and mathematical reserves in particular, and by other documents necessary for the normal exercise of supervision.	3. <u>This directive does</u> not prevent Member States from enforcing provisions requiring, for all insurance undertakings, approval of the general and special policy conditions, technical bases for calculating premiums and mathematical reserves in particular, and by other documents necessary for the normal exercise of supervision.
4. The above mentioned provisions may not require that any application for an authorization shall be examined in the light of the economic requirements of the market.	4. unchanged

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 11 unchanged	
Article 11A	Article 11A
(see Article 14)	Any decision to refuse an authorization shall be accompanied by the precise grounds for doing so and notified to the undertaking in question. Each Member State shall make provision for a right to apply to the courts should there be any refusal. Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorization upon the expiry of a period of six months from the date of its receipt.
Article 12	Article 12
1. An undertaking which sets up in a Member State may not carry on simultaneously the activities referred to in the Annex to the first Directive on the coordination of indemnity insurance and the activities listed in the Annex to this Directive.	1. An undertaking which sets up in a Member State may not carry on simultaneously the activities referred to in the Annex to the first Directive on the coordination of indemnity insurance and the activities listed in Article 1 of this Directive.
2. Any undertaking which, at the time of the entry into force of this Directive, is handling both life assurance and indemnity insurance must, where these activities are being carried out within the Community, provide separate management for each class of insurance in accordance with Article 13.	2. unchanged

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
3. Such an undertaking may extend its activities, within the meaning of Article 10, while handling both classes of insurance, on condition that it complies with Article 13.	3. unchanged
Article 13	Article 13
1. The separate management referred to in Article 12(2) must be organized so that:	1. unchanged
- the simultaneous handling of life assurance and indemnity insurance does not prejudice the interests of the life policy holders;	
- profits on the life assurance side accrue to the benefit of the life policyholders to the extent provided for in the memorandum and articles of association, the general and special policy conditions and the scheme of operations.	
2. Separate accounts shall be kept in respect of life assurance and other insurance business, and, particularly, separate balance sheets and separate profit and loss accounts so that the cover for the undertaking's commitments to its life policyholders is readily distinguishable.	2. Separate accounts shall be kept in respect of life assurance and other insurance business, and, particularly, separate balance sheets and separate profit and loss accounts so that the cover for the undertaking's commitments to its life policy holders is readily distinguishable.[1]
Profits, commission for intermediaries and expenditure incurred by the undertaking shall be broken down according to the class	Profits, commission for intermediaries and expenditure incurred by the undertaking shall be broken down according to the class of

[1] English version unchanged: see Explanatory Statement on the Proposed Amendments.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
of business to which they are attributable and items common to both classes of business shall be entered in accordance with rules for apportionment to be approved by the competent supervisory authority.	business to which they are attributable and items common to both classes of business shall be entered in accordance with rules for apportionment to be approved by the competent supervisory authority.
3. (a) The assets of the undertaking shall be divided into two portions, the life portion and the indemnity portion, each comprising the assets representing the respective technical reserves, solvency margin and guarantee fund.	3. (a) unchanged
(b) The assets representing the life portion shall be entered daily in a register which shall be subject to supervision by the competent authorities. These assets may be replaced by others of equal value. Each transfer of assets from the life portion to the indemnity portion must be approved a posteriori by the supervisory authority.	3. (b) The assets representing the life portion shall be entered daily in a register which shall be subject to supervision by the competent authorities. These assets may be replaced by others of equal value. Each transfer of assets from the life portion to the indemnity portion <u>and vice-versa</u> must be approved a posteriori by the supervisory authority.
(c) In the event of execution being levied at the suit of one or more individual creditors to enforce claims arising out of life assurance business, the assets representing the life portion shall be applied exclusively in satisfaction	(c) In the event of execution being levied at the suit of one or more individual creditors, the assets representing the life portion <u>and the indemnity portion</u> shall be applied exclusively in satisfaction of the

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
of those creditors, and in the event of a winding-up these assets shall be applied in priority to all other claims in satisfaction of all creditors whose claims arise out of life assurance business.	creditors whose claims arise out of operations related to the portion concerning them, and in the event of a winding-up the assets of each portion shall be applied in priority to all other claims in satisfaction of all creditors whose claims are in respect of the portion concerning them.[1]
Article 14	Article 14
Any decision to refuse an authorization shall be accompanied by the precise grounds for doing so and notified to the undertaking in question. Each Member State shall make provision for a right to apply to the courts should there be any refusal. Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorization upon the expiry of a period of six months from the date of its receipt.	(See Article 11 A.)
Articles 15 to 17 unchanged.	

[1] Your rapporteur believes that in this context, the word 'section' would be more appropriate than 'portion'.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 18	Article 18
Each Member State shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.	Each Member State shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.
The solvency margin shall correspond:	The solvency margins shall correspond:
1. to the assets of the undertaking, free of all foreseeable liabilities, less any intangible items. In particular, the following shall be considered:	1. to the assets of the undertaking, free of all foreseeable liabilities, less any intangible items. In particular, the following shall be considered:
- the paid up share capital or, in the case of a mutual concern, the effective initial fund,	- the paid up share capital or, in the case of a mutual concern, the effective authorized capital,
- 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,	- 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,	- reserves, statutory reserves and free reserves, not corresponding to underwriting liabilities,
- any carry-forward of profits;	- any carry-forward of profits;
2. to profit reserves appearing in the balance sheet insofar as these reserves may be used to cover any losses which may arise;	2. unchanged
3. upon application, with appropriate supporting evidence by the undertaking:	3. unchanged
(a) where the mathematical reserves are calculated on the basis of margins which, allowing for future prospects, are higher than those considered necessary, to an amount equal to the difference between the mathematical	

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
reserves calculated on the higher basis and on the basis of margins considered to be necessary; the latter shall be uniformly fixed by the supervisory authority for all undertakings carrying on business in its territory; it shall communicate them to the supervisory authorities of other Member States;	
(b) to an amount equal to 50% of the current value of future profits of the undertaking; the current value of future profits is obtained by multiplying the estimated annual profit by a factor which represents the average residual duration of the contracts and takes account of their importance; the estimated annual profit is the average of the profits for the last five years;	
(c) where Zillmerizing is not practised or where Zillmerizing fails to reach the cost of writing policies included in the premium, to the difference between the mathematical reserve where Zillmerizing is either not practised or only partially practised and a mathematical reserve Zillmerized at a rate equal to the cost of writing policies included in the premium; however, this difference may not exceed 3.5% where Zillmerization is not practised, or 3.5% less the rate of Zillmerization used, where there is partial Zillmerization, of capital at risk and it shall be reduced, should the occasion arise, by the amount of the undepreciated costs of writing policies appearing in the balance sheet;	

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
(d) to any hidden appreciation resulting from under-valuation of asset items and over-valuation of liability items other than mathematical reserves insofar as such appreciation is not exceptional in character.	
Article 19	Article 19
Subject to the provisions of Article 20 the solvency margin shall be determined as shown below according to the class of insurance practised.	Subject to the provisions of Article 20 the minimum solvency margin shall be determined as shown below according to the class of insurance practised.
(a) For insurance in Class I of the Annex to this Directive, other than that referred to in sub-paragraphs (b) and (c) below, it shall be equal to the sum of the following two results:	(a) For insurance referred to in Class I of the Annex to this Directive, other than that referred to in sub-paragraphs (b) and (c) of this article, it shall be equal to the sum of the following two results:
- first result: 4% of the mathematical reserves relating to direct business and reinsurance acceptances;	- first result: 3½% of the mathematical reserves relating to direct business without deducting reinsurance transfers, and including reinsurances accepted from outside the Community
- second result: the figure representing 3% of the capital at risk for which the undertaking is responsible multiplied by the ratio existing in respect of the last financial year between the amount of capital at risk for which the undertaking remains responsible after transfers and retrocessions for reinsurance and the amount of capital at risk without deducting reinsurance; this ratio may in no case be less than 50%.	- second result: the figure representing 0.25% of the capital at risk for which the undertaking is responsible multiplied by the ratio existing in respect of the last financial year between the amount of capital at risk for which the undertaking remains responsible after transfers and retrocessions for reinsurance and the amount of capital at risk without deducting reinsurance transfers, and including reinsurances accepted from outside the Community: this ratio may in no case be less than 50%.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
(b) For assurance on death, which is temporary or for a period not exceeding five years, referred to in Class I of the Annex to this Directive and for supplementary insurance referred to in Class III, it shall be equal to the result of the following calculation:	(b) For assurance on death, which is temporary or for a period not exceeding five years, referred to in Class I of the Annex to this Directive and for supplementary insurance referred to in Class III, it shall be equal to the result of the following calculation:
- the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of all direct business in the last financial year for all financial years, shall be aggregated.	- 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,	- 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.	- from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.
The amount so obtained shall be divided into two portions, the first portion extending up to 10 million units of account, the second comprising the excess; 10% and 16% of these portions respectively shall be calculated and added together.	The amount so obtained shall be divided into two portions, the first portion extending up to 5 million units of account , the second comprising the excess; 10% and 16% of these portions respectively shall be calculated and added together.
The sum so calculated shall be multiplied by the ratio existing in respect of the last financial year between the amount of claims	The sum so calculated shall be multiplied by the ratio existing in respect of the last three financial years between the amount

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
remaining to be borne by the undertaking after deduction of transfers and retrocessions for reinsurance and the gross amount of claims; this ratio may in no case be less than 50%	of claims remaining to be borne by the undertaking after deduction of transfers and retrocessions for reinsurance and the gross amount of claims ; this ratio may in no case be less than 50%.
	(i) In the case of Lloyds the solvency margin shall be calculated on the basis of net premiums; the latter shall be multiplied by a flat-rate percentage to be fixed annually and determined by the supervisory authority of the head office country. The flat-rate percentage must be calculated on the basis of the most recent statistical data on, in particular, commissions paid. These data and the result of the calculation shall be sent to the supervisory authorities of the countries where Lloyd's has offices.
(c) For permanent health insurance not subject to cancellation existing in the United Kingdom and Ireland, referred to in Class I of the Annex to this Directive, and for capital redemption operations in Class V, it shall be equal to 4% of the mathematical reserves relating to this type of insurance or operation.	(c) For permanent health insurance not subject to cancellation existing in the United Kingdom and Ireland, referred to in Class I of the Annex to this Directive, and for capital redemption operations in Class V it shall be equal to 3½% of the mathematical reserves as referred to in sub-heading (a), first result, of this article.
(d) For insurance connected with investment funds referred to in Class II, tontines referred to in Class IV and group pension funds referred to in Class VI, it shall be equal to 1% of the capital managed.	(d) For insurance connected with investment funds referred to in Class II, tontines referred to in Class IV and the management of group pension funds referred to in Class VI, it shall be equal to 1% of the mathematical reserves as referred to in sub-heading (a), first result, of this article.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 20	Article 20
1. One third of the solvency margin shall constitute the guarantee fund. It shall consist, to the extent of at least 50%, of items listed in Article 18 (1) and (2).	1. One third of the minimum solvency margin laid down in Article 19 shall constitute the guarantee fund. It shall consist, to the extent of at least 50%, of items listed in Article 18(1) and (2).
2. (a) The guarantee fund may not, however, be less than 600,000 units of account in the case where all or some of the risks are included in one of the classes listed in the Annex.	2. (a) unchanged.
(b) The minimum guarantee fund referred to in (a) should consist of the items listed in Article 18 (1) and (2)	(b) unchanged.
	(c) Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations
Article 21 unchanged.	
Article 22	Article 22
1. Member States shall gradually reduce the scope of the obligation imposed on undertakings to effect partial reinsurance, in respect of business covered by Article 1, with one or more of the agencies designated by national rules, so as to bring about the complete disappearance of such obligation at the end of the transitional period referred to in Article 33.	1. Member States shall gradually reduce the scope of the obligation imposed on undertakings to effect a partial transfer in respect of business covered by Article 1, to one or more of the public agencies designated by national rules, so as to bring about the (one word deleted) disappearance of such obligation when freedom to provide services in the life assurance takes effect.

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

Articles 23 and 24 unchanged.

Article 25	Article 25
1. Each Member State shall make it possible for an undertaking to assign all or part of its portfolio of policies if the assignees possess the necessary solvency margin, due account being taken of the assignment. The supervisory authorities concerned shall consult each other before approving such assignment.	1. Each Member State shall make it possible for an undertaking to assign all or part of its portfolio of policies to an assignee if the latter possesses the necessary solvency margin, due account being taken of the assignment.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
2. Once approved by the competent national authority, such assignment may automatically be relied upon against the subscribers concerned.	2. unchanged
3. Where an undertaking is simultaneously handling life assurance and indemnity insurance, each Member State shall ensure that, in the event of an assignment of all or part of its portfolio, such assignment does not prejudice the interests of the life policy-holders and that in particular the assets and liabilities be transferred separately for each of the classes of insurance concerned.	3. unchanged
Articles 26 and 27 unchanged	
Article 28	Article 28
Member States shall require undertakings to establish adequate technical reserves to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such technical reserves, including mathematical reserves, by means of assets which are equivalent to such reserves and are, to the extent fixed by the State in question, matching assets.	Member States shall require undertakings to establish adequate technical reserves to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such technical reserves, including mathematical reserves, by means of assets which are equivalent to such reserves and are, to the extent fixed by the State in question, matching assets.
The law of the Member States shall be applicable to the calculation of technical reserves, the determination of categories of investments, and the valuation of assets.	The law of the Member States shall be applicable to the calculation of technical reserves, the determination of categories of investments, and the valuation of assets.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
The Member State in question shall require that the assets representing the technical reserves shall be localized in its territory.	The Member State in question shall require that the assets representing the technical reserves shall be localized in its territory. Article 17 (3) shall, however, be applicable.
Article 29 unchanged.	
Article 30	Article 30
1. Any undertaking which, having obtained an authorization from one Member State, obtains an authorization from one or more other Member States to establish other agencies or branches therein may apply for one or more of the following advantages:	1. Any undertaking which, having obtained an authorization from one Member State, obtains an authorization from one or more other Member States to establish other agencies or branches therein may apply for (four words deleted) the following advantages:
(a) That the solvency margin referred to in Article 29 be calculated in relation to the entire business which it undertakes within the Community; in such case, account shall be taken of the premiums or contributions, mathematical reserves and capital at risk relating to the business effected by all the agencies or branches established within the Community;	(a) unchanged
(b) That it be dispensed from lodging the deposit required under Article 27 (2) (e), in such States, also;	(b) unchanged
(c) That the assets representing the guarantee fund be kept in any one of the Member States in which it carries out business.	(c) unchanged
2. Should at least two of the Member States in question approve the application in whole or in part,	2. Should at least two of the Member States in question approve the application (five

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
the competent authority of the Member State in whose territory the oldest establishment of the applicant is situated shall verify the state of solvency of the undertaking with respect to the entire business carried on by it within the Member States which approve the application. However, at the request of the undertaking and with the unanimous approval of the Member States concerned, such verification may be carried out by the competent authority of another Member State. The authority carrying out the verification shall obtain from the other Member States the necessary information regarding the agencies or branches established in their territories.	words deleted), the competent authority of the Member State in whose territory the oldest establishment of the applicant is situated shall verify the state of solvency of the undertaking with respect to the entire business carried on by it within the Member States which approve the application. However, at the request of the undertaking and with the unanimous approval of the Member States concerned, such verification may be carried out by the competent authority of another Member State. The authority carrying out the verification shall obtain from the other Member States the necessary information regarding the agencies or branches established in their territory.
3. The advantages conferred by this this Article may be withdrawn upon the initiative of one or more of the Member States concerned.	3. unchanged
Articles 31 to 41 unchanged	

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES [1]	AMENDED TEXT

Proposal for a directive abolishing restrictions on freedom of establishment in the business of direct life insurance

Preamble and recital unchanged

Articles 1 to 7 unchanged

[1] For complete text see OJ No. C 27 of 15 March 1974

B

EXPLANATORY STATEMENT

I. INTRODUCTION

1. On 24 July 1973 the Council adopted two directives on direct insurance, viz. :

- the Council's first directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
- the Council directive of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance[1].

2. These directives, which both deal with the business of indemnity insurance, have their origins in the General Programme for the abolition of restrictions on freedom of establishment, adopted by the Council on 18 December 1961 pursuant to Article 54 (1) of the Treaty of Rome[2],[3].

Sections C and D of Title IV of this programme stipulate that the abolition of restrictions on the establishment of branches or agencies of direct insurance undertakings is subject to the coordination of conditions for the taking-up and pursuit of such business.

3. The purpose of this is understandable. After all, in most Member States of the Community insurance companies are subject to public supervision to a greater or lesser degree, the main aim of this being to verify that the necessary financial resources are available. The principal task

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[1] OJ No. L 228 of 16.8.1973.

[2] Article 54 (1) of the EEC Treaty:
'1. Before the end of the first stage, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly, draw up a general programme for the abolition of existing restrictions on freedom of establishment within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage. The programme shall set out the general conditions under which freedom of establishment is to be attained in the case of each type of activity and in particular the stages by which it is to be attained.'

[3] OJ No. 2, 15.1.1962

of the supervisory authorities is to protect the insured party against undertakings which cannot meet their full obligations to the insured party due to a lack of adequate liquid resources. The regulations imposed on the insurance companies vary from one EEC country to another with the result that authorization in one member state of undertakings from another is also dependent on fulfilment of the conditions set by the host country. It was therefore necessary, in view of the need to abolish restrictions on the freedom of establishment, to coordinate national provisions in this area[1].

The directive mentioned above, based on Article 57 (2)[2] of the EEC Treaty - the 'Coordination' Directive - therefore logically preceded the directive abolishing restrictions on freedom of establishment, which has its legal basis in Article 54 (2) and (3)[3] of the Treaty of Rome.

4. It should be noted that the coordination directive was simply a first attempt at coordination which, while providing an adequate basis for the second directive adopted by the Council, is to be followed later by other coordination directives. (These are to deal with calculation of technical reserves, fixing of categories of investment, the assessment of assets and other matters).

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1 For a full explanatory statement see the introduction to the DERINGER Report contained in Annex II of the present report.

2 Article 57 (2) :
'For the same purpose the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the Assembly, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons.'

3 Article 54 (2) :
'In order to implement this general programme or, in the absence of such programme, in order to achieve a stage in attaining freedom of establishment as regards a particular activity, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly, issue directives, acting unanimously until the end of the first stage and by a qualified majority thereafter.'

Article 54 (3) (f) :
'3 The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:
(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries.'

5. The ultimate aim of coordination is a common market for insurance based on three elements:

- each insurance undertaking concerned which has its main office in the Community may establish an agency or branch office in each other Member State under identical authorization conditions in all nine Member States;
- conditions governing the pursuit of business shall be identical for all the insurance undertakings concerned;
- mutual recognition of the supervision carried out by Member States, with the proviso that the supervision - principally financial - is exercised by the supervisory authority of the state where the main office is established, assisted by the supervisory authorities of the Member States in which the agencies or branch offices are located.

The coordination directive applies to all insurance undertakings concerned regardless of whether their activity is confined to one Member State or extends to several Member States.

6. The directive abolishing restrictions on the freedom of establishment gives, for each Member State, a list of provisions which have a discriminatory effect on subjects of other Member States in comparison to the state's own subjects and which must therefore be abolished.

7. The European Parliament delivered its opinion on the two above-mentioned directives on 13 March 1968[1] on the basis of a report drawn up by Mr DERINGER on behalf of the Committee on Economic Affairs[2]. In view of the close analogies between the directives on direct insurance other than life assurance which have now been adopted and the present proposals for life assurance directives, the European Parliament's motion for a resolution and the explanatory statement from the DERINGER Report have been included as annexes to the present report. Attention should also be drawn to the fact that the Committee on Economic Affairs discussed the directives in great detail at the time. No less than ten meetings were devoted to the subject by the said committee.

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[1] OJ No. C 27, 28.3.1968

[2] Doc. 204 of 4.3.1968

8. Both the present directives follow the same procedure for coordination of legal provisions and abolition of restrictions on freedom of establishment, in this case in respect of life assurance, as the procedure laid down in the two directives adopted on direct insurance other than life assurance. As a result the texts are very similar.

It is to be expected that their consideration and approval in the Council of Ministers will thus be considerably facilitated. The work of your rapporteur has already been considerably simplified by Mr DERINGER's excellent report.

II. DIFFERENCES BETWEEN THE COORDINATION DIRECTIVE OF 24 JULY 1973 (DIRECT INSURANCE OTHER THAN LIFE ASSURANCE) AND THE PRESENT COORDINATION DIRECTIVE (LIFE ASSURANCE)

(a) The specialization system

9. Attention has already been drawn above to the fact that these two directives are very similar. Nevertheless the present proposal introduces a completely new element which was not touched upon in the directive adopted and which must be given serious consideration, namely the introduction of the 'specialization system' (see Article 12 and Article 13).

Under the specialization system an undertaking may not carry out simultaneously both life assurance business and direct insurance other than life assurance. The two types of activity should be carried out by separate legal persons. The legal division of the assets of life assurers and other insurers is considered to offer the best protection to life policy holders. The latter will therefore not suffer any disadvantage as a result of possible losses in the sector of direct insurance other than life assurance[1].

10. The Commission's proposal states that the specialization system should only apply to undertakings established after the entry into force of the directive (Article 12 (1)). Existing undertakings already engaged in both types of business simultaneously at the time when the directive comes into force may continue to carry out both types of business as long as they observe the provisions contained in Article 13 on separate management, separate book-keeping and separate guarantees (Article 12 (2)).

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[1] See the Commission's Explanatory Memorandum, page 7.

Subject to these same conditions the undertakings may also open agencies or branch offices in other Member States under the terms of Article 10 (Article 12 (3)).

11. Article 13 gives provisions for separate management, separate book-keeping and separate guarantees. The basic principle here is that the simultaneous pursuit of life assurance and indemnity insurance business should not in any way place life policy holders at a disadvantage. The most important implementation measure is set out in Article 13 (3) (a) which provides that the insurer's assets must be split into a 'life portion' and an 'indemnity portion'.

12. The specialization system is already in force in four Member States, i.e. Germany, France, Ireland and the Netherlands. In Denmark and Italy undertakings are encouraged to adopt this system without being legally compelled to do so. Undertakings in Belgium, Luxembourg and the United Kingdom are entirely free in this respect and may if they so desire deal in both types of insurance simultaneously.

13. Your rapporteur agrees with the solution proposed by the Commission in Article 12, since this represents a compromise acceptable in every respect between on the one hand the compulsory application of the specialization system for all Member States - and therefore also for existing undertakings - and on the other hand full freedom of choice for undertakings between the different systems. Article 12 and 13 of the present coordination proposal represent the most fundamental point of difference between this proposal and the directive of 24.7.1973.

14. While the proposal for a directive was being considered by the Legal Affairs Committee Mr SCHWÖRER tabled the following amendment to Article 12(3):

> 'Such an undertaking may extend its activities, within the meaning of Article 10, on condition that in those countries in which the separate management system is already prescribed under the relevant laws and provisions it confines its operations to one of the classes of insurance referred to in paragraph 1. In such cases the other class of insurance may be conducted through an independent subsidiary.'[1]

[1] This proposed amendment is a revised version of the text of PE 37.503.

The written motivation of this amendment read as follows:

'In its present form, the directive would allow existing multi-branch undertakings to extend their activities to other countries through branch offices and agencies provided they organize 'separate management' for these branches (see Art. 12(3) in conjunction with Art. 10 and Art. 13).

This formulation would therefore permit the further extension of the multi-branch principle. This is not in accordance with the Commission's intentions as stated in the section of its Explanatory Memorandum dealing with Articles 12 and 13 : 'By adopting this solution, the Commission shows its preference for the specialization system, while proving its concern not to upset the status quo'. The existing situation is, however, that in countries which apply the specialization system foreign multi-branch undertakings may not at present deal in both life assurance and indemnity insurance through one and the same branch.

The present text of Article 12(3) is not only in contradiction to the general guidelines laid down by the Commission, but is also bound to lead to distortion of competition, to the disadvantage of insurers under the specialization system : whereas insurance undertakings in one Member State operating under the specialization system and wishing to deal in more than one type of insurance in other Member States would be required to establish a separate branch for each, multi-branch undertakings would be in a position to acquire the same volume of business through a single branch office. Such a discrepancy in the initial conditions could lead to further distortion of the conditions of competition, which, under Article 101 of the EEC Treaty should be eliminated in so far as they are due to differences between the laws of Member States.

The danger of distortion of the conditions of competition would be reduced if both foreign and domestic undertakings dealing on the same market were made subject to the same legal provisions. The proposed amendment would allow multi-branch undertakings to opt for either life assurance or indemnity insurance for their branch offices. For dealings in the other type of insurance a subsidiary company would have to be set up, which, as a new insurance undertaking would be automatically subject to Article 12'[1].

Your committee discussed this proposed amendment at length and finally rejected it by eight votes to two with one abstention.

The main arguments against the amendments were:

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[1] The motivation is taken from PE 37.503 in its original form.

- the objective of the proposal for a directive is to create a European insurance market, in the interests of the insured; the proposed amendment would not support this objective; free competition within the Community would then be restricted as multi-branch undertakings would not be allowed to operate in certain countries, i.e. those where the separate management system is compulsory.

- the obligation on multi-branch undertakings to conduct separate management and separate accounts on the one hand, and the strict regulations on the formation of reserves on the other, together with the supervision to be carried out by the authorities, offer sufficient guarantee to ensure that the interests of the insured are not in jeopardy in multi-branch undertakings; furthermore the present situation in the Member States where undertakings are principally multi-branch does not give cause to fear the contrary.

- as, on balance, the multi-branch undertakings have to satisfy the same conditions as the specialized undertakings, there is equally little reason to fear that the multi-branch undertakings will have a better position on the market; the European Assurance Committee representing insurers from the nine Member States accepted the Commission's compromise suggestion without any reservation.

15. In its opinion adopted on 20 June 1974 the Committee on Economic and Monetary Affairs approved the proposal from the Commission

> 'stressing that, where separation already existed, it should not be jeopardized.'

The Legal Affairs Committee has no objection to including this addition in the draft resolution except that a more specific text would be preferable. Your committee therefore proposes the following text:

> '... on the understanding that the specialization system should not be jeopardized in practice by the per se lawful, even in accordance with the present coordination directive, operations of existing multi-branch undertakings from countries which have them'.

The specialization system might be jeopardized if an undertaking were to be in a favourable competition position as a direct consequence of its multi-branch nature. As already explained above, however, the Legal Affairs Committee has no fears on this score.

(b) <u>The financial reserves</u>

16. As in the case of indemnity insurance the financial guarantees required of undertakings are made up of three elements:

- adequate <u>technical reserves</u> (including mathematical reserves) to meet expected liabilities (<u>Articles 17</u>).

- a solvency margin, i.e. a supplementary reserve to cover unexpected and unusually large risks (Article 18). The volume of this depends on the undertaking's turnover.

- a guarantee fund consisting of one-third of the solvency margin, but not less than 600,000 units of account (Article 20)[1]

According to the Commission's explanatory memorandum the provisions relating to the solvency margin are the most important ones in the directive since the whole system which it is hoped, will be incorporated into national legislations by way of this directive is based on these provisions. The extremely complicated method of calculating the solvency margin is set out in Article 19

17. In respect of the financial guarantees the present proposal for a directive differs from the directive on direct insurance other than life assurance on two points:

i. the constituents of the solvency margin are defined in a different way: they are either 'explicit' (Article 18 (1) and (2) or 'implicit' (Article 18 (3)) depending on whether they are shown on the balance sheet.

ii. the instructions for the calculation of the solvency margin are different, due to the nature of the type of insurance involved.

18. Article 19 (a) first and second results

The following objection has been raised in several quarters to the Commission's provisions:

Since Article 17 (1) allows Member States to determine the rules fixing the amount of the mathematical reserves on their territory, it is possible for the minimum solvency margin to be calculated on the basis of gross reserves (without taking account of reinsurance transfers) in some countries and on the basis of net reserves (taking account of reinsurance transfers) in others. As a result the solvency margin is likely to differ substantially between the Member States and this would lead to a distorion of competition. It was proposed that the margin should be fixed for all countries on the basis of net reserves. An amendment to this effect was tabled by Mr BREWIS, Lord MANSFIELD and Sir Derek WALKER-SMITH on behalf of the European Conservative Group. It was stated that reinsurance would help to create reserves and this would be of particular benefit to small firms which reinsured a relatively large proportion of their business.

The Committee understands the reasons for these misgivings but is unable to concur with the proposed solution, since:

(a) the reinsurers concerned exclusively with the business of reinsurance are not subject to any control in the Community.

[1] For a fuller explanation see paragraph 11 of the DERINGER Report.

If the net reserves were taken as a basis for calculations it would be impossible to determine what part of the effective commitments of insureres to policyholders had been reinsured;

(b) insurances are sometimes reinsured with undertakings established outside the Community. In such cases - with due regard for the previous paragraph - control is even less possible;

(c) in the case of calculations based on net reserves the higher the proportion of insurance reinsured the smaller will be the margin of solvency required in relation to the effective commitments of the insurer;

(d) in the United Kingdom 20% of insurance policies are reinsured on average; the figure in the continental Member States is only 10%. Calculations based on net reserves might therefore also give rise to distortion of competition.

In view of the above your rapporteur advocates that calculations should be based on the gross reserves. To take account of the objections raised he is prepared to reduce the percentages proposed by the Commission in (a) and (b).

The amendment was rejected by six votes to three with two abstentions.

Reinsurance commitments taken on by an undertaking are also covered by this provision. In the case of reinsurance from insurers within the Community this goes without saying but there should be explicit mention of reinsurance accepted from outside the Community. In view of this your rapporteur would be glad to learn the figures for the proportion of the number of reinsurances accepted by undertakings from third countries in relation to those from undertakings within the Community.

(c) Obligatory reinsurance

19. Article 22 stipulates that the Member States concerned shall gradually reduce the scope of the obligation imposed on undertakings to effect partial reinsurance with one or more of the agencies designated by national rules. This national obligation should be completely abolished by the end of the transitional period. This provision is not contained in the directive on direct insurance other than life assurance. In fact Article 22 affects only one Member State, i.e. Italy, which is the only country within the Community to subject life assurance companies to the obligation referred to. The obligation did apply in another Member State, France, but has since been abolished.

20. However, your committee notes at this point that the obligation existing in Italy is not, basically, an obligation to effect reinsurance. The money which has to be transferred by the insurance companies to the semi-official 'Istituto Nazionale delle Assicurazioni' (INA) - at the present time between 10 and 40% of premiums - is intended to serve as security for the insured parties in the event of the companies concerned going bankrupt. If, after the coming into force of the directive, this obligation were to be fully maintained the Italian insurance companies would be in an unfavourable position as regards competition since not only would they have to maintain certain financial reserves (under the directive) but they would also have to transfer part of their premium income to the INA. This double obligation would lead to higher premiums than those technically necessary. As the financial stipulations in the directive already provide insured persons with adequate guarantees against bankruptcy, this specifically Italian provision will become quite superfluous after the coming into force of the directive, at least as far as the protection of the insured party is concerned.

At the same time your committee realizes that the Italian State must be given time to retract the relevant legislation in the proper way. It must be borne in mind that this will in fact be accompanied by a loss of government revenue. Regarding the transition period the Commission proposal (Article 22(1)) refers to Article 33 which stipulates a period of five years. In view of the anticipated adjustment difficulties in Italy this period seems too short. After an extensive debate, the Legal Affairs Committee decided that the abolition of this national regulation should be made compulsory only when freedom to provide services in the life assurance business had become a reality, a time when the distortion of competition mentioned above might really occur. Finally it would be better to replace the word 'reinsurance' in Article 22(1) by the word 'transfer' as otherwise the Italian State would not, strictly speaking, be bound by this provision.

21. As a result of the modification of Article 22(1), paragraph 2 becomes superfluous and paragraph 3 must be adjusted.

III. EXPLANATORY STATEMENT ON THE PROPOSED AMENDMENTS

(a) Coordination directive

22. Article 1

Introductory sentence

In order to avoid any misunderstanding about the undertakings to which the directive is applicable, a clear indication should be given of which branches are deemed to constitute the business of life assurance for the purposes of this directive.

Paragraph 1

It may be presumed that annuities come under Article 19(a) which concerns the method of calculating the margin of solvency for the life assurance branch. It would therefore be preferable to include 'annuities' in the list in Article 1 (1) (a).

Article 2(3)

This provision refers to independent pension funds and may result in distortion of competition in favour of insurers concerned exclusively with this kind of insurance work unless coordination as referred to in the article has been effected. It is therefore desirable to fix a definite deadline for the completion of such coordination.

Article 3

This article relates to 'popular insurance', specifically to cover funeral costs. The amount must be increased as 300 u.a. is hardly a realistic figure for a funeral nowadays.

Article 8(1)

Introductory sentence

The proposed amendment is intended simply to clarify the text.

Article 8 (1) (b)

Insurance undertakings do not limit their activities to the activities referred to in the directive and operations directly arising therefrom but also traditionally accept reinsurance commitments.

Article 8 (3)

Clarification of text.

Article 10(3)

Clarification of text.

Article 11A

Article 14 is a logical continuation of Article 11 and should therefore be correspondingly resituated in the directive.

Article 12 (1)

The list in Article 1 is more comprehensive than the list in the Annex.

Article 13 (2)

The term 'individualisées' could give rise to the misunderstanding that 'separate management' could go so far as to require the 'individualization' of all capital and securities forming part of the assets and intended separately to cover undertakings contracted in respect of each individual life policyholder. (This amendment does not apply to the English version).

IV. A COMPARISON OF THE COORDINATION DIRECTIVE OF 24 JULY 1973 (DIRECT INSURANCE OTHER THAN LIFE ASSURANCE) AND THE PROPOSAL FOR A COORDINATION DIRECTIVE (LIFE ASSURANCE) WITH THE EUROPEAN PARLIAMENT'S RESOLUTION OF 13 MARCH 1968

23. On 13 March 1968 the European Parliament adopted a resolution embodying an opinion on the two previous insurance directives (which have now been adopted) after a fairly extensive debate on the DERINGER report in the plenary assembly[1]. Two amendments to the motion for a resolution were tabled, of which one was partially adopted. This part-amendment is incorporated in Paragraph 10, second indent of the resolution adopted by Parliament[2].

Consideration of the resolution paragraph by paragraph

24. Your rapporteur finds no cause for comment in the preamble, nor in Paragraph 1 and Paragraph 2, both of which meet with his approval.

25. Paragraph 3 calls for the replacement of the system consisting of a solvency margin and a minimum guarantee fund by a system consisting of a guarantee fund and a variable increment added to the guarantee fund. The intention of this is to create a guarantee fund which would be fixed at a certain amount but could be increased step by step as the undertaking concerned attained a certain turnover figure.

This would enable the minimum amount for small businesses to be set lower than the minimum guarantee fund proposed by the Commission. On top of this there would be a variable increment related to the turnover of the undertaking which could be designated the 'extra technical reserve'.

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1 see Debates of 11 and 13 March 1968, and OJ No. C 27 of 28.3.1968.

2 It should be noted that the minutes of the meeting of 13.3.1968 (OJ No. C 27, 28.3.1968, p. 14) do not give a correct record of the voting on Amendment No.2 in the debate of 13.3.1968. This amendment consisted of three parts of which only the last part was adopted. The first part of this amendment, proposing the extension of deadlines to eight years in Article 29(1), and the second part, were rejected with the result that the deadline of five years proposed by the Committee on Economic Affairs remained in force. In the minutes therefore Paragraph 10, first indent, of the resolution, '... eight years ...' should read '... five years ...'.

This paragraph, which was adopted by the Committee on Economic Affairs after lengthy deliberation, was the result of an objection by the insurance companies to the system proposed by the Commission: it was claimed that until now a distinction had always been made between two factors, a fixed factor which could be increased step by step, and a variable factor[1].

In his reply during the plenary debate the then Member of the Commission Mr VON DER GROEBEN, did not give a final decision on this proposal from the Committee on Economic Affairs. The advantages and disadvantages were to be weighed up by the Commission before the problem could be solved.

26. Paragraph 4 is closely related with Paragraph 3 and does not in itself call for any comment. Your rapporteur completely endorses Paragraph 5, since the main consideration here is the protection of the insured party. Perhaps in the case of the present proposal reference could be made in the motion for a resolution to the separate management. Paragraph 6 provides no cause for comment. In his reply Mr VON DER GROEBEN indicated his satisfaction at this paragraph.

27. In Paragraph 7 the European Parliament proposed a cut of 50% in the minimum guarantee amount for businesses whose premium income was lower than 2.5 million units of account, with the aim of preventing smaller undertakings from experiencing difficulties in applying the financial regulations. Mr VON DER GROEBEN noted that the Commission had already taken account of this in the provision, contained in the proposal, allowing Member States to relieve undertakings which did not reach the required annual income of the commitment to form this guarantee fund for a certain period (see also the similar Article 33(2)(b) of the present proposal). Bearing in mind that the directive of 24.7.1973 has not been in force long enough to gain an idea of the consequences for smaller businesses your rapporteur is inclined to give the Commission the benefit of the doubt in this respect.

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[1] see Paragraph 12, 13 and 14 of the explanatory statement in the DERINGER report

28. According to Paragraph 8(a) the asset requirements should be differentiated according to the different classes of risk. According to the reply by Mr VON DER GROEBEN, the Commission had already taken account of the different risks of the different classes of insurance in fixing the average percentages. He did, however, agree to continue discussions with all parties in order to find the most satisfactory solution for all concerned. We have heard from the Commission that this element was also considered for the present proposal (Article 19). Here it can also be added that the indemnity insurance sector has a greater number of classes than the life assurance sector (compare the annexes).

29. Paragraph 8(b) expressed a desire for stricter requirements for new insurance companies than those already imposed on existing companies. One reason put forward by the Committee on Economic Affairs was that the establishment of insurance companies entailed considerable additional costs and new companies could only build up a balanced distribution of risks after a certain length of time[1]. The Commission was not in favour of this paragraph since it would cause distortion of competition between new and already existing businesses to the advantage of the latter. This argument seems to your rapporteur to be acceptable.

Mr VON DER GROEBEN also drew attention in this connection to the proposed transitional measures.

30. The Commission also objected to Paragraph 8(c) which advocated an increase in the solvency margin for businesses which had run at a loss for at least two of the preceding four years. The Committee on Economic Affairs had feared that such businesses would soon fall into the danger zone[2]. Mr VON DER GROEBEN said that modernization and conversion of such businesses would be made more difficult by such a provision if not impossible in view of the fact that the increasing of the financial requirements would in many cases lead to a provisional deficit.

31. The Commission did not reply in detail to Paragraph 8(d) referring to the asset requirements for insurance companies providing health insurance and Paragraph 9 referring to Belgian mutual insurance companies for industrial insurance.

32. Finally, the period proposed in Paragraph 10 first indent, of five years[3], is included both in the directive of 24.7.1973 and in the present proposal.

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[1] see Paragraph 19 of the explanatory statement in the DERINGER report.

[2] Cf Paragraph 20 of the explanatory statement in the DERINGER report.

[3] And not eight years as stated erroneously in OJ No. C 27 (see footnote No. 2 on page 46 of the present report).

However the Commission could not agree to extend the period in Article 29(2) from ten to twenty years. In the corresponding provision of the present proposal for a directive (Article 33(2)(b), second paragraph) the period is again fixed at ten years. However, in the directive of 24.7.1973 (Article 30(2)(b)) no precise period is given but the exemption from the obligation to form a minimum guarantee fund is to be abolished for the firms concerned by a decision taken unanimously by the Council on the proposal from the Commission, on the basis of the examination referred to in Article 33 (the Commission and the competent authorities of the Member States shall collaborate closely for the purpose of .... examining any difficulties which may arise in the application of this directive). Your rapporteur wonders why the Council wishes to follow such a cumbersome procedure and is prepared to accept the period of ten years proposed by the Commission.

Paragraph 10, second indent follows from an amendment adopted by the European Parliament and is included in Article 33(3) of the present proposal.

33. Finally, at the time when the European Parliament passed its resolution on the business of indemnity insurance, the Community still consisted of six members. In adopting the directives the Council naturally took account of the situation in the three Member States which had meanwhile acceded to the Community. Therefore in the case of Denmark, Ireland and the United Kingdom the present proposal could also be based on the directives of 24.7.1973. In this connection your rapporteur would like to point out the special position of Lloyd's of London.

Lloyd's is an association formed exclusively of individual underwriters - albeit grouped in syndicates - who do not possess legal personality. No company is allowed to join the association and the risks are borne by the syndicates of underwriters. The Community system has taken account of this special legal form as is apparent from the reference to 'Lloyd's underwriters' in Article 8 of the present proposal (legal forms of undertaking required for the granting of an authorization). Other provisions of the directive also take proper account of the position of Lloyd's.

ANNEX I

RESOLUTION of 13 March 1968

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a first directive on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance

and on the proposal from the Commission of the European Communities to the Council for a directive abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance (OJ No. C 27, 28.3.1968, p. 15)

The European Parliament,

- having regard to the proposals from the Commission of the European Communities to the Council[1],
- having been consulted by the Council pursuant to Article 57(2) and Article 54(2) of the EEC Treaty (Doc. 98/66 and Doc. 2/67),
- having regard to the report by the Committee on Economic Affairs (Doc. 3/68),

1. Endorses the principle that the coordination directive (Doc.98/66) should apply to all insurance companies and not only to those wishing to engage in trans-frontier insurance business;

2. Agrees to the two proposed directives, subject to the amendments to the coordination directive set out below in paragraphs 3 to 10;

3. Believes that the system of a solvency margin and minimum guarantee fund for asset requirements, as set out in Articles 16 and 17 of the Commission's proposal, should be replaced by a system consisting of a guarantee fund and a variable increment to the guarantee fund;

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[1] OJ No. 175 3.10.1966,pp.3056/66; OJ No. 62, 1.4.1967, p. 955/67

4. Does not wish to propose any specific percentage amounts for the guarantee fund and the variable increment;

5. Does, however, unanimously believe that the protection of the insured should be the determining factor in the establishment of such percentages, in other words that the assets of an insurance company should always be sufficient to guarantee coverage of the insurance policies which it has concluded;

6. Therefore believes that the requirements in respect of the assets of insurance companies should ultimately neither fall short of nor exceed the requirements set out in the Commission's proposal;

7. Believes, however, that the asset requirements for small insurance companies, i.e. companies with a premium income of less than 2.5 m.u.a., with a well-balanced portfolio of policies, can and should be reduced and that this reduction should be of the order of 50% of the guarantee fund;

8. Furthermore recommends, in the interests of the insured, that the following factors should be taken into account in fixing asset requirements:

   a. the requirements should be differentiated according to the various classes of risk involved;

   b. requirements for new insurance companies should in every case be considerably stricter than those for companies already in existence;

   c. in the case of insurance companies which have recorded a loss for at least two of the last four years and have consequently fallen short of the lower limit set for assets, the supervisory authorities should be empowered to increase the requirement figure by not more than 75%;

   d. in the case of insurance companies providing health insurance in a similar way to life assurance, the requirements may be reduced to one third of the figure for the requirements for other companies;

9. Recommends that the Belgian mutual insurance companies for industrial accidents should also be included in the list of excepted insurance companies in a new clause d) in Article 4;

10. Considers it indispensable, in the interests of a normal evolution,

that:

- the dates set for the transitional regulations in Article 29 be extended, from three to eight years in para. 1 and from ten to twenty years in para. 2;
- undertakings wishing to expand their activities, within the meaning of Article 10 of the proposed directive, may do so only if they have complied with the provisions of the said directive;

11. Requests the Commission of the European Communities to incorporate, pursuant to Article 149, second paragraph, of the EEC Treaty, the following proposed amendments in its proposal;

12. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

ANNEX II

EXPLANATORY STATEMENT

from the report drawn up by Mr DERINGER on behalf of the Committee on Economic Affairs,

on

the proposal from the Commission of the European Communities to the Council (Doc. 98/66) for a first directive on the coordination of laws, Regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance, and on the proposal from the Commission of the European Communities to the Council (Doc. 2/67) for a directive abolishing restrictions on the freedom of establishment in the business of direct insurance other than life assurance (Doc. 204 of 4 March 1968)

I. Introduction

1. Apart from a few exceptions, insurance companies in all the countries of the Community are subject to varying degrees of supervision by the public authorities in order to ensure that they are always in a position to honour their promise to persons insured by them to pay all claims that may be made. The supervisory authorities have an obligation to protect the insured against undertakings which do not at all times have the necessary funds to meet their obligations. At the present time it is customary for foreign insurance companies - most of whose assets lie outside the province of national public supervision - to have to fulfil special requirements, by providing guarantee funds or by maintaining certain liquid resources.

2. These extra requirements for foreign undertakings, i.e. undertakings from other Member States, cannot, however, be maintained indefinitely under the terms of the freedom of establishment provided for in the Treaty. Indeed, any insurance company permitted to operate in one of the Member States ought to be able to operate in other Member States, in a genuine Community insurance market, without having to undergo renewed vetting, perhaps on the basis of criteria which are different from those in the home country. However, in view of the need to protect the insured, this situation can only be accepted by the supervisory authorities in the other Member States if the same vetting criteria are applied throughout all Member States and, in particular, approximately the same security is required for authorization to operate.

3. The criteria for insurance companies must therefore, first and foremost, be coordinated in the various Member States in order to ensure that:-

   a. the same classes of insurance are subject to supervision in all Member States, and

   b. the nature of supervision in the various Member States is sufficiently homogeneous to allow each supervisory body to recognise operating requirements in any other Member State to be sufficient basis for authorization to operate in its own country.

4. The General Programme for the abolition of restrictions on the freedom of establishment, adopted by the Council on 18 December 1961[1], stipulates that conditions for the taking-up and pursuit of direct insurance business must be coordinated, before the restrictions imposed by the various Member States on the creation of agencies or branches of foreign undertakings can be lifted.

5. The present proposal, submitted on the basis of the Programme, for a 'first directive on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance' - hereinafter referred to simply as the 'coordination directive' is thus the first measure, which for a start, relates only to the freedom of establishment, i.e. creation of agencies and branches, and does not deal with the freedom to provide services, i.e. the conclusion of insurance policies in other countries. According to the proposal, supervision should be standard throughout the Member States in respect of the classes of insurance referred to in the Annex, and standard criteria should also be established for the granting of authorization to operate, especially in the matter of guarantee funds.

6. The other proposal submitted, for a directive abolishing restrictions on the freedom of establishment in the business of direct insurance other than life assurance, follows on from the coordination directive and lists the various obstacles which at present stand in the way of freedom of establishment for foreign insurance companies and which must be abolished under the terms of the Treaty.

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[1] OJ No.2, 15.1.1962, pp.36/62

II. Form to be taken by coordination[1]

7. According to the Commission's proposal, the coordination directive should apply to all insurance undertakings whether they wish to operate in one or more Member States. Objections were made to this both in committee and at the preparatory stage, especially as regards the financial provisions of Article 16 and 17. These objections can be summed up as follows:

   a. authorization for 'intracommunity operation' i.e. exercise of business in more than one Member State should be subject to stricter requirements in respect of assets, as the exercise of business in Member States other than the home country incurs higher costs and above all greater risks. From an objective point of view it would therefore seem reasonable to differentiate between undertakings active solely in their own country and others wishing to carry on business in more than one Member State.

   b. if the regulations on assets are to be applied uniformly to all insurance companies, one consequence will be that the requirements for major companies, which are the ones most likely to engage in intra-Community business, could not be as high as they should be on the basis of the extra costs and risks of carrying on business in other Member States; on the other hand requirements for small companies, operating only on a regional scale within one Member State, will be higher than required by technical considerations. In brief, the requirements contained in the proposal for directive are too mild for the major companies and too strict for the small companies.

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[1] See Commission proposal of 15.6.1966, Doc. 98/66,pp.2ff

8. Consultation with experts from the national supervisory authorities on 4 October 1967 showed that, except in the case of Luxembourg, 50- 75 per cent of all insurance companies operating at present do not at the moment comply with the requirements regarding assets as set out in the Commission's proposal. Making due allowance for adjustments to assets during the periods which may be granted for this purpose (under the terms of the transitional provisions contained in the proposal), this percentage could be put at between 15 and - in the case of one country - 40 per cent. The stumbling-block for most undertakings is the fact that the Commission's proposal stipulates an absolute minimum for assets, which is too high for small undertakings. Some experts considered, on the basis of these figures, that it would be possible to restrict the application of the financial provisions contained in the coordination directive to undertakings operating in more than one Member State, but others objected to this, mainly because they considered it might lead to distortion of competition.

9. Your committee has discussed in detail the pros and cons of both alternatives - application to all insurance undertakings or only to those wishing to operate on an intra-Community scale - and has approved by a clear majority the Commission's proposal. Its main considerations in this were:

a. Although there have been no actual examples so far where small undertakings established in the vicinity of a border or in small Member States have been at a disadvantage as a result of the restriction of the financial regulations to intra-Community business, in the sense that they were thereby subject in another Member State to stricter regulations than undertakings of the same size in the same State, your Committee believed that it would be possible that such cases might arise with the increasing interpenetration of the insurance market. It would, however, infringe a fundamental principle of the Treaty -- same treatment for other States' subjects as for one's own - if foreign insurance companies were subject to stricter regulations than companies operating exclusively in their own country.

b. It would also be politically undesirable for the present restrictions in business between Member States to be replaced by others, making the integration of the insurance market more difficult.

Your committee therefore believed that the financial provisions of the coordination directive should in principle apply to all undertakings,

but that account must be taken of the objections - which are, objectively speaking, reasonable in every respect - by modifying somewhat the financial regulations and considerably extending the deadlines for transitional condition.

III. Regulations on checking of financial conditions
(Articles 16 and 17 of the Coordination Directive)

10. Until now each of the controlling bodies has had its own set of regulations according to which it investigates each individual case to see whether an insurance company has large enough resources to meet its obligations. The possible mutual recognition of such investigations, and the claim by insurance companies to be allowed to operate in other Member States, imply that uniform objective regulations have to be drawn up for such investigations, so that:

a. the supervisory authorities will make no distinction, in granting authorization, between national and foreign companies, and

b. the supervisory authorities can be confident that companies from other Member States have the necessary funds to meet claims by insured parties in Member States other than the one in which they have their head office.

11. The Commission's proposal therefore stipulates that three financial conditions must be met before companies can operate:

a. the undertaking must have the requisite 'technical reserves', it must have adequate funds, in the form of proper assets or reinsurance agreements in each Member State in which it operates, in order to meet current claims and claims which can be expected on the basis of statistics. Such 'technical reserves' are a traditional component of the insurance business, but are calculated according to different norms. The Commission's proposal leaves the fixing of these norms, generally speaking, to the country in which business is pursued, since full coordination has not yet proved possible (see para. 13 of the explanatory statement)

b. apart from the technical reserves, each insurance company should have a 'solvency margin'. This is untied capital to cover unexpected and abnormal risks. This solvency margin has to be calculated by an extremely complicated method on the basis of the annual amount of premiums or the average burden of claims for the past three financial years, whichever is the greater.

c. at all events every undertaking must have a 'guarantee fund', both on establishment and at all times thereafter, which shall in principle be equivalent to one third of the solvency margin, but at least - according to the class of insurance - between 200,000 and 500,000 u.a.

If ever an undertaking falls short of the solvency margin or even the minimum guarantee fund, the supervisory authorities concerned must take specific steps.

12. In respect of this system the insurance world has commented that a distinction has usually been made until now between two factors: a fixed factor, which may be progressively augmented, and a variable factor. Each of these factors has a specific function. The fixed factor serves to cover the undertaking's general operational risks (financial management, investment policy, exchange losses, etc.) and is more in the nature of a genuine capital reserve, whereas the variable factor, which consists of the actual untied reserves, is only intended to cover the technical operational risks (increased amount of claims, increased frequency of claims, etc.) and thus corresponds more or less to the technical reserves. In its proposal the Commission makes no distinction between these two factors, both of which it lumps together in one element. The result is that every increase in turnover directly causes a a corresponding increase in the unencumbered capital resources of the undertaking, which in turn means a constant fluctuation in the undertaking's resources. It is also to be feared that the assets contained in the solvency margin might be subject to tax, although, from a functional point of view, they should be considered to be technical reserves.

13. To help meet these objections, Mr De Winter proposed that the financial scheme contained in Articles 16 and 17 of the Coordination Directive should be amended so that the solvency margin was split into two components:

- a guarantee fund of a fixed amount to be augmented on a step-by-step scale on attainment of a given turnover, and to be reduced for small undertakings, subject to a given minimum;
- an amount based on the undertaking's turnover calculated in a similar way to the 'extra technical reserve' referred to in the proposal for a directive.

14. Whereas most of the experts from the national supervisory bodies expressed support for the Commission's system, most of the representatives from the insurance world supported the De Winter proposal. After careful deliberation your committee has, by a large majority, decided to recommend the latter system for the directive with the proviso that the variable factor is not referred to as 'extra technical reserve' but as a 'variable increment to the guarantee fund'. This is to show that this part of the solvency margin is not formed under the rules for technical reserves either, but from genuine capital resources. If this component were still to be treated differently for tax purposes in the different Member States, this might lead to distortion of competition between the undertakings.

15. Your committee has also accepted the proposal to vary the size of the guarantee fund and variable increment according to the class of insurance, since risks vary greatly from one class to another and thus require different guarantee funds.

IV. Asset requirements - a detailed consideration

16. The proposal to replace the system contained in the Commission's proposal by a system consisting of a guarantee fund and a variable increment to this fund automatically means that percentages have to be fixed for the guarantee fund and the variable increment other than those fixed by the Commission in its proposal. Your committee had received practical proposals on this point from various members.

Despite lengthy discussion of these proposals, your committee was unable to agree on figures for these percentages. The matter involves such complicated insurance calculations, and any change at one point has such a great influence on other points, that neither your committee nor Parliament is in a position to answer all these technical questions. Your committee has therefore restricted itself to laying down a number of principles to be observed in the fixing of the percentages.

17. The purpose and objective of the financial regulations is to ensure that the insurance companies should at all times have adequate assets to meet obligations arising from all their insurance policies. Your committee agreed that, in assessing the financial regulations, the overriding principle must be the protection of the insured against undertakings whose assets did not at all times guarantee the honouring of all claims arising from policies.

18. There was however a difference of opinion in your committee on the extent of asset requirements for insurance companies which would permanently guarantee that they could meet all obligations from policies. Although no vote was taken on this point, it can be deduced from the discussions that, in the view of most members, the percentages ultimately fixed should not be lower than those contained in the Commission's proposal. On the other hand some members, albeit only a slight majority, found it unnecessary and perhaps even unacceptable for the ultimate percentages to be higher than those contained in the Commission's proposal. However, a considerable minority believed that the percentages in the latter proposal were too low to ensure that large international undertakings could meet their obligations

at all times; the members concerned referred in this context to the rules followed by the supervisory authorities in countries with highly 'inter penetrated' insurance markets, such as the USA, the Federal Republic of Germany and Switzerland.

V. Some details of the financial regulations

19. As considerable additional costs attend the establishment of insurance companies, and new companies can only build up a balanced distribution of risks after a lengthy period of time, your committee believes that it is necessary, in the case of new companies, to fix stricter asset requirements than those applying to well-established undertakings.

20. If a company has run at a loss during two of the preceding four years and consequently no longer meets the requirements laid down in the directive, your committee considers that it is insufficient simply to take measures to ensure that the requirements are met. In such cases the supervisory authorities should rather have the power to increase the requirements by up to 75% in order to prevent the undertaking concerned falling back into the danger zone soon afterwards.

21. On the other hand your committee considers it acceptable that the asset requirements for insurance companies which manage health insurance on similar lines to life assurance should be reduced even more than proposed by the Commission. It has been assumed that such companies, having calculated their technical reserves on the usual life-assurance basis will have adequate cover, corresponding to that incorporated by other classes of insurance in the variable increment for the guarantee fund.

VI. Transitional arrangement

22. As many undertakings will find it difficult to comply with the financial regulations immediately after the coming into force of the directive (see para. 9 above), your committee believes that the transitional periods should be extended.

VII. Proposal for a directive abolishing restrictions on the freedom of establishment

23. The Committee on Economic Affairs endorses the Commission's proposal for a directive abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance (Doc. 2/67). This

proposal comes within the framework of the General Programme for the abolition of restrictions on freedom of establishment of 18 December 1961.

This programme makes the abolition of restrictions on the freedom of establishment contingent on the coordination of conditions for the taking-up and pursuit of the business concerned. In the present report your committee presents a reasoned opinion on such coordination; the abolition of restrictions on freedom of establishment follows on logically from this and does not raise any particular problems.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter from the Chairman, Mr Erwin LANGE, to the Chairman of the Legal Affairs Committee, Mr Willem SCHUIJT, dated 27 June 1974

Dear Mr Schuijt,

On 20 June 1974 the Committee on Economic and Monetary Affairs considered the proposal from the Commission for a first directive on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance (Doc. 313/73) and the proposal from the Commission for a directive abolishing restrictions of freedom of establishment in the business of direct life assurance (Doc. 351/73).

The Committee discussed, in particular, the problems connected with general insurance. It decided, with three abstentions, to recommend to the Legal Affairs Committee that for reasons of competition, the long-term aim should be separation between undertakings handling life assurance and those handling indemnity insurance. In view of the conflicting legal provisions in the Member States, the Committee considers that the Commission's proposal offers a workable compromise. It voted (with seven abstentions) in favour of the Commission's proposal, stressing that, where separation already existed, it should not be jeopardized. It was pointed out in the discussion that the Commission's proposed rules were to apply only for a transitional period of five years.

It was also pointed out that the approval required for transfer of assets from the life portion to the indemnity portion, as provided for in Article 13,3 (b), should be given not a posteriori, but in advance.

The committee also noted that under Italian law, reinsurance was mandatory. The Legal Affairs Committee is requested to ascertain whether the Commission took this requirement into account in its proposal for coordinating legal and administrative provisions.

Please regard this letter as an opinion on the basis of the consultations of 14 January and 11 February 1974.

Yours sincerely,

(sgd) Hermann SCHWÖRER (sgd) Erwin LANGE

The following were present: Mr Lange, chairman; Mr Schwörer, draftsman of the opinion; Mr Artzinger, Mr Behrendt (deputizing for Mr van der Hek), Mr Bersani, Mr Burgbacher, Mr Flämig (deputizing for Mr Wohlfart), Mr Hougardy, Mr Kater, Mr Leenhardt, Mr Mitterdorfer, Mr Brøndlund Nielsen, Mr Noe' (deputizing for Mr Poher), Mr Nørgaard, Lord Reay, Mr Schachtschabel and Mr Scholten.