

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
THIRD COUNCIL DIRECTIVE
on the coordination of laws, regulations and administrative
provisions relating to direct life assurance and amending
Directives 79/267/EEC and 90/619/EEC

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION - GENERAL CONSIDERATIONS

- A) The completion of the internal market in insurance is one of the Commission's priority objectives given the increasing importance of this industry, which, especially on the life insurance side, is expanding rapidly, and the work already undertaken in other fields with a view to creating a single financial market.

In the direct non-life insurance sector, the Second Directive, Directive 88/357/EEC, has already made a significant contribution towards the formation of the internal market. That Directive lays down rules to facilitate freedom to provide services in direct non-life insurance in the form of two separate sets of arrangements. The first, intended for large risks and based on the approach - as mapped out in the White Paper - of home country control, provides for application of the law of the country of establishment of the insurer covering the risk. The second set of arrangements concerns "mass risks" and is based on application of the supervisory rules of the country in which the risk insured is located (host country control).

When the Second Directive was adopted, the Commission formally undertook to present at the earliest opportunity proposals which would permit the application of the principle of home country control to all direct non-life insurance business and its subjection to a single set of legal arrangements. A proposal for a Third Non-Life Insurance Directive was accordingly approved by the Commission on 18 July 1990 and transmitted to the Council.¹

1 OJ No C 244, 28.9.1990, p. 28.

As regards life insurance, the second stage has just been reached with the adoption, on 8 November last, of the Second Directive, Directive 90/619/EEC,¹ which governs freedom to provide services in life insurance, likewise on the basis of two sets of arrangements: the first, resting on the principle of application of the rules of, and supervision by, the home country, being concerned with insurance buyers who take the initiative in seeking "services" cover; the second providing for application of the rules of, and supervision by, the country in which the service is provided when it is the undertaking that takes the initiative in entering into a contractual relationship.

For the achievement of this, the third stage in life insurance, which will result in the full completion of the internal market, the general strategy adopted is, as in non-life insurance, that provided for in the White Paper:

- (a) coordination of the essential rules on the prudential and financial supervision of direct life insurance business;
- (b) mutual recognition, on the basis of such harmonization at Community level, of the authorizations granted to insurance undertakings and of the prudential supervision systems of the different Member States;
- (c) the grant of a single authorization valid throughout the Community and supervision of an undertaking's entire business by its home Member State (home country control).

This strategy has already been used to complete the internal market in other areas of financial services. Such is the case with UCITS (Directive 85/611/EEC, OJ No L 375, 31.12.1985), banking (Second Directive 89/646/EEC, OJ No L 386, 30.12.1989) and investment services (OJ No C 43, 22.2.1989), where considerations of the

protection of the savers, investors and consumers are as much to the fore as they are in insurance. It is therefore considered justified, while not denying the distinctness of insurance, to apply to all financial institutions a regime based on the same principles.

Once this objective has been attained, the free movement of insurance products will be possible within the Community and it will afford every person seeking insurance the opportunity of turning to any Community insurer in order to find the cover best suited to his needs, while providing him with adequate protection.

The introduction of this regime into the direct life insurance sector involves substantial amendment of the rules currently in force under the First and Second Directives. Those Directives make no provision for either a single authorization system or genuine home country control. Nor has any coordination been carried out yet as regards the essential harmonization of prudential supervision rules concerning insurance companies' technical, and in particular mathematical, provisions and investments.

The present proposal for a Third Directive addresses these issues and amends the first two Directives so as to produce a cohesive system applicable to all life insurance business, whether transacted under conditions of establishment or under conditions of provision of services.

The structure of this proposal for a Directive is the same as that already adopted by the Second Banking Directive, the proposal for a Directive on investment services and the proposal for a Third Non-Life Directive. It consists, therefore, of five titles:

TITLE I: Definitions and scope
 (Articles 1 and 2)

TITLE II: The taking-up of the business of life insurance
 (Articles 3 - 7)

TITLE III: Harmonization of conditions governing pursuit of business
 (Articles 8 - 27)

TITLE IV: Provisions relating to freedom of establishment and freedom
 to provide services
 (Articles 28 - 39)

TITLE V: Final provisions
 (Articles 40 - 46)

B) Harmonization of the rules concerning the technical provisions of undertakings carrying on the business of direct life insurance

The introduction of a system of a single authorization and home country control calls for harmonization of Member States' rules on the definition and calculation of technical provisions and on the currency matching, diversification, spread and localization of the assets representing them.

As regards the definition and calculation of technical provisions, this proposal for a Directive establishes coordination on the basis of actuarial principles that have to be respected by every insurance undertaking.

As regards the assets representing the technical provisions, the proposal lays down coordinated rules on their admissibility, diversification and valuation and on currency matching requirements.

The requirement that assets be located in the Member State in which business is carried on is deleted to take account of the measures adopted in the field of the liberalization of capital movements. For the same reason, any requirement that a minimum proportion of assets be invested in specific categories can no longer be maintained.

- law applicable to contracts and policy conditions

This proposal for a Directive does not undertake any harmonization of the substantive law applicable to contracts and policy conditions. The work on non-life insurance carried out within the Council in recent years has shown that it is not essential to achieve such harmonization at this stage. The system proposed in this Directive is based on the rules laid down in the Second Directive on choice of law applicable to insurance contracts. This system makes it possible to ensure satisfactorily the requisite consumer protection because, in principle, the Member State of the commitment can, if it so wishes, apply its own law to an insurance contract covering a policy-holder resident in its territory.

At the same time, the Commission considers that, in order that they might find the cover best suited to their specific needs, it is of the utmost importance that persons seeking insurance should have access to every insurance product lawfully marketed in the Community provided it does not conflict with legal provisions protecting the general good in force in the Member State of the commitment.

"Material control" over insurance policies and premium rates

As part of this drive to achieve greater freedom of movement of insurance products in the Community while maintaining an adequate level of consumer protection, the methods of vetting contracts and premium rates should be adapted to the requirements of a genuine single market.

As indicated above, the proposal for a Directive provides for coordination of the prudential principles applicable to technical provisions and investments. As far as policy conditions are concerned, in the absence of harmonization of contract law, the proposal permits Member States to request the application, in the vast majority of cases, of their own law to commitments concerning their residents, in so far as such application is justified by considerations of the general good, and subject ultimately to review by the Court of Justice.

The Commission considers that it has thus complied with the Court's Judgments of 4 December 1986.

The Commission proposes, therefore, henceforth to extend to all commitments the arrangements for vetting contracts and premium rates already accepted by the Member States in respect of contracts concluded on the policy-holder's initiative, i.e. the abolition of all systems of prior approval of such documents and their replacement by systems of non-systematic, subsequent notification.

That is not to say that Member States must abolish all checks on life insurance products and that they will be deprived of every means of monitoring and ensuring observance of the law. However, with a view to protecting policy-holders in the single market it is necessary to adapt existing methods of supervision, which were designed for purely national situations, to take account of requirements arising from the welding of the twelve national markets into a large economic and financial area without

internal frontiers. From this standpoint checks should be organized in such a way that the needs of protection are reconciled with those of competition between products, be it on premiums or on the product itself.

There are four cornerstones to the proposed system for vetting the content of contracts and policy conditions, a system geared to the single market with its proper functioning in mind:

- (I) The power of each Member State to require observance of the rules of law applicable in its territory. The supervisory authorities of the State in which the insurance undertaking conducts business will be able, in collaboration with the supervisory authorities of the home Member State, or even directly in urgent cases, to impose penalties on an offending insurer, the ultimate penalty being a ban on the conclusion of any new life insurance contracts in its territory (Article 35). An insurance company contemplating doing business in the Member State concerned will therefore be well-advised to observe the contract law in force there.
- (II) Secondly, when a branch is being set up, the authorities of the Member State in which the branch will be situated may spell out the legal environment in which it will be called upon to operate, indicating the conditions under which, in the interest of the general good, its activities must be carried on (Article 28(4)).

(iii) Thirdly, the present proposal provides for greater transparency of insurance products, stipulating that in all Member States a policy-holder must be informed, before finalising the contract or, if necessary, during the term of the contract, of the elements essential to a proper understanding of the commitment he is entering into (Article 27).

(iv) Lastly, the option given to policy-holders to cancel the contract within a period of between 14 and 30 days from its commencement. This provision has already been incorporated in Community law by the Second Life Directive 90/619/EEC.

- premium rates

Prior vetting of premium rates is likewise incompatible with the logic of the single market.

Once the essential elements of the calculation of technical provisions and of the investment rules have been coordinated, the supervisory authority of the home Member State will be responsible for the overall solvency of the undertaking. The principal task of the home Member State supervisory authority is, therefore, to make sure that the insurance undertaking has established sufficient technical provisions to meet all its liabilities, invested the assets representing those provisions in accordance with the rules in force, and correctly constituted its solvency margin.

But beyond this prudential basis, which ensures the safety of the products on offer, it is in the consumer's interest that he should be able to benefit from the broadest possible premium competition, given that the Treaty's general competition rules apply, of course, to insurance and ensure that such competition is fair.

- abolition of the prohibition of the simultaneous pursuit of business by way of right of establishment and by way of freedom to provide services

The Second Directive authorized, in the interests of protecting policy-holders, Member States to prohibit the simultaneous pursuit in their territory of insurance business by way of establishment and by way of freedom of services as far as the covering of commitments entered into on the insurer's initiative is concerned. This option was justified by the situation which prevailed, when the Second Directive was adopted, with regard to the harmonization of the essential rules on technical provisions and the law governing insurance contracts and policy conditions.

This proposal for a Directive brings about the coordination considered necessary to afford policy-holders the requisite degree of protection. At the same time, and as with other financial services, it introduces into the insurance sector the system of a single authorization and prudential supervision of all business by the home Member State. The option is therefore abolished by this proposal for a Directive.

- composite undertakings

In 1979 it was decided that the principle should be laid down of the segregation of the activities of life and non-life insurance by prohibiting the authorization of undertakings carrying on both types of activity simultaneously. This position was adopted at the time as being likely to afford lives assured the best possible protection against sums accumulated on their behalf being used to cover a deficit on the non-life side.

This principle was not, however, unqualified: those Member States which so wished could permit existing composite offices to continue operating provided they adopted separate management and did not set up any life insurance branches; the situation was, moreover, to be reviewed in the light of a report, to be drawn up by the Commission, taking stock of ten years' experience of the functioning of composites.

The report having shown that policy-holders are no less well protected when they contract with a composite undertaking than when they contract with a specialized one, the present Directive, while retaining the requirement of separate management, proposes to remove the restrictions on composite undertakings and affords those Member States which so wish the opportunity of authorizing new composites.

- exercise of implementing powers

This proposal for a Directive is silent about the procedure to be followed for the exercise of the implementing powers it confers on the Commission. The question is dealt with in a separate proposal for a Directive, which will apply to all Directives concerning life and non-life insurance providing for such powers (OJ No C 230, 15.9.1990).

- C) Two factors help explain the urgency of action at Community level along the lines of that proposed in this proposal for a Third Directive.

The first is a major political factor, the Single European Act. When this was signed, Member States expressed their firm political will to take, before 1 January 1993, the decisions needed to create a genuine internal market.

The second factor concerns the development of financial services and their increasing importance. Within the Community, this development has already led to adoption of the provisions needed to complete the internal market in the field of credit institutions and UCITS.

Such financial institutions will thus be able to propose throughout the Community products benefiting from a "European passport", thereby creating a distortion of competition to the detriment of those insurers, and in particular life insurers, with whom, in the case of certain products, they compete directly.

The insurance industry is currently at a disadvantage compared with other financial services when it comes to facing the challenge of the single market. Insurance undertakings are to a large extent still obliged to operate in twelve isolated markets subject to different rules and procedures as regards the taking-up and pursuit of business, whether it be by way of establishment or by way of freedom of services. This involves a variable degree of intervention in relation to insurance products and the freedom of insurers and those seeking insurance to enter into insurance contracts. This state of affairs can no longer be tolerated if the Community's commitments as regards attaining the objectives of the EEC Treaty are to be met.

II. COMMENTARY ON THE ARTICLES

TITLE I

Definitions and scope

Article 1 - Definitions

This Article contains definitions of certain terms used in the proposal for a Directive, the aim being to clarify their meaning and hence contribute to a better understanding of the Directive.

Article 2 - Scope

This Article defines the scope of the proposal for a Directive. The scope coincides with that of the First Directive 79/267/EEC. Article 1(2) of the First Directive is amended so as to permit any insurer duly authorized by the home Member State to pursue activities falling within the scope of the Directives anywhere in the Community.

The operations and activities referred to in Article 2 of the First Directive are excluded from the scope of the proposal, as are the organizations and mutual associations referred to in Articles 3 and 4 of that Directive.

TITLE II

The taking-up of the business of life insurance

AUTHORIZATION CONDITIONS

Articles 3 and 4 - The single authorization

These Articles introduce the fundamental concept of the single insurance licence by amending Articles 6 and 7 of the First Life Directive 79/267/EEC. Article 6 as amended now states that the authorization to take up the business of direct life insurance is to be granted by the competent authorities of the home Member State. This system still has as its premises that an official authorization is a pre-condition for the taking-up and pursuit of direct life insurance business. Article 7 has been amended to state that the authorization is to be valid throughout the Community. This extended territorial scope will apply both to establishment and to pursuit of the activities covered by this proposal for a Directive by way of provision of services (paragraph 1). The role of the competent authorities of the home Member State (defined in Article 1 as the Member State in which the head office of the insurance undertaking covering the commitment is situated) is consistent with the principle of home country supervisory control of the financial position of the undertaking, including its insurance activities undertaken by way of branches or by free provision of services (see Article 8). The task of supervising the undertaking's entire business falls to the insurer's home authorities, which are those that granted the authorization.

The authorization will continue to be given for a particular class of insurance as listed in the Annex to the First Directive. The option for Member States to also grant authorization for a group of classes has been maintained in this proposal (paragraph 2).

Any undertaking seeking to extend its business to other classes will be required to request a new authorization in accordance with the procedure laid down in Article 6 of the First Directive (point b).

Article 5 - Conditions for receipt of authorization

The home Member State must require any insurance undertaking seeking authorization to fulfill the conditions laid down in Article 8 of the First Directive. That is to say, to adopt a specific legal form, to which this proposal adds the legal form of the European Company, to limit its business activities to the business of insurance, submit a scheme of operations and possess a minimum guarantee fund.

An additional mandatory condition, which was facultative in the First Directive, has been added to the requirements, concerning adequate technical qualifications and soundness of the managers and directors of any undertaking seeking authorization.

These conditions are considered necessary to safeguard the general quality of business of an insurance company, as well as the day-to-day management of the company (paragraph 1).

An important step forward concerning authorization conditions is the proposal to abolish the possibility for Member States to require the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which the undertaking uses in its dealings with policy-holders (paragraph 3). Member States may require only non-systematic notification of such information in exercising their supervisory tasks, but this may not amount to a prior condition for an undertaking to be able to carry on its activities.

Article 6 - Adaptation of the scheme of operations

This provision replaces Article 9 of the First Directive and sets out the requirements for the scheme of operations. In accordance with the amended Article 8 of the First Directive, insurance undertakings seeking authorization do not have to state in their scheme of operations either the premium rates or the contract documents which they propose to apply for each category of business they engage in.

Article 7 - Supervision of shareholders of insurance undertakings

The ownership and control of an insurance undertaking by non-insurance interests is an issue of concern for the Community supervisors, especially in a period when highly complex group structures are a widespread phenomenon. Thus the risks of cross-financing and conflicts of interest are particularly evident in an environment of vast changes in the structure of financial systems. For these reasons the current proposal stipulates that the competent authorities, before granting an authorization, should be informed of the identity of shareholders and members holding a qualified participation in the proposed insurance undertaking as well as of the amount of such participations. This applies to direct or indirect shareholders or members and irrespective of whether they are physical or legal persons. This procedure enables the competent authority to appraise the suitability of the shareholders and members and if necessary to reject any particular group structures as improper at the moment of the setting-up of the institution. Closely linked with this provision is Article 14 of the present proposal which provides for an information procedure regarding the prospective acquisition of an insurance undertaking which is already in operation.

TITLE III

Harmonization of conditions governing pursuit of business

Chapter 1

Article 8 - Supervision of the business of insurance

The introduction of a system of a single official authorization granted by the competent authorities of the home Member State and valid throughout the Community calls for devolution of the power of supervision, and of the means to that end, on the competent authorities which granted the authorization so as to guarantee full compliance with the conditions governing the pursuit of business by the insurance undertaking, whether it be by way of establishment or by way of freedom of services.

Article 8 of this proposal for a Directive contains a new provision which replaces Article 15 of the First Directive 79/267/EEC. It specifies that the financial supervision of an insurance undertaking, including that of the activities it carries on either through branches or by way of freedom of services, is to be the responsibility of the competent authorities of the home Member State, that is to say, the authorities which granted the authorization to the undertaking. In addition, this provision specifies what the financial supervision of the undertaking consists of: it includes verification of (a) the undertaking's solvency, (b) the establishment of sufficient technical provisions for the undertaking's entire business and (c) the matching of assets in accordance with the provisions existing in that respect in the home Member State, which are coordinated in this proposal for a Directive.

Lastly, the existence of sound administrative and accounting procedures and adequate internal control mechanisms is a guarantee of an orderly and healthy pursuit of insurance business. This proposal for a Directive therefore requires the home Member State to ensure that this need is satisfied.

Without making any inroads into this exclusive competence, the Article also provides that the supervisory authorities of the Member State of the commitment may inform the competent authorities of the home Member State if they think, for whatever reason, that the activities of an undertaking carrying on business in their territory might affect its financial soundness. Naturally, in such circumstances, the home Member State authorities have sole power to determine the state of the undertaking's finances.

Article 9 - On-the-spot monitoring of branches

This proposal for a Directive provides for the possibility for the authorities of the insurance undertaking's home Member State to carry out, after having first informed the authorities of the Member State of the branch, on-the-spot monitoring of the branches of the undertakings they have authorized, with a view to obtaining the information necessary to ensure the financial supervision of the undertakings whose entire business they supervise.

This provision also meets a need for consistency in the approach adopted by the Community for the completion of the internal market in financial services. The Second Banking Directive contains a similar provision (Article 15). The same applies to the proposal for a Directive on investment services in the securities field (Article 19).

Article 10 - Sanctions

This Article introduces into the First Directive a new Article 23a which provides that Member States must impose suitable penalties on insurance undertakings or those who effectively control the business of insurance undertakings found to be in breach of the rules on supervision.

Article 11 - Transfers of portfolios

The Second Directive 90/619/EEC on direct life insurance contains a set of complex and detailed provisions on the transfer of portfolios tailored to the legal regimes introduced in respect of the taking-up and pursuit of the business of direct life insurance, both by way of establishment and by way of freedom of services. The introduction of a new, single legal regime for all direct life insurance business, irrespective of the way in which it is pursued, means that the provisions on portfolio transfer have to be adjusted.

Articles 12 and 13 - Withdrawal of authorization and financial recovery measures

Article 12 adapts to the system of a single official authorization and supervision of all insurance business by the authorities of the insurer's home Member State the provisions of Article 24 of the First Directive 79/267/EEC concerning the powers of the competent authorities to adopt measures to ensure the solvency of an insurance undertaking.

This same aim of adaptation to the single official authorization system is pursued by Article 13, which amends Article 26 of the First Directive, on the conditions under which the authorization granted to the insurance undertaking may be withdrawn.

Article 14 - Supervision of major shareholders or members

This Article introduces into the life insurance sector specific provisions the purpose of which is to ensure that the prudent and sound management of an insurance undertaking is not called into question by the existence of major holdings.

To that end, Article 14 lays down an obligation to furnish information in two sets of circumstances. First of all, shareholders or members who propose to acquire, directly or indirectly, a qualifying holding in an insurance undertaking must first inform the competent authorities of the size of the intended holding. The same applies where natural or legal persons wish to increase their qualifying holding so that it exceeds certain thresholds or the insurance undertaking becomes their subsidiary (Article 14(1)). This obligation to furnish information is also provided for in the event of a reduction in or disposal of a qualifying holding causing it to fall below the thresholds laid down (Article 14(2)).

Moreover, in order to ensure the effectiveness of supervision, insurance undertakings must, on becoming aware of them, inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below the thresholds laid down. They must also inform the competent authorities each year of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown by the information received at annual general meetings or as a result of compliance with the specific rules to which companies listed on stock exchanges are subject (Article 14(3)).

If the competent authorities consider that the influence exercised by shareholders or members works to the detriment of the prudent and sound management of the insurance undertaking, the Member States may take a series of measures to put an end to that state of affairs (Article 14(4)). Those measures will also be taken where the obligation to furnish information in advance is not complied with or where the competent authorities have opposed the acquisition of the shareholding.

Articles 14a and 14b - Composites

In accordance with the findings of the report drawn up by the Commission on the basis of Article 39(2) of the First Directive, these Articles provide for the abolition of restrictions on the right of composite undertakings to establish branches or on their freedom to provide life insurance services. Article 14a also allows those Member States which so wish to authorize new composite undertakings.

At all events, composite undertakings, whether existing or new, must have separate management, the results of their life and non-life activities being shown separately, and must comply with the prudential rules relating to both activities.

Chapter II

Article 15 - Home country control of technical provisions and coordination of the actuarial principles applied when calculating technical provisions

Paragraph 1 of this Article introduces the principle of home country control for the definition and calculation of technical provisions.

In comparison with non-life insurance, Council Directive on the annual accounts and consolidated accounts of insurance undertakings lays down few rules on the determination of technical provisions in life insurance. This Article therefore harmonizes national laws to the extent necessary to permit mutual recognition and home country control in this field.

Many different actuarial methods and bases are used at present in the Member States of the Community to calculate technical provisions in life insurance, and a wide variety of products are available. However,

comparative studies, in particular that by the Consultative Group of Actuaries of Countries of the European Communities, have shown that the results of calculations are often very similar where similar products are concerned and that the methods are all based on the same actuarial principles, including that of prudence in the face of uncertainty. The conclusion reached by the Consultative Group's study is that harmonization on the basis of these actuarial principles would be sufficient to ensure the effective protection of lives assured in the context of a single licence system. The Consultative Group considers, moreover, that any attempt to standardize throughout the Community the methods and bases used for calculating technical provisions would be inappropriate, unnecessary and counterproductive.

Apart from these considerations of prudence and the protection of lives assured, the Consultative Group also concluded that there is no risk of competition being distorted significantly by the use in the Member States of different methods and bases for calculating technical provisions, provided that sound actuarial principles continue to be applied. This Article therefore lays down these sound and prudent principles on the basis of suggestions made by the Consultative Group.

Even after this harmonization has been carried out, there will remain a large number of actuarial methods and bases capable of satisfying these principles. Paragraph 2 of this Article therefore provides that the methods and bases used by each undertaking must be published. Even if this information is too technical to be readily understood by most policy-holders, the mere fact that it is freely available is an added inducement to the undertaking to exercise prudence. It might, for example, be analysed and compared by trade associations, consumer protection bodies, the press or insurance intermediaries.

Paragraph 3 introduces the principle of home country control for the investment of the assets representing the technical provisions. These assets are required to be invested in accordance with the rules laid down in Articles 17 - 21 of this proposal for a Directive.

Those rules cover:

- (i) a general principle for the investment of the assets representing the technical provisions,
- (ii) the admissibility of investments,
- (iii) the diversification of investments,
- (iv) currency matching requirements.

Furthermore, paragraph 3 of this Article extends the requirement of localization of assets in the country where the business is carried on to a localization within the European Community. This extension is to be seen both in the context of freedom of capital movements within the European Community, which is fully applicable to institutional investors, and in the context of the negative effects of national localization on the performance and regional spread of insurance companies' investments.

Article 16 - Premiums for new business

The establishment and the supervision of technical provisions are the best guarantee of the strength of insurance undertakings and of the security of policy-holders. It is therefore important that the supervisory authority should be able to ascertain that the undertaking has sufficient resources to finance these provisions, notably for new business, and to meet all its liabilities, including the solvency margin.

In this context, premiums receivable for new business are obviously of considerable importance. In assessing an undertaking's capacity to meet its liabilities, it is nevertheless important to consider the undertaking's overall financial position.

This Article therefore stresses the importance of the adequacy of premium rates for new business, taking account of every aspect of the undertaking's financial situation.

Article 17 - Investment of technical provisions

This Article establishes a general principle for the investment of technical provisions, which is to be found in the current legislation of most Member States.

Articles 18(2) and 19(3) of this proposal for a Directive provide that, in particular circumstances and at the insurance undertaking's request, the home Member State may allow exceptions to the rules on the admissibility and spread of investments. These exceptions may, however, only be allowed when the home Member State is satisfied that the general requirement of Article 17 is fulfilled.

Article 18 - Admissible Investments

This Article contains a list of assets in which the home Member State may allow insurance undertakings to invest their technical provisions. With a view to retaining the parallelism between the arrangements for supervising life and non-life activities, the list is similar to that in the proposal for a third non-life insurance coordination Directive.

The list of admissible assets is to be regarded as a maximum list. This means that the home Member State is free to prohibit certain categories of investments included on the list, but only for insurance undertakings having their head office in its territory. In order to provide the list with a sufficient degree of flexibility, paragraph 2 of this Article allows Member States to permit other categories of investments on a case-by-case basis and subject to Article 17 of this proposal for a Directive.

Article 19 - Diversification of Investments

This Article lays down a set of rules on the diversification of investments. Again, the diversification rules laid down in paragraph 1 are to be regarded as a prudential minimum. Home Member States are thus free to impose lower maximum percentages for certain or all categories of investments, but only for insurance undertakings whose head office is in their territory. The diversification criteria are likewise similar to those of the proposal for a third non-life insurance coordination Directive.

For some categories of investments, especially government bonds, there are no maximum percentages. For other categories, however, especially debt securities and other bonds issued by undertakings, secured loans to natural persons, transferable shares and other transferable variable yield participations, units in UCITs, etc., paragraph 1 establishes a set of maximum percentages both for the category of investments and for units of any one undertaking, any one piece of real property, etc.

Paragraph 2 provides that no Member State may require insurance undertakings to invest in particular categories of investments, which is still common supervisory practice in some Member States, especially as regards government or local authority bonds.

The purpose of the final paragraph is to make the diversification rules sufficiently flexible by allowing the home Member State to permit higher percentages on a case-by-case basis and subject to Article 17.

Article 20 - Valuation of investments

This Article states that, under certain conditions, Member States may allow hidden reserves resulting from the undervaluation of assets as cover for technical provisions. The purpose of this Article is to allow Member States which currently require purchase price valuation of assets to put their undertakings on an equal competitive footing with undertakings of those Member States which allow or require the valuation of investments on the basis of current values.

Article 21 - Currency matching

In contrast to the position in direct non-life insurance, the Second Directive 90/619/EEC¹ on direct life insurance did not carry out any coordination of national currency matching rules.

This Article is intended to introduce such rules, with appropriate relaxations, into life insurance. The rules are similar to those which will apply in the non-life insurance sector, allowing for the peculiarities of life insurance, for example the existence of contracts linked to a particular unit of account.

Article 22 - Subordinated loan capital

This Article updates the list of assets recognized for the purpose of covering the solvency margin by including subordinated loan capital. The conditions under which subordinated loan capital may be recognized as own funds are identical to those laid down in Council Directive 89/299/EEC (OJ No L 124, 5.5.1989, p. 16) on the own funds of credit institutions.

1 OJ No L 330, 29.11.1990, p. 50.

Article 23

This Article amends Article 21 of the First Directive in order to bring it into line with the principle of home country control.

Chapter 3

Article 24 - Legal provisions protecting the general good

The aim of this Article is to specify that any person seeking insurance can conclude any contract allowed by the law of a Member State, provided that the contract does not conflict with legal provisions protecting the general good in the Member State of the commitment. In accordance with the established case law of the Court of Justice, such provisions concerning the general good can only be enforced, in the absence of more detailed harmonisation of the provisions of Member States, if they satisfy the following conditions: the provisions for the general good must be applied in a non-discriminatory manner to all undertakings operating on the territory of the Member State, they must be objectively necessary for the protection of that general good, they must also be proportionate in relation to the desired objective and the existing provisions in the Member State of origin of the product must be insufficient to protect that general good. The public authorities must also interpret this concept of general good in the light of these criteria. It is clearly for the Court to determine in the last resort whether the authorities' interpretation is in keeping with Community law.

Article 25 - Abolition of the prior approval of premium scales and policies

Consumer protection also includes the right to the widest possible choice of innovative insurance products at the most reasonable prices. This right

is given practical effect in regard to supervision by the abolition of any prior approval of premium scales and policies and by the replacement of such approval by a system better suited to the requirements of mutual recognition to the needs of the internal market.

The prior authorization system is tantamount to issuing a "quality label", and it is inconsistent with the logic of the single market to confer on the supervisory authority of a Member State the right to give its endorsement to, or withhold its endorsement from, products developed and already distributed in other Member States.

This holds true all the more in relation to the approval of premium scales: with the principle of the single licence, the supervisory authority of the home Member State vouches for the overall solvency of the undertaking and it is for that authority to ensure that the undertaking's financial policy does not jeopardize that solvency. This approach does not deny the supervisory authority of the State of the commitment the right to protect its consumers: that authority can still prove ex post facto and non-systematically that such and such a clause of a contract freely entered into is not in keeping with a legal provision protecting the general good. This "shifting of the burden of proof" will have the effect of making insured persons more aware of their responsibilities vis-à-vis the products offered to them, and hence of increasing the real level of their protection.

Article 26 - Cooling-off period

The Second Life Insurance Directive 90/619/EEC afforded a policy-holder who entered into a commitment under the services arrangements the possibility of cancelling the contract within a period of between 14 and 30 days from the time when he was informed that the contract had been concluded.

As part of the process of completing the internal market, this option must be extended to every policy-holder regardless of the way in which the contract is concluded, i.e. whether on an establishment or on a services basis, in order to afford policy-holders adequate protection.

Article 27 - Transparency

Life insurance differs from non-life insurance in the length of the commitments entered into, extending as they do in many cases over several decades. In addition, some products resemble rival financial products sold by economic operators other than insurance undertakings.

The upshot of this is that, if he is to profit fully from increased competition between a growing number of contracts, the consumer must be provided with clear and accurate information about the essential characteristics of products offered to him, both during the pre-contractual phase in order to guide him in his choice, and during the term of the contract in the event of any change or amendment.

The list set out in Annex 2 is a minimum list which Member States may add to in respect of commitments concerning their residents, although it must be understood that the aim of the obligation to provide information is to protect the consumer through a better understanding by the policy-holder of the essential elements of his particular contract, and not to limit the choice of products available.

TITLE IV

Provisions relating to freedom of establishment and freedom to provide services

Articles 28 and 29 - Freedom of establishment

Article 28 contains a set of detailed provisions amending Article 10 of the First Directive and organizing cooperation between the competent

authorities of the Member States, based on home country control, in the context of freedom of establishment.

In this context it is stipulated that an insurance undertaking wishing to establish a branch in another Member State must notify the authorities of its home country, providing at the same time the required information (e.g. scheme of operations, amount of the guarantee fund, state of the solvency margin, names and addresses of managers) (Article 10(1) - (3)).

After examining the notification, the competent authority may, if it has reason to doubt the viability of the project or the adequacy of the structures of the insurance undertaking, refuse to send the information to the prospective host authorities. In any such case it should give reasons for its refusal to the institution within three months of receipt of the notification (Article 10(3)).

Article 29 repeals Article 11 of the First Directive, thereby abolishing the detailed requirements the scheme of operations should fulfill for setting up a branch in another Member State. These requirements are now limited to, notably, the types of business the branch intends to carry on and information on the structural organization of the branch.

Articles 30 - 32 - Freedom to provide services

These Articles set out the procedure to be followed and cooperation between the home and host country authorities with regard to freedom to provide services. The relevant provisions of the Second Directive are amended and extended to cover not only activities carried on by way of freedom to

provide services on the initiative of the policy-holder, but all types of commitment falling within the scope of this proposal for a Directive, and thus to set up a single regime for the whole business of life insurance; those Articles of the Second Directive which have become superfluous are to be deleted (Article 33).

Thus any insurer wishing to pursue life business by way of cross-border services must indicate to the home authorities the Member State in which it is intended to provide services and the business that will be pursued there (Article 11 of the Second Directive, as amended). The host country authorities will be provided with information regarding the undertaking's solvency margin, the classes of business the undertaking is allowed to transact and the nature of the commitments it proposes to cover (Article 14 of the Second Directive as amended).

Article 33 - Technical adjustments, abolition of the prohibition of the simultaneous pursuit of business by way of establishment and by way of freedom of services

This Article deletes those provisions of the Second Directive 90/619/EEC which have been nullified by the introduction of a uniform system of supervision applicable to all direct life insurance business and by the extension of the scope to include all the activities referred to in the First Directive 79/267/EEC.

Article 10 of the Second Directive, which concerns the scope of the provisions on freedom to provide services, is thus deleted.

The same goes for Article 16 of the Second Directive, which entitles Member States to prohibit the simultaneous pursuit of insurance business by way of establishment and by way of services, and for Article 22, which

concerns the information to be supplied to policy-holders, inasmuch as Article 27 of this proposal for a Directive lays down more detailed rules on the subject.

Article 24 of the Second Directive, which provides for home country control of the technical provisions in the case of commitments entered into on a services basis on the initiative of the policy-holder and for host country control in all other cases, is likewise deleted.

Lastly, Article 14 of the Second Directive, which lays down the prior authorization arrangements governing the pursuit of business on an active provision of services basis, must also be repealed on identical grounds. Henceforth the only legal regime applicable to the taking-up of business under conditions of freedom to provide services is that provided for in Articles 30 - 32 of this proposal.

Article 34 - Approval of contract documents used by the insurer

This Article contains provisions concerning the means Member States may use to verify whether the policies and contract documents an insurer proposes to use in the course of his business comply with their legal provisions protecting the general good. The Article takes up the principle laid down in Articles 5 and 25 of this proposal for a Directive. The Member State of the commitment cannot, therefore, require prior approval of such documents as that would hinder considerably the free movement of products and the development of innovative products. Moreover, the provisions on the compulsory provision of information by insurers laid down in Article 27, and the option of cancelling the contract, afford policy-holders adequate protection. For the purpose of monitoring compliance with those provisions, the Member States may require only non-systematic communication

of policies and contract documents. These arrangements are better suited to the requirements of a single market and ensure an effective level of protection of policy-holders.

Article 35 - Sanctions

Article 20 of the Second Directive 90/619/EEC introduced rules on the adoption of measures and sanctions against insurance undertakings which infringe the provisions applicable to them when carrying on business by way of freedom to provide services.

The rules are based on the principles of devolution of the general power to adopt measures and sanctions to the home Member State and on collaboration between the different Member States concerned. The host Member State retains, however, the possibility of taking measures directly against an undertaking operating in its territory in order to prevent or correct irregularities committed by that undertaking in its territory. The same applies where the measures taken by the home Member State are insufficient or non-existent.

Within the framework of a single authorization system steps must also be taken to ensure compliance with the rules applicable to insurance business, whether it be carried on by way of establishment or by way of freedom of services. It is therefore necessary to extend the arrangements provided for in Article 20 of the Second Directive 90/619/EEC to cover all business. These arrangements are the same as those applicable to other financial services (Article 21, Second Banking Directive 89/646/EEC).

Article 36 - Advertising

Publicity for insurance products is an essential means of enabling insurance activities to be carried on effectively within the Community.

This Article allows any duly authorised insurance undertaking full access to all the normal means of mass-advertising of its services and products within the Community. The Article recalls the position that Member States may require that their national rules on the form and content of advertising be respected. These may be requirements resulting from Community legislation on advertising, in particular Directive 84/450/EEC on misleading advertising, and Chapter IV of Directive 89/552/EEC on cross-border television, or they may be national requirements adopted by Member States for reasons of the general good. Once again, this notion of the general good must be interpreted in accordance with the requirements of the case law of the Court of Justice as explained in the commentary on Article 24 and as expressed, for instance, in Case 352/85, Bond van Adverteerders and in Case 362/88, GB-INNO-BM.

Article 37 - Equality of treatment in the event of the winding-up of an insurance undertaking

This provision confirms the principle of equality of treatment of all insurance creditors in the event of the winding-up of an insurance undertaking and, where this case arises, in the event of the intervention of a guarantee system without any distinction being made on grounds of the nationality of insured persons or beneficiaries or on grounds of the way in which insurance contracts are underwritten. The principle has already been incorporated in other Insurance Directives, notably the Second Directives 88/357/EEC and 90/619/EEC.

Article 38 - Statistical information

This Article provides that every undertaking will have to furnish the supervisory authority of its home Member State with information on its turnover in each Member State, whether it be achieved through an establishment or under conditions of freedom to provide services.

The supervisory authorities of the Member States in whose territory the insurer in question operates may ask the supervisory authority of the home Member State to supply them with such information, which is essential if they are to gauge properly the relative size of the various markets. A similar provision is contained in the proposal for a Third Non-Life Insurance Directive (Article 39).

Article 39 - Taxation

This Article extends to the establishment regime the system provided for in the Second Directives in respect of freedom to provide services.

This proposal for a Directive thus states that, subject to future harmonization, the principle to be applied in respect of indirect taxes and parafiscal charges is that of the territoriality of the tax, that is to say the application of the system of taxation of the Member State of the commitment and for the benefit of that State.

Moreover, each State will apply to undertakings operating in its territory, whether by way of establishment or by way of freedom to provide services, its own national provisions concerning measures to ensure the collection of such taxes.

TITLE V

FINAL PROVISIONS

Article 40 - Implementing powers of the Commission

This provision indicates the Articles of the First Directive and of this proposal for a Directive which may be adapted when the moment is right.

The procedures for adapting those Articles are set out in the Council Directive setting up a Committee on Insurance.

Article 41

This Article contains a provision which states that this Directive does not affect existing rights acquired by authorized branches and in the field of freedom of services.

Article 42 - Transfers of portfolios of Community branches of undertakings subject to the law of a third country

Title III of the First Directive 79/267/EEC lays down rules applicable to branches set up in the Community by third-country undertakings. This Article introduces into that Title III, with a view to providing policy-holders with the same safeguards in all cases, rules on how the transfer of such branches' portfolios of contracts must be effected.

Article 43 - Right of appeal

This Article provides for a right to apply to the courts in respect of decisions taken by competent authorities in the field covered by this proposal for a Directive.

Articles 44 - 46 - Implementation of the Directive

These Articles contain the final provisions.

The date of entry into force should not be later than 31 December 1992.

Proposal for a

THIRD COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

1. Whereas it is necessary to complete the internal market in direct life assurance, from the point of view both of freedom of establishment and freedom to provide services, so as to make it easier for assurance undertakings whose head office is in the Community to cover commitments in the Community;
2. Whereas the Second Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC¹, hereinafter called the "Second Directive", has contributed substantially to the formation of the internal market in direct life assurance by already granting policyholders who, by virtue of the fact that they take the initiative in

entering into a commitment in another country, do not require special protection in the Member State of the commitment, complete freedom to avail themselves of the widest possible life assurance market;

3. Whereas the Second Directive therefore represents an important stage in the merging of national markets into a single, integrated market; whereas it must be supplemented by other Community Instruments with a view to enabling all policy-holders, whether or not they themselves take the initiative, to have recourse to any assurer having his head office in the Community and carrying on business there, whether he conducts business by way of freedom of establishment or by way of freedom to provide services, while guaranteeing them adequate protection;
4. Whereas the approach adopted consists in bringing about such harmonization as is essential, necessary and sufficient to achieve mutual recognition of authorizations and prudential control systems, thereby making it possible to grant a single authorization valid throughout the Community and apply the principle of home country control;
5. Whereas, as a result, the taking-up and pursuit of the business of life assurance is henceforth to be subject to the grant of a single official authorization issued by the authorities of the Member State in which the assurance undertaking has its head office; whereas such authorization enables the undertaking to carry on business everywhere in the Community, whether under conditions of freedom of establishment or under conditions of freedom to provide services; whereas the host Member State may no longer require assurance undertakings which have already been authorized in the home Member State and which wish to carry on assurance business there to seek a fresh authorization; whereas the First and Second Directives should therefore be amended along those lines;

6. Whereas responsibility for monitoring the financial health of the assurance undertaking, including its state of solvency, the establishment of sufficient technical provisions and the covering of those provisions by matching assets, henceforth lies with the competent authority of its home Member State;
7. Whereas the home Member State may lay down stricter rules than those provided for in Articles 7, 14, 15, 18, 19(1) and (3) and 20 in respect of assurance undertakings authorized by its own competent authorities;
8. Whereas this Directive fits into the pattern of Community legislation already set by the First Council Directive 79/267/EEC², as last amended by the Second Directive 90/619/EEC, and by Council Directive .../.../EEC [on the annual accounts and consolidated accounts of insurance undertakings]³;
9. Whereas the competent authorities must therefore have at their disposal such means of supervision as are necessary to ensure the orderly pursuit of business by the assurance undertaking throughout the Community, whether it be carried on by way of freedom of establishment or by way of freedom to provide services; whereas, in particular, they must be able to introduce appropriate safeguards or impose sanctions aimed at preventing irregularities and infringements of the provisions on insurance supervision;
10. Whereas it is necessary to adjust the provisions on transfers of portfolios to bring them into line with the single authorization system introduced by this Directive;

2 OJ No L 63, 13.3.1979, p. 1.

3 OJ No

11. Whereas it is clear from the report drawn up on the basis of Article 39(2) of the First Directive that there are no grounds for maintaining the current restrictions on composite undertakings or for opposing the formation of new composite undertakings provided they manage separately, and show separately the results of, the activity of life assurance and that of non-life insurance and comply with the prudential rules relating to both activities;
12. Whereas it is necessary from the point of view of the protection of lives assured that every assurance undertaking should establish sufficient technical provisions; whereas the calculation of such provisions is based for the most part on actuarial principles; whereas those principles should be coordinated in order to facilitate mutual recognition of the prudential rules applicable in the various Member States;
13. Whereas the rules concerning the valuation of the assets used to cover the technical provisions and their diversification, the rules on localization and currency matching rules must be coordinated in order to facilitate mutual recognition of Member States' provisions; whereas such coordination must take account of the measures adopted in the field of the liberalization of capital movements in Council Directive 88/361/EEC⁴ and the work undertaken by the Community with a view to achieving economic and monetary union;
14. Whereas, however, the home Member State may not require assurance undertakings to invest the assets covering their technical provisions in particular categories of assets, such a requirement being incompatible with the free movement of capital measures provided for in Directive 88/361/EEC;

4 OJ No L 178, 8.7.1988, p. 5.

15. Whereas the list of items of which the solvency margin required by the First Directive may be made up must be supplemented to take account of new financial instruments and of the facilities granted to other financial institutions for the constitution of their own funds;
16. Whereas it is at present neither necessary nor appropriate to harmonize the law covering the contract; whereas in the absence of such harmonization the opportunity afforded to the Member States of imposing the application of their law to assurance contracts covering commitments in their territory is likely to provide a sufficient safeguard for policy-holders;
17. Whereas within the framework of an internal market it is in the policy-holder's interest that he should have access to the widest possible range of life assurance products available in the Community so that he can choose that which is best suited to his need; whereas therefore the Member State in which the commitment is entered into must allow all life assurance products offered for sale in the Community to be marketed in its territory as long as they do not conflict with the legal provisions protecting the general good in force in that Member State, insofar as that good is not already protected by the rules in the Member State of origin, that these provisions are applied in a non-discriminatory manner to all undertakings carrying on business in that Member State and that they are objectively necessary and proportionate to the desired objective;
18. Whereas Member States must ensure that the life assurance products and contract documents used for covering, whether by way of establishment or by way of freedom to provide services, commitments entered into in their territory comply with such specific legal provisions protecting the general good as are applicable; whereas the systems of supervision to be employed must be in keeping with the requirements of an integrated market; whereas their employment may not, however,

constitute a prior condition for carrying on life assurance business; whereas from this standpoint systems of prior approval of policy conditions are unjustified; whereas it is necessary as a result to provide for other systems which are better suited to the requirements of a single market and which enable every Member State to guarantee policy-holders adequate protection;

19. Whereas in a single insurance market the consumer will have a wider and more varied choice of contracts; whereas if he is to profit fully from this diversity and from increased competition, he must be provided with whatever information is necessary to enable him to choose the contract best suited to his needs; whereas this information requirement is all the more important as the duration of commitments can be very long; whereas the minimum provisions must therefore be coordinated in order that the consumer receive clear and accurate information about the essential characteristics of the products proposed to him as well as the address of the body or bodies, to which any complaints of policy-holders, lives assured or beneficiaries of the contract may be addressed;

- 19a. Whereas publicity for insurance products is an essential means of enabling insurance business to be carried on effectively within the Community; whereas it is necessary to leave open to insurance companies the use of all normal means of advertising in the Member State of the branch or of provision of services; whereas Member States may nevertheless require compliance with their national rules on the form and content of advertising, whether required by Community legislation on advertising or adopted for reasons of the general good;

20. Whereas within the framework of a single market no Member State may continue to prohibit the simultaneous carrying-on of life assurance business in its territory by way of freedom of establishment and of freedom to provide services; whereas the option given to Member States in this connection by the Second Directive should therefore be abolished;

21. Whereas provision should be made for a system of penalties to be imposed when, in the Member State in which the commitment is entered into, the assurance undertaking does not comply with the provisions protecting the general good that are applicable to it;

- 21a. Whereas work is in progress on the subject of winding-up insurance undertakings (Amended Commission proposal COM(89) 394 final of 18 September 1989); whereas it is essential at this stage to provide, in the event of the winding-up of an insurance undertaking, that the systems of protection in place in Member States must guarantee equality of treatment for all insurance creditors, irrespective of nationality and of the method of entering into the commitment;

22. Whereas some Member States do not subject life assurance transactions to any form of indirect taxation, while others apply special taxes and other forms of contribution; whereas the structure and rate of these taxes and contributions vary considerably between the Member States in which they are applied; whereas it is desirable to avoid a situation in which existing differences lead to distortions of competition in insurance services between Member States; whereas, pending subsequent harmonization, the application of the tax system and of other forms of contribution provided for by the Member State in which the commitment is entered into is likely to remedy such mischief; whereas it is for the Member States to establish the method of ensuring that such taxes and contributions are collected;

23. Whereas, technical adjustments to the detailed rules laid down in this Directive may be necessary from time to time to take account of fresh developments in the insurance industry; whereas the Commission will make such adjustments as and when necessary, after consulting the Committee on Insurance set up by, in the exercise of the implementing powers conferred on it by the Treaty;

24. Whereas it is necessary to lay down specific provisions to ensure a smooth transition from the legal regime existing at the time of application of this Directive to the regime introduced by it, taking care not to place an additional workload on Member States' competent authorities,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

- (a) "First Directive" means Directive 79/267/EEC;
- (b) "Second Directive" means Directive 90/619/EEC;
- (c) "assurance undertaking" means an undertaking which has received official authorization in accordance with Article 6 of the First Directive;
- (d) "branch" means an agency or branch of an assurance undertaking, having regard to Article 3 of the Second Directive;
- (e) "commitment" means a commitment represented by one of the kinds of insurance or operation referred to in Article 1 of the First Directive;
- (f) "home Member State" means the Member State in which the head office of the assurance undertaking covering the commitment is situated;
- (g) "Member State of the branch" means the Member State in which the branch covering the commitment is situated;

- (h) "Member State of provision of services" means the Member State of the commitment, as defined in Article 2 (e) of the Second Directive, if the commitment is covered by an assurance undertaking or a branch situated in another Member State;
- (i) "control" means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Council Directive 83/349/EEC⁵, or a similar relationship between any natural or legal person and an undertaking;
- (j) "qualifying holding" means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which a holding subsists.

For the purposes of this definition, in the context of Articles 7 and 14 and of the other levels of holding referred to in Article 14, the voting rights referred to in Article 7 of Council Directive 88/627/EEC⁶ shall be taken into consideration;

- (k) "parent undertaking" means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;
- (l) "subsidiary" means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 2

1. This Directive shall apply to the commitments and undertakings referred to in Article 1 of the First Directive.

5 OJ No L 193, 18.7.1983, p. 1.

6 OJ No L 348, 17.12.1988, p. 62.

2. In Article 1(2) of the First Directive the words "and are authorized in the country concerned" are deleted.
3. This Directive shall not apply to operations, undertakings or entities to which the First Directive does not apply, nor to the entities referred to in Article 4 of that Directive.

TITLE II

The taking-up of the business of life assurance

Article 3

Article 6 of the First Directive is replaced by the following:

"Article 6

1. The taking-up of the business of direct life assurance shall be subject to prior official authorization.

Such authorization shall be sought from the authorities of the home Member State by:

- (a) any undertaking which establishes its head office in the territory of such State;
 - (b) any undertaking which, having received the authorization required, under (a) above, extends its business to other classes.
2. Member States shall not make authorization subject to the lodging of a deposit or the provision of security."

Article 4

Article 7 of the First Directive is replaced by the following:

"Article 7

1. An authorization shall be valid for the whole Community. It shall permit an undertaking to carry on business there, either by way of right of establishment or by way of freedom to provide services.
2. An authorization shall be granted for a particular class of assurance as listed in the Annex. It shall cover the entire class, unless the applicant wishes to cover only part of the risks pertaining to that class.

The supervisory authorities may restrict an authorization requested for one of the classes to the operations set out in the scheme of operations referred to in Article 9.

Each Member State may grant an authorization for two or more of the classes, where its national laws permit such classes to be carried on simultaneously."

Article 5

Article 8 of the First Directive is replaced by the following:

"Article 8

1. The home Member State shall require that any assurance undertaking for which an authorization is sought shall:
 - (a) adopt one of the following forms:

- In the case of the Kingdom of Belgium: "société anonyme/naamloze vennootschap", "société en commandite par actions/commanditaire vennootschap op aandelen", "association d'assurance mutuelle/onderlinge verzekeringmaatschappij", "société coopérative/coöperatieve vennootschap";
- In the case of the Kingdom of Denmark: "aktieselskaber", "gensidige selskaber";
- In the case of the Federal Republic of Germany: "Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit", "Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen";
- In the case of the French Republic: "société anonyme", "société d'assurance mutuelle";
- 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";
- 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";

- In the case of the United Kingdom: Incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Act, the association of underwriters known as Lloyd's;
- In the case of the Hellenic Republic:
" ανώνυμη εταιρία "
- In the case of the Kingdom of Spain: "sociedad anónima", "sociedad mutua", "sociedad cooperativa";
- in the case of the Portuguese Republic: "sociedade anonima", mutua de seguros".

Assurance undertakings may also adopt the form of a European company (SE), as provided for in Council Regulation (EEC) No .../...* and Council Directive .../.../EEC**.

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

- (b) limit its business activities to the business of insurance and operations directly arising therefrom, to the exclusion of all other commercial business;
- (c) submit a scheme of operations in accordance with Article 9;
- (d) possess the minimum guarantee fund provided for in Article 20(2);

(e) be run by technically-qualified persons of good repute.

2. An undertaking seeking authorization to extend its business to other classes shall be required to submit a scheme of operations in accordance with Article 9.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 19 and the guarantee fund referred to in Article 20(1) and (2).

3. Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring the approval of the memorandum and articles of association and the communication of any other documents necessary for the normal exercise of supervision.

Member States shall not, however, lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, the technical bases used inter alia for calculating scales of premiums and technical provisions, and forms and other printed documents which an undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of those conditions and other documents for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of assurance contracts, and this requirement may not constitute a prior condition for an undertaking to be able to carry on its activities.

4. The abovementioned provisions may not require that any application for authorization be dealt with in the light of the economic requirements of the market.

* OJ No L

** OJ No L"

Article 6

Article 9 of the First Directive is replaced by the following:

"Article 9

The scheme of operations referred to in Article 8(1)(c) and (2) shall contain the following particulars or proof concerning:

- (a) the nature of the commitments which the undertaking proposes to cover;
- (b) the guiding principles as to reinsurance;
- (c) the items constituting the minimum guarantee fund;
- (d) estimates relating to the cost of installing the administrative services and the organization for securing business and the financial resources intended to meet such cost;

and, in addition, for the first three financial years:

- (e) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- (f) a forecast balance sheet;
- (g) estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin."

Article 7

The competent authorities of the home Member State shall not grant authorization for taking up the business of assurance before they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, who have qualifying holdings and of the amounts of those holdings.

Those same authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an assurance undertaking, they are not satisfied as to the suitability of the said shareholders or members.

TITLE III

Harmonization of conditions governing pursuit of business

Chapter 1

Article 8

Article 15 of the First Directive is replaced by the following:

"Article 15

1. The financial supervision of an assurance undertaking, including that of the activities it carries on either through branches or by way of freedom to provide services, shall be the sole responsibility of the home Member State. If the authorities of the Member State of the commitment have reason to suspect that the activities of an assurance undertaking might affect its financial soundness, they shall inform the authorities of the undertaking's home Member State. The latter authorities shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.
2. The financial supervision shall include verification, with respect to the entire business of the assurance undertaking, of its state of solvency, the establishment of technical provisions, including mathematical provisions, and of the assets covering them, in accordance with the rules laid down or practices followed in the home Member State pursuant to provisions adopted at Community level.
3. The competent authorities of the home Member State shall require every assurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms."

Article 9

Article 16 of the First Directive is replaced by the following:

"Article 16

Member States of the branch shall provide that, where an assurance undertaking authorized in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the Member State of the branch, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification of the information necessary to ensure the financial supervision of the undertaking."

Article 10

The following Article 23a is inserted in the First Directive:

"Article 23a

Without prejudice to the procedures for the withdrawal of authorizations and the provisions of criminal law, Member States shall provide that their respective competent authorities may, as against assurance undertakings or those who effectively control the business of assurance undertakings which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their activities, adopt or impose in respect of them penalties or measures aimed specifically at ending observed breaches or the causes of such breaches."

Article 11

1. Article 6, paragraphs 2 to 7, of the Second Directive are deleted.
2. Each Member State shall, under the conditions laid down by national law, authorize assurance undertakings whose head office is established in its territory to transfer all or part of their portfolios of contracts, whether concluded by way of freedom of establishment or by way of freedom to provide services, to an accepting office established in the Community, if the supervisory authorities of the home Member State of the accepting office certify that the latter possesses the necessary solvency margin after taking the transfer into account.
3. Where a branch proposes to transfer all or part of its portfolio of contracts, whether concluded by way of freedom of establishment or by way of freedom to provide services, the Member State of the branch shall be consulted.
4. In the circumstances referred to in paragraphs 2 and 3, the supervisory authorities of the home Member State of the transferring undertaking shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member States of commitment.
5. The supervisory authorities of the Member States consulted shall inform the competent authorities of the home Member State of the transferring assurance undertaking of their opinion within three months of receipt of the request for an opinion; if no response is forthcoming by the end of that period, the opinion of the authorities consulted shall be deemed to be favourable.
6. A transfer authorized in accordance with this Article shall be published, under the conditions laid down by national law, in the Member State of the commitment. Such transfer shall be automatically valid against the policy-holders, the lives assured and any other person having rights and obligations arising out of the contracts transferred.

Member States may provide policy-holders with the option of cancelling the contract within a given period after the transfer.

Article 12

Article 24 of the First Directive is replaced by the following:

"Article 24

1. If an undertaking does not comply with the provisions of Article 17, the supervisory authority of its home Member State may prohibit the free disposal of assets after having informed the supervisory authorities of the Member States of commitment.

2. For the purposes of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under Article 19, the supervisory authority of the home Member State shall require a plan for the restoration of a sound financial position to be submitted for its approval.

3. If the solvency margin falls below the guarantee fund as defined in Article 20, the supervisory authority of the home Member State shall require the undertaking to submit a short-term finance scheme for its approval.

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

4. The competent supervisory authorities may further take all measures necessary to safeguard the interests of the lives assured in the cases provided for in paragraphs 1 and 3.

5. Each Member State shall also take the measures necessary to be able to prohibit the free disposal of assets located in its territory at the request of the undertaking's home Member State."

Article 13

Article 26 of the First Directive is replaced by the following:

"Article 26

1. An authorization granted to an assurance undertaking by the competent authority of the home Member State may be withdrawn by that authority if the undertaking:

- (a) does not make use of the authorization within 12 months, expressly renounces the authorization or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorization to lapse in such cases;
- (b) no longer fulfils the conditions for admission;
- (c) has been unable, within the time allowed, to take the measures contained in the restoration plan or finance scheme referred to in Article 24;
- (d) fails seriously in its obligations under the regulations to which it is subject.

In the event of withdrawal of the authorization, the supervisory authority of the home Member State shall notify such withdrawal to the supervisory authorities of the other Member States, which shall

take appropriate measures to prevent the undertaking from commencing new operations in their territory, whether by way of freedom of establishment or by way of freedom to provide services. The home Member State supervisory authority shall, in conjunction with those authorities, take all necessary measures to safeguard the interests of the lives assured and, in particular, shall restrict the free disposal of the assets of the undertaking in accordance with Article 24(1) and (3), second subparagraph.

2. Any decision to withdraw an authorization shall be supported by precise reasons and notified to the undertaking in question.

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

Article 14

1. Member States shall require any natural or legal person who proposes to acquire, directly or indirectly, a qualifying holding in an assurance undertaking to inform the competent authorities of the home Member State, indicating the size of the intended holding. Such a person must likewise inform the competent authorities of the home Member State if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital held by him would reach or exceed 20%, 33% or 50% or so that the assurance undertaking would become his subsidiary.

The competent authorities of the home Member State shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the assurance undertaking, they are not satisfied as to the suitability of the person referred to in the first subparagraph. If they do not oppose the plan referred to in the first subparagraph, they may fix a maximum period for its implementation.

2. Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his intended holding. Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20%, 33% or 50% or so that the assurance undertaking would cease to be his subsidiary.
3. On becoming aware of them, assurance undertakings shall inform the competent authorities of the home Member State of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 2.

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

4. Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to operate to the detriment of the prudent and sound management of the assurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 14a

Article 13 of the First Directive is replaced by the following:

"Article 13

1. Undertakings which, in accordance with Article 6 of the first non-life insurance coordination Directive and of this Directive, receive authorizations permitting them to carry on simultaneously the activities referred to in the Annex to the first non-life insurance coordination Directive and those listed in Article 1 of this Directive shall manage each activity separately in accordance with Article 14.
2. Where an undertaking carrying on the activities referred to in the Annex to the first non-life insurance coordination Directive has financial, commercial or administrative links with an undertaking carrying on the activities covered by this Directive, the supervisory authorities of the Member States in whose territory the head offices of those undertakings are situated shall ensure that the accounts of the undertakings in question are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.
3. Subject to paragraph 4, undertakings which at the time of notification of this Directive carry on simultaneously in a Member State both of

the activities referred to in paragraph 1 may continue to do so there provided that each activity is separately managed in accordance with Article 14.

4. Any Member State may require undertakings whose head offices are established in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged at the time of notification of this Directive."

Article 14b

Article 18 of the Second Directive is deleted with effect from 1 January 1996.

Chapter 2

Article 15

Article 17 of the First Directive is replaced by the following:

"Article 17

1. The home Member State shall require every assurance undertaking to establish sufficient technical provisions, including mathematical provisions, in respect of its entire business.

The amount of such provisions shall be determined according to the following principles:

A.(i) The amount of the mathematical provisions shall be calculated by a sufficiently prudent actuarial valuation of all future liabilities for all existing policies, including:

- all guaranteed benefits, including guaranteed surrender values;
- bonuses which have already been guaranteed, whether described as vested, declared or allotted;
- options available to the policy-holder under the terms of the contract;
- expenses, including commissions;

taking credit for future premiums due.

(ii) The use of a retrospective method is allowed, if it can be shown that the resulting technical provisions are not lower than would be required under a sufficiently prudent prospective calculation or if a prospective method cannot be used for the type of policy involved.

(iii) A prudent valuation is not a 'best estimate' valuation, but shall include an appropriate margin for adverse deviation of the relevant factors.

(iv) The valuation shall take account of the method of valuation of the corresponding assets, depending on the type of policy, and the extent to which specific assets can be identified.

(v) Technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalizations is allowed however, where they are likely

to give approximately the same result as the individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualized.

- (VI) Where the surrender value of a policy is guaranteed, the amount of the mathematical provisions for the policy shall be at least as great as that value.

- B. The rate of interest used in the calculation of the technical provisions shall be chosen prudently, taking into account the currency in which the policy is denominated, and having regard to the yield on the corresponding existing assets and to the yield which it is expected will be obtained on sums to be invested in the future.

- C. The elements of the statistical basis and the allowance for expenses used in the calculation of the technical provisions shall be chosen prudently, having regard to the State of the commitment, the type of policy, and the administrative costs and commissions expected to be incurred.

- D. In the case of participating policies, the valuation method shall take into account, either implicitly or explicitly, future bonuses of all kinds, in a manner consistent with the other assumptions on future experience and with the current method of distribution of bonus. Where no explicit allowance is made for future bonuses a technical rate of interest shall be used which is lower than the rate chosen according to principle B by an appropriate amount.

- E. Allowance for future expenses may be made implicitly, for instance by the use of an appropriate net premium. However the overall allowance, implicit or explicit, shall be not less than a prudent estimate of the relevant future expenses.
- F. The method of calculation of technical provisions from year to year shall be such as to recognize profit in an appropriate way over the duration of each policy, and shall not be subject to discontinuities arising from arbitrary changes to the method or the bases of calculation.
2. Assurance undertakings shall publish the bases and methods used in the calculation of the technical provisions, including provisions for bonuses.
3. The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 21. In respect of business written in the Community, these assets must be localized on the territory of the Community. The home Member State may, however, permit relaxations in the rules on the localization of assets."

Article 16

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable undertakings to meet all their commitments having regard to all aspects of their financial situation.

Article 17

Assets representing the technical provisions shall be invested having regard to the kind of business transacted, and the nature and duration of the assets, including possible future variations in their yield and value.

Article 18

1. The home Member State shall allow every assurance undertaking to cover the technical provisions only from amongst the following categories of assets:

- (a) debt securities, bonds and other money market instruments issued by a State or local authority; loans to or guaranteed by a State or local authority;
- (b) debt securities, bonds and other money market instruments issued by undertakings; secured loans to or guaranteed by undertakings;
- (c) secured loans to natural persons other than those listed under (h);
- (d) transferable shares and other transferable variable yield participations;
- (e) units in undertakings for collective investments in transferable securities and other investment pools;
- (f) hedging instruments, such as options, futures, swaps;
- (g) land and buildings;

- (h) loans guaranteed by mortgage on land, buildings, ships or aircraft;
- (i) cash at bank and in hand, deposits with credit institutions;
- (j) reinsurance amounts of technical provisions, determined in accordance with the stipulations of the underlying reinsurance contracts;
- (k) deposits with and debts owed by ceding undertakings;
- (l) debts owed by policy-holders and intermediaries arising out of direct and reinsurance operations, up to 30% of premiums earned in the financial year;
- (m) accrued interest and rent and other prepayments and accrued income;
- (n) deferred acquisition costs;
- (o) amounts receivable as a result of salvage and subrogation;
- (p) recognized tax recoveries;
- (q) claims against guarantee funds;
- (r) tangible fixed assets, other than land and buildings;
- (s) reversionary interests;
- (t) loans on policies.

2. Notwithstanding paragraph 1, in particular circumstances and at the assurance undertaking's request, the home Member State may, on the basis of a duly motivated decision, allow other categories of assets for the purpose of covering technical provisions, subject to Article 17.

Article 19

1. The home Member State shall require every assurance undertaking to invest no more than:

- (a) 50% of the total of the technical provisions, net of reinsurance, in the category of assets listed in Article 18(1)(b);
- (b) 50% of the total of the technical provisions, net of reinsurance, in the categories of assets listed in Article 18(1)(g) and (h), taken together;
- (c) 80% of the total of the technical provisions, net of reinsurance, in the categories of assets listed in Article 18(1)(d), (e) and (f), taken together, of which no more than 10% shall comprise the category of assets listed in Article 18(1)(f) or unlisted transferable shares and other transferable variable yield participations taken together;

The home Member State may waive the 80% limit, on condition that the 10% limit laid down in point (g) is reduced to 5%.

- (d) 5% of the total of the technical provisions, net of reinsurance, in the category of assets listed in Article 18(1)(c);

- (e) 10% of the total of the technical provisions, net of reinsurance, in any one piece of land or buildings, or a number of pieces of such buildings;
 - (f) 10% of the total of the technical provisions, net of reinsurance, in any one loan guaranteed by a mortgage on land, buildings, ships or aircraft;
 - (g) 10% of the total of the technical provisions, net of reinsurance, taken together in transferable shares, other transferable variable yield participations, debentures and other bonds of any one undertaking and loans to any one undertaking.
2. Member States shall not require assurance undertakings to invest in particular categories of assets or to localize their assets in a particular Member State.
3. Notwithstanding paragraph 1, in particular circumstances and at the assurance undertaking's request, the home Member State may, on the basis of a duly motivated decision, allow exceptions to the rules laid down in points (a) to (g) of paragraph 1 of this Article, subject to Article 17.

Article 20

At the request of, and upon proof being shown by, the assurance undertaking, the home Member State may allow any hidden reserves resulting from the undervaluation of assets as cover for technical provisions in so far as those hidden reserves are not of an exceptional nature.

If hidden reserves are recognized as cover for technical provisions, an adequate amount of latent taxes and selling expenses shall be deducted.

Article 21

For the purposes of Article 17(3) and Article 28 of the First Directive, Member States shall comply with Annex 1 to this Directive as regards the matching rules.

Article 22

Article 18(1) of the First Directive is replaced by the following:

"1. the assets of the undertaking free of any 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 fund;
- one-half of the share capital or the fund which is not yet paid-up, once the paid-up part reaches 25% of this capital or fund;
- reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities;
- any carry-forward of profits;
- subordinated loan capital, up to an overriding limit of 25% of the margin, if the following criteria are met:

there must be a binding agreement by which, in the event of bankruptcy or liquidation of the assurance undertaking, the subordinated loan capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at that time have been settled;

only fully paid-up funds may be taken into account;

the original maturity must be of at least five years, after which the subordinated loan capital may be repaid; if its maturity is not fixed, it shall be repayable only subject to five years' notice unless it is no longer considered as own funds or unless the prior consent of the home Member State is specifically required for early repayment. The home Member State may grant permission for the early repayment of such loans provided the request is made on the initiative of the issuer and the solvency of the assurance undertaking in question is not affected;

the extent to which subordinated loan capital may rank as own funds must be gradually reduced during at least the last five years before the agreed repayment date;

the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment date."

Article 23

Article 21 of the First Directive is replaced by the following:

"Article 21

1. Member States shall not prescribe any rules as to the choice of the assets in excess of those representing the technical provisions referred to in Article 17.

2. Subject to Article 17(3), Article 24(1), (3) and (5) and the second subparagraph of Article 26(1), Member States shall not restrain the free disposal of the assets, whether movable or immovable property, forming part of the assets of authorized businesses.
3. This Article shall not preclude any measures which Member States, while safeguarding the interests of the lives assured, are entitled to take as owners, members or associates of the undertakings in question."

Chapter 3

Article 24

The Member State of the commitment shall not prevent the policy-holder from concluding a contract conforming with the rules of the home Member State, as long as it does not conflict with legal provisions protecting the general good in the Member State of the commitment.

Article 25

Member States shall not lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, the technical bases used inter alia for calculating scales of premiums and technical provisions, and forms and other printed documents which an assurance undertaking intends to use in its dealings with policy-holders.

They may require only non-systematic notification of those conditions and other documents for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of assurance contracts, and this requirement may not constitute a prior condition for an undertaking to be able to carry on its activities.

Article 26

In the first subparagraph of Article 15(1) of the Second Directive the words "in one of the cases referred to in Title III" are deleted.

Article 27

1. Before any commitment is finalised, the policy-holder shall receive at least the information listed in point A of Annex 2.
2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in point B of Annex 2.
3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex 2 only if it is indispensable to a proper understanding by the policy-holder of the essential elements of the commitment.

TITLE IV

Provisions relating to freedom of establishment
and freedom to provide services

Article 28

Article 10 of the First Directive is replaced by the following:

"Article 10

1. An assurance undertaking wishing to establish a branch in another Member State shall notify the competent authorities of its home Member State.
2. Member States shall require every assurance undertaking wishing to establish a branch in another Member State to provide the following information when effecting the notification referred to in paragraph 1:
 - (a) the Member State in whose territory it plans to establish a branch;
 - (b) a scheme of operations setting out inter alia the types of business envisaged and the structural organization of the branch;
 - (c) the address in the Member State of the branch from which documents may be obtained;

- (d) the name of the person responsible for the management of the branch 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 Member State of the branch.

With regard to Lloyd's, in the event of any litigation in the Member State of the branch resulting from underwritten commitments, the lives assured must not be more unfavourably treated than if the litigation had been brought against businesses of a more conventional type. The authorized agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the assurance undertaking, taking into account the activities envisaged, they shall within three months of receipt of the information referred to in paragraph 2 communicate that information to the competent authorities of the Member State of the branch and shall inform the undertaking concerned accordingly.

The home Member State competent authorities shall also communicate the amount of the guarantee fund and solvency margin of the assurance undertaking, calculated in accordance with Articles 19 and 20.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the Member State of the branch, they shall give reasons for their refusal to the undertaking concerned within three months of receipt of all the information. That refusal or failure to reply shall be subject to a right to apply to the courts in the home Member State.

4. Before the branch of an assurance undertaking commences its activities, the competent authorities of the Member State of the branch shall, within two months of receiving the information mentioned in paragraph 3, if necessary indicate the conditions under which, in the interest of the general good, those activities must be carried on in the Member State of the branch.
5. On receipt of a communication from the competent authorities of the Member State of the branch, or, if no communication is received from them, on expiry of the period provided for in paragraph 4, the branch may be established and commence its activities.
6. In the event of a change in any of the particulars communicated pursuant to paragraph 2(b), (c) or (d), an assurance undertaking shall give written notice of the change to the competent authorities of the home Member State and Member State of the branch at least one month before making the change so as to enable the competent authorities of the home Member State to take a decision pursuant to paragraph 3 and the competent authorities of the Member State of the branch to take a decision on the change pursuant to paragraph 4."

Article 29

Article 11 of the First Directive is deleted.

Article 30

Article 11 of the Second Directive is replaced by the following:

"Article 11

Any undertaking intending to carry on business for the first time by way of freedom to provide services shall first inform the competent authorities of the home Member State, indicating the Member State or Member States within the territory of which it contemplates providing services and the nature of the commitments it proposes to cover."

Article 31

Article 14 of the Second Directive is replaced by the following:

"Article 14

1. The competent authorities of the home Member State shall communicate, within one month of the notification provided for in Article 11, to the Member State or Member States within the territory of which the undertaking intends to carry on business by way of freedom to provide services:
 - (a) the amount of the solvency margin calculated in accordance with Articles 19 and 20 of the First Directive;
 - (b) the classes which the undertaking has been authorized to transact;
 - (c) the nature of the commitments which the undertaking proposes to cover in the Member State of provision of services.

At the same time, they shall inform the undertaking concerned accordingly.

2. Where the competent authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down, they shall give the reasons for their refusal to the undertaking within that same period. The refusal shall be subject to a right to apply to the courts in the home Member State.
3. The undertaking may commence activities as from the certified date on which it is informed of the communication provided for in the first subparagraph of paragraph 1."

Article 32

Article 17 of the Second Directive is replaced by the following:

"Article 17

Any amendment which the undertaking intends to make to the information referred to in Article 11 shall be subject to the procedure provided for in Articles 11 and 14."

Article 33

Articles 10, 12, 13, 16, 22 and 24 of the Second Directive are deleted.

Article 34

1. Article 19 of the Second Directive is deleted.

2. Member States of the branch or of provision of services shall not lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, the technical bases used inter alia for calculating scales of premiums and technical provisions, and forms and other printed documents which an undertaking intends to use. For the purpose of verifying compliance with their national provisions, they shall require of any undertaking wishing to carry on assurance business in their territory, whether by way of freedom of establishment or by way of freedom to provide services, only non-systematic notification of the conditions it proposes to use, although this requirement may not constitute a prior condition for an undertaking to carry on its activities.

Article 35

1. Article 20 of the Second Directive is deleted.
2. Any undertaking carrying on business by way of freedom of establishment or freedom to provide services shall submit to the competent authorities of the Member State of the branch and/or of the Member State of provision of services all documents requested of it for the purposes of this Article in so far as undertakings whose head office is in those Member States are also obliged to do so.
3. If the competent authorities of a Member State establish that an undertaking with a branch or providing services in its territory is not complying with the legal provisions applicable to it in that State, they shall require the undertaking concerned to put an end to the irregular situation.

4. If the undertaking in question fails to take the necessary steps, the competent authorities of the Member State concerned shall inform the competent authorities of the home Member State accordingly. The latter authorities shall, at the earliest opportunity, take all appropriate measures to ensure that the undertaking concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the competent authorities of the Member State concerned.
5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are lacking in that State, the undertaking persists in violating the legal provisions in force in the Member State concerned, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or punish further irregularities, including, in so far as is strictly necessary, the prevention of the further conclusion of new assurance contracts by that undertaking in its territory. Member States shall ensure that in their territories it is possible to serve the legal documents necessary for these measures on assurance undertakings.
6. Paragraphs 2 to 5 shall not affect the power of the Member States concerned to take - in the case of urgency - appropriate measures to prevent or punish irregularities committed within their territories. This shall include the possibility of preventing assurance undertakings from continuing to conclude new assurance contracts within their territories.
7. If the undertaking which has committed the irregularity has an establishment or possesses property in the Member State concerned, the competent authorities of the latter may, in accordance with national legislation, apply the administrative penalties prescribed for that offence by way of enforcement against that establishment or property.

8. Any measure adopted pursuant to paragraphs 4 to 7 involving penalties or restrictions on the carrying-on of assurance business must be properly justified and communicated to the undertaking concerned. Provision shall be made for a right to apply in respect of any such measure to the courts in the Member State in which it was adopted.
9. Every two years the Commission shall submit to the Council a report summarizing the number and type of cases in which, in each Member State, decisions refusing authorization have been communicated under Article 28 or measures have been taken under paragraph 4. Member States shall cooperate with the Commission by providing it with the information required for the report.

Article 36

Nothing in this Directive shall prevent assurance undertakings with head offices in other Member States from advertising their services through all available means of communication in the Member State of the branch or Member State of provision of services, subject to any rules governing the form and content of such advertising adopted in the interest of the general good.

Article 37

1. Article 21 of the Second Directive is deleted.
2. In the event of an assurance undertaking being wound up, commitments arising from contracts underwritten through a branch or by way of freedom to provide services shall be met in the same way as those arising from that undertaking's other assurance contracts, without distinction of nationality as far as the lives assured and the beneficiaries are concerned.

Article 38

1. Article 23 of the Second Directive is deleted.
2. Every assurance undertaking shall inform the supervisory authority of its home Member State, separately in respect of operations effected by way of freedom of establishment and in respect of those effected by way of freedom to provide services, of the amount of the premiums, without deduction of reinsurance, receivable by Member State and by each of classes I to VI, as defined in the Annex to the First Directive.

The supervisory authority of the home Member State shall forward this information to the supervisory authorities of each of the Member States concerned which so request.

Article 39

1. Article 25 of the Second Directive is deleted.
2. Without prejudice to any subsequent harmonization, every assurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment within the meaning of Article 2(e) of the Second Directive, and also, with regard to Spain, to the surcharges legally established in favour of the Spanish "Consortio de Compensación de Seguros" for the fulfilment of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

The law applicable to the contract pursuant to Article 4 of the Second Directive shall not affect the fiscal arrangements applicable.

Each Member State shall, subject to future harmonization, apply to those undertakings which carry on business in its territory, its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges referred to in the first subparagraph.

TITLE V

Final provisions

Article 40

1. The technical adjustments to be made to the First and Second Directives and to this Directive in the following areas shall be adopted in accordance with the procedure laid down in Article ... of Council Directive ... (Committee on Insurance):

- amendments to the list set out in the Annex to the First Directive, or adaptation of the terminology used in that list to take account of developments on assurance markets;
- clarification of the items constituting the solvency margin listed in Article 18 of the First Directive to take account of the creation of new financial instruments;
- alteration of the minimum guarantee fund provided for in Article 20(2) of the First Directive to take account of developments in the economic and financial field;
- amendments to the list of admissible assets which may cover the technical provisions, set out in Article 18 of this Directive, and of the rules on the spreading of investments laid down in Article 19 of this Directive;

- changes to the exceptions to the matching principle, provided for in Annex 1 to this Directive, to take account of the development of new currency hedging instruments or progress towards economic and monetary union;
- clarification of the definitions in order to ensure uniform application of the First and Second Directives and of this Directive throughout the Community;
- consolidation of the First and Second Directives, and this Directive.

Article 41

1. Branches which have commenced their activities, in accordance with the provisions in force in their Member State of establishment, before the entry into force of the provisions adopted in implementation of this Directive shall be presumed to have been subject to the procedure laid down in Article 10(1) to (5) of the First Directive. They shall be governed, from the date of that entry into force, by Articles 17, 23a, 24 and 26 of the First Directive and by Article 35 of this Directive.
2. Articles 30 and 31 shall not affect rights acquired by assurance undertakings transacting business by way of freedom to provide services before the entry into force of the provisions adopted in implementation of this Directive.

Article 42

The following Article is inserted in the First Directive:

"Article 31a

1. Each Member State shall, under the conditions laid down by national law, authorize agencies and branches set up in its territory and referred to in this Title to transfer all or part of their portfolios of contracts to an accepting office established in the Community, if the supervisory authorities of the Member State of the accepting office certify that the latter possesses the necessary solvency margin after taking the transfer into account.

2. A transfer authorized in accordance with paragraph 1 shall be published, under the conditions laid down by national law, in the Member State of the commitment. Such transfer shall be automatically valid against the policy-holders, the lives assured and any other person having rights and obligations arising out of the contracts transferred.

This provision shall not affect the right of Member States to provide policy-holders with the option of cancelling the contract within a given period after the transfer."

Article 43

Member States shall ensure that decisions taken in respect of an assurance undertaking in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts.

Article 44

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ... They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 45

Upon notification of this Directive, Member States shall communicate to the Commission the texts of the main laws, regulations or administrative provisions which they adopt in the field covered by this Directive.

Article 46

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX 1

MATCHING RULES

The currency in which the assurer's commitments are payable shall be determined in accordance with the following rules:

1. Where the cover provided by a contract is expressed in terms of a particular currency, the assurer's commitments are considered to be payable in that currency.
2. Where the cover provided by a contract is directly linked to the value of units in a UCITS or some other reference value, the technical provisions must be represented by directly equivalent assets.
3. Member States may authorize undertakings not to cover their technical provisions, including their mathematical provisions, by matching assets if application of the above procedures would result in the undertaking being obliged, in order to comply with the matching principle, to hold assets in a currency amounting to not more than 7% of the assets existing in other currencies.
4. Member States may choose not to require undertakings to apply the matching principle where commitments are payable in a currency other than the currency of one of the Community Member States, if investments in that currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, it is not suitable for covering technical provisions.
5. Undertakings are authorized not to hold matching assets to cover an amount not exceeding 20% of their commitments in a particular currency.

However, total assets in all currencies combined must be at least equal to total commitments in all currencies combined.

6. Each Member State may provide that, whenever under the preceding procedures a commitment has to be covered by assets expressed in the currency of a Member State, this requirement shall also be considered to be satisfied when the assets are expressed in ecus.

Information for policy-holders

The policy-holder must be informed of the following information before finalising the contract (A), or during the term of the contract (B). The information must be provided in a clear and accurate manner, in writing, and in the official language of the Member State of the commitment:

A. Before finalising the contract

Information about the assurance company	Information about the assurance policy
a.1 The name of the company and its legal form	a.4 Definition of each benefit and each option
a.2 The name of the Member State in which the head office, and where appropriate the agency or branch which issues the policy, is situated	a.5 Term of the policy
a.3 The address of the head office, and where appropriate of the agency or branch which issues the policy	a.6 Means of terminating the contract
	a.7 Means of payment of premiums
	a.8 Means of calculation and distribution of profit participation
	a.9 Indications of surrender and paid-up values, and the extent to which they are guaranteed
	a.10 Information on the premiums for each benefit, both main benefits and supplementary benefits
	a.11 For unit-linked policies, definition of the units to which the benefits are linked
	a.12 Indication of the nature of the underlying assets for unit-linked policies

- a.13 Application of the cooling-off period
- a.14 Indication of the tax arrangements applicable to the policy
- a.15 The address of the body or bodies in the Member State of the commitment to which any complaints of policyholders, lives assured or beneficiaries of the contract should be addressed

B. During the term of the contract

In addition to the policy conditions, both general and specific, the policy-holder must receive the following information throughout the term of the contract.

Information about the assurance company	Information about the assurance policy
b.1 Any change in the name of the company, its legal form or the address of its head office, and where appropriate of the agency or branch which issues the policy	b.2 All the information listed in points a.4 to a.13 of A in the event of a change in the policy conditions or amendment of the law applicable to the policy

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The detailed application of the above requirements is to be determined according to the law of the Member State of the commitment.

FICHE FINANCIERE

(délai de consultation requis pour la DG XIX : 10 jours ouvrables)

VOLET 1 : IMPLICATIONS FINANCIERES

1. Intitulé de l'action

Prop. de directive du Conseil : 3ème directive de coordination dans le domaine de l'assurance directe sur la vie.

2. Lignes budgétaires concernées : crédits de fonctionnement

3. Base légale : Art. 57 para 2 et 66 du Traité CEE

4. Description de l'action

4.1. Objectifs spécifiques de l'action : acte législatif

4.2. Durée : pas d'application

4.3. Population visée par l'action : autorités dans les E.M.

5. Classification de la dépense ou des recettes

5.1. DO/DNO

5.2. CD/CND

5.3. Types de recettes visées

Réponse : pas d'application

6. Nature de la dépense ou des recettes

6.1. Subvention à 100 %

6.2. Subvention pour co-financement avec d'autres sources du secteur public et/ou privé

6.3. Bonification d'intérêt

6.4. Autres

6.5. En cas de réussite économique de l'action, un remboursement partiel ou total de l'apport financier communautaire est-il prévu ?

6.6. L'action proposée implique-t-elle une modification du niveau des recettes? Si oui, de quelle nature est la modification et quel type de recettes est visé ?

Réponse : pas d'application

7. Incidence financière sur les crédits d'intervention (partie B du budget)

7.1. Indiquez le mode de calcul du coût total de l'action

7.2. Indiquez la part du "mini-budget" dans le coût total de l'action. explicitiez le mode de calcul.

7.3. Echancier indicatif des crédits d'engagement et de paiement

Réponse : pas d'application

8. Quelles sont les dispositions anti-fraude prévues dans la proposition d'action ?

Réponse : pas d'application

**VOLET 2 : DEPENSES ADMINISTRATIVES
(partie A du budget)**

(Volet à transmettre à la DG IX pour avis; celle-ci le transmet ensuite à la DG XIX)

1. L'action proposée implique-t-elle une augmentation du nombre d'effectifs de la Commission ? Si oui, de combien ?

Non.

2. Indiquez le montant des dépenses de fonctionnement et de personnel générées la proposition d'action. Explicitiez le mode de calcul.

Pas d'application

VOLET 3 : ELEMENTS D'ANALYSE COUT-EFFICACITE

1. Objectifs et cohérence avec la programmation financière

1.1. Objectifs spécifiques de l'action proposée. Il doit être quantifié dans la mesure du possible et présenté pour chacune des années concernées s'il s'agit d'une action pluriannuelle.

Réponse : acte législatif comportant harmonisation des législations

1.2. L'action est-elle prévue dans la programmation financière de la DG pour les années concernées ?

Réponse : pas d'application

1.3. Indiquez à quel objectif plus général défini dans la programmation financière de la DG correspond l'objectif de l'action proposée

Réponse : programme de travail législatif de la DG XV

2. Justification de l'action

2.1. Justification de l'action choisie par rapport à une alternative qui permettrait d'atteindre les mêmes objectifs. La justification doit se baser notamment sur trois critères :

- a) coût
- b) effets dérivés (impact au-delà des objectifs spécifiques)
- c) effet multiplicateur (capacité de mobilisation d'autres sources de financement)

Réponse : pas d'application; proposition faite dans le cadre du droit d'initiative de la Commission en matière législative.

3. Suivi et évaluation de l'action

3.1. Indicateurs de performance sélectionnés

3.2. Modalités et périodicité de l'évaluation prévues

3.3. Principaux facteurs d'incertitude pouvant affecter les résultats spécifiques de l'action

Réponse : pas d'application

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS
with special reference to small and medium-sized enterprises (SMEs)

Title of proposal: Proposal for a Third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC

Reference Number (Répertoire): COM(91)

The proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

To complete the internal market in direct life assurance in accordance with the principles laid down in the White Paper, in order to create a genuine single market in this important area of financial services.

This proposal for a Third Directive fits into a wider pattern of work to be undertaken with a view to completing the single market in insurance, both life and non-life.

The adoption of the Second Directives on non-life insurance (1988) and life assurance (1990) contributed substantially to the attainment of this fundamental objective of the Community. Those instruments laid down two different sets of arrangements for the pursuit of business under conditions of freedom of services. The first, based on the approach - as mapped out in the White Paper - of home country control, is applicable to policy-holders who are in no need of specific protection by the application of their own national rules (large risks, provision of services on the policy-holder's initiative). The second, based on application of the rules of the country in which the service is provided, concerns policy-holders who do need specific protection (mass risks, life assurance commitments entered into by the policy-holder without his taking the initiative in seeking cover abroad).

When these two Directives were adopted, the Commission formally undertook to present new proposals aimed at completing the internal market within the time-limits prescribed by the White Paper.

A proposal for a third non-life insurance coordination Directive was transmitted to the Council on 27 July 1990. The present proposal for a Third Directive concerns life assurance and is designed to lay down the provisions necessary to complete the internal market in that branch of insurance.

The arrangements proposed are based on the strategy already used to create the internal market in banking and in investment services (Second Banking Directive and proposal for a Directive on investment services), namely the introduction of a single authorization system and a system of home country control. Once this Directive has been adopted, all direct life assurance business will be subject to a single regime under which life assurance undertakings will be able to sell their products anywhere in the Community and purchasers of life assurance will have access to the widest possible market in which to find the product best suited to their needs at the most reasonable price.

The impact on business

2. Who will be affected by the proposal?

- which sectors of business

Insurance undertakings authorized to carry on life assurance activities within the meaning of the First Directive 79/267/EEC.

Moreover, the proposal will enable buyers of insurance, many of whom are SMEs, to benefit from the final completion of the internal market and to have access as a result to the full range of life assurance products available in the the EEC.

- which sizes of business (what is the concentration of small and medium-sized firms)

All insurance undertakings falling within the scope of the Directive. Very small undertakings with a local base and a small market share are excluded (cf. 5a).

- are there particular geographical areas of the Community where these businesses are found

The measures contained in the proposal for a Directive are not likely to affect the regions of the Community unequally.

3. What will businesses have to do to comply with the proposal?

The proposal for a Directive introduces into the direct life assurance sector, as is the case with other financial services, the system of a

single official authorization for an undertaking's entire business in the Community, and prudential supervision by the authorities of the home Member State.

This approach simplifies considerably the present situation as regards the taking-up and pursuit of this business, characterized as it is by a multiplicity of authorizations and controls.

At the same time, home country control, on the basis of coordinated rules, of the holding by insurance undertakings of adequate technical and mathematical provisions, and of the valuation of those provisions and their representation by matching assets located in the Community, will reduce the multiplicity of arrangements now in existence. The strength of insurance undertakings will be increased and safeguarded, and policy-holders will be better protected as a result.

4. What economic effects is the proposal likely to have?

- on employment

No direct effect.

- on investment and the creation of new businesses

The introduction of a system of home country control will reduce the operating costs of insurance undertakings owing to the calculation at head-office level of the technical provisions in respect of an undertaking's entire business.

The measures proposed for the constitution of the solvency margin (inclusion of subordinated loan capital) will facilitate the financing of undertakings, notably mutuals and insurance cooperatives, by external resources.

- on the competitive position of businesses

Community insurance undertakings will be subject to coordinated rules on the taking-up and pursuit of the activities of direct life assurance and direct non-life insurance. Through the creation of a single market they will be able to offer their insurance products anywhere in the Community to any insurance buyer. There is therefore likely to be increased competition between insurance undertakings and between insurance undertakings and other financial institutions offering similar products.

SME buyers of insurance will have a much wider range of products from which to choose that which is best suited to their needs in terms of both cover proposed and price.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

(a) Insurance undertakings

The First Directive 79/267/EEC has already laid down a series of provisions specifically aimed at small or medium-sized insurance undertakings. Article 3 states that the Directive does not apply to certain small and medium-sized mutual associations. Moreover, the Directive permits a one-quarter reduction in the minimum guarantee fund required of insurance undertakings in the case of mutual associations and mutual-type associations.

The proposal for a Third Directive does not modify this treatment of certain insurance undertakings.

(b) Insurance buyers

The proposal for a Third Directive contains provisions aimed at giving insurance buyers the necessary degree of protection when they conclude insurance contracts. Insurance undertakings will have to render the contract subject to the law that is applicable in accordance with the provisions of the proposal (as a rule, the law of the country in which the policy-holder is resident). They will also have to provide the policy-holder with essential information about the product (Article 27). Lastly, there is a cooling-off period of between 14 and 30 days within which the policy-holder can cancel the contract.

Consultation

6. List the organizations which have been consulted about the proposal and outline their main views.

European Insurance Committee (EIC).

The EIC is in favour of the present proposal for a Directive, notably as regards the coordination of technical provisions and of the rules concerning the representation, valuation and localization of the assets covering the technical provisions.

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