

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 516 final.

Brussels, 22 December 1975

Proposal for
a second Council Directive
on the coordination of laws, regulations and administrative
provisions relating to direct insurance other than life
assurance and laying down provisions to facilitate the effective
exercise of freedom to provide services

(submitted to the Council by the Commission)

COM(75) 516 final.

EXPLANATORY MEMORANDUM

I. Object of the Directive

1. One of the essential features of a Common Market, as defined in the Treaty establishing the EEC, is that a business undertaking should be able to operate in that part of the market where conditions are most suitable for its activities ; it should be able to pursue its business throughout the market unhindered by national frontiers. It is with this objective in view that the EEC Treaty provides for the exercise of freedom to provide services which should allow service undertakings- and in particular insurance undertakings- with their head office in one Member State to operate in all other Member States of the European Community without having to be established in each of them.

The exercise of this freedom to provide services comes up against two obstacles. The first arises from the existence in some Member States of restrictive laws of a discriminatory nature. The second is connected with the profound differences existing between the laws governing the business sector in question.

2. The first obstacle has been removed by the Court of Justice judgment of 3 December 1974 in "Van Binsbergen". The Court ruled that the first paragraph of Article 59 and the third paragraph of Article 60 of the EEC Treaty have direct effect, at least insofar as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided.

3. However, the second obstacle persists in that insurance is subject to government supervision in all Member States of the European Community. The provisions in force vary from one Member State to another

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according to the reasons for this government supervisions. Normally these are of a social nature (consumer protection) but in some countries they are also based on financial or economic considerations (preservation of national wealth) ; however, with a few exceptions, all of these provisions make it difficult and sometimes impossible for an undertaking which is not established in the country in question to pursue its business there. It is the aim of this Directive to overcome this obstacle.

However, as such provisions often meet objective requirements, which have not been changed fundamentally by even the EEC Treaty, nothing would be gained by purely and simply abolishing them. In overcoming the obstacle presented by differences between them one should try to find solutions which are equivalent to the present regulations but take account of the existence and aims of the Common Market.

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II. Titles and Articles of the Directive

TITLE I - General provisions

Art. 1 : Object of the Directive

Art. 2 : Definitions :

- a) "first coordination Directive"
- b) "undertaking"
- c) "freedom to provide services"
- d) "Member State in which the risk is situated"
- e) "supervisory authority"
- f) "unit of account"

TITLE II - Provisions supplementing the first coordination Directive

Art. 3 : General principles concerning technical reserves

Art. 4 : Freedom to choose the law governing the contract

Art. 5 : Mandatory provisions of the law governing the contract

Art. 6 : Arrangements for "transport, credit and fidelity risks" and
"large risks"

Art. 7 : Responsibilities and powers of the supervisory authorities

TITLE III - Provisions designed to facilitate the effective exercise of
freedom to provide services

Art. 8 : Entitlement to freedom to provide services

Art. 9 : Exercise of freedom to provide services

Art. 10 : Arrangements concerning compulsory insurance

Art. 11 : Information to be made available to the policy-holder

Art. 12 : Special trading account

Art. 13 : Technical reserves

Art. 14 : Taxes on the insurance contract

Art. 15 : Undertakings from non-member countries

TITLE IV - Final provisions

- Art. 16 : Collaboration between the Commission and the supervisory authorities
- Art. 17 : Report on market developments
- Art. 18 : Period within which national provisions are to be amended
- Art. 19 : Communication of the amended texts
- Art. 20 : Parties to whom the Directive is addressed

III. Content of the Directive

1. Essentially the Directive is divided into two parts. The more important part, consisting of Articles 8 to 15 which make up the Title III, is intended to facilitate the effective exercise of freedom to provide services, which is already law following the abovementioned judgment of the Court of Justice of the European Communities of 3 December 1974. The other part, and in particular Articles 3 to 7 of Title II, contains rules on the coordination of certain problems of supervision relating to insurance and insurance contracts, which go beyond freedom to provide services and also apply to undertakings which pursue their business exclusively within a particular country.

2. Definition of freedom to provide services

a) For the purposes of this Directive, the freedom to provide services in the insurance field includes the right to cover risks situated in a country other than that in which the insurance undertaking is established (Article 2 c) ; the definition of the place in which the risk is situated is given in Article 2 d. Under this provision, the place where the risk is situated depends on the type of insurance involved ; in some cases, as for insurance covering persons, it is taken to be the place where the policy holder is established and in others, as is frequently the case in property insurance, the place where the insured property is actually situated ; in still other cases, it may be another place, such as the place in which the contract was concluded.

b) No attempt has been made to distinguish between freedom to provide services and freedom of establishment for two main reasons :

- this distinction is not normally necessary, as by the very nature of the insurance business - although this argument does not apply in the same way to all branches of insurance - an insurance undertaking tends to establish itself in the Member State in

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which the risks are situated as soon as the number of contracts underwritten by way of the provision of services reaches a relatively low level ;

- under the EEC Treaty, it is normally for the insurance undertaking itself to decide to what extent it intends to pursue its business within the Common Market through agencies or branches or by way of freedom to provide services. This freedom of choice may be limited if freedom to provide services is clearly being used as a way to circumvent the laws normally applicable or abuse them in any other way.

However, only a careful examination of the circumstances of the case in question can show whether abuses of this kind are actually being perpetrated and it is for the authority responsible for supervision to assess such cases.

3. Scope

Classes of insurance

The Directive is applicable to all classes of insurance covered by the first coordination Directive, i.e. all types of indemnity insurance (2nd paragraph of Article 1) ; it also applies in principle to compulsory insurance and small risks. Although a progressive liberalization is no longer possible since the abovementioned Court of Justice judgement, the decision of the Court of Justice has not altered the fact that not all policy holders require the same protection and that the interests of third parties should also be protected in many classes of insurance. This fact had therefore to be taken into account in the Directive. This is the reason why all the classes of insurance considered have been divided into three categories, namely ("compulsory insurance", "other risks" and "transport, fidelity and credit risks and large risks".

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a) Compulsory insurance (Article 10)

Compulsory insurance classes are governed, in the interest of those involved, by the most stringent provisions which thus require a particularly high degree of coordination. As there is no need to wait until the provisions governing compulsory insurance have been coordinated before liberalizing other classes of insurance, it seemed reasonable to postpone coordination of the former for the time being. Consequently, compulsory insurance, insofar as it does not cover risks defined in Article 6, will continue to be governed for the moment almost exclusively by the law of the country in which the risk is situated. Admittedly, exercise of freedom to provide services will thereby be made exceptionally difficult in many cases and, in the case of motor vehicle liability insurance, for example, virtually impossible. However, the situation in this sector must be accepted for the abovementioned social reasons until such time as it, too, can be improved by progressive coordination.

b) Other risks

"Other risks" are those which do not meet the requirements set out in Article 6 to define certain risks, i.e. bulk business, with the exception of compulsory insurance.

Compared with compulsory insurance, the following simplifications will apply to these risks :

Contracts : The principle of freedom of choice as to the law which is to govern the contract will apply irrespective of whether the contract has been concluded by an insurer exercising freedom to provide services or by an insurer established in the country (Article 4). Application of this principle is, however, subject to considerable restrictions in that certain mandatory provisions in force in the Member State in which the risk is situated will continue to apply (see Article 5 (1)).

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These mandatory provisions concern points of the law governing the contract which are listed exhaustively in the Directive. It emerged during discussions on coordination of the law on supervision that these points are a fundamental guarantee of protection for policy holders. This coordination, to be prepared with urgency, should be carried out within 3 years from the date of notification of the directive.

Supervision: To avoid discrimination against undertakings established in the country, but also to protect the interests of policy holders, it was necessary that undertakings pursuing their business by way of freedom to provide services should observe the laws on material supervision of the Member State in which the risk is situated. Insofar as it provides opportunities for influencing the content of contracts, the law on supervision will apply equally to undertakings which have an establishment in the country and to those which do not. This is important above all in countries where policy conditions or tariffs are subject to authorization (first sub-paragraph of Article 9 (1)).

Financial supervision remains subject to the provisions of the abovementioned first coordination Directive :

- the solvency margin is subject to supervision by the authority of the Member State in which the registered office is situated ;
- the supervisory authority of the authorizing State is responsible for the calculation of the technical reserves and the rules for investing the same (see point 5 a) below).

Competition: In view also of the need to avoid giving undertakings exercising freedom to provide services an unjustified advantage over firms established in the Member State where the risk is situated, it was also considered necessary to subject these undertakings to the rules on fair trading in force in that Member State.

c) Transport, credit and fidelity risks - large risks (Article 6)

It was considered necessary to facilitate cover of these various classes by way of freedom to provide services without however creating distortions of competition with established undertakings ; hence the need for a single system.

The reasoning for transport risks originates in the fact that most national laws take account of their often international nature and as a result there is complete freedom in the choice of contract law on the supervision of general conditions or the special conditions of the contract or tariffs. The Directive confirms a de facto situation, however, by stating that the policy holder must be a trader. The latter must be considered as having sufficient experience. The reasoning is similar for credit and fidelity risks.

As regards large risks, the problem was more complex. It was however apparent that policy holders had much less need of protection from the State.

Supervision of insurance has also been carried out hitherto in this field in several Member States ; this has been due in some cases to a desire to standardize legislation on supervision of insurance and in others to a desire for fairness with regard to premiums, i.e. to avoid a situation where bad results in the much more sensitive sector of industrial risks were offset by better results in the more stable sector of bulk business.

This practice has been subject to increasing criticism, all the more valid as the first objective is somewhat theoretical and the second could be achieved by other means.

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It proved difficult to distinguish these large risks from other risks.

In the final analysis, a choice had to be made between, firstly, criteria which would certainly have covered the greatest possible number of cases where a liberalization would have been justified in theory, but difficult to apply and, secondly, criteria which are easy to apply but which do not cover all cases "meriting liberalization". The second solution was finally chosen for reasons of expediency (Article 6 b).

Since these risks meet these criteria they are covered by the same arrangements as those described above for transport risks and credit and fidelity risks, i.e. the parties do not need to obtain approval for tariff conditions and are free to choose the law governing the contract (Article 4 together with Article 5 (2)).

Insurance undertakings

The following are free to provide services :

- a) insurance undertakings which have obtained the authorization laid down in Article 6 (2a) of the first coordination Directive (Article 2 b) ;
- b) insurance undertakings which have obtained the authorization laid down in Article 6 (2) (b) of the first coordination Directive (Article 2 c).

For legal as well as practical reasons, it was considered advisable to adopt the most liberal solution in the circumstances. Thus any undertaking established within the Community will be able to pursue its business by way of freedom to provide services : the head office in a Member State in which it has an agency and branch and that same agency and branch in the Member State where the head office is situated. From the legal point of view, establishment never excludes the right to provide services and from the practical point of view, the undertaking may have a policy whereby some of its establishments specialize in covering a particular risk, which can only be of benefit to the sector as a whole.

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4. Entitlement to freedom to provide services and supervision of the exercise thereof

a) Entitlement to freedom to provide services (Article 8)

Under the van Binsbergen judgment, Directives adopted by the Council on freedom to provide services are intended in particular to solve specific problems resulting from the fact that, in the absence of a permanent establishment, the provision of services could not be subjected fully to the professional rules in force in the Member State in which the services are provided.

With this in view, it does not seem that freedom to provide insurance services can be made conditional on a prior authorization given by the competent authority of the Member State in which the risk is situated, in view of the fact that the insurance undertaking which provides the services has already obtained, in the country in which it is established, authorization granted under conditions coordinated by the first Directive.

However, it was not possible to consider that this authorization should automatically be interpreted as also covering operations carried out by way of freedom to provide services. The following factors have to be considered in choosing the final solution :

- the fact that an undertaking takes on risks situated in another Member State constitutes an extension of its activities which can give rise to certain hazards, if only because of the different legal, economic and social conditions which such an undertaking will have to meet. Intervention by the supervisory authority which gave the initial authorization is fully justified ;
- Article 6 (2) of the first coordination Directive lays down an additional authorization not only for any undertaking which extends its business to other classes of insurance but also for any undertaking "which, having obtained in accordance with Article 7 (1) an authorization for a part of the national territory, extends its business beyond such part".

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It can be conceded that the fact that an undertaking pursues its business by way of freedom to provide services also constitutes an extension of that business which justifies a special authorization ;

- the supervisory authority of the Member State in which the risk is situated, which is traditionally responsible for safeguarding the policy holder, may rightly consider it normal to be informed, even consulted, where an undertaking established in another Member State proposes to pursue its business on its territory without being established there.

b) Exercise of freedom to provide services (Article 9)

The problem of relations between the supervisory authorities of the authorizing State and those of the State in which the risk is situated has also given rise to very serious difficulties.

In the absence of a more complete coordination of laws, the undertaking which pursues its business by way of freedom to provide services continues to be governed by the laws of the Member State in which the risk is situated, except in cases provided for by the Directive. Without prejudice to any possible legal action, a procedure was finalized enabling the competent authorities to act together to rapidly put an end to any infringements of these laws.

With this in view, a procedure was provided for which, without questioning the general principles of the Directive, enables the supervisory authority of the Member State in which the risk is situated to react effectively.

As soon as this authority becomes aware of an infringement it informs the supervisory authority of the authorizing State which thanks in particular to the existence of the special authorization it has given to the undertaking to pursue its business by way of freedom to provide services, has at its disposal a decisive means of compelling the latter to put an end to this state of affairs.

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Because of the powers at the disposal of the supervisory authorities, it should be possible to settle the majority of such cases without the authority of the authorizing state having, as a last resort, to take the protective measures referred to in Article 9 (4). Moreover, special provisions (Articles 11 and 12) have been included in the directive to enable both the policy holder and the supervisory authorities to be informed where there is freedom to provide services.

5. Other problems

a) Technical reserves

Certain principles have been established for calculating reserves for unearned premiums and for outstanding claims and special attention was given to the problem of equilization reserves and foreseeable losses (Article 3).

Article 15 of the first coordination Directive applies to the provision of services in that the Member State on whose territory the undertaking (head office or agency and branches) is established fixes the rules according to which these reserves are calculated ; checks are carried out by the supervisory authorities of that Member State. However, to take account of the special situation created by transactions carried out by way of freedom to provide services, provision is made that the technical reserves formed in this respect may be located anywhere in the Community (Article 13), no exception being possible with regard to the rules of equivalent and matching assets.

b) Taxation

The system of taxes applicable to insurance contracts also varies greatly from one Member State to another. Some Member States do not have this type of tax, others have rates which may reach 30%.

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To harmonize these various systems would be a long process and there can be no question of making the successful conclusion of the same a precondition for the exercise of freedom to provide services.

Therefore, it appeared preferable to stipulate that the laws in force in the Member State in which the risk is situated should apply at present, without prejudice however to subsequent harmonization (Article 14).

c) Non-member countries

For non-member countries, the solution adopted (Article 15) is based directly on the proposal for a directive on coinsurance presented by the Commission to the Council on 15 May 1974.

It appeared appropriate to class agencies and branches established in a Member State, whose head office is in a non-member country, as Community undertakings and, therefore, to enable them to benefit from the provisions of the directive. In fact, these agencies and branches are already the subject of the provisions of title III of the first coordination directive and are therefore subject to strict obligations at Community level with regard to solvency.

The provisions are entirely different for undertakings established in non-member countries which wish to exercise directly freedom to provide services in the Community. In this second case, the Member States are free to authorize or prohibit such operations until such time as the provisions are coordinated.

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II

(Preparatory Acts)

COMMISSION

Proposal for a second Council Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

(Submitted by the Commission to the Council on 30 December 1975)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 59 (2) and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas it is necessary to develop a European insurance market due in particular to the steady increase in the size of risks to be covered; whereas to achieve this objective, it is desirable to allow policy holders to avail themselves of insurers established not only in their country but also in other Member States;

Whereas pursuant to the Treaty any discrimination with regard to freedom to provide services based on the fact that an undertaking is not established in the Member State in which the services are provided has been prohibited since the end of the transitional period; whereas this prohibition applies to services provided from any establishment in the Community, whether it is the head office of an undertaking or an agency or branch;

Whereas, however, the effective exercise of freedom to provide services will not be fully accomplished

until certain aspects have been harmonized; whereas such work, because of its complex nature, can be accomplished only after a certain time; whereas it is possible meanwhile to adopt arrangements whereby the present situation can be considerably improved;

Whereas with this in view, it is advisable to supplement the first coordination Directive on direct insurance other than life assurance adopted by the Council on 24 July 1973 in particular with regard to the method of calculating technical reserves and the powers granted to the supervisory authorities of the various Member States;

Whereas the provisions in force in the Member States concerning the law governing insurance contracts remain divergent; whereas the disadvantages resulting from these differences, can, in the interest of a real common market for insurance, be eliminated by allowing the parties a freedom of choice of the law which should apply; whereas however too wide an interpretation of this freedom might result, in the absence of coordination, in serious weakness either in the protection of the insured or in the conditions under which many insurance undertakings conduct their business;

Whereas the first step in coordination can be taken straight away by determining on a Community basis those essential dispositions which the Member States may continue to apply in respect of risks situated on their territory; whereas, with this end in view, only certain of these dispositions should retain their

'essential' character, all others becoming open to coordination;

Whereas more complete coordination shall occur in the shortest possible time; whereas however the choice of the law applicable to contracts can be freed immediately without restriction by the complete elimination of the 'essential' character of the said dispositions, on the one hand in the case of risks classified as transport, credit and caution primarily on account of their frequently international nature, and on the other hand in the case of certain large risks, defined by precise quantitative criteria, in which there is less evident need of protection for the insured.

Whereas the fact that certain Member States require authorization for the general and special conditions of insurance policies as well as tariffs constitutes an obstacle to freedom to provide services; whereas although it appears possible at this stage to abolish such authorization for the classes of transport, credit and fidelity insurance and for large risks, the removal of this obstacle will be achieved by harmonizing the laws in force; whereas meanwhile the applicable law in this respect must remain that of the Member State in which the risk is situated;

Whereas the provision of services by an undertaking must be considered as a territorial extension of the business of that undertaking; whereas such an extension, in accordance with the principles already adopted in the first coordinating Directive of 24 July 1973, should be the subject of an authorization;

Whereas such authorization must be given by the competent authority of the Member State in which the undertaking is already established; whereas the various authorities concerned must be in a position, through close cooperation, to put an end to any infringement of the rules remaining applicable in the Member State where the risk is situated;

Whereas the first coordinating Directive adopted by the Council on 24 July 1973 laid down that the law of the authorizing Member State applies to technical reserves; whereas this principle is equally valid for operations carried out by way of freedom to provide services; whereas for such operations it is desirable to lay down that technical reserves may be located throughout the Community, although the principle of matching and equivalent assets must be consolidated;

Whereas considerable differences are apparent from one Member State to another with regard to the number and size of risks subject to compulsory cover; whereas under these conditions it is impossible to exclude these classes of insurance from the scope

of the Directive without creating, through the resulting situation, serious distortions of competition; whereas it is nevertheless desirable to apply to contracts covering such risks all the laws of the Member State where these risks are situated;

Whereas some Member States do not subject insurance transactions to any form of indirect taxation while the majority apply a special tax; whereas the structure and rate of this tax vary considerably between the Member States in which it is applied; whereas pending future harmonization, it is desirable to avoid a situation where existing differences lead to serious disturbances of competition in insurance services between the Member States; whereas the application of the tax system of the Member State in which the risk is situated will remedy such a situation;

Whereas agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community are the subject of the provisions of title III of the first coordinating Directive; whereas in this respect they are subject to harmonized conditions with regard to entitlement to and exercise of freedom to provide services; whereas in these conditions it appears normal to enable these agencies and branches to benefit from the provisions of this Directive;

Whereas it is necessary to initiate special cooperation with regard to freedom to provide services between the competent supervisory authorities of the Member States and between these authorities and the Commission,

HAS ADOPTED THIS DIRECTIVE:

Title I

General provisions

Article 1

The object of this Directive is:

- (a) to supplement the first Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
- (b) to lay down provisions to facilitate the effective exercise of freedom to provide services by the undertakings and in respect of the classes of insurance covered by that coordinating Directive.

Article 2

For the purposes of this Directive:

(a) 'first coordinating Directive'

means the first Council Directive referred to in Article 1 (a);

(b) 'undertaking'

means any undertaking which has received official authorization under Article 6 (2) (a) or (b) of that Directive;

(c) 'freedom to provide services'

means the covering by an undertaking of a risk situated in another Member State;

(d) 'Member State in which the risk is situated'

means:

- the Member State in which the insured property is situated, where the insurance covers immovable property or movable property which, because of its situation, is connected with the immovable property and used for the same purpose, together with any objects contained therein,
- the Member States in which insured movable property other than that specified in the preceding indent is situated, where because of the purpose for which the property is intended or used the location thereof is neither provisional nor temporary,
- the Member State in which the contract was concluded, where the insurance covers persons, or objects other than those referred to in the preceding indents, and was taken out for a short period or from an automatic machine,
- the Member State of registration, where the insurance covers land vehicles,
- the Member State in which the policy-holder habitually resides in so far as he is the owner of the vehicle in question, has a financial interest therein or operates the said vehicle, or, failing this, the Member State in which the vehicle is registered, where the insurance covers railway rolling stock, aircraft or sea, lake, river and canal vessels,
- the Member State in which the policy-holder habitually resides where any other form of insurance is involved, including insurance in respect of 'goods in transit';

(e) 'supervisory authority'

means:

- in the case of the head office, the authority responsible for granting the authorization

referred to in Article 6 (2) (a) of the first coordinating Directive or for supervising private insurance business,

- in the case of agencies and branches, the authority responsible for granting the authorization referred to in Article 6 (2) (b) of that Directive or for supervising private insurance business.

These authorities are hereafter called the supervisory authorities of the authorizing State;

(f) 'unit of account'

means the European unit of account (EUA) as defined by Council Decision 75/250/EEC of 21 April 1975.

Wherever reference is made in this Directive to the unit of account, the corresponding amount in national currency to be applied shall be that of the last working day of the preceding year.

Title II

Provisions supplementing the first coordinating Directive

Article 3

1. Member States shall take all steps necessary to ensure that at least the following principles are observed in calculating the technical reserves:

- (a) Unearned premiums are to be calculated, in principal, on a time basis. The calculation may, however, be made by methods of approximation if these lead to practically the same results as individual calculations.

The gross premiums shall be taken as the basis for the calculation. The resulting unearned premiums should then in principle be reduced by the *pro rata* commissions and other representatives' charges (agency costs). Member States will determine what is meant by deductible agency costs;

- (b) A reserve for potential losses from current contracts is to be formed if, on the basis of the trend of claims, having regard to their frequency and average amount in the financial year, future

insurance payment will probably exceed the corresponding net premiums;

- (c) For the purposes of calculating the loss reserves, the future gross expenditure on claims is to be estimated individually on the basis of known outstanding claims.

Member States may permit flat-rate methods of calculation, instead of individual calculation if:

- the number of similar outstanding claims is so great that the flat-rate method leads to a result which is not significantly different from that obtained by individual calculation, or
- the nature of the risks listed under numbers 3, 4, 5, 6, 7, 11 and 12 of point A of the Annex to the first coordinating Directive does not permit individual calculation.

Reserves for late claims are to be formed for claims which have occurred but which have not yet been notified to the insurer; these shall be calculated on the basis of values gained from past experience, having regard to the probable trend of claims;

- (d) As regards the risks listed under numbers 4, 5, 6, 7, 11 and 12 in point A of the Annex to the first coordinating Directive, amounts representing premiums and loss reserves may be consolidated in one amount.

2. Systems based on an 'account over a period not exceeding three years' shall be considered as equivalent to the system described in the preceding paragraph for unearned premiums and outstanding claims.

3. Undertakings shall set up an equalization reserve for the credit, hail and frost classes and for the risks of storm and natural forces other than storm, where such risks are included in the hail and frost classes.

The equalization reserve shall each year receive 75 % of any technical surplus remaining for that financial year. However, in the case of credit insurance, the amount involved may not exceed 12 % of the net premiums for the same financial year.

This transfer shall no longer be obligatory when the reserves have reached:

- in the case of credit insurance, 150 % of the highest annual amount of net premiums paid in during the last five financial years, and
- in the case of all other classes of insurance, 200 % of the amount of net premiums paid in during the last financial year.

Any technical deficit which may occur in the course of a given financial year in these classes of insurance shall be charged to the reserve.

4. The reserves referred to in this Article shall be disregarded for purposes of calculating the solvency margin and shall be under exemption from any liability to tax.

Article 4

1. Insurance contracts concluded in the classes covered by the first coordinating Directive shall be governed by the law of the parties' choice. Where the risk is situated within the Community the choice must be made from among the laws in force in the Member States.

The parties shall be free to choose the law of a third country if the risk in question is one of those listed under numbers 4, 5, 6, 7, 11, 12, 14 and 15 in point A of the Annex to the first coordinating Directive, where there is a definite connection between the laws of that country and the risk insured, or the insured person.

2. In the absence of a choice of law to be applied or where the choice made is contrary to the provisions of paragraph 1, the contract shall be governed by the internal law of the Member States in which the risk is situated.

Article 5

1. Pending their further coordination, which shall occur within a maximum period of three years from the date of notification of the present Directive, and in cases where the law chosen by the parties is other than that of the Member State where the risk is situated, only those 'essential' dispositions of the law applicable in that State may be applied; those essential dispositions can cover:

- the declaration of the risk by the policy-holder, either when the policy is taken out or during the period of the contract, and penalties,
- the payment of the premium and the consequences of non-payment,
- the obligations of the policy-holder on the occurrence of a claimable event, and penalties,
- the circumstances in which the contract may be annulled,
- the rights of third parties,

shall, pending their subsequent coordination, remain applicable.

2. The restrictions imposed by the preceding paragraph on the freedom to choose the law governing the contract shall not apply to contracts covering risks referred to in Article 6 provided that the conditions laid down in that Article are met.

3. Member States under whose legislation or case law the provisions referred to in paragraph 1 are mandatory shall forward the list of those provisions to the Commission within 18 months of the notification of the Directive. The Commission shall forward that list to the other Member States.

Article 6

1. The following is added to Articles 8 (3) and 10 (3) of the first coordinating Directive:

'However, Member States may not apply provisions which require general and special policy conditions and tariffs to be approved:

- (a) in respect of risks listed under numbers 4, 5, 6, 7, 11, 12, 14 and 15 in point A of the Annex to the first coordinating Directive:
 - where the policy-holder has the status of a trader, and
 - where the risk to be covered relates to his business activity;
- (b) in respect of risks listed under numbers 8, 9, 13 and 16 in point A of the Annex to the first coordinating Directive:
 - where these risks are the subject of a contract concluded for his own account and/or for account of a third party by a legal or natural person who owns all or part of the interest insured and who, under the law applying to him, has the status of a trader; and
 - where the amount insured in respect of risks listed under number 8 in point A of the Annex to the first coordinating Directive is not less than 7 million units of account or where the aggregate amount insured in respect of risks listed under numbers 8, 9 and 16 is not less than 10 million units of account.'

2. The figures given in point (b) second sentence, shall be reviewed and if necessary adapted, at the latest within three years from the date of notification of the present Directive, in the light of progress achieved in the coordination of legislation provided for in Article 5 (1).

Article 7

Every Member State shall take all steps necessary to ensure that the authorities responsible for supervising insurance undertakings are able:

- (a) to supervise all the activities of insurance undertakings and to ensure that:
 - the laws, regulations and administrative provisions concerning insurance are complied with,
 - the schemes of operations referred to in Articles 8 (1) (c) and 10 (1) (c) of the first coordinating Directive are properly executed, and
 - insured persons are protected against abuses;
- (b) to carry out the checks and to take the measures necessary for this purpose, and in particular:
 - to require undertakings to transmit all relevant documents,
 - to examine the administration of undertakings *in situ*,
 - to be vested with sufficient powers of constraint to ensure that Decisions are properly enforced.

Title III

Provisions to facilitate the effective exercise of freedom to provide services

Article 8

1. Any undertaking wishing to extend its business, by way of the exercise of freedom to provide services, to the territory of another Member State shall seek authorization for that purpose from the supervisory authority of the authorizing Member State.
2. The undertaking shall supply the following information:
 - (a) the Member State on whose territory it intends to provide services;
 - (b) the nature of the risks which it intends to insure on the territory of that State;
 - (c) the general and special conditions of the policies which it intends to use and the tariffs which it intends to apply provided the legislation of the Member State referred to in (a) requires those conditions and tariffs to be approved.

3. The authorization referred to in paragraph 1 shall be granted after consultation with the supervisory authority of the State on whose territory the undertaking intends to provide services.

The supervisory authority of the authorizing Member State shall send a copy of the application of the undertaking concerned, together with the information specified in paragraph 2, to the supervisory authority of the State on whose territory the undertaking is intending to provide services.

The latter's comments must be forwarded to the supervisory authority of the authorizing State within six weeks of the forwarding of the application for authorization.

Article 9

1. Subject to the provisions of this Directive, the undertaking must comply with the rules in force in the Member State in which the risk is situated which concern:

- compulsory insurance,
- the mandatory provisions concerning the insurance contract mentioned in Article 5 (1),
- tariffs and the general and special conditions of insurance policies,
- fair trading.

2. If the supervisory authority of the Member State in which the risk is situated is aware that these provisions are being violated by an undertaking exercising freedom to provide services on its territory, it shall submit its complaint to the supervisory authority of the authorizing State and shall propose suitable measures for putting an end to the situation.

3. The supervisory authority of the authorizing State shall take all appropriate measures, which may extend to withdrawal of the authorization referred to in Article 8, to put an end to the infringements of which it has thus been notified. It shall inform the supervisory authority of the Member State in which the risk is situated thereof.

4. If, in spite of the measures thus taken by the authorizing State, the undertaking persists in seriously violating the provisions referred to in paragraph 1, the Member State in which the risk is situated may, after having informed the supervisory authority of the authorizing State thereof, take any appropriate measures which are strictly necessary to put an end to the situation.

Article 10

1. Subject to Article 13 and notwithstanding Articles 4 and 5, contracts concluded by way of the exercise of freedom to provide services and covering risks insurance of which is compulsory in the Member State in which the risk is situated must comply with the legislation in force in that Member State.

This provisions shall not apply to the risks referred to in Article 6.

2. Where the Member State in which the risk is situated requires proof that the obligation to take out insurance has been complied with, it shall accept for this purpose the certificate issued by the insurance undertaking availing itself of freedom to provide services.

3. Where, in the Member State in which the risk is situated, the insurer has to notify certain competent authorities when cover ceases to be provided, the termination of cover can be invoked against injured third parties only one month after the date on which the competent authorities receive such notification from the insurance undertaking.

Article 11

Where contracts are concluded by way of the exercise of freedom to provide services, the policy-holder must be informed before the contract is signed that the insurer is not established in the country in which the risk is situated. Furthermore, the policy must specify the address of the competent supervisory authority and the address of the office of the insurer to whom the policy-holder may submit his claims.

Article 12

1. The supervisory authority of the Member State in which the head office is situated shall require that office to keep for each class of insurance and for each Member State, a special trading account in respect of all business transacted by way of the exercise of freedom to provide services, including that transacted by its agencies and branches. This account, the form of which is set out in the Annex, must show premiums, claims and technical reserves.

2. The supervisory authority of the Member State in which the head office is situated shall, if the supervisory authority of the Member State in which the risk is situated so requests, forward to the latter a copy of the special trading account.

3. For undertakings keeping their accounts in accordance with the system provided for in Article 3 (2), the trading account may be restricted to the net premiums received, less commission, and the claims paid during the calendar year, set out according to classes of insurance and countries of origin.

Article 13

1. The technical reserves relating to contracts concluded by way of the exercise of freedom to provide services shall be subject to the rules laid down by the authorizing State or, failing such rules, shall be in accordance with established practice in that State.

2. These reserves may be located in the Community without territorial restriction. They must in all cases be covered by equivalent and matching assets.

Article 14

Without prejudice to subsequent harmonization of indirect taxes on insurance, all insurance contracts concluded by way of the exercise of freedom to provide services shall be subject solely to the relevant taxation in force in the Member State in which the risk is situated.

Article 15

The provisions of this Directive shall apply to agencies and branches established within the Community and belonging to undertakings whose head office is outside the Community which are subject to and which satisfy the provisions of Title III of the first coordinating Directive.

Title IV

Final provisions

Article 16

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community and of examining any difficulties which might arise in the application of this Directive, and in particular of Article 9.

Article 17

The Commission shall forward to the Council within five years of notification of this Directive a report on the developments on the market in insurances transacted by way of the exercise of freedom to provide services.

Article 18

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

The provisions thus amended shall be applied within 24 months of notification.

Article 19

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

Article 20

This Directive is addressed to the Member States.

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 22 December 1975

ONLY CONCERNS THE
ENGLISH VERSION.

ADDENDUM

PROPOSAL FOR A SECOND COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services.

(Submitted to the Council by the Commission)

APPENDIX
SPECIAL TRADING ACCOUNT FOR COUNTRIES

COUNTRIES	PREMIUMS					CLAIMS			Total of claims during the accounting year	Commissions payed or payable during the accounting year	Other general expenses incurred during the accounting year	Profit or loss
	Reserve for outstanding risks at 1 January of the accounting year	Premiums debited during the accounting year	Reserve for outstanding risks at 31 December of the accounting year	Total of premiums received	Reserve for claims at 1 January of the accounting year	Claims payed during the accounting year	Reserve for claims at 31 December of the accounting year					
GERMANY												
BELGIUM												
DENMARK												
FRANCE												
IRELAND												
ITALY												
LUXEMBURG												
THE NETHERLANDS												
UNITED KINGDOM												

