

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 23 December 1988

Proposal for a

SECOND COUNCIL DIRECTIVE

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/EEC

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

The effective establishment of a common market in life assurance is one of the cornerstones of the European financial area which the Member States have undertaken to create by the end of 1992.

Although Directive 79/267/EEC of 5 March 1979 coordinated the conditions under which a life assurance undertaking from one Community country may set up an agency or branch in another Community country, a citizen of one Community country who wishes to enter directly into a life assurance contract in another country still encounters numerous obstacles, both legal and practical.

Within the European financial area, every citizen should be able to approach any assurance undertaking in the Community and thus have the widest possible choice of assurance arrangements and assurers.

The second report from the Commission to the Council and the European Parliament on the implementation of the Commission's White Paper on completing the internal market states that the Commission will present to the Council before 31 December 1988 a proposal for a Directive on freedom to provide life assurance services (COM(87) 203 final, para. 67, p. 20).

While Articles 57(2) and 66 of the EEC Treaty form the legal basis of that proposal, two recent events have shed much light on the subject of freedom to provide services in the insurance sector.

The Court of Justice of the European Communities delivered a number of judgments on this matter on 4 December 1986, notably in Case 205/84 Commission v Federal Republic of Germany.

Not only did those judgments put an end to differences in the interpretation of the Council Directive of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance, they paved the way for a resumption of discussions on the 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 and amending Directive 73/239/EEC. That Directive was adopted on 22 June 1988.

In its judgment in Case 205/84 the Court recognized that, in the present state of Community law, the Member State in which an insurance service is provided is justified, in order to ensure the protection of policy-holders and insured persons, in applying its own legislation concerning technical reserves and conditions of insurance (Ground 41).

In the same judgment, however, the Court observed that the grounds for protecting policy-holders and insured persons "are not equally important in every sector of insurance and that there may be cases where, because of the nature of the risk insured and of the party seeking insurance, there is no need to protect the latter by the application of the mandatory rules of his national law" (Ground 49).

Those two grounds of judgment apply equally to non-life insurance and to life assurance.

The second recent event is the abovementioned Directive of 22 June 1988, which divides all non-life risks into two categories defined according to the degree of protection required by policy-holders.

As regards the first category, known as "large risks", which is defined in terms of the status and size of the policy-holder and the nature of the risk and for which the need for as high a degree of protection does not exist, the supervisory rules of the country of the insurer apply (home country control). The reverse is true in the case of the second category, known as "mass risks", to which the supervisory rules of the country of the risk apply (risk country control) pending, that is, subsequent coordination, notably of technical reserves. Such coordination, which will constitute a second stage, will be directed towards further facilitating the effective exercise of freedom to provide services and will extend the scope of the supervisory legislation of the country of the insurer.

The Commission proposes to proceed along the same lines with regard to commitments covered by the life assurance Directive. During a first stage, a distinction will be made between commitments in respect of which policy-holders are in no great need of protection - to which the supervisory law of the country of establishment will apply - and other commitments which will be subject to the law of the country of the commitment, i.e. as a rule the country in which the policy-holder is resident, this move being made pending subsequent coordination.

The structure of the present proposal is based on that of the Directive of 22 June 1988. Title I "General provisions" and Title II "Provisions supplementary to the first Directive" (79/267/EEC of 5 March 1979) both apply to all the classes covered by the first Directive. Title III, on the other hand, contains provisions relating specifically to freedom to provide services.

In the case of group pensions assurance schemes and certain individual pensions assurances, the multiplicity and complexity of the various schemes and their close relationship with social security schemes calls for careful study, which is not yet completed. Consequently, this field is excluded from Title III of the proposal. It will form the subject matter of a separate proposal for a Directive, to be presented as soon as possible, which will therefore constitute the second part of the first stage.

As a result, Title III of the proposal relates only to individual contracts unconnected with a business activity. In this context a person who takes the initiative in approaching an assurer established in another country and subject to the supervisory law of that country willingly and knowingly forsakes the supervisory law of the country in which he is resident and shows by his behaviour that he does not need to be protected by it. The taking of the initiative by the person seeking life assurance, who will have to take formal note of the fact that he is renouncing such national protection, is thus the criterion which delimits the category of commitments to which the rules of the country in which the assurer is established apply.

At present, the law of ^{of} several Member States either prohibits their nationals from taking the initiative in entering into contracts abroad or considerably restricts this possibility.

However, it will be difficult to monitor compliance with that prohibition and those restrictions once Directive 88/361/EEC of 24 June 1988 on the liberalization of capital movements is in force. There is an urgent need, therefore, to define in Community rules the conditions under which a person seeking life assurance may act on his own initiative.

The present proposal enables well-informed seekers of life assurance to profit fully from the large internal market, while keeping intact the protection afforded by national law in cases where assurance undertakings actively seek to sell their products abroad.

The Commission still has as its ultimate aim, however, application of the supervisory rules of the country in which the assurer is established. As in the case of non-life insurance, this will necessitate closer coordination, which will form the subject matter of a second stage in the work in hand.

This proposal, together with the abovementioned additional proposal concerning group assurance schemes, brings us a step closer to establishing an internal market in life assurance, but does not in itself suffice to achieve that end.

Directive 79/267/EEC of 5 March 1979 lays down specific rules for the authorization of agencies and branches of undertakings whose head office is located outside the Community, but contains none relating to requests for authorization of a subsidiary of such an undertaking or to the contemplated acquisition by such an undertaking of a controlling participation in a Community insurance undertaking. The opportunity is taken in this proposal to fill this gap by a procedure, closely modelled on that of Article 7 of the proposal for a second banking coordination directive, which seeks to ensure that Community undertakings enjoy reciprocal treatment in the parent undertaking's country.

II. Comments on the Articles

Title I General provisions

Article 1 - Object of the Directive (Article 1)

This Article specifies the dual object of the Directive, namely:

1. to supplement the life assurance coordination Directive 79/267/EEC of 5 March 1979, which is the object of Titles I and II of the present Directive;
2. to lay down provisions relating specifically to freedom to provide services, which is the object of Title III.

In view of the fact that many Articles of this Directive are identical or at least broadly similar to those of the second non-life insurance coordination Directive of 22 June 1988, the numbers of the corresponding Articles are given in brackets.

Article 2 - Definitions (Article 2)

(b) undertaking

Article 6 of the first Directive concerns undertakings whose head office is within the Community and Article 27 those whose head office is outside the Community. The distinction in (b), which is borrowed from the second non-life Directive, means that third country assurers who are established in the Community only through an agency or a branch do not benefit from the provisions on freedom to provide services contained in this Directive.

(e) Member State of the commitment

Since one of the two objects of this Directive is to amend the first life assurance Directive, it must apply both to the insurances referred to in Article 1(1) of the first life Directive and to the operations referred to in Article 1(2) of that same Directive.

Consequently, the expression "Member State of the commitment" has been chosen on the strength of Article 9(a) of the first life Directive, which refers to commitments covered by an undertaking.

Article 3 - Permanent presence (Article 3)

This provision, which also appears in the Second non-life Directive, is taken from Ground 21 of the judgment of the Court of Justice of 4 December 1986 in Case 205/84 Commission v Federal Republic of Germany.

Article 4 - Law applicable to the contract (Article 7)

Paragraph 1

The parties to the contract must be clear as to what legal provisions govern the contract.

The Second non-life Directive fulfilled this legitimate requirement of legal certainty by adopting uniform rules of choice of private international law and providing in certain cases for freedom of choice of the applicable law.

This Directive adopts a similar approach, namely the adoption of a uniform rule of private international law and the choice, on this score, of the law of the Member State of the commitment, that is to say the habitual residence of the policy-holder, it being understood that if the law of that country so permits, the parties may choose another law.

If the policy-holder is a legal person, the law of the country of residence is replaced by the law of the Member State in which the establishment of that legal person, being that to which the contract relates, is situated.

Because life assurance always concerns, either directly or indirectly, a person and because the law as it relates to individuals is important in this respect, the legal environment of the policy-holder should be maintained. This concerns, for example, the determination of the beneficiary and acceptance by that person of the benefits flowing from the contract, the position of the divorced spouse, the current spouse and their respective children, that of the concubine, etc.

One must avoid imposing in this respect a legal order with which the parties concerned are unfamiliar, or to which they may even be averse.

Paragraph 2

The same reasoning underlies paragraph 2, according to which, where the policy-holder takes the initiative in entering into a contract under freedom of services and has his habitual residence in a Member State other than that of which he is a national, the parties may choose the law of the Member State of which he is a national.

Paragraph 3

The concern to preserve the policyholder's legal environment, expressed in the first two paragraphs, relates to private contract law. It must not be used to prevent the policyholder who takes the initiative in approaching an assurance undertaking in another Member State from benefiting from forms of insurance authorized under the public law in that State, even if such forms of insurance are not authorized in his country of residence. It is indeed one of the aims of this Directive to facilitate the exercise of this freedom.

Paragraphs 4 to 6

These paragraphs repeat almost word for word part of Article 7 of the Second non-life Directive.

Paragraph 4, which deals with countries comprising several territorial units each of which has its own rules of law concerning contractual obligations, is directed mainly at the United Kingdom and Spain.

Paragraph 5, like its counterpart in the Second non-life Directive, is based on Article 7 "Mandatory rules" of the Convention on the law applicable to contractual obligations, which was opened for signature in Rome on 19 October 1980 (OJEC No L 266, 9 October 1980) and which forms the subject matter of a report drawn up by Mr Mario Giuliano and Mr Paul Lagarde (OJEC No C 282, 31 October 1980).

The Article as a whole

A legal framework that is best suited to all the activities covered by the first Directive, whether they be carried on under conditions of establishment or under conditions of freedom to provide services, should be provided. Thus, as in the second non-life Directive, this Article on the law applicable to the contract is inserted in Title II, "Provisions supplementary to the first Directive".

Article 5 - Supervision of activities including those carried on outside the
country of establishment
(Article 10)

It was considered necessary in the case of the Second non-life Directive to define the powers of the supervisory authorities and the means they must have at their disposal when it comes to monitoring the activities of insurers, including activities engaged outside the country of establishment. Such is the object of Article 10 of that Directive. The same reasons applying here, the Article has been incorporated in the present Directive.

Article 6 - Transfer of portfolios (Article 11)

The same reasons applying here, Article 11 of the Second non-life Directive should be incorporated in the present Directive.

Article 7 - Abolition of statutory cessions to the "Istituto
Nazionale di Assicurazioni" (INA)

Statutory cessions by insurers to a single national body have always been considered incompatible with the EEC Treaty. Those in force in France were abolished before the 1979 life assurance coordination Directive was adopted.

The original proposal for that Directive presented by the Commission and the amended proposal presented following delivery of the opinions of the advisory bodies and of the European Parliament provided that this exception should be abolished either at the end of a five-year transition period or at the time of entry into force of the present Directive.

The Council decided otherwise: the first life Directive, that of 1979, provides that the INA may, as an exception, continue to receive these cessions, subject to their not being increased, and adds that these arrangements will be reviewed in connection with the present Directive.

The exception should now be abolished, otherwise undertakings established in Italy, whether they be Italian or not, will be placed at a disadvantage compared with undertakings established abroad and transacting life assurance in Italy under conditions of freedom to provide services, as the latter will not be subject to the obligation in question.

Article 8 - Amendment to Title III of first Directive

This amendment is necessary to prepare the way for the insertion into the first Directive of the new Article 32 A - see Article 9 of this proposal.

Article 9 - Reciprocity with third countries

This Article consists of an adaptation, for the life insurance sector, of Article 7 of the proposal presented by the Commission on 23 February 1988 for a second Council banking coordination directive, the wording of which is followed as closely as the different context permits.

Title III - Provisions relating specifically to freedom to provide services

Article 10 - Commitments by way of freedom to provide services covered by this Directive (Article 12)

This first Article of Title III determines the Title's scope, that is to say commitments entered into under conditions of freedom to provide services and covered by this Directive.

Only individual commitments are covered. The types of insurance referred to in Article 1(1) of the first Directive are thus excluded where they take the form of group assurance schemes, as are operations connected with the management of group pension funds within the meaning of Article 1(2)(c). Those insurances and operations are covered by the proposal for a Directive on group life assurance which the Commission will shortly be presenting to the Council.

Moreover, this Directive is concerned only with individual commitments unrelated to the employment or business activity of the policyholder. Individual contracts covered by Article 1(3) of the first Directive are thus excluded.

This Directive will help create a European financial area and enable Community citizens to conclude in other countries not only contracts similar to those used in their country of residence, but also contracts of a type not used in their country of residence, paragraph 4 stating only that the insurance undertaking must be authorized in its country of establishment.

However, the foregoing does not apply to tontines operations as referred to in Article 1(2)(a) of the first Directive. In 1979 these existed in only two Member States and they were allowed to remain in being only after a certain amount of discussion. They should be excluded from this Directive as it is on grounds of public policy that they are prohibited in other Member States.

Article 11 - Informing the supervisory authorities (Article 14)

The same reasons applying here, Article 14 of the second non-life Directive should be incorporated in this Directive.

Article 12 - Authorization to transact business under conditions of freedom to provide services (Article 15)

This Article, which is based on Article 15 of the second non-life Directive, concerns commitments which may be covered by way of freedom to provide services but in respect of which, in the opinion of the Court of Justice, policyholders require special protection.

The commitments in question are those referred to in Article 10, that is to say those which, while relating to individual life assurance, cannot benefit from the more liberal provisions of Article 13 concerning commitments entered into on the policyholder's initiative.

Such commitments come within the scope of the supervisory law of the country in which the service is provided. In other words, that country may make the foreign assurer's activity conditional on the granting of authorization and, to that end, require the production of various documents such as a certificate of solvency, a certificate of authorization and a scheme of operations. As stated in paragraph 3, the country in which the service is provided may also insist on the scheme of operations being in conformity with the laws, regulations and administrative provisions applicable in its territory, notably as regards the technical reserves, including mathematical reserves, and the assets representing those reserves.

Harmonization of those provisions will form the second stage of the work in hand, which will enable "home country control" to be extended to all commitments covered by the first Directive.

Article 13 - Commitments entered into on the initiative of the policy-holder

Paragraph 1 - Scope

This paragraph defines those commitments in respect of which the protection afforded by the supervisory law of the country of the assurer, "home country control", suffices, namely commitments entered into on the initiative of the policy-holder.

Paragraph 2 - Advertising

Care must be taken to ensure that the intentions of this Article are not circumvented by the assurer soliciting business or engaging in advertising.

It is therefore reasonable to state that the assurer may make himself known only through public notices indicating his address and the classes in respect of which he proposes to cover commitments.

It must be stressed that, from the assurer's point of view, the case here dealt with covers only passive freedom to provide services.

Paragraph 3 - Brokers

The object of Article 13 is to enable a person seeking life assurance to exercise his initiative to the full and choose from among the whole range of assurance products on offer in the various Member States, using all the means available both at home and abroad including the postal service, the telephone and the services of a broker.

However, as there is a risk that a broker might influence a client to seek life assurance abroad contrary to his best interests, the prospective assured must sign a statement to the effect that it is he himself who wishes enquiries to be made about assurance available in other Member States.

It is consistent with the provisions of paragraph 2 on advertising that in such a case the broker should not advertise this service.

Paragraph 4 - Statement by the person seeking life assurance

This statement is a special precautionary measure in the event of the person seeking life assurance taking the initiative in approaching companies abroad. It applies to all such cases irrespective of the means used.

Article 14 - Obligation to produce certificates (Article 16)

This Article is based on Article 16 of the second non-life Directive. Where a policyholder takes the initiative in entering into a life assurance contract in another Member State, the contract falls within the scope of the supervisory law of that other Member State. However, as indicated in the White Paper on completing the internal market (paragraph 103), the authorities of the country in which the service is provided will continue to exercise their control in a complementary manner. Article 14 provides a framework for this.

Article 15 - Right of cancellation

Life assurance contracts are generally entered into for lengthy periods and involve the payment of substantial premiums. Every precaution should therefore be taken to avoid misunderstandings.

In a number of Community countries, experience has shown that fairly frequently policyholders stop paying their premiums in the first two or three years.

As a result, some countries, notably France and the United Kingdom, have introduced a mandatory cancellation period.

The French Law of 7 January 1981, as amended by the Law of 11 June 1985, introduced a cancellation period of 30 days and provided that the right of cancellation may be exercised even where the contract provides immediate cover.

The United Kingdom adopted a similar measure on 1 January 1980. This provides for the right to cancel the contract within ten working days, likewise exercisable even where the contract provides immediate cover.

It is felt that such a measure is even more appropriate in the present context. When a person enters into a life assurance contract abroad he does not always have a clear idea, at the time of signature, of the differences between the contract he is signing and contracts used in his own country.

Article 16 - Simultaneous transaction of business by way of establishment and freedom to provide services (Article 13)

The same reasons applying here, this Article reproduces the terms of Article 13 of the second non-life Directive. It covers three eventualities:

1. Where a contract is concluded on the initiative of the policy-holder, (a lesser degree of protection thus being called for and home country control being applicable), there is no reason to prevent an assurer from another Member State from accepting the contract on the ground that that assurer has an establishment in the country of the policyholder. Simultaneous transaction of business by way of establishment and freedom to provide services is therefore authorized.
2. An assurer based in State A, but established also in State B, may cover, from State A, a policyholder in State B, even in cases where the policyholder has not exercised his own initiative in seeking the assurance, provided that the cover in question falls within a class of assurance which the assurer is not authorized by State B to pursue from its establishment in that State. The pursuit of both activities is authorized, but there is no real overlap as the classes are different.
3. On the other hand, if the circumstances set out in 2. above are maintained except that the classes are the same, that is to say if the assurer is authorized to transact the class into which the contract falls from his establishment in State B, the authorities of country B may oppose such provision of services. In these circumstances, therefore, the simultaneous transaction of business by way of establishment and freedom to provide services might not be permitted. Some Member States might consider that such overlapping transactions would be a source of confusion for a prospective assured who does not take the initiative in going abroad and who, consequently, must be given special protection, as the same assurer might offer the same product twice, first under conditions of establishment and secondly under conditions of freedom to provide services. Such an assurer might therefore be required to transact that class in State B only from his establishment in that State.

Article 17 - Changes to and extension of activities (Article 17)

This provision is based on Article 17 of the second non-life Directive, the reasons underlying both provisions being the same.

Paragraph 1 concerns changes to the activities of the assurer in the two sets of circumstances covered by freedom to provide services, that is to say where the commitment is entered into on the initiative of the policyholder and where it is entered into otherwise than on the policyholder's initiative. Paragraph 2 concerns the extension of the assurer's activities to contracts not entered into on the initiative of the policyholder, and paragraph 3 contracts entered into on the latter's initiative.

Article 18 - Composite undertakings

After lengthy discussions, it was decided that the first life Directive should embody the principle of specialization whereby, in order to protect policyholders, a non-life insurance undertaking may not transact at the same time the operations covered by that Directive. Such is the object of Article 13(1) of that Directive.

At the same time, it was decided that composite undertakings, that is to say those which at the time of notification of the Directive transacted both life assurance and non-life insurance, should be allowed to continue to carry on such activities simultaneously (Article 13(3)).

Such undertakings are authorized to set up agencies or branches in other Community countries to transact non-life insurance, but they are not authorized to do so in respect of life assurance (Article 13(4)).

The approach adopted in 1979 for establishment should also be followed for operations coming under freedom to provide services. In other words, just as a composite undertaking may not transact life assurance in another Member State by way of establishment, it may not do so either by way of freedom to provide services.

Article 18 - Approval of policy conditions and premium rates (Article 18)

Paragraph 1 of this article, which is based on Article 18 of the second non-life Directive, provides that the Member State in which the service is provided may maintain in force or introduce a degree of supervision of policy conditions and premium rates in respect of commitments covered by way of freedom to provide services, but only with a view to protecting the policyholder.

These provisions are not, however, applicable to commitments entered into on the initiative of the policyholder, for which Member States of residence may not require the approval or communication of policy conditions or premium rates.

Article 19 - Penalties (Article 19)

Since the same reasons apply, Article 18 is appropriately based on Article 19 of the second non-life Directive, which places various measures and penalties at the disposal of the competent authorities of Member States in which services are provided should undertakings not fulfil their obligations.

Article 20 - Winding-up (Article 20)

The same reasons applying here, Article 20 of the second non-life Directive is taken as a basis.

Article 21 - Provision of information to the policy-holder about the assurer (Article 21)

Since the same reasons apply, Article 21 of the second non-life Directive is taken as a basis. The policyholder should know that he is dealing with an assurer in another Member State and he should be aware of that assurer's identity and country of establishment.

Although in non-life insurance this requirement is less strict in the case of large risks, the same is not true of commitments entered into on the initiative of the policyholder within the framework of this Directive, as the policyholder should be as well-informed as possible.

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Article 23 - Supervision of reserves and other technical matters (Article 23)

The same reasons applying here, Article 23 of the second non-life Directive is taken as a basis.

As already indicated in this explanatory memorandum, technical reserves, including mathematical reserves, are supervised by the supervisory authority of the Member State in which the service is provided in those cases where that State requires the insurer to be authorized. This is "destination State control", applicable to commitments which are not entered into on the initiative of the policyholder. Such is the purpose of paragraph 1 of Article 23.

Paragraph 2, on the other hand, provides for home country control in all other cases.

Paragraphs 3 and 4 do not give rise to any particular comments.

Article 24 - Taxation (Article 25)

The reasons underlying them being identical, Article 24 is based largely on Article 25 of the second non-life Directive.

The question of the taxation of premiums and its budgetary impact, a well-known problem in non-life insurance where rates range from 0% to 30%, arises again in this context with rates of between 0% and 5.15%.

Leaving aside stamp duties, which are minimal and are based on the sum assured, it can be said essentially that Germany, the United Kingdom, the Netherlands and Spain apply zero rating, other countries apply rates of 2%, 2.4% and 4.4% and France applies various rates ranging from 0% in the case of group assurance schemes to 5.15% in the case of individual assurances.

This Directive, like the second non-life Directive, does not bring about taxation harmonization but opts for the territoriality principle whereby the tax arrangements of the country of the policyholder are applied for the benefit of that country.

Moreover, each Member State will apply to undertakings providing services in its territory its national provisions concerning measures to ensure that taxes are collected.

Article 25 - Collaboration between the Commission and Member States
(Article 28)

The same reasons applying here, Article 28 of the second non-life Directive is taken as a basis.

Article 26 - Regular reports from the Commission to the Council and European Parliament (Article 29)

The same comment applies.

The five-year period between the date of adoption of the Directive and the submission of the first report to the Council and European Parliament, provided for in the second non-life Directive, is proposed in the present Directive.

Article 27 - Period prescribed for the implementation of the Directive
(Article 32)

The same reasons applying here, Article 32 of the second non-life Directive is taken as a basis.

Article 28 - Communication of implementing provisions (Article 33)

The same comment applies.

Article 29 - Addressees of the Directive (Article 35)

The same comment applies.

PROPOSAL FOR A
SECOND COUNCIL DIRECTIVE
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/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,

Whereas it is necessary to develop the internal market in life assurance and in the operations referred to in the first Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance,¹ hereinafter called the "first Directive"; whereas, in order to achieve that objective, it is desirable to make it easier for assurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policy-holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States;

Whereas, under 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 that prohibition applies to services provided from any establishment in the Community, whether it be the head office of an undertaking or an agency or branch;

Whereas, for practical reasons, it is desirable to define provision of services taking into account both the assurer's establishment and the place where the commitment is to be covered; whereas, therefore, commitment should also be defined; whereas, moreover, it is desirable to distinguish between activities pursued by way of establishment and activities pursued by way of freedom to provide services;

¹OJ No L 63, 13.3.1979, p. 1.

Whereas it is desirable to supplement the first Council Directive of 5 March 1979 in order in particular to clarify the powers and means of supervision vested in the supervisory authorities; whereas it is also desirable to lay down specific provisions regarding the taking-up, pursuit and supervision of activity by way of freedom to provide services;

Whereas policy-holders who, by virtue of the fact that they take the initiative in entering into a commitment in another State and thus place themselves under the protection of the legal system of that other State, do not require special protection in the State of the commitment should be granted complete freedom to avail themselves of the widest possible market in life assurance and in the operations referred to in the first Directive; whereas, other policy-holders should also be afforded adequate protection;

Whereas in the case of group assurances and certain individual pensions assurances the multiplicity and complexity of the various schemes and their close connection with social security schemes call for careful study; whereas they should therefore be excluded from the scope of the provisions specific to freedom to provide services contained in this Directive; whereas they will form the subject matter of another proposal for a Directive;

Whereas the provisions in force in the Member States regarding contract law applicable to the activities referred to in the first Directive continue to differ; whereas the freedom to choose, as the law applicable to the contract, a law other than that of the State of the commitment may be granted in certain cases, in accordance with rules which take into account specific circumstances;

Whereas the first Directive's provisions on transfer of portfolio should be reinforced and supplemented by provisions specifically concerning the transfer to another undertaking of the portfolio of contracts concluded by way of freedom to provide services;

Whereas, in the interests of protecting policy-holders, Member States should, at the present stage of the coordination process, be given the option of limiting the simultaneous pursuit of activity by way of freedom to provide services and activity by way of establishment; whereas no such limitation can be provided for where policy-holders do not require such protection;

Whereas the taking-up and pursuit of activity by way of freedom to provide services should be subject to procedures guaranteeing the assurance undertaking's compliance with provisions regarding financial guarantees, conditions of assurance and premium rates; whereas those procedures may be relaxed where the activity pursued by way of freedom to provide services covers policy-holders who, by virtue of the characteristics of the commitment they propose to enter into, do not require special protection in the State of the commitment;

Whereas, however, in the case of this second category of policy-holder and where the contract is one of life assurance, the policy-holder should be given the opportunity of cancelling the contract within a period of 30 days;

Whereas the first Directive adopted the principle of prohibiting the simultaneous pursuit of the activities covered by the first Directive on the coordination of non-life insurance and those covered by the first Directive; whereas, while it authorized the continued existence of existing composite undertakings, it stated that they may not set up agencies or branches for life assurance; whereas, such undertakings should likewise be prohibited from covering by way of freedom to provide services commitments referred to in the first Directive;

Whereas it is necessary to make provision for special cooperation in the sphere of freedom to provide services between the competent supervisory authorities of the Member States and between those authorities and the Commission; whereas provision should also be made for a system of penalties to apply where the undertaking providing the service fails to comply with the provisions of the Member State in which the service is provided;

Whereas the technical reserves, including mathematical reserves, should be subject to the rules of and supervision by the Member State in which the service is provided where the provision of services involves commitments in

respect of which the State in which the service is received wishes to provide special protection for policy-holders; whereas, however, if such concern to protect policy-holders is unjustified, the technical reserves, including mathematical reserves, should remain subject to the rules of and supervision by the Member State in which the undertaking is established;

Whereas some Member States do not subject life assurance contracts and the other operations covered by the first Directive to any form of indirect taxation, while others apply special taxes; whereas the structure and rate of those taxes vary considerably between the Member States in which they are applied; whereas it is desirable to avoid a situation where those differences lead to distortions of competition between undertakings in the various Member States; whereas the application of the tax arrangements provided for by the Member State in which the commitment is entered into is a means of remedying such mischief; whereas it is for the Member States to establish a method of ensuring that such taxes are collected;

Whereas the first Council Directive of 5 March 1979 makes express provision for specific rules concerning the authorization of agencies and branches belonging to undertakings whose head offices are outside the Community; whereas it is also desirable to provide for a specific procedure for all requests for the authorization of a subsidiary of an undertaking governed by the laws of a third country or the acquisition of a participation by such an undertaking with a view to ensuring that Community undertakings benefit from reciprocity in the third countries in question; whereas this Directive lays down such a procedure;

HAS ADOPTED THIS DIRECTIVE :

TITLE I - GENERAL PROVISIONS

Article 1

The object of this Directive is:

- (a) to supplement the first Directive 79/267/EEC;
- (b) to lay down specific provisions relating to freedom to provide services in respect of the activities referred to in the first Directive, such provisions being set forth in Title III of this Directive.

Article 2

For the purposes of this Directive:

- (a) "first Directive":
means Directive 79/267/EEC;
- (b) "undertaking":
 - for the purposes of Titles I and II, means:

any undertaking which has received official authorization under Article 6 or Article 27 of the first Directive,
 - for the purposes of Titles III and IV, means:

any undertaking which has received official authorization under Article 6 of the first Directive;
- (c) "establishment":
means the head office, an agency or a branch of an undertaking, having regard to Article 3;
- (d) "commitment":
means a commitment represented by one of the kinds of insurance or operation referred to in Article 1 of the first Directive;

- (e) "Member State of the commitment":
means the Member State where the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State where the latter's establishment, to which the contract relates, is situated;
- (f) "Member State of establishment":
means the Member State in which the establishment covering the commitment is situated;
- (g) "Member State of provision of services":
means the Member State of the commitment where the commitment is covered by an establishment situated in another Member State.
- (h) "parent undertaking":
means a parent undertaking within the meaning of Article 1 of the Seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54 (3) (g) of the Treaty, on consolidated accounts; (1)
- (i) "subsidiary":
means a subsidiary undertaking in accordance with Article 1 of Directive 83/349/EEC.

Article 3

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

TITLE II - PROVISIONS SUPPLEMENTARY TO THE FIRST DIRECTIVE

Article 4

1. The law applicable to contracts relating to the activities referred to in the first Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.
2. Where, in one of the cases referred to in Article 13, the policy-holder has his habitual residence in a Member State other than that of which he is a national, the parties may choose the law of the Member State of which he is a national.
3. The Member State whose law governs the contract may not, in a case falling within Article 13, seek to prevent the policyholder from entering into any contract relating to a commitment which may be lawfully undertaken in the Member State of establishment.
4. Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

5. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

6. Subject to the preceding paragraphs, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

Article 5

The following paragraph shall be added to Article 23 of the first Directive:

'3. Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising assurance undertakings have the powers and means necessary for supervision of the activities of assurance undertakings established within their territory, including activities engaged in outside that territory, in accordance with the the Council Directives governing those activities and for the purpose of ensuring that they are implemented.

Those powers and means must, in particular, enable the supervisory authorities to:

- make detailed inquiries about the undertaking's situation and the whole of its business, inter alia by:
 - gathering information or requiring the submission of documents concerning assurance business,
 - carrying out on-the-spot investigations at the undertaking's premises,
- take any measures with regard to the undertaking which are appropriate and necessary to ensure that the activities of the undertaking remain in conformity with the laws, regulations and administrative provisions with which the undertaking has to comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent or remove any irregularities prejudicial to the interests of policy-holders;
- ensure that measures required by the supervisory authorities are carried out, if need be by enforcement, where appropriate through judicial channels.

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

Article 6

1. Article 25 of the first Directive is hereby deleted.
2. Each Member State shall, under the conditions laid down by national law, authorize undertakings which are established within its territory to transfer all or part of their portfolios of contracts for which that State is the State of the commitment to an accepting office established in that same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.
3. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10(1) to an accepting office established in the Member State of provision of services if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.
4. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10(1) to an accepting office established in the same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the accepting office possesses
the necessary margin of solvency after taking the transfer into account and if it fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services.

5. In the cases referred to in paragraphs 3 and 4, the supervisory authorities of the Member State in which the transferring undertaking is established shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member State of provision of services.
6. If a Member State, under the conditions laid down by national law, authorizes undertakings established within its territory to transfer all or part of their portfolios of contracts to an accepting office established in another Member State which is not the Member State of provision of services, it shall ensure that the following conditions are fulfilled:
 - the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account;
 - the Member State in which the accepting office is established agrees,
 - the accepting office fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services, the law of that Member State provides for the possibility of such a transfer and that Member State agrees to the transfer.
7. 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 policy-holders, assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the right of Member States to provide that policy-holders may cancel the contract within a given period after the transfer.

Article 7

Article 22(2) of the first Directive shall be replaced by the following:

The Italian Republic shall take all steps to ensure that the requirement that undertakings established within its territory cede part of their underwriting to the Istituto Nazionale di Assicurazioni is abolished within two years of the date of implementation of this Directive.

Article 8

1. The heading of Title III of the first Directive shall be replaced by the following:

TITLE III A

Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community.

2. The following heading shall be placed after Article 32 of the first Directive:

TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of participations by such parent undertakings.

Article 9

Title III B shall comprise an Article 32 A, the text of which shall be as follows:

1. Requests for authorization of a subsidiary whose parent undertaking is governed by the laws of a third country or the acquisition of a participation therein as provided for in paragraph 3 shall be subject to the procedure laid down in this Article.
2. The competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission of the request for authorization.
3. Member States shall provide that where an undertaking governed by the laws of a third country is considering the acquisition of a participation in an insurance undertaking established in the Community such that the latter undertaking will become its subsidiary, it shall inform the competent authorities of the Member State concerned. These authorities shall inform the competent authorities of the other Member States and the Commission.
4. The competent authorities of the Member State concerned must suspend their decision regarding requests as referred to in paragraphs 2 and 3 until the procedure provided for in paragraphs 5 and 6 is completed.
5. The Commission shall, within three months of receiving the information provided for in paragraphs 2 and 3, examine whether all undertakings of the Community enjoy reciprocal treatment, in particular regarding the establishment of subsidiaries or the acquisition of participations in insurance undertakings in the third country in question.
6. If the Commission finds that reciprocity is not ensured, it may extend suspension of the decision referred to in paragraph 4, after having consulted the competent authorities of the Member States under the collaboration procedure provided for in Article 38.
7. The Commission shall present suitable proposals to the Council with a view to achieving reciprocity with the third country in question.

TITLE III - PROVISIONS RELATING SPECIFICALLY TO FREEDOM TO PROVIDE SERVICES

Article 10

1. This Title shall apply where an undertaking, through an establishment situated in a Member State, covers a commitment in another Member State.
2. This Title shall not apply to operations, undertakings and institutions to which the first Directive does not apply.
3. This Title shall likewise not apply to commitments;
 - entered into with persons other than natural persons acting on their own account;
 - entered into with persons having a commercial, business or employment-based relationship with the person or persons in respect of whose life or lives the assurance is taken out, whether such relationship be past, present or future, where the commitment is entered into by virtue of such relationship;
 - entered into with a person in respect of whose life the assurance is taken out, if it is taken out by virtue of the employment or business activities of that person;
 - relating to the operations referred to in Article 1(2)(a), (c), (d), and (e) and Article 1(3) of the first Directive.
4. An undertaking shall not cover a commitment in another Member State unless it is authorized under Article 6 of the first Directive to cover such a commitment in its Member State of establishment.

Article 11

Any undertaking which intends to provide services shall first inform the competent authorities of the head office Member State, and, where appropriate, of the Member State of the establishment concerned, indicating the Member State or Member States within whose territory it intends to provide services and the nature of the commitments it proposes to cover.

Article 12

1. Each Member State within whose territory an undertaking intends, under conditions of freedom to provide services, to cover commitments within the meaning of Article 10 of this Directive may make the taking-up of such activity conditional on official authorization in so far as the commitments are not commitments within the meaning of Article 13; to that end, it may require that the undertaking:
 - (a) produce a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the first Directive and that, in accordance with Article 6(1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment;
 - (b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services;
 - (c) submit a scheme of operations containing the following particulars:
 - the nature of the commitments which the undertaking proposes to cover in the Member State of provision of services;
 - the general and special conditions of the assurance policies which it proposes to use there,

- the premium rates which the undertaking envisages applying and the technical bases which it proposes to use for each class of business,
- the forms and other printed documents which it intends to use in its dealings with policy-holders,

in so far as these are also required of established undertakings.

2. The competent authorities of the Member State of provision of services may require that the particulars referred to in paragraph 1(c) be supplied to them in the official language of that State.
3. The competent authorities of the Member State of provision of services shall have a period of six months from receipt of the documents referred to in paragraph 1 in which to grant or refuse authorization on the basis of the compliance or non-compliance of the particulars in the scheme of operations submitted by the undertaking with the laws, regulations and administrative provisions applicable in that State.
4. If the competent authorities of the Member State of provision of services have not taken a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be refused.
5. Any decision to refuse authorization or to refuse a certificate as referred to in paragraph 1(a) or (b) shall be accompanied by the precise grounds therefore and communicated to the undertaking in question.
6. Each Member State shall make provision for a the right to apply to the courts in respect of a refusal of authorization or refusal to issue the certificate referred to in paragraph 1(a) or (b).

Article 13

1. Commitments covered by way of freedom to provide services shall be subject, not to Article 12, but to Article 14 where the policy-holder takes the initiative in seeking a commitment from the undertaking.

The policy-holder shall be deemed to have taken the initiative:

- where the initial contact between the policy-holder and the undertaking, regardless of the means used, is made by the policyholder,
 - or
 - where the contract is concluded in the Member State in which the undertaking is established without there having been any prior contact between the policy-holder and the undertaking in the Member State in which the policy-holder has his habitual residence.
2. An undertaking which proposes to cover commitments in a Member State under the arrangements provided for in this Article shall not solicit business or engage in any advertising there relating to such activity apart from publishing notices indicating its address and the classes in respect of which it is authorized to transact business in the Member State of establishment from which it proposes to cover commitments.
 3. Where the policy-holder takes the initiative in seeking the commitment from the undertaking through a broker, he shall sign, before the contact with the undertaking takes place, a statement to the effect that he wishes the broker to make enquiries as to the assurance arrangements available in one or more Member States other than that in which he has his habitual residence; such broker shall be the person referred to in Article 2(1)(a) of Directive 77/92/EEC. The broker shall not engage in any advertising concerning the possibility of seeking commitments under the arrangements provided for in this Article.
 4. Before entering into a commitment under the arrangements provided for in this Article, the policy-holder shall sign a statement to the effect that he takes note of the fact that the commitment is subject to the rules of supervision of the country of the undertaking which is to cover the commitment.

Article 14

1. Each Member State within whose territory an undertaking intends, under conditions of freedom to provide services, to cover commitments within the meaning of Article 13 of this Directive shall require that the undertaking:
 - (a) produce a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the first Directive and that, in accordance with Article 6(1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment;
 - (b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services;
 - (c) state the nature of the commitments which it proposes to cover in the Member State of provision of services.
2. Each Member State shall make provision of a right to apply to the courts in respect of a refusal to issue the certificate referred to in paragraph 1(a) or (b).
3. The undertaking may commence activities as from the certified date on which the authorities of the Member State of provision of services are in possession of the documents referred to in paragraph 1.
4. This Article shall also apply where the Member State in whose territory an undertaking intends, by way of freedom to provide services, to cover commitments other than those referred to in Article 13 of this Directive does not make the taking-up of such activity conditional on official authorization.

Article 15

A policy-holder who concludes an individual life assurance contract under conditions of freedom to provide services as set out in Article 13 shall have a period of at least 30 days from the time when the parties entered into the contract within which to cancel the contract.

The giving of notice of cancellation by the policy-holder shall have the effect of releasing him from any obligation arising from the contract.

These provisions shall not apply to contracts of two months' duration or less.

The legal effects of cancellation shall be determined by the law applicable to the contract as defined in Article 4, notably as regards establishing the time when the parties entered into the contract.

Article 16

Member States' legislation shall provide that an undertaking established in a Member State may cover within that State by way of freedom to provide services from an establishment in another Member State at least:

- commitments within the meaning of Article 13 of this Directive,
- commitments within the meaning of Article 10 but not of Article 13 coming within classes in respect of which the undertaking established in the first Member State lacks authorization there in accordance with Article 6 of the first Directive.

If, however, in the latter case that undertaking has such authorization, the first Member State may prevent such provision of services.

Article 17

1. Where an undertaking referred to in Article 11 intends to amend the information referred to in Article 12(1)(c) or Article 14(1)(c), it shall submit the amendments to the competent authorities of the Member State of provision of services. Those amendments shall be subject to the provisions of Article 12(3) and 14(1), as the case may be.
2. Where the undertaking intends to extend its activities to commitments within the meaning of Article 10 but not of Article 13 of this Directive, it shall follow the procedure laid down in Articles 11 and 12.
3. Where the undertaking intends to extend its activities to commitments within the meaning of Article 13 or Article 14(4) of this Directive, it shall follow the procedure laid down in Articles 11 and 14.

Article 18

Undertakings which, by virtue of Article 13(3) of the first Directive, carry on simultaneously the activities referred to in the Annex to the first coordination Directive (non-life insurance) and those listed in Article 1 of the first Directive shall not, by way of freedom to provide services, cover any commitments in any of the classes referred to in the first Directive.

Article 19

1. Member States of provision of services may maintain or introduce laws, regulations or administrative provisions justified on policyholder protection grounds, concerning, in particular, approval of general and special policy conditions, of forms and other printed documents for use in dealings with policy-holders, of scales of premiums and of any other document necessary for the normal exercise of supervision on condition that the rules of the Member State of establishment are insufficient to achieve the necessary level of protection and the requirements of the Member State of provision of services do not go beyond what is necessary in that respect.

2. However, with regard to commitments within the meaning of Article 11 of this Directive, Member States of provision of services shall not lay down provisions requiring approval or notification of general and special policy conditions, scales of premiums, forms and other printed documents which the undertaking intends to use in its dealings with policy-holders.

Article 20

1. Any undertaking providing services shall submit to the competent authorities of the Member State of provision of services all documents requested of it for the purposes of implementing this Article, in so far as undertakings established there are also obliged to do so.
2. If the competent authorities of a Member State establish that an undertaking providing services within its territory does not comply with the legal provisions applicable to it in that State, such authorities shall request the undertaking concerned to put an end to the irregular situation.
3. If the undertaking in question fails to comply with the request referred to in paragraph 2, the competent authorities of the Member State of provision of services shall inform the competent authorities of the Member State of establishment accordingly. The latter authorities shall take all appropriate steps to ensure that the undertaking concerned puts an end to the irregular situation. The nature of those measures shall be communicated to the authorities of the Member State of provision of services.

The competent authorities of the Member State of provision of services may also apply to the competent authorities responsible for the head office of the assurance undertaking if the services are being provided by agencies or branches.

4. If, despite the steps thus taken by the Member State of establishment, or because such steps prove inadequate or are lacking in the Member State in question, the undertaking persists in violating the legal provisions in force in the Member State of provision of services, the latter Member State may, after informing the supervisory authorities of the Member State

of establishment, take appropriate steps to prevent further irregularities, including, in so far as it is strictly necessary, the prevention of the further covering of commitments by the undertaking by way of freedom to provide of services within its territory. In the case of commitments covered by way of freedom to provide services other than those within the meaning of Article 13 of this Directive, such steps shall include withdrawal of the authorization referred to in Article 12. Member States shall ensure that within their territory it is possible to effect the notifications necessary for such steps.

5. The foregoing provisions shall not affect the right of Member States to punish irregularities committed within their territory.
6. If the undertaking which has committed the irregularity has an establishment or owns property in the Member State of provision of services, the supervisory authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for such irregularity by way of enforcement against such establishment or property.
7. Any step taken under paragraphs 2 to 6 involving penalties or restrictions on the provision of services must be properly justified and communicated to the undertaking concerned. Even such measure shall be subject to the right to apply to the courts in the Member State in which the authorities adopted it.
8. Where steps are taken under Article 24 of the first Directive, the competent authorities of the Member State of provision of services shall be informed accordingly by the authority which takes them and, where the steps are taken under paragraphs 1 and 3 of the said Article, take whatever action is necessary to safeguard the interests of assured persons.

In the event of withdrawal of authorization under Article 26 of the first Directive, the competent authorities of the Member State of provision of services shall be informed accordingly and shall take appropriate steps to prevent the establishment concerned from continuing to conclude assurance contracts by way of freedom to provide services within the territory of that Member State.

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 12 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 21

In the event of an assurance undertaking being wound up, commitments arising from contracts underwritten by way of freedom to provide services shall be met in the same way as those arising from that undertaking's other assurance contracts, no distinction being made on grounds of the nationality of assured persons or beneficiaries.

Article 22

1. Where an operation is offered by way of freedom to provide of services, the policy-holder shall, before any commitment is entered into, be informed of the Member State in which the head office, agency or branch with which the contract is to be concluded is established.

Any document issued to the policy-holder shall contain the information referred to in the preceding subparagraph.

2. The contract or other document granting cover, together with the assurance proposal where it is binding upon the proposer, shall specify the address of the establishment which grants the cover and that of the head office.

Article 23

1. Where the provision of services is conditional upon authorization by the Member State of provision of services, the amount of the technical reserves, including mathematical reserves, and the rules on profit sharing and on the surrender and paid-up values of the contracts concerned shall be determined under the supervision of that Member State in accordance with the rules it has laid down or, failing such rules, in accordance with

established practice in that Member State. The covering of those reserves by equivalent and matching assets, the location of those assets and the application of the rules on profit sharing and on surrender and paid-up values shall be under the supervision of that Member State in accordance with its rules or practice.

2. In all other cases, those various operations shall be under the supervision of the Member State of establishment, in accordance with its rules or practice.
3. The Member State of establishment shall ensure that the reserves relating to all the contracts which the undertaking concludes through the establishment concerned are sufficient and covered by equivalent and matching assets.
4. In the circumstances referred to in paragraph 1, the Member State of establishment and the Member State of provision of services shall exchange any information necessary for carrying out their respective duties under paragraphs 1 and 3.

Article 24

Every assurance contract concluded by way of freedom to provide services shall be subject only to the indirect taxes and parafiscal charges on assurance premiums of the Member State of commitment within the meaning of Article 2(e).

The law applicable to the contract pursuant to Article 4 shall not affect the tax arrangements applicable.

Each Member State shall, subject to subsequent harmonization, apply to undertakings which provide services in its territory its own national provisions concerning measures to ensure the collection of indirect taxes and parafiscal charges due under the first subparagraph.

TITLE IV

FINAL PROVISIONS

Article 25

The Commission and the competent authorities of the Member States shall collaborate closely with a view to facilitating the supervision of the kinds of insurance and the operations referred to in the first Directive within the Community.

Each Member State shall inform the Commission of any major difficulties to which application of this Directive gives rise, inter alia any arising if a Member State becomes aware of an abnormal transfer of business referred to in the first Directive to the detriment of undertakings established in its territory and to the advantage of agencies and branches located just beyond its borders.

The Commission and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 26

The Commission shall forward to the Council and the European Parliament regular reports, the first on....., on the development of the market in assurance and operations transacted under conditions of freedom to provide services.

Article 27

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

The provisions amended in accordance with this Article shall be applied within 24 months of the date of notification of this Directive.

Article 28

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

Article 29

This Directive is addressed to the Member States.