

PROTOCOL

**relating to the collaboration
of the supervisory authorities
of the Member States of the European Community
in particular in the application of
the Directives on life assurance
and non-life insurance**

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**30 October 1997**



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## PROTOCOL

### relating to the collaboration of the supervisory authorities of the Member States of the European Community in particular in the application of the Directives on life assurance and non-life insurance

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#### PART I

#### GENERAL CONSIDERATIONS

##### **1.1 General aims**

The supervisory authorities of the Member States, having met in the Conference of Supervisory Authorities of the Member States of the European Union, consider that the adoption of the Third non-life insurance and life assurance framework Directives, which set up single authorisation and single supervision, particularly financial supervision exercised only by the competent authorities of the home Member State, makes necessary a deepening of their co-operation, which is already covered by protocols applying the First and Second Directives.

In determining these rules of behaviour, the supervisory authorities which are members of the Conference of Supervisory Authorities of the Member States of the European Union intend to uphold practical collaboration between national administrative services for the purpose of facilitating the supervision of direct insurance within the European Union and of examining any difficulties which might arise in the application of the Directives.

##### **1.2 Co-operation between supervisory authorities**

The supervisory authorities, ascertaining that the supervision of undertakings has a permanent character and that its efficiency shall be based upon a precise knowledge of the situation of undertakings and on the possibility of joint action, desire to collaborate in all cases where it is shown to be necessary for the proper application of Community rules and to mutually facilitate the carrying out of their task and to guarantee the good functioning of the Single Market.

They agree that collaboration between supervisory authorities such as results from the provisions of the Directives should be expressed by an attitude permitting spontaneous exchanges and the introduction of a genuine dialogue between themselves with a view to the promotion within the Community of a system of supervision which is as satisfactory as possible.

The supervisory authorities declare that these mutual exchanges may not in any case result in the removal from the various supervisory authorities of the competence which is laid down by the Directives.

In particular, they may not affect the duty vested in the competent authority of the home Member State to exercise financial control over the undertaking for which it has sole responsibility.

##### **1.3 Harmonisation of documents used**

The supervisory authorities declare that the analysis of the situation of undertakings in their respective countries calls for a variety of supervisory methods and practices and for a collection of different accounting documents and statistics. The standardisation of supervision would be improved by means of a common language of analysis and harmonisation of insurance accounting documentation and statistics.

The supervisory authorities confirm that they must have a standard document allowing them to verify the state of the solvency margin, since this is not immediately apparent from an examination of an undertaking's accounts.

Moreover, they are in agreement that they should increase mutual information on regulations and circulars from their respective countries, in particular, those which the Commission of the Communities would not circulate, for example texts relating to the form of statistical returns which undertakings have to supply.

#### **1.4 Rules on professional secrecy**

The supervisory authorities agree to exchange confidential information whenever possible, within the limits of the rules laid down in the Third Directives (Articles 16.1 and 16.2 of the Third Non-life Directive and 15.1 and 15.2 of the Third Life Directive) in order to improve the effectiveness of insurance supervision in the European Community.

Within the context of the single market, the supervisory authorities of the Member States stress the importance of a rigorous examination of the authorisation files for new insurance undertakings and the uniform application of precise criteria relating to supervision of access to the activity of insurance.

#### **1.5 Supervision of the good repute, competence and professional experience of managers and supervision of shareholders**

In view of the importance of supervision of the good repute, competence and professional experience of the directors of insurance undertakings and also the supervision of their shareholders both when authorisation is granted or refused and when the undertaking is already operating, the supervisory authorities shall endeavour to share as much as possible of the information available to them in those fields.

#### **1.6 Possible addition to rules on co-operation**

Finally, the supervisory authorities declare that the rules for collaboration set out in this document may show themselves to be inadequate when faced with actual cases and agree that as a result they will be expanded as the need arises.

The supervisory authorities also agree that their collaboration may extend to areas not expressly provided for by the Directives, taking account, as far as possible, of the principles of those Directives. This is especially true of the out-of-court settlement of complaints by policyholders, beneficiaries and interested third parties, in particular within the framework of freedom to provide services, and of companies mentioned in Article 3 of the First Co-ordination Directives excluded from the scope of the insurance directives which also wish to take up business by way of freedom of establishment or the freedom to provide services.

#### **1.7 Single protocol for life and non-life Directives**

Confirming that common objectives and broadly identical procedures in the life and non-life framework Directives have led to a detailed revision of the first and second co-ordination Directives, the supervisory authorities agree that this Protocol concerns the application of the two framework Directives and replaces the Protocols adopted in application of the co-ordination Directives, listed in Article 7.1 of the present Protocol.

#### **1.8 Co-operation with non-Community States that are parties to the EEA Agreement**

This protocol applies to the supervisory authorities of non-Community States that are parties to the EEA agreement as laid down in the second Protocol of 26 October 1995 on the collaboration of the supervisory authorities of the European Economic Area with a view to the application of directives concerning life assurance and non-life insurance, which appears in the addendum to the present Protocol.



## PART II

### ACTIVITY OF UNDERTAKINGS: AUTHORISATIONS, EXTENSIONS OF ACTIVITY

- 2.1 Single authorisation** (Article 7 of the First Non-life Directive, replaced by Article 5 of the Third Non-life Directive, Article 7 of the First Life Directive, replaced by Article 4 of the Third Life Directive)

In accordance with the principles of single authorisation, the decision to issue an authorisation, which is valid for the whole of the European Community, shall be the sole responsibility of the authorities of the home Member State.

- 2.2 Opening a branch** (Articles 10 of the First Directives, replaced by Articles 32 of the Third Directives)

**2.2.1 Contents of the file forwarded by the authority of the home Member State to the authority of the Member State of the branch**

When it does not oppose the opening of a branch in another Member State, the supervisory authority of the undertaking's home Member State communicates to the supervisory authority of the Member State of the branch a file, the contents of which are written in the language of the Member State of the branch, or, if the two authorities agree, in another Community language, with the exception of the certificate of solvency, which may always be written in the language of the home Member State. This file is made up as follows :

- the scheme of operations as defined in Annex VI (j), indicating in particular the type of operation envisaged and the structure of the organisation of the branch ;
- the classes of insurance according to the annexes to the First Non-Life Insurance Directive and the First Life Assurance Directive into which the planned businesses fall ;
- the precise name and address of the head office of the undertaking ;
- the address in the Member State of the branch from which documents may be obtained from the undertaking (which shall also be that of the general representative) and to which they may be delivered ;
- the name and powers of the general representative granted by the undertaking to bind it in relation to third parties and to represent it in relations with the supervisory authorities and courts of the host country ; the general representative can be a natural or a legal person. If he is a legal person, the host Member State can invite this legal person to appoint in turn a natural person to facilitate contact with the local authorities.
- if the undertaking is to cover motor vehicle third party risks (class 10 not including carrier's liability) a declaration of membership or a certificate of application for membership<sup>(1)</sup> of the national office and of the national guarantee fund of the Member State of the branch as defined in Annex VI (k) and (l) ;
- in cases where the undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 3.2 of Directive 87/344/EEC of 22 June 1987 ;
- a certificate of solvency, in the form provided for in Annex I of the present Protocol ;

The authority of the Member State of the branch acknowledges receipt immediately.

<sup>(1)</sup> In this case, the supervisory authority of the home Member State obtains from the undertaking a commitment that it will not engage in business concerning this class as long as it has not forwarded the final membership declaration.

## **2.2.2 Conditions imposed in the interests of the general good**

As from the date of the acknowledgement of receipt referred to in the previous paragraph, the supervisory authority of the branch has a period of two months within which if necessary to inform the authority of the home Member State in writing of the conditions under which, in the interests of the general good, the activity must be pursued within the territory of the Member State of the branch.

The home supervisory authority forwards this information to the head office of the undertaking.

## **2.2.3 Activity**

The branch may begin its activity as soon as the undertaking has received the correspondence referred to in paragraph 2.2.2 above or a communication stating that the Member State of the branch has no comment to make. In any case, the branch may begin its activity on the expiry of the period of two months referred to in that same paragraph.

The right to carry on the activity remains in effect even if the undertaking has not begun its activity. When the supervisory authority of the home Member State has withdrawn its authorisation, it notifies the supervisory authority of the host State thereof.

## **2.2.4 General representative**

The supervisory authorities consider that while it is possible to set up several places of business in a host Member State, only one general representative must be responsible, within the meaning of the term as regards supervision, for all business carried on by way of freedom of establishment in that member State.

## **2.3 Exercise of activities by way of freedom to provide services (Article 16 of the Second Non-life Directive and Article 14 of the Second Life Directive, amended by Article 35 of the Third Directives)**

### **2.3.1 Contents of the file forwarded by the authority of the home Member State to the authority of the Member State of provision of services**

When it is not opposed to the exercise of activity by way of freedom to provide services in another Member State, the supervisory authority of the home Member State communicates to the supervisory authority of the Member State of provision of services a file, the contents of which are written in the language of the Member State of provision of services, or, if the two authorities agree, in another Community language, with the exception of the certificate of solvency, which may always be written in the language of the home Member State. The file is made up as follows:

- the type of risks or commitments which the undertaking is proposing to cover by way of freedom to provide services;
- the classes of insurance according to the annexes to the First Non-Life Insurance Directive and the First Life Assurance Directive into which these risks or commitments fall;
- the full name and address of the head office of the undertaking;
- the name and address of the establishments, situated in the Member States, from which it is planned to provide services, in as much as they are not or are not only the head office of the undertaking;
- a certificate of solvency, in the form provided for in Annex I of the present Protocol;

- if the undertaking is to cover motor vehicle third party risks (class 10, not including carrier's liability), a declaration of membership or a certificate of application for membership<sup>(2)</sup> of the national office and of the national guarantee fund of the Member State of provision of services as defined in Annex VI (k) and (l) and the name and address of the representative for the handling of claims.
- if the undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 3.2 of Directive 87/344/EEC of 22 June 1987.

At the same time, the supervisory authority of the home Member State will advise the undertaking concerned that the file has been sent. The supervisory authority of the Member State of provision of services will acknowledge receipt of these documents by return.

### **2.3.2 Activity**

The undertaking may begin its activity by way of freedom to provide services as soon as it has been notified by the supervisory authority of the home Member State.

The right to carry on the activity remains in effect even if the undertaking has not begun its activity. When the supervisory authority of the home Member State has withdrawn its authorisation, it notifies the supervisory authority of the host State thereof.

If it has doubts as to the precise conditions under which the activity is to be pursued, the supervisory authority of the Member State of provision of services may ask the supervisory authority of the home Member State to forward any relevant information concerning the specific resources which the undertaking proposes to use in marketing its products in the Member State of provision of services.

### **2.3.3 Conditions imposed in the interests of the general good**

The authority of the Member State of provision of services may, if necessary, notify the supervisory authority of the home Member State in writing of the conditions under which, in the interests of the general good, the activities must be pursued within its territory.

The supervisory authority of the home Member State will send this information to the head office of the undertaking.

## **2.4 Changes to information contained in the file concerning the branch or the undertaking engaging in an activity by way of freedom to provide services (Articles 10.6 of the First Directives, replaced by Articles 32 of the Third Directives, Articles 17 of the Second Directives replaced by Articles 36 of the Third Directives)**

### **2.4.1 Changes relating to a branch**

Where, on the basis of a new file forwarded by the undertaking, the authorities of the home Member State do not object to the undertaking changing part of the information which they had notified pursuant to paragraph 2.2.1 above, any change in the file shall be communicated within two weeks by the authority of the home Member State, to the authority of the branch Member State, which will acknowledge receipt immediately.

On receipt of the communication referred to in the previous paragraph, the authority of the Member State of the branch may, if necessary, make known in writing to the supervisory authority of the home Member State the conditions under which, in the interests of the general good, and having regard to the authorised changes, the activities of the undertaking concerned must be pursued within its territory.

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<sup>(2)</sup> In this case, the supervisory authority of the home Member State obtains from the undertaking a commitment that it will not engage in business concerning this class as long as it has not forwarded the final membership declaration. If this commitment is not honoured, the supervisory authority of the home Member State can appraise the reasons put forward.

## **2.4.2 Changes relating to an undertaking engaging in an activity by way of freedom to provide services**

Where, on the basis of a new file forwarded by the undertaking, the authorities of the home Member State do not object to the undertaking changing part of the information which they had notified pursuant to paragraph 2.3.1 above, the change shall be communicated within one month by the authority of the home Member State to the supervisory authority of the Member State of provision of services, which will acknowledge receipt immediately.

At the same time, the authority of the home Member State advises the undertaking concerned that the change has been communicated.

The change envisaged may be made as soon as the notification referred to in the previous paragraph is received by the head office of the undertaking.

The authority of the Member State of provision of services may, if necessary, make known in writing to the supervisory authority of the home Member State the conditions under which, in the interests of the general good, and having regard to the authorised changes, the activities of the undertaking concerned must be pursued within its territory<sup>(3)</sup>.

## **2.4.3 Complementary information**

On the basis of a new file forwarded by the undertaking, only the supervisory authority of the home Member State can ask it for complementary information, insofar as it considers this is necessary to determine if the change can be made or not.

## **2.5 Provision of other information**

### **2.5.1 Extension of activity relating to composite insurance undertakings**

In the event of extension of activity from life assurance to non-life insurance or vice versa, the procedures mentioned in Articles 2.2 and 2.3 of the present Protocol shall apply.

### **2.5.2 Type of planned business / Type of risks or commitments**

The supervisory authority of the host Member State may inform the supervisory authorities of the other Member States of the list of additional information that it wishes to receive extra to that laid down in paragraphs 2.2.1, 2.3.1, 2.4.1 and 2.4.2 relative to the type of business or of risks or commitments that an undertaking could intend to cover or contract on its territory.

The supervisory authority of the home Member State informs of these wishes the undertakings subject to its supervision which wish to engage in business in the Member State in question. Insofar as it is possible it attaches the additional information desired by the supervisory authority of the host Member State to the notification relative to the opening of a branch (Articles 10 of the First Directives replaced by Articles 32 of the Third Directives) or to the pursuit of business by way of the freedom to provide services (Articles 14 of the Second Non-Life Directive and 11 of the Second Life Directive replaced by Article 34 of the Third Directives) or to the communication of a change.

If the undertaking is not in a position to forward the additional requested information, it informs the supervisory authority of the home Member State thereof, and the latter informs the supervisory authority of the host Member State thereof.

### **2.5.3 Representative for the handling of claims**

The supervisory authorities consider that motor vehicle liability insurance is a particularly sensitive area. They co-operate, within the limit of their possibilities, so that the supervisory authority of the home Member State can check the reliability and the professional qualification of the representative for the handling of claims who is to be appointed in the host country pursuant to Article 6 of Directive 90/618/EEC.

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<sup>(3)</sup> The last paragraph of Article 2.3.2. also applies in the event of a change to the file.

The supervisory authority concerned supply on request to the supervisory authority of the home member State, insofar as possible and as swiftly as possible, the information and documents concerning the representative for handling of claims.

#### **2.5.4 Compulsory insurance; alternative health insurance (Article 54-2 of the Third Non-Life Directive)**

The supervisory authority of the host Member State may inform the supervisory authorities of the other Member States of instances of compulsory insurance or alternative health insurance, where the general and specific conditions of such policies must be furnished to it before they are applied.

The other supervisory authorities should transmit this information to undertakings wishing to establish a branch or take up the provision of services in the Member State concerned and advise that such contracts may not be concluded before the supervisory authority of the host Member State is in possession of policy terms and conditions in the or one of the languages specified by that State's national law. They advise the supervisory authority of the host Member State thereof by providing it with the documents mentioned in paragraphs 2.2.1 and 2.3.1 or notifying it of changes pursuant to paragraphs 2.4.1 and 2.4.2.

#### **2.5.5 Option on provision of legal expenses insurance**

The authority of the host Member State should recognise the option exercised pursuant to Article 3.2 of Directive 87/344/EEC even if different rules apply to insurance undertakings having their head office in its territory.

#### **2.5.6 Conditions imposed in the interests of the general good**

Without prejudice to the provisions laid down in paragraphs 2.2.2 and 2.3.3, the supervisory authority of the host Member State may provide the supervisory authorities of the other Member States with the conditions imposed in the host Member State in the interests of the general good. The other supervisory authorities should transmit this information to undertakings that are seeking to establish a branch or take up the provision of services in the State concerned.

None of the participating authorities shall incur any legal liability with regard to the accuracy or completeness of the information provided pursuant to the preceding paragraph. In any case, the supervisory authorities of the host Member State shall make sure they update this information as often as necessary.

#### **2.5.7 Discovery of activity not notified**

If a supervisory authority discovers that an insurer has not notified an activity as prescribed in Articles 10.1 of the First Directives replaced by Articles 32 of the Third Directives or Articles 14 of the Second Non-Life Directive and 11 of the Second Life Directive replaced by Articles 34 of the Third Directives, it immediately informs the supervisory authority of the home Member State and can ask the insurer, in a situation of emergency, to stop this activity immediately.

The supervisory authority of the home Member State requests the insurer to send as soon as possible a file with a view to regularising the situation and informs the supervisory authority of the host Member State of the action taken.



**PART III**  
**UNDERTAKINGS ENGAGED IN BUSINESS**

**3.1 Undertakings whose situation is satisfactory**

**3.1.1 Definition**

"An undertaking whose situation is satisfactory" from the point of view of its home Member State means an undertaking which:

- a) fulfils the conditions for authorisation,
- b) operates in accordance with the rules of the home Member State, particularly as regards the calculation and representation of the technical provisions,
- c) possesses the necessary solvency margin (for its entire activities),
- d) shows an overall financial situation enabling the authorities responsible for its supervision, on the basis of the information available to them, to assess that the said undertaking will, in all probability, continue to fulfil its commitments in the future.

**3.1.2 Statement relating to the solvency margin** (Article 16 (amended by Article 24 of the Third Non-life Directive) and Article 17 of the First Non-life Directive; Article 18 (amended by Article 25 of the Third Life Directive), Articles 19 and 20 of the First Life Directive)

The supervisory authority of the home Member State requires from undertakings a specific document relating to the solvency margin established on the basis of a uniform standard and known as the "Statement relating to the solvency margin" (Annex II).

This statement, based upon a common interpretation of the First Directives, provides an instrument for collaboration between supervisory authorities and must permit an assessment of the financial situation of the undertakings.

**3.1.3 The exercise of supervision over undertakings** (Articles 13 and 14 of the First Non-life Directive, amended by Articles 9 and 10 of the Third Non-life Directive ; Articles 15 and 16 of the First Life Directive, amended by Articles 8 and 9 of the Third Life Directive)

The supervision of the entire activities of undertakings, including those carried on by branches or by way of freedom to provide services, shall be the responsibility of the competent authority of the home Member State, without prejudice to the proper powers of the supervisory authority of the Member State of the branch or of that of provision of services as recognised by the Directives.

On-the-spot inspection of branches should enable the authorities to assess the situation of each establishment and the standard of its business activities. To this end, the supervisory authority of the home Member State shall ask the undertaking to place at its disposal at local level any documents, books, registers, contracts, statements of claims, accounting documents, etc. which may be required and also personnel qualified to provide it with the information required.

When the supervisory authority of the home Member State makes a decision regarding on-the-spot investigation in a branch situated in another Member State, for the purpose of collecting and verifying the information required to ensure the overall financial supervision of the undertaking, it informs the supervisory authority of the Member State of the branch in advance, indicating the name and position of the persons responsible for the investigation, and the dates planned for the action in the branch.

The supervisory authorities of the Member State of the branch may ask the authorities of the home Member State for the outline programme for the proposed investigation. These provisions do not restrict the power of the authorities of the home Member State to extend their investigations beyond the outline programme.

The authority of the Member State of the branch may take part in the financial investigation operations, within the limits of the investigation carried out by the authority of the home Member State. When the supervisory authority of the Member State of the branch decides to use this option, it immediately informs the supervisory authority of the home Member State which quickly sends it an outline programme of the proposed investigation. The supervisory authority of the Member State of the branch informs it of the name and position of the persons who will take part in the investigation.

At the express request of the supervisory authority of the home Member State, the supervisory authority of the Member State of the branch may also carry out an on-the-spot investigation alone, on behalf of the authority of the home Member State. The latter then places at the disposal of the persons empowered to carry out that investigation any accounts, documents and information which they may need in the performance of their duties.

#### **3.1.4 Undertakings not complying with the rules of law of the Member State in which they are pursuing an activity** (Articles 40.3, 40.4, 40.5, 40.6, 40.7 and 40.8 of the Third Directives)

If the competent authorities of a Member State ascertain that an undertaking with a branch or operating by way of freedom to provide services on its territory is not complying with the rules of law of that State applying to it, for example as regards the law of contract, they invite the undertaking concerned to terminate this irregular situation.

For this purpose they send a letter to the head office of the undertaking stating the type of the infringements observed and the measures which must be taken. A copy of this letter is to be sent to the competent authority of the home Member State.

Where the operations are engaged in by a branch, a copy of this letter is also sent to the general representative of the branch concerned.

If the undertaking in question does not do what is necessary, the authority of the Member State of the branch or of provision of services informs the competent authorities of the home Member State. For this purpose, the authority of the Member State of the branch sends them all the elements technically necessary to allow the authorities of the home Member State to act effectively. The authorities of the home Member State acknowledge receipt of this information. As quickly as possible, they take all appropriate measures to ensure that the undertaking terminates this irregular situation. The nature of these measures shall be communicated to the competent authorities of the Member State of the branch or of provision of services.

If, despite these measures, or because they appear to be inadequate or are lacking, the undertaking persists in infringing the rules of law in force in the Member State concerned, the competent authorities of that Member State may take measures appropriate to terminate the irregularities.

In advance, the authorities concerned inform the competent authorities of the home Member State in writing of the measures which they intend to take.

These measures are notified in writing, simultaneously to the head office of the undertaking and, where appropriate, to the branch concerned. They may in particular include a prohibition on the undertaking from continuing to conclude new insurance contracts on the territory of the Member State concerned in so far as this is absolutely necessary or any other appropriate measure as provided for by national legislation. Notification of the measures must be accompanied by the appropriate grounds. It may be drafted in the language of the Member State of the branch or of provision of services.

Notwithstanding the procedure defined above, in emergencies, the supervisory authorities of a Member State may take any appropriate measures, under the conditions defined in the above paragraph, to prevent irregularities committed on their territory. In this case, they immediately inform the supervisory authorities of the home Member State.



In addition, when the irregular situation ascertained constitutes an infringement of the law or regulations in force in the Member State of the branch or of provision of services, the procedure defined above does not prevent administrative penalties, as provided for by the texts of the law, being applied at any time to persons, items of the operation or goods situated within the territory of the Member State concerned. When a penalty procedure is thus begun, the supervisory authority of the Member State of the branch or of provision of services immediately informs the supervisory authority of the home Member State.

### **3.1.5 Monitoring of compliance with the applicable rules of law** (Article 40.2 of the Third Directives)

Any undertaking which carries out operations by way of freedom to provide services or through the intermediary of a branch must communicate to the supervisory authority of the Member State of the branch or of provision of services all the documents requested by that authority to allow it to verify compliance with the rules of law of the Member State of the branch or of provision of services applicable to that undertaking, in so far as the communication of such documents would also be compulsory if they were requested from an undertaking having its head office in that Member State.

Refusal to communicate such documents shall be treated as an irregularity within the meaning of paragraph 3.1.4 above and may give rise to the application of the measures referred to in that paragraph 3.1.4 and, where necessary, to the application of the penalties provided for by national legislation.

Where, in order to investigate compliance with the rules of law applicable to a branch, it appears appropriate to carry out an on-the-spot investigation at the branch of the undertaking, the supervisory authority of the Member State of the branch may carry out such an investigation on its own responsibility. The supervisory authority of the Member State of the branch informs the supervisory authority of the home Member State in advance of its decision.

Furthermore, when, for the purposes of monitoring compliance with the rules of law applying to a branch, on-the-spot investigation at the head office of the undertaking seems advisable, the supervisory authority of the Member State of the branch informs the supervisory authority of the home Member State of this and the latter may then decide to carry out that investigation.

Similarly when, for the purposes of monitoring compliance with the rules of law applying to operations conducted within its territory by way of freedom to provide services, on-the-spot investigation at the head office of the undertaking seems advisable, the supervisory authority of the Member State of provision of services informs the supervisory authority of the home Member State of this and the latter may then decide to carry out such an investigation.

### **3.1.6 Transfers of portfolios of contracts of Community undertakings** (Article 12 of the Third Non-life Directive *amending Article 11 of the Second Non-Life Directive* and Article 11 of the Third Life Directive *amending Article 6 of the Second Life Directive*)

The provisions of Article 12 of the Third Non-life Directive and Article 11 of the Third Life Directive apply in all cases of transfer of portfolios of Community undertakings.

Before authorising an insurance undertaking having its head office on its territory under the conditions laid down by its national law to transfer all or part of its portfolio of contracts to an accepting office, the home authority of the transferring undertaking must:

- consult the authorities of the Member State(s) of the branch(es) whose portfolio is to be transferred,
- obtain the agreement of the competent authorities of the Member State(s) of risks or commitments.

When the head office of the accepting undertaking and that of the transferring undertaking are not in the same Member State, the home State authority of the transferring undertaking must also obtain a certificate of solvency from the home Member State of the accepting office stating that the accepting undertaking has at its disposal the necessary solvency margin, taking into account the transfer.

The authorities concerned immediately acknowledge receipt of the request of the supervisory authority of the home Member State of the transferring undertaking.

These opinions and agreements must be given within a period of three months as from the date of acknowledgement of receipt of the request. Once this period has expired, the opinion shall be considered to be positive or the agreement considered to have been given.

In order to facilitate these measures as a whole, the home authority of the transferring undertaking must provide the following minimum information :

- to the home State authority of the accepting undertaking :
  - the draft transfer agreement or the transfer agreement itself and, if they do not appear in it, the names and addresses of the transferring undertaking and the accepting undertaking, the insurance classes and the details of the nature of the risks / commitments to be transferred ;
  - the volume of gross and net technical provisions, established on the basis of the contracts to be transferred ;
  - the volume of gross and net premiums;
  - the volume of the gross and net burden of claims in non-life insurance ;
  - details of assets transferred ;
  - details of guarantees provided by the transferring undertaking or a third party (for example a reinsurer) to safeguard against deterioration of the reserves corresponding to the transferred business ;
  - name(s) of the country(ies) of the risks.
- to the authority of the Member State of a branch whose portfolio is to be transferred :
  - the draft transfer agreement or the transfer agreement itself or at least a summary of that agreement containing the relevant information for that authority and, if they do not appear in it, the names and addresses of the transferring undertaking and the accepting undertaking, and the scope of the operation (total or partial transfer of the branch's portfolio)
  - arrangements for the settlement of claims in the event of the closure of the branch following the transfer.
- to the authority of the Member State of risks or commitments:
  - the draft transfer agreement or the transfer agreement itself or at least a summary of that agreement containing the relevant information for that authority and, if they do not appear in it, the names and addresses of the transferring undertaking and the accepting undertaking.

If the supervisory authority of the home Member State of the accepting undertaking has serious concerns about how that undertaking will fare in the future, it should inform the home Member State authority of the transferring undertaking of those concerns within a period of three months.

Where the accepting undertaking:

- has not previously taken up the business of direct insurance and therefore requires authorisation from the supervisory authority of its home State or requires an extension of its authorisation;  
and/or
- will cover the risks or commitments through a branch which has yet to be established, or will require an extension of the business which it is entitled to carry on in the State of the branch;  
and/or
- will cover the risks or commitments through the provision of services where it has not previously done so;

the various supervisory authorities concerned must co-operate to ensure that as far as possible their respective functions can be carried out concurrently, to enable the transfer to take place in a reasonable period.

In certain cases, in accordance with the national law of the home State of the transferring undertaking, an authority other<sup>(4)</sup> than the supervisory authority of that State has the responsibility for authorising the transfer of portfolios of contracts.

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<sup>(4)</sup> Information on the responsibilities of these other authorities shall be given via the Conference Secretariat.

The supervisory authority of the home Member State of the transferring undertaking informs of its decision the supervisory authority of the country or countries of risks or commitments and the other authorities which were consulted. If necessary, the authority of the home Member State of the transferring undertaking also informs of its decision the other supervisory authorities affected by the transfer.

The supervisory authorities of the States of risks or commitments assist the home State authority of the transferring undertaking or of the accepting undertaking, or the transferring undertaking or the accepting undertaking themselves at the time of the publishing of the transfer, in accordance with the law applicable in the States of risks or commitments (Article 12.6 of the Third Non-Life Insurance Directive and Article 11.6 of the Third Life Assurance Directive). The supervisory authorities shall inform each other about the method of publication<sup>(5)</sup> of the transfer of portfolio provided by their national law.

The supervisory authorities consult each other under the same conditions where undertakings merge.

The authorisation of a transfer under this paragraph does not affect the right of Member States to give policyholders the option of cancelling contracts within a fixed period. The supervisory authorities shall inform each other of the cases and the period within which contracts can be cancelled<sup>(5)</sup> according to the provisions of their national law.

**3.1.7 Form of the certificate of solvency** (Articles 10.1 (b) of the First Directives replaced by Articles 32 of the Third Directives; Articles 16.1 (a) of the Second Non-life Directive and 14.1 (a) of the Second Life Directive, replaced by Articles 35 of the Third Directives; Article 20 of the First Non-life Directive and Article 24 of the First Life Directive, replaced by Articles 13 and 12 of the Third Non-Life and Life Directives)

The supervisory authority issues the "certificate of solvency" in the form provided for in Annex I, in non-life and life assurance.

Rules for the preparation of the certificate:

**I.** The numbers and names of the classes, sub-divisions and groups of classes are those of the classification annexed to the First Life and Non-life Directives.

**II.** The attestation of the existence of a sufficient solvency margin as defined in Article 16 of the First Non-life Directive (amended by Article 24 of the Third Non-Life Directive) and Article 18 of the First Life Directive (amended by Article 25 of the Third Life Directive) and of the minimum guarantee fund referred to in Article 17.2 of the First Non-life Directive and Article 20 of the First Life Directive shall be valid on the date of issue of the certificate.

As a consequence, the supervisory authority will take care to verify the validity of the reference documents taken into account in drafting the certificate and will decide, on its own responsibility, on the appropriateness of carrying out a further verification prior to issuing the certificate.

## **3.2 Undertakings in difficulty**

**3.2.1 Definition** (Articles 20 of the First Non-life Directive and 24 of the First Life Directive, replaced by Article 13 of the Third Non-life Directive and Article 12 of the Third Life Directive)

"Undertakings in difficulty" includes undertakings whose situation causes concern to the supervisory authority of the head office, in particular those which no longer have the financial guarantees required by the First Directives.

The supervisory authorities are required to collaborate specifically in the cases described in Article 20 of the First Non-life Directive and Article 24 of the First Life Directive and described below, in order to restore the situation of the undertakings and protect the interests of policyholders and third parties who are the beneficiaries of contracts.

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<sup>(5)</sup> Information on these arrangements shall be given via the Conference Secretariat.

**3.2.2 An undertaking which does not comply with national rules concerning technical provisions and how they are to be shown on the assets side of the company balance sheet** (Articles 20.1 and 20.5 of the First Non-life Directive, Articles 24.1 and 24.5 of the First Life Directive, replaced by Articles 13 and 12 of the Third Non-life and Third Life Directives)

The authority of the home Member State shall be the sole judge of the advisability of taking a measure to prohibit the free disposal of the assets of the undertaking and the extent of the measure. It informs the supervisory authorities of the States where the undertaking concerned operates, through the intermediary of a branch or by way of freedom to provide services, of its intention to take such a measure. In emergencies, the information may accompany the measure to freeze assets.

The supervisory authority of the home Member State informs the supervisory authorities of the Member States where the undertaking holds assets, in writing and in detail, of which assets of the undertaking situated in their countries must be frozen.

Insofar as it lies within their possibilities, the authorities of the Member States concerned check the material existence or the location of certain assets previously identified by the home State competent authority, on the basis of data which the latter will have supplied and on its request.

The authorities of the Member States concerned are then required to freeze the assets. They inform the supervisory authority of the head office of the measures they have taken.

When the home State competent authority asks the authorities of the Member States concerned for their assistance with a view to helping it to list, manage, realise assets and possibly freeze their use, these authorities either inform it of the help they can provide or else give it a description of the procedures to be followed to obtain certain types of aid.

**3.2.3 An undertaking that no longer possesses the minimum solvency margin** (Articles 20.2 and 20.5 and 24.2 and 24.5 of the First Non-life and Life Directives, replaced by Articles 13 and 12 of the Third Non-life and Third Life Directives)

The supervisory authority of the home Member State, when it requires an undertaking to provide a plan for the restoration of a sound financial position, shall be the sole body approving this plan and ensuring that it is carried out.

The plan shall be required whatever the causes of the inadequacy of the solvency margin, even if they are of a circumstantial and apparently temporary nature.

The supervisory authority warns the supervisory authorities of the Member State of the branch or of provision of services that it is asking for a plan for the restoration of a sound financial position. It may communicate the plan for the restoration of a sound financial position to the supervisory authorities of the Member State of the branch or of provision of services, together with any information which it considers appropriate in the circumstances. In any case it shall send to said supervisory authorities the plan for the restoration of a sound financial position, on request by them.

The supervisory authority of the home Member State takes any measures which it considers appropriate. If it decides to freeze the assets, it does so under the conditions defined in paragraph 3.2.2 above.

**3.2.4 An undertaking that no longer possesses the minimum guarantee fund** (Articles 20.3 and 20.5 and 24.3 and 24.5 of the First Non-life and Life Directives, replaced by Articles 13 and 12 of the Third Non-life and Third Life Directives)

The supervisory authority of the home Member State, when it requires an undertaking to provide a short-term finance scheme, shall be the sole body approving this plan and ensuring that it is carried out.

The plan shall be required whatever the causes of the inadequacy of the minimum guarantee fund, even if they are of a circumstantial and temporary nature, as is the case for the plan for the restoration of a sound financial position.

The supervisory authority of the home Member State warns the supervisory authorities of the Member State of the branch or of provision of services that it is asking for a short-term finance scheme. It may communicate the short-term finance scheme to the supervisory authorities of the Member State of the branch or of provision of services, in particular if the latter so request, together with any information which it considers appropriate in the circumstances.

The supervisory authority of the home Member State takes any measures which it considers appropriate. If it decides to freeze the assets, it does so under the conditions defined in paragraph 3.2.2 above.

### **3.2.5 The general principle of collaboration between supervisory authorities, in particular to protect the interests of policyholders**

In general, the supervisory authorities of the Member State of the branch or of provision of service or of the States in which the undertaking's assets are situated assist the supervisory authority of the home Member State as far as possible.

Whenever it deems it necessary, the supervisory authority of the home Member State notifies the supervisory authority of the Member State of the branch or of provision of services of the nature of any other measure taken to protect the interests of policyholders.

### **3.3 Withdrawal or lapse of authorisation** (Article 22 of the First Non-life Directive, replaced by Article 14 of the Third Non-life Directive, Article 26 of the First Life Directive, replaced by Article 13 of the Third Life Directive)

The supervisory authorities act in close co-operation throughout the entire procedure of withdrawal or lapse of authorisation.

Without prejudice to the proper competences of the supervisory authorities of the Member State of the branch or of provision of services, the supervisory authority of the home Member State assumes sole responsibility for terminating the activity of an undertaking.

The supervisory authority of the home Member State takes any preventive measures which it considers appropriate. If it decides to freeze the assets, it does so under the conditions defined in paragraph 3.2.2 above.

It may withdraw the authorisation for one or more classes (or part of a class) or for all the classes for which the undertaking is authorised.

Except under special circumstances and before withdrawing authorisation in respect of one, several or all the classes for which the undertaking is authorised, the supervisory authority of the home Member State informs all the supervisory authorities of its intention. The supervisory authority of the home Member State communicates the decision on withdrawal to all the other supervisory authorities.

The competent authorities of the States where the undertaking has branches or carries on business under the freedom to provide services forward to the home country competent authorities complaints sent to them by policyholders or other creditors of the undertaking who are situated in their territory.

The supervisory authorities involved act together in order to deal with the consequences of withdrawal of authorisation in a co-ordinated manner, particularly if it is necessary to inform the national courts of the host countries, within the framework of the provisions of national law which apply when an undertaking ceases operation.

In this latter case, the host country supervisory authorities can play the role of an intermediary between the home country competent authority and any competent authorities in the host countries. They state the name and address of one or several correspondents who can be consulted by the home country supervisory authority or who can play this role.

### **3.4 Cases where an undertaking ceases operation other than those referred to in Article 3.3 of the present Protocol**

In cases where an undertaking ceases operation other than those referred to in Article 3.3 of the present Protocol and in particular in the event of winding up under court supervision, the supervisory authority of the home Member State informs the supervisory authorities of all the other Member States as soon as possible.

Prior to the initiation of a winding-up procedure, the supervisory authorities act together. They may decide to take any appropriate measures, including, if necessary, referral to the national courts, within the framework of the provisions of national law that apply in such cases.

Should an undertaking envisage ceasing to conduct business through its branch in another Member State or closing the branch or if it has decided to abandon or cease its activity under the freedom to provide services in another Member State, the supervisory authority of the home Member State should inform the supervisory authority of the host Member State as soon as it is apprised thereof. In the event of closure of the branch, the supervisory authority of the home Member State should also inform the supervisory authority of the host Member State how the policies underwritten by the branch are to be managed.

Cessation of operations by a branch or by way of freedom to provide services does not cause the right to carry on business to lapse. When the supervisory authority of the home Member State has withdrawn its authorisation or has been informed by the undertaking of the voluntary cessation of business, it notifies the supervisory authority of the host Member State thereof.

## PART IV

### BRANCHES OF UNDERTAKINGS OF THIRD COUNTRIES

#### **4.1 The principle of co-operation**

Collaboration between supervisory authorities applies in every case where it is necessary to allow the authorities to fulfil their task in a satisfactory manner.

#### **4.2 The ordinary law system and the special system**

The extent of this collaboration differs according to whether the branches of undertakings of third countries are subject to the ordinary law system provided for by Articles 23 to 25 and Article 27 paragraph 1 of the First Non-life Directive and Articles 27 to 29 and 31.2 of the First Life Directive or to the special system described in Articles 26 to 28 of the First Non-life Directive and Article 30 and Article 31.2, second sentence, of the First Life Directive.

An appropriate degree<sup>(6)</sup> of collaboration should, if the need arises, be defined when agreements have been concluded with third countries under Article 29 of the First Non-life Directive and Article 32 of the First Life Directive.

#### **4.3 The principle that information is not provided according to a fixed time schedule**

Supervisory authorities are not required to communicate either documents or information according to a fixed time schedule or to consult at regular intervals.

#### **4.4 Collaboration under the ordinary law system** (Articles 20 (replaced by Article 13 of the Third Non-Life Directive), 23, 24, 25 and 27 of the First Non-life Directive; Articles 24 (replaced by Article 12 of the Third Life Directive), 27, 29 and 31.2 of the First Life Directive)

##### **4.4.1 System based on the separation between branches of the same undertaking**

This system shall be based upon separation between branches of the same undertaking, each being obliged to ensure its own solvency.

However, the solvency margin relating to each branch may, for that part which exceeds the amount of the minimum guarantee fund, be situated in any country of the European Community (Article 25.3 of the First Non-life Directive; Article 29.3 of the First Life Directive).

Under such conditions, using its own resources, a supervisory authority may experience difficulty in verifying the existence of assets forming the actual margin of the branch which it supervises.

##### **4.4.2 Provision of information relating to solvency**

Supervisory authorities of countries in which an undertaking of a third country has branches should exchange information which they have at their disposal so as to verify the state of solvency of each branch.

If a branch of an undertaking of a third country finds itself in one of the situations provided for in Article 20 of the First Non-life Directive and Article 24 of the First Life Directive, the supervisory authorities of the countries where other branches of the undertaking are established collaborate with the supervisory authority of the branch in difficulty.

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<sup>(6)</sup> For all the EEA States not members of the European Union, refer to the addendum to the present protocol.

#### **4.4.3 Collaboration even in the absence of a branch**

It is recommended that supervisory authorities, even if the undertaking has no branch in their own country, should try to lend assistance to an authority supervising a branch of a third country.

#### **4.5 Collaboration under the special system** (Articles 26 and 28 of the First Non-life Directive and Articles 30 and 31.2 of the First Life Directive)

##### **4.5.1 Setting up the system** (Article 26.2 of the First Non-life Directive and Articles 30.2 and 30.3 of the First Life Directive)

**4.5.1.1.** An undertaking whose head office is in a third country shall be the sole judge of the desirability of asking for the advantages of Articles 26 and 28 of the First Non-life Directive (Article 30 of the First Life Directive).

**4.5.1.2.** The request must cover all branches existing within the European Community as well as branches seeking authorisation.

It covers all the advantages. These cannot be granted separately.

**4.5.1.3.** The procedure for reaching an agreement under these Articles shall be as follows:

- the undertaking may make informal contact with the supervisory authorities of branches and with those of countries where it is seeking authorisation, particularly in order to determine which supervisory authority will be responsible for verifying within the European Community the undertaking's state of solvency.
- the undertaking sends an official request to each of the supervisory authorities concerned in accordance with the specimen attached (Annex III, Document I).

This request states the supervisory authority of choice which will be responsible for the overall supervision of solvency and the reasons for the choice of the undertaking.

- each supervisory authority notifies the undertaking of its acceptance or refusal.
- having obtained replies from the supervisory authorities, the undertaking assesses whether its selection of a supervisory authority of choice has been accepted.
- if this is the case, the undertaking communicates the replies from the supervisory authorities to the supervisory authority of the country of choice.

At the same time, it asks for responsibility as the "supervisory authority of choice" to be accepted (Annex III, Document II):

- the supervisory authority of choice, in taking note of this request, notifies the undertaking and the other supervisory authorities concerned of the date on which the agreement is to take effect, a date which it has fixed by agreement with these other supervisory authorities.
- the supervisory authorities involved, each on its own behalf, make the necessary arrangements for the agreement to take effect in their own country on the date fixed.

The replies of the supervisory authorities, the request of the undertaking addressed to the supervisory authority of choice and the reply of this supervisory authority establish the commitment of the parties at the time they were sent.



**4.5.1.4.** When an undertaking which benefits from such an agreement opens a branch in a European Community country where it was not carrying on business when the agreement was concluded, it must ask the supervisory authority of that host country to join in the agreement.

If it accepts, the new country of business participates in the agreement in the form in which it has been concluded.

The agreement cannot be renewed unless the new country where business is being carried on participates in it.

**4.5.2 Operation of the system** (Article 26.2 and Article 28 of the First Non-life Directive; Article 30.2 and Article 31.2 of the First Life Directive)

**4.5.2.1.** The supervisory authority of the country of choice carries out supervision of solvency for all the branches of the non-Community undertaking.

This role implies that it has the means to require the branch established in its country to centralise information relating to the undertaking's business in the countries covered by the agreement, and to provide overall accounts and the statement relating to the solvency margin for operations by all the branches concerned.

**4.5.2.2.** The supervisory authorities of the undertaking's other branches carry out financial supervision separately from supervision of solvency.

**4.5.2.3.** The rules of collaboration agreed for the supervision of undertakings whose head office is within the Community apply to supervisory authorities who are parties to the agreement.

**4.5.3 Termination of an agreement**

**4.5.3.1.** An agreement ends :

- on the initiative of one or more of the supervisory authorities concerned,
- on the initiative of the undertaking,
- following total transfer of the portfolio of contracts of the branch established in the country of choice.

**4.5.3.2.** After termination of an agreement, the undertaking's branches are subject to the ordinary law system unless their authorisation has been withdrawn or they enter into a new agreement.

**4.5.3.3.** Collaboration between supervisory authorities takes place in every case where an agreement lapses. The nature and extent of such collaboration cannot be specified precisely because it depends upon decisions taken by supervisory authorities in the circumstances of particular cases.

**4.5.3.4.** Such collaboration is intended in particular to facilitate the transfer of a third country undertaking from the system of financial guarantees laid down in Articles 26 and 28 of the First Non-life Directive (Article 30 of the First Life Directive) to the more restrictive ordinary law system under Articles 23 and 25 of the First Non-life Directive (Articles 27 and 29 of the First Life Directive).

It is indeed desirable to avoid the prospect of a withdrawal of authorisation for a branch placing an undertaking from a third country in a state of uncertainty as to the solvency of its other branches within the European Community.

#### 4.5.3.5. Termination of an agreement takes effect:

- on the date of the withdrawal of authorisation by the supervisory authority of the country of choice,
- on the date of termination of the agreement by one or more supervisory authorities or by the undertaking,
- on the effective date of a transfer in the country of choice.

On this date, the supervisory authorities should undertake the complete reassessment of the solvency of branches established in their respective countries, unless a new agreement has been negotiated beforehand and can take effect without a break in continuity.

#### 4.6 **Transfers of portfolios of branches of third countries** (Article 28 a of the First Non-life Directive, created by Article 53 of the Third Non-life Directive; Article 31 a of the First Life Directive, created by Article 49 of the Third Life Directive)

In accordance with the principles of Articles 53 of the Third Non-life Directive and 49 of the Third Life Directive, under the conditions provided for by national law, a Member State authorises the transfer of the portfolio of contracts from a branch of a third country established on its territory to an accepting office established in a Member State of the European Community subject to the following conditions:

- that the authorities of the home Member State of the accepting office attest that the accepting office possesses the necessary solvency margin, taking account of the transfer. The certificate shall be drawn up in the form provided for in paragraph 3.1.7.
- that if the accepting office is a branch of a third country established in the transferor's Member State, the authorities of the Member State in charge of supervising its overall solvency must certify that the accepting office fulfils the conditions referred to in the first indent. This certificate must be issued within the time limits and with the consequences to which reference is made in the last indent
- that if the accepting office is a branch of a third country established in a Member State other than that of the transferor and where this is authorised in the country of establishment of the transferor, the authorities of the country of establishment of the accepting office or those in charge of supervising its solvency must certify that the accepting office fulfils the conditions referred to in the first indent. Similarly, the authorities of the Member State of establishment of the accepting office must certify that the law of that Member State permits such a transfer and that the State accepts the transfer. Such a certificate must be issued within the time limits and with the consequences to which reference is made in the following indent.
- that the authorities of the country of the risks and those of the Member State of the commitment give their agreement within a period of three months from the request for an opinion from the authority of the Member State of establishment of the transferring undertaking. If these authorities have not replied by the time this period has expired, they are assumed to have agreed.

**PART V**  
**EXCHANGES OF INFORMATION**

### **5.1 Principle**

The supervisory authorities agree on the need to develop their exchanges of information in order to carry out their responsibilities under the best conditions. They reply to requests for information as quickly as possible.

### **5.2 The aim of harmonising supervisory methods and documents**

They are attempting progressively to harmonise their supervisory methods and documents, in particular the documents requested from undertakings in their file submitted each year to the authorities of the home Member State.

**5.3 Voluntary exchanges of non-financial information between supervisory authorities** (Article 19 of the First Non-life Directive, amended by Article 11 of the Third Non-life Directive, Article 23 of the First Life Directive, amended by Article 10 of the Third Life Directive). **Right to warn** (Article 15 of the First Life Directive, replaced by Article 8 of the Third Life Directive)

#### **5.3.1 Exchanges of information**

The supervisory authorities of the Member State of the branch or of provision of services will notify the supervisory authorities of the home Member State on a non-systematic basis, as and when it comes into their possession, of particular information which is appropriate to the exercise of prudential control, in so far as they consider such information to be credible.

- ♦ Such information may for example relate to the level of complaints from policyholders, beneficiaries and interested third parties, the standard of the conduct of business and the handling of investments, unsatisfactory commercial practices and details concerning directors and managers and shareholders.

- ♦ The information referred to above, which does not constitute an exhaustive list, will be passed on by the most appropriate means in the light of the circumstances and the nature of the information and will remain subject to any conditions which may be imposed by the supervisory authority of the Member State of the branch or of provision of services.

#### **5.3.2 Right to warn**

If the competent authorities of the Member State of the branch or of provision of services have reasons to consider that the activities of an insurance undertaking could harm its financial solvency, they inform the authorities of the home Member State of this. If necessary, the latter inform the authorities of the Member State of the branch or of provision of services of decisions they have been led to take and, in any case, check that the undertaking concerned is complying with the prudential principles defined by the Directives.

### **5.4 Exchanges of statistical information provided for in Article 44 of the Third Non-life Directive and Article 43 of the Third Life Directive**

Before the end of each year, the authorities of the home Member State communicate to the authorities of the State of establishment or of provision of services a summary of the following aggregated data for the year preceding the year in question:

- in the case of non-life insurance: the amount of premiums, claims and commissions without deductions for reinsurance, and the frequency and average cost of claims under motor vehicle third-party liability without deductions for reinsurance, according to groups of classes and showing separately insurance by way of establishment and insurance by way of freedom to provide services,

- life assurance: the amount of premiums before deduction for reinsurance, by class and showing separately life assurance by way of establishment and life assurance by way of freedom to provide services.

In doing so they should state the number of insurance undertakings concerned by the data communicated. If, during the year concerned, no insurance undertaking that has been the subject of a procedure mentioned in Articles 2.2 or 2.3 of the present Protocol has declared amounts corresponding to the activities described by the above mentioned data, the authority of the State of establishment or of provision of services should be informed of the fact.

This information constitutes a contribution from the authorities of the home Member State to the information that the authorities of the Member State of the branch or of provision of services have concerning their own market.

#### **5.5 Exchanges of statistical information supplied by the authorities of the home Member State, but not provided for by the Directives**

The authorities of the home Member State will make every effort to ensure that the authorities of the Member State of the branch or of provision of services have at their disposal the elements necessary for statistical information and the analysis of their markets.

In particular, at the request of the authorities of the Member State of the branch, the authorities of the home Member State shall communicate the statistical information supplied under Article 5.4 of the present Protocol on a broken down basis for each of the branches established within the territory of the Member State which made the request.

In addition, the supervisory authorities of the home Member State and the supervisory authorities of the Member State of the branch or of the Member State of provision of services may communicate, on a broken down basis, the simplified technical account presented in Annex IV for each of the branches established on the territory of the Member State making the request and for undertakings engaging in business by way of freedom to provide services within that Member State.

#### **5.6 Exchanges of information on good repute, competence and professional experience**

Exchanges of information between the Member States may include information on the good repute, competence or professional experience of:

- the managers or directors of insurance undertakings,
- the directors and general agents who administer an establishment of an insurance undertaking, and
- persons who propose to hold, directly or indirectly, a qualifying holding in an insurance undertaking or to increase the amount of their holding such that the proportion of voting rights or of capital shares held reaches or exceeds the thresholds of 20, 33 or 50%.

The supervisory authorities agree that it is essential to establish and develop exchanges of information on these points in order to guarantee insurance policyholders uniform and coherent protection.

#### **5.7 Procedures for the exchange of information on good repute, competence and professional experience**

Where the authority of the home Member State receives:

- an application for authorisation from an insurance undertaking (Articles 6 and 7 of the First Non-Life and Life Directives replaced by Article 4 of the Third Directives);
- notification of the establishment of a branch (Articles 10 of the First Directives replaced by Articles 32 of the Third Directives);

- notification within the framework of Article 15 of the Third Non-Life Directive or Article 14 of the Third Life Directive;
- notification of changes relating to the points above;

it is at liberty to request the collaboration of the other supervisory authorities within the framework of its enquiries in respect of the good repute, competence or professional experience of any of the persons referred to in Article 5.6 of the present Protocol. The supervisory authorities of the home Member State may forward any relevant information in their possession to accompany their request. The supervisory authorities whose co-operation is requested immediately acknowledge receipt of the request. If, at the time of the request or subsequently, the latter authorities hold or are in a position to ascertain any information relevant to the request of the authorities of the home Member State, such information is forwarded as soon as possible. Such exchanges of information are carried out within the limits of the rules on professional secrecy and privacy.

#### **5.8 Exchange of information contained in a register**

The basic data listed in Annex V is kept available by the authorities for an exchange of information at short notice. When the authorities receive from the authorities of another Member State, on the form provided for the purpose and appearing in Annex V, a request concerning this data, they answer promptly by fax on the extract form provided for the purpose in the request and confirm the answer by letter.

#### **5.9 Information from the supervisory authority of the home Member State on certain measures in respect of a subsidiary of an undertaking having its head office in another Member State**

The supervisory authority of a home Member State which takes one of the measures provided for in Article 20 of the First Non-Life Directive (replaced by Article 13 of the Third Non-Life Directive) or Article 24 of the First Life Directive (replaced by Article 12 of the Third Life Directive) and to which reference is made in paragraphs 3.2.2, 3.2.3 and 3.2.4 of the present Protocol, in respect of a subsidiary of an insurance undertaking having its head office in another Member State, informs the supervisory authority of the home Member State of the "parent" insurance undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC.

Similarly, when it deems it necessary, the supervisory authority of the home Member State of the subsidiary shall inform the supervisory authority of the home Member State of the parent undertaking of the nature of any other measures that it may have to take.



## PART VI

### MISCELLANEOUS QUESTIONS

#### **6.1 Assistance** (Articles 8.3, 10.3 and 13 of the First Non-life Directive, replaced by Articles 6, 32 and 9 of the Third Non-Life Directives)

When an undertaking is authorised in class 18 as listed in point A of the Annex to the First Non-life Directive, the supervisory authorities of the Member State of the branch or of provision of services collaborate with the supervisory authorities of the home Member State to verify the resources available to this undertaking to carry out successfully assistance operations which it has undertaken to carry out, in so far as their legislation provides for supervision of these resources.

In order to carry out this supervision, the supervisory authorities of the home Member State and the Member State of the branch or of provision of services exchange between them at their own request any information relating to the existence of assistance resources available to the undertaking and communicate to each other the necessary documents and information for the exercise of the supervision.

#### **6.2 The health assurance scheme** (Article 54.2 of the Third Non-life Directive)

The authorities of the Member State of the branch or of provision of services communicate sickness tables and any other relevant statistical data on the health insurance contracts as referred to in Article 54.2 of the Third Non-life Directive.

#### **6.3 Out-of-court settlement of complaints by policyholders** (Article 31.1, second indent of the Third Non-life Directive; Article 31.1 of the Third Life Directive)

##### **6.3.1 Competent bodies**

The complaints bodies, notified to the policyholder in accordance with Article 31 of the Third Non-Life Directive and Annex II of the Third Life Directive, are responsible for dealing with policyholders' complaints.

##### **6.3.2 Information**

At the request of a supervisory authority, an authority from another Member State gives all the necessary information regarding the out-of-court handling of complaints, indicating in particular whether these complaints are being addressed with by a professional mediation body or by a body which is part of an administration.

The supervisory authorities communicate to the Conference Secretariat the names and addresses of the competent bodies for dealing with complaints. The Secretariat circulates the list to all the delegations.

##### **6.3.3 Collaboration**

The supervisory authorities or competent bodies of the Member States, within the meaning of paragraph 6.3.1, collaborate as necessary on the out-of-court settlement of complaints, particularly where the Member State of the law applicable to the contract, the home Member State of the undertaking and the Member State of the risk or commitment are not the same.

In particular, where the law of a third Member State is applicable, the competent authority of the State where the policyholder resides shall make every effort to facilitate communication between the competent authority of the third Member State and the policyholder.

The supervisory authorities collaborate if a third party having suffered a loss complains that liability claims which he has against an insurance undertaking not operating in his State of residence are not dealt with or settled properly.

The supervisory authorities of the host State could, when able to do so, deal with complaints addressed to them and inform the supervisory authorities of the home State of cases that might be of interest to them.

Should the authorities involved learn, from dealing with complaints, of any breach by the undertaking of the laws and regulations of the host State or of any other anomalies that could prejudice the interests of policyholders, they should where appropriate inform the supervisory authority of the home State thereof.

#### **6.4 Collaboration on maximum interest rates** (Article 17 of the First Life Directive, replaced by Article 18 of the Third Life Directive)

##### **6.4.1 Interest rate ceiling.**

The supervisory authorities of the Member States which set a ceiling to interest rates under point i of Article 17.1.B a) of the First Life Directive for contracts expressed in a currency of another Member State, do so on the basis of the highest of the rates, either on issue, or on the secondary market, for Government debenture loans issued by the State whose currency is involved.

The supervisory authorities which set a ceiling to interest rates under point i of Article 17.1.B a) of the First Life Directive for contracts expressed in a currency of another Member State consult the authorities of the latter State. The authorities consulted indicate the maximum rates fixed if appropriate in their own currency and the method of determining such rates.

##### **6.4.2 Notification of the method of establishing maximum interest rates**

Each supervisory authority informs the other supervisory authorities, at least once a year and in cases of change, of the method of establishing the maximum interest rates applied in its country, per currency if appropriate. It states on that occasion whether it has applied the exemptions provided for in point c of Article 17.1.B of the First Life Directive.

##### **6.4.3 Provision of information on the level of the prudential margin and maximum rate**

Member States which set a ceiling to interest rates by applying the provisions of point (ii) of Article 17.1.B a) of the First Life Directive inform the other Member States concerned, for each currency and according to the time intervals laid down in paragraph 6.4.2:

- of the level of the prudential margin applied on the yield from the assets in question;
- of the level of the maximum rate applied on the yield from future assets.

#### **6.5 Co-operation in connection with the cross-border activity of undertakings mentioned in Article 3 of the First Directives**

The supervisory authorities of the home Member State and of the host Member State may collaborate for the application of the Treaty rules when one of the undertakings of a Member State, mentioned in Article 3 of the First Directives, intends to engage in crossborder business either by establishing a branch or under the freedom to provide services. In particular, and where applicable, said authorities shall exchange all the necessary information on the planned conditions for the pursuit of business for said undertaking in the home Member State or the host Member State. They may collaborate in order to determine the supervisory dispositions that may apply to them for the pursuit of said business, in the light of the principles of Community law.



**PART VII**  
**FINAL PROVISIONS**

**7.1 List of previous protocols now repealed**

On the date of entry into force of the present Protocol, the following Protocols on the application of the co-ordination Directives and their codicils are repealed :

- Protocol of 30 May 1974 on the collaboration of the supervisory authorities on the application of the first Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance No. 73/239/EEC of 24 July 1973
- Protocol of 5 December 1980 on the collaboration of the supervisory authorities on the application of the first Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance No. 79/267/EEC of 5 March 1979
- Protocol of 27 April 1990 on the collaboration of the supervisory authorities of the countries of the European Economic Community on the application of the second Directive No. 88/357/EEC of 22 June 1988 on the co-ordination 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 of 24 July 1973
- Codicil of 29 December 1990 to the 1974 Protocol on the collaboration of the supervisory authorities of the countries of the European Economic Community on the application of Directive No. 73/239/EEC of 24 July 1973
- Protocol of 16 October 1991 on the collaboration of the supervisory authorities of the countries of the European Economic Community on the application of the second Directive No. 90/619/EEC of 8 November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC of 5 March 1979
- Codicil of 16 October 1991 to the 1980 protocol on the collaboration of the supervisory authorities of the countries of the European Economic Community on the application of Directive No. 79/267/EEC of 5 March 1979.

**7.2 List of the protocols in force**

At the date of coming into effect of the present protocol, the only protocols staying in force will be :

- Protocol of 3 June 1977 on taking hidden reserves into account in the solvency margin for the implementation of the first Directive 73/239/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance of 24 July 1973.
- Protocol of 5 December 1980 on taking hidden reserves into account in the solvency margin for the implementation of the first Directive 79/267/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance of 5 March 1979.

- Protocol of 5 December 1980 of the Second Working Party on collaboration of supervisory authorities for the application of the Directive 78/473/EEC of 30 May 1978 on Community coinsurance.
- Protocol of 13 April 1984 on the implicit elements of the solvency margin for the application of the first Directive 79/267/EEC of 5 March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance of the 5 March 1979.
- Protocol of 26 October 1995 on the collaboration of the supervisory authorities of the countries of the European Economic Area with a view to the application of directives concerning life assurance and non-life insurance, which appears in the addendum to the present Protocol.

### **7.3 The principle of permanent co-operation between supervisors**

This protocol is not intended on its own to represent the collaboration between the supervisory authorities. This collaboration is first of all based on permanent co-operation and working relations between supervisors. All the provisions designed to develop this state of mind must be encouraged, in particular the exchanges of supervisors, at the request of a supervisory authority.

### **7.4 Transitional periods**

During the transitional period referred to in Articles 50.1. b) of the Third Non-life Directive and 46.2. b) of the Third Life Directive, as regards the supervision of technical provisions in Greece, and without prejudice to the documentation which the supervisory authorities of that Member State may request directly from branches established on its territory, the authority of the home Member State shall collaborate with the Greek authority by supplying it, at its request, the information necessary to carry out such supervision.

In order to verify compliance with the financial rules applicable, the Greek authority may carry out an on-the-spot investigation when this appears appropriate, after informing the authority of the home Member State accordingly.

In the case of operations carried on by way of freedom to provide services, and in order to permit the Greek supervisory authority to carry out its supervision, the activities of the supervisory authorities shall comply with the exchanges of information and collaboration provided for in Articles 3.1221 of the Protocols on the collaboration of the supervisory authorities for the application of the Second Life and Non-life Directives. These two Articles are retained in force during the transitional period referred to above.

Furthermore, in the cases referred to in Articles 50.2.a) and 46.2.a) of the Third Non-life and Life Directives, the supervisory authority of Greece may request the communication of the general and special conditions of the insurance policies in the files referred to in paragraphs 2.2.1 and 2.3.1 of the present Protocol on collaboration.

### **7.5 Report on the application of the protocol**

A report on the application of the present Protocol will be made at regular intervals at the level of the Plenary Conference, which will be able to decide on updating, if appropriate.