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NOTE

from:	Council Secretariat
to:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC and Directives 98/78/EC and 2002/83/EC - Presidency Compromise Text

Delegations will find attached the updated draft compromise text from the Presidency.

TITLE I – SCOPE AND DEFINITIONS

Article 1 – Scope

1. This Directive lays down rules for the taking up and pursuit of the self-employed activity of reinsurance carried on by reinsurance undertakings, which conduct only reinsurance activities, and which are established in a Member State or wish to become established therein.

2. This Directive shall not apply to the following:
   a) insurance undertakings to which Directives 73/239/EEC and 2002/83/EC apply;
   b) activities and bodies referred to in Articles 2 and 3 of Directive 73/239/EEC;
   c) activities and bodies referred to in Article 3 of Directive 2002/83/EC;
   d) the activity of reinsurance conducted or fully guaranteed by the government of a Member State when this is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort including in circumstances where such a role is required by a situation in the market in which it is unfeasible to obtain adequate[1] commercial cover.

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[1] After recital 12, a new recital 12a) is proposed with the following text:
"This Directive should not apply to the provision of reinsurance cover carried out or fully guaranteed by a Member State for reasons of substantial public interest, in the capacity of reinsurer of last resort, in particular where because of a specific situation in a market, it is unfeasible to obtain adequate commercial cover; in this regard "adequate commercial cover" should mainly mean a market failure which is characterised by an evident lack of a sufficient range of insurance offers, excessive premiums should not however imply in itself inadequacy of that commercial cover. Article 1, paragraph 2, (d) does also apply to arrangements between insurance undertakings to which Directives 73/239/EEC and 2002/83/EC apply that aim to pool financial claims ensuing from large risks such as terrorism."

Article 2 – Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) reinsurance means the activity consisting in accepting risks ceded by an insurance undertaking, or by another reinsurance undertaking.

In the case of the association of underwriters known as Lloyd's, reinsurance also means the activity consisting in an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's accepting risks ceded by any member of Lloyd's.

(aa) captive reinsurance undertaking means a reinsurance undertaking owned either- by a financial undertaking other than an insurance undertaking or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which Directive 98/78/EC applies, or by a non financial undertaking, the purpose of which is to provide reinsurance cover exclusively to the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive reinsurance undertaking makes part.[2]

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[2] Proposed new recital 11:
" This Directive should apply to reinsurance undertakings which conduct exclusively reinsurance business and do not engage in direct insurance business; it should also apply to the so-called "captive" reinsurance undertakings created or owned by either a financial undertaking other than an insurance or reinsurance undertaking or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which Directive 98/78/EC of the European Parliament and of the Council on the supplementary supervision of insurance undertakings in an insurance group applies, or by one or several non financial undertakings, the purpose of which is to provide reinsurance cover exclusively to the risks of the undertakings to which they belong. When in the Directive reference is made to reinsurance undertakings it shall include captive reinsurance undertakings, except when special provision is made for captive reinsurance undertakings.
Captive reinsurance undertakings do not cover risks deriving from the external direct insurance or reinsurance business of an insurance undertaking or reinsurance undertaking belonging to the group. Furthermore, insurance undertakings or reinsurance undertakings belonging to a financial conglomerate may not own a captive."

(b) reinsurance undertaking means an undertaking which has received official authorisation in accordance with Article 3;

(c) branch means an agency or a branch of a reinsurance undertaking;

(d) establishment means the head office or branch of a reinsurance undertaking, account being taken of point c);

(e) home Member State means the Member State in which the head office of the reinsurance undertaking is situated;

(f) Member State of the branch means the Member State in which the branch of a reinsurance undertaking is situated;

(g) host Member State means the Member State in which a reinsurance undertaking has a branch or provides services.

(h) control means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Council Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(i) qualifying holding means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which a holding subsists;

(j) parent undertaking means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(k) subsidiary means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(l) competent authorities means the national authorities which are empowered by law or regulation to supervise reinsurance undertakings;

(m) close links means a situation in which two or more natural or legal persons are linked by:

(i) *participation*, which shall mean the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or

(ii) *control,* in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC or a similar relationship between any natural or legal person and an undertaking;

(n) financial undertaking means one of the following entities:

(i) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 1(5) and (23) of Directive 2000/12/EC;

(ii) an investment firm or a financial institution within the meaning of Article 4(1), 1 of Directive 2004/39/EEC;

(iii) a mixed financial holding company within the meaning of Article 2(15) of directive 2002/87/EC.

(nn) special purpose vehicle means a legal entity, other than an existing insurance or reinsurance entity, that assumes risks from insurers and/or reinsurers and which fully funds its exposures to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the reinsurance obligations of such legal entity.

(nnn) finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, cannot significantly exceed the premium over the lifetime of the contract, together with at least one of the following two features:

(i) explicit and material consideration of the time value of money;

(ii) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

2. For the purposes of paragraph 1 (a), the provision of cover by a reinsurance undertaking to an institution for occupational retirement provision falling under the scope of Directive 2003/41/EC of the European Parliament and of the Council, where the latter's Home Member State has allowed it, shall also be considered as an activity falling under the scope of this Directive.

For the purposes of paragraph 1(c) any permanent presence of a reinsurance 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.

For the purposes of paragraph 1(i), and in the context of Articles 12, 19 to 23 and of the other levels of holding referred to in Articles 19 to 23, the voting rights referred to in Article 92 of Directive 2001/34/EC shall be taken into account.

For the purposes of paragraph 1(k), any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the undertaking which is those undertakings' ultimate parent undertaking.

For the purposes of paragraph 1(m), any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

For the purposes of paragraph 1(m) a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

3. Wherever this Directive refers to the euro, the conversion value in national currency to be adopted shall, as from 31 December of each year, be that of the last day of the preceding month of October for which euro conversion values are available in all the Community currencies.

TITLE II – THE TAKING-UP OF THE BUSINESS OF REINSURANCE
AUTHORISATION OF THE REINSURANCE UNDERTAKING

Article 3 – Principle of authorisation

The taking up of the business of reinsurance shall be subject to prior official authorisation.
Such authorisation shall be sought from the competent authorities of the home Member State by:
(a) any reinsurance undertaking which establishes its head office in the territory of that State;
(b) any reinsurance undertaking which, having received the authorisation, extends its business to other reinsurance activities than those already authorised.

Article 4 – Scope of authorisation

1. An authorisation pursuant to Article 3 shall be valid for the entire Community. It shall permit a reinsurance undertaking to carry on business there, under either the right of establishment or the freedom to provide services.

2. Authorisation shall be granted for non-life reinsurance activities, life reassurance activities or all kinds of reinsurance activities, according to the request made by the applicant.
It shall be considered in the light of the scheme of operations to be submitted pursuant Articles 6(b) and 11 and the fulfilment of the conditions laid down for authorisation by the Member State from which the authorisation is sought.

Article 5 – Form of the reinsurance undertaking

1. The home Member State shall require every reinsurance undertaking for which authorisation is sought to adopt one of the forms set out in Annex I.
   A reinsurance undertaking may also adopt the form of a European Company (SE) as defined in Council Regulation (EC) No 2157/2001.

2. Member States may, where appropriate, set up undertakings in any public-law form provided that such bodies have as their objects reinsurance operations under conditions equivalent to those under which private-law undertakings operate.

Article 6 – Conditions

The home Member State shall require every reinsurance undertaking for which authorisation is sought to:

a) limit its objects to the business of reinsurance and related operations; this requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2 point 8 of Directive 2002/87/EC; [3]
b) submit a scheme of operations in accordance with Article 11;
c) possess the minimum guarantee fund provided for in Article 40(2);
d) be effectively run by persons of good repute with appropriate professional qualifications or experience.

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[3] Proposed new recital:
"The reinsurance undertaking must limit its objects to the business of reinsurance and related operations. This requirement may allow a reinsurance undertaking to carry on, for instance, activities such as provision of statistical or actuarial advice, risk analysis or research for is clients. It may also include a holding company function and activities with respect to financial sector activities within the meaning of Article 2 point 8 of Directive 20002/87/EC. In any case this requirement does not allow the carrying out of unrelated banking and financial activities."

Article 7 – Close links

1. Where close links exist between the reinsurance undertaking and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

   The competent authorities shall refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the reinsurance undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

2. The competent authorities shall require reinsurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in paragraph 1 on a continuous basis.

Article 8 – Head office of the reinsurance undertaking

Member States shall require that the head offices of reinsurance undertakings be situated in the same Member State as their registered offices

Article 9 – Policy conditions and scales of premiums

1. This Directive shall not prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

2. However, Member States may not, however, adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums and forms and other printed documents which a reinsurance undertaking intends to use in its dealings with ceding or retro-ceding undertakings.

Article 10 - Economic requirements of the market

Member States may not require that any application for authorisation be considered in the light of the economic requirements of the market.

Article 11 – Scheme of operations

1. The scheme of operations referred to in Article 6(b) shall include particulars or evidence of:

   (a) the nature of the risks which the reinsurance undertaking proposes to cover;
   (b) the kinds of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
   (c) the guiding principles as to retrocession;
   (d) the items constituting the minimum guarantee fund;
   (e) estimates of the costs of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs.

2. In addition to the requirements in paragraph 1, the scheme of operations shall for the first three financial years contain:

   (a) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
   (b) estimates of premiums or contributions and claims;
   (c) a forecast balance sheet;
   (d) estimates of the financial resources intended to cover underwriting liabilities and the solvency margin.

Article 12 – Shareholders and members with qualifying holdings

The competent authorities of the home Member State shall not grant an undertaking authorisation to take up the business of reinsurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The same authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a reinsurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

Article 13 - Refusal of authorisation

Any decision to refuse an authorisation shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts, pursuant to Article 53, should there be any refusal.

Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorisation upon the expiry of a period of six months from the date of its receipt.

Article 14 - Prior consultation with the competent authorities of other Member States

1. The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to a reinsurance undertaking, which is:

   (a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State; or
   (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State; or
   (c) controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.

2. The competent authority of a Member State involved, who is responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to a reinsurance undertaking which is:

   (a) a subsidiary of a credit institution or investment firm authorised in the Community; or
   (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
   (c) controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

TITLE III – CONDITIONS GOVERNING THE BUSINESS OF REINSURANCE

Chapter 1 – Principles and methods of financial supervision

SECTION 1- COMPETENT AUTHORITIES AND GENERAL RULES

Article 15 – Competent authorities and object of supervision

1. The financial supervision of a reinsurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.

   If the competent authorities of the host Member State have reason to consider that the activities of a reinsurance undertaking might affect its financial soundness, they shall inform the competent authorities of the reinsurance undertaking's home Member State. The latter authorities shall determine whether the reinsurance undertaking is complying with the prudential rules laid down in this Directive.

2. The financial supervision pursuant to paragraph 1 shall include verification, with respect to the reinsurance undertaking's entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Community level.

3. The Home Member State of the reinsurance undertaking shall not refuse a retrocession contract concluded by the reinsurance undertaking with a reinsurance undertaking authorised in accordance with this Directive or an insurance undertaking authorised in accordance with Directives 73/239/EEC or 2002/83/EC on the grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.

4. The competent authorities of the home Member State shall require every reinsurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.

Article 16 – Supervision of branches established in another Member State

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

Article 17 – Accounting, prudential and statistical information: Supervisory powers

1. Each Member State shall require every reinsurance undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation and of its solvency.

2. Member States shall require reinsurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

3. Every Member State shall take all steps necessary to ensure that the competent authorities have the powers and means necessary for the supervision of the business of reinsurance undertakings with head offices within their territories, including business carried on outside those territories,

In particular, the competent authorities must be enabled to:

(a) make detailed enquiries regarding an reinsurance undertaking's situation and the whole of its business, inter alia, by gathering information or requiring the submission of documents concerning its reinsurance and retrocession business, and by carrying out on-the-spot investigations at the reinsurance undertaking's premises;

(b) take any measures with regard to a reinsurance undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that that reinsurance undertaking's business continues to comply with the laws, regulations and administrative provisions with which the reinsurance undertaking must comply in each Member State;

(c) ensure that those measures are carried out, if need be by enforcement and where appropriate through judicial channels.

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

Article 18 – Transfer of portfolio [4]

Under the conditions laid down by national law, each Member State shall authorise reinsurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, including those concluded either under the right of establishment or the freedom to provide services, to an accepting office established within the Community, if the competent authorities of the home Member State of the accepting office certify that, after taking the transfer into account, the latter possesses the necessary solvency margin referred to in Chapter 3.

SECTION 2- QUALIFYING HOLDINGS

Article 19 – Acquisitions

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

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4 New proposed recital: "The provisions of transfers of portfolios should be in line with the single authorisation provided for in this Directive. The provisions of transfers of portfolios should apply to different kinds of transfers of portfolios between reinsurance undertakings, such as transfers of portfolios resulting from mergers between reinsurance undertakings or other instruments of company law or transfers of portfolios of outstanding losses in run-off to another reinsurance undertaking. Moreover, the provisions of transfers of portfolios should include provisions specifically concerning the transfer to another reinsurance undertaking of the portfolio of contracts concluded under the freedom of establishment or the freedom to provide services."

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

Article 20 – Acquisitions by financial undertakings

If the acquirer of the holdings referred to in Article 19 is an insurance undertaking, a reinsurance undertaking, a credit institution or an investment firm authorised in another Member State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to the prior consultation referred to in Article 14.

Article 21 - Disposals

Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in a reinsurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his intended holding.
Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital he holds would fall below 20%, 33% or 50% or so that the reinsurance undertaking would cease to be his subsidiary.

Article 22 – Information to the competent authority by the reinsurance undertaking

On becoming aware of them, reinsurance undertakings shall inform the competent authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below any of the thresholds referred to in Articles 19 and 21.
They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

Article 23 – Qualifying holdings: Powers of the competent authority

Member States shall require that, where the influence exercised by the persons referred to in Article 19 is likely to operate against the prudent and sound management of a reinsurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information imposed pursuant to Article 19. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

SECTION 3 – PROFESSIONAL SECRECY AND EXCHANGES OF INFORMATION

Article 24 – Obligation

1. Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors and experts acting on behalf of the competent authorities, are bound by an obligation of professional secrecy

   Pursuant to that obligation no confidential information which they may receive while performing their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual reinsurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

2. However, where a reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

Article 25 – Exchange of information between competent authorities of Member States

Article 24 shall not prevent the competent authorities of different Member States from exchanging information in accordance with the directives applicable to reinsurance undertakings. Such information shall be subject to the conditions of professional secrecy laid down in Article 24.

Article 26 – Co-operation agreements with third countries

Member States may conclude co-operation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 28, paragraphs 1 and 2 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Section. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 27 – Use of confidential information

Competent authorities receiving confidential information under Articles 24 and 25 may use it only in the course of their duties:

(a) To check that the conditions governing the taking up of the business of reinsurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms,
(b) to impose sanctions,
(c) in administrative appeals against decisions of the competent authorities, or
(d) in court proceedings initiated under Article 53 or under special provisions provided for in this Directive and other Directives adopted in the field of insurance and reinsurance undertakings.

Article 28 – Exchange of information with other authorities

1. Articles 24-27 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

   (a) Authorities responsible for the official supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets,
   (b) Bodies involved in the liquidation and bankruptcy of insurance and reinsurance undertakings and in other similar procedures, and
   (c) Persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions,

   in the discharge of their supervisory functions, or the disclosure to bodies which administer compulsory winding-up proceedings or guarantee funds of information necessary to the performance of their duties. The information received by those authorities, bodies and persons shall be subject to the conditions of professional secrecy laid down in Article 24.

2. Notwithstanding Articles 24-27, Member States may authorise exchanges of information between the competent authorities and:

   (a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance or reinsurance undertakings and other similar procedures, or
   (b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance or reinsurance undertakings, credit institutions, investment firms and other financial institutions, or
   (c) independent actuaries of insurance or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

(a) this exchange of information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph;
(b) information received in this context shall be subject to the conditions of professional secrecy imposed in Article 24;
(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, may only be disclosed for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to this paragraph.

3. Notwithstanding Articles 24-27, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

(a) the information shall be for the purpose of performing the task referred to in the first subparagraph;
(b) information received in this context shall be subject to the conditions of professional secrecy imposed in Article 24;
(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Article 29 – Transmission of information to central banks and monetary authorities

This Section shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities, and where appropriate, to other public authorities responsible for overseeing payment systems, information intended for the performance of their task. Nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of Article 27.

Information received in this context shall be subject to the conditions of professional secrecy imposed in this Section.

Article 30 - Disclosure of information to government administrations responsible for financial legislation

Notwithstanding Articles 24 and 27, Member States may, under provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Articles 25 and 28 (1) and that obtained by means of the on-the-spot verification referred to in Article 16 may never be disclosed in the cases referred to in this article except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

SECTION 4 – DUTIES OF AUDITORS

Article 31 – Duties of auditors

1. Member States shall provide at least that any person authorised in accordance with Council Directive 84/253/EEC, performing in a reinsurance undertaking the task described in Article 51 of Council Directive 78/660/EEC, Article 37 of Council Directive 83/349/EEC or Article 31 of Council Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:

   (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance or reinsurance undertakings, or
   (b) affect the continuous functioning of the reinsurance undertaking, or
   (c) lead to refusal to certify the accounts or to the expression of reservations;

That person shall also have a duty to report any facts and decisions of which he/she becomes aware in the course of carrying out a task as described in the first subparagraph in an undertaking having close links resulting from a control relationship with the reinsurance undertaking within which he/she is carrying out the abovementioned task.

2. The disclosure to the competent authorities, by persons authorised in accordance with Directive 84/253/EEC, of any relevant fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

Chapter 2 – Rules relating to technical provisions

Article 32 – Establishment of technical provisions

1. The home Member State shall require every reinsurance undertaking to establish adequate technical provisions in respect of its entire business.

The amount of such technical provisions shall be determined in accordance with the rules laid down in Directive 91/674/EEC. Where applicable the home Member State may lay down more specific rules in accordance with Article 20 of Directive 2002/83/EC.

2. Member States shall not retain or introduce a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsurer is a reinsurance undertaking authorised in accordance with this Directive or an insurance undertaking authorised in accordance with Directives 73/239/EEC or 2002/83/EC.

3. When the home Member State allows any technical provisions to be covered by claims against reinsurers who are not authorised in accordance with this Directive or insurance undertakings which are not authorised in accordance with Directives 73/239/EEC or 2002/83/EC, it shall set the conditions for accepting such claims.

Article 33 – Equalization reserves

1. The home Member State shall require every reinsurance undertaking which reinsures risks included in class 14 in point A of the Annex to Directive 73/239/EEC to set up an equalization reserve for the purpose of offsetting any technical deficit or above-average claims ratio arising in that class in any financial year.

2. The equalization reserve for credit reinsurance shall be calculated in accordance with the rules laid down by the home Member State in accordance with one of the four methods set out in point D of the Annex to Directive 73/239/EEC, which shall be regarded as equivalent.

3. The home Member State may exempt reinsurance undertakings from the obligation to set up equalization reserves for reinsurance of credit insurance business where the premiums or contributions receivable in respect of reinsurance of credit insurance are less than 4% of the total premiums or contributions receivable by them and less than EUR 2 500 000.

4. The home Member State may require every reinsurance undertaking to set up equalization reserves for classes of risks other than credit reinsurance. The equalization reserves shall be calculated according to the rules laid down by the home Member State.

Article 34 – Assets covering technical provisions

1. The Home Member State shall require of every reinsurance undertaking to invest the assets covering the technical provisions and the equalization reserve referred to in Article 33 in accordance with the following rules:

(a) the assets shall take account of the type of business carried out by a reinsurance undertaking, in particular the nature, the amount and the duration of the expected claims payments, in such a way as to secure sufficiency, liquidity, security, quality, profitability and matching of its investments;

(b) the reinsurance undertaking shall ensure that the assets are diversified and adequately spread and give the undertaking the possibilities to respond adequately to changing economic circumstances, in particular developments in the financial markets and real estate markets or large impact catastrophic events. The undertaking has to asses the impact of irregular market circumstances on its assets and has to diversify the assets in such a way that it reduces this impact;

(c) investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;

(d) investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the institution's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;

(e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the institution to excessive risk concentration;

Member States may decide not to apply the requirements referred to in point (e) to investment in government bonds.

2. Member States shall not require reinsurance undertakings located in their territory to invest in particular categories of assets.

3. Member States shall not subject the investment decisions of a reinsurance undertaking located in their territory or its investment manager to any kind of prior approval or systematic notification requirements.

4. Notwithstanding the provisions of paragraphs 1 to 3, the Home Member State may, for the reinsurance undertakings located in their territories, lay down the following quantitative rules, provided they are prudentially justified:

(a) investments of gross technical provisions in currencies other than those in which technical provisions are set should be limited to 30%;
(b) investments of gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities which are not admitted to trading on a regulated market should be limited to 30%;
(c) the home Member State may require every reinsurance undertaking to invest no more than 5% of its gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money and capital market instruments from the same undertaking and no more than 10% of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money and capital market instruments from the undertakings part of the same group..

Chapter 3 – Rules relating to the solvency margin and to the guarantee fund

SECTION 1 – AVAILABLE SOLVENCY MARGIN

Article 35 – General rule

Each Member State shall require of every reinsurance undertaking whose head office is situated in its territory an adequate available solvency margin in respect of its entire business at all times, which is at least equal to the requirements in this Directive.

Article 36 – Eligible items

1. The available solvency margin shall consist of the assets of the reinsurance undertaking free of any foreseeable liabilities, less any intangible items, including:

   (a) the paid-up share capital or, in the case of a mutual reinsurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

      (i) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the available solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

      (ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

      (iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);

   (b) statutory and free reserves not corresponding to underwriting liabilities or classified as equalization reserves;

   (c) the profit or loss brought forward after deduction of dividends to be paid.

2. The available solvency margin shall be reduced by the amount of own shares directly held by the reinsurance undertaking.

For those reinsurance undertakings which discount or reduce their non-life technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of Directive 91/674/EEC, the available solvency margin shall be reduced by the difference between the undiscounted technical provisions or technical provisions before deductions as disclosed in the notes on the accounts, and the discounted or technical provisions after deductions. This adjustment shall be made for all risks listed in point A of the Annex to Directive 73/239/EEC, except for risks listed under classes 1 and 2 of that Annex. For classes other than 1 and 2 of that Annex, no adjustment need be made in respect of the discounting of annuities included in technical provisions.

In addition to the deductions in subparagraphs 1 and 2, the available solvency margin shall be reduced by the following items:

(a) participations which the reinsurance undertaking holds in the following entities:
   (i) insurance undertakings within the meaning of Article 6 of Directive 73/239/EEC, Article 4 of Directive 2002/83/EC, or Article 1(b) of Directive 98/78/EC,
   (ii) reinsurance undertakings within the meaning of Article 3 of this Directive or non-member-country reinsurance undertaking within the meaning of Article 1(l) of Directive 98/78/EC,
   (iii) insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,
   (iv) credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC,
   (v) investment firms and financial institutions within the meaning of Article 1(2) of Council Directive 93/22/EEC and of Article 2(4) and (7) of Council Directive 93/6/EEC;

(b) each of the following items which the reinsurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:

(i) instruments referred to in paragraph 4,

(ii) instruments referred to in Article 27(3) of Directive 2002/83/EC,

(iii) subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to under (a) and (b) of the fourth subparagraph.

As an alternative to the deduction of the items referred to in (a) and (b) of the fourth subparagraph which the reinsurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their reinsurance undertakings to apply mutatis mutandis methods 1, 2, or 3 of Annex I to Directive 2002/87/EC. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, reinsurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the fourth subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.

3. The available solvency margin may also consist of:

(a) cumulative preferential share capital and subordinated loan capital up to 50 % of the available solvency margin or the required solvency margin, whichever is the smaller, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided in the event of the bankruptcy or liquidation of the reinsurance undertaking, binding agreements exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

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

(ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the reinsurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing reinsurance undertaking and its available solvency margin will not fall below the required level;

(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the reinsurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the reinsurance undertaking's available solvency margin will not fall below the required level;

(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the reinsurance undertaking, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the available solvency margin or the required solvency margin, whichever is the smaller, for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the reinsurance undertaking to defer the payment of interest on the loan;

(iii) the lender's claims on the reinsurance undertaking must rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the reinsurance undertaking to continue its business;

(v) only fully paid-up amounts may be taken into account.

4. Upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of:

(a) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the available solvency margin or the required solvency margin, whichever is the smaller;

(b) in the case of non-life mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50 % of the available solvency margin or the required solvency margin, whichever is the smaller. The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;

(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature.

5. In addition, with respect to life reinsurance activities, the available solvency margin may, upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, consist of:

(a) until 31 December 2009 an amount equal to 50 % of the undertaking's future profits, but not exceeding 25 % of the available solvency margin or the required solvency margin, whichever is the smaller; the amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies; the factor used may not exceed six; the estimated annual profit shall not exceed the arithmetical average of the profits made over the last five financial years in the activities listed in Article 2(1) of Directive 2002/83/EC.

Competent authorities may only agree to include such an amount for the available solvency margin:

(i) when an actuarial report is submitted to the competent authorities substantiating the likelihood of emergence of these profits in the future; and

(ii) in so far as that part of future profits emerging from hidden net reserves referred to in paragraph 4 (c) has not already been taken into account;

(b) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium; this figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical provisions for all policies for which Zillmerising is possible; the difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.

6. Amendments to paragraphs 1 to 5 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin, shall be adopted in accordance with the procedure laid down in Article 55(2) of this Directive.

SECTION 2- REQUIRED SOLVENCY MARGIN

Article 37 – Required solvency margin for non-life reinsurance activities

1. The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

   In the case, however, of reinsurance undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.

2. Subject to Article 40, the amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4.

3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

   Premiums or contributions in respect of the classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC shall be increased by 50%.

   Premiums or contributions in respect of classes other than 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, may be enhanced up to 50%, for specific reinsurance activities or contract types, in order to take account of the specificities of these activities or contracts, in accordance with the procedure referred to in Article 55(2) of this Directive. The premiums or contributions, inclusive of charges ancillary to premiums or contributions, due in respect of reinsurance business in the last financial year shall be aggregated.

   From this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

   The amount so obtained shall be divided into two portions, the first portion extending up to EUR 50 million, the second comprising the excess; 18% and 16% of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the reinsurance undertaking after deduction of amounts recoverable under retrocession and the gross amount of claims; this ratio may in no case be less than 50%.

With the approval of the competent authorities, statistical methods may be used to allocate the premiums or contributions.

4. The claims basis shall be calculated, as follows, using in respect of the classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, claims, provisions and recoveries increased by 50%.

Claims provisions and recoveries in respect of classes other than 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, may be enhanced up to 50%, for specific reinsurance activities or contract types, in order to take account of the specificities of these activities or contracts, in accordance with the procedure referred to in Article 55(2) of this Directive.

The amounts of claims paid, without any deduction of claims borne by retrocessionaires, in the periods specified in paragraph 1 shall be aggregated.
To this sum there shall be added the amount of provisions for claims outstanding established at the end of the last financial year.

From this sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts. If the period of reference established in paragraph 1 equals seven years, the amount of provisions for claims outstanding established at the commencement of the sixth financial year preceding the last financial year for which there are accounts shall be deducted.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in paragraph 1, shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under retrocession and the gross amount of claims; this ratio may in no case be less than 50***%.***

With the approval of the competent authorities, statistical methods may be used to allocate claims, provisions and recoveries.

5. If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least equal to the required solvency margin of the year before multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of retrocession but the ratio may in no case be higher than 1.

6. The fractions applicable to the portions referred to in the sixth subparagraph of paragraph 3 and the sixth subparagraph of paragraph 4 shall each be reduced to a third in the case of reinsurance of health insurance practised on a similar technical basis to that of life assurance, if

(a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;
(b) a provision is set up for increasing age;
(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;

(d) the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;

(e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

Article 38 – Required solvency margin for life reassurance activities

1. The required solvency margin for life reassurance activities shall be determined according to Article 37 of this Directive.

2. Notwithstanding paragraph 1, the Home Member State may provide that for reinsurance classes of assurance business covered by Article 2(1)(a) of Directive 2002/83/EC linked to investment funds or participating contracts and for the operations referred to in Article 2(1)(b), 2(2)(b), (c), (d) and (e) of Directive 2002/83/EC the required solvency margin shall be determined in accordance with Article 28 of Directive 2002/83/EC.

Article 39 – Required solvency margin for a reinsurance undertaking conducting simultaneously non-life and life reinsurance

1. The home Member State shall require that every reinsurance undertaking conducting both non-life reinsurance and life reinsurance business shall have an available solvency margin to cover the total sum of required solvency margins in respect of both non-life and life reinsurance activities which shall be determined in accordance with Articles 37 and 38 respectively.

2. If the available solvency margin does not reach the level required in paragraph 1, the competent authorities shall apply the measures provided for in Articles 42 and 43.

SECTION 3 – GUARANTEE FUND

Article 40 – Amount of the guarantee fund

1. One third of the required solvency margin as specified in Articles 37 to 39 shall constitute the guarantee fund. This fund shall consist of the items listed in Article 36(1) to (3) and, with the agreement of the competent authority of the home Member State, (4)(c).

2. The guarantee fund may not be less than a minimum of EUR 3 million.

   Any Member State may provide that as regards captive reinsurance undertakings, the minimum guarantee fund be not less than EUR 1 million.

Article 41 – Review of the amount of the guarantee fund

1. The amounts in euro as laid down in Article 40(2) shall be reviewed annually starting [*date of implementation laid down in Article 61(1)]* in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

   The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of this Directive and the review date and rounded up to a multiple of EUR 100 000.

   If the percentage change since the last adaptation is less than 5%, no adaptation shall take place.

2. The Commission shall inform annually the European Parliament and the Council of the review and the adapted amounts referred to in paragraph 1.

Chapter 4 – Reinsurance undertakings in difficulty or in an irregular situation and withdrawal of authorisation

Article 42 – Reinsurance undertakings in difficulty

1. If a reinsurance undertaking does not comply with Article 32, the competent authority of its home Member State may prohibit the free disposal of its assets after having communicated its intention to the competent authorities of the host Member States.

2. For the purposes of restoring the financial situation of a reinsurance undertaking the solvency margin of which has fallen below the minimum required under Articles 37, 38 and 39, the competent authority of the home Member State shall require that a plan for the restoration of a sound financial situation be submitted for its approval.

   In exceptional circumstances, if the competent authority is of the opinion that the financial situation of the reinsurance undertaking will deteriorate further, it may also restrict or prohibit the free disposal of the reinsurance undertaking's assets. It shall inform the authorities of other Member States within the territories of which the reinsurance undertaking carries on business of any measures it has taken and the latter shall, at the request of the former, take the same measures.

3. If the solvency margin falls below the guarantee fund as defined in Article 40, the competent authority of the home Member State shall require the reinsurance undertaking to submit a short-term finance scheme for its approval.
   It may also restrict or prohibit the free disposal of the reinsurance undertaking's assets. It shall inform the authorities of all other Member States and the latter shall, at the request of the former, take the same measures.

4. Each Member State shall take the measures necessary to be able, in accordance with its national law, to prohibit the free disposal of assets located within its territory at the request, in the cases provided for in paragraphs 1, 2 and 3, of the reinsurance undertaking's home Member State, which shall designate the assets to be covered by such measures.

Article 43 – Financial recovery plan

1. Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those reinsurance undertakings where competent authorities consider that their obligations arising out of reinsurance contracts are threatened.

2. The financial recovery plan must, as a minimum, include particulars or proof concerning for the next three financial years:

   (a) estimates of management expenses, in particular current general expenses and commissions;
   (b) a plan setting out detailed estimates of income and expenditure in respect of reinsurance acceptances and reinsurance cessions;
   (c) a forecast balance sheet;
   (d) estimates of the financial resources intended to cover underwriting liabilities and the required solvency margin;
   (e) the overall retrocession policy.

3. Where the financial position of the reinsurance undertaking is deteriorating and the contractual obligations of the reinsurance undertaking are threatened, Member States shall ensure that the competent authorities have the power to oblige reinsurance undertakings to have a higher required solvency margin, in order to ensure that the reinsurance undertaking is able to fulfil the solvency requirements in the near future. The level of this higher required solvency margin shall be based on a financial recovery plan referred to in paragraph 1.

4. Member States shall ensure that the competent authorities have the power to revalue downwards all elements eligible for the available solvency margin, in particular, where there has been a significant change in the market value of these elements since the end of the last financial year.

5. Member States shall ensure that the competent authorities have the power to decrease the reduction, based on retrocession, to the solvency margin as determined in accordance with Articles 37,38 and 39 where:

(a) the nature or quality of retrocession contracts has changed significantly since the last financial year;
(b) there is no or an insignificant risk transfer under the retrocession contracts.

6. If the competent authorities have required a financial recovery plan for the reinsurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 18, as long as they consider that its obligations arising out of reinsurance contracts are threatened within the meaning of paragraph 1.

Article 44 – Withdrawal of authorisation

1. Authorisation granted to a reinsurance undertaking by the competent authority of its home Member State may be withdrawn by that authority if that undertaking:
(a) does not make use of that authorisation within 12 months, expressly renounces it or ceases to carry on business for more than 6 months, unless the Member State concerned has made provision for authorisation to lapse in such cases;
(b) no longer fulfils the conditions for admission;
(c) has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 42;
(d) fails seriously in its obligations under the regulations to which it is subject.

In the event of the withdrawal or lapse of authorisation, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly, and they shall take appropriate measures to prevent the reinsurance undertaking from commencing new operations within their territories, under either the right of establishment or the freedom to provide services.

2. Any decision to withdraw an authorisation shall be supported by precise reasons and communicated to the reinsurance undertaking in question.

TITLE IIIa – PROVISIONS RELATING TO FINITE REINSURANCE AND SPECIAL PURPOSE VEHICLES

Article 44a – Finite Reinsurance

1. The Home Member State shall require prior official authorisation for a reinsurance undertaking having its head office in its territory which intends to carry on finite reinsurance activities.

2. The Home Member State shall lay down the conditions under which these activities shall be carried on by a reinsurance undertaking. In particular, the Home Member State shall lay down rules regarding:
   - scope of authorisation; mandatory conditions for inclusion in all policies issued;
   - good repute and appropriate professional qualifications of persons running the reinsurance undertaking;
   - fit and proper requirements for shareholders or member s having a qualifying holding in that reinsurance undertaking;
   - sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements;
   - accounting, prudential and statistical information requirements;
   - the establishment of technical provisions to ensure that they are adequate reliable and objective;
   - investment of assets covering technical provisions in order to ensure that they take account of the type of business carried out by the reinsurance undertaking, in particular the nature, the amount and the duration of the expected claims payments, in such a way as to secure sufficiency, liquidity, security, profitability and matching of its assets;
   - rules relating to available solvency margin and the minimum guarantee fund that the reinsurance undertaking shall have in respect of finite reinsurance activities.

3. In the interests of transparency, Member States shall communicate the text of all measures laid down by their national law for the purposes of the preceding subparagraph, to the Commission without delay.

Article 44b – Special Purpose Vehicles (SPVs)[5]

1. The home Member State shall require prior official authorisation for a special purpose vehicle to be established in its territory.

2. The home Member State shall lay down the conditions under which these activities shall be carried on by a reinsurance undertaking. In particular, the Home Member State shall lay down rules regarding:
   - scope of authorisation; mandatory conditions for inclusion in all policies issued;
   - good repute and appropriate professional qualifications of persons running the reinsurance undertaking;
   - fit and proper requirements for shareholders or member s having a qualifying holding in that reinsurance undertaking;
   - sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements;
   - accounting, prudential and statistical information requirements;
   - rules relating to solvency requirements of special purpose vehicles.

3. In the interests of transparency, Member States shall communicate the text of all measures laid down by their national law for the purposes of the preceding subparagraph, to the Commission without delay.

[5] The Presidency will draft a text proposal on the reduction factor applicable to direct insurers dealing with special purpose vehicles.

TITLE IV – PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Article 45 – Reinsurance undertakings not complying with the legal provisions

1. If the competent authorities of the host Member State establish that a reinsurance undertaking with a branch or carrying on business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that State, they shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the competent authority of the home Member State.

   If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in infringing the legal provisions applicable to it in the host Member State, the latter may, after informing the competent authority of the home Member State, take appropriate measures to prevent or penalize further infringements, including in so far as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on reinsurance undertakings.

2. Any measure adopted under paragraph 1 involving penalties or restrictions on the conduct of reinsurance business must be properly reasoned and communicated to the reinsurance undertaking concerned.

Article 46 – Winding-up

In the event of a reinsurance undertaking being wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other reinsurance contracts.

TITLE V – REINSURANCE UNDERTAKINGS WHOSE HEAD OFFICES ARE OUTSIDE THE COMMUNITY AND CONDUCTING REINSURANCE ACTIVITIES IN THE COMMUNITY

Article 47 – Principle and conditions for conducting reinsurance business

A Member State shall not apply to reinsurance undertakings having their registered offices outside the Community and commencing or carrying out reinsurance activities in its territory, provisions which result in a more favourable treatment than that accorded to reinsurance undertakings having their head office in that Member State.

Article 48 – Agreements with third countries

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over:

   (a) reinsurance undertakings which have their head offices situated in a third country, and conduct reinsurance business in the Community,
   (b) reinsurance undertakings which have their head offices in the Community and conduct reinsurance business in the territory of a third country.

2. The agreements referred to in paragraph 1 shall in particular seek to ensure under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance. They shall also seek that:

   (a) the competent authorities of the Member States are able to obtain the information necessary for the supervision or reinsurance undertakings situated in the Community and conduct business in the territory of third countries concerned,
   (b) the competent authorities of third countries are able to obtain the information necessary for the supervision of reinsurance undertakings the head offices of which are situated within their territories and conduct business in the Community.

3. Without prejudice to Articles 300(1) and (2) of the Treaty establishing the European Community, the Commission, shall, with the assistance of the Insurance Committee examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

TITLE VI – SUBSIDIARIES OF PARENT UNDERTAKINGS GOVERNED BY THE LAWS OF A THIRD COUNTRY AND ACQUISITIONS OF HOLDINGS BY SUCH PARENT UNDERTAKINGS

Article 49 – Information from Member States to the Commission

The competent authorities of the Member States shall inform the Commission:

(a) of any authorisation of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of a third country.
(b) whenever such a parent undertaking acquires a holding in a Community reinsurance undertaking which would turn the latter into its subsidiary.

The Commission shall inform the Insurance Committee accordingly**.**

When authorisation is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.

Article 50 – Third country treatment of Community Reinsurance undertakings

1. Member States shall inform the Commission of any general difficulties encountered by their reinsurance undertakings in establishing themselves and operating in a third country or carrying on activities to a third country.

2. Periodically, the Commission shall draw up a report examining the treatment accorded to Community reinsurance undertakings in third countries, in the terms referred to in paragraph 3, as regards the establishment of Community reinsurance undertakings in third countries, the acquisition of holdings in third-country reinsurance undertakings, the carrying on of reinsurance activities by such established undertakings and the cross-border provision of reinsurance activities from the Community to third countries. The Commission shall submit those reports to the Council, together with any appropriate proposals or recommendations.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community reinsurance undertakings effective market access, the Commission may submit recommendations to the Council for the appropriate mandate for negotiation with a view to obtaining improved market access for Community reinsurance undertakings.

4. Measures taken under this Article shall comply with the Community's obligations under any international agreements, in particular in the World Trade Organisation.

TITLE VII
OTHER PROVISIONS

Article 51 – Rights acquired by existing reinsurance undertakings

1. Reinsurance undertakings subject to this Directive, which were authorised or entitled to conduct reinsurance business in accordance with the provisions of the Member States in which they have their head offices before the date of entry into force of this Directive shall be deemed to be authorised, in accordance with Article 3.

   However, they shall be subject to fulfilment of the provisions of this Directive concerning the carrying on of the business of reinsurance and to the requirements set out in Articles 6(a), (c), (d), Articles 7, 8 and 12 and Articles 32 to 41 as from the date of implementation referred to in Article 61.

2. Member States may allow reinsurance undertakings referred to in paragraph 1 which at the date of entry into force of this Directive do not comply with Articles 6 (a), 7, 8 and Articles 32 to 40 a period of 2 years after the date referred to in Article 61 in order to comply with these requirements.

Article 52 – Reinsurance undertakings closing their activity

1. Reinsurance undertakings which by [date of transposition of this Directive laid down in Article 61(1)] have ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to this Directive.

2. Member States shall draw up the list of the reinsurance undertakings concerned and they shall communicate that list to all the other Member States.

Article 53 – Right to apply to the courts

Member States shall ensure that decisions taken in respect of a reinsurance undertaking under laws, regulations and administrative provisions implementing this Directive are subject to the right to apply to the courts.

Article 54 – Co-operation between the Member States and the Commission

1. Member States shall cooperate with each other for the purpose of facilitating the supervision of reinsurance within the Community and the application of this Directive.

2. The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of reinsurance within the Community and of examining any difficulties which may arise in the application of this Directive.

Article 55 – Committee procedure

1. The Commission shall be assisted by the Insurance Committee instituted by Article 1 of Directive 91/675/EEC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

   The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall adopt its rules of procedure.

Article 56 – Implementing measures

The following implementing measures to this Directive shall be adopted in accordance with the procedure referred to in Article 55(2):

(a) extension of the legal forms provided for in Annex I to this Directive,

(b) clarification of the items constituting the solvency margin listed in Article 36 to take account of the creation of new financial instruments,

(c) enhancement up to 50% the premiums or claims amounts used for the calculation of the required solvency margin provided for in Article 37(3) and (4), in classes other than 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, for specific reinsurance activities or contract types, to take account of the specificities of these activities or contracts,

(d) alteration of the minimum guarantee fund provided for in Article 40(2) to take account of economic and financial developments,

(e) clarification of the definitions in Article 2 in order to ensure uniform application of this Directive throughout the Community.

TITLE VIII - AMENDMENTS TO EXISTING DIRECTIVES

Article 57 – Amendments to Directive 73/239/EEC

Directive 73/239/EEC is amended as follows:

(1) In Article 12a paragraphs 1 and 2 are replaced by the following:

"1. The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to a non-life insurance undertaking, which is:

(a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State; or
(b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State; or
(c) controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.

2. The competent authority of a Member State involved responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to a non-life insurance undertaking which is:

(a) a subsidiary of a credit institution or investment firm authorised in the Community; or
(b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
(c) controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community."

(2) In Article 13 (2), the following third subparagraph is added:

"The home Member State of the insurance undertaking shall not refuse a reinsurance contract concluded by the insurance undertaking with a reinsurance undertaking authorised in accordance with Directive 200./../EC of the European Parliament and of the Council [reinsurance Directive] or an insurance undertaking authorised in accordance with this Directive or Directive 2002/83/EC of the European Parliament and of the Council on the grounds directly related to the financial soundness of the reinsurance undertaking or the insurance undertaking.

(3) In Article 15, paragraph 2, first sentence and paragraph 3 are replaced by the following:

"2. The home Member State shall require every insurance undertaking to cover the technical provisions and the equalization reserve referred to in Article 15a by matching assets in accordance with Article 7 of the Directive 88/357/EEC.

3. Member States shall not retain or introduce for the establishment of technical provisions a system of gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions by the reinsurer, when the reinsurer is a reinsurance undertaking authorised in accordance with Directive *200./../EC [reinsurance Directive]* or an insurance undertaking authorised in accordance with this Directive or Directive 2002/83/EC.

When the home Member State allows any technical provisions to be covered by claims against a reinsurer who is neither a reinsurance undertaking authorised in accordance with Directive 200./../EC nor an insurance undertaking authorised in accordance with this Directive or Directive 2002/83/EC, it shall set the conditions for accepting such claims."

(4) Article 16 is amended as follows:

(a) in paragraph 1, the second subparagraph, second indent should read:

"- reserves (statutory and free reserves) not corresponding to underwriting liabilities or classified as equalization reserves;"

(b) in paragraph 2, the fourth subparagraph is replaced by the following:

"The available solvency margin shall also be reduced by the following items:

(a) participations which the insurance undertaking holds in

- insurance undertakings within the meaning of Article 6 of this Directive, Article 4 of Directive 2002/83/EC, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council,
- reinsurance undertakings within the meaning of Article 3 of Directive 200./..EC [reinsurance directive] or non-member-country reinsurance undertakings within the meaning of article 1 (l) of Directive 98/78/EC,
- insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,
- credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council,
- investment firms and financial institutions within the meaning of Article 1(2) of Council Directive 93/22/EEC and of Article 2(4) and (7) of Council Directive 93/6/EEC."

(5) The following Article 17b is inserted:

"Article 17b

Solvency margin for insurance undertakings conducting reinsurance activities

1. If the Commission decides, pursuant to Article 56(c) of Directive 200./../EC of the European Parliament and of the Council* [*reinsurance directive]* to enhance the amounts used for the calculation of the required solvency margin provided for in Article 37 (3) and (4) of that Directive, each Member State shall apply to insurance undertakings whose head office is situated within its territory the provisions of Articles 35 to 39 of that Directive in respect of their reinsurance acceptances activities, where one of the following conditions is met:

   (a) the reinsurance premiums collected exceed 10% of their total premium;
   (b) the reinsurance premiums collected exceed [EUR 500 000 000];
   (c) the technical provisions resulting from their reinsurance acceptances exceed 10% of their total technical provisions.

2. An insurance undertaking to which paragraph 1 applies shall establish, in respect of its entire business, a minimum guarantee fund in accordance with Article 40 of Directive 200./../EC [*reinsurance Directive*].

3. Each Member State may choose to apply to insurance undertakings referred to in paragraph 1 and whose head office is situated within its territory the provisions of Article 34 of Directive 200./../EC [reinsurance Directive] in respect of their reinsurance acceptances activities, where one of the conditions laid down in paragraph 1, second subparagraph is met.

   In that case, the respective Member State shall require that all assets employed by the insurance undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be ring-fenced, managed and organised separately from the direct insurance activities of the insurance undertakings, without any possibility of transfer.

In such case, and only as far as their reinsurance acceptance activities are concerned, insurance undertakings shall not be subject to Articles 20 to 22 of Directive 92/49/EEC and Annex I to Directive 88/357/EEC.
Each Member State shall ensure that their competent authorities verify the separation provided for in the second subparagraph.″

Article 58 – Amendments to Directive 92/49/EEC

Directive 92/49/EEC is amended as follows:

(1) In Article 15, paragraph (1a) is replaced by the following:

"*1a* If the acquirer of the holdings referred to in paragraph 1 is an insurance undertaking, a reinsurance undertaking, a credit institution or an investment firm authorised in another Member State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to the prior consultation referred to in Article 12a).of Directive 73/239/EEC"

(2) In Article 16, paragraphs (4), (5) and (5a) are replaced by the following:

"4. Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking up of the business of insurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions of the competent authorities, or

- in court proceedings initiated under Article 53 or under special provisions provided for in this Directive and other Directives adopted in the field of insurance undertakings and reinsurance undertakings.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

- authorities responsible for the official supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation and bankruptcy of insurance undertakings, reinsurance undertakings and in other similar procedures, and
- persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions,

in the discharge of their supervisory functions, and the disclosure, to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

5a. Notwithstanding paragraphs 1 to 4, Member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of assurance undertakings, reinsurance undertakings and other similar procedures, or
- the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions, or

- independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to this paragraph."

Article 59 – Amendments to Directive 2002/83/EC

Directive 2002/83/EC is amended as follows

(1) In Article 1 (1), the following point (s) is added:

(s) "reinsurance undertaking" shall mean a reinsurance undertaking within the meaning of Article 2 (1) point (b) of Directive 200./../EC of the European Parliament and of the Council*. [Reinsurance Directive]
* OJ L…"

(2) The following Article 9a is inserted:

"Article 9a

Prior consultation with the competent authorities of other Member States

1. The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to a life assurance undertaking, which is:

   (a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State; or
   (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State; or
   (c) controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.

2. The competent authority of a Member State involved responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to a life assurance undertaking which is:

   (a) a subsidiary of a credit institution or investment firm authorised in the Community; or
   (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
   (c) controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions."

(3) In Article 10(2), the following second subparagraph is added:

″The home Member State of the insurance undertaking shall not refuse a reinsurance contract concluded by the insurance undertaking with a reinsurance undertaking authorised in accordance with Directive 200./../EC [Reinsurance Directive) or an insurance undertaking authorised in accordance with Directive 73/239/EEC or this Directive on the grounds directly related to the financial soundness of the reinsurance undertaking or the insurance undertaking″.

(4) In Article 15, the following paragraph (1a) is inserted:

″1a. If the acquirer of the holdings referred to in paragraph 1 is an insurance undertaking, a reinsurance undertaking, a credit institution or an investment firm authorised in another Member State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to the prior consultation referred to in Article 9a)."

(5) Article 16 is amended as follows:

(a) paragraphs 4, 5 and 6 are replaced by the following

“4. Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of assurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms, or
- to impose sanctions, or
- in administrative appeals against decisions of the competent authority, or

- in court proceedings initiated pursuant to Article 67 or under special provisions provided for in this Directive and other directives adopted in the field of assurance undertakings and reinsurance undertakings.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

- authorities responsible for the official supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation and bankruptcy of assurance undertakings, reinsurance undertakings and in other similar procedures, and
- persons responsible for carrying out statutory audits of the accounts of assurance undertakings, reinsurance undertakings and other financial institutions,

in the discharge of their supervisory functions, and the disclosure, to bodies which administer (compulsory) winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

6. Notwithstanding paragraphs 1 to 4, Member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of assurance undertakings, reinsurance undertakings and other similar procedures, or
- the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions, or

- independent actuaries of insurance undertakings and reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to this paragraph."

(b) paragraph 8 is replaced by the following:

"8. Paragraphs 1 to 7 shall not prevent a competent authority from transmitting

- to central banks and other bodies with a similar function in their capacity as monetary authorities,
- where appropriate, to other public authorities responsible for overseeing payment systems

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article".

(6) Article 20(4) is replaced by the following:

"4. Member States shall not retain or introduce for the establishment of technical provisions a system of gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions by the reinsurer, authorised in accordance with *Directive 200./../EC [reinsurance Directive]* when the reinsurer is a reinsurance undertaking or an insurance undertaking authorised in accordance with Directives 73/239/EEC or this Directive.

When the home Member State allows any technical provisions to be covered by claims against a reinsurer who is neither a reinsurance undertaking authorised in accordance with Directive 200./../EC nor an insurance undertaking authorised in accordance with Directives 73/239/EEC or this Directive, it shall set the conditions for accepting such claims."

(7) In Article 27(2), the following second, third, fourth, fifth, sixth and seventh subparagraphs are added:

"The available solvency margin shall also be reduced by the following items:

(a) participations which the assurance undertaking holds, in:

- insurance undertakings within the meaning of Article 4 of this Directive, Article 6 of Directive 73/239/EEC, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council,
- reinsurance undertakings within the meaning of Article 3 of Directive 200./../EC or a non-member-country reinsurance undertakings within the meaning of Article 1(l) of Directive 98/78/EC,
- insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,
- credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC,

- investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC and of Articles 2(4) and 2(7) of Council Directive 93/6/EEC**;

(b) each of the following items which the assurance undertaking holds in respect of the entities defined in point (a) in which it holds a participation:

- instruments referred to in paragraph 3,
- instruments referred to in Article 16(3) of Directive 73/239/EEC,
- subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points (a) and (b) of the third subparagraph.

As an alternative to the deduction of the items referred to in (a) and (b) of the third subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply mutatis mutandis methods 1, 2, or 3 of Annex I to Directive 2002/87/EC of the European Parliament and of the Council. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the third subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(g) of Directive 98/78/EC."

(8) The following Article 28a is inserted:

"Article 28a

Solvency margin for assurance undertakings conducting reassurance activities

1. Each Member State shall apply to insurance undertakings whose head office is situated within its territory the provisions of Articles 35 to 39 of Directive200./../EC of the European Parliament and of the Council [*reinsurance directive*] in respect of their reinsurance acceptances activities, where one of the following conditions is met:

(a) the reinsurance premiums collected exceed 10% of their total premium;
(b) the reinsurance premiums collected exceed [EUR 500 000 000];
(c) the technical provisions resulting from their reinsurance acceptances exceed 10% of their total technical provisions.

2. Each Member State may choose to apply to assurance undertakings referred to in paragraph 1 and whose head office is situated within its territory the provisions of Article 34 of Directive 200./../EC [reinsurance Directive] in respect of their reinsurance acceptances activities, where one of the conditions laid down in paragraph 1, second subparagraph is meet.

In that case, the respective Member State shall require that all assets employed by the assurance undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be ring-fenced, managed and organised separately from the direct assurance activities of the assurance undertaking, without any possibility of transfer.

In such case, and only as far as their reinsurance acceptance activities are concerned, assurance undertakings shall not be subject to Articles 22 to 26 of Directive 2002/83/EC.

Each Member State shall ensure that their competent authorities verify the separation provided for in the second subparagraph.

Article 60 – Amendments to Directive 98/78/EC

Directive 98/78/EC is amended as follows

(1) The title is replaced by the following:

"Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group."

(2) Article 1 is amended as follows:

(a) The points (c), (i), (j) and (k) are replaced by the following:

"(c) reinsurance undertaking means an undertaking, which has received official authorisation in accordance with Article 3 of Directive 200./../EC of the European Parliament and of the Council [*Reinsurance Directive*];

(i) 'insurance holding company' means a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, reinsurance undertakings or non-member-country insurance undertakings or non-member-country reinsurance undertakings, at least one of such subsidiary undertakings being an insurance undertaking, or a reinsurance undertaking and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council;

(j) 'mixed-activity insurance holding company' means a parent undertaking, other than an insurance undertaking, a non-member country insurance undertaking, a reinsurance undertaking, a non-member country reinsurance undertaking, an insurance holding company or a mixed financial holding company within the meaning of Directive 2002/87/EC, which includes at least one insurance undertaking or a reinsurance undertaking among its subsidiary undertakings;

(k) 'competent authorities' means the national authorities which are empowered by law or regulation to supervise insurance undertakings or reinsurance undertakings."

(b) The following point (l) is added

"(l) 'non-member-country reinsurance undertaking' means an undertaking which would require authorisation in accordance with Article 3 of Directive 200./../EC *[Reinsurance Directive]* if it had its registered office in the Community;"

(3) Articles 2, 3 and 4 are replaced by the following:

"Article 2
Cases of application of supplementary supervision
of insurance undertakings and reinsurance undertakings

1. In addition to the provisions of Directives 73/239/EEC, 2002/83/EC of the European Parliament and of the Council and 200./…/EC [*Reinsurance directive*], which lay down the rules for the supervision of insurance undertakings and reinsurance undertakings, Member States shall provide supervision of any insurance undertaking or any reinsurance undertaking, which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, non-member-country insurance undertaking or a non-member country reinsurance undertaking, shall be supplemented in the manner prescribed in Articles 5, 6, 8 and 9.

2. Every insurance undertaking or reinsurance undertaking the parent undertaking of which is an insurance holding company, a non-member-country insurance or a non-member-country reinsurance undertaking shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), 6, 8 and 10.

3. Every insurance undertaking or reinsurance undertaking the parent undertaking of which is a mixed-activity insurance holding company shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), 6 and 8.

Article 3

Scope of supplementary supervision

1. The exercise of supplementary supervision in accordance with Article 2 shall in no way imply that the competent authorities are required to play a supervisory role in relation to the non-member-country insurance undertaking, the non-member-country reinsurance undertaking, insurance holding company or mixed-activity insurance holding company taken individually.

2. The supplementary supervision shall take into account the following undertakings referred to in Articles 5, 6, 8, 9 and 10:

- related undertakings of the insurance undertaking or of the reinsurance undertaking,
- participating undertakings in the insurance undertaking or in the reinsurance undertaking,
- related undertakings of a participating undertaking in the insurance undertaking or in the reinsurance undertaking,

3. Member States may decide not to take into account in the supplementary supervision referred to in Article 2 undertakings having their registered office in a non-member country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Annex I, point 2.5, and of Annex II, point 4.

Furthermore, the competent authorities responsible for exercising supplementary supervision may in the cases listed below decide on a case-by-case basis not to take an undertaking into account in the supplementary supervision referred to in Article 2:

- if the undertaking which should be included is of negligible interest with respect to the objectives of the supplementary supervision of insurance undertakings or reinsurance undertakings;
- if the inclusion of the financial situation of the undertaking would be inappropriate or misleading with respect to the objectives of the supplementary supervision of insurance undertakings or reinsurance undertakings.

Article 4

Competent authorities for exercising supplementary supervision

1. Supplementary supervision shall be exercised by the competent authorities of the Member State in which the insurance undertaking or the reinsurance undertaking has received official authorisation under Article 6 of Directive 73/239/EEC or Article 4 of Directive 2002/83/EC or Article 3 of Directive 200./../EC…. [*Reinsurance Directive*].

2. Where insurance undertakings or reinsurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, non-member-country insurance undertaking, non-member-country reinsurance undertaking or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision.

3. Where a Member State has more than one competent authority for the prudential supervision of insurance undertakings and reinsurance undertakings, such Member State shall take the requisite measures to organise coordination between those authorities."

(4) In Article 5, paragraph 1 is replaced by the following:

"1. Member States shall prescribe that the competent authorities shall require that every insurance undertaking or reinsurance undertaking subject to supplementary supervision shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of such supplementary supervision."

(5) Articles 6, 7 and 8 are replaced by the following:

"Article 6

Access to information

1. Member States shall provide that their competent authorities responsible for exercising supplementary supervision shall have access to any information which would be relevant for the purpose of supervision of an insurance undertaking or a reinsurance undertaking subject to such supplementary supervision. The competent authorities may address themselves directly to the relevant undertakings referred to in Article 3(2) to obtain the necessary information only if such information has been requested from the insurance undertaking or the reinsurance undertaking and has not been supplied by it.

2. Member States shall provide that their competent authorities may carry out within their territory, themselves or through the intermediary of persons whom they appoint for that purpose, on-the-spot verification of the information referred to in paragraph 1 at:

- the insurance undertaking subject to supplementary supervision,
- the reinsurance undertaking subject to supplementary supervision,
- subsidiary undertakings of that insurance undertaking,
- subsidiary undertakings of that reinsurance undertaking,
- parent undertakings of that insurance undertaking,

- parent undertakings of that reinsurance undertaking,
- subsidiary undertakings of a parent undertaking of that insurance undertaking.
- subsidiary undertakings of a parent undertaking of that reinsurance undertaking.

3. Where, in applying this Article, the competent authorities of one Member State wish in specific cases to verify important information concerning an undertaking situated in another Member State which is a related insurance undertaking, a related reinsurance undertaking, a subsidiary undertaking, a parent undertaking or a subsidiary of a parent undertaking of the insurance undertaking or of the reinsurance undertaking subject to supplementary supervision, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must act on it within the limits of their jurisdiction by carrying out the verification themselves, by allowing the authorities making the request to carry it out or by allowing an auditor or expert to carry it out.

The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.

Article 7

Cooperation between competent authorities

1. Where insurance undertakings or reinsurance undertakings established in different Member States are directly or indirectly related or have a common participating undertaking, the competent authorities of each Member State shall communicate to one another on request all relevant information which may allow or facilitate the exercise of supervision pursuant to this Directive and shall communicate on their own initiative any information which appears to them to be essential for the other competent authorities.

2. Where an insurance undertaking or a reinsurance undertaking and either a credit institution as defined in Directive 2000/12/EC of the European Parliament and of the Council* or an investment firm as defined in Directive 93/22/EEC, or both, are directly or indirectly related or have a common participating undertaking, the competent authorities and the authorities with public responsibility for the supervision of those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular within the framework of this Directive.

3. Information received pursuant to this Directive and, in particular, any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy defined in Article 16 of Directive 92/49/EEC and Article 16 of Directive 2002/83/EC and Articles 24 to 30 of Directive 200./../EC*...[Reinsurance directive]*.

Article 8

Intra-group transactions

1. Member States shall provide that the competent authorities exercise general supervision over transactions between:

(a) an insurance undertaking or a reinsurance undertaking and:
   (i) a related undertaking of the insurance undertaking or of the reinsurance undertaking;
   (ii) a participating undertaking in the insurance undertaking or in the reinsurance undertaking;
   (iii) a related undertaking of a participating undertaking in the insurance undertaking or in the reinsurance undertaking;

(b) an insurance undertaking or a reinsurance undertakings and a natural person who holds a participation in:

(i) the insurance undertaking, the reinsurance undertaking or any of its related undertakings;

(ii) a participating undertaking in the insurance undertaking or in the reinsurance undertaking;

(iii) a related undertaking of a participating undertaking in the insurance undertaking or in the reinsurance undertaking.

These transactions concern in particular:

- loans,
- guarantees and off-balance-sheet transactions,
- elements eligible for the solvency margin,
- investments,
- reinsurance and retrocession operations,
- agreements to share costs.

2. Member States shall require insurance undertakings and reinsurance undertakings to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions as provided for in paragraph 1 appropriately. Member States shall also require at least annual reporting by insurance undertakings and reinsurance undertakings to the competent authorities of significant transactions. These processes and mechanisms shall be subject to overview by the competent authorities."

If, on the basis of this information, it appears that the solvency of the insurance undertaking or the reinsurance undertaking is, or may be, jeopardised, the competent authority shall take appropriate measures at the level of the insurance undertaking or of the reinsurance undertaking.

* OJ L 126, 26.5.2000, p. 1”

(6) In Article 9, paragraph 3 is replaced by the following:

"3. If the calculation referred to in paragraph 1 demonstrates that the adjusted solvency is negative, the competent authorities shall take appropriate measures at the level of the insurance undertaking or the reinsurance undertaking in question."

(7) Article 10 is amended as follows:

(a) the title is replaced by the following:

"Insurance holding companies, non-member-country insurance undertakings and non-member-country reinsurance undertakings"

(b) paragraphs 2 and 3 are replaced by the following:

"2. In the case referred to in Article 2(2), the calculation shall include all related undertakings of the insurance holding company, the non-member-country insurance undertaking or the non-member-country reinsurance undertaking, in the manner provided for in Annex II.

3. If, on the basis of this calculation, the competent authorities conclude that the solvency of a subsidiary insurance undertaking or a reinsurance undertaking of the insurance holding company, the non-member-country insurance undertaking or the non-member-country reinsurance undertaking is, or may be, jeopardised, they shall take appropriate measures at the level of that insurance undertaking or reinsurance undertaking."

(8) Article 10a is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

"(b) reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office situated in a third country;

(c) non-member country insurance undertakings or non-member country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office in the Community."

(b) paragraph 2 is replaced by the following:

"2. The agreements referred to in paragraph 1 shall in particular seek to ensure both:

(a) that the competent authorities of the Member States are able to obtain the information necessary for the supplementary supervision of insurance undertakings and reinsurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and

(b) that the competent authorities of third countries are able to obtain the information necessary for the supplementary supervision of insurance undertakings and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States."

(9) Annexes I and II are replaced by the text set out in Annex II to this Directive.

TITLE IX - FINAL PROVISIONS

Article 61 – Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest by.. By way of derogation Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with article 57 (3) and 59 (6) at the latest by 2010. They shall forthwith communicate to the Commission the texts of those provisions and a correlation table between those provisions and this Directive.
   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 62 – Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 63 - Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

Form of reinsurance undertakings:

– in the case of the Kingdom of Belgium: 'société anonyme/naamloze vennootschap', 'société en commandite par actions/commanditaire vennootschap op aandelen', 'association d'assurance mutuelle/onderlinge verzekeringsvereniging', 'société coopérative/coöperatieve vennootschap';

– in the case of the Czech Republic: 'akciová společnost';

– in the case of the Kingdom of Denmark: 'aktieselskaber', 'gensidige selskaber';

– in the case of the Federal Republic of Germany: 'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit', 'Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen';

– in the case of the Republic of Estonia: 'aktsiaselts';

– in the case of the Hellenic Republic: "ανώνυμη εταιρία", "αλληλασφαλιστικός συνεταιρισμός";

– in the case of the Kingdom of Spain: 'sociedad anónima';

– in the case of the French Republic: 'société anonyme', 'société d'assurance mutuelle', 'institution de prévoyance régie par le code de la sécurité sociale', 'institution de prévoyance régie par le code rural' and 'mutuelles régies par le code de la mutualité';

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

– in the case of the Italian Republic: 'società per azioni';

– in the case of the Republic of Cyprus:

– in the case of the Repulic of Latvia: 'akciju sabiedrība', 'sabiedrība ar ierobežotu atbildību';

– in the case of the Republic of Lithuania: 'akcinė bendrovė', 'uždaroji akcinė bendrovė';

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

– in the case of the Republic of Hungary: 'biztosító részvénytársaság', 'biztosító szövetkezet', 'harmadik országbeli biztosító magyarországi fióktelepe';

– in the case of the Republic of Malta: 'limited liability company';

– in the case of the Kingdom of the Netherlands: 'naamloze vennootschap', 'onderlinge waarborgmaatschappij';

– in the case of the Republic of Austria: 'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit';

– in the case of the Republic of Poland: 'spółka akcyjna', 'towarzystwo ubezpieczeń wzajemnych';

– in the case of the Portuguese Republic: 'sociedade anónima', 'mútua de seguros';

– in the case of the Republic of Slovenia: 'delniška družba';

– in the case of the Slovak Republic: 'akciová spoločnost';

– in the case of the Republic of Finland: 'keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag', 'vakuutusosake-yhtiö/försäkringsaktiebolag', 'vakuutusyhdistys/försäkrings-förening';

– in the case of Kingdom of Sweden: 'försäkringsaktiebolag', 'ömsesidigt försäkringsbolag';

– in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered or incorporated under Friendly Societies Act, "the association of underwriters known as Lloyd's";

ANNEX II

Unchanged compared to the Commission proposal