

referred to in Article 14, the voting rights referred to in Article 7 of Council Directive 88/627/EEC (1) shall be taken into consideration;

- (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; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 2

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

2. This Directive shall not apply to operations, undertakings or entitles to which the First Directive does not apply, nor to the entitles referred to in Article 4 of that Directive.

Article 3

Notwithstanding Article 2 (2), Member States shall take every step to ensure that monopolies in respect of the taking-up of the business of certain classes of insurance, granted to entitles established in their territory, are abolished by the date mentioned in Article 44, second paragraph of this Directive.

TITLE II

The taking-up of the business of insurance

Article 4

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

'Article 6

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

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

- (a) any undertaking which establishes its head office in the territory of such State;
- (b) any undertaking which, having received the authorization required under (a), extends its business to other classes.'

Article 5

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

'Article 7

1. An authorization shall be valid for the whole Community. It shall permit an undertaking to carry on business there, either by way of right of establishment or by way of freedom to provide services.

2. An authorization shall be granted for a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only part of the risks pertaining to that class, as listed in point A of the Annex.

However:

- (a) Member States may grant authorizations for the groups of classes indicated in point B of the Annex, attaching to them the appropriate denomination specified therein;
- (b) an authorization granted for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified in point C of the Annex are fulfilled.'

Article 6

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

'Article 8

1. Each Member State shall require that any undertaking set up in its territory for which an authorization is sought shall:

- (a) adopt one of the following forms:

— in the case of Belgium:

"société anonyme/naamloze vennootschap",
 "société en commandite par actions/commanditaire vennootschap op aandelen",
 "association d'assurance mutuelle/onderlinge verzekeringmaatschappij", "société coopérative/coöperatieve vennootschap",

— in the case of Denmark:

"aktieselskaber", "gensidige selskaber",

— in the case of the Federal Republic of Germany:

"Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit", "Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen",

(1) OJ No L 348, 17. 12. 1988, p. 62.

Article 4 shall be completed with:

(a) Iceland

- Husatryggingar Reykjavikurborgar
- Vidlagatrygging Islands

(b) Switzerland

- Aargau: Aargauisches Versicherungsamt, Aarau
- Appenzell Ausser-Rhoden: Brand und Elementarschadenversicherung Appenzell AR, Herisau
- Basel-Land: Basellandschaftliche Gebäudeversicherung, Liestal
- Basel-Stadt: Gebäudeversicherung des Kantons Basel-Stadt, Basel
- Bern/Berne: Gebäudeversicherung des Kantons Bern, Bern /Assurance immobilière du canton de Berne, Berne
- Fribourg/Freiburg: Etablissement cantonal d'assurance des bâtiments du canton de Fribourg, Fribourg/Kantonale Gebäudeversicherungsanstalt Freiburg, Freiburg
- Glarus: Kantonale Sachversicherung Glarus, Glarus
- Graubünden/Grigioni/Grischun: Gebäudeversicherungsanstalt des Kantons Graubünden, Chur/Istituto d'assicurazione fabbricati del cantone del Grigioni, Coira/ Institut dil cantun Grischun per assicuranzas da baghetgs, Cuera
- Jura: Assurance immobilière de la République et canton du Jura, Saignelégier
- Luzern: Gebäudeversicherung des Kantons Luzern, Luzern
- Neuchâtel: Etablissement cantonal d'assurance immobilière contre l'incendie, Neuchâtel
- Nidwalden: Nidwaldner Sachversicherung, Stans
- Schaffhausen: Gebäudeversicherung des Kantons Schaffhausen, Schaffhausen
- Solothurn: Solothurnische Gebäudeversicherung, Solothurn
- St. Gallen: Gebäudeversicherung des Kantons St. Gallen, St. Gallen
- Thurgau: Gebäudeversicherung des Kantons Thurgau, Frauenfeld
- Vaud: Etablissement d'assurance contre l'incendie et les éléments naturels du canton de Vaud, Lausanne
- Zug: Gebäudeversicherung des Kantons Zug, Zug
- Zürich: Gebäudeversicherung des Kantons Zürich, Zürich

Article 8 shall be completed with:

(a) Austria

- Aktiengesellschaft
- Versicherungsverein auf Gegenseitigkeit

(b) Finland

- Keskinäinen Vakuutusyhtiö
- Vakuutusosakeyhtiö
- Vakuutusyhdistys

(c) Iceland

- Hlutafélag
- Gagnkvaemt félag

(d) Norway

- Aksjeselskaper
- Gjensidige selskaper

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(d) Pending further coordination, which shall be implemented within four years of notification of this Directive, export credit insurance operations for the account of or with the support of the State.

3. 87/1393

3. Vistót skv. 2. gr. 84/641

Article 3

1. This Directive does not apply to mutual associations in so far as they fulfil all the following conditions:

- the articles of association must contain provisions for calling up additional contributions or reducing their benefits,
- their business does not cover liability risks — unless the latter constitute ancillary cover within the meaning of subparagraph (c) of the Annex — or credit and suretyship risks,
- the annual contribution income for the activities covered by this Directive must not exceed one million units of account,
- and
- at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association.

Vistót 3. gr. 84/641

2. This Directive shall not, moreover, apply to mutual associations which have concluded with other associations of this nature an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the concessionary undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

In such a case the concessionary undertaking shall be subject to the rules of this Directive.

Article 4

Vistót skv. EBA 25.7.91

This Directive shall not apply to the following institutions unless their statutes or the law are amended as regards capacity:

(a) In Germany

The following institutions under public law enjoying a monopoly (Monopolanstalten):

1. Badische Gebäudeversicherungsanstalt, Karlsruhe,
2. Bayerische Landesbrandversicherungsanstalt, Munich.

3. Bayerische Landestüerversicherungsanstalt, Schlachtviehversicherung, Munich,
4. Braunschweigische Landesbrandversicherungsanstalt, Brunswick,
5. Hamburger Feuerkasse, Hamburg,
6. Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer) Darmstadt,
7. Hessische Brandversicherungsanstalt, Kassel,
8. Hohenzollernsche Feuerversicherungsanstalt, Sigmaringen,
9. Lippische Landesbrandversicherungsanstalt, Detmold,
10. Nassauische Brandversicherungsanstalt, Wiesbaden,
11. Oldenburgische Landesbrandkasse, Oldenburg,
12. Ostfriesische Landschaftliche Brandkasse, Aurich,
13. Feuersozietaät Berlin, Berlin,
14. Württembergische Gebäudebrandversicherungsanstalt, Stuttgart.

However, territorial capacity shall not be regarded as modified in the case of an agreement between such institutions which has the effect of maintaining for the benefit of the new institution the territorial capacity of the institutions which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these institutions takes over in respect of the same territory one or more of the classes of another such institution.

The following semi-public institutions:

1. Postbeamtenkrankenkasse,
2. Krankenversorgung der Bundesbahnbeamten,

(b) In France

The following institutions:

1. Caisse departementale des incendies des Ardennes,
2. Caisse departementale des incendies de la Côte-d'Or,
3. Caisse departementale des incendies de la Marne,
4. Caisse departementale des incendies de la Meuse.

- 5. Caisse départementale des incendiés de la Somme,
- 6. Caisse départementale grêle du Gers,
- 7. Caisse départementale grêle de l'Hérault;

(c) In Ireland

Voluntary Health Insurance Board;

(d) In Italy

The Cassa di Previdenza per l'assicurazione degli sportivi (Sportase);

(e) In the United Kingdom

The Crown Agents.

(f) Visbök 4.9.84/641
Article 5

For the purposes of this Directive:

- (a) 'Unit of account' means that unit which is defined in Article 4 of the Statute of the European Investment Bank;
- (b) 'Matching assets' means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency;
- (c) 'Localization of assets' means the existence of assets, whether movable or immovable, within a Member State but shall not be construed as involving a requirement that movable property be deposited or that immovable property be subjected to restrictive measures such as the registration of mortgages. Assets represented by claims against debtors shall be regarded as situated in the Member State where they are to be liquidated.

d) Sbc. 5.9.88/357, 3.9.90/618

Title II — Rules applicable to undertakings whose head offices are situated within the Community

Section A: Conditions of admission

Article 6

- 1. Each Member State shall make the taking-up of the business of direct insurance in its territory subject to an official authorization.
- 2. Such authorization shall be sought from the competent authority of the Member State in question by:
 - (a) Any undertaking which establishes its head office in the territory of such state;

- (b) Any undertaking whose head office is situated in another Member State and which opens a branch or agency in the territory of the Member State in question;
- (c) Any undertaking which, having received the authorization required under (a) or (b) above, extends its business in the territory of such State to other classes;
- (d) Any undertaking which, having obtained in accordance with Article 7 (1) an authorization for a part of the national territory, extends its business beyond such part.

3. Member States shall not make an authorization subject to the lodging of a deposit or the provision of security.

Article 7

- 1. An authorization shall be valid for the entire national territory unless, and in so far as the national legislation permits, the applicant seeks permission to carry out his business only in a part of the national territory.
- 2. An authorization shall be given for a particular class of insurance. It shall cover the entire class, unless the applicant desires to cover only part of the risks pertaining to such class, as listed in point A of the Annex.

However:

- (a) It shall be open to any Member State to grant an authorization for any group of classes indicated in point B of the Annex, provided that it attaches to such authorization the appropriate denomination specified therein;
- (b) An authorization given for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified in point C of the Annex are fulfilled;
- (c) Pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes.

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Article 8

Visbök
Stv. EEA
25.7.91

- 1. Each Member State shall require that an undertaking set up in its territory for which an authorization is sought shall:

(a) Adopt one of the following forms:

— in the case of the Kingdom of Belgium:

'société anonyme/naamloze vennootschap',
'société en commandite par actions/vennootschap bij wijze van geldschieting op aandelen', 'association d'assurance mutuelle/onderlinge verzekeringsmaatschappij', 'société coopérative/coöperative vennootschap',

— in the case of Denmark:

'Aktieselskaber' (joint stock companies),
'gensidige selskaber' (mutuals),

— in the case of the Federal Republic of Germany:

'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit', 'Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen',

— in the case of the French Republic:

'société anonyme', 'société à forme mutuelle',
'mutuelle', 'union de mutuelles',

— in the case of the Republic of Ireland:

'incorporated companies limited by shares or by guarantee or unlimited',

— in the case of the Italian Republic:

'società per azioni', 'società cooperativa',
'mutua di assicurazione',

— in the case of the Grand Duchy of Luxembourg:

'société anonyme', 'société en commandite par actions', 'association d'assurance mutuelles',
'société coopérative',

— in the case of the Kingdom of the Netherlands:

'naamloze vennootschap', 'onderlinge waarborgmaatschappij', 'coöperative vereniging',

— in the case of the United Kingdom:

'incorporated companies limited by shares or by guarantee or unlimited', 'societies registered under the Industrial and Provident Societies Acts', 'societies registered under the Friendly Societies Act' Lloyd's underwriters.

Furthermore, Member States may set up, where appropriate, undertakings under any form of known public law provided that such institutions have as their object insurance operations in

conditions equivalent to those undertakings under private law;

(b) Limit its business activities to the business of insurance and operations directly arising therefrom to the exclusion of all other commercial business;

(c) Submit a scheme of operations in accordance with the provisions of Article 9;

(d) Possess the minimum guarantee fund provided for in Article 17 (2).

2. An undertaking seeking an authorization to extend its business to other classes or, in the case referred to in Article 6 (2) (d), to another part of the territory, shall be required to submit a scheme of operations in accordance with the provisions of Article 9 as regards such other classes or other part of the territory.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 16 and, if, with regard to such other classes, the provisions of Article 17 (2) require a higher minimum guarantee fund than previously, that it possesses such minimum.

3. These coordinating measures do not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the memorandum or articles of association, general and special policy conditions, tariffs and any other documents necessary for the normal exercise of supervision to be approved.

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

Article 9

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

(a) The nature of the risks which the undertaking proposes to cover, the general and special policy conditions which it proposes to use;

(b) The tariffs which it is proposed to apply for each category of business;

(c) The guiding principles as to reinsurance;

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IV. COMMON RULES

Article 41
(general principle)

In conformity with the provisions of this Chapter and of Annexes 9 and 10, the Contracting parties shall ensure that competition within the territory covered by this Agreement is not distorted.

IV.1 ANTI TRUST RULES

Article 42
(restriction of competition)

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between the Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:
 - a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - b) limit or control production, markets, technical development, or investment;
 - c) share markets or sources of supply;
 - d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(ex art. 85, EEC)

Article 43

(abuse of dominant position)

Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in:

- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b) limiting production, markets or technical development to the prejudice of consumers;
- c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(ex art.86)

Article 44
(public undertakings)

1. In the case of public undertakings and undertakings to which the EC Member States or EFTA States grant special or exclusive rights, Contracting Parties shall ensure that is neither enacted nor maintained in force any measure contrary to the rules contained in this Agreement, in particular to those rules provided for in Article [ex Art. 7 EEC] and Articles 42 and 43.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue producing monopoly shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties.
3. The Commission of the European Communities and the EFTA Surveillance Authority shall ensure the application of the provisions of this Article and shall, where necessary address appropriate measures to the States falling within their respective [jurisdiction] [competence].
(ex art. 90 EEC)

Article 45
(surveillance)

1. Without prejudice to the provisions giving effect to Articles 42 and 43 of this Agreement as contained in Annex S and Protocol 2P of the Agreement, the EC Commission and the EFTA Surveillance Authority shall ensure the application of the principles laid down in Articles 42 and 43.
2. The competent Surveillance Authority, as provided for in Article 46 of this Agreement shall investigate cases of suspected infringement of these principles, on its own initiative, on application by a State within its territory or by the other Surveillance Authority. The competent Surveillance Authority shall carry out these investigations in cooperation with the competent national authorities in its territory and in cooperation with the other Surveillance Authority, who shall give it their assistance.
3. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.
4. If the infringement is not brought to an end, the competent Surveillance Authority shall record such infringement of the principles in a reasoned decision.

5. The Competent Surveillance Authority may publish its decision and authorize States within its territory to take the measures, the conditions and details of which it shall determine, needed to remedy the situation. It may also request the other Surveillance Authority to authorize States within its territory to take such measures.
(ex Art. 89 EEC)

Article 46
(attribution of cases)

1. Individual cases falling under Articles 42 and 43 of this Agreement shall be decided upon by the surveillance authorities in accordance with the following provisions:
 - a) Individual cases where only trade between EFTA States is affected be decided upon by the EFTA Surveillance Authority.
 - b) The EFTA Surveillance Authority decides, as provided for in the provisions set out in Protocol 2P and the rules adopted for its implementation, Article 47, Protocol C and Annex S, on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33 percent or more of their turnover in the territory covered by this Agreement.
 - c) The Commission of the European Communities decides on other cases, in taking into account the provisions set out in Protocol 2P, Article 47, Protocol C and Annex S.
2. The terms undertakings and turnover are, for the purpose of this Article, defined in Protocol A.

Article 46a
(secondary legislation)

Annex [S] contains specific provisions giving effect to the principles set out in Articles [41], 42, 43, 44 and 48 of this agreement and ~~of~~ in Articles [] of Protocol [on competition rules in the field of coal and steel].

Article 47
(cooperation between the structures)

With a view to developing and maintaining a uniform surveillance policy throughout the [EFTA: European Economic Area] [EC: territory covered by this Agreement] in the field of competition and of promoting a homogeneous implementation, application and interpretation of the relevant provisions the competent authorities of the Contracting Parties shall cooperate in accordance with the provisions set out in Protocol C.

Article 48
(merger control)

Concentrations which create or strengthen a dominant position as a result of which effective competition would be significantly impeded shall be declared incompatible with this Agreement.

The control of concentrations shall be carried out:

- a) by the Commission of the European Communities in cases falling under Regulation (EEC) 4064/89 according to this Regulation and in accordance with Protocol M. The Commission shall subject to the review by the EC Court of Justice sole competence to take decisions on the cases.
- b) by the EFTA Surveillance Authority in cases not coming under a) where the relevant thresholds set out in Annex S are fulfilled in the territory of the EFTA States according to [Annex S] and in accordance with Protocols 2P and M. This is without prejudice to the competence of EC Member States.

IV.2 STATE AID

Article 49
(basic principle)

1. Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting parties be incompatible with the functioning of this Agreement.
2. The following shall be compatible with this Agreement:
 - a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;