JUDGMENT OF THE COURT

20 April 1999 *

In Case C-241/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Regeringsrätten (Sweden) for a preliminary ruling in the proceedings brought before that court by

Försäkringsaktiebolaget Skandia (publ),

on the interpretation of Article 18(1) of the First Council Directive (73/239/EEC) of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3), as amended by Article 26 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1), and of Article 21(1) of the First Council Directive (79/267/EEC) of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (OJ 1979 L 63, p. 1), as amended by Article 27 of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and

* Language of the case: Swedish

administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), J. C. Moitinho de Almeida (Rapporteur), C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Försäkringsaktiebolaget Skandia (publ), by J.-M. Bexhed and B. Berndtsson, Advocates, Stockholm,

— the Swedish Government, by L. Nordling, Rättschef in the Legal Service (EU) of the Ministry of Foreign Affairs, acting as Agent,

— the Norwegian Government, by J. Bugge-Mahrt, Deputy Director General in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by D. Gouloussis and C. Tufvesson, Legal Advisers, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Försäkringsaktiebolaget Skandia (publ), represented by J.-M. Bexhed and O. Lindén, Advocate, Stockholm; of the Swedish Government, represented by A. Kruse, departementsråd in the Legal Service (EU) of the Ministry of Foreign Affairs, acting as Agent; of the Finnish Government, represented by T. Pynnä, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; and of the Commission, represented by C. Tufvesson, at the hearing on 10 November 1998,

after hearing the Opinion of the Advocate General at the sitting on 17 December 1998,

gives the following

Judgment

1 By order of 11 June 1997, received at the Court on 2 July 1997, the Regeringsrätten referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 18(1) of the First Council Directive (73/239/EEC) of 24 July 1973 on the coordination of laws, regulations and

administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3), as amended by Article 26 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1), and of Article 21(1) of the First Council Directive (79/267/EEC) of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (OJ 1979 L 63, p. 1), as amended by Article 27 of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).

2 Those questions have been raised in proceedings brought by Försäkringsaktiebolaget Skandia (publ) (hereinafter 'Skandia'), a public limited liability insurance company established in Stockholm (Sweden), concerning the obligation to limit its shareholding in the public limited liability company Kungsdialysen AB (hereinafter 'Kungsdialysen') to 5% of the voting rights attached to all the shares, in accordance with the relevant Swedish legislation.

Community law

3 The taking up and pursuit of insurance business are governed at the Community level in particular by Directives 73/239 and 79/267 concerning, respectively, direct insurance other than life assurance and direct life assurance.

4 As regards direct insurance other than life assurance, Article 8(1) of Directive 73/239, as amended by Article 6 of Directive 92/49, provides:

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

...

(b) limit its objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;

...'

5 Article 13 of Directive 73/239, as amended by Article 9 of Directive 92/49, provides:

'1. The financial supervision of an insurance 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.

2. That financial supervision shall include verification, with respect to the insurance 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.

...'

6 Article 15 of Directive 73/239, as amended by Article 17 of Directive 92/49, provides:

'1. The home Member State shall require every insurance 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.

2. The home Member State shall require every insurance undertaking to cover the technical provisions in respect of its entire business by matching assets in accordance with Article 6 of Directive 88/357/EEC. In respect of risks situated within the European Community, those assets must be localised within the Community. Member States shall not require insurance undertakings to localise their assets in any particular Member State. The home Member State may, however, permit relaxations in the rules on the localisation of assets.

...'

7 Article 18(1) of Directive 73/239, as amended by Article 26 of Directive 92/49, provides:

'Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 15.'

8 Article 22(5) of Directive 92/49 also provides:

'Member States shall not require insurance undertakings to invest in particular categories of assets.'

9 As regards direct life assurance, Article 8(1) of Directive 79/267, as amended by Article 5 of Directive 92/96, provides:

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

...

(b) limit its objects to the business provided for in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business;

...'

10 Article 15 of Directive 79/269, as amended by Article 8 of Directive 92/96, provides:

'1. The financial supervision of an assurance 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. ...

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

...'

11 Article 17 of Directive 79/267, as amended by Article 18 of Directive 92/96, provides:

'1. The home Member State shall require every assurance undertaking to establish sufficient technical provisions, including mathematical provisions, in respect of its entire business.

The amount of such technical provisions shall be determined according to the following principles:

...

3. The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 24 of Directive 92/96/EEC. In respect of business written in the Community, these assets must be localised within the Community. Member States shall not require assurance undertakings to localise their assets in a particular Member State. The home Member State may, however, permit relaxations in the rules on the localisation of assets.

...'

12 Article 21(1) of Directive 79/267, as amended by Article 27 of Directive 92/96, provides:

'Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 17.'

13 Article 22(5) of Directive 92/96 also provides:

'Member States shall not require assurance undertakings to invest in particular categories of assets.'

14 Article 13 of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for

collective investment in transferable securities (UCITS) (OJ 1985 L 375, p. 3) provides: 'No investment company may engage in activities other than those referred to in Article 1(2).' That latter provision refers to collective investment in transferable securities of funds raised from the public.

15 Finally, Article 25 of Directive 85/611 provides:

'1. An investment company or a management company acting in connection with all of the unit trusts which it manages and which fall within the scope of this Directive may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

Pending further coordination, the Member States shall take account of existing rules defining the principles stated in the first subparagraph under other Member States' legislation.

2. Moreover, an investment company or unit trust may acquire no more than:

— 10% of the non-voting shares of any single issuing body;

— 10% of the debt securities of any single issuing body;

— 10% of the units of any single collective investment undertaking within the meaning of the first and second indents of Article 1(2).

...'

The Swedish legislation

16 Under the first paragraph of Article 3 of Chapter 1 of the Försäkringsrörelselagen (1982: 713) (Insurance Business Law, hereinafter 'the FRL'), an insurance company may not, except for special reasons, pursue any business other than insurance business.

17 Article 17 of Chapter 7 of the FRL provides:

'An insurance company may not, without the approval of the Finansinspektionen (Financial Supervisory Authority), own a greater proportion of the shares in a Swedish or foreign joint-stock company than corresponds to the number of votes not exceeding 5% of the votes attached to all the shares. If the insurance company belongs to a group, this provision shall be applicable to the group. In the calculation of the group's holding, no regard shall be had to shares owned by banks belonging to the group or by subsidiaries of such banks unless they represent more than 5% of the votes in the joint-stock company.

The first paragraph shall not be applicable to shares or holdings in insurance companies or in legal persons whose business consists exclusively in owning shares in

insurance companies, to provide guarantee capital for mutual insurance companies, to administer insurance companies' property or to assist insurance companies in the conduct of their business. The first paragraph shall, however, be applicable to shares or holdings in legal persons whose object is to own, directly or indirectly, assets referred to in the first paragraph of Article 10 if those assets do not consist of shares or holdings in public insurance companies or foreign companies of the same type.

Article 17(a) shall apply as regards the right of insurance companies to own shares or have holdings in companies which pursue some form of financial activity.'

18 The expression 'assets referred to in the first paragraph of Article 10' means the assets needed to cover the technical provisions.

19 The Lagen om Försäkringsrörelse (1948: 433) (hereinafter 'the 1948 Insurance Business Law') contained a provision equivalent to that set out in the first and second sentences of the first paragraph of Article 17 of Chapter 7 of the FRL. According to the preparatory documents concerning the 1948 Insurance Business Law, the aim of such a rule was to prevent insurance undertakings from acquiring too much influence over companies outside the insurance sector.

20 In accordance with the first paragraph of Article 17 of Chapter 7 of the FRL, the Finansinspektionen may grant an insurance undertaking a derogation from the rule prohibiting such undertakings from acquiring holdings in Swedish or foreign public limited liability companies representing more than 5% of the voting rights attached to all the shares.

The dispute of the main proceedings

21 Skandia owns 100% of the life insurance company Livförsäkringsaktiebolaget Skandia (publ) (hereinafter 'Skandia Life'). Skandia and Skandia Life own 100% of Skandia Investment AB (publ) (hereinafter 'Skandia Investment'), a company which invests in small and medium-sized undertakings.

22 By a letter of 29 December 1995, Skandia informed the Finansinspektionen that Skandia Investment had increased its shareholding in Kungsdialysen, a company active in the field of dialysis. By that operation, Skandia Investment increased its voting rights in Kungsdialysen from 5% to 9.2% and its part of the share capital from 30.8% to 33.9%. The shares owned following this operation form part of Skandia's and Skandia Life's free assets, that is to say funds not covering the technical provisions.

23 In that letter, Skandia contended that the first paragraph of Article 17 of Chapter 7 of the FRL (hereinafter 'the 5% rule') was contrary to Article 18(1) of Directive 73/239 and Article 21(1) of Directive 79/267, as amended.

24 By decision of 21 March 1996, the Finansinspektionen decided that those Community provisions did not have direct effect, on the ground that they were not sufficiently clear and precise, so that Skandia was obliged to comply with the 5% rule. It asked Skandia to take all the measures necessary to reduce, by 1 September 1996, its shareholding in Kungsdialysen to no more than 5% of the voting rights attached to all the shares of that company.

25 Skandia appealed against that decision to the Swedish Government, which rejected the appeal by decision of 15 August 1996.

26 On 6 September 1996, Skandia sought judicial review of that decision by the Regeringsrätten (Supreme Administrative Court).

27 In view of that appeal, the Finansinspektionen, by decision of 10 October 1996, extended the time-limit set for Skandia Investment to reduce its shareholding in Kungsdialysen until a date to be notified, but not later than three months after the date on which the Regeringsrätten gives its definitive ruling.

28 Contrary to the position taken by the Finansinspektionen, the Swedish Government considers that Article 18(1) of Directive 73/239 and Article 21(1) of Directive 79/267, as amended, are sufficiently clear and precise so as to create rights on which individuals may rely. However, the purpose of those provisions is principally to prevent national rules from requiring insurance undertakings to invest, or prohibiting them from investing, their free resources in certain categories of assets. In its view, those articles do not therefore prohibit every form of regulation of free resources. Consequently, in its view there is nothing to prevent a Member State from enacting rules to limit the influence which an insurance undertaking may exert on other undertakings through its shareholdings.

29 According to Skandia, the 5% rule constitutes a quantitative restriction on the investment by insurance undertakings of their free assets which is incompatible with the amended Article 18(1) of Directive 73/239 and the amended Article 21(1) of Directive 79/267, which, in its view, have direct effect. If such a restriction were accepted, Swedish insurance undertakings would be subjected to distorted competition *vis-à-vis* undertakings established in other Member States. Such a rule would also make it more difficult to achieve the internal market in provision of insurance services in the European Union, which would be detrimental to consumers.

30 In those circumstances the Regeringsrätten decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is it compatible with Article 18(1) of Directive 73/239/EEC, as amended by Article 26 of Directive 92/49/EEC, and with Article 21(1) of Directive 79/267/EEC, as amended by Article 27 of Directive 92/96/EEC, for national legislation to prescribe that, so far as an insurance company's free assets (i. e. those assets not used to cover the technical provisions) are concerned, the insurance company may not, without special administrative authorisation, own more shares in a domestic or foreign joint-stock company than corresponds to 5% of the votes attached to all the shares?

If Question 1 is answered in the negative:

2. Are the aforementioned directive articles of such a character, as regards clarity and so forth, that they have the consequence that a national court must disregard a national provision having the tenor described above when called upon to examine the permissibility of an insurance company's investments of its free assets?'

The first question

31 By its first question, the national court asks essentially whether, on a proper construction of Article 18(1) of Directive 73/239, as amended by Article 26 of Directive 92/49, and of Article 21(1) of Directive 79/267, as amended by Article 27 of Directive 92/96, a rule of national law may not prohibit insurance undertakings from holding, as their free assets, shares representing more than 5% of all the voting rights in a domestic or foreign public limited company, without administrative authorisation.

32 According to the Swedish, Finnish and Norwegian Governments, the amended Article 18(1) of Directive 73/239 and the amended Article 21(1) of Directive 79/267 prohibit Member States from imposing qualitative restrictions on the choice of assets constituting insurance undertakings' free assets. The Member States cannot therefore compel such undertakings to invest their free assets in particular categories of assets. However, they are still at liberty to impose on them quantitative restrictions regarding the investment of such free assets.

33 The governments contend that the purpose of the adoption by Member States of measures restricting the quantity of assets which insurance undertakings may invest in other companies is, in accordance with Article 8(1)(b) of Directives 73/239 and 79/267, as amended, first, to prevent a concentration of shareholdings and the exertion by insurance undertakings of excessive influence over companies not pursuing insurance business and, second, to protect insured persons against the financial risks stemming from the involvement of those companies in non-insurance business.

34 They further contend that the prohibition on the pursuit by insurance undertakings of non-insurance business could easily be circumvented if the Member States were unable to prevent those undertakings from holding 'significant' or 'substantial' shareholdings in companies carrying on business other than insurance business. It is for each Member State to determine how 'significant' or 'substantial' influence over such companies is to be defined.

35 The Swedish Government refers in particular to Directive 85/611, which, in Article 13, provides that investment companies may not engage in activities other than the management of investment funds in transferable securities and, in Article 25, stipulates that such companies may not acquire any shares carrying voting rights which would enable them to exercise 'significant influence' over the management of the bodies issuing the securities which they manage. Although 'significant influence' is

not defined by Directive 85/611, the majority of Member States indicated, during the drafting of the directive, that they favoured an express limit of 5% of the shares carrying voting rights.

36 Finally, the Swedish Government maintains that a rule of national law such as the 5% rule in question in the main proceedings appears reasonable, particularly when it is considered that the national authorities may, as in this case, authorise an insurance company to exceed the threshold in particular cases.

37 It must be recalled first of all that the purpose of Directives 73/239 and 79/267, adopted on the basis of Article 57(2) of the EEC Treaty, is to facilitate the exercise of the right of establishment of undertakings operating in the non-life insurance sector and in the life assurance sector (see the second recital of the preamble to Directive 73/239 and the first recital of the preamble to Directive 79/267).

38 The purpose of Directives 92/49 and 92/96, amending Directives 73/239 and 79/267, also adopted on the basis of Article 57(2) and on the basis of Article 66 of the EEC Treaty, is to complete the internal market in non-life insurance and life assurance from the point of view both of the right of establishment and of the freedom to provide services.

39 In order to achieve those aims, the purpose of Directives 92/49 and 92/96 is to bring about 'such harmonisation as is essential, necessary and sufficient to achieve the mutual recognition of authorisations and prudential control systems, thereby making it possible to grant a single authorisation valid throughout the Community and apply the principle of supervision by the home Member State' (recital (5) of the preamble to those two directives).

40 Under Article 13 of Directive 73/239 and Article 15 of Directive 79/267, as amended, the home Member State is therefore solely responsible for the financial supervision of insurance undertakings, including, in particular, verification, in respect of their entire business, of their state of solvency and the establishment of technical provisions and matching assets.

41 The amended Article 15 of Directive 73/239 and the amended Article 17 of Directive 79/267 also provide that the home Member State is to require every insurance undertaking to establish adequate technical provisions in respect of its entire business, in the form of matching assets and, for risks situated within the Community, localised within it. Article 22(5) of Directives 92/49 and 92/96 also provides that the Member States are not to require insurance undertakings to invest in particular categories of assets.

42 However, the amended Article 18(1) of Directive 73/239 and the amended Article 21(1) of Directive 79/267 provide, in clear and binding terms, that 'Member States shall not prescribe any rules as to the choice of assets that need not be used as cover for the technical provisions ...'.

43 It is therefore clear from the very wording of the amended Article 18(1) of Directive 73/238 and the amended Article 21(1) of Directive 79/267 that the Member States must abstain from enacting any rules as to the choice of assets constituting the free assets of insurance undertakings, whether in relation to the quality or to the quantity of such assets.

44 Moreover, the application by a Member State to insurance undertakings subject to its supervision of a rule of national law, such as the 5% rule, is liable to entail, vis-à-vis insurance undertakings subject to the supervision of other Member States whose legislation does not lay down such a rule, distortions of competition

incompatible with the internal market which, in the non-life insurance and life assurance sectors, Directives 92/49 and 92/96 were precisely adopted to achieve.

45 Nor can such a rule be justified by the Member States' obligation, under the amended Article 8(1)(b) of Directives 73/239 and 79/267, to ensure that insurance undertakings limit their objects to insurance business and to the operations directly arising therefrom, to the exclusion of all other commercial business.

46 First, the wording of such a provision does not prohibit insurance undertakings from holding, as their free assets, shares in a company carrying on business other than insurance business.

47 Second, the purpose of the prohibition preventing insurance undertakings from carrying on commercial business other than insurance business, laid down in the amended Article 8(1)(b) of Directives 73/239 and 79/267, is in particular to protect the interests of insured persons against the risks which the exercise of such business could entail for the solvency of those undertakings. It follows that the aforesaid provision does not prevent insurance undertakings from holding shares in public limited companies carrying on commercial business other than insurance business and to the assets of which the financial risks are confined.

48 As regards the Swedish Government's argument based on Directive 85/611, if the Community legislature had intended to introduce, in the field of insurance, a restriction similar to that which Article 25 of that directive imposes on investment companies, it could have done so at the time when Directives 73/239 and 79/267 were amended, in particular by Directives 92/49 and 92/96.

49 It follows that the mere holding of shares in a company carrying on business other than insurance business is not in itself contrary either to the wording or to the purpose of the amended Article 8(1)(b) of Directives 73/239 and 79/267.

50 The mere fact that the competent national authorities enjoy a discretionary power to grant derogations from the 5% rule cannot render that rule compatible with Article 18(1) of Directive 73/239 and Article 21(1) of Directive 79/267 (see, to this effect, the judgment in Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203, paragraph 10).

51 It is true that there is a risk that certain investments might compromise the solvency of insurance undertakings. In order to guard against such a risk, it is for the national supervisory authorities of the home Member State to maintain, in accordance with the amended Article 13 et seq. of Directive 73/239 and the amended Article 15 et seq. of Directive 79/267, financial supervision of insurance undertakings.

52 In any event, as Skandia and the Commission rightly point out, the fact that the 5% rule takes into account the percentage of voting rights and not the share of the capital held by insurance undertakings in public limited companies demonstrates that the purpose of such a rule is not to ensure the financial stability of those undertakings but to limit the influence which they may exert in such companies.

53 The answer to be given to the first question must therefore be that, on a proper construction of Article 18(1) of Directive 73/239, as amended by Article 26 of Directive 92/49, and of Article 21(1) of Directive 79/267, as amended by Article 27 of Directive 92/96, a rule of national law may not prohibit insurance undertakings from holding, as their free assets, shares representing more than 5% of all the voting rights in a domestic or foreign public limited company without administrative authorisation.

The second question

54 By its second question, the Regeringsrätten asks essentially whether Article 18(1) of Directive 73/239, as amended by Article 26 of Directive 92/49, and Article 21(1) of Directive 79/267, as amended by Article 27 of Directive 92/96, are sufficiently precise and unconditional to be relied upon before the national court as against the national authorities and to render a rule of domestic law contrary to them inapplicable.

55 The obligation, imposed on Member States by those provisions, not to prescribe any rules as to the choice of assets that need not be used as cover for the technical provisions is laid down in clear and unconditional terms and does not require any particular measure to implement it.

56 It follows that such provisions may be relied on before the national court as against the national authorities, rendering inapplicable any contrary rule of domestic law.

57 The answer to be given to the second question must therefore be that Article 18(1) of Directive 73/239, as amended by Article 26 of Directive 92/49, and Article 21(1) of Directive 79/267, as amended by Article 27 of Directive 92/96, are sufficiently precise and unconditional to be relied upon before the national court as against the national authorities, rendering inapplicable any contrary rule of domestic law.

Costs

58 The costs incurred by the Swedish, Finnish and Norwegian Governments and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Regeringsrätten by order of 11 June 1997, hereby rules:

1. On a proper construction of Article 18(1) of the First Council Directive (73/239/EEC) of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Article 26 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), and of Article 21(1) of the First Council Directive (79/267/EEC) of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of

the business of direct life assurance, as amended by Article 27 of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive), a rule of national law may not prohibit insurance undertakings from holding, as their free assets, shares representing more than 5% of all the voting rights in a domestic or foreign public limited company without administrative authorisation.

2. **Article 18(1) of Directive 73/239, as amended by Article 26 of Directive 92/49, and Article 21(1) of Directive 79/267, as amended by Article 27 of Directive 92/96, are sufficiently precise and unconditional to be relied upon before the national court as against the national authorities, rendering inapplicable any contrary rule of national law.**

Rodríguez Iglesias Puissochet Hirsch

Jann Moitinho de Almeida Gulmann

Murray Edward Ragnemalm Sevón Wathelet

Delivered in open court in Luxembourg on 20 April 1999.

R. Grass G. C. Rodríguez Iglesias

Registrar President