business conducted on its territory but also for business conducted in other Member States in the context of the provision of services. On the contrary, such a requirement does conform to the principles laid out in Directive 73/239. The directive is based on the principle that the State of establishment is authorized to take into account all the business activities of undertakings constituted within its territory in order to be able to carry out an effective supervision of the conditions in which such activities are pursued.

REPORT FOR THE HEARING
delivered in Case 252/83 *

I — Facts and written procedure

1. The co-insurance sector, that is to say, insurance in which several insurers take part, has been the subject of the following harmonizing directives:

(a) Council Directive No 73/239 of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up of the business of direct insurance other than life assurance (Official Journal L 228, p. 3), adopted on the basis of Article 57 (2) of the Treaty and is designed to facilitate the setting-up of branches and agencies of insurance undertakings of other Member States by coordinating the conditions governing the taking-up and pursuit of the activities of direct insurance undertakings whose head offices are situated within the Community (Articles 6 to 22) and the activities of agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community (Articles 23 to 29).

Under that directive, the taking-up of the business of direct insurance on the territory of a Member State both for undertakings whose head offices are situated within the Community and for those whose head offices are outside the Community is subject to an official authorization (Articles 6 and 23).

More specifically, Article 6 (1) and (2) of the directive provides, with respect to undertakings whose head offices are situated within the Community, that:

'1. Each Member State shall make the taking-up and 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

* Language of the Case: Danish.

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.'

The authorization in question is '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' (Article 7 (1)).

Directive No 73/239 also regulates supervision of compliance with the conditions governing the exercise of the business of direct insurance and, in particular, the financial position of the undertakings concerned (Article 13). In that connection, the supervisory authority of the Member State in whose territory the head office of the undertaking is situated must verify the state of solvency of the undertaking with respect to its entire business (Article 14). Moreover, the directive lays down rules relating to the establishment of an adequate solvency margin in respect of the entire business of the undertaking, corresponding to the assets thereof (Article 16 to 18). As regards technical reserves, the directive provides that they must be sufficient and represented by equivalent and matching assets localized in each country where business is carried on (Article 15), whilst reserving the question of coordination in that respect for later directives.

With regard to supervision of undertakings of this kind, Article 19 provides:

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

2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.'

Finally, the directive provides that the Commission and the competent authorities of the Member States are to collaborate closely 'for the purpose of facilitating the supervision of direct insurance within the Community and of examining any difficulties which may arise in the application of this directive' (Article 33).

(b) Council Directive No 78/473 of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (Official Journal L 151, p. 25) was adopted on the basis of Articles 57 (2) and 66 of the Treaty, and specifically governs Community co-insurance operations. According to the first paragraph of Article 1 (2), it applies to 'risks . . . which by reason of their nature or size call for the participation of several insurers for their coverage'. Article 2 (1) provides that the directive is to apply only to those Community co-insurance operations which satisfy the following conditions:

'(a) the risk, within the meaning of Article 1 (1), is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings, hereinafter referred to as

"co-insurers", each for its own part; one of these undertakings shall be the leading insurer;

(b) the risk is situated within the Community;

(c) for the purpose of covering this risk, the leading insurer is authorized in accordance with the conditions laid down in the first coordination directive, i.e. he is treated as if he were the insurer covering the whole risk;

(d) at least one of the co-insurers participates in the contract by means of a head office, agency or branch established in a Member State other than that of the leading insurer;

(e) the leading insurer fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.'

On the other hand, those co-insurance operations which do not satisfy those conditions or which cover risks other than those listed in Article 1 are to 'remain subject to the national laws operative at the time when this directive comes into force' (Article 2 (2)).

The adoption of Article 2 (1) is the source of the following statement which appears in the minutes of the Council's meeting of 23 May 1978:

'The Council emphasizes that the adoption of this directive and in particular Article 2 (1) thereof is entirely without prejudice to the resolving of the dispute between the Member States and the Commission on the interpretation to be placed on the rulings of the Court of Justice on freedom to provide services (Case 33/74 *Van Binsbergen*).

This text is without prejudice to national provisions relating to the establishment of the leading insurer, which are to be appraised on the basis of the Treaty, by the Court of Justice as a last resort if necessary.'

The rights of undertakings which have their head office in a Member State and which are subject to and satisfy the requirements of Directive 73/239 to participate in Community co-insurance may not be made subject to any provisions other than those of Directive 78/473 (Article 3).

The conditions and procedure for Community co-insurance are dealt with in the following provisions:

'*Article 4*

1. The amount of the technical reserves shall be determined by the different co-insurers according to the rules fixed by the Member State where they are established or, in the absence of such rules, according to customary practice in that State. However, the reserve for outstanding claims shall be at least equal to that determined by the leading insurer according to the rules or practice of the State where such insurer is established.

2. The technical reserves established by the different co-insurers shall be represented by matching assets. However, relaxation of the matching assets rule may be granted by the Member States in which the co-insurers are established in order to take account of the requirements of sound management of insurance undertakings. Such assets shall be localized either in the Member States in which the co-insurers are established or in the Member State in which the leading

insurer is established, whichever the insurer chooses.

Article 5

The Member States shall ensure that co-insurers established in their territory keep statistical data showing the extent of Community co-insurance operations and the countries concerned.

Article 6

The supervisory authorities of the Member States shall cooperate closely in the implementation of this directive and shall provide each other with all the information necessary to this end.'

Directive 78/473 also provides for close cooperation between the Commission and the supervisory authorities in the Member States (Article 8):

'The Commission and the competent authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this directive.

In the course of this cooperation they shall examine in particular any practices which might indicate that the purpose of the provisions of this directive and in particular of Article 1 (2) and Article 2 are being misused either in that the leading insurer does not assume the leader's role in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.'

Finally, according to the first four recitals in the preamble to the directive, the main reasons for its adoption were as follows:

'... the effective pursuit of Community co-insurance business should be facilitated by a minimum of coordination in order to prevent distortion of competition and inequality of treatment, without affecting the freedom existing in several Member States;

... such coordination covers only those co-insurance operations which are economically the most important, i.e. those which by reason of their nature or their size are liable to be covered by international co-insurance;

... this directive thus constitutes a first step towards the coordination of all operations which may be carried out by virtue of the freedom to provide services; whereas this coordination, in fact, is the object of the proposal for a second Council directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services ...;

... the leading insurer is better placed than the other co-insurers to assess claims and to fix the minimum amount of reserves for outstanding claims.'

(c) The proposal for a second Council directive (Official Journal 1976, C 32, p. 2) was submitted by the Commission on 30 December 1975. That proposal, as amended in February 1978 in the light of the opinions of the Economic and Social Committee and the European Parliament, seeks to lay down specific provisions facilitating the effective exercise of the freedom to provide services on the part of the undertakings and in respect of the branches of insurance covered by Directive 73/239, particularly as regards the method of calculating technical reserves, the rules governing insurance contracts and supervision of the undertaking concerned.

It appears from the documents before the Court that significant progress has been achieved on certain points, namely defi-

nition of major risks, choice of the applicable law, compulsory insurance and the procedures for the taking-up and pursuit of business in respect of major risks and mass risks.

On the other hand, other questions of a more technical nature, such as the provisions dealing with assignment of portfolios or calculation of technical reserves, are still under consideration. Furthermore, discussions undertaken have not to date produced a unanimously acceptable solution regarding the application of rules on matching assets or the way in which certain types of insurance, such as building insurance in France or fire insurance on immovable property in Denmark, should be treated. The same is true of tax problems (methods of collection and supervision). Finally, differences of opinion still persist as to the demarcation line, in the field of direct insurance, between freedom to provide services and establishment.

2. In order to transpose Directive 78/473 into national law, the Danish Government adopted Decree No 459 of 10 September 1981 on Community co-insurance.

(a) Article 7 of that decree provides that the leading insurer must be established in Denmark for the purposes of covering risks which must be regarded as Danish.

(b) Point 2 of Article 2 (1) of the said decree fixes thresholds for the amount of the guarantee or the turnover of the insured above which the provisions concerning Community co-insurance may be applied.

(c) Articles 18, 19, 21 and 28 of the decree require foreign insurance undertakings whose registered offices are situated in the Community and which have a branch or agency established in Denmark to obtain an authorization in order to take part in Community co-insurance transactions.

Furthermore, the combined effect of Articles 12 and 17 of the abovementioned decree, Articles 2 and 4 of Decree No 455 of 10 September 1981 on the authorization required in order to offer insurance against loss or damage and Decree No 457 of 10 September 1981 on solvency margins and the share capital of undertakings offering insurance other than life insurance is that an insurance undertaking whose registered office is situated in Denmark must obtain authorization in order to carry on business, and in particular, Community co-insurance business, abroad.

3. Since it considered that the Danish legislation set out above was contrary to the provisions of the Treaty regarding the right of establishment and freedom to provide services, the Commission, on 2 June 1981, sent a letter to the Danish Government, pursuant to the first paragraph of Article 169 of the Treaty, calling upon it to submit its observations.

In that letter, the Commission stated that the obligation to set up an establishment in Denmark, imposed on insurance undertakings not established there and which intended to act as leading insurer, constituted a restriction on freedom to provide services contrary to Articles 59 and 60 of the Treaty. Furthermore, the effect of fixing thresholds above which Community co-insurance operations were permitted was to exclude all provision of services in respect of co-insurance covering risks below those thresholds and thus constituted an infringement of Articles 59 and 60 of the Treaty. Finally, the obligation to obtain a special authorization imposed on branches or agencies of foreign undertakings wishing to participate in Community co-insurance operations was contrary to Articles 59 and 60 of the Treaty, Article 3 of the co-insurance directive and Article 7 of the Treaty.

In its reply of 7 September 1982, the Danish Government contended *inter alia* that Article 7 of the decree on Community co-insurance complied with Article 2 (1) (c) of Directive 78/473 and, for that reason, could not be contrary to the provisions of the Treaty. With regard to the thresholds laid down in Article 2 of the decree, the Danish Government pointed out that by virtue of the terms of the directive, those thresholds must be fairly fixed by the Member State and were in fact so fixed. Finally, with regard to the authorization required to carry out insurance transactions in the Community, the Danish Government referred to the need to ensure adequate supervision of branches and, as far as Danish undertakings were concerned, to the fact that they were treated in the same way as branches.

On 10 January 1983, the Commission delivered a reasoned opinion under the first paragraph of Article 169 of the Treaty. In that opinion it claimed, on the basis of the Court's case-law, that the obligation to be established in Denmark imposed on the leading insurer by Danish law constituted a restriction contrary to Article 59 of the Treaty. That restriction was not justified since all insurance undertakings in the Community, in all the Member States, were nowadays subject to a common authorization procedure established by Article 6 of Directive 73/239.

By virtue of the principle of mutual recognition of authorizations thus granted, the Member States are required to permit Community undertakings not established on their territory to exercise without restriction the freedom to provide services.

Finally, the Commission pointed out that the arguments put forward by the Danish Government to justify the provisions requiring that an authorization be obtained before carrying on insurance business outside Denmark led to the conclusion that those provisions were contrary both to Articles 52 and 59 of the Treaty and to Article 6 of Directive 73/239.

The Danish Government was called upon to bring the infringement to an end within two months from the notification of the reasoned opinion.

By letter of 20 April 1983, the Danish Government replied to the reasoned opinion. It maintained its point of view and contended in particular that the obligation to become established was justified under the case-law of the Court and that it was necessary in order to ensure compliance with Danish legislation on the part of all those carrying on insurance business on Danish territory.

By application of 9 November 1983, the Commission brought the present proceedings.

4. The application was lodged at the Court Registry on 11 November 1983.

By applications lodged at the Court Registry on 9 February and 1 March 1984 respectively, the Kingdom of the Netherlands and the United Kingdom sought leave to intervene in support of the Commission's conclusions. By applications lodged at the Court Registry on 3 and 14 February 1984 respectively, the Kingdom of Belgium and Ireland sought leave to intervene in support of the defendant's conclusions.

By orders of 29 February and 14 March 1984, the Court, after hearing the Advocate General, decided to allow the interventions in accordance with Article 93 of the Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, pursuant to Article 21 of the Statute of the Court of Justice of the EEC, the Court asked the Commission and the Danish Government to reply in writing, before the hearing, to certain questions and to supply certain information dealing essentially with the interpretation of Directive 78/473, the stage reached in regard to the preparation of the draft of a second directive on direct insurance other than life insurance, the development of Community co-insurance, the national rules and practices concerning authorization of co-insurance activities, the obligation to obtain a special authorization for co-insurance activities carried on in other Member States and the thresholds for application of the co-insurance rules. In reply to those questions, certain information and documents were supplied to the Court and account has been taken of them in all essential respects in the statement of facts and in the presentation of the submissions and arguments of the parties.

II — Conclusions of the parties

The *Commission*, supported by the Kingdom of the Netherlands and the United Kingdom, claims that the Court should:

1. Declare that the Kingdom of Denmark,

   (a) by adopting Decree No 459 of 10 September 1981 requiring insurance undertakings to become established in Denmark in order to be able to provide co-insurance services in them as leading insurers, has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty;

   (b) by adopting Decree No 459 of 10 September 1981, which prevents Community insurance undertakings not established in Denmark from participating in co-insurance activities which, by reason of their nature or size or the insured's turnover, are not covered by the aforesaid decree, has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty;

   (c) by inserting into the Danish legislation regulating insurance and into the orders adopted pursuant thereto a requirement that insurance companies whose stated principal place of business is in Denmark and Danish branches of insurance companies whose stated principal place of business is elsewhere in the European Community must have a special authorization in order to provide services in the field of insurance, including co-insurance, in other Member States of the European Community, and by laying down conditions for the granting of such authorization which are not the same for companies whose stated principal place of business is in Denmark as for Danish branches of companies whose stated place of business is elsewhere in the European Community, the Kingdom of Denmark has failed to fulfil its obligations under Articles 52, 59 and 60 of the EEC Treaty and under Article 6 of Directive 73/239/EEC of 24 July 1973;

   (d) by applying, by way of decisions adopted by the national authorities, the provisions mentioned in paragraphs (a) to (c) above instead of Articles 59 and 60 of the EEC Treaty, has failed to fulfil the obligations which ensue from the direct

effect of the aforesaid provisions of the EEC Treaty and from the rule of the primacy of Community law; and

2. Order the Kingdom of Denmark to pay the costs.

The *Kingdom of Denmark*, supported by the Kingdom of Belgium and Ireland, contends that the Court should:

1. Dismiss the application as unfounded;

2. Order the Commission to pay the costs.

III — Submissions and arguments of the parties

1. *General observations on the provisions of the Treaty regarding freedom to provide services and the harmonizing directives*

(a) The *Commission* claims that Articles 59 and 60 of the Treaty are designed to bring about the immediate removal of restrictions on the freedom to provide services. The Court has consistently held that those provisions have direct effect and confer rights on individuals which the national courts are obliged to protect. Since they contain no limitation *ratione materiae*, they also apply to the insurance sector without regard to the nature or size of the risks covered.

Their scope cannot be limited by provisions of secondary Community law or subordinated to the implementation of coordination directives adopted in accordance with Article 57 (2) of the Treaty, since the purpose of those directives is not to implement but merely to facilitate the freedoms laid down in the Treaty by eliminating disparities between non-discriminatory national laws. Consequently, they may not be interpreted and applied in a way which derogates from the fundamental requirements of Articles 59 and 60 of the Treaty.

The third paragraph of Article 60 of the Treaty, which provides that the person providing a service is subject to the same conditions as are imposed by Member States on their own nationals, is not applicable in this instance because it deals only with the case in which the person providing a service must pursue his activity by means of a physical presence in the country where the service is provided and not with the fact that the service provided produces effects in the country of the recipient of the service, as is the case when the risk covered is situated in that country.

With regard to Directive 78/473 (the co-insurance directive), the Commission explains that it first submitted its proposal to the Council in May 1974, that is to say, before the judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* v *Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299). The text of that proposal is therefore still based on the principle that the Member States had a right to adopt and maintain in force legislation on the establishment of leading insurers and that the right freely to provide services in the field of co-insurance, both for the leading insurer and for the other co-insurers, depended on the adoption by the Council of appropriate directives.

Ever since its amended proposal of May 1975, however, the Commission has supported the proposition that the purpose of the directive could not be to liberate Community co-insurance but merely to facilitate it and that the national provisions concerning the determination of the place of establishment of the leading insurer were no longer applicable because they did not comply with the Treaty. Since several

Member States did not accept that proposition, the Commission considered the possibility of amending the text so that the Community co-insurance transactions covered by the directive would be limited to those in respect of which the contract had been concluded under the auspices of a leading insurer established either in the country in which the risk was situated or in the country in which the insured was domiciled. It was, however, made clear that the leading insurer could also be established in a country other than that of the risk or of the insured, in which case it would not have the benefit of the facilities provided for in the directive.

In that connection, the Commission refers to the aforesaid statement of the Council of 23 May 1978 (see p. 3717). The Commission thus excludes the possibility that Article 2 (1) (c) of Directive 78/473 might be interpreted as meaning that the leading insurer must be established in the country in which the risk is situated or that the Member States are entitled to require that he be so established.

(b) The *United Kingdom* observes that according to the judgments of 18 January 1979 (Joined Cases 110 and 111/78 *Ministère public* v *Van Wesemael* [1979] ECR 35) and of 17 December 1981 (Case 279/80 *Webb* [1981] ECR 3305), the essential requirements of Article 59 include the abolition of discrimination against the person providing the service by reason of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided. That requirement also includes abolition of covert discrimination.

Although the Court's case-law leaves the Member States free to apply their national law to persons established elsewhere in the Community who provide services in their territories where that law is objectively justified, that freedom involves two reservations: firstly, the requirement to obtain a licence is not justified when the person providing the service established in another Member State holds in that State a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject to proper supervision whatever may be the Member State in which the service is provided. Secondly, any justification put forward by a Member State must be looked at objectively. Consequently, the least restrictive measures must be chosen and those measures must be proportionate to the end result to be achieved. The existence of directives harmonizing national laws in the field under consideration reduces *pro tanto* the scope of national competence.

(c) The *Danish Government* concludes from a detailed analysis of the Court's case-law and particularly the judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* v *Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299), the judgment of 26 November 1975 (Case 39/75 *Coenen* v *Sociaal-Economische Raad* [1975] ECR 1547) and the judgment of 18 January 1979 (*Van Wesemael*, cited above) that national rules and requirements, even though they interfere with or obstruct freedom to provide services, may be objectively necessary in order to realize the objectives which those rules are intended to protect.

In this case, it is not in practice possible to give effect to the freedom to provide services unless the problems which it is proposed to resolve in the context of the second directive on insurance against loss or damage are also resolved in a very concrete way by harmonization at Community level. Supplemental rules are thus necessary, particularly with regard to technical reserves (matching and equivalent assets), the law

applicable to the contract, approval of the conditions of insurance, compulsory insurance, and pooling schemes, the rules concerning inspection and supervision and the rules dealing with penalties, withdrawal of authorization and judicial settlement.

That consideration is confirmed, *inter alia*, by the General Programme of 18 January 1961 for abolition of restrictions on freedom to provide services, according to which that freedom cannot be implemented until certain prior conditions have been satisfied, namely that freedom of establishment in the various branches of insurance shall have been attained, that national rules governing insurance contracts shall have been coordinated, in so far as the disparity between such rules is detrimental to the insured and to third parties, and that formalities for the mutual recognition and enforcement of judgments shall have been simplified. Similarly, it is recognized in the recitals in the preamble to the proposal for a second directive on direct insurance that 'the effective exercise of freedom to provide services will not be fully accomplished until certain aspects have been harmonized'.

(d) The Belgian Government states that Articles 59 and 60 of the Treaty, which are directly applicable, are not absolute. Firstly, the freedom to provide services is of a residual nature inasmuch as the practical realization of that freedom must be set aside where the exercise of an activity is governed by the provisions relating to freedom of movement for goods, capital and persons (first paragraph of Article 60 of the Treaty).

Furthermore, by virtue of the third paragraph of Article 60 of the Treaty, the freedom to provide services may be exercised only if the laws and regulations in force in the country in which the service is performed are respected, whether the person providing the service is physically present in the country or acts through intermediaries or by correspondence.

Finally, the provisions of the Treaty cannot be interpreted without reference to the harmonizing directives provided for in Article 57 (2) of the Treaty with the result that an absence of harmonization may justify the temporary maintaining in force of specific measures which are adapted to meet objective situations arising from that deficiency.

(e) *Ireland* adds that although the direct application, in accordance with the case-law of the Court, of Articles 59 and 60 cannot be questioned, and the applicability of those provisions to services in insurance *ratione materiae* cannot be denied, there are none the less objective differences between the different categories and types of insurance which call for different treatment under those articles in the public interest. The decision of the Court should therefore be strictly limited to the field of co-insurance.

2. *The requirement that the leading insurer must be established in Denmark and comply with the national rules in their entirety*

(a) The *Commission* claims firstly that the Kingdom of Denmark has failed to fulfil its obligations under Articles 59 and 60 of the Treaty inasmuch as the Danish legislation requires Community insurance undertakings to be established in Denmark in order to be able, as leading insurers, to offer co-insurance services, and inasmuch as it requires them to comply with all the national rules dealing with insurance.

Those restrictions are not justified by the concern to ensure that third parties are protected, that essential Danish rules are complied with or that appropriate supervision is exercised by the authorities of the State of establishment.

On the one hand, no preventive measure can provide total protection against offences deliberately committed. On the other hand, as regards a possible lack of knowledge of the essential provisions of national law, it would suffice if the Danish authorities were to establish a list of those provisions. This would in particular meet the obligations under Article 5 of the Treaty and the various provisions of secondary law requiring the Member States to cooperate with and assist each other (see Article 33 of Directive 73/239 and Articles 6 and 8 of Directive 78/473).

Furthermore, verification of compliance with essential rules can only reasonably take place after the services have been provided and not before, that is to say, attention should be directed to *a posteriori* controls. From that point of view, the obligation to obtain prior authorization appears disproportionate.

That obligation also appears to be unjustified inasmuch as it duplicates the prior authorization which undertakings must obtain from the public authorities of the State in which they are based (Article 6 of Directive 73/239) and it deprives of all real significance the principle of the mutual recognition of documents and certificates which have been coordinated at Community level.

The only function that prior authorization could perform is to make it possible to verify the good professional reputation and the professional competence generally required and the financial standing of undertakings not established in Denmark. However, it follows from Articles 8 (3), 10 (3), 13, 14, 15 and 19 of Directive 73/239 as well as from Article 5 of Directive 78/473 that such verifications are now exclusively matters for the authorities of the State in which the undertaking is established.

Finally, it must be emphasized that the obligation to obtain prior authorization gives rise to indirect or covert discrimination inasmuch as undertakings which are not in the same situation are subject to the same treatment. Danish undertakings are only required to obtain authorization when they begin to carry on business, whereas undertakings established in another Member State and which are already authorized there are obliged to seek a further authorization.

The argument to the effect that it is impossible for the Member State in which the undertaking is established to supervise adequately activities pursued in another country is not relevant in this case in view of the means of detection and taking action at the disposal of the Member State in which the service is performed.

On the one hand, there are a great many means of exercising direct supervision through the various contacts which both insured and insurer are necessarily obliged to have with the authorities of the State in which the service is performed, for example, when taxes are paid and when a company's foreign exchange transactions or accounts are controlled.

On the other hand, the duty on the part of the supervisory authorities of the Member States to cooperate closely with each other and the duty of undertakings to provide information (see Articles 13, 14, 19 and 33 of Directive 73/239 and Articles 5 and 6 of Directive 78/473) provide means of exercising indirect supervision.

At the request of the Court, the Commission also submitted a table of the national rules and practices applicable in the Member States, other than France and Denmark, of co-insurance services. That summary shows a great divergence between the laws of the various Member States.

With regard to the obligation to obtain an authorization, it appears from the table that certain Member States (the Netherlands, the United Kingdom) generally permit an undertaking which has not been authorized in those States to cover risks situated on their territory or to conclude contracts with parties resident on their territory either as a leading insurer or as a co-insurer other than the leading insurer. On the other hand, other Member States (Belgium, the Federal Republic of Germany, Ireland, Luxembourg) permit that sort of activity only under certain conditions, notably when the risk insured is of a certain minimum size. Finally, certain Member States (Greece, Italy) seem generally to prohibit such activities by undertakings not authorized in those States.

The Commission states that in so far as authorization is required, it is always an authorization of the type provided for by the first coordination directive (73/239), which is granted to the insurance undertakings themselves (and not to any intermediaries they may have) and is linked in one way or another to a requirement of establishment.

With regard to the financial guarantees required of insurance undertakings, the Commission emphasizes that in all the cases in which an insurance undertaking established in one Member State and not authorized in another is permitted to conclude an insurance contract with a resident of the latter State or to cover a risk situated on its territory, that Member State does not itself require the observance of any financial guarantee. It is thus left to the Member State in which the undertaking is established or the State in which it has its head office, or both of those States, to supervise the financial security of the contract and of the undertaking. That is in conformity with the Commission's interpretation of Directive 73/239, according to which it is for the Member State in which the undertaking is established and the Member State in which it has its head office to carry out that financial supervision.

(b) The *Netherlands Government* observes that it is clear from the history of Directive 78/473 that Article 2 (1) (c) of that directive does not require the leading insurer to obtain an authorization from the Member State in which the risk is situated.

The initial draft proposal submitted to the Council by the Commission still permitted the Member States to require that the leading insurer be established in the State where the risk was situated. In the amended draft, however, that provision was removed as a result of the judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* v *Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299), since the Commission considered that national legislation requiring the leading insurer to be established on the territory of a particular Member State was contrary to Article 59 of the Treaty as interpreted by the Court.

There is no justification for requiring establishment or authorization in the Member State in which the service is provided. Firstly, the essential conditions for responsible supervision of direct insurance operations other than life insurance are coordinated by the harmonizing directives (see Articles 13, 14, 19 (2) and 33 of Directive 73/239 and Article 6 of Directive 78/473).

Secondly, the consequence of the requirement that leading insurers be established or authorized is a double supervision which constitutes unjustified discrimination against insurers established in other Member States as compared with Danish insurers.

Nor, finally, is the requirement of establishment or authorization in the Member State in which the service is provided necessary for the collection of taxes relating to insurance contracts because it is sufficient for that purpose to require that the tax be paid by the policy-holder. Co-insurance is concerned only with insurance in which the policy-holder carries on a profession or an industrial activity and is obliged for that reason to keep accounts. It is thus possible to verify *a posteriori* whether insurance contracts have been entered into and whether any tax which may be due in respect of them has been paid.

(c) The *United Kingdom* observes that the insured in co-insurance business are usually commercial and industrial companies of substantial size with substantial resources. They thus have access to skilled professional advice and need no special protection. For that reason, Article 2 (1) (c) of Directive 78/473 dealing with authorization of the leading insurer must be interpreted, in accordance with the terms of the Treaty, as referring merely to an authorization granted in any Member State of the Community.

The Danish Government's argument to the effect that, owing to the special nature of insurance, particularly restrictive national legislation is required in that field cannot be accepted since insurance has operated for centuries in the United Kingdom on a freedom of services basis and more specifically, with regard to co-insurance, there are no weak parties to protect.

It also cannot be said that the Danish Government has shown that the authorization required by the Danish rules does not duplicate the safeguards in the other Member States. Inasmuch as those rules impose a double authorization in the Community on undertakings from other Member States, it constitutes discrimination, particularly so since an insurer may participate only occasionally in co-insurance and for that reason the requirement to set up an establishment would make this totally uneconomic.

In any event, a requirement that a leading insurer be established in Denmark is an inappropriate and disproportionate mechanism to ensure compliance with Danish law since the Member State in whose territory the insurer's registered office is situated is required to verify the state of solvency of the undertaking with respect to its entire business, without regard to where that business is transacted (see Article 14 of Directive 73/239).

Finally, breaches of Danish law can be dealt with through cooperation between the supervisory authorities of the Member States (see Article 33 of Directive 73/239 and Article 8 of Directive 78/473).

(d) In the *Danish Government's* view, on the other hand, Article 2 (1) (c) of Directive 78/473 must be interpreted as permitting the Member States to require the leading insurer to set up an establishment in the country of the risk. That interpretation is the only one which provides a convincing explanation of the way in which the scope of the directive has been delimited.

The purpose of the directive is to permit co-insurance transactions across frontiers for all co-insurers other than the leading insurer, who is still required to be estab-

lished in the country of the risk. The cross-border element is therefore guaranteed by means of a rule requiring a different place of establishment for the leading insurer and at least one of the other insurers (see Article 2 (1) (d) of Directive 78/473). That rule presupposes that the leading insurer be established in the country of the risk.

With regard to Denmark, the obligation to set up an establishment means that the undertaking must have in Denmark, *inter alia*, sufficient technical reserves to cover at least the sum of its commitments under insurance contracts directly entered into in Denmark. That requirement must be seen in relation to the rules permitting the supervisory authority to prohibit an undertaking from disposing of its assets when it is in financial difficulties in order to ensure that in the case of a financial collapse, the assets remaining in Denmark would be sufficient to cover the sums owed to insured persons in that country.

Abolition of the requirement to set up an establishment and to obtain an authorization thus presupposes adoption of a series of new and autonomous rules governing the specific problems which will arise once foreign undertakings not established in Denmark begin to provide services there. It is particularly necessary that the provider of services should be subject in respect of all his activities to a form of supervision designed to verify whether he is at all times fulfilling his obligations under the legislation. Part of that supervision at least must necessarily be carried out before any business is transacted and must cover the existence of sufficient technical reserves not merely for the entire period of insurance provided for in the contract but also for the subsequent period in the course of which the question of liability is investigated, the value of claims is ascertained, and payment is made of the sum due under the policy. It is in practice impossible, at the present stage of development of Community law for the supervisory authority of another Member State effectively to ensure that insurance undertakings comply with the Danish rules on technical reserves, compulsory insurance or insurance policies.

Moreover, the Danish supervisory authorities cannot independently ensure compliance with, for example, the legislation dealing with technical reserves, in so far as those reserves were valued on the basis of the rules of another Member State.

Since the person providing services is required to comply both with the basic rules of the country in which the service is provided and those of the country in which he is established, he may, in the present state of harmonization of Community law, be subjected to a disproportionate and even, in certain cases, impossible burden. In order to avoid that double supervision, it is necessary to require that an independent branch be established in Denmark in the interest both of the companies and of the supervisory authorities.

In reply to a question put to it by the Court, the Danish Government states that there are no special rules regarding the conditions under which leading insurers are issued an authorization. The rules applied in that respect are those normally applied to the issue of an authorization. This is done in accordance with the rules laid down in the first coordination directive (73/239).

Every company has a right to the issue or renewal of an authorization once it fulfils the conditions laid down by law (Law No

127 of 23 March 1984 on insurance; Decree No 455 of 10 September 1981 on the authorization to engage in insurance activities other than life insurance; Decree No 459 of 10 September 1981 on Community co-insurance). Neither the need for nor the appropriateness of such an application are examined.

The leading insurer must have an authorization from the Danish supervisory authorities if the risk is situated in Denmark. Article 5 of Decree No 459 provides that 'the Member State in which the risk is situated shall be deemed to be:

(a) the one in which the insured property is situated if the insurance covers immovable property or movable property or covers risks classified as . . .

(b) the one in which the insured property was registered if the subject of the insurance is a registered ship, a railway vehicle or an aircraft and the insurance covers risks classified as . . .

(c) the one in which the insured is ordinarily resident, or, if the insured is a legal person, the one in which the establishment primarily referred to by the contract is situated, in all cases which are not expressly referred to at (a) and (b), and in particular risks classified as . . .'.

In certain cases, therefore, it is essential that, if the risk is to be regarded as located in Denmark, certain property must be situated there.

The Danish Government adds that, in accordance with Directive 78/473, a company which is authorized in another Member State and which merely acts as a co-insurer in respect of Danish risks, does not require an authorization from the Danish authorities.

(e) The *Belgian Government* contends that Directive No 78/473 is based on the premise that the leading insurer has obtained an authorization in the country in which the risk is situated. It is only by virtue of that premise that co-insurers whose head office is in another Member State do not require a specific authorization.

This becomes clear in particular from Article 2 (1) (c) of Directive 78/473, in conjunction with Directive 73/239, and from Article 4 (1) of Directive 78/473, according to which the reserve for outstanding claims is to be at least equal to that determined by the leading insurer 'according to the rules or practice of the State where such insurer is established'.

The obligation to obtain authorization in the State in which the service is provided is justified by the specific nature of the insurance sector, and in particular of the co-insurance sector. An insurance contract, because of its complexity and of the arcane terminology which is often employed, cannot be understood by the great majority of those taking out insurance, who are thus unable to deal on equal terms with the insurer. On the other hand, insurance is a highly technical product which relies on the laws of probability and of interest, and which thus represents a high level of risk for the insurer.

In the absence of complete harmonization, the authorization requirement is necessary both to protect the insured, who is unable to verify for himself if the undertaking is financially sound, and to avoid distortions of competition between undertakings established in a given Member State and those

which are not and, consequently, disturbances in the field of public policy and in the economic and monetary situation in a Member State.

(f) *Ireland* considers, as do the Fench, Belgian and German Governments, that the requirement that the leading insurer be authorized and established in the State of the risk flows directly from the terms of the harmonizing directives. That interpretation is supported, *inter alia*, by the recitals in the preamble to Directive 78/473 which recognizes that 'the leading insurer is better placed than the other co-insurers to assess claims and to fix the minimum amount of reserves for outstanding claims'. That statement implies that the leading insurer has more than a merely temporary link with the insurance market in the country of the risk.

The requirement to obtain an authorization and to be established is compatible with Articles 59 and 60 of the Treaty, particularly in the light of the judgment of 17 December 1981 (*Webb*, cited above). The insurance sector is a particularly sensitive area which has an impact on the public interest. With a view to the protection of that interest, the provision of insurance is subject to detailed regulation in all Member States, including strict governmental controls.

It must also be recalled that insurance transactions involve the transfer of large amounts of capital both for the payment of claims and for the investment of technical reserves in foreign currency. That circumstance would be liable to give rise to important capital movements which might affect some Member States in an adverse manner.

3. *The prohibition of co-insurance transactions in respect of risks below certain thresholds*

(a) The *Commission* and the *United Kingdom* also claim that the Kingdom of Denmark has failed to fulfil its obligations under Articles 59 and 60 of the Treaty inasmuch as the Danish legislation prohibits provisions of co-insurance services in respect of risks below the thresholds therein provided for. The Commission states that Decree 459, adopted by the Minister for Industry on 10 September 1981 for the purpose of implementing Directive 78/473, fixes in particular excessively high thresholds for risks in the fire insurance and civil liability insurance sectors.

An analysis of the Danish provisions shows that there are some co-insurance operations which fall within the scope of Directive 78/473 by virtue of the thresholds unilaterally fixed by the Danish authorities, and which thus have the benefit of the advantages resulting from the coordination brought about by that directive, and other co-insurance operations which are unable to benefit from the provisions of the directives and which thus remain subject to the general law, that is to say, the national legislation.

In reply to a question put to it by the Court, the Commission states that in its view, the co-insurance referred to by Directive 78/473 is only a part of co-insurance in the broader sense, by which must be understood coverage of a risk by several insurance undertakings (co-insurers) of which one is the leading insurer, without there being any solidarity between them, by means of a single contract for the same duration requiring payment of an overall premium. The co-insurance to which Directive 78/473 applies does not include, for example, coverage of risks regarded as forming part

of certain classes of insurance nor does it refer to the co-insurance of any risk where all the insurance undertakings participate through a head office or an agency or branch established in a single Member State.

The Commission considers that Articles 59 and 60 of the Treaty apply to any situation in which a co-insurer, including a leading insurer, covers a risk or an insured party in a Member State other than a Member State in which the insurer is established (head office, agency or branch), whereas the provisions of the directive deal only with risks which by their size or nature require the participation of several insurers in order to be covered. Consequently, the Kingdom of Denmark wrongly excludes the application of Articles 59 and 60 of the Treaty to co-insurance operations falling below the thresholds it has fixed.

(b) With regard to the second head of claim, the *Danish Government* refers essentially to its observations on the first head of claim concerning the leading insurer's obligation to set up an establishment in Denmark.

In reply to a question put to it by the Court, it adds that the thresholds are fixed on the basis of both the text of Directive 78/473, and in particular Article 1 thereof defining the scope of the directive, and a declaration of the Council which appears in the minutes of its meeting of 30 May 1978. That declaration reads as follows:

'The Council calls upon the supervisory authorities of the Member States to join with the Commission in taking all possible steps to establish by common agreement within 12 months of the date of notification of the directive the broad lines of what is meant by "nature" and "size" of the risks justifying recourse to the technique of co-insurance.

The Council recognizes that for legal and administrative reasons it may be necessary for Member States to include in the instruments giving legal force to this directive criteria for interpreting the first subparagraph of Article 1 (2).'

At a meeting held in 1978 within the framework of the Conference of Supervisory Authorities of the Member States with competence in the matter of insurance, a working party was created with the task of preparing the decisions to be taken in common by the Member States in cooperation with the Commission in order to give effect to the wishes expressed by the Council. The working party considered it necessary to attempt to define criteria sufficiently clear and precise to enable the terms 'nature' and 'size' to be defined in so far as the Member States considered it necessary or desirable, on the basis of harmonized rules, to establish such criteria for the purpose of incorporating them into national law. A majority of the Member States were of the opinion that the working party should seek to define objective criteria, while a minority considered that it was not necessary to specify the nature and size of the risks to be covered by Community co-insurance. No compromise was reached on the amount of the thresholds.

However, the majority of the working party recommended that the Member States incorporate into their legislation the following amounts (which represent maxima) in respect of each class:

Transport: 30 million units of account per contract,

Fire and natural forces: 50 million units of account per contract,

General civil liability: turnover of about 200 million units of account.

Denmark adhered to that majority position when it implemented the directive by means of Decree No 459 of 10 September 1981 on Community co-insurance. The Danish Government emphasizes that according to the information in its possession most of the Member States fixed thresholds in accordance with the guidelines recommended by the majority of the Member States.

(c) According to the *Belgian Government*, Article 1 (2) and the second paragraph of Article 8 of Directive 78/473 make clear that it is only to the extent that the directive completed coordination in respect of certain transactions that co-insurers can be dispensed from the requirements imposed on any person who provides services in the country in which the service in question is provided. On the other hand, the other transactions fall under the general rules regarding freedom to provide services, which is provisionally subject to certain limitations.

(d) *Ireland* is of the opinion that the establishment of thresholds is logically necessary given that the directive of 1978 is only intended to cover those risks which by reason of their nature or size are liable to be covered by international co-insurance. Furthermore, the amounts of the thresholds determined for applying the said directive were not unilaterally fixed but were arrived at in the context of the Conference of Insurance Supervisory Authorities of the EEC.

4. *The obligation to obtain a special authorization for co-insurance activities in other Member States*

(a) The *Commission* also claims that the Kingdom of Denmark has failed to fulfil its obligations under Articles 52, 59 and 60 of the Treaty and Article 6 of Directive 73/239 inasmuch as the Danish legislation requires insurance undertakings whose head office is in Denmark as well as the Danish branches or agencies of insurance undertakings whose head office is in another Member State to obtain a special authorization in order to provide services in the field of insurance, and in particular, of co-insurance, in other Member States.

The Commission claims firstly that the Danish legislation is contrary to Article 52 of the Treaty inasmuch as it makes the grant of that authorization to the branches of foreign insurance undertakings established in Denmark subject to more rigorous conditions than are applied to Danish undertakings. While it is true that the national rules do not make clear whether the conditions under which a Danish insurance undertaking and those applying to a Danish branch of a foreign insurance undertaking may obtain an authorization are the same, it none the less appears at first sight that they are not.

The obligation to obtain a special authorization in order to provide insurance services, and particularly co-insurance services, in the other Member States of the Community constitutes an infringement of Articles 59 and 60 of the Treaty and Article 6 of Directive 73/239 according to which an undertaking established in a Member State is free to provide services in all the other Member States.

The Commission also replied to a question from the Court as to what constitutes the alleged discrimination between Danish insurers and branches of foreign insurance undertakings.

It observes in that connection that Danish insurance undertakings must obtain an authorization in order to enter into transactions abroad by virtue of the provisions of Decree No 455 of 10 September 1981 on the auth-

orization required to carry on insurance activities other than life insurance, read together with the provisions of Decree No 457 of 10 September 1981 on the solvency margin and share capital of undertakings engaged in insurance other than life insurance. Article 12 (3) of Decree No 457 provides that an insurance undertaking whose registered office is in Denmark must draw up a scheme of operation for the activities which it proposes to carry out abroad. The authorization is granted on the basis of that programme under Articles 2 and 4 of Decree No 455. Moreover, pursuant to Articles 18 and 19 of Decree No 459, Community insurance undertakings established in Denmark through a branch are required to obtain a further authorization in order to participate in Community co-insurance of risks situated in another Member State and exceeding the Danish thresholds.

The discrimination lies in the fact that insurance undertakings whose head office is in Denmark are able, under Article 12 of Decree No 457 (on condition that they seek an additional authorization if the initial authorization does not cover provision of services), to participate in the co-insurance of risks situated outside Denmark which are outside the scope of Decree No 459 or below the thresholds fixed by that decree, although the absence of a similar provision in regard to Danish branches of insurers whose head office is elsewhere in the Community seems to prevent those branches from doing the same thing.

(b) The *Netherlands Government* states that the requirement to obtain a special authorization in order to be able to provide services in other Member States is superfluous since any insurer in that situation would already have been granted an authorization by the Danish supervisory authority for the purpose of pursuing its insurance activities in Denmark. This must cover the conclusion, from the base in Denmark, of insurance contracts in other Member States in the context of the provision of services. The requirement to obtain a special authorization in order to provide services in other Member States thus entails a double supervision.

(c) The *Danish Government*, on the other hand, denies that it is possible to speak of a special authorization for those activities of an undertaking which are carried on abroad. The obligation is, in reality, a general one which concerns all applications for authorization and which presupposes not merely the indication of the type of activity envisaged but also the geographical scope of that activity.

It is quite common for undertakings, at the time when they lodge their initial application for authorization, to make known at the same time their wish to provide services abroad, but it may also happen that such applications merely seek an authorization for activities limited to certain classes of insurance and certain geographical regions and that the area in which the activity is to be carried on is later extended so as also to cover provision of services abroad. In such a case, an application for a further authorization — which the supervisory authorities must necessarily grant if the conditions laid down by law are fulfilled — is necessary.

That practice is compatible with Article 6 of Directive 73/239 which provides expressly for an authorization only in regard to the territory of the Member State in which the undertaking is established. Moreover, Articles 6 (2) and 7 (1) of that directive expressly provide that authorization may be limited to a part of the national territory.

The Danish Government points out that the conditions under which the disputed authorization is granted are not discriminatory. The reason for which the law deals differently with Danish undertakings on the one hand and branches of foreign companies on the other is, leaving aside considerations of legislative technique, that it is clear from Directive 73/239 that those branches are to be subject to more flexible rules than those applied to undertakings established in Denmark since they already fulfil the conditions for establishment in their country of origin.

(d) The *Belgian Government* considers, as does the Danish Government, that the authorization referred to in Article 6 of Directive 73/239 is valid only for the territory of the State in which the undertaking is established. Until the process of coordination has reached such a stage that there is closer cooperation between the supervisory authorities in the State of establishment and those in the State in which the service is provided, it does not therefore appear to be unlawful to make the exercise of an activity abroad subject to a certain agreement on the part of the State of establishment, which is responsible for the financial stability of all the activities of the undertaking established there.

Moreover, it would be contradictory to reject, as the Commission does, the idea of any prior intervention whatsoever on the part of the authorities of the country in which the service is performed in respect of operations carried out in exercise of the freedom to provide services and at the same time to refuse to recognize the rights of the authorities in the country of establishment.

5. *Breach of the principles of direct effect and of the primacy of Community law*

(a) Finally, the *Commission* claims that the Kingdom of Denmark has failed to fulfil the obligations resulting from the direct effect of Articles 52, 59 and 60 of the Treaty and from the rule of the primacy of Community law inasmuch as the Danish authorities are applying national rules which are contrary to the said provisions of the Treaty.

As the Court held in its judgment of 9 March 1978 (Case 106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* [1978] ECR 629), the national authorities are under a duty to give full effect to the directly applicable provisions of Community law by refusing of their own motion to apply any conflicting provision of national legislation.

According to the Commission's information, the Danish authorities are continuing to apply the provisions of Danish law regarding the leading insurer's obligation to be established in Denmark, the thresholds fixed for application of the national rules and the obligation to obtain an authorization in order to carry on insurance activities in other Member States.

In reply to a question put to it by the Court, the Commission adds that it was pursuing two objectives by seeking a declaration that Denmark has failed to fulfil its obligations under the principles of direct effect and the primacy of Articles 59 and 60 of the Treaty, namely that of ensuring immediate implementation of the said articles by the national authorities and that of saving individuals from the need to have recourse to the Court for a preliminary ruling in order to obtain immediate recognition of their rights under those provisions.

(b) The *Danish Government* contests the proposition that the application of rules of national law allegedly contrary to directly applicable provisions of Community law could be regarded as a separate infringement of Community law.

In fact, the Commission is applying, under cover of Treaty infringement proceedings, for a declaration which would ensure direct and immediate application of provisions of the Treaty in the future without waiting for the Danish authorities to modify the national provisions at issue. Such an objective cannot, however, be pursued by way of the procedure under Article 169 of the Treaty.

Moreover, the Danish authorities have not had occasion in preceding years to apply the contested rules to insurance undertakings through specific administrative measures.

(c) The *Belgian and Irish Governments* reply essentially that since the Danish rules are in conformity with Community law, their implementation cannot constitute a breach of obligation.

IV — Replies to questions put by the Court

In addition to the facts already referred to above, it emerges from the Commission's replies to the questions put to it by the Court that the report on the development of Community co-insurance provided for in Article 9 of Directive 78/473 has not yet been submitted to the Council.

The Commission also indicated that it did not have sufficient statistical information to be able to advise the Court of developments in the volume of Community co-insurance.

V — Oral procedure

The Commission of the European Communities, represented by F. Buhl, assisted by E. Steindoff and A. Philip, the Danish Government, represented by L. Mikaelsen, assisted by C. Gulmann, the Netherlands Government, represented by D. J. Keur, the United Kingdom, represented by N. Phillips and P. Lasok, the Belgian Government, represented by R. Hoebaer, and Ireland, represented by J. D. Cooke and J. O'Reilly, presented oral argument and answered questions put by the Court at the hearing on 6 and 7 November 1985.

The Commission stated at the hearing that it was not pursuing the second head of claim concerning the rule prohibiting Community insurance undertakings from taking part in co-insurance operations which, by reason of their nature or size, did not come under the Danish Decree No 459 of 10 September 1981. At a later point in the same hearing, however, it stated that it wished to maintain that head of claim.

The Commission also stated at the hearing that the second head of claim was not directed against the unilateral fixing of the level of the thresholds but against the very existence of such thresholds. It was based on the premise that any requirement of authorization and establishment in the matter of freedom to provide services in the insurance sector was contrary to Articles 59 and 60 of the Treaty and that it was not open to the Member States, when transposing the directive into their national law, to limit the exemption from the obligations of establishment and authorization to co-insurers participating in insurance business which, according to the view taken by each State, came within the scope of the directive.

The Advocate General delivered his Opinion at the sitting on 20 March 1986.

U. Everling
Judge-Rapporteur