II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 January 1992

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/33.100 — Assurpol)

(Only the French text is authentic)

(92/96/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 2, 6 and 8 thereof,

Having regard to the notification submitted on 17 February 1989 by the economic interest grouping (EIG) Assurpol concerning agreements relating to the co-reinsurance of environmental damage risks originating in certain types of industrial plant located in France,

Having published the summary of the notification pursuant to Article 19 (3) of Regulation No 17 [2],

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

The notification

(1) On 17 February 1989 a co-reinsurance agreement for the covering of certain environmental damage risks was notified to the Commission by the economic interest grouping (EIG) Assurpol with a view to obtaining exemption pursuant to Article 85 (3) of the EEC Treaty. The EIG's statutes and the agreement's procedural provisions supplement the co-reinsurance pool's rules of procedure.

At the request of the Commission, a number of amendments were made to the notified instruments (co-reinsurance agreement and procedural provisions) so as to ensure that premiums ceded by way of co-reinsurance no longer include commissions paid to intermediaries or the administration costs of insurer-members. Such premiums are henceforth calculated on the basis of pure premiums (fixed in the light of the potential claims cost of the risks), to which is added a flat-rate contribution towards the co-reinsurance pool's operating costs.

The instruments as thus amended were approved by the grouping's general meeting on 21 December 1990 and transmitted to the Commission on 6 February 1991.

The grouping's objectives

(2) Assurpol was formed in October 1988 for a period of 20 years for the purpose of administering the co-reinsurance and retrocession for common account of the risks of damage to the environment, both accidental and non-accidental, originating in

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 188, 19. 7. 1991, p. 7.

certain industrial and commercial installations. To that end, it carries out and coordinates all studies or surveys and the gathering of statistics aimed at developing and improving the standards of insurance of such risks, helps examine co-reinsured risks, keeps account in respect of those risks, and holds and administers the sums representing the co-reinsurance liabilities towards all the ceding companies.

(3) The territorial scope of the agreement administered by the EIG includes metropolitan France, the French overseas departments and territories and the Principality of Monaco. Nevertheless, risks situated elsewhere may also qualify for Assurpol cover, subject to the agreement of one of the grouping's decision-making bodies (the Technical Committee).

(4) Assurpol replaces Garpol, a co-reinsurance pool set up in 1977 by more or less the same companies with a total capacity one quarter that of Assurpol.

Conditions of membership

(5) Membership of the Assurpol co-reinsurance pool is open to any French or foreign insurance or reinsurance enterprise authorized to operate in France, including, therefore, enterprises which, though not established in France, are authorized to operate there under conditions of freedom to provide services.

Members are free to withdraw from the grouping and the agreement at the end of a given financial year, subject to their notifying their intention at least three months before the end of the financial year.

Members

(6) There are two categories of member [1]:

(a) insurer members, i. e. French or foreign insurance enterprises which cede to the pool 90 % of their liabilities in respect of the risks covered by the pool; and

(b) participant members, i. e. French or foreign reinsurance enterprises which take part in the co-reinsurance of all the risks ceded by the insurer members and which account for 54,5 % of total pool capacity.

(7) The membership is made up of 50 French and foreign insurance enterprises and 14 French and foreign reinsurance enterprises, of which two insurance enterprises and one reinsurance enterprise are branches in France of enterprises whose head offices are in a Member State of the European Communities. In addition, four of the 14 reinsurance enterprises participate in the pool directly through their head offices in Germany.

All the insurer members transact, among other classes, general liability insurance. In 1989, the amount of gross premiums written by way of direct business by insurance enterprises belonging to the grouping (all classes combined) came to some FF 100 000 million [2].

The decision-making bodies and their functions

(8) Pursuant to the statutes of the grouping and the co-reinsurance agreement, the decision-making bodies are:

(a) the General Meeting;

(b) the Management Board;

(c) the Technical Committee;

(d) the Claims Settlement Committee.

(9) Resolutions of a General Meeting are decided by a majority of the votes cast by the members present or represented and are binding on members.

Each member has one vote plus as many votes as his capacity committed (per claim and per contract/year) is times 0,4 % of the total capacity of all the members.

(10) The Management Board consists of between 12 and 15 members, elected each year by the General Meeting. It is responsible, among other things, for organizing and coordinating the studying of risks and for determining the procedure whereby co-reinsurance operating costs are added to pure premiums.

(11) The Technical Committee, which consists of 15 insurer members and two participant members, is appointed by the Management Board and is responsible for:

[1] See in the Annex the insurer members and the participant members of Assurpol.

[2] Report from the Minister of State for Economic, Financial and Budgetary Affairs to the President of the Republic on insurance and capitalization enterprises for the 1989 financial year.

— defining the characteristics of risks for which a premium rate may be quoted directly by reference to the tariff and those of risks of rwhich the premium has to be assessed on a case-by-case basis,

— deciding on extensions to the territorial limits within which risks giving rise to a co-reinsurance cession may be situated,

— establishing the rules applicable in the event of a claim where the loss is put at less than FF 200 000,

— determining the conditions of application of the common retrocession agreements and the common acceptance agreements decided by the Management Board.

(12) The Claims Settlement Committee consists of four members: a chairman (representing the insurer member or participant member members of the Technical Committee), a representative of the insurer member and another of the participant member non-members of the Technical Committee, and a representative of the policy-issuing company concerned by the claim.

The composition of the Claims Settlement Committee is renewed whenever a new claims dossier comes up for examination.

Other provisions of the agreement

(13) Each insurer member and participant member is responsible for reinsuring the risks ceded to the pool to the amount of his share calculated on the basis of his capacity committed in relation to the total capacity of the pool (currently FF 131 million per claim and per contract/year). Each year members may increase or reduce their committed capacity. Insurer members retain for their own account a proportion (10 % of liabilities, subject to a limit of FF 200 000 per contract/year) which cannot be reinsured. These standard amounts are fixed by the General Meeting.

Neither insurer members nor participant members may retrocede individually their share in the co-reinsured risks.

(14) Placing reinsurance outside the pool is not prohibited. Nevertheless, insurer members undertake to propose for co-reinsurance all risks falling within the scope of the agreement the covering of which is requested of them specifically or as an extension of an existing contract. If they do not agree with the terms set by the Technical Committee, they are free to grant cover on other terms by taking out reinsurance elsewhere.

(15) Retrocession agreements for common account may be concluded with French or foreign reinsurers where the pool accepts, in respect of the same risk, a liability the limit to which is higher than its overall capacity.

(16) The agreement's procedural provisions prescribe the general characteristics of the risks which may be co-reinsured, the standard questionnaires which must be used for analysing risks, the risk prevention measures which must be taken into consideration, the tariff and its application, and the claims settlement procedures.

(17) An insurer member may himself analyse the risk and rate it by reference to the tariff where the insured's turnover does not exceed FF 1 000 million and the amount of cover requested (per claim and per contract/year) does not exceed FF 10 million, including FF 2 million by way of cover for clean-up costs.

Where cover or turnover exceeds these amounts or the risk involves activities in the waste sector or plant falling within the scope of the Council 'Seveso' Directive 82/501/EEC [1] (irrespective of the amount of cover), rating is effected on a case-by-case basis by the Technical Committee.

(18) The claims settlement procedures require any claim to be handled by the insurer member who is the underwriter. He, himself, will chose the assessors and settle the claim. Nevertheless, claims involving damage in excess of FF 200 000 are handled by the Settlement Committee, which decides the measure of indemnity.

(19) The tariff and the case-by-case ratings are expressed in terms of premiums ceded by way of co-reinsurance, that is to say pure premiums based on the potential claims cost of risks plus the co-reinsurance operating costs. Premiums ceded by way of co-reinsurance may, under no circumstances, include either the administration costs of the insurer member or the commissions paid to intermediaries.

[1] OJ No L 230, 5. 8. 1982, p. 1.

The Assurpol insurance product

(20) The Assurpol insurance product is a contract specifically aimed at covering the risks of liability for damage to the environment of an accidental or non-accidental (gradual) nature originating in industrial and commercial installations classified in accordance with Law No 76-663 of 19 July 1976 (1).

The amount of cover is limited to FF 131 million per claim and per contract/year (amount of damages in respect of all claims notified to the insurer in the course of the same insurance year and ascribable to the same event). Within these limits, and as a rule subject to a sub-limit of 20 %, cover is provided for clean-up costs and business interruption losses.

The contract is concluded for one year and is renewable from year to year.

The insurance market

(21) The risks of damage to the environment of accidental origin are covered in France, as in most other Member States, by a variety of policies falling within the general liability insurance class.

The insurance of risks of non-accidental origin (gradual pollution) is not very widespread at world level.

In the Community, specific policies offering accidental pollution cover in conjunction with gradual pollution cover are issued by three pools consisting of insurance and reinsurance companies operating in Italy (Pool Inquinamento), the Netherlands (MAS-pool) and France (Assurpol).

Owing both to the differences that still exist between Member States as regards environmental protection legislation, civil law, taxation, the insurance market legislative and regulatory framework and the safety and prevention measures required of industrial and commercial enterprises, and to differences in geology and plant design, and bearing in mind that true freedom to provide services has yet to be attained in the class in question as far as small-business risks are concerned, it is only within national territories that the conditions of competition are similar for all economic operators in environmental liability insurance.

Consequently, at the present time the geographical market is France and the product market consists of Assurpol policies and all cover for environmental damage liability, even if the cover concerns only risks of an accidental or of a gradual nature and even if other risks are covered by the same policy.

The EIG Assurpol estimates that in 1989 premiums written in France in respect of contracts containing, *inter alia,* environmental liability cover (professional liability risks) amounted to FF 6 500 million, of which only FF 200 million related to environmental liability cover.

The supply side consists, in particular, of the 122 insurance enterprises operating in the general liability class in France. In 1989 the amount of gross premiums written in this class come to approximately FF 7 500 million (2), of which the insurer members as a whole accounted for approximately 75 %.

The demand side consists of industrial enterprises operating plant capable of causing claims resulting in environmental damage.

Assurpol estimates at about 40 000 the total number of industrial and commercial enterprises operating in France installations (of which there are some 500 000) required by law to observe certain safety standards.

The elasticity of demand depends on the enterprises' degree of awareness of the risks incurred and on the economic climate.

Sharp fluctuations in demand may be caused by factors extraneous to the risks, such as environmental protection legislation imposing increasingly stringent standards of liability on polluters, the expanding role of the courts, developments in science and medicine and growing public awareness.

In the current context of worsening ecological problems in the world in general and in the Community in particular, a growth in demand is to be expected.

(1) i.e. fixed land installations posing a particular threat to health and the natural environment which must, as a result, meet certain safety standards.

(2) Report from the Minister of State for Economic, Financial and Budgetary Affairs to the President of the Republic on insurance and capitalization enterprises for the 1989 financial year.

The reinsurance market

(22) The reinsurance market is a world-wide one with a turnover in the region of US$ 50 000 million (1).

The demand side consists of insurance enterprises which find in reinsurers the financial and technical support they need if they are to cover risks which are difficult to identify and where claims are large and scarcely predictable.

The supply side is characterized by diversity. Several hundred enterprises are present in the market. They are either professional reinsurers or direct insurers operating through their specialized arms. Competition in the market is intense.

Assurpol's position in the markets

(23) No more than 200 Assurpol contracts were concluded in 1989 and 242 in 1990. These contracts represented a premium income of FF 6,5 million (3 % of the amount of premiums estimated for the environmental damage liability insurance market) in 1989 and FF 10,3 million in 1990. Garpol likewise collected no more than FF 4,4 million in premiums.

Nevertheless, the EIG Assurpol would be potentially capable of accepting, by way of co-reinsurance, more than 70 % of the insurances which might be placed in France for environmental damage, bearing in mind that the insurer members as a whole cover, in respect of other risks and under liability policies included in the general liability class, between 70 and 80 % of potential consumers and that the environmental damage risks covered by existing policies may be detached from them and form the subject matter of an Assurpol policy.

(24) At the present time the EIG Assurpol is only a very minor player in the reinsurance market given the international dimension of that market.

Comments of third parties

(25) No observations were made by third parties after publication of a notice pursuant to Article 19 (3) of Regulation No 17.

(1) Eurostaf Dafsa, *Insurance Companies in Europe*, volume I, collection 'Sector Analyses', fourth quarter 1988, p. 96.

II. LEGAL ASSESSMENT

A. Article 85 (1)

1. *Undertakings, agreements between undertakings, decisions by associations of undertakings*

(26) The members of Assurpol are undertakings and the EIG is an association of untertakings within the meaning of Article 85 (1) of the Treaty. The co-reinsurance agreement is an agreement between undertakings.

The activities of the EIG Assurpol are based on the decisions of its General Meeting and other bodies, which are decisions by an association of undertakings within the meaning of Article 85 (1) of the Treaty.

2. *Restrictions of competition*

(27) The agreements between insurance and reinsurance enterprises aimed at setting up a permanent and institutionalized co-reinsurance pool and the decisions, being in the nature of decisions by an association of undertakings, governing the pool's activities have as their object and effect the coordination of the parties' competitive behaviour and the restriction of competition with regard to the direct insurance, reinsurance and retrocession of the risks of damage to the environment originating in industrial and commercial installations located in France.

(a) Restrictions with regard to direct insurance

(28) The insurance enterprises party to the agreements are no longer free to determine independently the general conditions of, or the pure premiums chargeable under, the insurance policies they issue in respect of the risks of damage to the environment originating in industrial or commercial installations classified in accordance with French Law No 76-663. Moreover, they must cede business to the pool on the basis of co-reinsurance premiums (pure premiums plus a flat-rate contribution towards the grouping's costs).

Moreover, in the case of risks for which a premium rate may not be quoted by reference to the tariff, insurer members are no longer free to give a quotation independently and directly but must abide by the decisions of the competent body (the Technical Committee), which fixes the pure premium on a case-by-case basis.

Although each insurer member remains free to calculate independently premiums with a loading for profit, the agreements nevertheless have as their object and effect the restriction of competition between insurer members as, were it not for the agreements, they would have had greater independence in determining premiums and policy conditions and hence could have competed with one another on a different footing.

The fact that insurer members can write policies with premiums and conditions different from those decided by the Technical Committee does not lessen the stringency of the restriction as they may do so only after consulting the Technical Committee and they are disqualified from obtaining co-reinsurance if they grant cover on other terms.

(29) The commercial autonomy of the insurance enterprises party to the agreements is further limited by virtue of the fact that they:

— are obliged to keep a standard retention for their own account,

— may not retrocede their share in the reinsurance of the risks ceded to the pool, and

— undertake not to settle individually claims involving damage in excess of FF 200 000, submitting instead to the rulings of the Settlement Committee in this respect.

Were it not for these restrictions, insurer members could freely choose a diversified retention according to the risks and their reinsurance requirements and freely decide the measure of indemnity or reject the claim or settle it by arriving at a compromise solution, for example.

(30) As the Commission stated in its TEKO Decision 90/22/EEC (1), the finding of these restrictions of competition is not invalidated:

— neither by the fact that the agreements were concluded with a view to introducing co-reinsurance, as they go beyond the influence which reinsurers normally exercise over direct insurers, such influence being confined as a rule to checking the premiums and terms and conditions freely worked out by direct insurers,

— nor by the fact that, without recourse to Assurpol, the insurance enterprises party to the agreements would be unable to insure environmental damage risks. Even if they are difficult to assess owing to their unexpected magnitude and their tendency to develop as a result of external factors coming into play, the possibility cannot be ruled out of gradual pollution risks being covered, if not by insurers individually, then at least under other, less highly organized forms of collaboration between the enterprises in question or with other enterprises.

(1) OJ No L 13, 17. 1. 1990, p. 34.

(b) Restrictions with regard to reinsurance

(31) By forming a co-reinsurance pool, the insurer members limit their freedom of choice when it comes to placing, by way of reinsurance, risks which they have insured individually, and hence refrain from competing with one another, as they might otherwise have done, for reinsurance cover.

If the members did not reserve to themselves the exclusivity over reinsurance business, each of the insurer members could choose independently the reinsurer best suited to covering the risks in his portfolio.

The fact that insurer members are obliged to propose for co-reinsurance all the risks they insure falling within the scope of the co-reinsurance agreement tightens the restriction further as it enables members to know at any time what risks other members propose to cover outside the pool, and perhaps what reinsurance conditions competitors are offering.

Participant members (reinsurers) likewise do not compete with one another when it comes to covering the risks concerned by way of reinsurance as they are accorded exclusivity for reinsurance business and grant reinsurance cover on the same terms, co-reinsurance premiums being laid down by the group's decision-making bodies.

Were it not for the agreements, the reinsurers participating in the pool could freely determine the terms on which to grant reinsurance cover in the light of the risks proposed to them individually and of the performance of the insurer in question.

(c) Restrictions with regard to retrocession

(32) The fact that retrocession is possible only for common account eliminates the freedom of choice of the insurer members in their capacity as reinsurers and of the participant members when it comes to their share in the co-reinsured risks. They refrain from supplying each other individually and separately with retrocession business and hence from competing with one another for retrocession facilities.

2. *Appreciable effect on trade between Member States*

(33) The notified agreements and the decisions connected therewith are capable of having an appreciable effect on trade between Member States both as regards direct insurance and as regards reinsurance and retrocession.

National price agreements extending over the whole territory of a Member State may, by their very nature, have the effect of reinforcing the compartmentalization of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about [1]. The agreements notified by Assurpol are capable of having an impact throughout France owing to the fact that a large number of insurance enterprises are party to the agreements.

These include foreign reinsurance companies and branches of foreign insurance and reinsurance companies which, as direct offshoots of those companies, are involved in trade between Member States.

(34) Although, as Community law now stands, the situation in the market for environmental damage liability insurance is characterized, in the Community, by a juxtaposition of national markets, only limited trade being possible between Member States, this situation is likely to change in future.

Moreover, although the direct insurance contracts concern risks of damage to the environment originating in industrial and commercial installations located in France, those installations may be owned by foreign enterprises [2].

Industrial or commercial installations located in other Member States may also be affected by extension of the territorial scope of the agreement decided by the Technical Committee.

The appreciable nature of the effect on trade is due to the considerable economic and financial power wielded by the insurer members as a whole.

(35) With regard to reinsurance, the effect on trade between Member States stems from the exclusivity for reinsurance within the pool, the membership of which includes five reinsurance enterprises whose head offices are in Member States other than France. Moreover, although it may qualify for exemption, this exclusivity with regard to the reinsurance of environmental damage liability risks prevents the companies belonging to the pool from having recourse to other reinsurers in the Community, as a result of which trade in reinsurance services between Member States is deflected.

The appreciable nature of the effect on trade between Member States with regard to reinsurance is also due to the size of the insurance and reinsurance enterprises party to the agreements.

(36) With regard to retrocession, the effect on trade between Member States is due to the fact that retrocession agreements can be concluded at European or international level only for common account, thereby producing a pattern of trade in retrocession services between Member States which is different from that which would result from retrocession operations effected by each of the reinsurers individually.

In view of the size of the reinsurers in question, the deflection of trade in retrocession services from its natural course is capable of having an appreciable effect on trade between Member States.

B. **Article 85 (3)**

(37) The agreements and decisions setting up and governing the activities of the Assurpol co-reinsurance pool fulfil the conditions for exemption pursuant to Article 85 (3).

1. *Improving production or distribution and promoting technical and economic progress*

(38) The characteristics of environmental damage risks, susceptible as they are to internal and external influences, the long time lag in some instances between the event giving rise to the damage to the environment, the incurring of the loss and the submission of a claim, and the lack of statistical data make environmental damage risks difficult to insure, especially where they are of non-accidental origin. As a result of the difficulty of identifying risks of the latter type and calculating an appropriate premium, their insurance is not very widespread at world level.

[1] Case 8/72 *Vereniging van Cementhandelaren* [1972] ECR 977, groun 18.
[2] Commission's *Concordato Incendio* Decision 90/25/EEC, OJ No L 15, 19. 1. 1990, p. 25.

The cooperation between insurance and reinsurance enterprises within the EIG Assurpol makes it possible to improve the knowledge of risks, create financial capacity and develop technical expertise in insuring environmental damage risks.

The practice of reinsurance by the pool members enables each one to obtain a more diversified and balanced portfolio, which greatly facilitates the insurance of risks.

The automatic reinsurance of the risk underwritten under the conditions laid down leads to rationalization as it is no longer necessary for each insurer to seek reinsurance individually and for several reinsurances to be negotiated with different reinsurers.

The production of the insurance product is improved as it is better attuned to serving customer needs, and its distribution is also improved as the insurance can be transacted more quickly.

The cooperation broadens the basis for generating statistics, in addition to which the better identification of risks, to which the participant members contribute in particular thanks to their experience gained at international level, facilitates the introduction of risk prevention measures which lead to the development of industrial production techniques less hazardous to the environment and conducive to technical and economic progress.

The settlement of claims is speeded up. The technical and legal problems which only qualified specialists can solve are more easily overcome thanks to the pooling of the knowledge and international experience of the reinsurers belonging to the pool.

Cooperation within the reinsurance pool opens up the market to enterprises which would have had difficulty in gaining access to it alone owing to their limited capacity and experience, and makes it easier to conduct insurance business in this field in other countries.

2. *Benefits to consumers*

(39) A fair share of the benefit resulting from the formation and operation of the EIG Assurpol goes to consumers. Cooperation within the pool makes the insurance product more readily available to, and more suited to the requirements of, industrial and commercial enterprises on whose premises an environmental damage risk might materialize. The capacity of the pool now makes it possible to cover both the risks of small and medium-sized businesses and those of larger enterprises.

Through their cooperation within Assurpol, members are able to offer small and medium-sized industrial and commercial enterprises in France an insurance contract not readily available elsewhere, since complete freedom to provide services, based on the principle of a single licence and a single country control, does not as yet exist for the risks of that category of business.

Although the purchase of an Assurpol policy cannot prevent all the economic losses due to the occurrence of the event insured against, it will make the loss financially bearable for the policyholder. As a result, victims can be compensated, the environment repaired and business activity resumed.

The prevention measures with which the issue of the policy is associated also contribute to technical and economic progress and to the protection of the environment.

The existence of standard policy conditions makes it easier for consumers to compare the commercial premiums charged by each of the insurers belonging to Assurpol.

The possibility of obtaining cover for installations located outside France is also of benefit to consumers as they can insure their installations in other Member States at the same time.

Lastly, the covering of the risks of accidental pollution and gradual pollution under a single policy is of benefit to policyholders as they will no longer have to provide proof of the nature of the origin of the claim.

3. *Indispensability of the restrictions*

(40) The agreements and decisions setting up and governing the activities of the Assurpol co-reinsurance pool do not impose on the enterprises concerned restrictions which are not indispensable to the improvement of the production and distribution of the insurance product to which the cooperation relates.

Co-reinsurance is an appropriate way of creating the capacity needed to cover environmental damage risks and of promoting their better identification and the acquisition of technical expertise in covering such risks.

The laying-down of common general conditions for direct insurance policies and of a tariff of co-reinsurance premiums and the rating, on a case-by-case basis, by the Technical Committee of the more serious risks, are indispensable to the insurance of the risk, firstly because the lack of statistical data and the characteristics of the risk prevent each member individually from having sufficient knowledge to be able to identify and rate it properly, and secondly because the co-reinsurance costs have to be borne uniformly by all the insurer members.

The obligation on insurer members to employ common general policy conditions, rate risks by reference to the tariff and seek the rating of certain risks by the Technical Committee if they wish to qualify for reinsurance within the pool is indispensable to the proper functioning of the pool. Since the member companies share the risks and the premiums, it is essential that appropriate premiums and conditions be fixed and that some companies do not carry on loss-making activities to the detriment of the others.

These restrictions do not go beyond what is necessary as they leave insurer members entirely free to fix commercial premiums. Consumers are not, therefore, deprived of a choice between insurer members on that basis.

The fixing of a retention which cannot be reinsured is indispensable in order to ensure that each insurer member continues to carry on the business of insurance and does not simply act as an insurance intermediary. The uniform nature of this retention is inherent in the functioning of the pool. The obligation on members not to retrocede their share in the reinsurance of the risks ceded to the pool is justified on the same grounds.

The joint settlement of claims in the case of more serious risks is necessary as losses are also shared by the members and, given the difficulty of assessing losses due to complex technical and legal considerations, it must be ensured that some members do not employ, to the detriment of the others, inadequate settlement terms.

Joint retrocession is necessary in order to obtain favourable retrocession terms as the pool is likely to be in a stronger negotiating position in the international markets than each reinsurer acting on his own.

The obligation on insurer members to propose for co-reinsurance by the grouping in standard proportions all risks covered by the agreements is indispensable in order to ensure a sufficient spread of risks and at the same time to prevent the risk of an adverse selection by each of the pool members. The extension of co-reinsurance cover to include accidental pollution is a guarantee of that spread.

4. *Non-elimination of competition*

(41) The cooperation between a large number of insurance enterprises operating in the general liability class in France and big international reinsurers, either directly or through their subsidiaries or branches in France, within the EIG Assurpol does not afford the parties the possibility of eliminating competition in respect of a substantial part of the insurance services in question as insurer members remain free to charge consumers different commercial premiums for the Assurpol insurance product. As a result, consumers are not deprived of a choice between insurer members and, given that the co-reinsurance enables a larger number of insurance companies to offer a product better attuned to serving customer needs, the freedom of choice of consumers will be increased.

On the direct insurance front, competition continues to exist between the insurance of risks under other policies with lower levels of cover and the Assurpol policy with its cover extended to include gradual pollution risks.

Moreover, insurer members remain free to cover risks on other terms by placing reinsurance outside the pool should they not agree with the terms set by the Technical Committee. Nor are they forbidden to enter into other arrangements with other enterprises with a view to covering risks. The agreements do not impose any restrictions after their expiry date and members are free to withdraw from the pool at the end of a financial year subject only to their giving three months' notice.

Consequently, if an insurer member considers he has already gained sufficient expertise in identifying and rating risks, and if he finds other means of obtaining the financial capacity necessary for the cover, he can withdraw from the pool without any particular difficulty.

The ease of withdrawal from the pool and the absence of restrictions after the expiry of the agreements offer the safeguard that the formation of the pool is not likely to deprive actual or potential competitors of similar opportunities and enable the parties to remain fully competitive after the termination or expiry of the agreement, thus holding out the prospect of increased competition between the parties in future.

On the reinsurance front, competition is not eliminated as the reinsurance market is a competitive world market and there are a sufficient number of competing companies who are not party to the agreements.

Whilst the pool is potentially capable of co-reinsuring the environmental damage risks of almost all industrial and commercial installations in France, since the insurer members already cover between 70 and 80 % of those same consumers in respect of other risks, all these policies are not likely to give rise to the same number of Assurpol policies in the near future unless there is a sudden change in demand. This could happen if, for example, liability insurance for such risks were to be made compulsory. Even then, the notified agreements are not likely to afford the parties the possibility of eliminating competition as the opening-up of the insurance markets in the Community will afford the opportunity even for small and medium-sized enterprises to obtain insurance in another country, and since it is probable that other forms of cover for such risks will be created.

C. Articles 6 and 8 of Regulation No 17

(42) Pursuant to Article 6 (1) of Regulation No 17, this Decision is to take effect from 6 February 1991, the date on which the new versions of the co-reinsurance agreement and its procedural provisions, as adopted by the EIG Assurpol at its ordinary general meeting on 21 December 1990, were communicated to the Commission.

(43) In view of the limited experience gained so far with the insurance of the risks in question owing to their relatively recent character and their susceptibility to internal and external influences, the collaboration between the enterprises must be able to extend over a period which enables knowledge of the risks to improve. Given that a sudden variation in demand for the insurance in question cannot be ruled out, it seems appropriate to grant exemption, pursuant to Article 8 (1) of Regulation No 17, for seven years.

(44) To enable the Commission to check during the exemption period whether the conditions for exemption continue to be fulfilled, Assurpol must be required to inform the Commission of any amendments and/or additions to the notified agreements, any changes in the coefficient applicable to the co-reinsurance costs, any withdrawals from the pool, the admission of any other companies, the number of Assurpol policies written each year and the corresponding annual amount of premiums ceded by way of co-reinsurance,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable for the period from 6 February 1991 to 5 February 1998 to the following agreements:

— statutes of the EIG Assurpol,

— co-reinsurance agreement and procedural provisions approved by the General Meeting on 21 December 1990 and communicated to the Commission on 6 February 1991.

Article 2

The following obligation is attached to the exemption provided for in Article 1:

'The EIG Assurpol shall communicate to the Commission once a year any amendments or additions to the notified agreements, any changes in the coefficient applicable to the co-reinsurance costs, any withdrawals from the pool, the admission of any other companies, the number of Assurpol policies written each year and the corresponding amount of premiums ceded by way of co-reinsurance.'

Article 3

This Decision is addressed to the EIG Assurpol, 29 rue des Trois Fontanot, BP 320, F-92003 Nanterre.

Done at Brussels, 14 January 1992.

For the Commission

Leon BRITTAN

Vice-President

ANNEX

INSURER MEMBERS

ABEILLE-ASSURANCES
52, rue de la Victoire
75455 PARIS CEDEX 09

ACTE IARD
6, rue de Niederbronn
67000 STRASBOURG

ALLIANZ FRANCE SA
18, rue Paul Lafargue
LA DÉFENSE 10 — 92800 PUTEAUX

RIUNIONE ADRIATICA DI SICURTA
RAS — SA
18, rue Paul Lafargue
LA DÉFENSE 10 — 92800 PUTEAUX

ASSURANCES DU CRÉDIT MUTUEL IARD (ACM-IARD)
34, rue du Wackem
67010 STRASBOURG CEDEX

AGF
87, rue de Richelieu
75060 PARIS CEDEX 02

ASSURANCES MUTUELLES DE L'INDRE (AMI)
25, rue Porte Thibault
BP n° 137
36003 CHÂTEAUROUX

ASSURANCES MUTUELLES DE SEINE-ET-MARNE
19, rue de la Pépinière
75008 PARIS

CAISSE GÉNÉRALE D'ASSURANCES MUTUELLES (CGA)
14, rue Racine
44046 NANTES CEDEX 01

CAISSE INDUSTRIELLE D'ASSURANCES MUTUELLES CIAM
7, rue de Madrid
75081 PARIS CEDEX 08

LANGUEDOC
7, rue de Madrid
75083 PARIS CEDEX 08

RHIN ET MOSELLE
ASSURANCES FRANÇAISES
1, rue des Arquebusiers
67000 STRASBOURG

CAISSE MUTUELLE D'ASSURANCES ET DE PRÉVOYANCE (CMA)
47-49, rue de Miromesnil
75380 PARIS CEDEX 08

CHUBB COMPAGNIE D'ASSURANCES EUROPÉENNE SA
12, rue de Penthièvre
75008 PARIS

COMMERCIAL UNION IARD
104, rue de Richelieu
75002 PARIS

CAMAT
Caisse d'assurances maritimes, aériennes et terrestres
9, rue des Filles Saint-Thomas
75083 PARIS CEDEX 02

LA CONCORDE
5, rue de Londres
75009 PARIS

LE CONTINENT
62, rue de Richelieu
75015 PARIS CEDEX 02

DROUOT ASSURANCES (AXA ASSURANCES)
45, rue de Châteaudun
75009 PARIS

MUTUELLE PARISIENNE DE GARANTIE MPG (AXA ASSURANCES)
45, rue de Châteaudun
75009 PARIS

MUTUELLES UNIES (AXA ASSURANCES)
45, rue de Châteaudun
75009 PARIS

PRÉSENCE ASSURANCES (AXA ASSURANCES)
45, rue de Châteaudun
75009 PARIS

PATERNELLE RD (AXA ASSURANCES)
45, rue de Châteaudun
75009 PARIS

PRÉVOYANCE MUTUELLE MACL (AXA ASSURANCES)
45, rue de Châteaudun
75009 PARIS

ELVIA-S^{TE} SUISSE D'ASSURANCES, ZURICH
153, rue du Faubourg Saint-Honoré
75383 PARIS CEDEX 08

LA FRANCE
7-9, boulevard Haussmann
75309 PARIS CEDEX 09

GAN Incendie-Accidents
Tour GAN — Cedex 13
92082 PARIS-LA-DÉFENSE

GENERAL ACCIDENT
40, rue Laffitte
75440 PARIS CEDEX 09

GROUPE AZUR ASSURANCE MUTUELLE
8-12, rue Boissy d'Anglas
75382 PARIS CEDEX 08

GFA
38, rue de Châteaudun
75439 PARIS CEDEX 09

HANNOVER INTERNATIONAL — HIF
17, rue de Provence
75009 PARIS

LLOYD CONTINENTAL
1 *ter*, rue du Maréchal De Lattre de Tassigny
59671 ROUBAIX CEDEX 01

LA LUTÈCE
15, rue du Musée Guimet
69006 LYON

MUTUELLE D'ASSURANCE DES PROFESSIONS ALIMENTAIRES
(La Prévoyante Accidents)
Rue Anatole Contré
17411 SAINT-JEAN D'ANGÉLY CEDEX

MUTUELLE GÉNÉRALE D'ASSURANCES (MGA)
6-10, rue du Bourg Neuf
41007 BLOIS

MUTUELLES DU MANS ASSURANCES
19-21, rue Chanzy
72030 LE MANS CEDEX

MUTUELLE DE POITIERS
47, rue de la Cathédrale
BP n° 297
86007 POITIERS CEDEX

MUTUELLE DES PROVINCES DE FRANCE — MPF
19, avenue Grammont
37017 TOURS CEDEX

MUTUELLES RÉGIONALES D'ASSURANCES (MRA)
Le Croc — BP n° 30
45430 CHECY

NATIONALE SUISSE FRANCE
79-81, rue de Clichy
75009 PARIS

LA NORMANDIE
6, rue Stanislas Girardin
BP n° 811
76001 ROUEN CEDEX

PFA
Cedex 43
92076 PARIS-LA-DÉFENSE

SOCIÉTÉ LILLOISE D'ASSURANCES ET DE RÉASSURANCES
11 A, avenue de la Marne
59290 WASQUEHAL

SIS ASSURANCE
Immeuble SIS
38, rue Jacques Ibert — BP n° 21
75822 PARIS CEDEX 17

UAP
26, rue Le Peletier
75449 PARIS CEDEX 09

UNION ET PHÉNIX ESPAGNOL
86, boulevard Haussmann
75008 PARIS

VIA ASSURANCES NORD ET MONDE
20, rue Le Peletier
75439 PARIS CEDEX 09

WINTERTHUR
Tour Winterthur Cedex 18
92082 PARIS-LA-DÉFENSE

ZURICH ASSURANCE
14, boulevard Poissonnière
75426 PARIS CEDEX 09

ABRI (ZURICH INTERNATIONAL FRANCE)
14, boulevard Poissonnière
75426 PARIS CEDEX 09

PARTICIPANT MEMBERS

ABEILLE RÉASSURANCES
11, rue de la Rochefoucauld
75442 PARIS CEDEX

BAYERISCHE RÜCK
Postfach 220106
D-8000 MÜNCHEN 22

CAISSE CENTRALE DE RÉASSURANCE (CCR)
31, rue Henri Rochefort
75017 PARIS

C^IE DE RÉASSURANCE DE PARIS COREPA
18, rue Paul Lafargue
LA DÉFENSE 10
92800 PUTEAUX

C^IE SUISSE DE RÉASSURANCES
Mythenquai 50-60
BP n° 172
CH-8022 ZURICH

C^IE TRANSCONTINENTALE DE RÉASSURANCE
15, rue Louis Grand
75002 PARIS

EISEN UND STAHL-RÜCKVERSICHERUNGS-AG
Karl-Wiechert-Allee 50
D-3000 HANNOVER 61

HANNOVER RÜCKVERSICHERUNGS-AG
Karl-Wiechert-Allee 50
D-3000 HANNOVER 61

KÖLNISCHE RÜCK
61, avenue Franklin Roosevelt
75008 PARIS

MÜNCHENER RÜCK
Königinstraße 107
D-8000 MÜNCHEN 40

MUTUELLE CENTRALE DE RÉASSURANCES
65, rue de Monceau
75008 PARIS

SAFR
Société anonyme française de réassurances
34-36, boulevard de Courcelles
75849 PARIS CEDEX 17

SOCIÉTÉ COMMERCIALE DE RÉASSURANCE
Immeuble SCOR — Cedex 39
92074 PARIS-LA-DÉFENSE

SOREMA
29, rue de Washington
75008 PARIS