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Working Documents

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DOCUMENT 1-457/80

Report

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council (Doc. 1-373/79) for a directive amending, as regards credit insurance, first Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance

Rapporteur: Mr M. FISCHBACH

By letter of 26 September 1979, the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a Directive amending as regards credit insurance First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance.

By letter of 10 October 1979, the President of the European Parliament referred this proposal to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

On 20 November 1979 the Legal Affairs Committee appointed Mr Fischbach rapporteur.

It considered this proposal on the basis of an introductory statement by the rapporteur at its meeting of 25 and 26 February 1980. It continued its consideration of the proposal at its meeting of 28 and 29 April 1980. The Legal Affairs Committee considered the draft report at its meetings of 8 and 9 July, 23 and 24 September and 1 and 2 October 1980 and adopted the motion for a resolution unanimously at the last-mentioned meeting.

Present: Mr Ferri, chairman; Mr Luster and Mr Turner, vice-chairmen; Mr Fischbach, rapporteur; Mr Croux (deputizing for Mr Modiano), Mr Dalziel, Mr De Gucht, Mr Flanagan (deputizing for Mr Gillot), Mr Geurtsen, Mr Irmer (deputizing for Mr Donnez), Mr Malangré, Mr Prout, Mr Schieler (deputizing for Mr Vetter), Mr Sieglerschmidt, Mr Tyrrell and Mrs Vayssade.

The opinion of the Committee on Economic and Monetary Affairs is attached

C O N T E N T S

	<u>Page</u>
A. <u>MOTION FOR A RESOLUTION</u>	5
(a) As regards suretyship insurance	6
(b) As regards credit insurance	6
B. <u>EXPLANATORY STATEMENT</u>	13
<u>Preliminary remarks</u>	13
I. <u>ELIMINATION OF COMPULSORY SPECIALIZATION IN RESPECT OF CREDIT INSURANCE AND SURETYSHIP INSURANCE OPERATIONS</u>	14
(i) <u>As regards suretyship insurance</u>	14
A. BASIS OF THE PROPOSAL	14
B. METHOD	15
C. OPINION OF THE LEGAL AFFAIRS COMMITTEE	15
(ii) <u>As regards credit insurance</u>	15
A. BASIS OF THE PROPOSAL	15
B. METHOD	15
C. OPINION OF THE LEGAL AFFAIRS COMMITTEE	16
II. <u>DEFINITIVE EXCLUSION FROM THE SCOPE OF APPLICATION OF THE FIRST DIRECTIVE OF CREDIT INSURANCE OPERATIONS TRANSACTED FOR THE ACCOUNT OF OR WITH THE GUARANTEE OF THE STATE</u>	17
A. BASIS OF THE PROPOSAL	17
B. OPINION OF THE LEGAL AFFAIRS COMMITTEE	18
(a) Criticism of the Commission's proposal	18
(b) Positions adopted by Parliament on previous occasions	18
(c) Counterproposal of the Legal Affairs Committee ..	19
III. <u>FURTHER OBSERVATIONS</u>	20
(i) On the implementation of national provisions amended pursuant to the proposal for a directive under consideration once adopted by the Council	20
(ii) On the duty to inform the Commission of measures taken by the Member States to implement the directive	20
(iii) On the structure of the proposal under consideration ..	21
 <u>ANNEXES:</u> Annex I - Article 7(2) (c)	 22
Annex II - Article 2(2)	23
Annex III - Statement by Mr TUGENDHAT (8 July 1980)	24
 Opinion of the Committee on Economic and Monetary Affairs	 29

A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive amending as regards credit insurance First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life insurance

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
- having been consulted by the Council pursuant to Article 57(2) of the EEC Treaty (Doc. 1-373/79),
- having regard to the Treaty establishing the European Economic Community and in particular Articles 3(b) and (f), 54(3), 90, 92 and 113,
- having regard to the general programme for the elimination of restrictions on the freedom of establishment² and in particular Title IV(c) thereof,
- having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1-457/80),
- considering that under the terms of the first Council Directive of 24 July 1973 (73/239/EEC)³ one of the aims of Community legislation is to facilitate the taking up and pursuit of the business of insurance subject to proper protection for insured persons and third parties,
- considering that the fact that one of the Member States was allowed to maintain its prohibition on the simultaneous undertaking of credit insurance and suretyship insurance with other classes of insurance represented an obstacle to the full achievement of freedom of establishment in the sector concerned,
- considering that it was not considered possible at the time of adoption of the first directive to make the general provisions of the directive applicable to credit insurance and suretyship insurance operations,

¹ OJ No C 245, 29 September 1979, page 7

² OJ No 2, 15 January 1962, page 36/62

³ OJ No L 228, 16 August 1973, page 3 (see particularly second recital)

- considering that compulsory specialization has the effect that companies transacting several classes of insurance are precluded from transacting credit insurance in the Federal Republic of Germany although German credit insurance companies may establish themselves in the other Member States,
- considering that the achievement of the common commercial policy entails harmonization of export policies, in which the guarantees granted by the State for export credit insurance operations play a large part,

(a) As regards suretyship insurance,

1. Approves the elimination of the prohibition against the simultaneous undertaking of credit insurance and suretyship insurance either with one another or with other classes of insurance;
2. Notes that the provisions of the 1973 Directive would henceforth be applicable in their entirety to suretyship insurance;
3. Calls upon the Commission to ensure however that those provisions are no more favourable than those applying to other businesses (banks and other financial institutions) which transact operations of the same kind ;

(b) As regards credit insurance

4. Notes that the Commission proposes to exclude definitively from the scope of application of the first directive export credit insurance operations transacted for the account of or with the guarantee of the State;
5. Observes that this exclusion as proposed by the Commission perpetuates a difference in treatment between the public and private sector;
6. Affirms that such different treatment is incompatible with the proper working of the Common Market as regards both:
 - exports to another Member State, State guarantees being an unacceptable form of aid in trade within the Community, and also
 - exports to third countries in so far as the guarantee granted by the State is not yet governed by rules laid down under the common commercial policy;
7. Considers that having regard to the statement¹ to the Legal Affairs Committee by the Member of the Commission responsible, the exclusion of credit insurance operations from the scope of application of the directive should be limited pending subsequent coordination to trade with third countries;

¹ see Annex III to the report of the Legal Affairs Committee (Doc 1-457/80)

8. Considers that the amendment in those terms of the proposal under consideration would enable greater progress to be made towards freedom of establishment in the sector concerned, but that it remains necessary:
- to draw up a Community position on the question of aid for exports to third countries, of which State guarantees for export credit insurance operations are one example¹,
 - to ensure the total equalization of conditions of competition between public and private undertakings²;
9. Requests the Commission accordingly to draw up within 18 months from the date of adoption of this resolution recommendations aimed at determining the basis for the coordination-within the context of the common commercial policy-of the national provisions governing export credit insurance operations;
10. Calls upon the Commission to ensure greater clarity in the proposals which it presents to the Council particularly in the case of proposals for the amendment of Community rules already in force and to incorporate the following amendments, in its proposal, pursuant to the second paragraph of Article 149 of the EEC Treaty.

¹ See the resolution on the harmonization of export aid systems adopted by the European Parliament on 15 June 1977 (OJ No C 163, 11 July 1977, page 42) and the COUSTE report (Doc. 129/77)

² The resolution on the seventh report of the Commission of the European Communities on competition policy adopted by the European Parliament on 13 October 1978 (OJ No C 261, 6 November 1978, page 48) and the DAMSEAUX report (Doc. 334/78)

Title

Proposal from the Commission of the European Communities to the Council for a directive amending as regards credit insurance First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance

Title

Proposal from the Commission of the European Communities to the Council for a directive amending as regards credit insurance and suretyship insurance, First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance

Preamble and Recitals 1 and 2 unchanged

Recital 3

- whereas, since the protection of insured persons normally provided by the Directive is provided by the State itself where export credit insurance operations are carried out for the account of or with the guarantee of the State, such operations should continue to be excluded from the scope of the said Directive;

Recital 3

- whereas - as regards export credit insurance operations - free competition should be guaranteed between public and private sector undertakings;
whereas the risks covered by export credit insurance in trade within the Community are not of a different economic kind from those covered by credit insurance for transactions within the domestic market of a Member State;
whereas, therefore, in this case credit insurance operations for the account of or with the guarantee of the State should be included within the scope of this Directive;
whereas - as regards export credit insurance operations in the context of trade between Member States and third countries - further coordination of national provisions is required to achieve a common export policy, which is essential to the common commercial policy.

Recitals 4 to 11 unchanged

¹OJ No. C 245, 29 September 1979, page 7 (see Doc. 1-373 79)

Article 1

Article 1

Council Directive 73/239/EEC is hereby amended as follows:

1. Article 2(2)(d) shall be replaced by the following:

'(d) export credit insurance operations for the account of or with the guarantee of the State'

1. Article 2(2)(d) shall be replaced by the following:

'(d) pending further coordination export credit insurance operations for the account of or with the guarantee of the State where the customer of the insured is a national of a non-member state.

2. In Article 7 2)(c), the words: 'credit and suretyship insurance' shall be deleted.

2. Unchanged

The technical reserves for credit insurance shall be shown separately. The accounts of the undertaking must be so drawn up that the results of credit insurance business can be distinguished¹.

3. Insert after Article 15 a new Article 15A (accounts) to read as follows:

'The accounts shall show separately the technical reserves for credit insurance and the results of credit insurance business.'

4. Insert after Article 15A (new) the following Article 15B (equalization reserve):

Undertakings shall set up an equalization reserve for the class of insurance listed under No. 14 in point A of the Annex to Directive 73/239/EEC (hereafter referred to as 'credit insurance').² Any technical deficit which may occur for a given financial year in credit insurance shall be charged to such equalization reserve³.

'(1) Undertakings shall set up an equalization reserve to which shall be charged any technical deficit appearing at the end of the financial year for the class of insurance listed under No. 14 in point A of the Annex (delete 3 words), hereafter referred to as 'credit insurance'.

¹ Article 3 of the proposal from the Commission of the European Communities

² Article 2(1), first sentence, of the Commission's proposal

³ Article 2(2) of the Commission's proposal

Such reserve shall each year receive 75% of the technical surplus, if any, of that financial year. The amount involved may now however exceed 12% of the net premiums or contributions for the same financial year. Such transfer shall no longer be obligatory when the reserves have reached 150% of the highest annual amount of net premiums or contributions paid in during the last five financial years¹.

(2) This equalization reserve shall be calculated according to one of the following methods, as chosen by each State:
- the national volume of the equalization reserve and the amount transferable to it each year shall be calculated by mathematical statistical methods,
- the national volume of the equalization reserve shall amount to 150% of the highest annual amount of net premiums or contributions paid in during the last five years. The transfer from the surplus for each financial year shall be paid into the equalization reserve until the national volume is reached.

(3) Such equalization reserve up to the amount referred to in paragraph 1 shall be disregarded for purposes of calculating the solvency margin and shall be under exemption from any liability to tax².

(3) Such equalization reserve up to the amount referred to in paragraph 2 shall be disregarded for purposes of calculating the solvency margin and shall be under exemption from any liability to tax.

(4) The provisions of this article shall not apply to undertakings where the premiums collected in respect of the class of insurance listed under No. 14 in point A of the Annex amount to less than 5% of the total amount of premiums and contributions receivable by the undertaking concerned.

¹ Article 2(1), second sentence of the Commission's proposal

² Article 2(3) of the Commission's proposal

Article 1(3)

Unchanged, becomes Article 1(5)

Article 1(4)

Unchanged, becomes Article 1(6)

Article 1(5)

The following subparagraph (d) shall be added to Article 17(2):

'(d) where an undertaking carrying on credit insurance is required to raise the fund referred to in subparagraph (a) to 1,000,000 units of account, the Member State concerned shall allow such undertaking a period of three years in which to carry out such increase.

The three-year period shall run from the date on which the first indent of subparagraph (a) becomes applicable to the undertaking. The Member States shall determine the manner in which this increase is to be carried out'.

Article 2

Article 3

Article 1(7)

The following subparagraph (d) shall be added to Article 17(2):

'(d) where an undertaking carrying on credit insurance is required to raise the fund referred to in subparagraph (a) to 1,000,000 units of account, the Member State concerned shall allow such undertaking a period of three years in which to carry out such increase; such increase shall be implemented progressively.

The three-year period shall run from the date on which the first indent of paragraph (a) becomes applicable to the undertaking'. (16 words deleted).

(it is proposed that the provisions of this article with certain amendments be included in Article 1(4) as amended)

(it is proposed that the provisions of this article with certain amendments be included in Article 1(3) as amended)

Article 4

Member States shall amend their national provisions to comply with this directive within twelve months of its notification and shall forthwith inform the Commission thereof.

They shall apply such amended provisions following a period of eighteen months from the date of such notification.

Article 2

Member States shall amend their national provisions to comply with this directive within eighteen months of its notification and shall forthwith inform the Commission thereof.

They shall apply such amended provisions following a period of twenty-four months from the date of such notification.

Article 5

unchanged, becomes article 3

Article 6

unchanged, becomes article 4

EXPLANATORY MEMORANDUMPreliminary remarks

1. The purpose of this proposal for a directive submitted for Parliament's consideration is to amend as regards credit insurance and suretyship insurance the first Council Directive of 24 July 1973 on the coordination of the national provisions on indemnity insurance¹.

2. The general objective of Community insurance legislation is to safeguard the freedom of establishment in this field of economic activity. This freedom is made possible by the coordination of national provisions the aim of which is to safeguard the protection afforded to insured persons. Such coordination must of course be undertaken with due regard to the general objectives of the EEC Treaty.

Thus, in the case of export credit insurance which is the principal subject of the proposal under consideration, the Community rules must meet the following three requirements:

- they must contribute to the achievement of a common market within which competition is not distorted,
- they must strengthen the protection afforded to insured persons,
- they must not stand in the way of the achievement of a common commercial policy.

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3. Having completed its deliberations on the proposal for a directive (Doc. 1-373/79) forwarded to it for consideration and in the light of the opinion of the Committee on Economic and Monetary Affairs, the Legal Affairs Committee proposes that Parliament:

¹ The full title of this directive (published in OJ No. L 228, 16 August 1973, page 3) is as follows:

'First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance and life insurance'. This directive was sent to members of the Legal Affairs Committee under Notice to Members No. 1/80 (PE 64.116).

- approved, subject to certain technical adjustments, the proposed arrangements on the elimination of the right to prohibit the simultaneous undertaking of suretyship insurance, credit insurance¹ together or with other classes of insurance (see below Section I),
- reject the definitive exclusion of credit insurance operations for the account of or with the guarantee of the State from the scope of application of the first Council Directive of 24 July 1973 and recommends that Parliament adopt the proposed amendments contained in the motion for a resolution (see below Section II),
- note certain more general observations on the legislative procedure followed by the Commission (see below Section III).

I. ELIMINATION OF COMPULSORY SPECIALIZATION IN RESPECT OF CREDIT INSURANCE AND SURETYSHIP INSURANCE OPERATIONS

4. The elimination of this requirement would follow from the adoption by the Council of the provision contained in Article 1(2) of the proposal under examination as shown on page 22 (Annex I).

(i)

As regards suretyship insurance

A. BASIS OF THE PROPOSAL

5. The Commission proposes to put an end to the right enjoyed hitherto by the Federal Republic of Germany to maintain a ban on the simultaneous undertaking in its territory of suretyship insurance and other classes of insurance.

6. The Commission in its explanatory memorandum states that:

- this class is not considered in all cases as being particularly hazardous and that in addition the principle of compulsory specialization is not applied in an absolute manner,
- banks and other financial institutions also carry out operations of this type,

¹ The legal basis of the First Directive, as of the proposal under consideration, is Article 57(2), EEC Treaty. This article forms the basis of the Community's powers to take action to facilitate the taking up and pursuit of activities as self-employed persons. It should be read together with the provisions contained in Article 54 and in particular paragraph 1 thereof (see general programme for the elimination of restrictions on the freedom of establishment within the Community - OJ No. 2, 15 January 1962, page 36/62) and those contained in paragraph 3(g) (guarantees for the protection of members and third parties, in this case insured persons).

- the provisions of the first Directive are sufficient for the protection of insured persons.

B. METHOD

7. The Commission therefore takes the view that for this class of insurance it is not necessary to provide measures comparable with those proposed for credit insurance (improvement in capital resources and special accounting rules - see paragraphs 12 and 13 below). The Commission considers that such special provisions would have the effect of weakening the position of insurance companies as against other undertakings operating on the market.

C. OPINION OF THE LEGAL AFFAIRS COMMITTEE

8. The Legal Affairs Committee notes these explanations and the proposed solution. It is surprised that in these circumstances the full achievement of freedom of establishment for this class of insurance has been delayed beyond the four year period set by Article 7(2)(c) of the first Directive.

9. The Legal Affairs Committee also points out that the title of the proposal under consideration should be amended by the addition of the words 'and suretyship insurance'.

10. The Legal Affairs Committee considers that it should be made quite clear that the rules to which undertakings are subject, now that the provisions contained in the 1973 directive will apply in full to suretyship insurance operations, are not more favourable than those governing other businesses carrying out that type of operation since this would have the effect of hindering competition.

(ii)

As regards credit insurance

A. BASIS OF THE PROPOSAL

11. This amendment arises out of the fact that as stated in the Commission's explanatory memorandum (Section I, third paragraph) 'as far as the Community is concerned, the specialization rule has the effect of enabling all German credit insurance undertakings to become established in the different Member States whereas foreign composite insurers are not allowed to write credit insurance in Germany'.

B. METHOD

12. In order to make acceptable the elimination of compulsory specialization as regards credit insurance, the Commission is proposing a perceptible improvement in the capital resources of companies writing credit insurance and the introduction of special accounting provisions.

13. The perceptible improvement in capital resources would result from the following provisions:

14. (a) The solvency margin (as defined in Article 16(1) of the first Directive) should, as for risks of a cyclical nature (storm, hail, frost), be calculated on the basis of the company's last seven financial years (see Article 1(3) of the proposal for a directive).

15(b) The minimum amount of the guarantee fund (as provided by Article 17 of the first Directive) is to be raised from 400,000 EUA to 1 million EUA for undertakings whose annual premiums or other receipts in that class have in each of the last three financial years exceeded 1 million EUA or 5% of the total amount of premiums or contributions receivable by the undertaking concerned (Article 1(4) (a) of the proposal for a directive).

16(c) The Commission also proposes the creation of a special reserve called the equalization reserve (see Article 2 of the proposal for a directive and paragraph 19 below).

C. OPINION OF THE LEGAL AFFAIRS COMMITTEE

17. Broadly speaking, the Legal Affairs Committee considers that the Commission proposal is suitable firstly to make acceptable in the Federal Republic of Germany the elimination of the possibility of banning the simultaneous undertaking of different classes of insurance and secondly to help strengthen the protection of insured persons in the matter of credit insurance throughout the Community. However, the Legal Affairs Committee wishes to make certain observations as contained in the following paragraphs (Nos. 18 to 21).

18. As regards the transitional measures for the increase in the guarantee fund set out in Article 1(5) of the proposal for a directive, the Legal Affairs Committee would like the Commission to consider whether this increase should not be effected progressively during the proposed three-year transitional period. This is the purpose of the amendment to the text of the new Article 17(2) (d) (see Commission proposal, Article 1(5)).

19. As regards the rules governing the proposed equalization reserve, the legal Affairs Committee approves its broad economic principles, but considers that it should be possible to create a broader basis for the equalization reserve than that laid down in the proposal for a directive. For this reason, the Committee has adopted two methods of calculation, as set out in Article 1(4) (2) of the amended text, between which each Member State may choose. The Legal Affairs Committee has also approved an amendment taking account of the point made paragraph 17(iii) of the opinion of the Committee on Economic and Monetary Affairs to the effect that the obligation to create an equalization reserve

shall not apply to undertakings whose premiums in that class are below 5% of the total amount of premiums or contributions receivable by the undertaking concerned (see Article 1(4) (4) of the amended text).

20. Finally, as regards the special accounting rules contained in Article 3 of the proposal for a directive, the Legal Affairs Committee¹ considers that they would be clearer and stronger if worded as follows: 'The accounts must be so drawn up as to show separately the technical reserves set aside for credit insurance and the results of credit insurance business'.

21. In the interest of preserving clarity in the text of the first directive, as it would be amended by the adoption of the Commission's proposal, the Legal Affairs Committee proposes that this provision should form Article 15 A of the amended first directive.

Accordingly the provisions on the equalization reserve should form Article 15 B of the amended first directive.

II. DEFINITIVE EXCLUSION FROM THE SCOPE OF APPLICATION OF THE FIRST DIRECTIVE OF CREDIT INSURANCE OPERATIONS TRANSACTED FOR THE ACCOUNT OF OR WITH THE GUARANTEE OF THE STATE

22. This exclusion would arise from the adoption by the Council of Article 1(1) of the proposal for a directive under consideration as indicated on page 23 (Annex II).

23. If this amendment were adopted, the following operations would henceforth be subject to the rules contained in the first directive:

- export credit insurance operations carried on with the support of the State,
- credit insurance operations in connection with transactions within each State.

A. BASIS OF THE PROPOSAL

24. The Commission considers that the proposed amendment is justified by the fact that operations 'for the account of or with the guarantee of the State' do not represent any risk for insured persons and that, this being so, there is no reason for Community legislation on such operations.

¹ The Legal Affairs Committee does not share the reservations expressed in the third subparagraph of paragraph 17(iii) of the opinion of the Committee on Economic and Monetary Affairs and has rejected an amendment intended to exclude from the scope of these accounting rules companies whose credit insurance operations represent 5% or less of their business as a whole.

B. OPINION OF THE LEGAL AFFAIRS COMMITTEE

25. The Legal Affairs Committee cannot recommend Parliament to approve the definitive exclusion from the scope of application of the first directive of export credit insurance operations for the account of or with the guarantee of the State.

(a) Criticism of the Commission's proposal

The effect of such an exclusion would firstly be to distort the conditions of competition between public and private sector undertakings as regards export credit insurance¹ and secondly, to remove one of the mainstays of the common commercial policy, namely the harmonization of the Member States' export policies.²

(b) Positions adopted by Parliament on previous occasions

26. The European Parliament has expressed its views on these matters on various occasions and in particular:

- in its resolution of 15 June 1977 (OJ No. C 163, 11 July 1977, page 42) on the harmonization of export aid systems. This resolution states that the European Parliament:

- (i) (noted) 'that the disparities between national export aid systems applied in the Member States may distort competition and damage the Community and ultimately each of the Member States themselves;'
- (ii) (opposed) 'any stepping up of national export aid measures and (stressed) that responsibility in this field lies with the Community bodies'.

¹ It will be recalled that Article 92(1) EEC Treaty provides as follows: 'Save as otherwise provided in this Treaty any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods insofar as it affects trade between Member States be incompatible with the common market'.

² See Article 113(1) EEC Treaty: '... the common commercial policy shall be based on uniform principles particularly in regard to ... export policy ...'.

- in its resolution of 13 October 1978 (OJ No. C 261, 6 November 1978, page 48) on the seventh report of the Commission on competition policy; in this resolution the European Parliament insisted particularly on the need 'to introduce greater transparency in the financial relations between the states and the undertakings to which Article 90 of the EEC Treaty refers' and expressed the view that 'while they should be enabled to fulfil their particular tasks efficiently, private and public undertakings should be placed on a footing of complete parity as regards conditions of competition, the efficiency of public undertakings being meanwhile ensured'.

(c) Counterproposal of the Legal Affairs Committee

27. The Legal Affairs Committee assumes from the passing of seven years between the adoption of the first Directive and the presentation of the proposal under consideration that the Commission has run up against considerable difficulties in its attempts to coordinate the national rules governing export credit insurance operations since it is proposing to exclude them definitively from the scope of application of the first Directive.

The Legal Affairs Committee considers that the Community should have an export policy worthy of the name and that the Community institutions should still seek to coordinate export credit insurance.

28. The Legal Affairs Committee therefore considers that Article 2(2) (d) of the first Directive should retain the words 'pending further coordination'. It does not seem necessary for this directive to state the period within which coordination shall be achieved, as experience has shown that such time limits are illusory. The Legal Affairs Committee considers that Parliament should invite the Commission to formulate recommendations pursuant to the second indent of Article 155 of the EEC Treaty within eighteen months from the adoption of this resolution with a view to working out the basis for such further coordination (see paragraph 9 of the motion for a resolution and paragraph 17(ii) of the opinion of the Committee on Economic and Monetary Affairs).

29. The view of the Legal Affairs Committee is that exclusion should be confined to cases where the customer of the insured person is a national of a third country, i.e. to exports to third countries. In such cases credit insurance includes not only a guarantee against economic risks but also against political risks which are not a factor in trade between the Member States.

30. To conclude this point, the opinion of the Legal Affairs Committee is that Article 2(2)(d) of the first Directive should be amended as follows:

'(This directive does not apply to the following operations):

- (d) Pending further coordination export credit insurance operations for the account or with the guarantee of the State where the customer of the insured person is a national of a third country.

31. In recommending the adoption of this wording, the Legal Affairs Committee considers that it has taken account of the opinion of the Committee on Economic and Monetary Affairs as expressed in paragraph 17(i) of that committee's opinion¹.

III. FURTHER OBSERVATIONS

- (i) On the implementation of national provisions amended pursuant to the proposal for a directive under consideration once adopted by the Council

32. The opinion of the Legal Affairs Committee is that if the proposal contained in the preceding paragraph of this report were adopted, it might be appropriate to set a longer period than that contained in Article 4 of the proposal under examination. The time allowed for the amendment of national provisions could be increased to 18 months and these new provisions should enter into force within a period not exceeding 24 months.

- (ii) On the duty to inform the Commission of measures taken by the Member States to implement the directive

33. The Legal Affairs Committee notes that Article 5 of the Commission's proposal stipulates notification of only the main provisions adopted in

¹ As regards the observations contained in paragraph 17(ii) of the opinion of the Committee on Economic and Monetary Affairs see paragraph 28 below.

the field covered by the directive. On this subject the Legal Affairs Committee recalls that in a different connection it pointed out the disadvantages which might result from limiting the information which the Member States were required to communicate to the Commission to only the main provisions which they adopt and stressed the advisability of requiring notification of all provisions which the States adopt or propose to adopt. Nevertheless, having regard to the fact that the first Directive contained a provision in similar terms, the Legal Affairs Committee does not think it absolutely necessary to propose a formal amendment on this subject.

(iii) On the structure of the proposal under consideration

34. The Legal Affairs Committee considers that the proposal would be clearer if all the amendments to the first Directive were grouped under Article 1 which would then have the following structure:

paragraph 1: provisional retention of the exclusion of export credit insurance operations in trade with third countries

and

elimination of State guarantees for export credit insurance operations in trade within the Community

paragraph 2: elimination of the right to prohibit the simultaneous undertaking of different classes of insurance

paragraph 3: insertion of an Article 15A relating to the accounting requirements for credit insurance

paragraph 4: insertion of an Article 15B dealing with the creation of equalization reserves

This Article 15B would consist of four paragraphs, the first three reproducing respectively the wording of Article 2(1) first sentence; Article 2(2); Article 2(1) second sentence and finally Article 2(3); the final paragraph of this new Article 15B would consist of an amendment proposed by the Legal Affairs Committee (see paragraph 19 above).⁷

paragraphs 5 to 7: As regards the other provisions relating to the amendments to Article 16(2) and Article 17 of the 1973 directive, these would form the subject of paragraphs 5, 6 and 7 of Article 1.

The following Articles of the proposal would be renumbered accordingly.

Article 7(2)(c)

Text of directive 73/239/EEC

Amendments proposed by the Commission
of the European Communities

(Doc. 1-373/79)

/See Article 1(2)/

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

However: /

(a) unchanged

(b) unchanged

(c) Pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence either with one another or with other classes.

(c) Pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance¹ (delete four words) or insurance in respect of recourse against third parties and legal defence², either with one another or with other classes.

¹ The Commission has not yet proposed a text relating to the elimination of compulsory specialization in the case of health insurance.

² On 22 July 1979 the Commission forwarded to the Council a proposal for a directive (Doc. 1-257/79) coordinating the national provisions on these two classes of insurance (see OJ No. C 198, 7 August 1979, p. 2); Parliament will be called upon to deliver its opinion on this proposal on the basis of a report drawn up on behalf of the Legal Affairs Committee by Mr DE GUCHT.

Article 2(2)

Text of directive 73/239/EEC

Amendments proposed by the Commission
of the European Communities

(Doc. 1-373/79)

/Article 1(1)/

This directive does not apply to:

2. The following operations:

- (a) unchanged
- (b) unchanged
- (c) unchanged

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

(d) (Delete 15 words)
Export credit insurance
operations for the account of
or with the guarantee of the
State.

Statement by Mr TUGENDHAT to the Legal Affairs Committee
on 8 July 1980

I am particularly glad to be able to speak on a matter that the Commission regards as extremely important and a matter which is extremely complex. I believe that the question has been handled with very great skill by the services, by the representatives of the Commission beforehand, and I see my role not as adding to the knowledge of the committee because I think that insofar as knowledge is concerned and insofar as the fullness of explanation is concerned, there is very little, if indeed anything at all, that could be added as a result of my coming here today. But I think that it is right that the Commissioner who has overall political responsibility for particular questions ought to appear before committees of this Parliament, both in order to put the position in the whole, as it were, and also, of course to be available to answer questions.

The proposal for a directive which the committee is examining today is intended to tidy up two loose ends left over from the First Non-life Insurance Directive of 16 August 1973. The purpose of the 1973 directive is to facilitate the exercise of the right of establishment. These two loose ends were left over because at the time it was impossible to reach agreement on how they should be treated and it was considered that they needed further detailed consideration. It is as a result of that further detailed consideration, which has involved extensive consultations with national experts and with representatives of the insurance industry, that the present text has been brought into being.

Most of the text of the proposed directive is given over to settling a matter referred to in Article 7(2)(c) of the First Coordination Directive. This concerns the requirement at present existing in the Federal Republic of Germany that insurance undertakings carrying out credit and suretyship insurance must specialize in those branches; that is, they are prohibited from engaging in any other kind of insurance activity. No such requirement exists in other Member States, whose insurance undertakings very commonly carry out credit and suretyship operations alongside other branches of insurance. These so-called composite companies are therefore prohibited from carrying on credit or suretyship insurance in Germany unless they establish a separate subsidiary company for this purpose. On the other hand, there has been nothing to prevent the German specialized companies from carrying on business in the other Member States. This is a situation which clearly could not be allowed to continue, though it has not been at all easy to arrive at a view on how it might be done away with.

The reason for the specialization requirement in Germany goes back to 1929 when a big crash of a composite insurance undertaking that also affected policyholders in other branches was brought about by a deficiency in the credit insurance business. A decision was reached in Germany that it would be safer to introduce specialization to prevent a recurrence and because credit insurance in particular was regarded as exceptionally dangerous by its very nature. It depends more, in fact, on judgement and less on statistics than most branches of insurance and it is sharply influenced by the economic cycle. The other Member States, however, with a different historical experience and perhaps a different philosophy of insurance, not only do not consider specialization necessary, but even in some cases consider it to be positively harmful.

In this situation the Commission has had to seek a compromise. This compromise consists in requiring Germany to give up the specialization requirement, but in return requiring all insurance undertakings carrying on credit insurance to subject themselves to additional financial guarantees beyond those that are already laid down in the First Coordination Directive. These additional safeguards consist firstly in increasing the minimum guarantee fund required from 400,000 units of account to 1,000,000 units of account; secondly, the compulsory constitution of an equalization reserve to which contributions have to be made in profitable years in order to meet deficits in non profitable years to take account of the cyclical nature of credit insurance; and thirdly, a requirement for separate accounting in order that the results of the credit insurance business may be immediately apparent.

Now I must stress that these proposals represent a compromise and have to be defended as a compromise. Germany would certainly like higher financial safeguards whereas other Member States on the whole were satisfied with the safeguards in the First Coordination Directive and were not very willing to go as far to meet the German view as do the Commission's proposals. The Commission has in fact pitched these proposals at what it considers to be the level most likely to find acceptance, however reluctant that acceptance may be, by the two sides on this issue.

So far I have spoken here about credit insurance, but of course the directive concerns also surety insurance. What we have done here is simply to abolish any specialization requirement without introducing separate higher safeguards than those for other branches of insurance. The reason is simply that even in Germany surety insurance was not considered to be as dangerous as credit insurance, and while credit insurance undertakings were allowed to deal with suretyship business, composite undertakings were also, by and large, permitted to carry out suretyship insurance. The consultations we had led us to believe there was no need to put special requirements for surety insurance in our proposal.

Let me now turn to the other matter dealt with in the proposal for a directive, namely export credit insurance with state backing, a point which I know arouses a good deal of interest in the committee. It takes up very little space in the Commission's proposal but it has been dealt with at great length in the draft submitted by your rapporteur. Article 2(2)(d) of the First Coordination Directive said that that directive should not apply pending further coordination to export credit insurance operations to the account of or with the support of the State. We are touching here, I think, on the tip of a fairly large iceberg. Every Member State has a State-backed insurance organisation of one sort or another. It may be a part of a government department, as with the British Export Credit Guarantee Department. Or it may be a para-state body, such as COFACE in France, Hermes in Germany, Ducroire in Belgium and also in Luxembourg, and so on. However it may be, such bodies carry on export credit insurance operations through the account of or with the guarantee of the State and it is impossible for bodies with their particular constitution to carry on such work without explicitly or implicitly having a state guarantee. If you say that they must work without a state guarantee, what in fact you would be saying is that they must not work at all.

Now I should like to make it quite plain that the Commission cannot simply say that public undertakings must not engage in particular areas of economic activity. It is one thing to say that the state must not compete unfairly, certainly; it is quite another thing to say that it must not compete at all. There is, I think, a big difference between those two propositions. In dealing with these state-backed export credit insurance organisations, we are, as I think members of the committee are well aware, touching upon a vast and controversial area. It did not seem at all appropriate to us, even on reflection, to make them subject to the requirements of the First Non-life Insurance Coordination Directive, whose provisions are tailor-made to meet the particular circumstances of private insurance undertakings, and which is concerned with the exercise of the right of establishment. It seems appropriate to remove from that directive export credit insurance operations to the account of, or with the guarantee of, the state for which this question of the right of establishment does not crop up. It does not mean, it does not mean at all, that we are not concerned about the conditions of competition between public and private insurance undertakings. I would like to emphasize that. It means only that we did not think they could be properly dealt with by inclusion in the directive. Articles 90 and 92 of the Treaty make it possible to require public undertakings to work in ways which do not give them advantages over private undertakings, and I well understand that this committee should be preoccupied with that problem. The task is to provide a suitable means of achieving this result. As I said, and I would stress

it again, it is impossible under the Treaty to say that public undertakings must not engage in particular areas of economic activity.

The Commission has, however, just adopted a directive which is directly applicable on the transparency of public undertakings, the text of which will shortly be published in the Official Journal. My colleague responsible for competition, M. Vouel, considers that once this directive is in force it should be considerably easier to examine public export credit undertakings under its provisions if such undertakings were to be brought within the ambit of our credit insurance directive, insofar as their activities in intra-Community trade are concerned. This, even though the application to them of financial requirements (I mean their solvency margin, minimum guaranteed fund, and so on) designed for the private sector will not have any immediate or direct effect upon them. In discussions, at Commission working group level, the Member States' experts unanimously rejected the idea of applying the financial requirements just referred to to the intra-Community operations of state export bodies.

In the light of the new directive, however, the Commission is now in a position to give a credible undertaking to examine this aspect again, and I am certainly prepared to give such an undertaking to look at the matter in detail in the light of the new development to which I have just referred. You will, of course, understand that I can at this stage make no commitment as regards the conclusions of this study. I think it is wrong for the Commission to enter into commitments without having first undertaken the work merely in order to get out of a difficult situation. It is possible that it might lead to the conclusion that public export credit insurance institutions should be brought within the scope of the First Non-life Insurance Coordination Directive, but there cannot be any certainty on this score at the present moment. Now, the Commission will in any case take the appropriate action under Articles 90 and 92 when it hears of any unfair fiscal or other advantages from which public sector insurers are benefiting. Furthermore, the Commission will, as soon as possible, engage in a general study of the conditions of competition between public and private export credit undertakings, and I suggest that perhaps the committee might like to include a reference to this undertaking in recital 3.

In conclusion, may I point out again that the First Non-life Insurance Coordination Directive and the present credit insurance proposal which amends it are concerned first and foremost with the exercise of the right of establishment. It would be a great pity if the abolition of the requirement for specialization in credit insurance in Germany, a question which is fairly and squarely within the scope of the directive concerned with the right of establishment, should be held up by problems of competition between

state and private export credit organisations. However important these problems may be, they are not central to the exercise of the right of establishment, and I do want, again, to emphasize the fact that we quite understand the importance of these problems. It is merely that the difference between us is perhaps the question of whether a different matter should be held up because of them. We believe that these problems are not central to the exercise of the right of establishment, which is in itself an extremely desirable objective within the terms of the Treaty and within the terms of its objective. I therefore urge the committee to recommend the adoption of the Commission's proposal whilst asking the Commission to give immediate and urgent attention to the matters concerning export credit about which I have just spoken and on which we will certainly seek to act as quickly and as thoroughly as we possibly can.

As I said at the outset, it is a slightly long intervention but I felt it right to make as full and as complete a statement as possible so that it can be on the record of the committee and so that people won't feel that I have attempted either to gloss over a particular point or to take an easy way out. That is as full a statement as I think we can possibly give.

OPINION

of the Committee on Economic and Monetary Affairs

Draftsman; Mr BALFOUR

On 11 October 1979 the Committee on Economic and Monetary Affairs appointed Mr Balfour draftsman.

It considered the draft opinion at its meeting of 20 February 1980 and adopted it unanimously with 1 abstention.

Present: Mr Delors, chairman; Mr de Ferranti, vice-chairman; Mr Balfour, draftsman; Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Caborn, Mr Damseaux, Mr Herman (deputizing for Mr Tindemans), Mr Hopper, Sir David Nicolson, Mr Petronio, Mr Purvis (deputizing for Miss Forster), Mr Walter, Mr von Wogau.

1. Background

1. The first council directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance was adopted on 24 July 1973. In the directive there were two special provisions relating to credit insurance. Article 2 (2) d stated that the directive did not apply to "export credit insurance operations for the account of or with the support of the state", pending, however, "further coordination, which shall be implemented within 4 years of notification of this directive". In addition, Article 7 (2) c stated that "pending further coordination, which must be implemented within 4 years of notification of this directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes."
2. The draft directive deals with both of these points. Firstly it acknowledges that export credit insurance should still not be subject to the regime of the directive when the state acts as guarantor to the policyholder, but that where such insurance is merely undertaken with state "support" the situation is different. It therefore continues the exclusion of export credit insurance from the directive's scope but only for operations for the account of or with the "guarantee" of the state.
3. The draft directive also abolishes the principle of compulsory specialisation, which currently prevents foreign composite insurers from writing credit insurance in Germany. It does this by deleting the words "credit" and "suretyship" insurance from Article 7 (2) c. This brings suretyship insurance directly within the regime of the first directive, but the special nature of credit insurance is acknowledged by introducing a number of special provisions to deal with it. Because of the cyclical nature of the business, the period of reference for the average burden of claims, (used in determining the claims basis), which is laid down in the first directive as 3 years for most classes of insurance, is increased to 7 years for credit insurance, as for storm, hail and frost insurance.

4. The draft directive also raises to 1 million units of account the amount of the guarantee fund which undertakings carrying on credit insurance are required to possess under the terms of the first directive. Two exceptions are made in the case of undertakings where the amount of premiums receivable from the credit insurance business does not exceed 1 million units of account, and also where the premiums receivable from such insurance do not exceed 5% of the total premiums receivable by the undertakings: in these cases the minimum amount of the guarantee fund is left at the old figure of 400,000 units of account.

In calculating this the results of the last 3 financial years are to be taken into consideration. Furthermore, firms are also given 3 years to bring about this very considerable increase in the amount of the guarantee fund.

5. The draft directive also lays down provisions for the creation of equalisation reserves, specifically set up for credit insurance operations in order to equalise fluctuations in levels of claims.

Finally, the draft calls for separate accounting for credit insurance operations.

2. Comments

6. The draft directive amends two of the provisions of the first directive, Articles 2 (2) d and Article 7 (2) c. Its emphasis, however, is on the latter: this opens up the market for credit and suretyship insurance in Germany by eliminating the principle of mandatory specialisation, while also laying down adequate safeguards for the conduct of credit insurance on account of its unusually risky nature.
7. While it regrets the delay in achieving such coordination, which should have been implemented by mid 1977, the Committee on Economic and Monetary Affairs endorses the general objectives laid down in this section of the draft directive.
8. The draft directive, however, is far less satisfactory in the way it has tackled the other provision, Article 2 (2) d, dealing with exemption from the directive for export credit insurance operations where states are involved. All that has been done is to substitute "with the guarantee of the state" for "with the support of the state". Although this in itself is an improvement, the draft directive is in other respects actually retrograde, in that it no longer calls for

any further coordination. The public sector escapes, therefore, from the scope of the proposed directive.

9. Real changes are needed because of the nature of export credit insurance operations in the Community, where in a number of Member States no separation is made by state or state-backed insurers between whether the risks are incurred, in Community or in non-Community countries.
10. A number of examples can be given to illustrate this point. In France, for instance, the public sector insurer, COFACE, offers cover for both intra and extra Community sales for French exporters and has a market sharing agreement with the major private sector company in this area (SFAC) which precludes the latter from covering sales from France to other Community countries.
11. In the United Kingdom the relevant public sector undertaking (The Export Credits Guarantee Department) insists on whole turnover policies being taken out by exporters, and makes no distinction between export credit insurance policies covering sales to Community Member States (where competition between public and private undertakings should be encouraged) and sales to other countries (where government intervention is to be welcomed). Some indication of the significance of this lack of distinction is given by the fact that in 1976 26.8% of the worldwide shipments insured by the Export Credits Guarantee Department were to other Member States of the Community.
In Italy too the state fails to separate exports to other member countries from those to third countries.
12. With regard to types of risk as well, some state undertakings cover both risks of an essentially commercial nature involving insolvency or default and also risks of a more political nature, such as failure by governments to settle debts, the non-transfer of funds and the imposition of other government restrictions and controls.

In Italy, for instance, the state covers both commercial and political risks. the Export Credits Guarantee Department in the United Kingdom actually applies combined premium rates to the two.
13. Clearly the Member States must continue to **play** a major role in export credits insurance, particularly where political risks in unstable parts of the world are involved. Furthermore, where the state is the guarantor, the solvency provisions of the directive are evidently of little relevance.

However, what is at issue is why there should continue to be discriminatory treatment between public and private sector undertakings in the internal market, and why the private sector should not be given the opportunity to compete on equal terms for the export credit insurance market within the Community.

14. Such business should be subject to the Community's rules of competition, and in particular to Article 92 of the Treaty governing aids granted by states. The Committee on Economic and Monetary Affairs has recently confirmed this general objective in Paragraph 8 of its motion for a resolution on the 8th report on the competition policy (Doc. 1-625/79) when it requested "the Commission to draw up the provisions needed to free the provision of services in the insurance sector and to ensure the strict application of the rules on competition in all insurance sectors and especially in life insurance and export credit insurance." Furthermore, Parliament itself, in its resolution of 13 October 1978 (OJ. C 261, 6 November 1978), called upon the Commission to take action to ensure transparency and emphasized that "private and public undertakings should be placed on a footing of complete parity as regards conditions of competition".
15. The Commission has repeatedly emphasized, along with the Court of Justice, that the granting of assistance by Member States to promote exports in intra-Community trade is incompatible with the general principle of the Common Market, especially the free movement of goods. More specifically, it has also taken effective action to change the situation in which the British Government established fixed rates of interest for medium and long-term credit extended to British exporters, again with no distinction between exports inside and outside the Community, and in which the rates charged were generally substantially lower than the normal market rate. Export credit insurance in the internal market poses similar problems.
16. Finally, when public undertakings cover both political and commercial risks together, greater transparency is also needed in order to get a better idea of the basis for the respective rates charged.

3. Conclusion

17. Measures liberalising competition within the internal market while providing adequate safeguards for the consumer should be strongly encouraged. Unfortunately this draft directive only achieves these aims in limited respects. It steers clear of the central problem of discriminatory treatment between public and private insurers in the internal market: the freedom on paper to provide services throughout

the Community is of little use when protectionism is in practice perpetuated through the dominant role played by state undertakings. While recognising that the problems facing the Commission in drawing up the draft directive were of a political rather than a technical nature, the Committee on Economic and Monetary Affairs cannot recommend that it be supported in its present form, and calls for significant changes to be made:

- (i) (a) in recognition of the fact that there should be no need for political risk insurance within the European Community, government-supported schemes should apply exclusively to trade outside the Community (i.e. political risk and 'del credere' insurance falling within Article 113 of the Treaty of Rome).

and/or

- (b) that, in order to give effect to Parliament's resolution of 13 October 1978 calling for parity as regards conditions of competition between public and private undertakings, government-supported schemes dealing with export credit insurance should be required to match the fiscal and re-insurance obligations imposed upon private undertakings.
- (ii) that, recognising the concern which is felt by industrialists at the total lack of progress in harmonising the rules governing export credit insurance in general since 1973, and aware of the strong criticism which has been levelled against the Commission for its failure to make proposals in this direction even where this concerns important Community interests in the field of international projects, the Commission should be called upon to draw up within the next 12 months definitive recommendations for future export credit insurance harmonisation and proposals for greater cooperation in the area of multinational consortium contracts with non-EEC international projects.
- (iii) that the text of the draft directive should take into account the following considerations concerning articles 2 and 3:

Article 2

For undertakings transacting several classes of business and an insignificant amount of credit insurance business, this provision is inappropriate. Therefore an exemption should be allowed for companies which, for instance, receive 5% or less of their premium income from credit insurance.

Article 3

We should take care here not to impose detailed rules for separation of the accounts for credit insurance; nor should this apply to companies whose credit business is 5% or less.

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