

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90)278 final - SYN 179

Brussels, 20 June 1990

Amended proposal for a

COUNCIL DIRECTIVE

amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC and Second Council Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance.

(presented by the Commission pursuant to Article 149(3)  
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

On 3 January 1989 the Commission presented to the Council a proposal for a Council Directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC, and Second Council Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC<sup>(1)</sup>.

The main object of this White Paper proposal is to bring compulsory third party motor insurance within the framework established by the Second Non-Life Insurance Coordination Directive (the "second Directive") of 22 June 1988<sup>(2)</sup>, thus facilitating the effective exercise of freedom to provide services in this insurance class.

Compulsory third party motor insurance was excluded from the scope of the second Directive because of the special problems arising in this area. These relate to the operation of the national guarantee funds (to compensate the victims of uninsured or unidentified vehicles), to the operation of the green card system (particularly of the Supplementary Agreement between motor insurers' bureaux, which enabled frontier green card checks to be abolished) but also and more importantly to the safeguarding in general of the interests of road accident victims.

The proposal deals with the above problems and applies the provisions of the second Directive to both compulsory third party cover and optional cover (the latter insuring essentially damage to the insured's own vehicle). The proposal therefore makes a distinction between large risks (subject to home-country control), with application of the thresholds of the second Directive, and mass risks (host-country control), for the whole of motor insurance.

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(1) COM(88)791 final - SYN 179, OJ No L 65, 15.03.1989, p. 6.

(2) OJ No L 172, 04.07.1988, p. 1.

The Economic and Social Committee delivered its opinion on 31 May 1989<sup>(3)</sup>. The European Parliament has completed its first reading, delivering its opinion on 14 February 1990<sup>(4)</sup> on the basis of the report prepared by its Legal Affairs Committee. Acting on the basis of the third paragraph of Article 149 of the Treaty, and taking account of the two opinions, the Commission hereby presents an amended version of its proposal for a Directive.

In its opinion Parliament proposed nine amendments. This amended proposal follows a number of those amendments and also reflects the discussions that have taken place in the Council.

The Commission has not accepted the most important change sought by Parliament, namely the removal of any reference to large risk treatment for motor insurance.

The Commission remains convinced that the provisions of the second Directive, in particular the special rules on compulsory insurances, and the appointment of a claims settlement representative in the Member State of provision of services to deal with all third party claims, will provide adequate protection for third party victims.

If all motor insurance risks were to be treated as mass risks this would in the Commission's view empty this proposal of most of its substance, would constitute a retrograde step compared with the degree of liberalisation achieved with the second Directive in June 1988, and would be inconsistent with the objective of creating a single Community-wide insurance market.

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(3) OJ N° C.194, 31.7.1989.

(4)

Comments on the main individual amendments proposed

1. The title of the proposal has been shortened and simplified in line with Parliament's wishes.
2. The first recital has been amended to quote the full titles of the first and second non-life Directives. This again corresponds to a request from Parliament.
3. A new seventh recital is added to make clear the effect this proposal will have on the coverage of the coinsurance Directive of 1978. The inclusion of the motor insurance classes (3 and 10) in the large risk definition of the second Directive will automatically add those same classes to the category of risks which may be covered by way of Community coinsurance.
4. A new eighth and a new tenth recital are added to provide additional background information and to enable the full titles of the earlier motor insurance Directives to be given. This corresponds to Parliament's wishes to make the proposal more self-contained and easier to understand.
5. The thirteenth recital, dealing with the claims settlement representative has been amended in the light of the changes to Article 5. See point 9.
6. A new fourteenth recital is added to cover the reciprocity rules added by the new Articles 9 and 10. See point 13.
7. The reciprocity rules require the inclusion in Article 1 of definitions of "parent undertaking" and "subsidiary".
8. Article 4 has been slightly amended to require undertakings providing services to report to the authorities not just their overall premium income figures for motor insurance, but also to

specify the figures for class 10 (motor vehicle liability) excluding carrier's liability. This information can then be used to check that the correct contributions are made to the bureau and guarantee fund of the country of provision of services.

9. The new Article 12a of the second Directive to be added by Article 5 of this proposal has been amended in the light of discussions with the Member States and of the views of the Council's Legal Service concerning the claims settlement representative.

Paragraph 1: It is felt that the special rules of this article, which are concerned with protection of accident victims, do not need to apply to the carrier's liability risk, which although forming part of insurance class 10 does not raise the same victim protection considerations.

Paragraph 3: A number of Member States have rules concerning the cover of aggravated risks. The Commission accepts that those rules should apply equally to providers of services.

Paragraph 4: The appointment of the claims settlement representative is now made an obligation. Furthermore the provisions covering the role of the representative have been made clearer. His main task is to collect information and represent the services insurer in relation to third party claims. The Member States of provision of services may require the representative to help in checking the existence and validity of third party insurance cover, but may not impose any other requirements.

Although the representative may be an insurer in his own right he may not engage in activities which would constitute the carrying-on of insurance business on behalf of the insurance undertaking, he represents in respect of third party motor claims.

10. A new Article 6 is added allowing Member States to require the communication of information relating to the claims representative and to the services insurer's membership of the bureau and guarantee fund of the Member State of provision of services.

11. A new Article 7 is introduced to take account of the transitional periods allowed by the second Directive for the introduction of the large risks regime in certain Member States. This simply remedies an omission in the original proposal.

12. In its amendment No. 14, Parliament sought to use this motor services proposal as a vehicle for the introduction of 'reciprocity' rules in the field of non-life insurance as a whole.

The Commission has now decided that the motor insurance proposal is the appropriate vehicle and accordingly proposes in the new Articles 8 and 9 a flexible regime modelled on that adopted in the Second Banking Directive.

However, since the Commission plans shortly to propose the creation of an Insurance Committee to fulfil various advisory and regulatory functions Article 9 does not include any committee provisions.

14. The new Article 10 (former Article 6) allows Member States 18 months to amend their national law and a further 6 months to apply their amended provisions.

## II

*(Preparatory Acts)*

## COMMISSION

**Amended proposal for a Council Directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC and Second Council Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance**

*COM(90) 278 final — SYN 179**(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 21 June 1990)**(90/C 180/05)*

## INITIAL PROPOSAL

**Proposal for a Council Directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC, and Second Council Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services, and amending Directive 73/239/EEC**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

## AMENDED PROPOSAL

**Proposal for a Council Directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC, and Second Council Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

**Visas unchanged**

## INITIAL PROPOSAL

Whereas in order to develop the internal insurance market the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC<sup>(1)</sup>, hereinafter referred to as the 'Second Directive', made it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policyholders to have recourse not only to insurers established in their own country, but also to insurers which have their head office in the Community and are established in other Member States;

Whereas the scope of the provisions of the Second Directive specifically concerning freedom to provide services excluded certain risks, the application to which of the said provisions was rendered inappropriate at that stage by the specific rules adopted by the Member States' authorities, owing to the nature and social implications of such provisions; whereas those exclusions were to be re-examined after the Second Directive had been in force for a certain period;

Whereas one of the exclusions concerned motor vehicle liability insurance, other than carrier's liability;

Whereas, however, when the Second Directive was adopted the Commission gave an undertaking to present to the Council as soon as possible a proposal concerning freedom to provide services in the area of insurance against civil liability in respect of the use of motor vehicles (other than carrier's liability);

Whereas, subject to the provisions of the Second Directive concerning compulsory insurance, it is appropriate to provide for the possibility of large risk treatment, within the meaning of Article 5 of the said Directive, for the said insurance class of motor vehicle liability;

Whereas large risk treatment should also be envisaged for insurance covering damage to or loss of land motor vehicles and land vehicles other than motor vehicles;

(<sup>1</sup>) OJ No L 172, 4. 7. 1988, p. 1.

## AMENDED PROPOSAL

Whereas in order to develop the internal insurance market, Directive 88/357/EEC<sup>(1)</sup>, hereinafter referred to as the 'Second Directive', on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC<sup>(2)</sup>, hereinafter referred to as the 'First Directive', on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, made it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policyholders to have recourse not only to insurers established in their own country, but also to insurers who have their head office in the Community and are established in other Member States;

**Five following recitals unchanged**

(<sup>1</sup>) OJ No L 172, 4. 7. 1988, p. 1.

(<sup>2</sup>) OJ No L 228, 16. 8. 1973, p. 3.



## INITIAL PROPOSAL

## AMENDED PROPOSAL

Whereas to ensure the continued proper functioning of the green card system and the agreements between the national motor insurers' bureaux it is appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the bureau of that Member State;

Whereas it is also appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the guarantee fund set up in that Member State to pay compensation to the victims of uninsured or unidentified vehicles;

Whereas the Second Directive laid down that the risks which may be covered by way of Community co-insurance within the meaning of Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance<sup>(1)</sup> were to be large risks as defined in the Second Directive; whereas the inclusion by the present Directive of the motor insurance classes in the large risks definition of the Second Directive will have the effect of including those classes in the list of classes which may be covered by way of Community co-insurance;

Whereas Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability<sup>(2)</sup>, as last amended by Directive 84/5/EEC<sup>(3)</sup>, built on the green card system and the agreements between the national motor insurers' bureaux in order to enable green card checks to be abolished;

Unchanged

Whereas the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as last amended by Directive 90/232/EEC<sup>(4)</sup>, required the Member States to set up or authorize a body (guarantee fund) with the task of providing compensation to victims of accidents caused by uninsured or unidentified vehicles;

Whereas it is also appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the guarantee fund set up in that Member State;

<sup>(1)</sup> OJ No L 151, 7. 6. 1978, p. 25.

<sup>(2)</sup> OJ No L 103, 2. 5. 1972, p. 1.

<sup>(3)</sup> OJ No L 8, 11. 1. 1984, p. 17.

<sup>(4)</sup> OJ No L 129, 19. 5. 1990, p. 33.

## INITIAL PROPOSAL

Whereas in order to ensure that third party claimants are not prejudiced or put to greater inconvenience where the motor liability insurer is operating by way of the provision of services rather than by way of an establishment Member States shall require that insurance undertakings intending to provide services in this insurance class shall nominate a claims settlement representative to be responsible for the processing and settlement of third party claims;

## AMENDED PROPOSAL

Unchanged

Whereas in the field of motor liability insurance the protection of the interests of persons suffering damage who could pursue claims in fact concerns each and everyone and that it is therefore advisable to ensure that these persons are not prejudiced or put to greater inconvenience where the motor liability insurer is operating by way of provision of services rather than by way of establishment; whereas for this purpose, and in so far as the interests of these persons are not sufficiently safeguarded by the rules applying to the supplier of services in the Member State in which it is established, it should be provided that the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory to collect all necessary information in relation to claims and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims; whereas this representative may also be required to represent the undertaking before the competent authorities of the Member State of provision of services in relation to the control of the existence and validity of a motor vehicle liability insurance policy;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in third countries; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations,

## INITIAL PROPOSAL

## AMENDED PROPOSAL

HAS ADOPTED THIS DIRECTIVE:

HAS ADOPTED THIS DIRECTIVE:

*Article 1**Article 1*

For the purposes of this Directive:

For the purposes of this Directive:

- (a) 'First Directive' means Directive 73/239/EEC <sup>(1)</sup>;
- (b) 'Second Directive' means Directive 88/357/EEC;
- (c) 'vehicle' means a vehicle as defined in Article 1 (1) of Directive 72/166/EEC <sup>(2)</sup>;
- (d) 'bureau' means a national insurers' bureau as defined in Article 1 (3) of Directive 72/166/EEC;
- (e) 'guarantee fund' means the body referred to in Article 1 (4) of Directive 84/5/EEC <sup>(3)</sup>.

- (a) 'First Directive' means Directive 73/239/EEC;
- (b) 'Second Directive' means Directive 88/357/EEC;
- (c) 'vehicle' means a vehicle as defined in Article 1 (1) of Directive 72/166/EEC;
- (d) 'bureau' means a national insurers' bureau as defined in Article-1 (3) of Directive 72/166/EEC;
- (e) 'guarantee fund' means the body referred to in Article 1 (4) of Directive 84/5/EEC;
- (f) 'parent undertaking' means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC <sup>(1)</sup>;
- (g) 'subsidiary' means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC, any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

*Article 2**Article 2*

In Article 5 (d) of the First Directive the phrase 'risks classified under classes 8, 9, 13 and 16 of point A of the Annex' in the first paragraph of point (iii) is hereby replaced by 'risks classified under classes 3, 8, 9, 10, 13 and 16 of point A of the Annex'.

In Article 5 (d) of the First Directive the phrase 'risks classified under classes 8, 9, 13 and 16 of point A of the Annex' in the first paragraph of point (iii) is hereby replaced by the following:

'risks classified under classes 3, 8, 9, 10, 13 and 16 of point A of the Annex'.

*Article 3*

Unchanged

The second and third indents in the second paragraph of Article 12 (2) of the Second Directive are hereby deleted.

<sup>(1)</sup> OJ No L 228, 16. 8. 1973, p. 3.

<sup>(2)</sup> OJ No L 103, 2. 5. 1972, p. 1.

<sup>(3)</sup> OJ No L 8, 11. 1. 1984, p. 17.

<sup>(1)</sup> OJ No L 193, 18. 7. 1983, p. 1.

## INITIAL PROPOSAL

*Article 4*

Article 22 (1) of the Second Directive is hereby replaced by the following:

'1. Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without deduction of re-insurance, receivable by Member State and by group of classes. The groups of classes shall be defined as follows:

- accident and sickness (1 and 2),
- motor insurance (3, 7 and 10),
- fire and other damage to property (8 and 9),
- aviation, marine and transport (4, 5, 6, 7, 11 and 12),
- general liability (13),
- credit and suretyship (14 and 15),
- other classes (16, 17 and 18).

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services.'

*Article 5*

The following Article 12a is hereby inserted in Title III of the Second Directive:

*Article 12a*

1. This Article shall apply where an undertaking, through an establishment situated in a Member State, covers a risk classified under No 10 of point A of the Annex to the First Directive which is situated in another Member State.

## AMENDED PROPOSAL

*Article 4*

Article 22 (1) of the Second Directive is hereby replaced by the following:

'1. Every establishment must inform its supervisory authority in respect of operations effected by way of provisions of services of the amount of the premiums, without deduction of re-insurance, receivable by Member State and by group of classes. The groups of classes shall be defined as follows:

- accident and sickness (1 and 2),
- motor insurance (3, 7 and 10, the figures relating to class 10, excluding carrier's liability, being specified),
- fire and other damage to property (8 and 9),
- aviation, marine and transport (4, 5, 6, 7, 11 and 12),
- general liability (13),
- credit and suretyship (14 and 15),
- other classes (16, 17 and 18).

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services.'

*Article 5*

The following Article 12a is hereby inserted in Title III of the Second Directive:

*Article 12a*

1. This Article shall apply where an undertaking, through an establishment situated in a Member State, covers a risk, other than carrier's liability, classified under No 10 of point A of the Annex to the First Directive which is situated in another Member State.

## INITIAL PROPOSAL

2. The Member State of provision of services shall require the undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

The undertaking shall not, however, be required to make any payment or contribution to the bureau or fund of the Member State of provision of services in respect of risks covered by way of provision of services other than one calculated, on the same basis as for undertakings covering risks in class No 10 through an establishment in that State, by reference to its premium income from that class in that State or the number of risks in that class covered there.

3. The Member state of provision of services shall require the undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk in class 10 by way of provision of services rather than through an establishment in that State.

In particular, the Member State of provision of services may require the undertaking to nominate a representative resident or established in its territory who shall be responsible for the handling of claims and possess sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the courts of that Member State.

The representative, who may be an employee of the undertaking, shall limit his activities on behalf of that undertaking to the handling and settlement of such claims.

Notwithstanding Article 3, the nomination of the representative shall not in itself constitute the opening of a branch or agency for the purpose of Article 6 (2) (d) of the First Directive and the representative shall not be an establishment within the meaning of Article 2 (c) of this Directive.

## AMENDED PROPOSAL

2. The Member State of provision of services shall require the undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

The undertaking shall not, however, be required to make any payment or contribution to the bureau or fund of the Member State of provision of services in respect of risks covered by way of provision of services other than one calculated, on the same basis as for undertakings covering risks, other than carrier's liability, in class No 10 through an establishment in that State, by reference to its premium income from that class in that State or the number of risks in that class covered there.

3. Insurance undertakings providing services shall be required to comply with the rules concerning the cover of aggravated risks which are in force in the Member State of provision of services in so far as they apply to established undertakings.

4. The Member State of provision of services shall require the undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, in class 10 by way of provision of services rather than through an establishment in that State.

For this purpose, the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims.

The representative may also be required to represent the undertaking before the competent authorities of the State of provision of services with regard to checking the existence and validity of motor vehicle liability insurance policies.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

The Member State of provision of services may not require that appointee to undertake activities on behalf of the undertaking which appointed him other than those set out in the preceding paragraph. The appointee shall not take up the business of direct insurance on behalf of the said undertaking.

The appointment of the representative shall not in itself constitute the opening of a branch or agency for the purpose of Article 6 (2) (b) of the First Directive and the representative shall not be an establishment within the meaning of Article 2 (c) of this Directive.'

*Article 6*

1. The following subparagraph is added to Article 15 (1) and to Article 16 (1) of the Second Directive:

'Each Member State within the territory of which an undertaking intends to provide services coverings risks in class 10, other than carrier's liability, may require that the undertaking:

- notify the name and address of the claims representative referred to in Article 12a (3),
- produce a declaration that the undertaking has become a member of the national bureau and the national guarantee fund of the Member State of provision of services.'

2. The following subparagraph is added to Article 21 (2) of the Second Directive:

'Each Member State may require that the name and address of the representative of the insurance undertaking also appear in the abovementioned documents.'

*Article 7*

Article 27 (1), last subparagraph, of the Second Directive is hereby replaced by the following:

'The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 3, 8, 9, 10, 13 and 16 situated exclusively in one of the four Member States benefiting from the transitional arrangements.'

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 8*

1. The heading of Title III of the First Directive is replaced by the following:

'TITLE III A

**Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community.'**

2. The following heading is placed after Article 29 of the First Directive:

'TITLE III B

**Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of participations by such parent undertakings.'**

*Article 9*

The following Articles 29a and 29b shall be added to Title III B of the First Directive:

*'Article 29a*

The competent authorities of the Member States shall inform the Commission:

- (a) of any authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the insurance Committee established by Council Decision ...;
- (b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the insurance Committee established by Council Decision. ... accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 29b*

1. The Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially no later than six months before the application of this Directive, and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community insurance undertakings. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph above, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in the Council Decision referred to in Article 29a, that the competent authorities of the Member States must limit or suspend their decisions

— regarding requests pending at the moment of the decision or future requests for authorizations,  
and

— regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.



## INITIAL PROPOSAL

## AMENDED PROPOSAL

The duration of the measures referred to may not exceed six months.

Before the end of that six-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority that the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such institutions or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request:

- (a) of any request for the authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of the third country in question;
- (b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse once an agreement is concluded with the third country referred to in paragraph 3 or 4 when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up and pursuit of the business of insurance undertakings.'

## INITIAL PROPOSAL

*Article 6*

Member States shall amend their national provisions to comply with this Directive within ... months of the date of its notification<sup>(1)</sup> and shall forthwith inform the Commission thereof.

The provisions amended in accordance with this Article shall be applied within ... months of the date of the notification of the Directive.

*Article 7*

This Directive is addressed to the Member States.

## AMENDED PROPOSAL

*Article 10*

Member States shall amend their national provisions to comply with this Directive within 18 months of the date of its notification and shall forthwith inform the Commission thereof.

The provisions amended in accordance with this Article shall be applied within 24 months of the date of the notification of the Directive.

*Article 11*

This Directive is addressed to the Member States.

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<sup>(1)</sup> This Directive was notified to Member States on ...

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# DOCUMENTS

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