

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 305 final - SYN 177

Brussels, 2 July 1990

Amendment to the proposal for a

SECOND COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC

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

EXPLANATORY MEMORANDUM

On 1 March of this year the Commission presented to the Council, on the basis of Article 149(3) of the Treaty, an amended proposal for a second life assurance Directive¹ to take account of the detailed discussions which had taken place since 23 December 1988, the date on which the original proposal was transmitted.²

Parliament has just completed its first reading. It delivered its opinion on 13 June³ on the basis of the report drawn up by its Committee on Legal Affairs and Citizens' Rights in agreement with the Committee on Economic and Monetary Affairs and Industrial Policy.

The Commission has not accepted the principal amendment requested by Parliament, namely the abolition, where the supervisory regime of the Member State of establishment is more liberal, of any intervention by an intermediary established in the Member State in which the policy-holder has his habitual residence and carrying on the business activity defined in Article 2(1)(a) of Directive 77/92/EEC, that is to say as a rule the insurance broker.⁴

The Commission remains convinced that, where the policy-holder takes the initiative in seeking life assurance cover under conditions of freedom to provide services, there is no justification for withholding from him the benefit of the advice which an independent broker can give him, especially since, in those circumstances, the proposal for a Directive provides for special safeguards to draw the policy-holder's attention to the consequences of his action.

However, in view of the differences which exist between the Member States in relation to the regulation and supervision of brokers, it is only right that those Member States which feel the need should be given time to adapt their laws in this field.

The Commission proposes, to take account of the fears expressed by Parliament, to add a new recital to underline the importance, from the point of view of the protection of the consumer, of any legislation aimed at guaranteeing the professional qualification and independence of insurance brokers.

1 COM(90)46 final - SYN 177, OJ C 72, 22.3.2990, p. 5.

2 COM(88) 729 final - SYN 177, OJ C 38, 15.2.1989, p. 7.

3 -

4 OJ L 26, 31.1.1977, p. 14.

Parliament has also proposed that those Member States which allow on their territory companies carrying on simultaneously life and non-life insurance business should undertake to adopt measures to facilitate the transformation of those companies into specialized life assurance companies, notably by the automatic grant of an official authorization to specialized life assurance companies and by granting tax relief.

The Commission cannot accept this proposal as it prejudices the findings of the report mentioned in Article 18(2) which the Commission is preparing with a view to examining the position of such composite companies.

Moreover, the automatic grant of an official authorization is incompatible with the responsibilities of a supervisory authority, and tax provisions are, in fact, a harmonization measure which is out of place in this instrument.

On the other hand, the Commission proposes to stress in a new recital that, where a composite company wishes to divide itself into two separate companies, the Member States concerned are free, subject to compliance with the provisions of Community law, notably the Community rules on competition, to introduce specific tax arrangements as regards in particular the taxation of the capital gains which often show up in the accounts as a result of such division.

Amendment to the proposal for a Second Council Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC

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(90/C 179/24)

After the twelfth recital, the following recital is inserted:

‘Whereas nothing in this Directive would prevent a composite undertaking from dividing itself into two undertakings, one active in the field of life assurance and the other in that of non-life insurance; whereas in order to allow such division to take place under the best possible conditions, it is desirable to permit Member States, in accordance with the Community rules on competition, to provide for appropriate tax arrangements, in particular with regard to the capital gain such division might entail;’

After the last recital the following recital is inserted:

‘Whereas it will be particularly important to allow those Member States which so wish a sufficiently long period in which to adopt the appropriate provisions in order to ensure the professional qualification and independence of insurance brokers; whereas in view of the increasingly important role such brokers play in advising those buying insurance and facing an increasing offer of products owing to the achievement of freedom to provide services, their professional qualification and independence will become essential factors in the protection of the consumer;’
