

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 891 final

Brussels, 31st December 1980

## PROPOSAL FOR A COUNCIL DIRECTIVE

amending the 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 assurance, particularly as regards tourist assistance

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(presented by the Commission to the Council)

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# COMMISSION OF THE EUROPEAN COMMUNITIES

C O R R I G E N D U M

COM(80) 891 final/2

Concerns only the English  
version

Brussels, 20th January 1981

## PROPOSAL FOR A COUNCIL DIRECTIVE

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Article 14, par. 1

- Delete the words : "Member States shall allow undertakings which provide in their territories assistance insurance only a period of five years";
- Insert the following words : "Member States shall allow undertakings which do not carry on insurance in their territories in any class other than assistance a period of five years ...".

EXPLANATORY MEMORANDUM1. Provisions concerning assistance

Recent years have seen an enormous increase in the amount of travel undertaken by ordinary citizens, both for business purposes and, above all, for tourism. This development has been matched by an equally remarkable growth in the offers to the travelling public of contracts under which they will receive assistance of one kind or another should they fall ill, suffer an accident or otherwise experience difficulties while away from home. Such offers of assistance may be made by specialist organizations, created for the sole purpose of engaging in such activities, or by other bodies, in particular motoring clubs, which often nowadays go far beyond mere help at the roadside.

It is not surprising that national governments have felt a need to exercise some control over the bodies which offer these services in order to protect the man in the street. This need has never been greater than now, when competition is becoming increasingly sharp and the range of benefits offered more and more varied and extensive. The public needs to be assured that an organization offering assistance contracts really has the ability to undertake what is proposed. Furthermore the collapse reported in France at the beginning of August 1980 of an assistance company whose contracts covered some 350,000 beneficiaries can only underline the need to maintain the financial stability of such undertakings.

Member States have taken different views on the question of whether offers of touring assistance, and other offers of a similar nature but not necessarily connected exclusively with travel, ought to be regarded as a form of insurance. Some have argued that a contract under which a person who fears the adverse consequences of an uncertain event makes a fixed payment in advance to an undertaking which promises benefits if that event should occur, has all the essential characteristics of insurance. Others have drawn a firm line between insurance and assistance, taking the view that an operation cannot amount to insurance if the benefit is provided only in kind or, more narrowly, if the undertaking providing it uses only its own staff and equipment.

This divergence of treatment is not only, in the long term, unsatisfactory for members of the public, who expect to find broadly similar safeguards throughout the Community, but has also led to practical difficulties between Member States. The First Non-Life Insurance Coordination Directive ("the First Directive" (1)) lays down standard conditions under which an undertaking recognized as an insurer in its home State can set up a branch or agency in another State. If an assistance undertaking based in a State where its activities are not considered to be insurance wishes to establish itself in another State which takes the contrary view, it will find its way blocked. Conversely, if it is based in a State which treats it as an insurer but wishes to set up business in a State which takes a different attitude, the provisions of the Directive will be of no help to it.

In order to overcome this problem and to afford equal and adequate safeguards for the public, the proposed Directive introduces various modifications to the First Directive. Their nature is explained in the comments on particular Articles, below.

## 2. Other provisions (not concerning assistance)

Advantage has been taken of this opportunity to introduce certain modifications to the First Directive, of a purely technical character, where the need for them has become apparent.

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(1) 73/239/CEE : First Council Directive of 24 July 1973 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.

## Comments on particular Articles

### Article 2

The First Directive does not itself contain a definition of insurance and no definition is usually found in national law either. Discussion with experts of the Member States made plain that it would be extremely difficult to arrive at a comprehensive positive definition of "assistance insurance" while insurance itself remained undefined. The course adopted here is therefore to introduce a new paragraph 2 into Article 1 of the First Directive, stating merely that operations shall not be regarded as being outside the scope of the Directive just because services are rendered exclusively in kind or because the only staff and equipment used are those belonging to the provider of the services. In practice, where certain Member States have hitherto not treated as insurance "assistance" operations which were regarded as insurance in other Member States, it has been precisely for those reasons. It was considered appropriate to set out a number of criteria as examples in order to give a clearer idea of the field of assistance to which the Directive applies.

It will be noted that the new paragraph 2 covers not only "assistance" falling within the new class 18 (see below), but all kinds of insurance where benefits are given in kind, some of which may fall within other classes.

### Article 3

A special situation exists in Denmark, where De Danske Redningskorps Faellesforbund, usually known as Falck, is an organisation which has no counterpart in other Member States. Although more than half its income comes from motorists, for whom it provides a breakdown service in return for an annual subscription, it also enters into very comprehensive contracts with local authorities and others to provide a wide range of services - more than half the local authorities in Denmark have their fire service provided by Falck - and it also engages in "assistance" contracts with farmers, under which it undertakes to transport sick animals to a veterinary practitioner.

It appears likely that, in the absence of any special measure, some of Falck's activities would fall within the scope of the Directive. Considerable inconvenience would result from the need to separate the "insurance" activities from the others and, because of Falck's unique nature, no useful purpose would be served. It therefore appears appropriate to exclude it entirely.

#### Article 4

Point A of the Annex to the First Directive contains a classification of risks according to classes of insurance. Those Member States which have hitherto regarded "assistance" as insurance have treated it as falling into a number of existing classes, including no. 16 ("miscellaneous financial loss"), into which it does not fit very easily. The new class 18 covers those cases where benefits are given primarily in kind and which do not fall fairly and squarely into one of the existing classes. Sickness insurance remains within class 2, for example, even if the sickness occurs in the course of a journey away from home, but urgent transport to hospital or repatriation, together with help in dealing with administrative and other problems, would normally fall within "assistance insurance" and hence class 18. Although insurance within class 18 will normally provide for benefits to be given in kind, it is not excluded that the insured may be provided with vouchers which he may, in appropriate circumstances, use virtually as money or that he may, in certain circumscribed conditions and where it is the most practical way in which help can be given, spend money himself and receive later reimbursement.

It must not in any case be forgotten that point C of the Annex to the First Directive explicitly provides that, where appropriate, an authorization granted for covering risks in a particular class may also extend to risks in other classes where they may be regarded as ancillary to the principal risk.

The new class 18 consists of two indents. The first covers what is commonly, although perhaps not altogether accurately, known as "touring assistance", which is the field in which the greatest developments have taken place and which has given rise to the problem making a Directive necessary. But they are not the only kind of imaginable "assistance insurance" and it was therefore considered desirable, on discussion with national experts, to include a second indent of a general nature to leave scope for further evolution.

Whether an insurance operation falls within class 18 or within another class depends entirely upon the nature of the benefits which the insurer is required, under the terms of the contract, to provide to the insured. It is immaterial whether the insurer provides the benefits directly, using his own staff and equipment, or indirectly, through arrangements made with subcontractors or agents.

The creation of this new class 18 does not mean that all activities which may be thought of as assistance are henceforth to be treated as insurance. It is necessary to decide first whether an activity has the characteristics of insurance. It is only if it has those characteristics that the question arises of allocating it to a particular class in point A of the Annex. Ordinary after-sales and maintenance contracts, for example, will not in the normal case fall within the scope of the Directive because they will not be regarded as insurance.



Article 5

A particular problem is presented by motoring clubs and associations, which have many millions of members throughout the Community. In many Member States they provide a wide range of assistance services, for foreign as well as domestic travel, and engage in a variety of activities which give them the appearance of substantial commercial organizations. The mainstay of their operations is, however, usually the provision of a roadside breakdown service. The majority of their members indeed probably join with the main purpose of securing the benefits of this service and regard their membership subscription as something similar to an insurance premium.

Although the roadside service is usually given through the use of the organization's own staff and equipment, this may not always be possible and the member may then be authorized to pay a third party (perhaps through use of a voucher). Moreover it is now common for a club which provides a breakdown service to arrange for a vehicle which cannot be repaired at the roadside to be towed to a garage by a third party and for a third party also to transport the driver and passengers to some nearby public transport so that they may continue their journey.

The principle effect of Article 5 is to exclude this basic service from the scope of the First Directive. Moreover, it was considered appropriate to exclude certain assistance operations which are not carried out on the basis of a specific contract. It would clearly be inappropriate, however, to exclude those operations in which the motoring associations find themselves most obviously in competition with other bodies. One thinks here particularly of the foreign travel "assistance packages" offered by many motoring associations for a specific extra payment.

Certain associations, particularly in the Netherlands and the United Kingdom, offer a service falling somewhere between the two extremes (the basic roadside and the foreign touring services) outlined above. Typically, such an intermediate service provides that in the event of a total breakdown the vehicle, the driver and the passengers will be conveyed free of charge to their ultimate destination, wherever within the national boundaries this may be. Such a service breaks

into an area in which independent "assistance" organizations are active, at least in certain Member States, and the view taken by most national experts was that it would be wrong to exclude it from the scope of the Directive. But the service in question may from an organizational point of view be an extension of the basic roadside service and a physical or financial separation of the two may be difficult to bring about. For this reason the final part of the proposed text (after the semicolon) provides that where the basic roadside assistance is inseparable from an operation that is to be treated as insurance, then the basic service too shall be so treated - as indeed is at present the case in the United Kingdom. Similarly, where independent commercial organizations offering a wide range of assistance services include a roadside breakdown service among their activities, they will not be able to benefit from the exclusion in the first part of Article 5.

#### Articles 6 and 7

The amendments proposed here place upon national supervisory authorities a responsibility to ensure, as far as reasonably possible, that undertakings engaged in "assistance insurance" are not merely financially sound but are also capable of providing the kind of assistance they offer. The "means" referred to may be either the undertaking's own staff and equipment or subcontracts entered into with other parties.

#### Article 8

The "second result" which may be used in the calculation of the solvency margin in Article 16 of the First Directive takes account of "the amount of claims paid". Where benefits are accorded in kind it is necessary to take account of the cost to the undertaking providing them.

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Article 9

The guarantee fund referred to in Article 17 of the First Directive, as well as the solvency margin referred to in Article 16, may be represented by assets of any kind (see Article 18(1) of the First Directive). It follows that where an assistance organization, treated as an insurer, possesses its own buildings, vehicles, aircraft or other equipment it may use their value to cover the guarantee fund and solvency margin.

Article 10

This has the same purpose as Articles 6 and 7.

Article 11

Owing to changes which have taken place in the legislation of The Netherlands, it is no longer possible for undertakings to carry on insurance business under the form of a "coöperatieve vereniging". The amendment to the First Directive proposed here does no more than take account of this change.

Article 12

Article 26 of the First Directive concerns a grouping arrangement which may be applied where an undertaking whose head office is outside the Community has a branch or agency in more than one Member State. The wording of this Article was found to be defective and an amended version was used in Article 30 of the First Life Assurance Coordination Directive (1), where the same subject-matter was dealt with in the life assurance field.

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(1) OJ L 63 of 13 March 1979.

In order to remedy the defect, advantage is taken of this opportunity to amend Article 26 to bring it into line with Article 30 of the First Life Directive.

#### Article 13

The amendment made here is purely consequential upon the amendment contained in the preceding Article.

#### Article 14

Since the attitude adopted towards bodies offering assistance services which will now fall within the scope of the First Directive has varied from one Member State to another and indeed within individual Member States according to the precise nature of the activity, a fairly long transitional period is necessary. This is particularly true of those bodies which carry on multiple activities, some of which will henceforth be regarded as insurance while others will not. Such bodies will have to reorganise their affairs in order to comply with the provisions of Article 8(1)(b) of the First Directive.

Article 14 is closely modelled upon Article 30 of the First Directive.

#### Article 15

This Article, modelled upon Article 31 of the First Directive, serves the same purpose as Article 14, but for undertakings whose head office is situated outside the Community.

## II

(Preparatory Acts)

## COMMISSION

**Proposal for a Council Directive amending the 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 assurance, particularly as regards tourist assistance**

*(Submitted by the Commission to the Council on 13 January 1981)*

THE COUNCIL OF THE EUROPEAN  
COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas First Council Directive 73/239/EEC of 24 July 1973 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 <sup>(1)</sup>, as amended by Directive 76/580/EEC of June 1976 <sup>(2)</sup>, eliminated certain divergencies between the laws of Member States in order to facilitate the taking up and pursuit of the above business;

Whereas considerable progress has been achieved in that area of business involving the provisions of benefits in kind; whereas such benefits are governed

by provisions which differ from one Member State to another; whereas those differences constitute a barrier to the exercise of the right of establishment;

Whereas in order to eliminate the abovementioned barrier to the right of establishment it should be specified that an activity is not excluded from the application of Directive 73/239/EEC for the simple reason that it constitutes a benefit in kind solely or one for which the person providing it uses his own staff or equipment only;

Whereas a new class of insurance consisting of assistance should be included in the above Directive; whereas certain forms of assistance which are provided most frequently in a number of Member States by motoring clubs and similar organizations should be excluded from the application of that Directive;

Whereas an undertaking engaged in the business of assistance insurance must possess the means necessary for it to provide the benefits in kind which it proposes within an appropriate period of time; whereas special provisions should be laid down for calculating the solvency margin and the minimum amount of the guarantee fund which such undertaking must possess;

Whereas certain transitional provisions are necessary in order to permit undertakings engaging solely in assistance insurance to adapt themselves to the application of the provisions of Directive 73/239/EEC;

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

<sup>(2)</sup> OJ No L 189, 13. 7. 1976.

Whereas it is necessary to keep up to date the provisions of that Directive concerning the legal forms which insurance undertakings may assume; whereas certain provisions of the Directive concerning the rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community should be amended in order to make them more consistent,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

In this Directive the words 'First Directive' mean First Council Directive 73/239/EEC of 24 July 1973 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.

#### Article 2

Article 1 of the First Directive is replaced by the following:

1. This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance carried on by insurance undertakings which are established in a Member State or which wish to become established there.
2. An activity shall not be excluded from the application of the Directive for the simple reason that the benefits are supplied in kind only or that the person providing them uses his own staff or equipment only. This applies especially to undertakings entered into, subject to the prior payment of a fixed sum, to make a material aid immediately available to the holder of an assistance contract where the latter is in difficulties following the happening of a chance event in the cases and conditions set out in the contract. Assistance does not cover servicing and maintenance, nor after sales service.
3. The classes of insurance referred to in paragraph 1 above are listed in the Annex to this Directive.

#### Article 3

Article 4 of the First Directive is supplemented as follows:

- (f) In Denmark  
De Danske Redningskorps Fællesforbund.

#### Article 4

In point A of the Annex to the First Directive the following is inserted between the words 'Legal expenses and costs of litigation' and the last sentence:

#### 18. Assistance

- assistance for persons who get into difficulties while travelling or while away from home,
- assistance in other circumstances.

#### Articles 5

Article 2 (2) of the First Directive is supplemented as follows:

- (e) operations of assistance to persons who are not holders of an assistance contract at the moment of the happening of the chance event or who are holders of a contract not concerning such an event.
- (f) assistance provided in the event of an accident involving the breakdown of a road vehicle and consisting solely of
  - a roadside breakdown service for which the organization providing the service uses, in most circumstances, its own staff and equipment;
  - the conveyance of the vehicle to the nearest and most practical location at which repairs may be carried out; and
  - the conveyance of the driver and passengers to the nearest place from which they may conveniently continue their journey by other means;

However, this Directive applies to the above operations if they are carried out in close conjunction with the other operations referred to in the first indent of No 18 of point A of the Annex, provided:

- the same staff, equipment or other means are used or may be used in order to comply with requests for assistance covered by one or other category of operations; or
- the same operations are covered by the same contract as other operations to which this directive applies.

#### Article 6

In Articles 9 and 11(1) of the First Directive the following paragraph is inserted immediately before

the words 'and in addition, for the first three financial years':

- (ee) where the risks to be covered are classified under No 18 of point A of the Annex, the resources available to it for providing assistance.

#### Article 7

Article 13 of the First Directive is replaced by the following:

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings. Should the undertakings in question be authorized to cover the risks set out in the category listed under No 18 of point A of the Annex, Member States shall also collaborate in supervising the resources available to those undertakings for carrying out the assistance operations they have undertaken to perform.

#### Article 8

Article 16 (3) of the First Directive is supplemented as follows:

In the event of the risks listed under No 18 of point A of the Annex, the amount of claims paid used to calculate the second result shall be the costs borne by the undertaking in respect of claims for assistance. Such costs shall be calculated on the basis laid down by the supervisory authority of the Member State in whose territory the head office of the undertaking is situated.

#### Article 9

In Article 17 of the First Directive, the second indent of paragraph 2 (a) is replaced by the following:

- 300 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 are covered.

#### Article 10

Article 19 of the First Directive is replaced by the following:

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account covering all types of

operations, of its financial situation, solvency and, as regards cover for risks listed under No 18 of point A of the Annex, other resources available to them for meeting their liabilities.

2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision and, as regards cover for risks listed under No 18 of point A of the Annex, to indicate the resources available to them for meeting their liabilities. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.

#### Article 11

In the eighth indent of Article 8 (a) of the First Directive the words 'coöperatieve vereniging' are deleted.

#### Article 12

Article 26 of the First Directive is replaced by the following:

1. 'Undertakings which have sought or obtained an authorization from two or more Member States may apply for the following advantages which may only be granted jointly:

- (a) that the solvency margin referred to in Article 25 be calculated in relation to the entire business which they undertake within the Community; in such case, account shall be taken only of the business effected by all the agencies or branches established within the Community for that calculation;
- (b) that the deposit referred to in Article 23 (2) (e) be lodged in one of those States only;
- (c) that the assets representing the guarantee fund shall be kept in any one of the Member States in which they carry on business.

2. An application for the advantages provided for in paragraph 1 shall be submitted to the competent authorities of all the Member States from which the undertaking in question has sought or obtained an authorization. The application shall indicate the authority responsible for verifying in the future the solvency of agencies or branches established within the Community with respect to their entire business. The choice of authority made by the undertaking shall set out the reasons on which it is based. The deposit shall be lodged with the corresponding Member State.

3. The advantages provided for in paragraph 1 shall be granted only with the consent of the competent authorities of all the Member States to which an application has been submitted. They shall take effect on the date on which the supervisory authority selected has undertaken, *vis-à-vis* the other supervisory authorities, to verify the solvency of the agencies or branches established in the Community with respect to their entire business. The supervisory authority selected shall obtain from the other Member States the information necessary for verifying the overall solvency of the agencies or branches established in their territory.

4. The advantages conferred pursuant to this Article shall, on the initiative of one or more of the Member States concerned, be withdrawn simultaneously by all the Member States concerned.

#### *Article 13*

The second paragraph of Article 27 of the First Directive is replaced by the following:

As regards the application of Article 20, where an undertaking qualifies for the advantages provided for in Article 26 (1) above, the authority responsible for verifying the solvency of agencies or branches established within the Community with respect to their entire business shall be the authority of the State in which the head office of the Community undertaking is situated.

#### **Transitional provisions**

##### *Article 14*

1. Member States shall allow undertakings which do not carry on insurance in their territories in any class other than assistance a period of five years, commencing on the date of adoption of this Directive, in order to comply with the requirements of Articles 16 and 17 of the First Directive.

2. Furthermore, Member States may allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the margin of solvency, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 20 of the First Directive, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose.

3. Any undertaking referred to in paragraph 1 which wishes to extend its business within the meaning of Article 8 (2) or Article 10 of the First Directive may do so only on conditions that it complies forthwith with the rules of the Directive in question.

4. Any undertaking referred to in paragraph 1 having a structure different from those referred to in Article 8 of the First Coordination Directive may continue for a period of three years from the date of adoption of this Directive to carry its existing business in the legal form in which it exists on that date.

#### *Article 15*

Member States shall allow agencies and branches referred to in Title III of the First Directive which provide in their territories assistance insurance only a maximum period of five years commencing on the date of adoption of this Directive in order to comply with the requirements of Article 25 of the First Directive provided such agencies or branches do not extend their business pursuant to Article 10 (2) of the First Directive.

#### **Final provisions**

##### *Article 16*

Member States shall amend their national provisions in order to comply with this Directive before 31 December 1982 and shall notify the Commission thereof forthwith. The provisions thus amended shall, subject to Articles 12 and 13 above, be brought into force before 31 December 1983.

##### *Article 17*

Upon notification of this Directive, Member States shall forward to the Commission the texts of the main provisions laid down by law, regulation or administrative provision which they adopt in the field covered by this Directive.

##### *Article 18*

This Directive is addressed to the Member States.