

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 886 final

Brussels, 6 January 1983

Amended 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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(submitted to the Council by the Commission in accordance with Article 149, indent 2 of the EEC Treaty)

COM(82) 886 final

Explanatory Memorandum

In the light of the opinions delivered by Parliament<sup>1</sup> and by the Economic and Social Committee<sup>2</sup> on the 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<sup>3</sup> than life assurance, particularly as regards tourist assistance<sup>3</sup>, the Commission hereby submits a revised text of its proposal pursuant to the second paragraph of Article 149 of the EEC Treaty.

The main changes from the original text are as follows :

1. In relation to the insurance activities referred to in Directive 73/239/EEC, the activities that constitute the provision of assistance, to be covered by the Directive, are more clearly defined (Article 2 of the proposal);
2. The national supervisory authorities are required to verify, in the case of undertakings providing assistance, the resources in terms of personnel and equipment available to them, and in particular the competence of medical teams and the quality of medical equipment (Article 6 of the proposal).

A. Article 2

The Economic and Social Committee, which supports the objectives set out in the proposed Directive, nevertheless proposed that, on account of the real differences between insurance activities and the provision of assistance, coordinated rules governing the latter should be laid down in a specific Directive.

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<sup>1</sup> Council document 7018/82 (ASSRE 165/SURE) 22 of 14 May 1982.

<sup>2</sup> OJ No C 343 of 31 December 1981, p. 9.

<sup>3</sup> OJ No C 51 of 10 March 1981, p. 5.

The Commission feels unable to accept this proposal since, in its view, a specific directive of that sort would have to duplicate a number of the fundamental provisions of Directive 73/239/EEC, and it is precisely the purpose of the present proposal for a Directive to bring the provision of assistance within the existing coordination arrangements, particularly those governing official supervision and the requisite financial guarantees, where it displays the characteristics of an insurance activity. Nor has the Commission taken up Parliament's proposal that the scope of Directive 73/239/EEC (Article 1) be amended by making a distinction between insurance activities and the provision of assistance by insurance or assistance undertakings. The upshot of that would be that, irrespective of the nature of the assistance they provided, all assistance undertakings would be caught by the provisions of Directive 73/239/EEC; it would also mean that a large number of the Directive's provisions which apply only to insurance undertakings would have to be expressly extended to embrace assistance undertakings.

The Commission's proposal (Article 2) consists in re-defining the scope of Directive 73/239/EEC so that, alongside conventional direct insurance activities, it covers such provision of assistance as is in the nature of an insurance activity (Article 1(1) of Directive 73/239/EEC, as amended). The provision of assistance is more clearly defined as an activity whereby, in the cases and under the conditions set out in the contract and subject to prior payment of a premium, material aid is made immediately available to the beneficiary where he is in difficulties following a chance event (first sentence of Article 1(2)). A further stipulation is that an activity is not to be excluded from the scope of the Directive on the ground that the benefits are supplied in kind only or that the person providing them uses his own staff or equipment only (Article 1(3)).

As far as is possible, such provision of assistance as is in the nature of an insurance activity is thus described in concrete terms and a distinction is made between it and conventional insurance activities. The wishes expressed by the Economic and Social Committee and by Parliament have thus been accommodated. This also ensures that, irrespective of the nature of their business, not all assistance undertakings are automatically brought within the scope of Directive 73/239/EEC.

B. Article 6

The Commission has taken up Parliament's proposal that Article 6 be amended in such a way that national supervision of assistance undertakings caught by Directive 73/239/EEC is strengthened and its coverage more clearly defined. This ensures that insurance supervision will also extend to the resources in terms of personnel and equipment available to an assistance undertaking, with special attention being paid to the competence of medical teams and the quality of medical equipment.

C. Article 8

The Economic and Social Committee and Parliament both took the view that the solvency margin to be required of assistance undertakings should be lower than that prescribed in Article 16 of Directive 73/239/EEC for insurance undertakings. Parliament proposed that the fractions to be applied in calculating the solvency margin be reduced to one third.

The Commission was unable to accept this proposal, which was also put forward by certain assistance undertakings concerned. The provisions of Directive 73/239/EEC governing calculation of the solvency margin are designed to cause non-life insurance undertakings to build up free reserves using a precise method of calculation (based on premium income or the burden of claims). Such reserves must not fall below a minimum level fixed for each class of insurance. In essence, therefore, the purpose of the solvency margin is to

enable the undertakings concerned to honour their commitments towards policyholders at all times. Where the solvency margin is not met, the supervisory authorities are empowered to require the undertaking in question to restore a sound financial position.

The fact that assistance undertakings, in contrast to insurance undertakings of the conventional type, do not need to build up large technical reserves because they frequently conclude short-term contracts and, in the event of any claims, use for the most part their own personnel and equipment does not provide any justification for an easing of the solvency requirements. On the contrary, the fact that technical reserves are not substantial means that they are soon used up when large, unforeseeable claims are received. Nor must it be forgotten that assistance is sometimes provided through expensive sub-contracts. The collapse of a large assistance undertaking in 1980 demonstrated the need for tight requirements governing the formation of free reserves. What is more, Article 18(1) of Directive 73/239/EEC provides that any assets whatsoever may be used to represent the solvency margin and the minimum amount of guarantee fund alike; assistance undertakings may, therefore, take into account the value of the material resources available to them (buildings, vehicles, aircraft) and of other plant and machinery for the purpose of satisfying the solvency margin requirement. For the rest, the Directive allows undertakings lengthy transitional periods in which to comply with the solvency requirements.

Annex

## Amendments

to the 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

Original proposal

The Council of the European Communities,

New proposal

The Council of the European Communities,

Citations unchanged

First to third recitals unchanged

Fourth recital

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 such provision of assistance as is in the nature of insurance should be covered by the above Directive; whereas, however, account should be taken of the special characteristics of such assistance; whereas, however, certain forms of assistance which are provided most frequently in a number of Member States by motoring clubs and similar organizations must be excluded from the application of the Directive;

## Fifth recital

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 an undertaking proposing assistance contracts 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;

## Sixth recital

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;

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

Last recital unchanged

Article 1 unchanged

## 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.

## 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, including the provision of assistance referred to in paragraph 2 and which is in the nature of insurance carried on by 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.

2. The provision of assistance shall consist in making material aid immediately available to the holder of an assistance contract, subject to the prior payment of a premium, in the cases and under the conditions set out in the contract where he is in difficulties following the happening of a chance event. Provision of assistance shall not include servicing and maintenance, nor after-sales service.

3. An activity shall not be excluded from the application of this 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.

4. The classes of insurance referred to in paragraph 1 above are listed in the Annex to this Directive.

Articles 3, 4 and 5 unchanged

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':

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.

(ee) where the risks to be covered are classified under No 18 of point A of the Annex, the resources, in particular the personnel and equipment, available to it for providing assistance in the different countries, with special attention being paid to the competence of the medical teams and the quality of the medical equipment available to them.

Articles 7 to 13 unchanged

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.

Article 14

1. Member States shall allow undertakings providing in their territories assistance only 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.

Paragraphs 2, 3 and 4 unchanged

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

Article 15

Member States shall allow agencies and branches referred to in Title III of the First Directive and providing in their territories assistance 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

do not extend their business  
pursuant to Article 10(2) of the  
First Directive.

9

agencies or branches do not extend  
their business pursuant to Article  
10(2) of the First Directive.

Articles 16 to 18 unchanged