



European Communities

EUROPEAN PARLIAMENT

# SESSION DOCUMENTS

12 October 1990 English Edition

A3-0249/90



## RECOMMENDATION

of the Committee on Legal Affairs and Citizens' Rights

on the COMMON POSITION established by the Council with a view to the adoption of a second 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 (C3-0202/90 - SYN 177)


Rapporteur: Mr James JANSSEN VAN RAAJ

DOC\_EN\RR\96893


PE 143.472/fin.  
Or. FR

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

 = Consultation procedure requiring a single reading

 = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

 = Cooperation procedure (first reading)

 = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

C O N T E N T S

	<u>Page</u>
Procedural page .....	3
A. RECOMMENDATION .....	4
B. EXPLANATORY STATEMENT .....	16

At its sitting of 13 June 1990 the European Parliament delivered its opinion at first reading on the amended Commission 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.

At the sitting of 12 July 1990 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meeting of 19 September 1990 the Committee on Legal Affairs and Citizens' Rights appointed Mr Janssen van Raay rapporteur. The Committee on Economic and Monetary Affairs and Industrial Policy has not delivered an opinion.

At its meeting of 26, 27 and 28 September 1990, the Committee on Legal Affairs and Citizens' Rights considered the common position and the draft recommendation.

At that meeting it adopted the following recommendation by 11 votes to one.

The following were present for the vote: Vayssade, first vice-chairman and acting chairman; Janssen van Raay, rapporteur; Alber, Bandres Molet, De Gucht, Fontaine, Grund, Hoon, Inglewood, Klepsch (for Anastassopoulos), Marinho, Medina Ortega, Oddy and Taradash.

The recommendation was tabled on 10 October 1990.

The deadline for tabling amendments to the common position or proposals to reject it will appear on the draft agenda for the part-session at which the recommendation is to be considered.

A

RECOMMENDATION

(Cooperation procedure: second reading)

on the common position established by the Council with a view to the adoption of 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 (COM(90) 46<sup>1</sup> and COM(90) 305<sup>2</sup>)

The Committee on Legal Affairs and Citizens' Rights,

- having regard to the common position of the Council (C3-0202/90 - SYN 177)

Recommends that the European Parliament amend the common position as follows:

Common position of the Council

Amendments

**Eighteenth recital**

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 other 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;

Whereas it is appropriate also to make provision for a separate procedure for requests for authorization of a subsidiary or the acquisition of a participation by a company which is governed by the law of a third country with a view to securing for Community undertakings reciprocal arrangements in the third countries concerned; whereas it is the intention of this Directive to lay down the details of this procedure, the aim of which is not to bar access to 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 other third countries;

---

<sup>1</sup> OJ No. C 72, 22.3.90, p.5

<sup>2</sup> OJ No. C 179, 19.7.90, p. 14

19th and 20th recitals unchanged

(Amendment No. 2)

21st recital

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 qualifications and independence will become essential factors in the protection of the consumer;

Article 4(1)

1. The law applicable to contracts relating to the activities referred to in the First Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.

1. The law applicable to contracts relating to the activities referred to in the First Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.

2. Where the policy-holder is a natural person and has his habitual residence in a Member State other than that of which he is a national, the parties may choose the law of the Member State of which he is a national.

2. Unchanged

(Amendment No. 3)  
Article 4(2a) (new)

2a. The Member State whose law governs a contract entered into by way of freedom to provide services under the provisions of Article 13, may not, subject to paragraph 5 of this Article, seek to prevent the policy-holder from entering into any contract relating to the commitment which may be lawfully undertaken in the Member State of establishment.

Article 4(3)

3. Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

3. Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

Article 4(4)

4. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

4. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

#### Article 4(5)

5. Subject to the preceding paragraphs, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

5. Subject to the preceding paragraphs, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

#### Articles 5 - 8 unchanged

#### Article 9

The following Articles shall be added to Title III B of the First Directive:

The following Article shall be added to Title III B of the First Directive:

(Amendment No. 4)  
Article 32a

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 referred to in Article 32b(6) accordingly;

(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 referred to in Article 32b(6) 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.

Article 32b

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.

1. Requests for authorization of a subsidiary whose parent undertaking is governed by the laws of a third country or the acquisition of a participation therein as provided for in paragraph 3 shall be subject to the procedure laid down in this Article.

2. The competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission of the request for authorization.

3. Member States shall provide that, where an undertaking governed by the laws of a third country is considering the acquisition of a direct or indirect participation in an insurance undertaking established in the Community such that the latter undertaking will become its subsidiary, it shall inform the supervisory authorities of the Member State concerned. These authorities shall inform the competent authorities of the other Member States and the Commission.

4. The competent authorities of the Member State concerned must suspend their decision regarding requests as referred to in paragraphs 2 and 3 until the procedure provided for in paragraphs 5 and 6 is completed.



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.

5. The Commission shall, within three months of receiving the information provided for in paragraphs 2 and 3, examine whether all undertakings of the Community enjoy reciprocal treatment, in particular regarding the establishment of subsidiaries or the acquisition of participations in insurance undertakings in the third country in question.

6. If the Commission finds that reciprocity is not ensured, it may extend suspension of the decision referred to in paragraph 4, after having consulted the competent authorities of the Member States under the collaboration procedure provided for in Article 38.

7. The Commission shall submit appropriate proposals to the Council with a view to achieving reciprocity with the third country in question.

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 Article 32b(6), 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.

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

Before the end of that six months 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 whether 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 undertakings 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 whenever an agreement is concluded with the third country referred to in paragraph 3 or 4 or when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

(Amendment No. 5)

Article 32b

6. The Commission shall be assisted by a Committee composed of representatives of the Member States and chaired by the Commission representative.

The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall express its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be expressed by the majority laid down in Article 148(2) of the Treaty for adoption of decisions which the Council is required to take (when a vote is taken in the Committee,) on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted as laid down in the said Article. The chairman shall not vote.

The committee shall adopt the measures proposed if they are consistent with the Committee's opinion.

- The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the the Commission representative.

The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall express its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Committee shall decide by the majority laid down in Article 148(2) of the Treaty for adoption of decisions which the Council is required to take (when a vote is taken in the Committee,) on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted as laid down in the aforementioned Article. The chairman shall not vote.

The measures adopted by the Commission may be applied immediately. However, if these measures are not consistent with the Committee's opinion, they shall be communicated by the Commission to the Council forthwith.

Where the proposed measures are not consistent with the Committee's opinion, or if no opinion is issued, the Commission shall submit to the Council without delay a proposal concerning the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

7. 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.

Articles 10 and 11 unchanged

Article 12(1) - (3) unchanged

(Amendment No. 6)

Article 12(4)

4. If the competent authorities of the Member State of provision of services have not taken a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be refused.

In that event, the Commission shall defer application of the measures which it has adopted for a period to be laid down in each act adopted by the Council, but which may in no case exceed three months from the date of communication to the Council

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

4. If the competent authorities of the Member State of provision of services have not taken a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be approved.

Article 12(5) and (6) unchanged

Article 13 unchanged

Article 14(1) - (4) unchanged

(Amendment No. 7)  
Article 14(5)

5. Member States may not prevent the policy-holder from entering into any commitment which may be lawfully undertaken in the Member State of establishment unless it is contrary to public policy in the Member State of the commitment.

5. Deleted

Articles 15 - 17 unchanged

Article 18(1) unchanged

(Amendment No. 8)  
Article 18(1a) (new)

1a. Notwithstanding the provisions of Article 13(6) of the first Directive, Member States whose regulations allow the insurance undertakings established on their territory to offer life assurance and 'non-life' insurance services concurrently shall undertake to adopt, within a period of 5 years from publication of this Directive, the necessary measures to enable the above-mentioned undertakings to be converted into undertakings specializing in life assurance only, providing at least for:

(a) the automatic granting of administrative authorizations to any specialized undertaking which forms and sets up in the same Member State in which the composite undertaking is established and,

(b) preferential tax arrangements in regard to the basis for assessment which the conversion of the composite company may give rise to and in regard to the operations necessary to effect the conversion.

Article 18(2)

2. This Article will be reviewed in the light of the report to be prepared by the Commission in accordance with Article 39(2) of the First Directive.

2. This Article will be reviewed in the light of the report to be prepared by the Commission in accordance with Article 39(2) of the First Directive.

Articles 19 - 26 unchanged

Article 27(1)

1. In the case of group assurance contracts entered into by virtue of the insured person's contract of employment or professional activity, the Member States may, until 31 December 1994, limit the commitments for which it is the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 12.

1. In the case of group assurance contracts entered into by virtue of the insured person's contract of employment or professional activity, the Member States may, until 31 December 1994, limit the commitments for which it is the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 12.

(Amendment No. 9)

Article 27(2)

2. Member States may, up to three years at the latest after the date of application laid down in the second paragraph of Article 30, consider that the policyholder shall be deemed to have taken the initiative only in the case provided for in the first indent of Article 13(1).

2. Deleted

Articles 28 - 32 unchanged

EXPLANATORY STATEMENT

1. The common position of the Council, adopted unanimously on 29 June 1990, appears following adoption by the Parliament on 13 June 1990 of the SARIDAKIS report (Doc. A3-130/90) on the amended proposal for a directive submitted by the Commission in accordance with Article 149(3) of the EEC Treaty.
2. The amended proposal for a directive reproduces - almost word for word - the text drawn up by the Council, before Parliament had to give its opinion. The text of the common position is therefore almost identical to the Commission's amended proposal for a directive. None of the amendments adopted by Parliament has been taken up by the Commission or, naturally, by the Council. However, the Commission did get the Council to include two new recitals in its common position which in some measure satisfy Parliament on the following points:
  - (a) the insurance broker question (dealt with in Amendments Nos. 2, 7, 11 and 12 of the SARIDAKIS report), and
  - (b) the question of the splitting of composite companies (dealt with in Amendment No. 10 of the SARIDAKIS report).
3. Despite this not very satisfactory result, the text of the common position does not contain any important modifications in relation to the Commission's amended proposal (apart from the 'eternal' question of commitology, the Council having for once opted - against the Commission's advice - for the 'III(b)' procedure), and is thus a common position within the terms of Article 149(2) of the EEC Treaty.
4. Your rapporteur, however, while considering that the argument used by the Commission and Council to reject Parliament's amendments is not entirely convincing, proposes a more detailed consideration of the common position. The following areas require particular comment:
  - Article 13, concerning the insurance broker. The Council and Commission do not react to the fact that a simple reference to an insurance broker could cause confusion - and thus lead to disguised infringements of the provision in question - particularly in view of the uncertainty which could arise from Article 5(1)(b) of Directive 77/92/EEC concerning the status of the insurance agent and the insurance broker (see OJ No. L 26, 31.1.1977. p.14). The Commission claims that Parliament's amendments 'would have the effect of discriminating between brokers established in the Member State of the policy-holder and those established in other Member States' (see Communication from the Commission to the European Parliament, p.3). No mention is made, however, of the discrimination which will arise, because of the wording of Article 13, between the professions of insurance agent and insurance broker.



Nevertheless, after due consideration, it would appear to be more helpful for the completion of the single market as regards insurance for us to accept the position taken by the Council and the Commission so as to avoid the legal uncertainty that the professional circles involved and consumers might feel in the absence of a set of rules - albeit incomplete - governing the freedom to provide insurance services. In this respect, your rapporteur feels - and here he distances himself from the text proposed by the Commission and adopted by the Council - that even the transitional period provided for in Article 27(2) of the common position would not be necessary (see in this connection Amendment No. 10 of the SARIDAKIS report as adopted in plenary, minutes of the sitting of 13 June 1990, PE 142.453, and Amendment No. 9 of this recommendation).

- reciprocity, where Parliament has repeatedly endeavoured to win agreement on the efficacy of the solution it adopted in Amendments Nos. 1 and 4 of the SARIDAKIS report;
- commitology, where, however, it should be noted that even the Commission is careful to distance itself, though discreetly, from the Council's position.

5. Your rapporteur therefore intends to incorporate in this recommendation at second reading Amendments Nos. 1, 3, 4, 5, 6 and 9 of the SARIDAKIS report which Parliament adopted at first reading (Doc. A3-130/90; see also minutes of the sitting of 13 June 1990, PE 142.453).

