

European Communities

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Report

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council for a 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 (Doc. 1-917/80)

Rapporteur: Mr D. VIE

By letter of 10 February 1981, the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a 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 (Doc. 1-917/80).

At its sitting on 13 February 1981, the European Parliament referred this proposal for a directive to the Legal Affairs Committee as the committee responsible.

On 4 May 1981, the Committee on Economic and Monetary Affairs was asked for its opinion.

During its meeting of 18 March 1981, the Legal Affairs Committee appointed Mr VIE rapporteur.

At its meeting on 17 and 18 March 1982, the Legal Affairs Committee adopted the amendments and motion for a resolution contained in Mr Vié's report.

The motion for a resolution was adopted by 16 votes with one abstention.

The following participated in the vote: Mrs Veil, chairman; Mr Luster and Mr Turner, vice chairmen, Mr Vie, rapporteur; Mr Dalziel, Mr D'Angelosante, Mr Geurtsen, Mr Goppel; Mr Janssen van Raay, Mrs Macciocchi, Mr Megahy, Mr Poniridis, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mr Vetter and Mr Visentini.

The opinion of the Committee on Economic and Monetary Affairs is attached.

C O N T E N T S

	<u>Page</u>
Amendments.....	5
A. MOTION FOR A RESOLUTION	10
B. EXPLANATORY STATEMENT	11
I - INTRODUCTION	11
II - THE SCOPE OF THE DIRECTIVE	11
III - SUPERVISION OF UNDERTAKINGS	12
IV - TRANSITIONAL AND FINAL PROVISIONS AND OTHER TECHNICAL ADJUSTMENTS	12
A - <u>Transitional and final provisions</u>	12
B - <u>Other technical adjustments</u>	13
Opinion of the Committee on Economic and Monetary Affairs	14

The Legal Affairs Committee hereby submits to the European Parliament the following amendments and motion for a resolution together with explanatory statement:

Amendments proposed by the
Legal Affairs Committee

Text proposed by the Commission
of the European Communities

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 (Doc. 1-917/80).

Citations and first three recitals of the preamble unchanged.

No. 1

whereas the provision of assistance which has some similarities with insurance should be covered by the above directive; whereas, however, account must be taken of the special characteristics of such assistance;

whereas a new class of insurance consisting of assistance should be included in the above directive;
... (see Amendment No. 2)

No. 2

whereas however 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 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;

No. 3

whereas an undertaking engaged in the business of assistance 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 with regard to financial guarantees, with particular reference to technical reserves and the solvency margin;

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;

No. 4

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;

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;

Last recital and Article 1 unchanged.

No. 5

Article 2

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

1. This directive concerns the taking-up and pursuit of the following self-employed activities:

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.

- direct insurance carried on by insurance undertakings which are established in a Member State or which wish to become established there;
- assistance provided by insurance or assistance undertakings which are established in a Member State or which wish to become established there.

Paragraphs 2 and 3 unchanged.

Articles 3, 4 and 5 unchanged.

No. 6

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 in terms of personnel and equipment available to it for providing assistance in all countries, with special attention being paid to the competence of medical teams and the quality of the equipment available to them.

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 unchanged.

No. 7

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 16(4) of the First Directive is amended as follows:

4. The fractions applicable to the portions referred to in (3) shall be reduced to a third in the case of

- assistance
- health insurance practised on a similar technical basis to that of life assurance, if ...

Rest unchanged.

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.

Articles 9 - 13 unchanged

No. 8

Article 14

1. Member States shall allow undertakings which provide in their territories assistance (1 word deleted) 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.

1. Member States shall allow undertakings which provide in their territories assistance insurance 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.

No. 9

Article 15

Member States shall allow agencies and branches referred to in Title III of the First Directive which provide in their territories assistance (delete 1 word) 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.

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.

Articles 16 to 18 unchanged.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a 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

The European Parliament,

- having regard to the proposal for a directive from the Commission of the European Communities to the Council (COM(80) 891 final)¹
 - having been consulted by the Council of the European Communities pursuant to Article 57 of the EEC Treaty (Doc. 1-917/80),
 - having regard to Directive 73/239/EEC²,
 - having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1-54/82);
1. Finds that the considerable development in the tourist business makes it necessary to coordinate the laws, regulations and administrative provisions relating to tourist assistance;
 2. Observes that to make Community legislation clear it is necessary for the formal presentation of legislation which is subsequently amended to be more coherent;
 3. Notes that the business of providing assistance includes certain specific aspects in which it resembles insurance, while in others it is different therefrom;
 4. Considers that this relatively new activity should not be prematurely confined within an excessively rigid legal framework;
 5. Approves the proposal for a directive subject to the amendments adopted and invites the Commission to adopt those amendments in accordance with the second paragraph of Article 149 of the EEC Treaty;
 6. Instructs its President to forward this resolution and the report of its committee to the Council and the Commission.

¹OJ N° C 51, 10.3.1981, p. 5

²OJ N° L 228, 16.8.1973, p. 3

B
EXPLANATORY STATEMENT

I. INTRODUCTION

1. The growth in tourist assistance has inevitably promoted the Member States of the Community to regulate this business and the Community authorities to concern themselves with giving users adequate and uniform protection.

From the legal point of view, tourist assistance may be analysed as being an insurance contract or else the guarantee of a benefit in kind provided by an undertaking using its own staff or equipment where a chance event provided for in the contract happens. In view of the differences between the Member States, the Commission had to propose by means of a directive the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of tourist assistance. The Commission decided to incorporate tourist assistance in the scope of the Council Directive of 24 July 1973 so as to eliminate certain differences in the legislation of the Member States.

Your committee's attention has been drawn to what appears to be a genuine need to take greater account of the special character of the business of providing assistance as distinct from insurance¹. Your committee considers that the proposal for a directive should be amended accordingly. This is the reason for amendments Nos. 1 to 5 and No. 8.

II. THE SCOPE OF THE DIRECTIVE

2. The Commission proposes to make Article 1 of the First Directive more specific as regards tourist assistance².

Thus the provision of benefits in kind or the use by the person providing them of his own staff or equipment comes within the scope of the first directive.

This applies to undertakings entered into through 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 (Article 2).

The annex (point A) to the First Directive is amended accordingly (Article 4).

3. On the other hand, operations of assistance to persons who are not holders of an assistance contract or who are holders of a contract not concerning such an event are still excluded from the application of the First Directive, as are also assistance provided in the event of an accident involving or the breakdown of a road vehicle and consisting solely of a roadside breakdown service, the conveyance of the vehicle to the nearest 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.

¹In its opinions of 28 October 1981 (Doc. CES 10-73/81 p. 4) the Economic and Social Committee also expresses its awareness of this special character.

²OJ N° L 228, 16.8.1973, p.3

However, the directive covers these operations if they are carried out in close conjunction with the assistance operations defined in the first indent of No. 18 of point A of the Annex.

III. SUPERVISION OF UNDERTAKINGS

4. In addition to the laying-down of conditions for the taking-up of the business of tourist assistance provided for in Article 6, the proposal for a directive regulates the various questions relating to the conditions of the pursuit of that business by authorized undertakings.

Your committee wishes to propose that the requirements as to resources in terms of personnel and equipment should be higher for undertakings having the authorization of the supervision authorities (Amendment No. 6).

5. It is for the Member States to supervise the financial position of undertakings authorized to cover assistance operations and they must collaborate in supervising the resources available to those undertakings for carrying out those operations (Article 7).

In order to calculate the solvency margin, the amount of claims paid used to calculate the second result is formed by the costs borne by the undertaking in respect of claims for assistance. Such costs must 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 8).

However, it seems appropriate, having regard to the specific nature of assistance, to extend to assistance the reduction to a third of the fractions applicable to the calculation of the solvency margin laid down in respect of health insurance (Amendment No. 7).

The guarantee fund, for its part, is fixed at 300,000 units of account (Article 9).

Finally, undertakings must produce an annual account covering all types of operation and stating their situation, solvency and the resources available for meeting their liabilities as regards assistance (Article 10). The same applies with regard to the provision of documents, particularly statistical documents, which are necessary for the purposes of supervision.

IV. TRANSITIONAL AND FINAL PROVISIONS AND OTHER TECHNICAL ADJUSTMENTS

A. Transitional and final provisions

6. Article 14 enables the Member States to give undertakings providing in their territories assistance insurance only a period of five years (commencing on the date of adoption of the directive) in order to comply with the requirements laid down in Articles 16 and 17 of the First Directive. These articles

concern the establishment of an adequate solvency margin with regard to each undertaking in respect of its entire business (Article 16 of the First Directive) and the establishment in respect of each undertaking of a guarantee fund equivalent to one-third of the solvency margin (Article 17 of the First Directive).

The Member States may extend by a maximum of two years the period for fully establishing the margin of solvency, provided that the undertaking concerned has submitted for the approval of the supervisory authority the measures which it proposes to take for such purpose (Article 14(2)).

7. Undertakings which provide tourist assistance only and which wish to extend their business to other classes of insurance in the territory of another Member State must comply forthwith with the rules of the First Directive. These undertakings do not have any adaptation period (Article 14(3)).

On the other hand, undertakings which provide tourist insurance only but which have not adopted one of the legal forms required by Article 8 of the First Directive may retain their existing legal form for a period of three years (Article 14(4)).

8. Agencies and branches established within the Community and belonging to undertakings whose head offices are outside the Community which only provide tourist assistance have a period of five years commencing on the date of adoption of the directive to establish their solvency margin and guarantee fund.

This transitional provision is valid only insofar as these agencies or branches do not extend their business to another class of insurance or to the territory of another Member State (Article 15).

9. The Member States must amend their national provisions before 31 December 1982 and notify the Commission thereof forthwith. The provisions thus amended must be brought into force before 31 December 1983, subject to the provisions relating to the calculation of the solvency margin, deposit and guarantee fund.

B. Other technical adjustments

10. Some technical adjustments have been made to the first directive. They concern direct insurance (other than life insurance) generally. Undertakings which have sought or obtained an authorization from several Member States may apply for certain advantages relating to the solvency margin, deposit and the whereabouts of the assets (Article 12).

As regards verifying the solvency of agencies or branches with respect to their entire business, the authority responsible for this shall be the authority of the state in which the head office of the Community undertaking is situated (Article 13).

11. The Legal Affairs Committee wishes to draw the attention of the Commission of the European Communities to the following matter. In the interests of the greater clarity of Community legislation, it would be advisable for the Commission to make that legislation more easily intelligible; this would give greater legal certainty, in particular as far as individuals are concerned.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman of the opinion: Mr WALTER

On 15 April 1981 the Committee on Economic and Monetary Affairs appointed Mr Walter draftsman of the opinion.

It considered the opinion at its meeting of 27 and 28 October 1981 and adopted it unanimously.

Present: Mr J. Moreau, chairman; Mr Walter, draftsman; Mr Beazley, Mr Beumer, Mr Bonaccini, Mr Caborn, Mr Delorozoy, Mr Desouches, Mr Giavazzi, Mr Herman, Mr Hopper, Mr Leonardi, Mr Mihr, Mr Purvis and Mr Schinzel.

1. In recent years there has been a steady increase in the demand for and supply of services providing tourists with assistance in the event of an illness, accident or other difficulties while away from home. In the interests of consumer protection there is an urgent need for some control over the undertakings providing such services and the services themselves. The customer must be certain that he will actually receive the assistance to which he is entitled by contract.

2. To date, tourist assistance has been subject to different regulations in the Member States. In certain Member States, assistance services are regarded as insurance, in others, especially when the contract covers only benefits in kind or the undertaking providing the service uses its own staff and equipment only, the assistance is not classified as insurance.

The application or non-application of the first directive on the coordination of regulations relating to direct insurance other than life assurance, and in particular the provisions of the directive with regard to the right of establishment, depends on whether or not the undertaking providing assistance is recognized as an insurance company.

3. The present directive proposes various changes to the first directive on the coordination of provisions relating to direct insurance other than life assurance (73/239/EEC), as a result of which undertakings providing assistance are recognized as insurance companies, thus affording the customer an appropriate degree of protection and ensuring freedom of establishment.

CONCLUSION

4. The Committee on Economic and Monetary Affairs has consistently supported freedom of establishment and the free movement of persons. Since the Commission's proposal has both these objectives in view, without, however, dealing in detail with implementing rules, the Committee on Economic and Monetary Affairs approves the proposal.

