

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 459 final

Brussels, 7th September 1979

**PROPOSAL FOR A COUNCIL DIRECTIVE
AMENDING, AS REGARDS CREDIT INSURANCE,
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 INSURANCE**

(presented by the Commission to the Council)

COM(79) 459 final

-1-

Explanatory memorandum

I.

The 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 assurance¹ has the purpose of facilitating freedom of establishment in indemnity insurance. Credit and suretyship insurance were nevertheless excluded from the scope of this Directive, by virtue of Article 7(2)(c), "pending further coordination", which is what this proposal is intended to achieve.

Coordination is necessary because in Germany, for credit insurance in its entirety and suretyship insurance in part, specialization is mandatory, i.e., those classes of insurance may not be undertaken together with other classes of insurance. This is due to the fact that, as a result of its considerable dependence on short-term fluctuations in the economy, the somewhat inadequate spread of risk, the insurer's relative inability to influence the relationship between the policyholder and his clients and the incalculable nature of political risks in export credit insurance, credit insurance is regarded in Germany as an exceptionally hazardous class of insurance. This view is shared in principle by most Member States, but they by no means draw such radical conclusions from it.

As far as the Community is concerned, the specialization rule has the effect of enabling all German credit insurance undertakings to become established in the different Member States, whereas foreign composite insurers are not allowed to write credit insurance in Germany.

As an alternative to class segregation, the proposal provides essentially for a perceptible improvement in the capital resources of companies writing credit insurance.

¹ OJ no. L 228 of 16.8.1973.

It also deals with the question posed by Article 2(2)(d) of the directive concerning the extent to which undertakings writing export credit insurance are governed by the directive.

II. The provisions in detail

Article 1(a)

Export credit insurance

In all Member States export credit insurance is written with State participation of one kind or another. In view of this, the question arises whether any further solvency control, such as is provided for in the Directive, is needed in such cases. In the case of export credit insurance operations "for the account of" or "with the guarantee of" the State the answer is in the negative, since in such cases the State acts as guarantor to the policyholder. This condition cannot be regarded as fulfilled, however, where export credit insurance operations are undertaken merely with "State support".

Article 1 (b)

Specialization

The deletion of the words "credit and suretyship insurance" in Article 7(2)(c) of the Directive abolishes the principle of class segregation (in practice found only in Germany).

In the case of suretyship insurance, this deletion is the end of the matter, because the provisions laid down in the rest of the Directive for credit insurance do not apply to it. One reason is that similar business is also transacted by banks and other financial institutions. The imposition of stricter requirements on suretyship insurers might therefore have had the effect of placing them at a disadvantage in the market compared with their competitors.

In point of fact, even in Germany, suretyship insurance does not rank without exception among the "hot" (i.e. hazardous) classes, to which alone class segregation applies, and is therefore not absolutely subject to this principle even in that country.

Article 1(c)

Claims basis

Through increasing the period of reference for the burden of claims from three to seven years, account is taken of the fact that in credit insurance - as in hail insurance - the claims experience operates cyclically. As a result of this measure, it should be possible to collect more reliable data on the average burden of claims, which in turn is used to determine the claims basis under Article 16(2) and (3) of the directive.

Article 1(d)

Guarantee Fund

The amendment to Article 17 (2)(a) of the First Directive brings up to 1,000,000 units of account the minimum amount of own resources which undertakings carrying on credit insurance are in general required to possess. It will be remembered that credit insurance was previously placed in the category having a requirement of 400,000 units of account, which was the highest category in this paragraph before the present amendment.

There are two exceptions to this general rule:

- 1) Where the amount of premiums receivable by an undertaking from credit insurance business does not exceed 1,000,000 units of account, a guarantee fund of 1,000,000 units of account appears out of proportion.
- 2) Where the premiums receivable from credit insurance business do not exceed 5 % of the total premiums receivable by the undertaking, the view is taken that the undertaking in question would have less difficulty in absorbing any losses that might result from credit insurance.

In these two cases the minimum amount of the guarantee fund remains unchanged at 400,000 units of account. It is moreover recognised that it would be unreasonable to require a guarantee fund of 1,000,000 units of account if the undertaking had only temporarily exceeded one of these limits. For this reason it is laid down that the results of the last three financial years must be taken into consideration.

Article 1(e)

Increase in the Guarantee Fund

An undertaking which has to increase the amount of the guarantee fund from 400,000 units of account to 1,000,000 units of account, through the application of the new first indent of Article 17(2)(a) of the First Directive, would have difficulty in bringing about this considerable increase immediately. It is therefore laid down that undertakings shall have three years - in addition to the three financial years referred to in the first indent - to bring about the increase, but it is left to the Member States to determine the manner in which the increase is to be made; they will therefore be able, for example, to provide for a step-by-step increase in the course of this period.

Article 2

Equalization reserve

As already indicated, because of its dependence on the prevailing economic situation, credit insurance is a typical example of a class of insurance with a cyclical claims experience. Risks therefore have to be spread, not over one year, but over several years. The credit insurer is required under Article 2, for years in which he achieves a technical surplus, to allocate part of such surplus to an "equalization reserve" specifically set up for credit insurance operations.

Since the object is merely to equalize fluctuations in the claims experience i.e. to earmark funds for claims which will in all probability arise in coming years, the reserve is not to be regarded as part of the solvency margin and is deductible for tax purposes.

Article 3

Separate accounting

To obviate the danger that losses from credit insurance operations might affect other classes of insurance written by the undertaking, it is essential that any warning signs be detected in good time. The accounts must therefore be drawn up in such a fashion that the figures which specifically relate to credit insurance can be distinguished.

5

Proposal for a Council Directive amending, as regards credit insurance 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 insurance

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 the 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 (1), as amended by Directive 76/580/EEC (2), eliminated a number of divergencies in the laws of the Member States in order to facilitate the taking up and pursuit of that business;

Whereas, however, the said Directive states in Article 2(2)(d) that it does not apply, "pending further coordination, which shall be implemented within four years of notification of this Directive", to "export credit insurance operations for the account of or with the support of the State"; whereas, since the protection of insured persons normally provided by the Directive is provided by the State itself where export credit insurance operations are carried out for the account of or with the guarantee of the State, such operations should continue to be excluded from the scope of the said Directive;

Whereas the said Directive states in Article 7(2)(c) that "pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and surety insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes"; whereas it follows from this that there are

./.

¹ O.J. No. L 228, 16.8.1973, p.3.

² O.J. No L 189, 13.7.1976, p.13.

barriers to the establishment under normal conditions of competition of agencies and branches transacting credit and suretyship insurance; whereas the present Directive is intended to remedy this situation;

Whereas the interests of insured persons are sufficiently safeguarded, as regards suretyship insurance, by the provisions of the said Directive; whereas the prohibition in the Federal Republic of Germany on the simultaneous undertaking of suretyship insurance and other classes is therefore not justified, and should be lifted;

Whereas in view of the cyclical nature of claims in credit insurance, the latter should for the purposes of calculating the average burden of claims within the meaning of Article 16(2) of the said Directive, be treated on the same basis as insurance against storm, hail and frost risks;

Whereas the nature of the risk in credit insurance is such that undertakings which transact such business ought to form a higher guarantee fund than is at present provided for in Directive 73/239/EEC;

Whereas credit insurance undertakings require an equalization reserve which does not form part of the solvency margin and which is not liable to tax;

Whereas, moreover, certain provisions are necessary as regards the accounts undertakings which carry on credit insurance business;

Whereas however certain obligations imposed upon undertakings which carry on credit insurance business are not necessary for undertakings whose operations do not exceed a certain volume whereas it is appropriate to grant them a period of three years to meet these obligations from the time when they exceed such volume; whereas it is also appropriate to grant to undertakings whose operations exceed such volume at the date of notification of this Directive a period of three years to meet those obligations;

whereas, in view of the provisions laid down in respect of credit insurance, the maintenance by the Federal Republic of Germany of the prohibition of the simultaneous undertaking of credit insurance and other classes is no longer justified, and such prohibition should therefore be removed,

HAS ADOPTED THIS DIRECTIVE

8

Article 1

Council Directive 73/239/EEC is hereby amended as follows:

1. Article 2(2)(d), shall be replaced by the following:
"Export credit insurance operations for the account of or with the guarantee of the State".
2. In Article 7(2)(c), the words "credit and suretyship insurance" shall be deleted.
3. In Article 16(2), the text of the second sentence shall be replaced by the following text:
"In the case, however, of undertakings which essentially underwrite only one or more of the risks of credit, storm, hail, frost, the last seven years shall be taken as the period of reference for the average burden of claims".
4. Article 17(2)(a) shall be replaced by the following:

"The guarantee fund may not, however, be less than:

- 1,000,000 units of account in the case where all or some of the risks included in the class listed in point A of the Annex under No 14 are covered.

this class for each of the last three financial years exceeded 1,000,000 units of account or 5 % of the total amount of premiums or contributions receivable by the undertaking concerned.

- 400,000 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 10, 11, 12, 13, 14 in so far as the first indent does not apply, and 15".
 - (Remainder unchanged).
- ./.

5. The following subparagraph (d) shall be added to Article 17(2):

"(d) Where an undertaking carrying on credit insurance is required to raise the fund referred to in subparagraph (a) to 1,000,000 units of account, the Member State concerned shall allow such undertaking a period of three years in which to carry out such increase.

The three year period shall run from the date on which the first indent of subparagraph (a) becomes applicable to the undertaking. The Member States shall determine the manner in which this increase is to be carried out.

Article 2

1. Undertakings shall set up an equalization reserve for the class of insurance listed under No 14 in Point A of the Annex to Directive 73/239/EEC (hereafter referred to as "credit insurance"). Such reserve shall each year be 75% of the technical surplus, if any, of that financial year. The amount involved may not, however, exceed 12 % of the net premiums or contributions for the same financial year. Such transfer shall no longer be obligatory when the reserves have reached 150 % of the highest annual amount of net premiums or contributions paid in during the last five financial years.
2. Any technical deficit which may occur for a given financial year in credit insurance shall be charged to each equalization reserve.

Such equalization reserve, up to the amount referred to in Paragraph 1 shall be disregarded for purposes of calculating the solvency margin and shall be under exemption from any liability to tax.

Article 3

The technical reserves for credit insurance shall be shown separately. The accounts of the undertaking must be so drawn up that the results of credit insurance business can be distinguished.

Article 4

Member States shall amend their national provisions to comply with this Directive within 12 months of its notification and shall forthwith inform the Commission thereof. They shall apply such amended provisions following a period of 18 months from the date of such notification.

Article 5

Upon notification of this Directive, Member States shall ensure that the texts of the main laws, regulations and administrative provisions which they adopt in the field governed by this Directive are communicated to the Commission.

Article 6

This Directive is addressed to the Member States.