

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 255 final

Brussels, 12 May 1982

Amendment to the  
Proposal for a  
COUNCIL DIRECTIVE

amending, as regards credit insurance, First Directive 73/239/EEC  
on the coordination of laws, regulations and administrative pro-  
visions relating to the taking up and pursuit of the business of  
direct insurance other than life insurance

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(submitted to the Council by the Commission pursuant to the  
second paragraph of Article 149 of the EEC Treaty)

COM(82) 255 final

Explanatory Memorandum

Having regard to the Opinions delivered by the European Parliament (1) and the Economic and Social Committee (2) on the 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 (3), the Commission hereby submits a revised version of its proposal.

The principal changes compared with the original text concern :

1. the treatment of State-backed export credit insurance;
2. a restriction on the obligation to set up an equalization reserve;
3. a rearrangement and redrafting of much of the text in order to make it clearer and to integrate it more completely into the scheme of the First Directive (73/239/EEC) which it amends.

1. Deferring to the wishes of the European Parliament, the Commission has brought within the scope of the First Directive those export credit insurance operations carried on for the account of or with the guarantee of the State in which the export to which the insurance relates takes place from one Member State to another. Parliament observed that the Commission's original proposal to exclude from the scope of the Directive all export credit insurance operations, whether the customer of the insured was inside or outside the Community, would not merely perpetuate a difference of treatment between the public and private sectors but would put a seal of approval on what might be regarded as a form of state aid for trade within the common market.

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(1) OJ No. C 291 of 10 November 1980.  
(2) OJ No. C 146 of 16 June 1980.  
(3) OJ No. L 228 of 16 August 1973.

Whilst the Commission considers that there is nothing in the Treaty preventing public sector organizations from offering export credit insurance facilities for intra-Community trade and that such organizations, by their very nature, work explicitly or implicitly with the guarantee of the State, nevertheless it fully accepts that everything possible must be done to ensure that competition between the public and private sectors takes place in conditions of neutrality and transparency. After consultation with those concerned, it accepts that the application of the present Directive to public sector bodies acting in this area is practicable and will make a useful contribution to the achievement of these conditions.

The same objectives of competitive neutrality and transparency are also important where the customer of the insured is outside the Community. Circumstances are usually different in such a case, however, as Parliament itself has recognized, in that the risk may often have a high political content which only State-backed bodies are willing to cover by insurance and where coordination of policies among the Member States is not yet fully realised. Parliament therefore did not consider it appropriate to extend the scope of the Directive to cover this field until further coordination had been brought about.

The Commission, for its part, recognizes that the application of the present Directive to the export credit field, whether the trade concerned is between Member States or with third countries, is only part of a much wider endeavour to ensure fair competition between the public and private sectors in this area. It has undertaken to carry out a general study of this question and will report its conclusions to Parliament.

2. The Commission's original proposal provided for an equalization reserve which was to be constituted on a uniform basis. Parliament suggested a number of modifications.

In the first place it proposed that alternative methods of constituting the reserve should be available to the Member States. The first of these, intended to allow the Federal Republic of Germany to continue to apply

the mathematical and statistical basis at present employed in that country, had no counterpart in the Commission's scheme. The second represented essentially the Commission's proposal, except that the reserve would have been fed by 100% of the technical surplus for the year (until the required total was reached) instead of 75%, and the restriction of the annual contributions to 12% of the premiums, introduced by the Commission to prevent manipulation for tax purposes, would have been abolished.

The Commission is unable to accept this proposal for a number of reasons. It seems desirable, in a measure intended to bring about coordination, to recognize only one method. Even if the coexistence of two methods were considered admissible, there would be the objection that no limit was set by Parliament to the amount of the reserve formed under the first method, whereas a ceiling for tax purposes was imposed under the second method. This could lead to a distortion of competition. Furthermore, the abolition of the restriction of contributions to the reserve, designed to prevent tax abuses, appears particularly undesirable in that some Member States have difficulty in accepting the principle that contributions to the reserve should be tax-deductible at all.

The Commission does not consider, however, that its proposal is necessarily the last word on the subject. Since it was made, a group of experts set up by the conference of the insurance supervisory authorities of the Member States has produced a detailed report on technical reserves in general and equalization reserves in particular. Discussion in the Council may be expected to take account of this valuable work. The Commission feels it advisable not to change the main points of its text for the present, while approaching these discussions with an open mind.

Parliament made one further proposal for an amendment affecting the equalization reserve. This was that there should be no obligation to set up the reserve where credit insurance business represented less than 5% of the undertaking's total turnover. Since in such a case an unevenness of results on the credit insurance side could not have a very great effect upon the stability of the undertaking as a whole, the Commission has accepted this proposal.

3. Parliament wished the text of the Commission's proposal to be rearranged so that it would read throughout as an amendment to the First Directive. The Commission recognizes the logic of this and indeed hopes that it will in due course be possible to prepare a revised text of the First Directive which will consolidate the amendments introduced by this and other proposed Directives.

Amendment to the 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.

(Submitted to the Council by the Commission pursuant to the second paragraph of Article 149 of the EEC Treaty

INITIAL PROPOSAL

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

NEW PROPOSAL

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

Unchanged

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

Unchanged

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';

Unchanged

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 - as regards export credit insurance operations - free competition should be guaranteed between public and private sector undertakings ;

Whereas the risks covered by export credit insurance in trade relations within the Community are not of a different economic kind from those covered by credit insurance for transactions within the domestic market of a Member State;

Whereas, therefore, in this case credit insurance operations for the account of or guaranteed by the State should be included within the scope of this Directive;

Whereas - as regards export credit insurance operations in the context of trade relations between Member States and third countries - further coordination of national provisions is required to achieve a common export policy which is essential to the common commercial policy.

(\*) OJ No L 228, 16. 8. 1973, p. 3.  
(\*\*) OJ No L 189, 12. 7. 1976, p. 13.

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 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;

Unchanged

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 health insurance and other classes is therefore not justified and should be lifted,

Unchanged

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;

Unchanged

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;

Unchanged

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 insurance undertakings whose credit insurance business amounts to more than a small proportion of their total business require an equalisation 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;

Unchanged

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 these obligations;

Unchanged

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,

Unchanged



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.'

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 receive 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.

Article 1

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

1. Article 2(2)(d) shall be replaced by the following :

"(d) pending further coordination, export credit insurance operations for the account of or guaranteed by the State, where the customer of the insured is a national of a non-member State."

2. Unchanged.

3. The following Article 15a shall be inserted between Article 15 and Article 16:

"Article 15a

1. In respect of the risks included in the class of insurance listed in point A of the Annex under No.14 (hereafter referred to as 'credit insurance'), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.

- 2. Any technical deficit which may occur for a given financial year in credit insurance shall be charged to each equalization reserve.
- 2. Such reserve shall in each financial year receive 75% of any technical surplus arising on credit insurance business, subject to a limit of 12% of the net premiums or contributions, until the reserve has reached 150% of the highest annual amount of net premiums or contributions received during the previous five financial years.
- 3. 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.
- 3. Such equalization reserve up to the amount referred to in paragraph 2 shall be disregarded for purposes of calculating the solvency margin and any liability to tax shall be suspended.
- 4. The obligation to set up an equalization reserve for credit insurance business shall not apply to undertakings where the premiums or contributions receivable in respect of credit insurance are less than 5% of the total premiums or contributions receivable by the undertaking."

Former Article 1 (3) becomes point 4; otherwise unchanged.

Former Article 1 (4) becomes point 5; otherwise unchanged.

Article 1

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.

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

"(d) where an undertaking carrying on credit insurance is required to increase the fund referred to in subparagraph (a), first indent, 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; such increase shall be implemented progressively.

The three-year period shall run from the date on which the first indent of paragraph (a) becomes applicable to the undertaking."

(16 words deleted)

7. The following paragraph 2 shall be inserted after Article 19(1):

"2. In respect of credit insurance, the accounts of the undertaking shall show separately both the results and the technical reserves."

Article 19(2) becomes Article 19(3)

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.

Former Article 2 becomes Article 1(3).

Former Article 3 becomes Article 1(7).

*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 2

Member States shall adopt  
the measures necessary to comply with  
this Directive by 31 December 1983.  
They shall inform the Commission  
thereof immediately.

They shall apply such measures from  
1 July 1984.

Former Article 5 becomes Article 3.

Former Article 6 becomes Article 4.

ANNEX II

Draft of letter to the European Parliament

Sir,

On 17 October 1980 the European Parliament gave its opinion on the 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 assurance, with the Commission had submitted to the Council on 13 September 1979 (OJ No C 245/1979).

I have the honour to inform you that the Commission has now submitted to the Council an amended proposal (enclosed) in accordance with the second paragraph of Article 149 of the EEC Treaty. The amended proposal incorporates most of the amendments suggested by the European Parliament.

Yours faithfully,