

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 854 final

Brussels, 16 December 1980

Amendment of the proposal for a Council Directive
on the coordination of laws, regulations and administrative provisions
relating to insurance contracts

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

COM(80) 854 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 on the coordination of laws, regulations and administrative provisions relating to insurance contracts (3), the Commission hereby submits a revised version of its proposal.

The principal changes compared with the original text concern:

1. the scope (Article 1);
2. the language in which the insurance document is drafted (Article 2(5));
3. the extent of the obligation to declare the risk when concluding the contract and during its currency and the consequences of failure to fulfil this obligation (Articles 3 and 4);
4. the reimbursement of the cost of measures to reduce the loss (Article 7).

(1) Minutes of proceedings of the sitting of 19.9.1980 (PE 66.785, p. 27).

(2) OJ No C 146 of 16.6.1980.

(3) OJ No C 190 of 28.7.1979.

1. Deferring to the wishes of both the Economic and Social Committee and the European Parliament, the Commission has limited the scope of the proposal for a Directive in two respects:

- by limiting the scope of coordination to insurance contracts covering risks situated in the Member States of the Community;
- by excluding sickness insurance.

2. As regards the probative value of the translation of the insurance document provided for in Article 2, former paragraph 6, the Economic and Social Committee and the European Parliament have expressed conflicting opinions. In order to avoid difficulties of interpretation of the contract which could arise as a result of the coexistence of two texts, the Commission has chosen to afford to the policyholder the possibility of requiring that the contract be drawn up (and not translated into) the language of the country where he normally resides.

3. Parliament has expressed the view that the obligation to declare the risk when concluding the contract should be clarified by reference to the following criteria:

- knowledge of the risk on the part of a reasonable policyholder;
- assessment of the risk by a prudent insurer.

These concepts have been incorporated in Article 3(1). This being so, failure to declare a known, material fact can normally be considered to be a sign of unreasonable conduct on the part of the policyholder and the case of failure to declare in the absence of fault disappears. Consequently, paragraphs 2(a) and 3(a) of Article 3 have been amended.

The situation might arise, however, whereby a policyholder fails to declare circumstances of which he has knowledge but of whose influence on the assessment of a risk by a prudent insurer he is unaware. The version proposed by Parliament did not permit the insurer to take action of any kind. The Commission has therefore added to Article 3(2)(a) a phrase intended to rectify this omission.

In accordance with Parliament's wishes, Article 3(3)(c) has been supplemented so as to enable an insurer to cease to provide cover where the actual risk is such that no prudent insurer would have accepted it or that he would have accepted it only on different terms (other than rate of premium). In that event the policyholder would, of course, be entitled to reimbursement of the premium paid pursuant to Article 9 (former Article 5).

A new paragraph 7 has been added to Article 4 at Parliament's request, the purpose of which is to specify the types of increases of risk covered by that Article. It is in conjunction with this paragraph 7 that the phrase "any exclusions" has been added to Article 2(1)(b).

The other amendments made to Articles 3 and 4 are intended either to clarify the original proposal or to bring it into line with the amendments requested by Parliament (e.g. with regard to time limits).

4. Both Parliament and the Economic and Social Committee expressed reservations regarding the reimbursement in full of the cost of measures to reduce the loss as provided for in Article 8(2) of the original version.

The Commission is aware of the difficulties that payment in excess of the sum insured of the cost of measures to reduce the loss, which can be very high, can cause the insurer. It gets the impression, however, from the examples that have been brought to its attention that these difficulties are peculiar to contracts covering industrial and commercial risks. Consequently, instead of adopting Parliament's proposal, a second subparagraph has been added to paragraph 2 of Article 7 (new version) according to which reimbursement is limited to the sum insured where the policyholder carries on a commercial or industrial activity and the contract covers a risk connected with that activity. This rule is of a supplementary nature: pursuant to Article 12, the parties may agree to waive it in favour of the policyholder. Where the policyholder is a mere "consumer" reimbursement in full remains the norm.

The Commission has complied with almost all of Parliament's wishes in spirit, and often in letter. It has also followed most of the recommendations made by the Economic and Social Committee. It has not incorporated the amendments proposed by Parliament regarding:

- Article 1: The Commission is of the opinion that the amendment proposed is inappropriate since it would have the effect of defining the scope of the Directive by reference to the second Directive ("services"), which has not yet been adopted. It would be better to continue to refer to the first Coordination Directive which has already been adopted and implemented and to provide, as is the case, for certain exclusions (transport, credit, suretyship and sickness classes).

- Article 4(5): Parliament proposed that, in the event of failure to declare an increase of risk whose notification has been requested, the insurer nevertheless be made liable to pay a claim which has no causal link with the undeclared circumstances. The Commission prefers to maintain the concordance between Articles 3 and 4 rather than combine the principles of proportionality and causality.

Amendment of the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts (1)

(Submitted to the Council by the Commission pursuant to the second paragraph of Article 149 of the EEC Treaty on 30 December 1980)

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NEW PROPOSAL

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Citations unchanged

First recital unchanged

Second recital

Whereas the second Council Directive .../EEC of ... on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services granted the parties freedom to choose the law applicable to the contract, firstly in the case of risks classified as transport, primarily on account of their frequently international character, and secondly in the case of certain risks which are defined by precise criteria in respect of which there is less need of protection for insured persons;

Whereas the second Council Directive .../EEC of ... on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services, granted the parties freedom to choose the law applicable to the contract, firstly in the case of risks classified as transport, primarily on account of their frequently international character, and secondly in the case of certain risks which are defined by precise criteria; (13 words deleted);

New recital

Whereas coordination of laws relating to insurance contracts would facilitate the provision of services in a Member State by those providing them in another Member State;

Third recital

Whereas, however, pending subsequent coordination of national rules governing insurance contracts, that Directive maintained in respect of other risks the principle of the application of the law in force in the State in which the risk is situated; whereas such coordination, by establishing a balance between the interests of the insurer on the one hand and the protection of the policyholder and the insured person on the other, is likely to enable freedom of choice to be extended and thus to facilitate the exercise of freedom to provide services;

Whereas in coordinating the laws relating to insurance contracts it is necessary to maintain the fairest balance between the interests of the insurer on the one hand and the protection of the insured person on the other; whereas such coordination is likely to facilitate an extension of the freedom of choice of the law applicable to the contract;

(1) OJ No C 190, 28. 7. 1979, p. 2.

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Fourth recital

Whereas it was considered advisable to exclude from the scope of the Directive marine, aviation and transport insurance because of their widely international character and the freedom traditionally allowed to the parties in concluding such contracts; whereas the credit and suretyship insurance classes display peculiarities which, pending subsequent coordination, justify not making them subject to the provisions of this Directive as they stand;

Whereas it was considered advisable to exclude from the scope of the Directive, marine, aviation and transport insurance because of their widely international character and the freedom traditionally allowed to the parties in concluding such contracts, and **sickness insurance which in some cases is operated in a manner similar to life assurance and has special technical features**; whereas the credit and suretyship insurance classes display peculiarities which, pending subsequent coordination, justify not making them subject to the provisions of this Directive as they stand;

Fifth recital

Whereas among the fundamental problems posed by legislation on insurance contracts are the consequences resulting firstly from the conduct of the policyholder at the time of the conclusion and in the course of the contract concerning the declaration of the risk and of the claim, and secondly his attitude with regard to the measures to be taken in the event of a claim;

Whereas among the problems **(one word deleted)** posed by legislation on insurance contracts are the consequences resulting **(one word deleted)** from the conduct of the policyholder at the time of the conclusion and in the course of the contract concerning the declaration of the risk and of the claim, and **(three words deleted)** with regard to the measures to be taken in the event of a claim;

Sixth recital

Whereas it is also necessary to regulate certain general questions relating in particular to the existence of cover depending on the payment of the premium, the duration of the contract, and the position of insured persons who are not policyholders;

Whereas it is also **desirable to coordinate the law** relating in particular to the existence of cover depending on the payment of the premium, the duration of the contract, and the position of insured persons who are not policyholders;

Seventh recital unchanged

HAS ADOPTED THIS DIRECTIVE:

Article 1

The object of this Directive is to coordinate the fundamental laws, regulations and administrative provisions governing insurance contracts relating to one of the classes contained in point A of the Annex to 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⁾, with the exception of the classes contained in points 4 (railway rolling stock), 5 (aircraft), 6

Article 1

The object of this Directive is to coordinate the **important** laws, regulations and administrative provisions governing insurance contracts **covering risks situated in Member States of the Community** and relating to one of the classes contained in point A of the Annex to 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, with the exception of the classes

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(ships, sea, lake and river and canal vessels), 7 (goods in transit), 11 (aircraft liability), 12 (liability for ships, sea, lake and river and canal vessels), 14 (credit) and 15 (suretyship).

Article 2

1. Every insurance contract shall give rise to the issue to the policyholder of a document containing at least the following information:

- (a) the name and address or head office of the contracting parties;
- (b) the subject matter of the insurance and a description of the risks covered;
- (c) the amount insured or the method of calculating it;
- (d) the amount of the premium or contribution or the method of calculating it;
- (e) the dates on which premiums or contributions fall due;
- (f) the duration of the contract and the times at which cover commences and expires and, where it applies, the time of automatic renewal.

2. Pending the issue of such a document the policyholder shall be entitled to receive, at the earliest opportunity, a document which attests to the existence of an insurance contract and contains at least the information referred to in paragraph 1 (1), (b) and (c).

3. If, after the contract has been concluded any change occurs that affects the information referred to under paragraph 1 (a) to (f), the insurer shall furnish the policyholder with a document notifying such change

4. If provisional cover is provided the policyholder shall receive a document which certifies that such cover has in fact been provided and which contains at least the information referred to in paragraph 1 (a), (b), (c) and (f).

(¹) OJ No L 228, 16. 8. 1973, p. 3.

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contained in points 2 (**sickness**), 4 (railway rolling stock), 5 (aircraft), 6 (ships (sea, lake and river and canal vessels)), 7 (goods in transit), 11 (aircraft liability), 12 (liability for ships (sea, lake and river and canal vessels)), 14 (credit) and 15 (suretyship).

Article 2

1. Every insurance contract shall give rise to the issue to the policyholder of a document containing at least the following information:

- (a) the name and address of the **policyholder; name and registered office of the insurer or co-insurers; address of the establishment to which the policyholder is to send his declarations and pay the premiums;**
- (b) the subject matter of the insurance, **any exclusions** and a description of the risks covered;
- (c) the amount insured or the method of calculating it;
- (d) the amount of the premium or contribution or the method of calculating it;
- (e) the dates on which premiums or contributions fall due;
- (f) the duration of the contract and the times at which cover commences and expires and, where it applies, the time of automatic renewal.

2. Pending the issue of such a document the policyholder shall be entitled to receive, **without delay**, a document which attests to the existence of an insurance contract and contains at least the information referred to in paragraph 1 (a), (b) and (c).

3. If, after the contract has been concluded, any **agreed** change occurs that affects the information referred to under paragraph 1 (a) to (f), the insurer shall furnish the policyholder with a document **containing information as to** such change.

4. If provisional cover is provided, the policyholder shall be entitled to receive a document **which contains the information** that such cover has in fact been provided and which contains at least the information referred to in paragraph 1 (a), (b), (c) and (f).

(¹) OJ No L 228, 16. 8. 1973, p. 3.

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5. The contract shall be drafted in the language of the Member State whose law is applicable.

However, the policyholder shall be entitled to stipulate as a condition precedent to the conclusion of the contract that all documents relating to the conclusion, amendment and performance of the insurance contract be translated into the language of his habitual residence, provided such language is an official language of the Community.

6. The documents referred to in the above paragraphs have only a probative value.

7. Notwithstanding the provisions of this Article, the laws of the Member States may authorize a simplified form for insurance contracts concluded for a short period and for bearer policies.

Article 3

1. When concluding the contract, the policyholder shall declare to the insurer any circumstances of which he is aware which may influence the insurer's assessment or acceptance of the risk. The policyholder shall not be obliged to declare to the insurer circumstances which are already known to the latter or which are common knowledge. Any circumstance in respect of which the insurer has asked specific questions in writing shall, in the absence of proof to the contrary, be regarded as influencing the assessment and acceptance of the risk.

2. (a) If circumstances which were unknown to both parties when the contract was concluded come to light subsequently, or if the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer shall be entitled, within a period of two months from the date on which he becomes aware of the fact, to propose an amendment to the contract.

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5. The documents referred to in paragraphs 1, 2, 3 and 4 shall be drafted in the language of the Member State whose law is applicable according to the second Council Directive .../.../EEC of

However, the policyholder shall be entitled to stipulate as a condition precedent to the conclusion of the contract that all documents relating to the conclusion, amendment and performance of the insurance contract be **drafted** in the language of his habitual residence, provided such language is an official language of the Community.

6. The documents referred to in the above paragraphs shall have only a probative value.

7. Notwithstanding the provisions of this Article, the laws of the Member States may authorize a simplified form for insurance contracts concluded for **a period of less than six months** and for bearer policies.

Article 3

1. When concluding the contract, the policyholder shall declare to the insurer any circumstances of which he **ought reasonably to be aware and which he ought to expect to influence a prudent insurer's** assessment or acceptance of the risk. The policyholder shall not be obliged to declare to the insurer circumstances of which the latter is already aware because he has already covered the risk. **In the case of a corporate policyholder, circumstances of which it ought reasonably to be aware means circumstances of which the appropriate officer of the corporation ought reasonably to have been aware.** Any circumstances in respect of which the insurer has asked specific questions in writing shall, in the absence of proof to the contrary, be regarded as influencing the assessment and acceptance of the risk.

2. (a) If circumstances **existing at the time of entering into the contract** which were unknown to both parties when the contract was concluded come to light subsequently, or if the policyholder has failed to declare **circumstances of which he was aware but which he did not expect to influence a prudent insurer's assessment of the risk**, the insurer or the policyholder shall be entitled, within a period of two months from the date on which he becomes aware of the fact, to propose an amendment to **or termination of the contract**.

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- (b) 1. The policyholder shall be entitled to a period of fifteen days from the date on which he receives the proposal for an amendment in which to accept or reject it. If the policyholder rejects the proposal or fails to reply within the above time limit, the insurer may terminate the contract within a period of eight days by giving fifteen days' notice.

2. If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.

3. If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall provide the agreed cover.

3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 and may be considered to have acted improperly, the insurer may terminate the contract or propose an amendment to it.

- (a) The insurer shall choose either to terminate the contract or to propose an amendment to it within two months from the date on which he becomes aware of such facts. Termination shall take effect fifteen days after the date on which the policyholder is notified thereof at his last known address. If the insurer has proposed an

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Where one of the parties proposes an amendment to the contract, the insurer shall be entitled to a period of fifteen days and the policyholder to a period of one month from the date of receipt of the proposal in which to accept or reject it. In the event of rejection of the proposal or failure to reply within the above time limit, the party proposing the amendment may terminate the contract within a period of eight days.

Termination shall not take effect until a period of fifteen days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address.

The abovementioned periods shall be extended to three weeks and one month where they are to the policyholder's benefit and the contract covers a risk which is not connected with a commercial or industrial activity of the policyholder.

Where one of the parties proposes that the contract be terminated, termination shall not take effect until a period of fifteen days has elapsed from the date on which notice of termination is given to the insurer or to the policyholder at his last known address.

The abovementioned period shall be extended to one month where the insurer terminates the contract and the contract covers a risk which is not connected with a commercial or industrial activity of the policyholder.

- (b) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.

- (c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall provide the agreed cover.

3. (a) If the policyholder has failed to fulfil the obligation referred to in paragraph 1, **(eight words deleted)** the insurer may, **within two months from the date on which he becomes aware of such fact, propose an amendment to the contract or terminate it.**

Where the insurer has proposed an amendment to the contract, the policyholder shall be entitled to accept or reject it within **one month** from the date on which he receives the proposal for an amendment. If the policyholder refuses the proposal or fails to

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amendment to the contract, the policyholder shall be entitled to accept or reject it within fifteen days from the date on which he receives the proposal for an amendment. If the policyholder refuses the proposal or fails to reply, the insurer may terminate the contract within eight days by giving fifteen days' notice.

- (b) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.
- (c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall be liable to provide only such cover as is in accordance with the ratio between the premium paid and the premium that the policyholder should have paid if he had declared the risk correctly.

4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract.

- (a) The insurer shall take such action within two months from the date on which he becomes aware of such facts.
- (b) By way of damages, premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due.
- (c) The insurer shall not be liable in respect of any claim.

5. In the cases referred to in paragraphs 3 and 4, the burden of proof of fraudulent or improper conduct on the part of the policyholder shall rest on the insurer.

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reply, the insurer may terminate the contract within eight days. **Termination shall not take effect until a period of fifteen days has elapsed from the date on which the policyholder is notified thereof at his last known address.**

Where the insurer terminates the contract, termination shall take effect fifteen days after the date on which the policyholder is notified thereof at his last known address.

- (b) If the contract is terminated, the insurer shall refund to the policyholder the proportion of the premium in respect of the period for which cover is not provided.
- (c) If a claim arises before the contract is amended or before termination of the contract has taken effect, the insurer shall **pay the policyholder a proportion of the compensation which would have been payable had the policyholder not failed to fulfil his obligations under paragraph 1 equal to the ratio between the agreed premium and the premium which a prudent insurer would have fixed if the policyholder had fulfilled his obligations under paragraph 1. However, if the insurer can show that no prudent insurer would have accepted the risk regardless of the rate of premium if he had been aware of the circumstances which the policyholder should have disclosed, or if the insurer can show that a prudent insurer would not have accepted the risk unless certain conditions were complied with, he shall not be bound to pay any claim.**

4. (a) If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract **(six words deleted)** within two months from the date on which he becomes aware of such fact.

- (b) By way of damages, premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due, **without prejudice to the payment of damages in respect of any additional losses he has incurred by reason of the intention to deceive.**
- (c) The insurer shall not be liable in respect of any claim.

5. In the cases referred to in paragraphs 3 and 4, the burden of proof of **failure to fulfil the obligation referred to in paragraph 1 or of intention to deceive** on the part of the policyholder shall rest on the insurer.

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Article 4

2. The insurer may, within two months of the date on which he was notified of the increase of the risk, propose an amendment to the contract in accordance with the procedure laid down in Article 3 (2) (b).

3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, such failure to give notice shall not give rise to any sanction where it relates to a new circumstance or change in circumstances which is not liable to appreciably and permanently increase the risk and lead to an increase in the premium.

4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer may, within two months of the date on which he becomes aware of such fact, propose an amendment to the contract in accordance with the procedure laid down in Article 3 (2) (b).

5. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 and may be considered to have acted improperly, Article 3 (3) shall apply.

6. If the policyholder has failed to fulfil the obligation referred to in paragraph 1 with the intention of deceiving the insurer, the latter may terminate the contract.

(a) The insurer shall take such action within two months from the date on which he becomes aware of such fact;

(b) By way of damages, any premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due.

(c) The insurer shall not be liable in respect of any claim arising after the increase of the risk.

7. In the case referred to in paragraphs 5 and 6, the burden of proof of fraudulent or improper conduct on the part of the policyholder shall rest on the insurer.

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Article 4

1. unchanged.

2. The insurer may, within two months of the date on which he **became aware of the increase of risk**, propose an amendment to or terminate the contract in accordance **with the provisions covering such circumstances set out in Article 3 (2)**.

3. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, such failure to give notice shall not give rise to any sanction where it relates to a new circumstance which is **(one word deleted)** liable **neither** to increase the risk appreciably or permanently **nor** lead to an increase in the premium.

4. If the policyholder has failed to fulfil the obligation referred to in paragraph 1, the insurer may, within two months of the date on which he becomes aware of such fact, propose an amendment to the contract or terminate it in the manner provided for in Article 3 (3). **However, in respect of the application of the proportionality provided for in Article 3 (3) (c) account shall be taken only of the portion of premium corresponding to the period subsequent to the increase.**

(deleted)

5. (a) If the policyholder has failed to fulfil the obligation referred to in paragraph 1, with the intention of deceiving the insurer, the latter may terminate the contract **(six words deleted)** within two months from the date on which he becomes aware of such fact.

(b) By way of damages, any premiums paid shall be retained by the insurer who shall be entitled to the payment of all premiums due **without prejudice to the payment of damages in respect of any additional losses he has incurred by reason of the intention to deceive.**

(c) The insurer shall not be liable in respect of any claim arising after the increase of the risk.

6. In the cases referred to in paragraphs 4 and 5, the burden of proof of **failure to fulfil the obligation referred to in paragraph 1 or of intention to deceive**

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Article 5

Any unjustified payment made pursuant to Articles 3 and 4 shall be refunded.

Article 6

If, while the contract is in force, the risk has diminished appreciably and permanently because of circumstances other than those covered by the contract, and if this justifies a reduction in the premium, the policyholder shall be entitled to terminate the contract without compensation if the insurer does not consent to reduce the premium proportionately.

The right to terminate the contract shall arise immediately the insurer refuses to reduce the premium or, where he fails to reply to the policyholder's proposal, after a period of 15 days following such proposal.

Where the contract is terminated, the insurer shall refund to the policyholder a proportion of the premium corresponding to the period for which cover is not provided, less the administrative costs involved.

Article 8

2. Any costs incurred by the policyholder in performing the obligation referred to in paragraph 1 shall be borne by the insurer.

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on the part of the policyholder shall rest on the insurer.

7. **The provisions of this Article shall not apply to circumstances which form the subject of an express exclusion of cover in the contract.**

(Article 5 becomes Article 9).

Article 5

If, while the contract is in force, the risk has diminished appreciably and permanently because of circumstances other than those covered by the contract **(nine words deleted) the policyholder may ask for the premium to be reduced.** The policyholder shall be entitled to terminate the contract without compensation if the insurer does not consent to reduce the premium proportionately.

The right to terminate the contract shall arise immediately the insurer refuses to reduce the premium or, where he fails to reply to the policyholder's proposal, after a period of fifteen days following such proposal.

Where the contract is terminated, the insurer shall refund to the policyholder a proportion of the premium corresponding to the period for which cover is not provided, less the administrative costs involved.

Article 6

(Old Article 7 unchanged).

Article 7

1. (Old Article 8 (a) unchanged).

2. Any costs incurred by the policyholder in performing the obligation referred to in paragraph 1 shall be borne by the insurer.

Notwithstanding this, where the policyholder carries on a commercial or industrial activity and the contract covers a risk connected with such activity, they shall be defrayed only in so far as, when combined with the amount of damage suffered, they do not exceed the sum insured.

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Article 9

1. If a claim arises, the policyholder shall declare it to the insurer in accordance with the conditions and time limits laid down in the policy.

The time limit must be reasonable. Such time limit may be fixed by national laws for certain classes of insurance.

Article 5

Any unjustified payment made pursuant to Articles 3 and 4 shall be refunded.

Article 10

1. The circumstances and conditions in which the contract may be denounced or terminated shall be set out in the contract either directly or by reference to the law.

3. Without prejudice to the circumstances referred to in paragraph 2:

- (a) premature termination on the part of the policyholder or the insurer shall not take effect until a period of 15 days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address;
- (c) if the contract is for a period of more than three years, the policyholder may terminate it at the end of the third year or of any subsequent year by giving at least two months' notice;
- (d) as regards sickness insurance and contracts drawn up on the same basis as life assurance contracts, national law may, by way of derogation from

Paragraphs 3, 4 and 5 unchanged.

Article 8

1. If a claim arises or if an event occurs which may result in a claim arising, the policyholder shall declare it to the insurer in accordance with the conditions and time limits laid down in the policy. The time limit must be reasonable. Such time limit may be fixed by national laws for certain classes of insurance.

Paragraphs 2, 3 and 4 unchanged.

Article 9

Any unjustified payment made by the parties pursuant to the foregoing Articles shall be refunded.

Article 10

1. The circumstances and conditions in which the contract may be denounced or terminated shall be set out in the contract either directly or by reference to the law **applicable to the contract.**

2. (unchanged).

3. Without prejudice to the circumstances referred to in paragraph 2:

- (a) **Save where the parties have agreed to a shorter period in the case of war, insurrection or civil war,** premature termination on the part of the policyholder or the insurer shall not take effect until a period of fifteen days has elapsed from the date on which notice of termination is given, as the case may be, to the insurer or to the policyholder at his last known address.
- (b) unchanged.
- (c) If the contract is for a period of more than three years, the policyholder may terminate it at the end of the third year or of any subsequent year by giving at least two months' notice, **provided that the premiums were not agreed for a fixed period.**
- (d) deleted.

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subparagraphs (a) and (b), limit or prohibit termination of the contract by the insurer.

Article 13

Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification. They shall forthwith inform the Commission thereof.

Articles 11 and 12

(unchanged).

Article 13

Member States shall bring into force the measures, necessary to comply with this Directive **before 1 July 1983**. They shall inform the Commission thereof immediately.

Articles 14 and 15

(unchanged).
