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EUROPEAN PARLIAMENT

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**II

RECOMMENDATION

of the Committee on Legal Affairs and Citizens' Rights

on the COMMON POSITION established by the Council with a view to the adoption of a directive amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance
(C3-204/90 - SYN 179)

Rapporteur: Mr Willy ROTHLEY

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

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PE 143.351/fin.

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= Consultation procedure requiring a single reading

**II

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

**I

= Cooperation procedure (first reading)

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

C O N T E N T S

	<u>Page</u>
Procedural page	3
A. RECOMMENDATION for second reading	4
B. EXPLANATORY STATEMENT	9

At its sitting of 14 February 1990 the European Parliament delivered its opinion at first reading on the proposal from the Commission to the Council for a directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC and the Second Council Directive 88/357/EEC 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 and amending Directive 73/239/EEC (COM(88) 791 final, OJ No C 65, 15 March 1989, p. 6).

At the sitting of 12 July 1990 the President of the European Parliament announced that he had received the COMMON POSITION of the Council and had referred it to the Committee on Legal Affairs and Citizens' Rights as the committee responsible, and to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meeting of 18 September 1990 the Committee on Legal Affairs and Citizens' Rights considered the COMMON POSITION and adopted this recommendation by 12 votes to 2.

The following were present for the vote: Stauffenberg, chairman; Vayssade, first vice-chairman; Bontempi, Casini, Garcia Amigo, Hoon, Inglewood, Janssen van Raay, Lauga, Marinho, McIntosh, Perreau de Pinninck Domenech, Price, Sarlis and Taradash.

This recommendation was tabled on 21 September 1990

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

A

RECOMMENDATION

on the

COMMON POSITION established by the Council with a view to the adoption of a directive amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance

The Committee on Legal Affairs and Citizens' Rights

- having regard to the common position of the Council (C3-0204/90 - SYN 179),

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

Common position of the Council

Amendments by Parliament

(AMENDMENT No. 1)

Sixth recital

Sixth recital

Whereas, subject to the provisions of the second Directive concerning compulsory insurance, it is appropriate to provide for the possibility of large risk treatment, within the meaning of Article 5 of the said directive for the said insurance class of motor vehicle liability.

Whereas, until such time as there is greater coordination between the Member States' special rules on motor liability insurance for the protection of policy holders, the insured and the victims, in particular financial guarantees, insurance supervision and insurance policies, each Member State should require official authorization to allow access to the said insurance class and be able to supervise, inter alia, the premiums proposed by the insurance companies.

(AMENDMENT No. 2)

Seventh recital

(deleted)

Whereas large risk treatment should also be envisaged for insurance covering damage to or loss of land motor vehicles and land vehicles other than motor vehicles.

(AMENDMENT No. 3)

Eighth recital

(deleted)

Whereas Directive 88/357 laid down that the risks which may be covered by way of Community co-insurance within the meaning of Council Directive 78/473/EEC of 30 May 1987 on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance were to be large risks as defined in Directive 88/357/EEC; whereas the inclusion by the present Directive of the motor insurance classes in the large risks definition of Directive 88/357/EEC will have the effect of including those classes in the list of classes which may be covered by way of Community co-insurance:

(AMENDMENT No. 4)

Tenth recital

(deleted)

Whereas it is desirable, however, to grant Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to large risk treatment for the said insurance classes, including where risks are covered by co-insurance;

AMENDMENT No. 5

(deleted)

Article 2

In Article 5(d) of the first directive the phrase 'risks classified under Classes 8, 9, 13 and 16 of point A of the Annex' in the first paragraph of point (iii) is hereby replaced by the following: 'Risks classified under Classes 3, 8, 9, 10, 13 and 16 of Point A of the Annex'.

(AMENDMENT No. 6)

Article 6

Article 12a(2) of Directive 88/357/EEC

2. The Member State of provision of services shall require the undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

The undertaking shall not, however, be required to make any payment or contribution to the Bureau or Fund of the Member State of provision of services in respect of risks covered by way of provision of services other than one calculated, on the same basis as for undertakings covering risks in Class No. 10 through an establishment in that State, by reference to its premium income from that class in that State or the number of risks in that class covered there.

Article 6

Article 12a(2) of Directive 88/357/EEC

2. The Member State of provision of services shall require the undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

The undertaking shall not, however, be required to make any payment or contribution to the Bureau or Guarantee Fund of the Member State of provision of services other than one calculated on the same basis as for undertakings covering risks in Class No. 10 through an establishment in that State.

To this end, the supervisory authority of the Member State of provision of services shall forward the information received under Article 22(1) from the supervisory authority of each Member State of establishment concerning the amount of the premiums entered for insurance Class No. 10 to the national insurance bureau and the national Guarantee Fund of the Member State of provision of services.

(AMENDMENT No. 7)

Article 5

Article 12a(4) second paragraph of Directive 88/357/EEC

For this, purpose the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims.

Article 5

Article 12a(4) second paragraph of Directive 88/357/EEC

For this, purpose the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory who is empowered and authorized to bind the undertaking in relation to third parties, represent the undertaking in relations with the authorities and the courts of that Member States, has the technical reserves stipulated under Article 23 at his disposal and can be sued along with the company.

(AMENDMENT No. 8)

Article 11

Notwithstanding Article 23(2) of Directive 88/357/EEC, in the case of a large risk within the meaning of Article 5(d) of Directive 73/239/EEC, classified under class 10, other than carrier's liability, the Member State of provision of services may provide that:

- the amount of the technical reserves relating to the contract concerned shall be determined, under the supervision of the authorities of that Member State, in accordance with its rules, or failing such rules, in accordance with established practice in that Member State, until the date by which the Member States must comply with a Directive co-ordinating the annual accounts of insurance undertakings;

Article 11

(deleted)

- the covering of these reserves by equivalent and matching assets shall be under the supervision of the authorities of that Member State in accordance with its rules or practice, until the notification of a Third Directive on non-life insurance;
- the localization of the assets referred to in the second indent shall be under the supervision of the authorities of that Member State in accordance with its rules or practice until the date by which the Member States must comply with a Third Directive on non-life insurance.

B

EXPLANATORY STATEMENT

1. Except for an improvement to the wording of the title of the directive, the Committee on Legal Affairs and Citizens' Rights failed to have its amendments, adopted though they were in plenary, accepted by the Council.

The main disagreement is over inclusion of large risk treatment for motor vehicle liability risk and insurance covering damage to or loss of land motor vehicles, to which the 'country of origin' principle is to apply, if the policy holder complies with certain capacity criteria.

The Council has in fact sought to give greater weight to the victim protection aspect, in that the amount and cover of the technical reserves for the corresponding liability insurance contracts, together with the location of the supporting assets, are, by contrast with other large risks and contrary to the Commission's proposal, to continue to be subject to the rules and supervision of the Member State of provisions of service, pursuant to Article 23(1) of the Second Directive on mass risk.

There remain however the other objections to the distinction between 'large risk' and 'mass risk' in motor vehicle liability insurance, as set out in the report by the Committee on Legal Affairs and Citizens' Rights at first reading (Doc. A 3-15/90), pp. 16-17). These objections basically are that the distinction is unsystematic, because motor vehicle liability insurance by its nature is not an industrial risk, but is always a mass risk, that it is not appropriate, because open to manipulation, and that it can be unfair to Member States who operate state concessionary premiums for this branch of insurance.

2. Meanwhile, there is now a proposal for a Third Directive on non-life insurance, which applies the principle of uniform EC authorization and, as far as can be anticipated, will at all events abolish the said distinction between large risk and mass with the exception of the question of legal choice. Any obligation to operate premium concessions would, under the existing proposal, be admissible only as part of a general price control scheme.

The question therefore arises whether the legislative commitment for one segment of the market is at all justified, when a fundamental reshaping of the non-life insurance market is in any event in the pipeline and the proposed partial arrangements is only intended as a transitional solution. This approach is confirmed by the consideration that the present fragmentation of the legal texts reduces all efforts to grapple with the subject to an intractable jigsaw puzzle, and the need for codification of the first, second and proposed third Directives has become inescapable.

3. The amendments in particular:

Amendments 1 to 4 relate to the justifying recitals of the Directive, and stand in a material connection to the question of the treatment of motor

vehicle risks as large risks. The substantive arrangements are to be found in Amendment No 5; the classes of insurance involved are Class 3 (damage to or loss of land motor vehicles) and 10 (liability for land motor vehicles).

Amendment No 6 is to ensure that the mutual support institutions in the Member State of provision of service have a certain freedom in drawing up the financing criteria, and are supported in the fixing of the amounts by the supervisory authorities.

Amendment No 7 relates to the powers of the representative in the settling of claims, which are still insufficient.

The deletion of Article 11 proposed in Amendment No 8 is a necessary consequence if motor vehicle liability insurance is not classified as large risk insurance.

4. Remarks on the Council's reasons

On page 4 of the Council's reasons reference is made to an amended Commission proposal of 20 June 1990, which has still not been communicated to Parliament¹. This relates to the question of a reciprocity clause, which will have to be gone into after consultation in more detail with the author of the underlying amendment at first reading. It is nevertheless significant that neither the Council in its reasons nor the Commission in its communication weighs up the pros and cons of the solution adopted with Amendment No 14 in plenary sitting.

On page 9 of its reasons the Council asserts that the Directive will help to ensure 'a high degree of protection for the insured and for accident victims'. This statement tends to point in a wrong direction: the purpose of the Directive was and is to open up motor vehicle insurance to the provision of services, i.e. to freedom to operate in the insurance market across frontiers, and to do so without loss of protection for insured persons and accident victims. That objective was provided for under the solution advocated by Parliament at first reading in the form of a 'first stage of liberalization', if insurance is declared admissible under the freedom to provide services, but subject to prior authorization by the Member State of provision of service and as regards the technical reserves for the contracts concerned and, where applicable, the approval of insurance conditions and rates, to the rules in force in the Member State of provision of services, and conditional on the participation of the undertakings providing the service in the mutual support facilities of the Member State concerned.

¹ The amended proposal has meanwhile been requested and received by the Secretariat of the Committee on Legal Affairs and Citizens' Rights. It nevertheless contains no substantively new approach.