

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(90) 1384 final-SYN 179

Brussels, 6 July 1990

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to Article 149.2(b) of the EEC Treaty

ON THE

COMMON POSITION OF THE COUNCIL

PROPOSAL FOR A COUNCIL DIRECTIVE

amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance

1. Introduction

On 3 January 1989, the Commission presented to the Council a proposal for a Council Directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73/239/EEC, and 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/EEC¹.

The principal objective of this White Paper proposal was to bring compulsory third party motor insurance within the framework established by the Second Non-Life Insurance Directive (the "second Directive") of 22 June 1988². In line with the second Directive the proposal drew the distinction between "large risks" (subject to home country control) and "mass risks" (host country control) for the whole of motor insurance.

2. The opinion of Parliament

The European Parliament delivered its first reading opinion on this proposal on 14 February 1990 on the basis of the opinion prepared by its Legal Affairs Committee. Parliament adopted 9 amendments.

The Commission accepted a number of those amendments but was unable to approve the most important change sought by Parliament, namely the removal of any reference to large risk treatment for motor insurance.

The Commission firmly believed that the proposal guaranteed adequate protection for both the victim and policyholder and that if all motor risks were to be treated as mass risks this would empty the proposal of most of its substance, would fall well short of the degree of liberalization achieved with the second Directive in June 1988, and would be inconsistent with the aim of creating a single Community-wide insurance market.

3. The Common Position of the Council

On 20 June 1990 the Council adopted by qualified majority vote a Common Position on this proposal for a directive.

1 COM(88)791 final - SYN 179, OJ No L 65, 15.03.1989, p.6.

2 OJ No L 172, 04.07.1988, p.1.

The Council decided that, subject to certain safeguards, a large risk regime could be phased in over a transitional period in the area of motor vehicle liability insurance.

Accordingly, under Article 11 of the Common Position, home country control of the technical reserves relating to large motor liability risks will be introduced progressively in line with the work to coordinate further Member States' rules on technical reserves.

This need for further coordination was also expressed in Parliament's Amendment No 2, while Amendment No 11 itself called for host-country localization of technical reserves.

While the Commission did not accept that restrictions on the home-country control of the technical reserves relating to large motor liability risks were necessary for the purpose of protecting the policyholder or third party, it was prepared to accept them as the only basis on which agreement could be reached in the Council.

The title of the proposal has been shortened in line with Parliament's Amendment No 1, to which the Commission agreed.

The preamble of the proposal has been amended to quote the full titles of the earlier Directives to which reference is made. This is in line with Parliament's Amendment No 4 and the undertaking given by the Commission to Parliament.

Parliament's Amendment No 14 called for the introduction via this proposal of a "reciprocity" regime in the non-life insurance field. The Commission and the Council decided to follow Parliament's wishes on this point, but modelled the regime on that laid down in the Second Banking Directive³. The application of the proposed reciprocity regime will involve the use of the Commission's implementing powers under the Decision of 13 July 1987. The Council decided, on a proposal from the Commission, that the "comitology" procedure to be followed by the Commission both in this case and in other future insurance legislation should be defined not in the present directive but in a separate horizontal directive which the Commission will shortly present and which will establish an Insurance Committee to fulfil various advisory and regulatory functions, including the administration of the reciprocity procedures. The Council also decided, in line with the Second Banking Directive, on a maximum period of three months for the duration of sanctions under the reciprocity regime rather than the six months the Commission had initially proposed.

³ Directive 89/646/EEC, OJ No L 386, 30.12.1989, p.1.

Lastly, although it had accepted Parliament's proposed implementation schedule of 12 and 18 months, the Commission agreed to the Council's unanimous wish for 18 and 24 months.

4. Conclusion

The Commission considers that the Common Position adopted by the Council is in conformity with the objective of the original proposal and with the spirit of a number of Parliament's proposed amendments. The Commission therefore invites Parliament to approve this Common Position.