

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 8 November 1990

OPINION OF THE COMMISSION

on the amendments proposed by the European Parliament
to the Council's common position on the

proposal for a

SECOND COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative
provisions relating to direct life assurance, laying
down provisions to facilitate the effective exercise of
freedom to provide services and amending Directive 79/267/EEC

(presented by the Commission pursuant to Article 149.2(d)
of the EEC treaty)

I. Introduction

On 23 December 1988 the Commission sent the Council a proposal for a second Council Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 769/267/EEC. On 9 March 1990 it sent the Council a first amended version of the proposal followed by a second version on 28 June 1990, on the basis of which the Council adopted a common position on 29 June 1990.

The aim of the proposal, which is one of the measures announced in the White Paper on completing the internal market, is to lay down rules governing the provision of life-assurance services and to create a single market in life assurance in which policy-holders and insurers are free to conclude life-assurance contracts across frontiers and in which the interests of the persons concerned by the assurance are at the same time protected.

II. Parliament's opinion and the Commission's observations

Meeting in plenary sitting during its part-session of 22-26 October 1990, Parliament reacted favourably on the whole to the amended proposal on second reading.

A. Parliament's Committee on Legal Affairs decided not to propose again the amendments adopted by the Parliament on first reading which called for the supervisory arrangements in the Member State of establishment to exclude any intervention by an intermediary established in the Member State in which the policy-holder has his usual residence and carrying on the business activity defined in Article 2(1)(a) of Directive 77/92/EEC, i.e. generally an insurance broker.

However, five members of Parliament did propose these three amendments on second reading and they were rejected.

- B. On the other hand, Parliament did approve the 9 amendments proposed by the Committee on Legal Affairs.
1. The aim of amendments Nos 1, 4 and 5, previously adopted by Parliament on first reading, is to reinstate the text of the Commission's initial proposal on reciprocity, while adding new provisions concerning an insurance committee.

The new version is more workable than the initial proposal, since examination of the reciprocity arrangements in force in a non-member country is carried out on a country-by-country basis, and not whenever a company requests authorization.

The amended proposal also introduces a definition of reciprocity which is more precise and more readily applicable and which at the same time honours the Community's international commitments. The intention is that European insurers should enjoy in the non-member country concerned the same treatment as national insurers, thereby enabling them to compete with the latter on an equal footing, and that they should have effective access to the market in that country.

Lastly, Parliament proposes setting up a type II(b) insurance committee, i.e. a management committee, whereas the Commission takes the view that the most appropriate body is a type III(a) (regulatory) committee.

The Commission is unable to accept the amendments, and the Council's common position adhered to the amended proposal, while nevertheless opting for a type III(b) committee. Following the second reading in the European Parliament, the Commission maintains its position on the amended proposal, and in particular a type III(a) committee.

2. In amendment No 8, Parliament proposes that those Member States which allow on their territory companies carrying on concurrently life and non-life insurance business should undertake to adopt measures facilitating the conversion of those companies into specialized life assurance companies, in particular by automatically granting an administrative authorization to specialized life assurance companies and by granting preferential tax arrangements.

The Commission cannot accept this proposal as it prejudices the findings of the report mentioned in Article 18(2) and being prepared by the Commission with a view to examining the position of such composite companies.

Moreover, the automatic grant of an administrative authorization is incompatible with the responsibilities of a supervisory authority, and the tax provisions represent, in fact, a harmonization measure which is out of place in this instrument.

On the other hand, on a proposal from the Commission, the Council has adopted a new recital stressing that, where a composite company wishes to divide itself into two separate companies, the Member States concerned will be free, subject to compliance with the provisions of Community law, notably the Community rules on competition, to introduce specific tax arrangements as regards in particular the taxation of the capital gains which often appear in the accounts as a result of such division.

3. The Commission is unable to accept the other amendments proposed by Parliament, for the reasons set out below:

- a) Amendments Nos 3 and 7 underline - quite rightly, in the Commission's view - the need to grant policy-holders the freedom to purchase the insurance products of their choice throughout the Community, but they delete the public-policy exception, which prevents the policy-holder from purchasing a product that is contrary to public policy in his Member State of residence. The Commission considers that the exception must be maintained, at least in the current state of development of European Law, and cannot therefore accept these amendments.
- b) Amendment No 6 proposes that, if the supervisory authorities have not taken a decision within six months on a request for authorization submitted under conditions of freedom actively to provide services, authorization will be deemed to be approved, and not refused as provided for in the proposal.

This proposal will be examined in the context of the proposal for a third directive on direct life assurance but cannot be accepted here as it runs counter to the solution adopted for non-life insurance and might, therefore, give rise to procedural conflicts, particularly in the case of composite companies.

- c) Amendments No 2 and 9 propose the suppression of the 3 year period of grace allowed to Member States before the introduction of the freedom for consumers to approach an insurance broker established in their own country to take out a policy on the basis of home country control in the insurance company's home country.

Although the Commission is sympathetic to this proposal which reflects its own original proposal, it is nevertheless reluctant to accept it, because the discussions leading up to the Common Position showed that those Member States which do not have detailed regulations on the independence and training of brokers, insist on this period in order to bring in such regulations.

III. Conclusion

The Commission takes the view that the amendments proposed by Parliament should not be accepted.

Accordingly, it calls on the Council to adopt the text which was the basis of its common position of 29 June 1990 while reinstating the text of the amended proposal of 1 March 1990 concerning the Committee.