II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive amending the 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, particularly as regards tourist assistance

(Submitted by the Commission to the Council on 13 January 1981)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

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 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 ([1]), as amended by Directive 76/580/EEC of June 1976 ([2]), eliminated certain divergencies betweeen the laws of Member States in order to facilitate the taking up and pursuit of the above business;

Whereas considerable progress has been achieved in that area of business involving the provisions of benefits in kind; whereas such benefits are governed by provisions which differ from one Member State to another; whereas those differences constitute a barrier to the exercise of the right of establishment;

Whereas in order to eliminate the abovementioned barrier to the right of establishment it should be specified that an activity is not excluded from the application of Directive 73/239/EEC for the simple reason that it constitutes a benefit in kind solely or one for which the person providing it uses his own staff or equipment only;

Whereas a new class of insurance consisting of assistance should be included in the above Directive; whereas certain forms of assistance which are provided most frequently in a number of Member States by motoring clubs and similar organizations should be excluded from the application of that Directive;

Whereas an undertaking engaged in the business of assistance insurance must possess the means necessary for it to provide the benefits in kind which it proposes within an appropriate period of time; whereas special provisions should be laid down for calculating the solvency margin and the minimum amount of the guarantee fund which such undertaking must possess;

Whereas certain transitional provisions are necessary in order to permit undertakings engaging solely in assistance insurance to adapt themselves to the application of the provisions of Directive 73/239/EEC;

([1]) OJ No L 228, 16. 8. 1973.
([2]) OJ No L 189, 13. 7. 1976.

Whereas it is necessary to keep up to date the provisions of that Directive concerning the legal forms which insurance undertakings may assume; whereas certain provisions of the Directive concerning the rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community should be amended in order to make them more consistent,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In this Directive the words 'First Directive' mean 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.

Article 2

Article 1 of the First Directive is replaced by the following:

1. This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance carried on by insurance undertakings which are established in a Member State or which wish to become established there.

2. An activity shall not be excluded from the application of the Directive for the simple reason that the benefits are supplied in kind only or that the person providing them uses his own staff or equipment only. This applies especially to undertakings entered into, subject to the prior payment of a fixed sum, to make a material aid immediately available to the holder of an assistance contract where the latter is in difficulties following the happening of a chance event in the cases and conditions set out in the contract. Assistance does not cover servicing and maintenance, nor after sales service.

3. The classes of insurance referred to in paragraph 1 above are listed in the Annex to this Directive.

Article 3

Article 4 of the First Directive is supplemented as follows:

(f) In Denmark

De Danske Redningskorps Fællesforbund.

Article 4

In point A of the Annex to the First Directive the following is inserted between the words 'Legal expenses and costs of litigation' and the last sentence:

18. **Assistance**

— assistance for persons who get into difficulties while travelling or while away from home,

— assistance in other circumstances.

Articles 5

Article 2 (2) of the First Directive is supplemented as follows:

(e) operations of assistance to persons who are not holders of an assistance contract at the moment of the happening of the chance event or who are holders of a contract not concerning such an event.

(f) assistance provided in the event of an accident involving the breakdown of a road vehicle and consisting solely of

— a roadside breakdown service for which the organization providing the service uses, in most circumstances, its own staff and equipment;

— the conveyance of the vehicle to the nearest and most practical location at which repairs may be carried out; and

— the conveyance of the driver and passengers to the nearest place from which they may conveniently continue their journey by other means;

However, this Directive applies to the above operations if they are carried out in close conjunction with the other operations referred to in the first indent of No 18 of point A of the Annex, provided:

— the same staff, equipment or other means are used or may be used in order to comply with requests for assistance covered by one or other category of operations; or

— the same operations are covered by the same contract as other operations to which this directive applies.

Article 6

In Articles 9 and 11(1) of the First Directive the following paragraph is inserted immediately before the words 'and in addition, for the first three financial years':

(ee) where the risks to be covered are classified under No 18 of point A of the Annex, the resources available to it for providing assistance.

Article 7

Article 13 of the First Directive is replaced by the following:

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings. Should the undertakings in question be authorized to cover the risks set out in the category listed under No 18 of point A of the Annex, Member States shall also collaborate in supervising the resources available to those undertakings for carrying out the assistance operations they have undertaken to perform.

Article 8

Article 16 (3) of the First Directive is supplemented as follows:

In the event of the risks listed under No 18 of point A of the Annex, the amount of claims paid used to calculate the second result shall be the costs borne by the undertaking in respect of claims for assistance. Such costs shall be calculated on the basis laid down by the supervisory authority of the Member State in whose territory the head office of the undertaking is situated.

Article 9

In Article 17 of the First Directive, the second indent of paragraph 2 (a) is replaced by the following:

— 300 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 are covered.

Article 10

Article 19 of the First Directive is replaced by the following:

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account covering all types of operations, of its financial situation, solvency and, as regards cover for risks listed under No 18 of point A of the Annex, other resources available to them for meeting their liabilities.

2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision and, as regards cover for risks listed under No 18 of point A of the Annex, to indicate the resources available to them for meeting their liabilities. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.

Article 11

In the eighth indent of Article 8 (a) of the First Directive the words 'coöperatieve vereniging' are deleted.

Article 12

Article 26 of the First Directive is replaced by the following:

1. 'Undertakings which have sought or obtained an authorization from two or more Member States may apply for the following advantages which may only be granted jointly:

(a) that the solvency margin referred to in Article 25 be calculated in relation to the entire business which they undertake within the Community; in such case, account shall be taken only of the business effected by all the agencies or branches established within the Community for that calculation;

(b) that the deposit referred to in Article 23 (2) (e) be lodged in one of those States only;

(c) that the assets representing the guarantee fund shall be kept in any one of the Member States in which they carry on business.

2. An application for the advantages provided for in paragraph 1 shall be submitted to the competent authorities of all the Member States from which the undertaking in question has sought or obtained an authorization. The application shall indicate the authority responsible for verifying in the future the solvency of agencies or branches established within the Community with respect to their entire business. The choice of authority made by the undertaking shall set out the reasons on which it is based. The deposit shall be lodged with the corresponding Member State.

3. The advantages provided for in paragraph 1 shall be granted only with the consent of the competent authorities of all the Member States to which an application has been submitted. They shall take effect on the date on which the supervisory authority selected has undertaken, *vis-à-vis* the other supervisory authorities, to verify the solvency of the agencies or branches established in the Community with respect to their entire business. The supervisory authority selected shall obtain from the other Member States the information necessary for verifying the overall solvency of the agencies or branches established in their territory.

4. The advantages conferred pursuant to this Article shall, on the initiative of one or more of the Member States concerned, be withdrawn simultaneously by all the Member States concerned.

Article 13

The second paragraph of Article 27 of the First Directive is replaced by the following:

As regards the application of Article 20, where an undertaking qualifies for the advantages provided for in Article 26 (1) above, the authority responsible for verifying the solvency of agencies or branches established within the Community with respect to their entire business shall be the authority of the State in which the head office of the Community undertaking is situated.

Transitional provisions

Article 14

1. Member States shall allow undertakings which do not carry on insurance in their territories in any class other than assistance a period of five years, commencing on the date of adoption of this Directive, in order to comply with the requirements of Articles 16 and 17 of the First Directive.

2. Furthermore, Member States may allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the margin of solvency, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 20 of the First Directive, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose.

3. Any undertaking referred to in paragraph 1 which wishes to extend its business within the meaning of Article 8 (2) or Article 10 of the First Directive may do so only on conditions that it complies forthwith with the rules of the Directive in question.

4. Any undertaking referred to in paragraph 1 having a structure different form those referred to in Article 8 of the First Coordination Directive may continue for a period of three years from the date of adoption of this Directive to carry its existing business in the legal form in which it exists on that date.

Article 15

Member States shall allow agencies and branches referred to in Title III of the First Directive which provide in their territories assistance insurance only a maximum period of five years commencing on the date of adoption of this Directive in order to comply with the requirements of Article 25 of the First Directive provided such agencies or branches do not extend their business pursuant to Article 10 (2) of the First Directive.

Final provisions

Article 16

Member States shall amend their national provisions in order to comply with this Directive before 31 December 1982 and shall notify the Commission thereof forthwith. The provisions thus amended shall, subject to Articles 12 and 13 above, be brought into force before 31 December 1983.

Article 17

Upon notification of this Directive, Member States shall forward to the Commission the texts of the main provisions laid down by law, regulation or administrative provision which they adopt in the field covered by this Directive.

Article 18

This Directive is addressed to the Member States.