II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 November 1990

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

(90/618/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas in order to develop the internal insurance market, the Council adopted on 24 July 1973 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 (4) (also referred to as the 'First Directive') and on 22 June 1988 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 (5) (also referred to as the 'Second Directive');

Whereas Directive 88/357/EEC made it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policyholders to have recourse not only to insurers established in their own country, but also to insurers who have their head office in the Community and are established in other Member States;

Whereas the scope of the provisions of Directive 88/357/EEC specifically concerning freedom to provide services excluded certain risks, the application to which of the said provisions was rendered inappropriate at that stage by the specific rules adopted by the Member States' authorities, owing to the nature and social implications of such provisions; whereas those exclusions were to be re-examined after that Directive had been implemented for a certain period;

Whereas one of the exclusions concerned motor vehicle liability insurance, other than carrier's liability;

Whereas, however, when the abovementioned Directive was adopted the Commission gave an undertaking to present to the Council as soon as possible a proposal concerning freedom to provide services in the area of insurance against civil liability in respect of the use of motor vehicles (other than carrier's liability);

Whereas, subject to the provisions of the said Directive concerning compulsory insurance, it is appropriate to provide for the possibility of large risk treatment, within

(1) OJ No C 65, 15. 3. 1989, p. 6, and OJ No C 180, 20. 7. 1990, p. 6.
(2) OJ No C 68, 19. 3. 1990, p. 85, and Decision of 10 October 1990 (not yet published in the Official Journal).
(3) OJ No C 194, 31. 7. 1989, p. 3.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 172, 4. 7. 1988, p. 1.

the meaning of Article 5 of the said Directive, for the said insurance class of motor vehicle liability;

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;

Whereas Directive 88/357/EEC 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 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance [1] 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;

Whereas Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability [2], as last amended by Directive 90/232/EEC [3], built on the green card system and the agreements between the national motor insurers' bureaux in order to enable green card checks to be abolished;

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;

Whereas to ensure the continued proper functioning of the green card system and the agreements between the national motor insurers' bureaux it is appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the bureau of that Member State;

Whereas Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles [4], as last amended by Directive 90/232/EEC, required the Member States to set up or authorize a body (guarantee fund) with the task of providing compensation to victims of accidents caused by uninsured or unidentified vehicles;

Whereas it is also appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the guarantee fund set up in that Member State;

Whereas the rules in force in some Member States concerning the cover of aggravated risks apply to all undertakings covering risks through an establishment situated there; whereas the purpose of those rules is to ensure that the compulsory nature of motor liability insurance is balanced by the possibility for motorists to obtain such insurance; whereas Member States should be permitted to apply those rules to undertakings providing services in their territories to the extent that the rules are justified in the public interest and do not exceed what is necessary to achieve the abovementioned purpose;

Whereas in the field of motor liability insurance the protection of the interests of persons suffering damage who could pursue claims in fact concerns each and everyone and that it is therefore advisable to ensure that these persons are not prejudiced or put to greater inconvenience where the motor liability insurer is operating by way of provision of services rather than by way of establishment; whereas for this purpose, and insofar as the interests of these persons are not sufficiently safeguarded by the rules applying to the supplier of services in the Member State in which it is established, it should be provided that the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory to 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 these claims;

Whereas this representative may also be required to represent the undertaking before the competent authorities of the Member State of provision of services in relation to the control of the existence and validity of motor vehicle liability insurance policies;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets

[1] OJ No L 151, 7. 6. 1978, p. 25.
[2] OJ No L 103, 2. 5. 1972, p. 1.
[3] OJ No L 129, 19. 5. 1990, p. 33.
[4] OJ No L 8, 11. 1. 1984, p. 17.

in third countries; whereas, to that end, this Directive provided for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

(a) 'vehicle' means a vehicle as defined in Article 1 (1) of Directive 72/166/EEC;

(b) 'bureau' means a national insurers' bureau as defined in Article 1 (3) of Directive 72/166/EEC;

(c) 'guarantee fund' means the body referred to in Article 1 (4) of Directive 84/5/EEC;

(d) 'parent undertaking' means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC [1];

(e) 'subsidiary' means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 2

In Article 5 (d) of Directive 73/239/EEC, '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'.

Article 3

1. The heading of Title III of Directive 73/239/EEC is hereby replaced by the following:

'TITLE III A

Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community'.

2. The following heading is placed after Article 29 of Directive 73/239/EEC:

'TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of holdings by such parent undertakings'.

Article 4

The following Articles 29a and 29b shall be added to Title III B of Directive 73/239/EEC.

'Article 29a

The competent authorities of the Member States shall inform the Commission:

(a) of any authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission;

(b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.

Article 29b

1. Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially not later than six months before the application of this Directive, and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate

[1] OJ No L 193, 18. 7. 1983, p. 1.