COUNCIL DIRECTIVE

of 22 June 1987

on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance

(87/344/EEC)

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 (1),

Having regard to the opinion of the European Parliament (2),

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

Whereas 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 (4), as last amended by Directive 87/343/EEC (5), eliminated, in order to facilitate the taking-up and pursuit of such activities, certain differences existing between national laws;

Whereas, however, Article 7 (2) (c) of Directive 73/239/EEC provides that 'pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes';

Whereas the present Directive provides for the coordination of legal expenses insurance as envisaged in Article 7 (2) (c) of Directive 73/239/EEC;

Whereas, in order to protect insured persons, steps should be taken to preclude, as far as possible, any conflict of interests between a person with legal expenses cover and his insurer arising out of the fact that the latter is covering him in respect of any other class of insurance referred to in the Annex to Directive 73/239/EEC or is covering another person and, should such a conflict arise, to enable it to be resolved;

Whereas legal expenses insurance in respect of disputes or risks arising out of, or in connection with, the use of sea-going vessels should, in view of its specific nature, be excluded from the scope of this Directive;

Whereas the activity of an insurer who provides services or bears the cost of defending the insured person in connection with a civil liability contract should also be excluded from the scope of this Directive if that activity is at the same time pursued in the insurer's own interest under such cover;

Whereas Member States should be given the option of excluding from the scope of this Directive the activity of legal expenses insurance undertaken by an assistance insurer where this activity is carried out in a Member State other than the one in which the insured person normally resides and where it forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence;

Whereas the system of compulsory specialization at present applied by one Member State, namely the Federal Republic of Germany, precludes the majority of conflicts; whereas, however, it does not appear necessary, in order to obtain this result, to extend that system to the entire Community, which would require the splitting-up of composite undertakings;

Whereas the desired result can also be achieved by requiring undertakings to provide for a separate contract or a separate section of a single policy for legal expenses insurance and by obliging them either to have separate management for legal expenses insurance, or to entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality, or to afford the person having legal expenses cover the right to choose his lawyer from the moment that he has the right to claim from his insurer;

Whereas, whichever solution is adopted, the interest of persons having legal expenses cover shall be protected by equivalent safeguards;

Whereas the interest of persons having legal expenses cover means that the insured person must be able to choose a lawyer or other person appropriately qualified according to national law in any inquiry or proceedings and whenever a conflict of interests arises;

(1) OJ No C 198, 7. 8. 1979, p. 2.
(2) OJ No C 260, 12. 10. 1981, p. 78.
(3) OJ No C 348, 31. 12. 1980, p. 22.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) See page 72 of this Official Journal.

Whereas Member States should be given the option of exempting undertakings from the obligation to give the insured person this free choice of lawyer if the legal expenses insurance is limited to cases arising from the use of road vehicles on their territory and if other restrictive conditions are met;

Whereas, if a conflict arises between insurer and insured, it is important that it be settled in the fairest and speediest manner possible; whereas it is therefore appropriate that provision be made in legal expenses insurance policies for an arbitration procedure or a procedure offering comparable guarantees;

Whereas the second paragraph of point C of the Annex to Directive 73/239/EEC provides that the risks included in classes 14 and 15 in point A may not be regarded as risks ancillary to other classes; whereas an insurance undertaking should not be able to cover legal expenses as a risk ancillary to another risk without having obtained an authorization in respect of the legal expenses risk; whereas, however, Member States should be given the option of regarding class 17 as a risk ancillary to class 18 in specific cases; whereas, therefore, point C of the said Annex should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to coordinate the provisions laid down by law, regulation or administrative action concerning legal expenses insurance as referred to in paragraph 17 of point A of the Annex to Council Directive 73/239/EEC in order to facilitate the effective exercise of freedom of establishment and preclude as far as possible any conflict of interest arising in particular out of the fact that the insurer is covering another person or is covering a person in respect of both legal expenses and any other class in that Annex and, should such a conflict arise, to enable it to be resolved.

Article 2

1. This Directive shall apply to legal expenses insurance. Such consists in undertaking, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to:

— securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings,

— defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against him.

2. This Directive shall not, however, apply to:

— legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels,

— the activity pursued by the insurer providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings if that activity is at the same time pursued in the insurer's own interest under such cover,

— where a Member State so chooses, the activity of legal expenses insurance undertaken by an assistance insurer where this activity is carried out in a Member State other than the one in which the insured person normally resides, where it forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence. In this event the contract must clearly state that the cover in question is limited to the circumstances referred to in the foregoing sentence and is ancillary to the assistance.

Article 3

1. Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

2. Each Member State shall take the necessary measures to ensure that the undertakings established within its territory adopt, in accordance with the option imposed by the Member State, or at their own choice, if the Member State so agrees, at least one of the following solutions, which are alternatives:

(a) the undertaking shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof carries on at the same time a similar activity

— if the undertaking is a composite one, for another class transacted by it,

— irrespective of whether the undertaking is a composite or a specialized one, in another having financial, commercial or administrative links with the first undertaking and carrying on one or more of the other classes of insurance set out in Directive 73/239/EEC;

(b) the undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in paragraph 1. If the undertaking having separate legal personality has links with an undertaking which carries on one or more of the other classes of insurance referred to in point A of the Annex to Directive 73/239/EEC,