II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 22 June 1987

amending, as regards credit insurance and suretyship insurance, 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

(87/343/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 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 (4), as amended by Directive 76/580/EEC (5), eliminated a number of divergencies in the laws of the Member States in order to facilitate the taking-up and pursuit of that business;

Whereas, however, Article 2 (2) (d) of the said Directive states that it does not apply, 'pending further coordination, which shall be implemented within four years of notification of this Directive', to 'export credit insurance operations for the account of or with the support of the State'; whereas, since the protection of insured persons normally provided by the Directive is provided by the State itself where export credit insurance operations are carried out for the account of or with the guarantee of the State, such operations should continue to be excluded from the scope of the said Directive pending further coordination;

Whereas Article 7 (2) (c) of the said Directive states 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 it follows from this that there are barriers to the establishment of agencies and branches; whereas the present Directive is intended to remedy this situation;

Whereas the interests of insured persons are sufficiently safeguarded, as regards suretyship insurance, by the said Directive; whereas the prohibition in the Federal Republic of Germany on the simultaneous undertaking of suretyship insurance and other classes should be lifted;

Whereas insurance undertakings whose credit insurance business amounts to more than a small proportion of their total business require an equalization reserve which does not form part of the solvency margin; whereas that reserve should be calculated according to the methods laid down in this Directive, which are recognized as equivalent;

(1) OJ No C 245, 29. 9. 1979, p. 7 and OJ No C 5, 7. 1. 1983, p. 2.
(2) OJ No C 291, 10. 11. 1980, p. 70.
(3) OJ No C 146, 16. 6. 1980, p. 6.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 189, 13. 7. 1976, p. 13.

Whereas in view of the cyclical nature of claims in credit insurance, the latter should, for the purposes of calculating the average burden of claims within the meaning of Article 16 (2) of Directive 73/239/EEC, be treated on the same basis as insurance against storm, hail and frost risks;

Whereas the nature of the risk in credit insurance is such that undertakings which transact such business ought to form a higher guarantee fund than is at present provided for in the said Directive;

Whereas a sufficient period of time should be granted to undertakings which are required to meet that obligation;

Whereas it is unnecessary to impose this obligation on undertakings whose operations in this class of insurance do not exceed a certain volume;

Whereas, in view of the provisions of this Directive in respect of credit insurance, the maintenance by the Federal Republic of Germany of the prohibition of the simultaneous undertaking of credit insurance and other classes is no longer justified, and such prohibition should therefore be removed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 73/239/EEC is hereby amended as follows:

1. Article 2 (2) (d) shall be replaced by the following:

'(d) pending further coordination, export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.'

2. In the second subparagraph of Article 7 (2) (c), the words 'credit and suretyship insurance' shall be deleted.

3. The following Article shall be inserted:

'Article 15a

1. Each Member State shall require undertakings established on its territory and underwriting risks included under class 14 in point A of the Annex (hereinafter referred to as "credit insurance") to set up an equalization reserve for the purpose of offsetting any technical deficit or above-average claims ratio arising in that class for a financial year.

2. The equalization reserve must be calculated, under the rules laid down by each Member State, in accordance with one of the four methods set out in point D of the Annex which shall be regarded as being equivalent.

3. Up to the amount calculated in accordance with the methods set out in point D of the Annex, the equalization reserve shall be disregarded for purposes of calculating the solvency margin.

4. Member States may exempt establishments from the obligation to set up an equalization reserve for credit insurance business where the premiums or contributions receivable in respect of credit insurance are less than 4 % of the total premiums or contributions receivable by them and less than 2 500 000 ECU.'

4. In Article 16 (2), the second sentence shall be replaced by the following text:

'In the case, however, of undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.'

5. The first indent of Article 17 (2) (a) shall be replaced by the following indents:

'— 1 400 000 ECU in the case where all or some of the risks included in the class listed in point A of the Annex under No 14 are covered. This provision shall apply to every undertaking for which the annual amount of premiums or contributions due in this class for each of the last three financial years exceeded 2 500 000 ECU or 4 % of the total amount of premiums or contributions receivable by the undertaking concerned;

— 400 000 ECU 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 10, 11, 12, 13 and 15 and, insofar as the first indent does not apply, No 14.'

6. The following subparagraph shall be added to Article 17 (2):

'(d) Where an undertaking carrying on credit insurance is required to increase the fund referred to in subparagraph (a), first indent, to 1 400 000 ECU, the Member State concerned shall allow such undertaking:

— a period of three years in which to bring the fund up to 1 000 000 ECU,

— a period of five years to bring the fund up to 1 200 000 ECU,

— a period of seven years to bring the fund up to 1 400 000 ECU.

These periods shall run from the date from which the conditions referred to in the first indent of subparagraph (a) are fulfilled.'

7. The following shall be inserted in Article 19:

'1a. In respect of credit insurance, the undertaking shall make available to the supervisory authority accounts showing both the technical results and the technical reserves relating to that business.'

8. Point D in the Annex to this Directive shall be added to the Annex.