COUNCIL DIRECTIVE

of 10 December 1984

amending, particularly as regards tourist assistance, 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

(84/641/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 the First Council Directive (73/239/EEC) of 4 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), hereinafter referred to as the 'First Directive', as amended by Directive 76/580/EEC (5), eliminated certain differences between 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 provision 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 that barrier to the right of establishment, it should be specified that an activity is not excluded from the application of the First Directive for the simple reason that it constitutes a benefit solely in kind or one for which the person providing it uses his own staff or equipment only; whereas, therefore such provision of assistance consisting in the promise of aid on the occurrence of a chance event should be covered by the above Directive, taking into account the special characteristics of such assistance;

(1) OJ No C 51, 10. 3. 1981, p. 5; OJ No C 30, 4. 2. 1983, p. 6.
(2) OJ No C 149, 14. 6. 1982, p. 129.
(3) OJ No C 343, 31. 12. 1981, p. 9.
(4) OJ No L 228, 16. 8. 1973, p. 3.
(5) OJ No L 189, 13. 7. 1976, p. 13.

Whereas the purpose of the inclusion, for reasons of supervision, of assistance operations in the scope of the First Directive, which does not involve the definition of these operations, is not to affect the fiscal rules applicable to them;

Whereas the sole fact of providing certain forms of assistance on the occasion of an accident or breakdown involving a road vehicle normally occurring in the territory of the Member State of the undertaking providing cover is not a reason for any person or undertaking that is not an insurance undertaking to be subject to the arrangements of the First Directive;

Whereas provision should be made for certain relaxations to the condition that the accident or breakdown must occur in the territory of the Member State of the undertaking providing cover in order to take into account either the existence of reciprocal agreements or of certain specific circumstances relating to the geographical situation or to the structure of the organizations concerned, or to the very limited economic importance of the operations referred to;

Whereas an organization of a Member State whose main activity is to provide services on behalf of the public authorities should be excluded from the scope of the First Directive;

Whereas an undertaking offering assistance contracts must possess the means necessary for it to provide the benefits in kind which it offers 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 providing only assistance to adapt themselves to the application of the First Directive;

Whereas, having regard to special structural and geographical difficulties, it is necessary to allow a transitional period to the automobile club of a Member State for bringing itself into line with the said Directive concerning repatriation of the vehicle, possibly accompanied by the driver and passengers;

Whereas it is necessary to keep up-to-date the provisions of the First Directive concerning the legal forms which insurance undertakings may assume; whereas certain provisions of the said Directive concerning the rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are situated outside the Community should be amended in order to make them consistent with the provisions of Directive 79/267/EEC (1),

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

'*Article 1*

1. This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance, including the provision of assistance referred to in paragraph 2, carried on by undertakings which are established in the territory of a Member State or which wish to become established there.

2. The assistance activity shall be the assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence. It shall consist in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

The aid may consist in the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

The assistance activity does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

3. The classification by classes of the activity referred to in this Article appears in the Annex.'

Article 2

Article 2 of the First Directive is hereby supplemented by the following point:

3. The assistance activity in which liability is limited to the following operations provided in the event of an accident or breakdown involving a road vehicle which normally occurs in the territory of the Member State of the undertaking providing cover:

— an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment,

— the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means,

— if provided for by the Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State,

unless such operations are carried out by an undertaking subject to this Directive.

In the cases referred to in the first two indents, the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover

(a) shall not apply where the latter is a body of which the beneficiary is a member and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement;

(b) shall not preclude the provision of such assistance in Ireland and the United Kingdom by a single body operating in both States.

In the circumstances referred to in the third indent, where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland, the vehicle, possibly accompanied by the driver and passengers, may be conveyed to their home, point of departure or original destination within either territory.

Moreover, the Directive does not concern assistance operations carried out on the occasion of an accident to or the breakdown of a road vehicle and consisting in conveying the vehicle which has been involved in an accident or has

(1) OJ No L 63, 13. 3. 1979, p. 1.