

## 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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

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 <sup>(4)</sup>, as amended by Directive 76/580/EEC <sup>(5)</sup>, 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;

<sup>(1)</sup> OJ No C 245, 29. 9. 1979, p. 7 and

OJ No C 5, 7. 1. 1983, p. 2.

<sup>(2)</sup> OJ No C 291, 10. 11. 1980, p. 70.

<sup>(3)</sup> OJ No C 146, 16. 6. 1980, p. 6.

<sup>(4)</sup> OJ No L 228, 16. 8. 1973, p. 3.

<sup>(5)</sup> 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.

*Article 2*

Member States shall take the measures necessary to comply with this Directive by 1 January 1990. They shall forthwith inform the Commission thereof.

They shall apply these measures from 1 July 1990 at the latest.

*Article 3*

Following notification <sup>(1)</sup> of this Directive, Member States shall communicate to the Commission the texts of the

main provisions of national legislation which they adopt in the field governed by this Directive.

*Article 4*

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1987.

*For the Council*

*The President*

L. TINDEMANS

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<sup>(1)</sup> This Directive was notified to the Member States on 25 June 1987.

## ANNEX

**D. Methods of calculating the equalization reserve for the credit insurance class***Method No 1*

1. In respect of the risks included in the class of insurance in point A No 14 (hereinafter referred to as 'credit insurance'), the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.
2. Such reserve shall in each financial year receive 75 % of any technical surplus arising on credit insurance business, subject to a limit of 12 % of the net premiums or contributions until the reserve has reached 150 % of the highest annual amount of net premiums or contributions received during the previous five financial years.

*Method No 2*

1. In respect of the risks included in the class of insurance listed in point A No 14 (hereinafter referred to as 'credit insurance') the undertaking shall set up an equalization reserve to which shall be charged any technical deficit arising in that class for a financial year.
2. The minimum amount of the equalization reserve shall be 134 % of the average of the premiums or contributions received annually during the previous five financial years after subtraction of the cessions and addition of the reinsurance acceptances.
3. Such reserve shall in each of the successive financial years receive 75 % of any technical surplus arising in that class until the reserve is at least equal to the minimum calculated in accordance with paragraph 2.
4. Member States may lay down special rules for the calculation of the amount of the reserve and/or the amount of the annual levy in excess of the minimum amounts laid down in this Directive.

*Method No 3*

1. An equalization reserve shall be formed for class 14 in point A (hereinafter referred to as 'credit insurance') for the purpose of offsetting any above-average claims ratio for a financial year in that class of insurance.

2. The equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached, or is restored to, the required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The required amount shall be equal to six times the standard deviation of the claims ratios in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

Irrespective of claims experience, 3,5 % of the required amount of the equalization reserve shall be first placed to that reserve each financial year until its required amount has been reached or restored.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

The required amount of the equalization reserve and the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin.

*Method No 4*

1. An equalization reserve shall be formed for class 14 in point A (hereinafter referred to as 'credit insurance') for the purpose of offsetting any above-average claims ratio for a financial year in that class of insurance.

2. The equalization reserve shall be calculated on the basis of the method set out below.

All calculations shall relate to income and expenditure for the insurer's own account.

An amount in respect of any claims shortfall for each financial year shall be placed to the equalization reserve until it has reached the maximum required amount.

There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The maximum required amount shall be equal to six times the standard deviation of the claims ratio in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the equalization reserve until it has reached the minimum required amount. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

The minimum required amount shall be equal to three times the standard deviation of the claims ratio in the reference from the average claims ratio multiplied by the earned premiums for the financial year.

The length of the reference period shall be not less than 15 years and not more than 30 years. No equalization reserve need be formed if no underwriting loss has been noted during the reference period.

Both required amounts of the equalization reserve and the amount to be placed to it or the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin and that safety margin is more than one-and-a-half times the standard deviation of the claims ratio in the reference period. In such a case the amounts in question shall be multiplied by the quotient or one-and-a-half times the standard deviation and the safety margin.

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