

First Council Directive 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relating to the taking-up and pursuit of the business of direct insurance other than life assurance (73/239/EEC) (repealed)

Title I —

General provisions

[^{F1}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.]

Textual Amendments

- F1** Substituted by [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 \(84/641/EEC\)](#).

Article 2

This Directive does not apply to:

1. The following kinds of insurance:
 - (a) Life assurance, that is to say, the branch of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or an earlier death, life assurance with return of premiums, tontines, marriage assurance, and birth assurance;
 - (b) Annuities;

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- (c) Supplementary insurance carried on by life-assurance undertakings, that is to say, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;
 - (d) Insurance forming part of a statutory system of social security;
 - (e) The type of insurance existing in Ireland and the United Kingdom known as 'permanent health insurance not subject to cancellation'.
2. The following operations:
- (a) Capital redemption operations, as defined by the law in each Member State;
 - (b) Operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;
 - (c) Operations carried out by organizations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;
 - (d) [^{F2}Pending further coordination, export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.]
3. [^{F3}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 broken down outside the territory of the Grand Duchy of Luxembourg, possibly accompanied by the driver and passengers, to their home, where such operations are carried out by the Automobile Club of the Grand Duchy of Luxembourg.

Undertakings subject to this Directive may engage in the activity referred to under this point only if they have received authorization for class 18 in point A of the Annex without prejudice to point C of the said Annex. In that event this Directive shall apply to the operations in question.]

Textual Amendments

- F2** Substituted by [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 \(87/343/EEC\)](#).
- F3** Inserted by [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 \(84/641/EEC\)](#).

Article 3

[^{F41} This Directive shall not apply to mutual associations which fulfil all the following conditions:

- a the articles of association must contain provisions for calling up additional contributions or reducing their benefits;
- b their business does not cover liability risks unless these constitute ancillary cover within the meaning of point C of the Annex or credit and suretyship risks;
- c the annual contribution income for the activities covered by this Directive must not exceed EUR 5 million; and
- d at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association.

This Directive shall not apply to undertakings which fulfil all the following conditions:

- the undertaking does not pursue any activity falling within the scope of this Directive other than the one described in class 18 in point A of the Annex,
- this activity is carried out exclusively on a local basis and consists only of benefits in kind, and
- the total annual income collected in respect of the activity of assistance to persons who get into difficulties does not exceed EUR 200 000.

Nevertheless, the provisions of this Article shall not prevent a mutual insurance undertaking from applying, or continuing, to be licensed under this Directive.]

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2 This Directive shall not, moreover, apply to mutual associations which have concluded with other associations of this nature an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the concessionary undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

In such a case the concessionary undertaking shall be subject to the rules of this Directive.

Textual Amendments

F4 Substituted by [Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings](#).

Article 4

This Directive shall not apply to the following institutions unless their statutes or the law are amended as regards capacity:

(a) *In Germany*

The following institutions under public law enjoying a monopoly (Monopolanstalten):

1. Badische Gebäudeversicherungsanstalt, Karlsruhe,
2. Bayerische Landesbrandversicherungsanstalt, Munich,
3. Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, Munich,
4. Braunschweigische Landesbrandversicherungsanstalt, Brunswick,
5. Hamburger Feuerkasse, Hamburg,
6. Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt,
7. Hessische Brandversicherungsanstalt, Kassel,
8. Hohenzollernsche Feuerversicherungsanstalt, Sigmaringen,
9. Lippische Landesbrandversicherungsanstalt, Detmold,
10. Nassauische Brandversicherungsanstalt, Wiesbaden,
11. Oldenburgische Landesbrandkasse, Oldenburg,
12. Ostfriesische Landschaftliche Brandkasse, Aurich,
13. Feuersozietät Berlin, Berlin,
14. Württembergische Gebäudebrandversicherungsanstalt, Stuttgart.

However, territorial capacity shall not be regarded as modified in the case of a merger between such institutions which has the effect of maintaining for the benefit of the new institution the territorial capacity of the institutions which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these institutions takes over in respect of the same territory one or more of the classes of another such institution.

The following semi-public institutions:

1. Postbeamtenkrankenkasse,
2. Krankenversorgung der Bundesbahnbeamten;

(b) *In France*

The following institutions:

1. Caisse départementale des incendiés des Ardennes,
2. Caisse départementale des incendiés de la Côte-d'Or,
3. Caisse départementale des incendiés de la Marne,
4. Caisse départementale des incendiés de la Meuse,
5. Caisse départementale des incendiés de la Somme,
6. Caisse départementale grêle du Gers,
7. Caisse départementale grêle de l'Hérault;

(c) *In Ireland*

Voluntary Health Insurance Board;

(d) *In Italy*

The Cassa di Previdenza per l'assicurazione degli sportivi (Sportass);

(e) *In the United Kingdom*

The Crown Agents^[F1;]

(f) ^[F3]*In Denmark*

Falcks Redningskorps A/S, København^[F5;]

(g) ^[F6]*In Spain*

The following institutions:

1. Comisaría de Seguro Obligatorio de Viajeros,
2. Consorcio de Compensación de Seguros,
3. Fondo Nacional de Garantía de Riesgos de la Circulación.]

Textual Amendments

- F1** Substituted by [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 \(84/641/EEC\)](#).
- F3** Inserted by [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 \(84/641/EEC\)](#).

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- F5** Substituted by [Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties.](#)
- F6** Inserted by [Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties.](#)

Article 5

For the purposes of this Directive:

- (a) ‘^{F7}Unit of account’ means the European unit of account (EUA) as defined by Commission Decision 3289/75/ECSC⁽¹⁾. Wherever this Directive refers to the unit of account, the conversion value in national currency to be adopted shall, as from 31 December of each year, be that of the last day of the preceding month of October for which EUA conversion values are available in all the Community currencies;]
- (b) ‘Matching assets’ means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency;
- (c) ‘Localization of assets’ means the existence of assets, whether movable or immovable, within a Member State but shall not be construed as involving a requirement that movable property be deposited or that immovable property be subjected to restrictive measures such as the registration of mortgages. Assets represented by claims against debtors shall be regarded as situated in the Member State where they are to be liquidated^{F8};]
- (d) ^{F9}‘Large risks’ means:

- (i) risks classified under classes 4, 5, 6, 7, 11 and 12 of point A of the Annex;
- (ii) risks classified under classes 14 and 15 of point A of the Annex, where the policy-holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
- (iii) ^{F10}risks classified under classes 3, 8, 9, 10, 13 and 16 of point A of the Annex] in so far as the policy-holder exceeds the limits of at least two of the following three criteria:

first stage: until 31 December 1992:

- balance-sheet total: 12,4 million ECU,
- net turnover: 24 million ECU,
- average number of employees during the financial year: 500.

second stage: from 1 January 1993:

- balance-sheet total: 6,2 million ECU,
- net turnover: 12,8 million ECU,
- average number of employees during the financial year: 250.

If the policy-holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC⁽²⁾ are drawn up, the criteria mentioned above shall be applied on the basis of the consolidated accounts.

Each Member State may add to the category mentioned under (iii) risks insured by professional associations, joint ventures or temporary groupings.]

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Textual Amendments

- F7** Substituted by Council Directive of 29 June 1976 amending 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 (76/580/EEC).
- F8** Substituted by Second Council Directive of 22 June 1988 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 (88/357/EEC).
- F9** Inserted by Second Council Directive of 22 June 1988 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 (88/357/EEC).
- F10** Substituted by 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).

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- (1) [^{F7}OJ No L 327, 19. 12. 1975, p. 4.]
- (2) [^{F9}OJ No L 193, 18. 7. 1983, p. 1.]

Textual Amendments

- F7** Substituted by Council Directive of 29 June 1976 amending 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 (76/580/EEC).
- F9** Inserted by Second Council Directive of 22 June 1988 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 (88/357/EEC).