

COUNCIL DIRECTIVE

of 24 July 1973

abolishing restrictions on freedom of establishment in the business of direct insurance
other than life assurance

(73/240/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (2) and (3) thereof;

Having regard to the General Programme ⁽¹⁾ for the abolition of restrictions on freedom of establishment, and in particular Title IV C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament ⁽²⁾;

Having regard to the Opinion of the Economic and Social Committee ⁽³⁾;

Whereas the General Programme referred to above provides for the abolition of all discriminatory treatment of the nationals of the other Member States as regards establishment in the business of direct insurance other than life assurance;

Whereas, in accordance with this General Programme, the lifting of restrictions on the setting-up of agencies and branches is, as regards direct insurance undertakings, dependent upon the coordination of conditions of taking up and pursuit of the business; whereas this coordination has been achieved for direct insurance other than life assurance, by the first Council Directive of 24 July 1973;

Whereas the scope of this Directive is in all respects the same as that defined in item A of the Annex to the first Directive on coordination; whereas it appeared reasonable in the circumstances to exclude, for purposes of coordination, credit-insurance for exports;

Whereas, in accordance with the General Programme referred to above, the restrictions on the right to join professional organizations must be abolished where

the professional activities of the persons concerned involve the exercise of this right;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the natural persons and undertakings covered by Title I of the General Programme for the abolition of restrictions on freedom of establishment, hereinafter called 'beneficiaries', the restrictions referred to in Title III of this programme affecting the right to take up and pursue self-employed activities in the classes of insurance specified in Article 1 of the first Coordination Directive.

By 'First Coordination Directive' is meant the first Council Directive of 24 July 1973 on coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.

However, as regards credit-insurance for exports, these restrictions shall be maintained until the coordination programme laid down in Article 2 (2) (d), of the first Coordination Directive has been carried out.

Article 2

1. Member States shall in particular abolish the following restrictions:

- (a) those which prevent beneficiaries from establishing themselves in the host country under the same conditions and with the same rights as nationals of that country;
- (b) those existing by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals.

2. The restrictions to be abolished shall include in particular those arising out of measures which

⁽¹⁾ OJ No 2, 15. 1. 1962, p. 36/62.

⁽²⁾ OJ No C 27, 28. 3. 1968, p. 15.

⁽³⁾ OJ No 118, 20. 6. 1967, p. 2323/67.

prevent or limit the establishment of beneficiaries by the following means:

(a) In Germany:

the provisions granting the Federal Ministry of Economic Affairs the discretionary right to impose its own conditions of access to this business on foreign nationals and to prevent them from pursuing this business within the Federal Republic (Law of 6 June 1931 (VAG), Article 106 (2), No 1, in conjunction with Article 8 (1), No 3, Article 106 (2), last sentence, and Article 111 (2));

(b) In Belgium:

the obligation to hold a 'carte professionnelle' (Article 1 of the Law of 19 February 1965);

(c) In France:

— the need to obtain special consent (Law of 15 February 1917, as amended and supplemented by the 'décret-loi' of 30 October 1935, Article 2 (2) — 'décret' of 19 August 1941, as amended, Articles 1 and 2 — 'décret' of 13 August 1947, as amended, Articles 2 and 10);

— the obligation to provide a surety-bond or special guarantees as a reciprocal requirement (Law of 15 February 1917, amended and supplemented by the 'décret-loi' of 30 October 1935, Article 2 (2) — 'décret-loi' of 14 June 1938, Article 42 — 'décret' of 30 December 1938, as amended, Article 143 — 'décret' of 14 December 1966, Articles 9, 10 and 11);

— the obligation to deposit technical reserves ('décret' of 30 December 1938, amended Article 179 — 'décret' of 13 August 1947, as amended, Articles 8 and 13 — 'décret' of 14 December 1966, Title I).

(d) In Ireland:

the provision that, to be eligible for an insurance licence, a company must be registered under the Irish Companies Acts, two-thirds of its shares must be owned by Irish citizens and the majority of the directors (other than a full-time managing director) must be Irish citizens (Insurance Act, 1936, Section 12; Insurance Act, 1964, Section 7).

3. The laws, regulations or administrative provisions that involve beneficiaries in the obligation to provide a deposit or special surety-bond shall not be abolished, as long as the undertakings do not fulfil the financial conditions under Articles 16 and 17 of the first Coordination Directive in accordance with the provisions of Article 30 (1) and (2) of the same Directive.

Article 3

1. Where a host Member State requires of its own nationals wishing to take up any activity referred to in Article 1 proof of good repute and proof of no previous bankruptcy, or proof of either of these, that State shall accept as sufficient evidence, in respect of nationals of other Member States, the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence the foreign national comes, showing that these requirements have been met.

2. Where the country of origin or the country whence the foreign national comes does not issue such documentary proof of good repute or documentary proof of no previous bankruptcy, such proof may be replaced by a declaration on oath — or in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or where appropriate a notary, in the country of origin or in the country whence that person comes; such authority or notary will issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. A declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

3. Documents issued in accordance with paragraph 1 or with paragraph 2 may not be produced more than three months after their date of issue.

4. Member States shall, within the time limit laid down in Article 6, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 4

1. Member States shall ensure that beneficiaries have the right to join professional or trade organizations under the same conditions and with the same rights and obligations as their own nationals.

2. The right to join professional or trade organizations shall, in the case of establishment, entail eligibility for election or appointment to high office in such organizations. However, such posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organization concerned is involved in the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the 'Chambre de commerce' shall not give beneficiaries the right to take part in the election of the administrative organs of that Chamber.

Article 5

No Member State shall grant to any of its nationals who go to another Member State for the purpose of pursuing any activity referred to in Article 1 any aid liable to distort the conditions of establishment.

Article 6

Member States shall amend their national regulations in accordance with this Directive and within 18 months of the notification of the first Coordination

Directive and shall forthwith inform the Commission thereof. The regulations thus amended shall be implemented at the same time as the laws, regulations and administrative provisions set up in pursuance of the first Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD