

THE COMMUNITY AND ITS APPROACH TO INSURANCE

by Christopher S. TUGENDHAT, EEC Commissioner, at the Royal Insurance Institute,
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Mr Chairman, Ladies and Gentlemen,

I am particularly pleased to be able to accept your kind invitation tonight because it gives me an opportunity - actually the first I have had in London - to talk about the general questions of trying to create a common market in insurance. Your Institute has often shown interest in the European aspects of insurance and, in doing so, has - I believe - set a fine example to the whole industry. Nothing therefore could give me greater pleasure than to attend one of your meetings and to go over with you some of the salient objectives and difficulties.

The timing of this particular occasion has also turned out to be rather happy because it comes shortly after the heads of government of the Member States meeting in the European Council re-affirmed their commitment to the principle of Economic and Monetary Union.

This gives a renewed importance to the development of a common market in financial services, of which insurance is such an important fact. Indeed whether we measure in terms of its influence on the capital markets, or in terms of its rôle in channeling the savings of the public, or even in terms of its international business, insurance must claim a major place in our efforts to provide a sound business structure for the economic integration of our European Community.

Unfortunately ./.

Unfortunately progress has so far been much slower than either the Commission or the British insurance industry would wish. It is to this question that I wish to devote the first part of my remarks today and, in the course of its examination, to consider the validity or otherwise of the approach we have adopted.

First of all, however, the facts. The Treaty of Rome was signed in March 1957, very nearly twenty-one years ago. Between then and now three general measures have been adopted affecting insurance, and seven specific directives about insurance have been enacted. However of these seven directives, two are of minor significance merely altering some provisions of others, while two others are really part of a single piece of legislation. The tally is therefore three general measures, with some bearing on insurance, and four directives specifically about insurance. Not much you may think for twenty-one years of labour!

Let us look more closely at these seven adopted steps. First, the three general measures. In December 1961 the Council adopted a General Programme for the Abolition of Restrictions on Freedom of Establishment and Freedom to Provide Services: insurance came into this programme in the form of a decision to tackle first the problems of establishment, and subsequently those of services, for non-life insurance and life assurance, in that order.

Then, in September 1968, there was a Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgements, which contained a section on jurisdiction in matters of insurance. This Convention came into force in February 1973.

Thirdly, the Member States signed a Protocol in June 1971 concerning the interpretation by the Court of Justice of the 1968 Convention which I have just mentioned. This Protocol came into force in September 1975.

Now for the specific legislation. In 1964 the Council adopted a directive on reinsurance and retrocession under which restrictions on freedom of establishment and services in the reinsurance business were abolished. Since then, as far as we know, there have been few obstacles in the Community to international reinsurance.

Secondly, in 1972, a directive was adopted which began the process of approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against this liability: the so-called "green card" directive. A minor amending directive was also adopted some eight months later.

Then in July ./.

Then, in July 1973 came the two directives covering non-life establishment and coordinating licensing and supervision of insurers in this field. You will know that the unit of account used in these measures was up-dated to the one used nowadays in the Community by a modifying directive adopted in 1976.

Finally the Council enacted a directive about brokers and agents in December 1976. And that is the sum total of what has so far been achieved: in practical terms, just four insurance directives of any consequence.

Of course you will be aware of a number of other measures which the Commission has proposed to the Council, but which, for one reason or another, have either been withdrawn because outdated or are still being discussed in Council working parties. Most important of those still under discussion are the life-assurance coordination and the non-life services directives, but there is also a useful directive about coinsurance which is very near to being adopted. I shall have more to say about these measures in a moment.

But the question I want to treat first is why it is all taking so long. I have seen the articles in the British Press, the speeches by leading insurance personalities and the debates at Westminster, and I know how unsatisfactory the United Kingdom insurance industry finds this slow, plodding rate of progress. I can assure you that we in the Commission are just as frustrated as you are and every bit as anxious to see a real common market insurance playing its legitimate part as one of the foundation stones of a European Union. /.

I think there are several reasons for the slowness of progress and I want to explain them to you frankly tonight. We shall not be able to examine them all but we must consider the most important. First there are the procedural problems. These cover the past decisions of Member Governments and the established ways of doing things. The General Programme of 1961, for instance, told us how we had to go about the task of removing obstacles to free establishment and services, but gave us no means of meeting the schedule if the ministers themselves failed to take the necessary decisions. In February of last year, during the British Presidency of the Council, ministers called for faster progress with insurance liberalisation and a report in one year's time: but we are now only a month or so away from making this report and can only say that discussions have continued in the Council without leading to the requisite decisions.

In other words, the best of intentions - even the adoption of good resolutions or definitive programmes - are of no avail if the particular Council which deals with insurance matters fails to reach and take the necessary decisions. In this respect, the Commission is powerless. In the only case where the Commission was empowered to take the decisions - I refer to the abandonment of green-card inspections at frontiers - we took them and it was done in good time.

The second cause ./.

The second cause of delay on the procedural front is the method, now sanctified by time, of working parties to prepare and scrutinise texts. Perhaps you know that it is the practice for the Commission, after consulting the insurance industry, to call a working group of national experts to prepare the text of a draft directive for submission to the Council. After consultation of the Parliament and the Economic and Social Committee, the Council - in its turn - calls a working group to examine on its behalf the text received from the Commission. It is not without interest that the Council's working group and that of the Commission normally are composed of the same people - yet they do the whole thing again, and, I am afraid, often go back on positions they have adopted in the first round.

This double examination is time-consuming. Indeed in such a technical area as insurance, staggeringly so. The 1973 non-life directive for instance took fourteen years in the two working groups. The life assurance directive, after twelve years, is still not adopted.

I am determined to try to find ways of shortening these impossibly long time-scales. One possibility certainly worth examining, is to see whether the Commission could not produce a text of a proposal after consultation with the industry, and submit it to the Council with only a brief examination by the Commission working group. This would achieve a great saving of time and much duplication of work while still, I believe, permitting enough opportunity for thorough preparation and scrutiny.

A third reason for slowness is the very real reluctance of certain countries which have no experience of international insurance competition to open their hitherto protected domestic markets any more quickly than is absolutely inevitable. For some reason, which you perhaps may understand, Mr Chairman, they seem to fear competition from elsewhere in the Community. Anyhow the outcome is that they prefer to hasten as slowly as possible. And in the Council the pace is always the pace of the slowest.

There is a fourth cause of delay, too. Insurance wins pretty few votes in domestic constituencies - it is therefore lacking in political sex-appeal. The Ministers - and consequently their officials - coming to the Council cannot get very excited about insurance directives. Insurance, as a consequence, does not enjoy the sort of priority that is accorded to agriculture, fishing, or regional policy. This means that there can only be a small number of meetings each year on insurance topics. This aspect of the problem is one we can do little about, though I can assure you we always try to impress on the Council presidency the commercial importance of making progress. And at this point I would like to pay tribute to the British and Belgian presidencies for responding to this urgency and giving us more meetings for insurance than had previously been the pattern.

Finally ./.

Finally, a fifth cause of delay is the technical complexity of the subject matter. We have done our best to concentrate on the principles and leave the details on one side but, as I shall explain in a moment, this is not wholly possible. And you know better than I how intricate and important are the various questions of how technical reserves are calculated, and what the wording of insurance contracts should contain. When you come to attempt to standardise nine different ways of doing these things to a sufficient extent to ensure that there is no room for misunderstanding you are inevitably in a rather lengthy process. If you can only get three meetings a year at which to discuss them, the years of delay soon mount up.

I have spoken enough, I think, about the causes of delay, though I hope I have not sounded complacent. All the disillusion and disappointment felt in the British insurance industry with the slow rate of progress is shared in full measure by us in the Commission. We shall continue to do all in our power to hasten the creation of a truly common market in all kinds of insurance.

However there is one thing I would like to emphasise. While we need, and must work for, greater rapidity of progress we must ensure that this is not at the expense of security or the protection of the insured. It is a sincerely held preoccupation of those countries which are least inclined to open their domestic markets to more international competition that the system of legislative protection they have so painstakingly built up over the years should not be weakened, should not be prejudiced by our Community initiatives.

They are ./.

They are not just being protectionist - though there is enough protectionism about at present - no - there is a genuine problem here. But it is a problem we can overcome, and you in the insurance industry can help us to overcome it.

There is nothing new about consumer protection: what is new is the political emphasis being given to it. In such a climate no responsible government can acquiesce in any change which it cannot defend in its own parliament, or to its own citizens. In both France and Germany, for instance - and I take these two countries deliberately because I know that British insurers have had difficulties in both - in France and Germany the law has been carefully and expressly developed to ensure the level of protection of the taker of insurance which successive governments have considered necessary. Special machinery has been set up, with specific legally imposed duties, to supervise the operations of insurers under the law.

Now it is obvious that respect for the law is the main guarantee of security in insurance in those countries. Government and people feel more sure when they follow their normal practice and rely on the law: they feel much less sure of where they stand if they have to rely on such imprecise and "foreign" concepts as "prudent management" or "traditional practices". For them the law is the tradition.

It follows ./.

It follows that for them, the British way of supervising insurance genuinely seems fraught with risk. What we have to do is to arrive at arrangements in Europe which allow the various different systems to coexist while nevertheless having common basic principles of supervision. The common principles are essential if we are to overcome the fears of our Continental partners; the coexistence is necessary so as not to injure the open and liberal international activity of the British insurance industry.

Understanding of this fundamental problem on your part, recognition of the quite genuine hesitation of Continental legislators, and a concerted effort to reassure those in other European markets that the British insurance industry is as safe as theirs, is as well supervised and is as socially conscious will go a long way, I believe, to helping us to speed up the liberalisation in the Community. As far as we in the Commission are concerned, we shall try to ensure that our proposals do not weaken the degree of protection any of the Member States have judged to be desirable.

It is thus clear that the measures to liberalise

Europe's insurance market have to be something of a compromise. But while a compromise entails give and take on all sides it must not be the insured who has to suffer the consequences. The market, after all, is for him.

With your permission ./.

With your permission, Mr Chairman, I would now like to turn from the problems of the past and present, and take a rapid look at the immediate future. First of all, of course, we have a number of important measures already on the stocks or in course of adoption. The freedom of services directive for non-life insurance is by far the most significant and is so seen by all concerned. I do not have to remind you of the central feature of this measure, namely the freeing from host-country control of the larger commercial insurances.

It is just this next step which gives rise in some Continental breasts to the anxieties I have been discussing. If this directive is adopted it will mean that, to a large extent, the system of legislative protection at present available to takers of insurance in, say, Germany or France will no longer come into play if the insurer they choose is not established there. Can they trust sufficiently the control authorities of the countries from which such insurers might come?

As you know, we in the Commission think they can, thanks to the increasingly effective cooperation between supervisory authorities that we have played some part in developing since the 1973 directive. We have also been cautious in not suggesting that this new freedom should yet apply to smaller personal insurances where protection is no doubt more necessary. I believe that the British insurance industry and the Department of Trade still have a job to do in convincing their counterparts elsewhere in Europe of the equivalent security of the British systems of insurance and supervision.

In our view /.

In our view, not much further liberalisation can occur until there is a good deal more coordination of the underlying legislations of the Member States. The CEA, and I suspect the British industry, took the view that sufficient further coordination could be achieved quickly, but certain governments made it clear that they think the process will be a long one. Nevertheless, we are pressing on as fast as possible and hope to be able to bring forward a directive on insurance contracts and their content before the end of this year. This will remove some at least of the doubts and fears of Continental supervisors. We shall also press on with the work already well-advanced concerning liquidation and winding up. Then too we shall be proposing a measure covering the methods of selling insurance outside business premises. The objective of this directive will be to ensure proper qualification of those who sell; full and apt information for both seller and taker; and proper control of the insurance product being offered by this means.

This will take up inevitably into the area of insurance qualifications - all that difficult business of brokers and agents. You know we have already in existence a directive on these intermediaries but it is only an interim solution pending more thorough-going Europeanisation of the professions concerned. We have been greatly heartened by the developments here in Britain in the insurance broking profession, and as Mr Perkins well knows, are hopeful that the harmonisation he has succeeded in piloting through in the United Kingdom may serve as a prototype for a European broking profession.

Finally I would refer to one matter which is causing us some concern and perplexity. We are very much aware that differences which exist from one country to another in the minimum level of cover in motor vehicle insurance cause not inconsiderable difficulties to international motorists. They thus act as an obstacle to free movement and have given rise to a number of questions in Parliament and some distress. We therefore thought that we should try to find a way of standardising the minimum level of cover. But when we consulted the Member Governments there was a fairly general refusal to contemplate any change in the existing arrangements: they saw no need for action. Needless to say, we rest unsatisfied with this position and would greatly value any advice or views which the industry would care to give us. It seems to us only reasonable that all policies issued in one Member State should cover the same risks in all other Member States. Can we not have Community policies?

Mr President ./.

Mr President, I have tried to outline the Commission's approach to insurance as exemplified by what we have so far achieved. If my remarks have helped to explain why everything is taking so long, I shall have done something worthwhile. But the important point I want to leave with you tonight is that though we are every bit as frustrated as you may be by the delays, while we recognise the genuine fears some Member States feel about opening up their markets, we are determined to do everything we can to accelerate progress. The key however lies in the hands of the Member States meeting in the Council of Ministers. It is they whom we have to convince. You can do much, both on a national basis with the British government and through European-wide industry associations on all Community governments to keep up the necessary pressure for greater liberalisation.