



European Communities

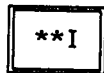
EUROPEAN PARLIAMENT

SESSION DOCUMENTS

English Edition

6 February 1991

A3-0017/91



S E C O N D R E P O R T

of the Committee on Legal Affairs and Citizens' Rights
on the proposals from the Commission to the Council for:

- I. a decision on the conclusion of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance
(COM(89) 436 - C3-0145/89 - SYN 220)
- II. a directive on the implementation of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance
(COM(89) 436 - C3-0146/89 - SYN 221)
- III. a regulation laying down particular provisions for the application of Articles 36 and 37a of the Agreement between the Swiss Confederation and the European Economic Community on direct insurance other than life assurance
(COM(89) 436 - C3-0146/89 - SYN 220)

Rapporteur: Mr Willi ROTHLEY

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PE 146.103/fin.
Or. Fr.

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of a majority of the current Members of Parliament

CONTENTS

	<u>Page</u>
Procedural page.	3
A. DRAFT LEGISLATIVE RESOLUTIONS	4, 5, 6
B. EXPLANATORY STATEMENT.	7
Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy.	8
Opinion of the Committee on External Economic Relations.	10
Opinion of the Committee on Institutional Affairs.	12
ANNEX: Commission statement on the powers of the Joint Committee. .	15

At the sitting of 12 December 1990 the first report (A3-288/90) was referred back to the Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 40(2) of the Rules of Procedure.

At its meeting of 10 November 1989 the Committee on Legal Affairs and Citizens' Rights had appointed Mr Rothley rapporteur.

At its meeting of 29 and 30 January 1991 the committee discussed the matter again and adopted the draft legislative resolution set out below by 17 votes to 2.

The following took part in the vote: Stauffenberg, chairman; Vayssade, first vice-chairman; Rothley, second vice-chairman and rapporteur; Anastassopoulos, Bandres Molet, Bontempi, Casini, Fontaine, Garcia Amigo, Grund, Malangré, Marinho, Mazzone, McIntosh, Merz, Oddy, Salema, Schlechter and Wijsenbeek.

The report was tabled on 5 February 1991.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission for

- a Council decision on the conclusion of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance

The European Parliament,

- having regard to the Commission proposal to the Council (COM(89) 0436 final - SYN 220)¹,
- having been consulted by the Council pursuant to Articles 57 and 235 of the EEC Treaty (C3-0145/89),
- having regard to the revised draft Agreement initialled by the Commission¹,
- having regard to the first report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on External Economic Relations and the Committee on Institutional Affairs (A3-0288/90),
- having regard to the statement made by the Commission regarding the powers of the Joint Committee established pursuant to Article 37 of the draft Agreement²,
- having regard to the second report of the Committee on Legal Affairs and Citizens' Rights (A3-0017/91),

1. Approves the Commission proposal in accordance with the vote thereon;
2. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 53, 5.3.1990

² See the verbatim record of proceedings for the sitting of Monday, 10 December 1990, p. 31

A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission for

- a Council directive on the implementation of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance,

The European Parliament,

- having regard to the Commission proposal to the Council (COM(89) 0436 final - SYN 221)¹,
 - having been consulted by the Council pursuant to Article 57(2) of the EEC Treaty (C3-0146/89),
 - having regard to the revised draft Agreement initialled by the Commission¹,
 - having regard to the first report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on External Economic Relations and the Committee on Institutional Affairs (A3-0288/90),
 - having regard to the statement made by the Commission regarding the powers of the Joint Committee established pursuant to Article 37 of the draft Agreement²,
 - having regard to the second report of the Committee on Legal Affairs and Citizens' Rights (A3-0017/91),
1. Approves the Commission proposal in accordance with the vote thereon;
 2. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 53, 5.3.1990

² See the verbatim record of proceedings for the sitting of Monday, 10 December 1990, p. 31

A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission for

- a Council regulation laying down particular provisions for the application of Articles 36 and 37a of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

The European Parliament,

- having regard to the Commission proposal to the Council (COM(89) 0436 final - SYN 222)¹,
 - having been consulted by the Council pursuant to Articles 57 and 235 of the EEC Treaty (C3-0147/89),
 - having regard to the revised draft Agreement initialled by the Commission¹,
 - having regard to the first report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on External Economic Relations and the Committee on Institutional Affairs (A3-0288/90),
 - having regard to the statement made by the Commission regarding the powers of the Joint Committee established pursuant to Article 37 of the draft Agreement²,
 - having regard to the second report of the Committee on Legal Affairs and Citizens' Rights (A3-0017/91),
1. Approves the Commission proposal in accordance with the vote thereon;
 2. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 53, 5.3.1990

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A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission for

- a Council directive on the implementation of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance,

The European Parliament,

- having regard to the Commission proposal to the Council (COM(89) 0436 final - SYN 221)¹,
 - having been consulted by the Council pursuant to Article 57(2) of the EEC Treaty (C3-0146/89),
 - having regard to the revised draft Agreement initialled by the Commission¹,
 - having regard to the first report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on External Economic Relations and the Committee on Institutional Affairs (A3-0288/90),
 - having regard to the statement made by the Commission regarding the powers of the Joint Committee established pursuant to Article 37 of the draft Agreement²,
 - having regard to the second report of the Committee on Legal Affairs and Citizens' Rights (A3-0017/91),
1. Approves the Commission proposal in accordance with the vote thereon;
 2. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 53, 5.3.1990

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DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission for

- a Council regulation laying down particular provisions for the application of Articles 36 and 37a of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance

The European Parliament,

- having regard to the Commission proposal to the Council (COM(89) 0436 final - SYN 222)¹,
 - having been consulted by the Council pursuant to Articles 57 and 235 of the EEC Treaty (C3-0147/89),
 - having regard to the revised draft Agreement initialled by the Commission¹,
 - having regard to the first report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on External Economic Relations and the Committee on Institutional Affairs (A3-0288/90),
 - having regard to the statement made by the Commission regarding the powers of the Joint Committee established pursuant to Article 37 of the draft Agreement²,
 - having regard to the second report of the Committee on Legal Affairs and Citizens' Rights (A3-0017/91),
1. Approves the Commission proposal in accordance with the vote thereon;
 2. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 53, 5.3.1990

² See the verbatim record of proceedings for the sitting of Monday, 10 December 1990, p. 31

B

EXPLANATORY STATEMENT

1. In the first report drawn up by Mr Rothley (A3-288/90), the Committee on Legal Affairs and Citizens' Rights had recommended to Parliament that it reject the Commission proposals for the conclusion of an Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance. One of the main reasons for this recommendation stemmed from the institutional uncertainties surrounding the operation and powers of the Joint Committee established by Article 37 of the Agreement (A3-288/90, p. 8).

2. In this connection, at the sitting of 10 December 1990 the Commission of the European Communities made a statement, through its Vice-President Sir Leon Brittan³, spelling out the scope of the Joint Committee's powers and stating that 'substantial revision of the Agreement ... would be proposed on the basis of Article 57(2) EEC and Article 235 EEC, in cooperation with the Parliament'. The full text of the statement is reproduced in the annex to this report.

3. In the light of this declaration, and on a proposal from its rapporteur, the Committee on Legal Affairs and Citizens' Rights took the view that its previous doubts had been resolved and decided, therefore, to recommend to Parliament that it approve all the Commission proposals.

³ Statement read in the House by Mr Ripa di Meana, Member of the Commission

O P I N I O N

of the Committee on Economic and Monetary Affairs and Industrial Policy

Letter from the Chairman of the committee to Mr von Stauffenberg, Chairman of the Committee on Legal Affairs and Citizens' Rights

Subject : The Commission proposals for :

- (a) a COUNCIL DECISION on the conclusion of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance (COM(89) 436 final - SYN 220)
- (b) a COUNCIL DIRECTIVE on the implementation of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance (COM(89) 436 final - SYN 221)
- (c) a COUNCIL REGULATION (EEC) laying down particular provisions for the application of Articles 36 and 37a of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance (COM(89) 436 final - SYN 222)

Dear Mr von Stauffenberg,

The committee considered the above Commission proposals at its meeting of 31 January 1990.

The Agreement allows insurance undertakings with their head office in the territory of one contracting party to set up agencies and branches in the other. Under the Agreement, such agencies and branches will no longer need to hold a separate solvency margin, thus releasing considerable amounts of capital and facilitating more favourable premiums. The Agreement does not apply to the cross-frontier provision of services.

Article 29 of Directive 73/239/EEC of 24 July 1973 - the first Directive on establishment for indemnity insurance - empowers the Community to conclude agreements with third countries. The committee responsible should therefore consider whether Article 29 of the first Directive on establishment, read in conjunction with Article 57 of the EEC Treaty, can be invoked as the legal basis for the Agreement. The reference to Article 235 of the EEC Treaty would then be unnecessary, since existing Community law would give the Community the powers required for the Agreement.

With regard to substance, the Committee on Economic and Monetary Affairs and Industrial Policy welcomes the Agreement negotiated by the Commission, since it represents a first step towards the realization of a single European economic area and the creation of a formal partnership with individual member countries of the European Free Trade Association (EFTA).

Yours sincerely,

(sgd) BEUMER

The following took part in the vote: Beumer, Chairman; Bernard-Reymond, Cassidy, de Donnea, Ernst de la Graete, Herman, Martinez (for Megret), Porto (for Visentini), Read, Riskaer Pedersen, Rogalla, Siso Cruellas, Stevens and van der Waal (for Lataillade).

OPINION

of the Committee on External Economic Relations

Letter from the Chairman of the committee to Graf Stauffenberg, Chairman of the Committee on Legal Affairs and Citizens' Rights

Brussels, 21 February 1990

Subject: Proposal for a Council decision on the conclusion of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance (COM(89) 436 final - SYN 220 - C3-145/89)

Dear Mr Stauffenberg,

At its meeting of 21-22 February 1990, the Committee on External Economic Relations considered the proposal for a Council decision on the conclusion of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance, on which it was asked for its opinion on 23 September 1989.

The first non-life insurance establishment Directive⁴ lays down minimum conditions which must be met when an insurance undertaking having its head office in a third country wishes to establish a branch or agency in the Community. Member States remain free to impose additional requirements.

Article 29 of the Directive, however, gives the Community the possibility to negotiate treatment on the basis of reciprocity and on condition that insured parties in the Community are adequately protected.

After a very long period of preparatory work - lasting almost 16 years - the Commission, assisted by an ad hoc committee of the Member States, held two formal negotiating sessions with the Swiss authorities on 15 and 16 February and 9 and 10 March 1989 leading to the present agreement, which was initialled by the negotiators from the Commission and Switzerland on 26 July 1989.

The legal basis selected - Articles 57 and 235 - which requires consultation of the EP appears perfectly adequate.

With regard to the substance, the draft Agreement allows insurance undertakings with their head office in one Contracting Party to set up agencies or branches in the other on a harmonized and non-discretionary basis. The draft agreement relates only to freedom of establishment and is not concerned with the cross-frontier provision of services.

In fact, given that the insurance industry of each Contracting Party is already represented on the market of the other (albeit under chaotic conditions) the Agreement is not expected to have a major economic impact in terms of increased competition.

⁴ Directive 73/239/EEC, 24 July 1973, OJ No. L 228, 16.8.1973, p. 3

On the other hand, this will be the Community's first international agreement in the services field and will be of particular relevance to the Community's relations with the EFTA countries, indicating the Community's determination to create a more structured relationship with EFTA.

The Committee on External Economic Relations, which attaches great importance to relationships of this nature, can only welcome the conclusion of this agreement, which should herald a considerable increase in European cohesion with a view to the establishment of the large European economic area.

At its meeting of 20-21 February 1990, the Committee on External Economic Relations therefore decided unanimously to deliver a favourable opinion.

Yours sincerely,

Willy DE CLERCQ

The following took part in the vote:

De Clercq, chairman; Cano Pinto, vice-chairman; Moorhouse, vice-chairman; Hindley, Marck (for Lemmer), Moretti, Peijs, Porto, Randzio-Plath, Sonneveld (for Gallenzi), Titley and de Vries.

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Institutional Affairs

Draftsman: Mrs Adelaide AGILETTA

At its meeting of 22 and 23 May 1990, the Committee on Institutional Affairs appointed Mrs Aglietta draftsman.

At its meeting of 26 and 27 September 1990 it considered the proposed agreement and the draft opinion.

At the latter meeting it adopted the draft opinion unanimously.

The following were present at the vote: Oreja, chairman; Prag, vice-chairman; Aglietta, draftsman; Bandrés Molet, Bieroco, Colombo, Giscard d'Estaing, Musso, Penders, Raffarin, Tomlinson and Valverde.

From an institutional point of view the Agreement between the European Community and the Swiss Confederation on direct insurance other than life insurance is controversial in three respects, which may prove to be unacceptable.

(a) The Agreement is based on Articles 57 and 235 of the EEC Treaty, which means that it must be approved through cooperation procedure, at the end of which, however, the Council takes a unanimous decision. There are two major disadvantages to this:

- cooperation procedure per se is an unsuitable means of approving international agreements; it cannot give rise to any 'compromise' between Parliament and Council and, at this stage of the procedure for signing the Agreement, Parliament may only accept it or reject it: if, at second reading, Parliament were to reject the Agreement by an absolute majority, the Council could only approve it unanimously;
- the latter aspect of the procedure is in any case nullified by the reference to Article 235 which provides for the Council to act unanimously.

The procedure which has been established therefore rules out any real power being exercised by Parliament and, furthermore, is totally inappropriate, given the subject-matter of the decision in question.

Moreover, Article 57 is a sufficient legal basis - in the light of the decisions of the Court of Justice - for signing this agreement. The 'Vademecum' drawn up by the Commission stressed the need to ensure that the establishment of a dual legal basis - except where this is expressly ruled out by the Treaty - does not lead to procedural confusion.

The reference to Article 235 should therefore be deleted.

On the other hand, this will be the Community's first international agreement in the services field and will be of particular relevance to the Community's relations with the EFTA countries, indicating the Community's determination to create a more structured relationship with EFTA.

The Committee on External Economic Relations, which attaches great importance to relationships of this nature, can only welcome the conclusion of this agreement, which should herald a considerable increase in European cohesion with a view to the establishment of the large European economic area.

At its meeting of 20-21 February 1990, the Committee on External Economic Relations therefore decided unanimously to deliver a favourable opinion.

Yours sincerely,

Willy DE CLERCQ

The following took part in the vote:

De Clercq, chairman; Cano Pinto, vice-chairman; Moorhouse, vice-chairman; Hindley, Marck (for Lemmer), Moretti, Peijs, Porto, Randzio-Plath, Sonneveld (for Gallenzi), Titley and de Vries.

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The following were present at the vote: Oreja, chairman; Prag, vice-chairman; Aglietta, draftsman; Bandrés Molet, Bieroco, Colombo, Giscard d'Estaing, Musso, Penders, Raffarin, Tomlinson and Valverde.

From an institutional point of view the Agreement between the European Community and the Swiss Confederation on direct insurance other than life insurance is controversial in three respects, which may prove to be unacceptable.

(a) The Agreement is based on Articles 57 and 235 of the EEC Treaty, which means that it must be approved through cooperation procedure, at the end of which, however, the Council takes a unanimous decision. There are two major disadvantages to this:

- cooperation procedure per se is an unsuitable means of approving international agreements; it cannot give rise to any 'compromise' between Parliament and Council and, at this stage of the procedure for signing the Agreement, Parliament may only accept it or reject it: if, at second reading, Parliament were to reject the Agreement by an absolute majority, the Council could only approve it unanimously;
- the latter aspect of the procedure is in any case nullified by the reference to Article 235 which provides for the Council to act unanimously.

The procedure which has been established therefore rules out any real power being exercised by Parliament and, furthermore, is totally inappropriate, given the subject-matter of the decision in question.

Moreover, Article 57 is a sufficient legal basis - in the light of the decisions of the Court of Justice - for signing this agreement. The 'Vademecum' drawn up by the Commission stressed the need to ensure that the establishment of a dual legal basis - except where this is expressly ruled out by the Treaty - does not lead to procedural confusion.

The reference to Article 235 should therefore be deleted.

(b) Article 39 of the Agreement confers considerable powers on the Joint Committee, which is responsible for monitoring the implementation of the Agreement. In particular, this article empowers the Joint Committee to take action and adjust the provisions of the Agreement if one of the two parties should amend its domestic legislation. While it is true that the Agreement provides that, in accordance with the two parties' respective regulations, certain decisions should be submitted to the competent bodies for ratification, nevertheless:

- the decisions of the Joint Committee may enter into force provisionally before ratification;
- under cooperation procedure to ratify such decisions, the European Parliament is reduced merely to accepting or rejecting regulations which might require in-depth consideration; furthermore, the situation is exacerbated by the fact that these decisions could call into question the substance of laws already adopted.

(c) The implementing regulation on the setting up of the Joint Committee stipulates that the Community's position in this Committee shall be determined by the Council. The situation is thus made extremely serious, as this procedure has the effect of:

- unduly strengthening the legislative power of the Council beyond what is stipulated in the Treaties,
- quite simply excluding Parliament from procedures whose conclusions it will be obliged to accept or reject, even though the EEC Treaty provides for quite different powers.

All this is exacerbated by the fact that there is mistrust between the executive (in this case the Council, with help from the Commission) and legislative bodies.

The problems mentioned in (a) could be solved in the first instance by deleting the reference to Article 235, which is starting to be abused in order to 'water down' cooperation procedure, and then by implementing the amendments to the Treaty called for by Parliament.

The problems mentioned in (b) and (c), however, require specific solutions, otherwise Parliament will be forced to reject the Agreement. One solution might be to amend the rules of procedure relating to the Joint Committee, by stipulating that the Community's position in respect of legislative matters shall be determined by the Council in cooperation with Parliament; in respect of non-legislative matters, the Community's position should be determined by the Commission.

Conclusions

The Committee on Institutional Affairs:

(a) confirms that the system of signing external agreements with the Community is inconsistent from an institutional point of view, in that it provides for inappropriate procedures or makes it possible to restrict those powers which Parliament actually has; this is often exacerbated by

the unjustified use of Article 235 of the EEC Treaty or other articles which provide for the Council to act unanimously; in the case in question, the reference to Article 235 should be deleted;

- (b) confirms the need to reform this system on the basis of the documents adopted or in the process of being drawn up by the European Parliament, in particular the report on parliamentary assent by the draftsman of this opinion;
- (c) calls for the rules of procedure relating to the Joint Committee to be amended - otherwise there is a risk that Parliament will decide to reject the agreement - in such a way as to ensure that, as regards legislative matters, the European Community and the Council decide through cooperation procedure the position to be adopted by the Community within the Joint Committee; in the case of non-legislative matters, this decision should be taken by the Commission.

EEC-SWITZERLAND AGREEMENT CONCERNING DIRECT INSURANCE
OTHER THAN LIFE ASSURANCE

COMMISSION STATEMENT ON THE POWERS OF THE JOINT COMMITTEE

The European Parliament has expressed doubts regarding the powers of the Joint Committee established by Article 37 of the Agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance. It has been suggested that decisions taken in this Committee could have far-reaching implications and that provision should therefore be made for greater parliamentary supervision.

The Commission wishes to make the following statement to be included in the Minutes of the sitting:

- '(a) Amendments to the annexes, protocols and exchanges of letters as foreseen in Article 43 of the EEC/Swiss non-life insurance agreement would be purely technical and administrative in nature;
- (b) substantial revision of the agreement as foreseen in Articles 41 and 42 would be proposed on the basis of Article 57(2) EEC and Article 235 EEC, in cooperation with the Parliament;
- (c) the powers of the joint committee under Article 39 involve the incorporation into the agreement of developments in the *acquis communautaire* which have taken place through normal Community decision-making procedures with full parliamentary cooperation.'

