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SPEECH BY CHRISTOPHER TUGENDHAT, Member of the EEC Commission before the Economic and Monetary Committee OF EUROPEAN PARLIAMENT - 23 JUNE 1977

Freedom of services Directive - Non-life insurance

Mr. President,

Let me say first of all that I am glad it has at last proved possible for me to respond to your invitation to appear before this Committee and speak about the directive the Commission forwarded to the Council in 1975 on non-life insurance services. Insurance is an essential industry in the Community and handles the savings, often the life-time savings, of the citizen to an overriding extent while at the same time providing a socially desirable security in the face of the accidents and vicissitudes of life. It plays for these reasons a key role in the development both of economic integration and of the capital market.

I believe that the main purpose of your Committee in inviting me to attend to-day was to hear whether the new Commission had in any way changed its mind about the purpose or shape of this admittedly controversial proposal. Well - I can tell you now that the Commission has not changed its mind in any way. On the contrary - you will have noticed, I am sure, the feeling of disillusion that is becoming evident with the slow progress in the creation of a true Common Market for insurance.

/This is a Community interest

This is a Community interest, because Europe needs to maintain and build up further its international position in the insurance world. This was well understood by my distinguished predecessor M. SIMONET, on whose authority this proposal was drafted. As far as the European market is concerned, we are more than ever convinced that both the users of insurance and those who offer it are right to demand more rapid liberalisation of insurance services : we in the Commission share their impatience.

Secondly, we are more than ever convinced that the proposal we have made is a rational and balanced beginning to the necessarily long process of coordination in this field, and represents a suitably careful choice of method. In our view the proposal exposes no-one to greater danger or risk who is not fully able to carry it and leaves the individual completely protected as at present.

However - before we discuss these aspects - I think it might be helpful if we were to look first at the main features of the directive.

<u>What does freedom to provide services mean in the insurance field</u> ?

One of the essential facets of a perfect market is that a commercial undertaking should be able to operate in that part of the market where economic conditions are most

/suitable for

suitable for its activities. And the essential feature of the Common Market, as defined in the Treaty establishing the EEC is that an undertaking should be able to pursue its business throughout the market unhindered by national frontiers. It is with this objective in view that the EEC Treaty provides for the exercise of freedom to provide services, allowing service undertakings - and so insurance companies - with their head office in one Member State to operate in all other Member States of the Community without needing to be established in each of them. It is the last part of this phrase that is the most important one.

Then, of course, this principle has been reaffirmed by the decisions of the Court in Luxembourg from the 'van Binsbergen' case on. However, although the Treaty and the Court have opened the gate - as it were - to freedom of services for insurance there is still the very real problem cross-border insurers have to overcome of a host of varied and complex national controls and regulations. In practice these regulatory differences effectively prevent freedom of services from operating, even if theoretically it exists. And it is not only insurers who are thus prevented from doing good business - firms and ordinary people are prevented from having access to the full range of potential insurers.

/Let me give

Let me give a couple of perfectly realistic illustrations:

A German in Munich, who owns a house in Terracina, Italy, and who wishes to have it insured without wasting his holidays shopping around for an Italian insurer, might ring up his Munich broker, asking him to find an Italian insurer willing to underwrite a policy for the house. He would probably meet with difficulties, because under German legislation, his broker would not be allowed to arrange insurance contracts with foreign insurers. If he asked his German insurer to give him a policy for his house, he would still have trouble because this time it would be the Italian law which would prohibit such a contract. In Italy, he would eventually have to pay - as a fine - double the premium he had paid to the German insurer, and - in order to comply with the Italian legislation - take out another policy with an Italian insurer.

On the commercial level, the problems are even more serious:

The owner of a Company X in Germany finds out that his competitors in the United Kingdom are able to get cheaper fire insurance in Great Britain than he does in Germany. The price difference is such that Company X would prefer to take out a policy under British conditions even if it

/contained the provision

contained the provision that British law should be applicable to the contract. At present, however, the company is restricted to the German market for its fire insurance, and so does not have the option.

Situations like these are by no means uncommon, especially since some insurance markets are somewhat falsified by various kinds of restrictive practices. It is intolerable that nearly 20 years after the signing of the Treaty of Rome, competition should not be allowed to operate freely in the interest of both insurer and insured, without it being necessary to insulate national markets by insisting on establishment.

Every bit as important as the disadvantage to insurers is the detriment suffered by the insured. Policy conditions differ from country to country:why should a firm not be able to get the most advantageous policy conditions available in the Community? In some countries certain risks cannot be insured at all: why, in such cases, should not access to the insurers of other countries, where the risk is written, be automatically permitted without proof of need? When a business has branches in several countries of the Community, why should it not be able to insure all its branches with its usual insurer in its head-office country?

/These illustrations

These illustrations and questions are just examples of the need for freedom of services in insurance. There are plenty of other cases and reasons, of course, but I will not try now to provide an exhaustive catalogue. Let us instead take a look at some of the main difficulties in creating the freedom we need.

Problems.

First there is the question of which law should apply to a contract when insured and insurer are not in the same country. Some theorists prefer the law of the country where the risk is situated, others believe it should be the law of the country where the insurer is established. In practice, of course, this is not likely to be the most important consideration in the choice of insurance, but the Commission has put forward what seems to us a workable compromise. As far as relations between the insurer and the supervisory authority are concerned, these we think should be governed by the law of the country in which the insurance is offered: this would ensure equality of competition on any particular market-place. On the other hand, we think that the contract between the insurer and his customer could be under whichever law the parties choose, but on the condition that the dispositions each country considers essential in its own law should continue to apply

/to any contracts

to any contracts concluded by its citizens. We think this compromise strikes a fair balance between our preference for free choice and the need for competitive justice, but our minds are not closed on this subject and we shall be interested in your views in this committee.

The second question which has arisen on this directive is the subject of consumer protection. Now I must assure you that the Commission is fully aware of its responsibilities towards consumers and the need to ensure protection especially for the savings of the public - indeed this is a subject given high priority in all our policy planning. And we have therefore sought to reconcile the essential freedom to provide services with the need to maintain and strengthen protection for those who need it. There are five ways in which this reconciliation is achieved in the directive;

First, by making a distinction between small takers of insurance and large insureds. The ordinary individual, the private person, is only affected by the directive to a limited extent: he remains protected by the most important provisions of his national law against any surprises a foreign law could provide for him.

But businesses - shipowners, airlines, multinational companies, and also many others of more moderate size, do

/not need

not need the same national protection. They have international experience, lawyers, specialists or other ways of knowing what they are doing. For them national legislative protection is actually a meaningless and perhaps expensive hindrance. So they, we propose, should be free to treat with insurers anywhere in the Community, wherever they can get the best deal and the soundest cover. Of course, there is the problem of drawing the dividing line between large and small. We have had a shot at it in Article 6, but on this again our minds are open to any alternative ideas for drawing the line. Indeed we also provide for reviewing the dividing line in the light of experience.

Secondly, protection of policy-holders is maintained in our directive by the section on mandatory provisions (Art. 5). The directive says that even in cases where the law to govern the contract chosen by the parties is not that of the policy-holder's own country, certain dispositions of his own country's law shall nevertheless apply. These dispositions are those regarded in that country as fundamental guarantees for the policy-holder and therefore mandatory; they include the obligation to disclose material facts, payment of premiums, or the circumstances in which the policy can be annulled - all the most important elements in the life of an insurance contract.

/The third protection

The third protection which is maintained in the directive concerns compulsory insurances. By making certain insurances compulsory national legislators have recognized certain special needs for protection. Our Article 9, leaves each State's compulsory insurance laws in full application.

A fourth important protection in the directive concerns information. It is obvious that the settlement of a claim on a foreign insurer may present more difficulty than a national settlement. We therefore provide, in Article 11, that the policy-holder must have his attention drawn to this aspect of the deal before the contract is concluded: he thus has the chance to weigh lower premiums or more convenient conditions against possible difficulties in execution.

> Incidentally, I might just add that further important protections are included in the draft directive we are preparing on insurance contracts,

Fifthly, the protection of third parties to insurance contracts is also treated in our directive. Third parties are, for example, the mortgagee in the case of a fire policy or the victim in a civil liability case. In civil liability there could be a problem, for instance between France and the United Kingdom.

/In France the victim

In France the victim can sue directly the policy-holder's insurer, whereas in Britain he has to sue the policy-holder. If therefore a French policy-holder insures with a British insurer, would the French third party lose his right to sue the insurer directly ?

This point is covered in the directive in the following way:

a) Most cases of this kind arise in the area of compulsory insurance. Where this is so, the directive stipulates that the contract has to be treated as if it were concluded in the policy-holder's country - so his full domestic protection would apply.

b) The same is true for non-compulsory insurances whenever the policy-holder is not a big business.

c) Any other cases would have to be dependent on the general juridical principle that no contract may prejudice a third party - that means, as I see it, that even if the parties were to choose the law of the insurer the third party's rights could not be infringed.

/Mr. President, I think

Mr. President, I think I have spoken for long enough but this is probably the only opportunity I shall have to introduce this directive to your committee and I wanted to explain just why I consider it so important.

In my view, both insurers and policy-holders have the right to enjoy the whole market of the Community - this is a right accorded by the Treaty and yet it is still not a reality after nearly twenty years of the Community's existence. We have tried to present a proposal which safeguards the protection of all those takers of insurance who need legislative protection while opening the doors to freer offering of services for those who do not need it so fully. I believe the directive should be adopted rapidly and would therefore ask you to consider it in detail with despatch. For this detailed examination you will have the assistance, of course, of the specialists from our Insurance Division who will be prepared to give you all the help they can. Your efforts to complete your consideration quickly will, I know, meet with the approval not only of many takers and providers of insurance, but will also be noted as a constructive response to the urgency felt by the Commission and the Council in these matters.