Economic and Social Committee
of the European Communities

OBSERVATORY

Consumers in the insurance market

SINGLE MARKET

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FOREWORD

The Single Market Observatory of the Economic and Social Committee has as its single most important task to find out how Single Market is working on the ground. The Insurance Market is one field in which it has been apparent for some time that problems persist, so on 18th March 1997, the Economic and Social Committee called on its Single Market Observatory to prepare a report on "*The Consumers in the Insurance Market*". The aim was to concentrate on the consumers' interest in this field, in part because some Member States have seen some well-publicised instances of sharp practices. More especially, the opening of the market to insurance services is imperfect in practice and is also exposed to a difficult learning curve in respect of defence by the joint regulatory authorities and other means of consumer interests.

In June and July some 200 questionnaires were sent out to insurance companies and associations working in this field, in Portugal and the UK. The resulting replies of these questionnaires were then analyzed. This analysis formed the basis for two hearings: one in Lisbon, on 27 June 1997 and the second in London, on 2 September 1997.

The result of this work has been brought together in this publication, the first part of which is the Opinion adopted with 77 votes in favour, no votes against and 3 abstentions by the Economic and Social Committee on 29 January 1998.

Tom JENKINS
Chairman
of the Economic and Social Committee

I.
Own-initiative opinion of the Economic and Social Committee
(CES 116/98)

On 18 March 1997 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on:

Consumers in the insurance market
(Own-initiative opinion - Single Market Observatory).

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 January 1998. The rapporteur was **Mr Ataíde Ferreira.**

At its 351st plenary session (meeting of 29 January 1998), the Economic and Social Committee adopted the following opinion by 77 votes in favour and three abstentions.

1. Introduction: scope of the opinion

1.1 The importance of insurance in general economic activity in the single market is well recognized; it accounts for a substantial proportion of the volume of trade in financial services and a very high percentage of employment in the sector.

1.2 Furthermore, in today's world where technological progress entails an inevitable increase in risks and changes in the concept of fault for the definition of third party liability, the insurance industry is playing an increasingly important role in society.

Moreover, in the insurance sector the introduction of the euro is inevitably leading to new developments, marked in particular by greater transparency and easier subscription of cross-border contracts.

1.3 The demographic explosion associated with an ageing population, combined with the need for security which goes hand in hand with the inherently vulnerable nature of human existence, serves to intensify growing concern about the future. From this viewpoint, insurance constitutes an undeniable instrument for redistributing and spreading risks across society; it is moreover a consequence of freer competition and the growing role of private initiative in the economy.

1.4 There are many different types of insurance which are of special interest to consumers, either as policyholders or insured parties, or as third parties potentially entitled to compensation in the event of a claim (third party/beneficiary or third party/victim). Prominent within these two categories are health and life insurance, insurance for personal accident, comprehensive household insurance, car insurance, legal protection insurance and third party liability insurance[1].

1.5 Under the plan to build the single market, the thrust of Community legislation has been to grant more and more freedom of establishment to insurance companies, with their legal regulation being based on the supervision of solvency, accounting harmonization, and the principles of home-country control, mutual recognition, minimum harmonization and the "passive" freedom to provide services.

1.6 On the other hand, harmonization of substantive insurance law (principally the standardization of policies' general conditions) and policyholders' freedom of choice (the "active" freedom of provision of services) has not received the same attention.

1.7 Even after the third generation directives[2] and the introduction of the "single authorization" system abolishing prior approval of policies' general conditions by Member States' supervisory bodies, consumers are not therefore guaranteed non-discriminatory access to insurance in Member States other than the one in which they reside or of which they are nationals. Nor has there been any harmonization of policies' standard conditions or of insurers' practices in order to guarantee clear information, extensive choice and the creation of a genuine single market in this field, as pointed out in a number of Commission and Committee documents[3].

1.8 A key aspect here is the diversity of tax systems, which has exercised decisive influence in splitting up the single market along national lines and in distorting competition between insurance companies, as explicitly recognized and highlighted in the Action Plan for the Single Market recently presented by the Commission[4].

1.9 On the other hand, as explained in detail below, studies have revealed that insurance companies engage a whole host of practices which, it is claimed, are frequently the result of technical requirements imposed by international reinsurance companies; these run counter to consumers' interests and legitimate expectations and in some cases may even infringe legal provisions, particularly in the area of unfair terms in contracts.

1.9.1. It should however be noted that insurance companies also implement agreements which are advantageous to consumers: e.g. to facilitate rapid settlement of claims or to guarantee collective risks beyond the capacity of an individual insurer (e.g. insurance pool to cover natural disaster or nuclear risks).

Furthermore, it should not be overlooked that many insurance companies are mutual or cooperative societies. These companies have helped devise new insurance formulae and they should continue in future to play a major role in promoting both consumer interests and a dialogue with policyholders.

1.9.2 The Commission's DG XXIV has recorded more than 240 rulings by courts and other competent bodies for the 1976-1996 period condemning unlawful contractual practices by insurance companies in ten Member States which were detrimental to consumers' interests.

1.10 The explicit exclusion of insurance contracts covering risks situated within the territory of European Union Member States from the scope of the Rome Convention on the law applying to contractual obligations, together with the ambiguous wording of the rules governing conflicts and the protection of "the public interest" set out in the Community's second and third directives on non-life insurance[5], makes the provision of these services within the internal market an extremely complex and hazy affair, especially in the event of a dispute between insurers and insured parties or insurance beneficiaries. This is particularly so where the latter are private non-professional consumers, who have no basic information, no specialist technical knowledge and no specific legal support.

1.11 This own-initiative opinion takes up an earlier concern of the ESC, voiced in several documents, to consider the right conditions and propose and recommend appropriate measures for the shaping of the single market so as to achieve the early, effective removal of the main distortions of competition and increase consumer confidence in the reliability and quality of goods and services[6].

1.12 Referring more particularly to the financial services sector and specifically to insurance, the ESC - in line with its stance on the Commission's Green Paper on financial services: meeting consumers' expectations[7] - emphasizes the need to identify consumers' main concerns (the right to information, to legal protection and to access to legal remedy), along with the necessary means of guaranteeing a suitable response to such needs and concerns in keeping with its earlier recommendations[8].

At the same time, the Committee remains attentive to the insurance industry's complaints about frequent attempts at fraud by policyholders, either by making false declarations when taking out policies, or making inflated claims for loss or damage.

1.13 This opinion also aims to encourage dialogue between consumers and insurance companies in order to reconcile their positions and establish conciliation, mediation and arbitration procedures to deal with any disputes, in keeping with the Communication from the Commission on the follow-up to the Green Paper on financial services: meeting consumers' expectations[9].

The Committee therefore welcomes and supports the Commission's recent initiative in launching a dialogue between representatives of consumers and financial services, with the specific aim of reaching voluntary agreements on transparency, consumer information and resolution of disputes.

1.14 The Committee seeks, against the backdrop of the dialogue mentioned above, to urge insurance companies to take the initiative in drawing up codes of conduct and appointing ombudsmen, thus lending greater transparency to their activities and boosting consumer confidence in the services they provide.

2. Outline of the Community directives

2.1 Existing legislation

2.1.1 The basic principles of the single insurance market are laid out in the Treaty of Rome: freedom of establishment (Article 52) and freedom to provide services (Article 59). It has, however, to be recognized that neither the 1985 White Paper on completion of the internal market, nor the Single Act of 1986, nor, more recently, the Maastricht Treaty has succeeded in enabling economic operators or consumers to draw the full benefits and advantages they might justifiably expect.

2.1.2 Nevertheless, there are now some thirty Community instruments which attempt to regulate the insurance sector. They may be grouped as follows:

a) **general Directives**, laying down the basic principles of access to and exercise of the two main branches of the insurance business, namely life and non-life;

b) **two competition Regulations** concerning insurance;

c) **specific Directives** regulating, in particular, certain branches such as vehicle insurance, tourist assistance, credit and guarantees and legal protection, or certain activities such as co-insurance, reinsurance and retrosurance;

d) **Directives on accounting rules** specific to insurance companies;

e) **one Directive and one Recommendation** specifically regulating the insurance broking business;

f) a **Directive** setting up an **Insurance Committee** to provide coordination and technical support for the Commission in its dealings with national control and supervisory authorities.

2.1.3 In addition to establishing the basic principle of a specialized life insurance branch and harmonizing a number of fundamental financial rules (mathematical provisions, solvency margins, minimum guarantee funds), the first generation directives for the life and non-life branches regulated **freedom of establishment**, abolishing any form of discrimination on the basis of nationality while retaining twin control by the home state and the host state.

2.1.4 Nine years later, in the wake of the White Paper and the Single European Act and, more specifically, in response to four major Court of Justice judgments of 4 December 1986[10], the second generation directives attempted to take the some initial steps towards the **freedom to provide services (FPS)**, although still with major limitations arising, in particular, from the following:

a) the distinction, in non-life insurance, between "major risks" or insurance for companies, and "small risks" or insurance for private consumers, with the FPS principle applying only to the former;

b) the distinction, in life insurance, between active FPS (at the insurer's initiative) and passive FPS (at the insured party's initiative), with the FPS

principle applying only in the second case.

In other words, for small risks and active FPS, the freedom to provide services remained conditional upon official authorization from the country in which the risk was situated, while certain other types of insurance - such as vehicle insurance - were entirely excluded .

2.1.5 The guiding principles of the third generation directives were - as subsequently in other financial services sectors - the following:

a) **the introduction of a single authorization system** ("European passport"), enabling any insurer based and authorized in any of the 17 Member States of the European Economic Area, to offer its services throughout Europe either through agencies, subsidiaries or branches, or directly under FPS, on the basis of such authorization and in accordance with the technical rules and home country financial control, for any type of life or non-life insurance;

b) **mutual recognition** of the authorization and control systems of each Member State by all the others;

c) **abolition of prior approval of contract conditions for policies and premiums**, replaced by solvency checks and accounting rules for insurance companies.

2.1.6 The third generation directives, with **consumer protection** as their basic aim, have established a number of important rules concerning:

a) **compulsory minimum contractual information**, limited in the case of non-life insurance, but broader in the case of life insurance;

b) **determination of the law applicable** to insurance contracts, varying in accordance with the type of insurance, the size of the risk or the location of the insured party or object;

c) concept of **general good**, as an exception providing grounds for binding national regulations derogating from the principles of freedom of establishment and freedom to provide services.

2.1.7 An aspect meriting particular emphasis in Community rules is **competition**, it being the explicit aim of Articles 85 and 86 of the Treaty of Rome that agreements between economic operators which distort competition or lead to abuse of a dominant position should be prohibited.

However, given the specific nature of the insurance sector, the Commission decided in two regulations of May 1991 and December 1992 to allow - with some flexibility - certain types of cooperation agreements or concerted practices between insurance companies. These applied to the following areas :

a) joint fixing of risk premiums;

b) determination of standard conditions;

c) joint cover of certain types of risks in the form of co-insurance or re-insurance;

d) testing and acceptance of security devices.

Article 7 and the second indent of Article 17 of the 1992 regulation, however, impose major restrictions on such agreements, either in relation to the specific content of certain general contractual clauses or concerning any creation "to the detriment of the policyholder, [of] a significant imbalance between the rights and obligations arising from the contract".

2.1.8 Despite its key importance to the operation of the insurance sector on the internal market, **insurance broking** is covered by only a single directive from 1976, which did not regulate aspects such as professional liability, financial guarantees, registers and other business conditions. These still come under national legislation. A 1991 recommendation on these aspects was not followed by the Member States, due to a clear lack of political will.

2.1.9 A number of important draft directives were submitted by the Commission over the years but failed, at the time, to secure the necessary agreement and political backing for adoption as legislation.

These were:

a) the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts[11], which sets out essentially to harmonize a number of **basic rules of direct insurance contract law**;

b) the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions relating to the **compulsory winding up of direct insurance undertakings**[12];

c) the amended proposal for a Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision[13].

It would not appear that the Commission intends to return to any of these topics in the near future, even though it is the prevailing opinion among both insurance operators and consumer organizations that a whole series of obstacles hampering completion of the single market in this field can be traced back to the absence of Community legislation on insurance contracts (a minimum level of harmonization of substantive law).

2.1.10 At the same time, there are no plans for any Community legislation whatsoever on major parts of the insurance business as it affects both economic operators and consumers. **The non-harmonization of tax arrangements** for insurance, for example, directly influences the terms of competition conditions in the internal market. Not only are there variations in national tax levels and bases (including those for parafiscal charges), and in the exemptions and administrative requirements of national authorities, but also the tax exemptions and benefits applied to insured parties differ territorially. In both areas clear disparities are apparent between the different Member States[14].

2.2 Future law

2.2.1 It is reported that the Commission is preparing a number of initiatives,

some of a general or specific legislative nature, others "interpretative", in order to deal with some of the difficulties mentioned. These are highly relevant to the present Opinion.

On a general level, a proposal for a European Parliament and Council Directive on the **supplementary supervision of insurance undertakings in an insurance group** has already appeared, being presented by the Commission on 20 October 1995[15].

In the specific area of credit insurance, a proposal for a Council Directive on **harmonization of the main provisions concerning export credit insurance for transactions with medium- and long-term cover**[16] has recently been under discussion at the Commission (4 June 1997); at the same time, a draft Communication from the Commission to the Member States on distortions to competition caused by **short-term export credit insurance** has been distributed.

2.2.2 More generally - but of the greatest relevance to the insurance sector - a proposal for a Directive has been announced aimed directly at **protecting consumers in distance financial services contracts**. This is a matter which is known to have been excluded from the scope of Directive 97/7/EC of 17 February 1997. It is important that whatever is adopted with regard to distance selling does not frustrate the development of the single market for insurance services.

2.2.3 Elsewhere, the anxiously-awaited Directive 97/5/EC of 27 January 1997 replacing Recommendation 90/109/EEC on the transparency of banking conditions relating to cross-border financial transactions was finally adopted, with the aim of regulating important aspects such as minimum transparency requirements and the rights and obligations of the parties with respect to certain distance contracts[17]. More recently still a communication from the Commission of 9 July 1997 on boosting customers' confidence in electronic means of payment within the single market included a new recommendation, supplementing and superseding the recommendation of November 1988 on the same subject. In particular it covers the relationship between issuers and holders and sets out detailed transparency requirements, as well as defining the rights and responsibilities of each party and calling for new means of redress[18]. The Commission has announced that it will be closely monitoring progress in this area up to the end of 1998 and that, if it judges the results unsatisfactory, it may propose a Directive.

2.2.4 The possible publication of the promised draft Directive on insurance brokers is also, naturally, awaited with interest, as this is an essential element in the proper functioning of the internal insurance market.

2.2.5 On 15 October 1997, the Commission proposed a **fourth specific Directive on vehicle insurance**, for the purpose of giving the victims of traffic accidents outside their own countries the right to take direct action with respect to the insurer of the opposing party which caused the physical or material loss while using a vehicle registered and

insured in a Member State other than that of the victim's residence.

In order to significantly reduce the time victims have to await compensation, the draft Directive stipulates that the opposing party's insurer must submit a proposal for compensation within three months of the date on which the victim lodges a claim for compensation with the appropriate representative.

2.2.6 The Commission has also announced that a communication interpreting the concept of the **general good** as applied to insurance, similar to its recent work in connection with the banking sector[19], is at an advanced stage of preparation.

The draft Communication was published on 10 October 1997 (SEC(97) 1824 final), and represents an important step towards clarifying the scope, range and meaning of a number of basic concepts in this sphere, particularly regarding the freedom to provide services and the general good.

Given that the Commission, rather than immediately issuing a final document, has very wisely decided to open the subject to public debate in order to hear the views of the various sectors, and that the Committee will draw up an Opinion on the document in due course, it suffices at this point to highlight the importance, necessity and timeliness of the document and point out that the concerns it voices are in keeping with those contained in the present Opinion.

2.2.7 Lastly, a carefully-prepared Commission report to the Insurance Committee points to the Commission's current concerns regarding the need for better harmonization of insurance companies' solvency margins[20] - the importance of which for effective consumer protection hardly needs underlining.

2.3 **Main difficulties and obstacles in the effective implementation of the single insurance market**

2.3.1 There are a number of **recognized general obstacles** of various types. Some of the main ones are set out below, though the list is by no means exhaustive:

2.3.1.1 **Legislative obstacles at Community level**

2.3.1.1.1 The first of these is, of course, the **total lack of harmonization at the level of substantive law**, in other words, a minimum level of regulation on insurance contract law in the European Union.

2.3.1.1.2 This **lack of legislative focus** at Community level and the way in which Directives are successively amended and partially revoked, make legislation difficult to understand and implement. Consolidation is necessary[21].

The result is that the three generations of Directives complement, parallel and supersede each other, generating major difficulties for both market operators and consumers. Consolidation of insurance law in the form of a coherent code could contribute to a more even application of Community law.

2.3.1.1.3 The absence of minimum harmonization in **insurance distribution** and of real freedom for insurance bro-

kers to provide services - insofar as there is no single licence system for distribution - explains why insurance intermediaries face artificial barriers when operating on the Community market.

2.3.1.2 **Difficulties in interpretation**

2.3.1.2.1 The first difficulty naturally concerns the **precise distinction between freedom of establishment and freedom to provide services**, and the concepts of "temporality", "regularity", "periodicity", "continuity" and "frequency" which are involved in defining them, in accordance with Court of Justice jurisprudence[22].

2.3.1.2.2 The second relates to the **concept of the "general good"**, and arises from the widely varying interpretations as a result of which each Member State has been able to justify a range of derogations from the right to provide services which are quite simply distortions of competition, of no benefit to consumers and of no help to operators. It is important that "general good" should not be mistaken for "national interest" as defined by each Member State, but should be understood exclusively as the real interest of citizens as a whole, which is not the same thing.

2.3.1.2.3 The third, but equally important, difficulty in interpreting and applying Community insurance law relates to the **identification and interpretation of the law applicable** to insurance contracts, whenever there is more than one connecting link which may be subject to different legal systems.

Having apparently abandoned the idea of harmonizing insurance contract law, and since the Rome Convention of 19 June 1980[23] on the law applicable to contractual obligations still does not apply "to contracts of insurance which cover risks situated in the territories of the Member States of the European Economic Community" (Article 1(3)), the Directives opted - without allowing the parties any say in the decisive roles allotted to them - to get embroiled in a new complex set of rules on the subject of competence and referral. This has had the effect of turning straightforward determination of the law applicable (conflict of laws) and, consequently, of the competent court (conflict of jurisdiction) into an impenetrable labyrinth, particularly given that one of the determining elements also involves the "general good enigma"[24].

2.3.1.3 **Difficulties at Member State level**

2.3.1.3.1 Some supervisory bodies do not clearly indicate which criteria they use in complying with the principle of non-discrimination and do not inform all operators working within their territory about the tax arrangements and regulations applying to the sector.

2.3.1.3.2 National legislation is sometimes obscure and vague, and operators from other countries providing services experience difficulty in obtaining legal texts: there is a pressing need for an up-to-date database of the national legislation applicable in the Member States of the European Union. Such national databases should be consolidated at Union level and incorporated into the Commission's system. The Commission should define the requirements for

communication and release of information and means of access.

2.3.1.3.3. Cases have also been reported of late, incomplete or incorrect transposition of Directives on the part of some Member States, or of certain branches of insurance, particularly agricultural insurance and pension funds in certain countries, being exempt from the need to comply with Directives.

2.3.1.3.4. The diversity of tax systems, mentioned earlier, naturally has an impact on the prices applied by certain operators and also gives rise to discrimination between nationals and non-nationals, generating serious distortions of competition as well as constituting effective "technical" barriers to the single market.

2.3.1.3.5 Lastly, although it would not be reasonable to expect rapid harmonization of insurance law, there are a number of aspects which constitute real obstacles to the completion of the single market, such as the differences in the legal maximum duration of insurance policies.

2.3.2 A number of **barriers specific to certain markets or branches of insurance** were also identified and reported. Among these the following should be mentioned:

2.3.2.1 Some markets have not abolished prior control of contracts, as stipulated in the third coordinating directive, so that contractual amendments and new clauses must still be notified to the supervisory bodies prior to commercialization.

2.3.2.2 Some supervisory bodies, particularly where "compulsory" insurance is concerned, require compliance with specific contractual clauses which are apparently unfair, or prohibit the use of other clauses which have never been acknowledged by courts as being unlawful.

2.3.2.3. Some countries infringe the provisions of the third Directive as regards the requirement that existing insurance companies should be obliged to communicate new contractual conditions, or that this condition must be met by a company before it starts in business[25].

2.3.2.4 The differences in classification of insurance products on national markets (e.g. the distinction between pension savings and life insurance, or between these and certain investment funds), together with the uncontrolled emergence of new products lead to lack of transparency and hamper the application of the principle of mutual recognition with regard to the equivalence of classes of life assurance and non-life insurance, and the classification of risks.

2.3.2.5 Some countries still require insurance brokers from other Member States, intending to work in that country under FPS arrangements, to seek prior authorization[26].

2.3.2.6 Lastly, in exercising their perfectly legitimate right to demand the establishment of a "fiscal representative" in relation to FPS, some Member States lay down a series of administrative and financial requirements which are real obstacles to competition and constitute discrimination towards insurance companies from other Member States.

2.3.3. Two difficulties should be men-

tioned at this point. The first concerns some Member States' requirement that insurance companies join national professional bodies in order to be able to be a party to the agreements for the rapid settlement of claims, which bans insurance companies operating under FPS from being a party to such agreements.

The second difficulty lies in the fact that in some countries where official arbitration systems have been set up, only policyholders from that country may use such arrangements: access is denied to policyholders with companies not from the country in question, even if the claim has occurred within its territory, or if the policy has been concluded in a country other than that in which the policyholder is resident.

3. Contractual insurance relations - policies

3.1 The position of consumers merits particular attention and special protection because of the specific form of contractual relations, embracing the range of reciprocal rights and obligations flowing from the conclusion of the contract - **the insurance policy**[27].

This is, of course, a classic example of what is known as a "standard form contract", the contents of which are pre-established and non-negotiable and characterized in legal theory by the **economic superiority** of one of the parties, who is in a position to dictate the contract clauses to the other, the **unilateral nature** of the clauses, drawn up specifically in the interests of the stronger party, and the **invariability** of the contract text, which offers the weaker party a "take it or leave it" option.

3.2 The particular nature of these contracts finally led to the adoption, after a lengthy period of preparation, of **Directive 93/13/EC of 5 April 1993**[28] the main purpose of which is to **prevent the use** of general contractual clauses in which "contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer", and to **allow them to be declared null and void** when included in standard contracts.

The Directive, already transposed in most Member States, automatically applies to insurance contracts.

The specific nature of insurance activity does however justify individual agreements, allowed by EEC Regulation No. 3932/92 of 21 December 1992, in the area of standard conditions for direct insurance, provided the restrictions imposed by Articles 7 and 17, and the fundamental principle of contractual balance, are observed.

Although, as will be seen below, a degree of similarity may often be observed in the way insurance companies in the different Member States use general contractual clauses, sometimes as a result of national rules, and which might, under Community law, be deemed unfair, there is no record of the Commission ever having investigated or reported such occurrences as an infringement of the Regulation's provisions, or having recommended that Member States amend their national rules.

3.3 With the exception of Directive 92/96 (life assurance), the specific insurance Directives referred to above make only incidental reference, in separate provisions, to:

- minimum information to be supplied to policyholders/insured parties (Articles 12(5), 31 and 43 of Directive 92/49 and Articles 11 and 18(2) of Directive 92/96);
- publicity (Article 41 of Directive 92/49 and Directive 92/96);
- special rights enshrined in the legal expenses insurance Directive (Directive 87/344).

Directive 92/96 (life assurance) is the only one to draw up a list (in Article 31 and Annex 2) of information relating to the insurance company and to the content of the contract which must be communicated to policyholders/insured parties both before the contract is concluded and at the time the contract is signed .

3.4. There is no legal framework at Community level defining rules for a minimum level of transparency in insurance contracts in general, including non-life insurance or, more specifically, describing unfair general contractual clauses in insurance, or even laying down general principles of good faith or contract balance in the field of insurance.

3.5. In some Member States, on the other hand, the legislator has striven to establish, in general terms, the form and minimum content of the pre-contractual and contractual information to be given to policyholders/insured parties in both the life and non-life sectors, together with some rules on insurance publicity and on the content of certain clauses. The French insurance code is a case in point.

In other countries, spontaneous dialogue and consultation between insurance companies and consumers has led to freely adopted codes of practice in such important areas as joint information to be provided to consumers, product transparency, prohibition of unfair clauses and access to legal redress. One instance is the 1994 Protocol of Agreement in Italy between ADICONSUM and ANIA.

In this respect, it is worth highlighting the UK's experience on account of its traditional approach, deeply-rooted in the country's legal and cultural principles, and its results in terms of pre-contract information, negotiation and implementation of insurance contracts and the settlement of disputes via the Ombudsman and the Personal Investment Authority. All parties seem to find this approach satisfactory[29].

3.6 Consumers do however share a number of concerns with regard to the embryonic single insurance market, ranging from disparities in contract content to means of achieving judicial or extra-judicial redress, from the quality of information to the quality of insurance distribution, from the lack of a specific regulatory framework for cross-border insurance sales to the scope of the "general good" clause and from the effects of tax aspects to the impossibility of comparing prices.

3.6.1 The different ways in which each Member State has regulated these questions - or, alternatively, the lack of regulation - leaves an entire market, where competition is far from perfect

and those acting for one side tend to work together to the detriment of the other, to its own devices. This means that a huge number of different solutions exist to what are identical situations within the single market, particularly with regard to cross-border transactions, which are becoming ever simpler with the arrival of the information society.

3.6.2 Even in cases where procedures based on national codes of practice appear to achieve meaningful results in the countries where they exist, their "temporal" nature, in addition to their dependence on specific cultural factors, means that they cannot be considered for adoption as an overall solution.

3.6.3 The results of the work under way at the Commission, as part of the discussions with the relevant trade and consumer organizations, are therefore awaited with interest since a proper balance must be struck between regulation by the authorities, codes of good conduct, and contractual freedom.

3.7 It is possible, even within each Member State and in the light of their own legal systems, to detect insurance contractual relations which are less than proper and fair.

Both research in this area and decisions by judicial or administrative bodies with jurisdiction in the field have revealed contractual practices and conditions which are less than clear or less than intelligible, even though in legal terms they might not be unfair, immoral or unlawful [30].

Some of the main points arising from such initiatives, which have an impact on contractual relations in the insurance sector, are given below.

3.7.1 Pre-contractual advertising and information

3.7.1.1 With regard to the general advertising of insurance products, mention was made of such practices as: intrusive advertising, involving persistent telephone calls to people at home, encouraging them to take out insurance policies; direct mailing, serving the same objective and, in some cases, offering gifts (such as mobile phones) to people taking out certain policies; and direct insurance advertising, indicating rates ("the cheapest") or cover which subsequently prove false.

3.7.1.2 Most of the complaints, however, concern the lack of correct and complete or, at least, proper pre-contractual information regarding the essential aspects of a contract - cover, exclusions, definition of loss, conditions and deadlines for compensation, insured party's obligations, real cost of premiums.

This was regarded as particularly bad in situations where credit institutions, as opposed to legally authorized insurance brokers, advertise policies from companies with which they have links, making these policies "obligatory" for people seeking finance (e.g. life or fire insurance for people wishing to take out a mortgage). The practice of "clandestine" insurance was also condemned: this is insurance connected, for example, to a bank account or a credit card. Insufficient information about the insurance is given to the insured person; as a result, they frequently fail to take

advantage of the inherent benefits which they are unaware of but pay for.

Also highlighted was the need to make a clear distinction between genuine insurance products and financial, savings or investment products, whether insurance-linked or not, which come under banking and not insurance legislation and must be regarded as such, regardless of who sells them.

3.7.1.3 Special mention should be made of "distance" insurance communication techniques and in particular the use of modern means of communication such as the Internet and the appearance of new prospecting and marketing technologies and sophisticated "non-material" distribution techniques, for which there is no legal framework at Community level and hardly any in most Member States.

The Commission's forthcoming draft Directive, intended to establish a genuine single market in this field and to provide consumers with adequate protection while ensuring the development of electronic commerce, is eagerly awaited.

3.7.2 Negotiation of insurance contracts

3.7.2.1 The offer, negotiation and signing of insurance contracts raises the following main questions:

a) the nature, quantity and reliability of the information provided beforehand to clients, involving the need to:

- guarantee simple and comprehensible information about the main features of the contracts, outlawing the use of "technical" or ambiguous jargon, without compromising technical and legal accuracy;
- permit the information to be comparable, avoiding the use of identical terms for different types of cover;
- demand clarification of the wording of the clauses in contracts, thereby reversing the burden of proof;
- ensure the precise indication of the level of the premiums, how they are made up and what criteria are used to fix them;

b) obligation always to provide, prior to the signing of a contract, the full text of the general and special conditions, written in a legible and comprehensible manner;

c) the need to guarantee generally (and not only for life assurance policies) a cooling-off period for the insured party, after which the contract is considered to be applicable retroactively from the date on which the insurer's proposal was accepted, with express mention of the provisions applicable in the intervening period in the event of a claim and possible entitlement to the premium;

d) clear definition of the role of the initial "questionnaire" and the consequences of the insured party's "declarations", as regards not only the penalties in the event of false information or failure to divulge information but also the protection and confidentiality of personal data, in accordance with the appropriate Directive[31];

e) suitability of the insurance product for the real needs of the insured party, so as not to sell unwanted products or products which do not cater for needs;

f) as regards the special case of "dis-

tance" contracts (e.g. via the Internet), the need to:

- guarantee precise knowledge of all the terms of the contracts;
- define the legal value of "electronic signatures" and the legislation applicable to these new methods of "distance" marketing;
- guarantee, without prejudice to special cases such as policies with immediate effect, a cooling-off period without penalty or requirement to give reasons;
- clarify the system of compensation applicable in the event of a claim between the date of "signature" of the contract and the date of its confirmation in writing;
- protect consumers who do not wish to be contacted by distance communication methods;
- define the principles for implementing the services provided for in distance contracts;
- guarantee the confidentiality of personal data;
- identify the law applicable and the means of redress available.

3.7.2.2 An extremely important question in this context is the role played by insurance brokers and other middlemen in the marketing of products and provision of after-sales services.

3.7.2.2.1 Reference was made to the significant differences between the provisions in force in the different Member States, leading to the call for a possible Directive establishing a Community framework. This would address the recognized ineffectiveness of Recommendation 92/48/EEC of 18 December 1991[32] and the outmoded content of Directive 77/92/EEC of 13 December 1976[33].

3.7.2.2.2 Emphasis was also placed on the need to ensure that insurance brokers had the technical training needed to perform their important task, so as to guarantee a quality service. Credit institutions and similar bodies were also criticized for acting wrongfully more and more as insurance brokers in some Member States without having any specific qualifications to do so. They have been giving wrong information and not providing any after-sales assistance, especially when claims are submitted, and occasionally made their financial services subject to the signing of an insurance contract.

3.7.3 General, special and particular conditions of contracts

3.7.3.1 As a standard form of contract, an insurance policy is drafted in advance for acceptance by the insured parties. It normally consists of a general part - the **general conditions** - and a series of equally standard options - the **special conditions**.

The **particular conditions** set out the real content of the contract, listing the contracting parties and the risks covered and excluded and specifying the premium and how it is to be paid.

In general insurance contracts for private individuals, it is practically impossible to amend or obtain a derogation from any general or specific condition, except within the highly restricted framework of the above-mentioned particular conditions.

3.7.3.2 Studies carried out in various Member States and, in particular, a

study commissioned by the Commission and coordinated by the Consumer Law Centre at Montpellier University[34] on unfair clauses in certain motor vehicle (third-party and fully-comprehensive) and house (multi-risk) insurance contracts in the then twelve Member States revealed the existence of numerous clauses which infringed the provisions of Directive 93/13/EC.

The study identified 23 types of unfair clauses used by insurance companies in the various Member States in the specified fields[35].

3.7.3.3 Case law and the competent authorities in most Member States have often censured unfair clauses in insurance policies. DG XXIV has collated a set of decisions showing the main types of contract clause considered unfair by the relevant judicial, administrative or other authorities of the Member States[36].

3.7.4 The premiums and their payment

3.7.4.1 The premium is the price paid for the service, as agreed on by the parties.

However, insurance is a mathematically based activity based on rigorous commercial principles, meaning that the "commercial premium" consists of the "pure premium" plus loadings.

In accordance with good actuarial practice, the "pure premium" must cover the statistical cost of the risk and the aim of the tariff rules is to ensure this balance as a function, in particular, of the capital insured, the nature of the risks and the duration of the guarantee. Apart from taxes, the loadings cover a proportional share of the administrative and acquisition costs (general expenditure, financial charges, cost of collection and commissions).

3.7.4.2 A first point to be noted is the enormous difference between the insurance premiums charged in different EU countries to cover similar risks[37].

In addition, as already stated, when insurance companies in some Member States negotiate contracts with clients, they fail to give any precise information about the exact level of the premiums, and how they relate to the risks covered. Such information would be useful for making comparisons.

3.7.4.3 Equally, some insurance companies fail in their duty to inform clients that they can adjust the amounts covered. Nor do they freely adjust these amounts when this may be to their disadvantage. In the event of a claim, they usually apply the "proportional rule" so as to reduce the compensation they pay without, however, returning any of the excess premium.

3.7.4.4 It was also found that, in many cases where insurance contracts are reduced in value, or rescinded before their normal date of expiry, some companies do not refund the corresponding part of the pure premium.

3.7.4.5 It was also pointed out that some companies which accept the payment of premiums in instalments charge above the market rates for common consumer credit.

3.7.4.6 Finally, it was discovered that vastly differing arrangements apply when premiums are not paid on time,

especially as regards the renewal of contracts and irrespective of whether national legislation addresses the consequences. In particular, the following matters are affected:

- the immediate effects - termination or suspension of cover and for what period;
- the additional deadlines for the respective payment, if any;
- the consequences of a claim arising in the meantime;
- the possibility of demanding the premiums due, despite the suspension of the insurance, for an indefinite period (several years).

3.7.5 Verification of claims and compensation

3.7.5.1 More often than not, insurance policies fail to lay down precise deadlines for the settlement of claims, using vague and ambiguous expressions such as "the utmost care" and "the utmost effort".

Because of this failure, it has been known to take more than 120 days to settle claims and thereafter about a year to pay the compensation. Some companies take more than two months to simply recognize who is (ir)responsible.

3.7.5.2 In some Member States where legal proceedings are known to be lengthy (between two and four years to obtain a declaratory judgement in a court of first instance), it is customary for insurance companies to refuse systematically to accept an amicable settlement or deliberately to offer less than they are required to pay. This is because of what they gain by paying later, despite the costs of going to court. In addition, a large number of claimants never even go to court (because of their reluctance or lack of money) especially if the court is not in the country of which they are a national or their country of residence or if the law applicable is not the law of the country of which they are a national or if the proceedings are likely to be slow or have an uncertain outcome.

3.7.5.3 The non-judicial avenues available, in turn, vary considerably from Member State to Member State. In many cases, not enough is known about them by citizens of other countries, which creates added problems in the case of cross-frontier disputes.

It was also mentioned that some systems are not impartial and do not even provide consumers and insurance companies with identical guarantees of protection. They may discriminate on grounds of nationality, especially in cases where complaints are assessed by professional bodies or bodies within the insurance companies themselves.

An exception here seems to be when a case goes to independent arbitration or when an equally independent ombudsman mediates (as in the UK).

3.7.5.4 It is necessary to underline the disparities between damage assessment criteria especially for physical or mental suffering and the differences in the compensation paid for the same type of damage, as a result of the practice of applying the law at the place of the accident. This is a cause of injustice. The Commission's suggestion that the "lex loci delicti" be changed into the "lex damni" or the law of the claimant's

country has not been given the favourable response it merits.

3.8 The ESC thinks that all the aforementioned factors should be given close consideration by the Commission and the Member States and, in particular, by insurance supervisory bodies and the representatives of consumers' interests at both national and EU level. The aim should be to contribute towards the desired establishment of the single market in insurance, in accordance with the legitimate hopes of customers.

The ESC is, however, aware that in the short term it will not be possible to make any significant changes to many of these aspects and to others which are directly or indirectly linked thereto and are the subject of other studies or opinions.

Therefore, the conclusions which follow list only urgent, priority measures, as defined within the framework of this Opinion without prejudice to subsequent developments in this or other contexts.

4. Conclusion and recommendations

4.1 **Show support for current Commission initiatives on:**

4.1.1 establishment of a right for victims of accidents abroad to take direct action against the insurer of the opposing party (proposal in the fourth motor-vehicle insurance Directive);

4.1.2 Community regulation on the liberalization of insurance broking and the freedom to provide insurance broking services in any Member State;

4.1.3 regulation of the essential requirements with regard to the offer, negotiation and signing of financial service contracts, including those concluded at a distance, particularly via Internet, covering aspects such as:

4.1.3.1 the minimum amount of information with which consumers must be provided;

4.1.3.2 the principles governing the implementation of the services provided for in the contract;

4.1.3.3 consumers' right to terminate contracts or change their mind;

4.1.3.4 arrangements for settling disputes out of court;

4.1.3.5 prohibition on supplying unsolicited services that could lead to premium increases;

4.1.3.6 restrictions on the use of certain distance communications techniques;

4.1.4 supplementary supervision of insurance companies in an insurance group[38];

4.1.5 precise definition of the concept of "general good" and what it entails for insurance;

4.1.6 close consideration of questions linked to supplementary pensions[39];

4.1.7 establishment of a working group to study the improvements to be

made to existing legislation on insurance companies' solvency margins[40].

4.2 **Call on the Commission to begin work on:**

4.2.1 the definition of specific Community-level rules for cross-border insurance advertising, especially via Internet, to serve as minimum requirements to protect the general good at Community level;

4.2.2 the possibility of harmonizing tax arrangements for insurance, either in terms of the system applied to insurance companies or tax incentives for policy holders;

4.2.3 the applicability of the Rome Convention to insurance;

4.2.4 a special legislative initiative for the out-of-court settlement of cross-border insurance disputes;

4.2.5 creation of an observatory to deal with complaints about insurance at Community level;

4.2.6 consolidation of insurance-related legislation in a single intelligible text which is easy to consult and circulate.

4.3 **Direct the attention of the Commission and the Member States to the following in particular:**

4.3.1 the need to improve pre-contract information on insurance, requiring (i) better training for insurance company staff, agents and other intermediaries, and (ii) availability of adequate, accurate means of information;

4.3.2 the desirability of arrangements to settle disputes by arbitration, or the appointment of insurance ombudsmen independent of insurance companies;

4.3.3 the advisability of setting up a rapid system for provisional compensation in cases of third party liability, acting before liability is apportioned between insurance companies, even where cases go to court;

4.3.4 the need to continue research and discussion with a view to setting up a guarantee fund on a harmonized basis for compensation to victims of certain risks in default of appropriate insurance;

4.3.5 the need for a clear ban on "obligatory" and "linked" insurance policies;

4.3.6 the advisability of re-examining the Commission's 1979 draft Directive on the coordination of laws, regulations and administrative provisions relating to insurance contracts[41] in the light of the principle of subsidiarity and of progress made in the meantime with the third generation Directives and the recent Treaty amendments agreed at Amsterdam, particularly the new wording of Article 129a of the Maastricht Treaty;

4.3.7 the need to assess the effectiveness of the mechanisms provided for in EEC Regulation Nos. 1534/91 of 31 May 1991 and 3932/92 of 21 December 1992, with a view to monitoring effectively the unfair nature of some of the general clauses contained in insurance policies;

4.3.8 the case for strengthening the powers of the Insurance Committee so that it can play an effective part in harmonizing the coordinating practices of the various national regulators in the field of insurance;

4.3.9 the need to set up national databases of existing insurance law and regulations in each country and coordinate them at Community level, and to draw up rules on access to, and disclosure of, their content.

4.4 **Prompt trade organizations from the insurance sector and consumer organizations to engage in dialogue and concentrate their efforts on regulating their working practices in accordance with codes of good conduct and finding the best solutions for settling disputes out of court.**

4.5 **Urge the Commission to spare no effort in defining Community-level common minimum requirements for insurance contracts (draft directive), involving:**

4.5.1 minimum pre-contract information modelled, for example, on the French insurance code (Articles 112 and 132);

4.5.2 a list of key terms and their meanings;

4.5.3 a list of typical unfair terms in insurance contracts;

4.5.4 the minimum compulsory content of any insurance contract;

4.5.5 all the contractual obligations common to any insurance contract;

4.5.6 the basic principles and rules of any insurance contract;

4.5.7 a provisional compensation scheme for third party liability insurance;

4.5.8 compulsory link between premiums and the value of risks, in particular by means of automatic depreciation of insured objects in line with their age and a corresponding reduction in premiums;

4.5.9 establishment of harmonized minimum cooling-off periods within which consumers may withdraw from a contract;

4.5.10 requirement for policies to be legible and understandable and for the general and special conditions to be made available during the pre-contract stage and before signature.

4.6 **Urge the Commission to continue its efforts to create a Community-wide systematic inventory and public register of unfair general terms in insurance contracts based on:**

4.6.1 thorough research and assessment by the Commission services;

4.6.2 compilation and processing of decisions by the relevant Member State bodies;

4.6.3 publication of results;

4.6.4 access to information via Internet;

4.6.5 possible description of types of unfair terms and bans thereon through legislation, providing the appropriate

Commission service with the necessary human and other resources.

4.7 **Press the Member States to set up speedy, efficient systems for the condemnation and judicial, extrajudicial or administrative amendment of unfair terms in insurance contracts, particularly through class actions effective across the board, and suggest that the Commission launch support programmes for initiatives in this field.**

Brussels, 29 January 1998.

The President
of the
Economic and Social Committee

Tom Jenkins

The Secretary-General
of the
Economic and Social Committee

Adriano Graziosi

1 Other areas such as reinsurance or supplementary retirement pensions, which are either of only indirect concern to consumers, or have been discussed in specific ESC opinions or studies, are not covered by the present opinion. The same applies, for the same reasons, to the effects of introducing the euro as a means of payment.

2 Directives 92/49/EEC of 18 June 1992 (OJ No L 228 of 11.8.1992) and 92/96/EEC of 10 November 1992 (OJ No L 360 of 9.12.1992).

3 Cf. SEC(96) 2378 of 16 December 1996, the preparatory document for COM(96) 520 final on the impact and effectiveness of the single market, and COM(97) 184 final on the Draft Action Plan for the single market, together with the ESC opinions on these documents, CES 467/97 of 23 April 1997 (OJ No C 206 of 7.7.1997) and CES 606/97 of 28 May 1997 (OJ No C 287 of 22.9.1997); see also the ESC opinions on the Commission reports to the Council and European Parliament on the single market in 1994 (COM(94) 51 final) and 1995 (COM(96) 51 final).

4 Cf. CSE(97) 1 final of 4 June 1997, Strategic target 3, Action 1: Break down the barriers in service markets.

5 Directives 88/357/EEC of 22 June 1988 (OJ No L 172 of 4.7.1988) and 92/49/EEC of 18 June 1992 (OJ No L 228 of 11.8.1992).

6 Cf. inter alia: CES 1268/96 of 30 October 1996 (OJ No C 56 of 24.2.1997) (Green Paper - financial services: meeting consumers' expectations - COM(96) 209 final); CES 1309/95 of 23 November 1995 (OJ No C 39 of 12.2.1996) (Single market and consumer protection: opportunities and obstacles); CES 1115/91 of 26 September 1991 (Consumer protection and completion of the internal market - OJ No C 339 of 31.12.1991); CES 1320/92 of 24 November 1992 (The consumer and the internal market - OJ No C 19 of 25.01.1993); CES 1177/93 of 25 November 1993 (OJ No C 34 of 2.2.1994) (Supplier-consumer dialogue); CES 889/96 of 10 July 1996 (OJ No C 295 of 7.10.1996) (Communication from the Commission: Priorities for consumer policy (1996-1998)); CES 410/96 of 26 March 1996 (OJ No C 174 of 17.6.1996) (Proposal for a European Parliament and Council Directive on the supplementary supervision of insurance undertakings in an insurance group - COM(95) 406 final); CES 1248/89 of 15 November 1989 (OJ No C 56 of 7.3.1990) (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); CES 659/90 of 30 May 1990 (OJ No C 182 of 23.7.1990) (Proposal for a Council Regulation (EEC) on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector); CES 1257/91 of 30 October 1991 (OJ No C 14 of 20.1.1992) (Proposal for a third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC); CES 267/91 of 28 February 1991 (OJ No C 102 of 18.4.1991) (Proposal for a third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC; CES 268/91 of 28 February 1991 (OJ No C 102 of 18.4.1991) (Proposal for a Council Directive setting up an insurance committee); CES 606/97 of 29 May 1997 (OJ No C 287 of 22.9.1997) (Draft Action Plan for the single market - COM(97) 184 final); CES 467/97 of 23 April 1997 (OJ No C 206 of 7.7.1997) (Communication from the Commission to the European Parliament and the Council on the impact and effectiveness of the single market - COM(96) 520 final).

7 COM(96) 209 final of 22 May 1996. Opinion CES 1268/96 of 30.10.1996, in OJ No. C 56 of 24.02.1997; a Eurobarometer survey of 27 May 1997 reveals that the financial services sector is the one in which consumers feel least protected, at both Community level, particularly in view of the development of the new technologies (96%), and Member State level (average 58%, rising to 67% in Italy and 66% in Germany). The full results are available on the DG XXIV home page, http://europa.eu.int/en/comm/spc/spc.html.

8 Cf., for example, the ESC additional Opinion on the consumer and the internal market (OJ No. C 19 of 25.01.1993, point 4.11.5); ESC Opinion on consumer protection and completion of the internal market (OJ No. C 339 of 31.12.1991); and the comments made in the Opinion on the Annual Report on the functioning of the internal market (OJ No. C 393 of 31.12.1994, point 5.2.1).

9 COM(97) 309 final of 26 June 1997. In this regard, cf. the report by MEP **Elena Marinucci** of 17 February 1997 (document A4-0048/97). At the Commission's initiative, significant steps have recently been taken in this direction, by holding meetings between financial service providers and consumers' representatives on 14 July, 15 September and 24 November 1997. Nevertheless, the insurance sector's reservations concerning possible compulsory application by its members of codes of conduct should be noted.

10 Commission versus Germany, Commission versus Denmark, Commission versus Ireland and Commission versus France, in European Court Reports 1986, p. 3663.

11 COM(79) 355 final, in OJ No. C 190 of 28.7.1979, as amended by COM(80) 854 final, in OJ No. C 355 of 31.12.1980; the relevant ESC and EP opinions are in OJ No. C 146 of 16.6.1980 and C 265 of 13.10.1980 respectively.

12 COM(86) 768 final as amended by COM(89) 394 final of 6 October 1989, in OJ No. C 253; the relevant ESC and EP opinions are in OJ No. C 319 of 30.11.1987 and C 96 of 17.4.1989 respectively.

13 COM(93) 237 final, in OJ No. C 171 of 22..6.1993.

14 The recent Wielockx case in which the Court of Justice decided - contrary to the Bachmann v. Belgium case - that a Belgian citizen was entitled to enjoy, in Belgium, the tax advantages of an insurance policy concluded in Holland, cannot really be interpreted as a significant shift in the Court's position in this area given the specific character of the case, arising from an agreement for avoiding double taxation. It should, however, be noted that the Svensson judgment (14 November 1995) placed a further limit to the precedent created by the Bachmann case by forbidding a Member State (in this case, Luxembourg) from invoking "the integrity of the fiscal regime" to justify a national measure restricting the freedom to provide services, since there was in this case no direct link whatsoever between the benefit provided by the measure (in this case, an interest rate subsidy for a housing loan) and the financing of this benefit by means of the profit tax on financial establishments officially recognized in the State in question. For further details and a balanced approach to the issue, see e.g. **J.M. Binon**, "Avantages fiscaux en assurance de personnes et droit européen. Après les arrêts Schumacker, Wielockx and Svensson, quelle place rest-t-il pour la jurisprudence Bachmann?" ("Personal insurance fiscal advantages and European law. After the Schumacker, Wielockx and Svensson judgments, what role for the Bachmann ruling?"), *Revue du Marché Unique Européen*, 1996, p.129-144.

15 COM(95) 406 final, in OJ No. C 341 of 19.12.1995; cf. opinion CES 410/96 (rapporteur: **Mr Pelletier**), in OJ No. C 174 of 17.6.1996.

16 CAB II/160/97.

17 In OJ No. L 43 of 14.2.1997.

18 COM(97) 353 final ...; see Opinion CES 103/98 of 28.1.98 (Rapporteur: **Mr Burani**).

19 SEC(97) 1193 final of 20.06.1997.

20 COM(97) 398 final of 24.07.1997.

21 The outstanding Consolidation of Community Insurance Law produced by the European Insurance Committee is particularly worthy of note, as is the recent publication of two important works on the single market in life assurance and insurance other than life assurance, which were used extensively in drawing up this opinion.

22 See cases 33/74 Van Bingsbergen of 31.12.1974, Reports 1974, 1299; cases 286/82 and 26/83, Luisi and Carbone, Reports 1983, 377; case C 148/91 of 3.02.1993, Reports 1993, 1487; case C 55/94 Gebhard, Reports 1995, I, 4195.

23 In OJ No. L 266 of 9.10.1980 (80/934/EEC).

24 See **B. Dubuisson**, "Transparence et sécurité dans les contrats d'assurance en Europe (13th International Legal Colloquium of the European Insurance Committee, Dresden, October 1995).

25 This practice by France was recently the subject of a "reasoned opinion" sent by the Commission to the French Government.

26 This occurs in Spain, and gave rise to the Commission's recent "reasoned opinion".

27 In this connection, see the Judgment of the Court of Justice of 4.12.1986 (case 205/84, Commission v. Germany).

28 OJ No. L 95 of 21.04.1993.

29 Although the PIA is the competent authority for settling disputes, it is always the PIA ombudsman who acts as an independent judge in disputes between consumers and life assurance companies. Further ombudsmen exist in the UK who also act as independent judges for other insurance sectors and are not affiliated to the PIA.

30 In this respect, see the reports of the important European insurer/consumer dialogues, organized by the EIC under the aegis of the Commission on 17 December 1996 and 16 April 1997.

31 Directive 95/46/EC in OJ No. L 281 of 23.11.1995.

32 OJ No. L 19 of 28.01.92.

33 OJ No. L 26 of 31.01.77.

34 Contract AO-2600/93/009263: summary report prepared by **Anne d'Hauteville** and **Kristian Vandenhoudt** (July 1995).

35 Because of its relevance to the present opinion, it is worth mentioning that these clauses were considered to be unfair for the following reasons:

a) **Formal reasons:** ambiguity, imprecision or use of subjective concepts; reference to legal principles or rules not to be found in the contract;

b) **Content:** the contractual guarantee is incomplete; the insured party is required to provide evidence of negative facts or ones that are virtually impossible to prove; the insurer is entitled to alter or suspend the guarantee unilaterally;

c) **Execution of the contract:** the insured party is required to act within very short deadlines, or to take "immediate" action with no specified deadline; the policy may be rescinded because the insured party fails, for reasons which are not his or her fault, to fulfil minor or secondary obligations; the insured party is obliged to accept an expert assessment of arbitration, against his or her will; the insurer is allowed excessively long deadlines to pay out compensation; the insured party is obliged to use the services of a particular lawyer or to follow certain judicial procedures;

d) **Termination of the contract:** the insurer is granted special rights to rescind the contract; the insurer is entitled to rescind the contract unilaterally without stating why; the insurer is entitled to rescind the contract following the first claim; the insurer is entitled to terminate the contract at very short notice, while the insured party is required to give much longer notice; a penalty clause entitles the insurer to retain part of the premium on termination of the contract;

e) **Legal redress:** any legal action must be taken within a very short deadline; the use of arbitration is obligatory; the jurisdiction clause (only the laws of the country where the insurer's head office is located apply).

36 Because of its relevance to the present opinion, it is worth mentioning that these clauses were considered to be unfair for the following reasons:

a) **Clauses which restrict cover by using unclear, imprecise or ambiguous terms, such as:** particularly dangerous or reckless behaviour (000175); vandalism (000085); drunkenness (000129); safety rules (000206); exceptional weather conditions (000311); vehicle wear or defect or poor maintenance (000312).

b) **Clauses which show lack of good faith or abuse of rights:** refusal of the insurer to pay compensation following the non-payment of the premium, without any forewarning, when a fire occurs the day after the deadline for payment of the premium (000176); demand by the insurer for payment of various outstanding annual premiums, after the guarantee has been suspended owing to failure to pay the premium, when this failure is due to an intentional delay in collection of the premium by the insurer (000193); refusal of the insurer to pay compensation because the premiums were paid to a broker when the policy states that they must be paid directly to the insurer (000201); automatic reduction of the insurance sum, following the first claim, for the rest of the insurance period, while the premium remains unchanged (000314); amount of compensation agreed between the insurer and the insured party, preventing the latter from taking any action against the third party who is the reason for the claim (000327); limited liability clauses which were not expressly accepted by the insured party and which are not indicated clearly in the policy (000031); clause requiring the insured party to notify the insurer within 48 hours, failing which compensation will not be paid (000232); clause allowing the insurer to terminate the policy unilaterally after the first claim (000152); clause allowing the insurer to alter the terms of the policy unilaterally at the end of the year, assuming tacit acceptance of the new terms by the insured party if he or she does not respond within a given deadline (000160); clause allowing the policy to be rescinded in the case of non-repayment of excess by the insured party (000298); clause waiving insurer liability if a motor vehicle transports, free of charge, more passengers than stipulated in the log book (000305); clause restricting insurer liability if a motor vehicle is not driven by the insured party, or if the driver is not authorized to drive it or does not have a driving licence (000306); clause freeing the company of liability for a burglary when the insured party has not locked all doors, windows and other possible entry points (000133).

c) **Clauses which contain subjective concepts or concepts whose interpretation is left to the insurers:** the company reserves the right to refuse defence (...) when it considers that the demands of the insured party are indefensible (000178); incapacity to work, infirmity, invalidity, acute or chronic illness or restriction of pathological activity (000169); any false statement (even if not intentional) makes the contract null and void (000170).

d) **Clauses not respecting the balance of the contract:** motor-vehicle insurance with a ten-year term (000002); increase in premiums (in health insurance) because of factors which depend solely on the will of the insurance company (000301); non-provision of third party motor vehicle cover where accidents involve the insured party's spouse or relatives, despite the absence of effective proof of fraud (000303); possibility for the insurance company to make it necessary to obtain an expert assessment, even without the agreement of the insured party, with the costs being borne by both parties (000274); possibility for the insurance company to make it necessary to obtain an expert assessment, as a condition for the insured party being able to go to court (000144); non-repayment of part of the premium in the event of an insurance contract being rescinded before its date of expiry when the premium had been paid in full in advance and no claim has been made (000300); non-specification of the period within which a claim is to be settled or compensation paid by the insurance company, or specification of a period without indicating the date on which this is to start or leaving this to the discretion of the insurance company (000304).

The figures in brackets refer to the case numbers catalogued by DG XXIV, which the rapporteur was able to consult.

37 A recent study carried out by BEUC/TEST ACHATS for the motor-vehicle sector revealed differences in the premiums for similar risks of up to 1 to 4; the increases in premiums as a result of accidents (bonus-malus system) also diverge between Member States by 0 to 67% and in some cases, 100%.

38 OJ No. C 341 of 19.12.1995

39 Green Paper on supplementary pensions in the single market, COM(97) 283 final; opinion CES 1403/97 (rapporteur: **Mr Byrne**, co-rapporteur: **Mr van Dijk**).

40 COM(97) 398 final of 24 July 1997.

41 OJ No. C 190 of 28.07.1979

II.
Questionnaire

"SINGLE MARKET CONSUMERS IN THE INSURANCE MARKET"

1. What kind of insurance is of direct interest to consumers?

Consumers' refers to natural persons who take out insurance for non-professional reasons (group I) or who wish to be compensated for actions involving third parties (group II), the following probably being the most important forms:

Group I:
- Health insurance
- Life insurance
- Personal accident insurance (travel etc) and insurance taken out for domestic staff
- Household insurance (fire, contents and building, theft, civil liability)
- Car insurance (comprehensive)
- Others (luggage etc)

Group II:
- Product liability insurance
- Pet liability insurance
- Liability insurance for services rendered
- Third-party car insurance

2. Before taking out insurance

2.1 What are the characteristics of generic insurance advertising?

2.2 Who are the main targets of advertising directed at particular social groups or specific age groups, and what means and methods are employed?

2.3 What are the features of direct mail?

2.4 What is the quantity and quality of specific information provided at the request of the potential customer?

2.5 What part do insurance salesmen, brokers and middlemen play?

2.6 Are there instances in which insurance is sold through other institutions (eg. banks)? Under what circumstances?

2.7 Are there instances of "compulsory" insurance policies linked to other types of transaction (eg. housing mortgage)?

2.8 What is the normal attitude of insurance companies towards potential clients who are not resident in the country where the company is based? Is there any difference depending on whether the customer is resident in a Community country or in a third country?

3. When taking out insurance

3.1 Before signing the contract

3.1.1 What kind of information is provided on the conditions of insurance, and how detailed is it?
3.1.2 How does one go about negotiating particular or special conditions?
3.1.3 How is the insurance proposal drawn up? To what extent is the insured made aware of its contents? At what point does the insurance policy become binding on the insurance company?
3.1.4 Are there cases where insurance is refused? On what basis? Are there cases where having one kind of insurance policy is a precondition for obtaining another, even when the second is compulsory (eg is it necessary to have household fire insurance or life insurance before being able to take out car insurance)?
3.1.5 Are there instances of the hard sell? What form do they take?

3.2 The policy: the contract of insurance

A Form of the policy

1. How legible are the general and special policy conditions? Are there exceptions? What are they?
2. On average, how comprehensible are the general clauses in the contract? Give examples.

B Content of the policy

1. If possible, point out general clauses in the policy which may be considered to contravene a particular directive or national law.
2. Point out clauses which may be considered unethical, if not actually illegal *(non omnia quod licet honestum est).*
3. Is the insured person given a copy of the policy (general and special conditions) for reference before signing?

4. Validity of the contract

4.1 Premiums: the cost of insurance

4.1.1 Are premiums usually set unilaterally by the insurance companies?
4.1.2 How much information is given to the insured about the factors affecting the premium and how it is worked out?
4.1.3 What is your assessment of the balance between premium and risk? Give examples.
4.1.4 Are premiums payable in advance? Can they be paid in instalments? Is an extra charge made for payment in instalments?
4.1.5 What are the consequences of not paying the premiums on time? Are there cases where insurance is rescinded without prior notice?

4.1.6 If the insured cancels the policy before expiry, is the insurance company allowed to keep the premium paid? All of it, or what percentage of it?

4.2 Claims (own damage and civil liability)

A Car insurance

1. What are the consequences of not submitting a claim within a certain time limit
   a) with comprehensive policies?
   b) with third-party policies?
2. What has been your experience of amicable settlements reported to insurance companies?
3. How is the claim investigated? Average time? Is there recourse to expert opinion and arbitration?
4. What is the level of refusal versus acceptance of liability by insurance companies without legal action?
5. How is a claim settled? Average time and level of satisfaction among insured persons?
6. How is liability apportioned between insurance companies when more than one is involved?
7. Are there fixed arrangements between insurance companies for such cases?

B. Other types of insurance

(see above)

4.3 Compensation payments

4.3.1 How is the level of compensation worked out? How does the "proportional rule" work in the case of underinsurance and overinsurance? How much information are insured persons given in advance about these rules?

4.3.2 How long does it take, on average, to process and pay out compensation with the various types of insurance? How satisfied are the insured?

4.3.3 What are the main reasons given by insurance companies for non-payment of compensation?

4.3.4 What is the average rate, in percentage terms, of recourse to legal action to obtain compensation with the various types of insurance? What is the average time taken for such action? What are the reasons for this?

4.4 Follow-up and after-sales advice

4.4.1 Do insurance companies generally offer some kind of after-sales service? What form does it take?

4.4.2 Do other bodies provide this follow-up and advice service for insurance? Who are they? On what terms do they work? What charges are involved?

5. Breaking the contract

5.1 Cancellation of the contract by the insurance company or the insured

5.1.1 What are the consequences in either case? Do both parties have the same options?
5.1.2 What are the most common reasons given by each party for cancellation?
5.1.3 Are insurance companies always free to rescind contracts? Are there cases where this freedom should be limited? Which?

5.2 Legal action by the insured or third-party beneficiaries

5.2.1 The main reasons for such action.
5.2.2 Time taken by the courts.
5.2.3 Cost of access to justice.
5.2.4 The uncertainty of decisions (burden of proof).

5.3 Settlement of disputes without recourse to legal action

6. Special cases

Instances of insurance or special cases (health, life etc) related to contracts of insurance or the business practice of insurance companies worth mentioning in this context.
(see I above)

III.
Comparative analysis of the responses to the questionnaire

In general terms, insurance Companies answer in a similar way which contrasts with the responses of the Consumers' organizations. The lack of responses to the questionnaire by British consumers' organizations (which nevertheless have sent specific brochures and have participated to the London hearing) bend the balance in favour of the well functioning British insurance industry. Overall, responses to the questionnaire show the following common points:

- **The forms of insurance of most common interest to consumers** are more or less the same in both geographical areas, considering the entity of insurances which are "compulsory" in Law for customers. However the entity of life-insurance should be highlighted in the UK, where this branch is regarded as an investment product regulated and marketed in a different way.
- Both Auditions reflect the critical role played by insurance salesmen, brokers and other intermediaries, **before taking out the insurance**, providing an independent advice which benefits, not only the consumers by securing the most appropriate insurance contract at the best price, but also the insurers by representing an important part of the Companies' business. In certain cases, suppliers try to make conditional for consumers to buy the supplier's own product as an integral part of the principal transaction. Overall, there still remain limitations when it comes to give insurance to non-resident consumers from another EU country according to the principle of freedom to provide services. However, the international - and not only European - vocation of the British Insurance Companies should be pointed out.
- **When taking out insurance**, a proper negotiation of the particular or special conditions does not exist. Consumers will normally take out standard insurance cover, specially in the case of direct insurance and life insurance.
- With regards to the form of **the policy**, whilst insurers consider that policy documents are reasonably legible, consumers and intermediaries can see improvements but believe that policy clauses are still not sufficiently easily comprehensible for the average citizen. They are often edited confusingly and/or in reduced dimensions (phrases in negative or inducing to error, etc.). With regard to the content of the policy the Portuguese associations of consumers reveal instances of clauses which may be considered unethical if not illegal. On the other hand, a copy of the policy is not provided automatically before signing the contract for reference, but a period in which the consumer can decide to cancel the contract is usually provided.
- Concerning **the validity of the contract**, usually premiums are set uni-

laterally by the insurance companies on the basis of technical and statistical rules. Insurers justify the lack of information about the factors affecting the premium and how it is worked out in competition rules. A result of the mutualistic nature of the insurance is that the balance between premium and risk works in global and technical terms and not always for the individual insured. The general principle of insurance is that premiums are paid in advance. Most insurers offer instalment facilities for consumers but then there is normally a charge for this service. Whilst the non-payment of the premiums by the insured will be cause of cancellation the contract, the insured may incur a loss in cancelling the contract.

- Referring to **compensations**, especially with regard to car insurance, insurers and insured feels satisfied when the settlement of the claims is made by amicable agreement. When the compensation exceeds a certain amount, expert opinion is usually the verification model. Most cases relating to property damage will be settled very quickly, but personal injury cases are often very complex and an expert opinion will normally be asked for. Liability between insurance companies when more than one is involved is apportioned by negotiation and/or pre-existing arrangements and/or litigation. Provision for disputes to be resolved by arbitration may be made.
- **Compensation** is in respect of the amount invested in the policy and the damage verified, and is calculated by reference to sums insured and indemnity limit. The average condition applies only to under-insurance. If there is over-insurance, the actual loss would be paid in accordance with the real value and independently of the value declared.
- The principal **causes of cancellation** invoked by the insurer are fundamental change of the circumstances (increase or disappearance of the risk); frequency or severity of claims and contractual breach, and, by the insured, denial of the insurer's liability or a more competitive quota.
- The responses show that **access to justice** can be lengthy and costly. There are other ways of settling disputes without recourse to legal action, such as **Arbitration** or the insurance **Ombudsman**. They can be considered more efficient whether they comply with the conditions of less costs, independence and speed. In this context, in the UK exist the "Regulatory bodies" for resolving complaints. They are independent authorities or independent arrangements for handling complaints which aim to provide cost-free settlements for the investor.

As a **conclusion**, the responses to the questionnaires show the nature of the insurance contract as a contract of adhesion which the consumer takes out without a proper negotiation of the conditions. Nevertheless, there exists a trend to limit the unilateral power of the insurance Companies, giving more protection to consumers, by means of a detailed regulation of the contractual relationship and by means of the independent regulatory bodies, especially in UK.

A Belgium insurance company considers that the conversion of a Contract Office in London into a Branch

turned out to be a smooth process. In this instance bureaucracy has been reduced considerably. But from an operational perspective, trading on a cross border basis is not so easy. In some territories (L, NL) the companies are still prevented from accepting risks because they do not have a fiscal representation, which requires a presence in this countries in order to pay the Insurance Premium Tax.

IV.
Summary of the Lisbon hearing held on 27 June 1997

On 27 June 1997 the Single Market Observatory of the Economic and Social Committee of the European Communities held a hearing entitled "Consumers in the insurance market" which was attended by representatives of insurance companies and their associations, insurance brokers, consumer groups, public bodies responsible for overseeing insurance or protecting the consumer, the legal system and the ombudsman's office.

The statements made by participants at the hearing make it clear that, although the single market in insurance exists in formal terms, in practice it is often not economically attractive for insurance companies, who face image problems (foreign companies are often unknown) as well as differences in legislation and national traditions regarding risk categories and the settlement of claims. At the same time, consumers do not yet benefit from the creation of the single market because of different tax laws, diversity in the ways legal protection is applied or linguistic problems. There are two areas where much is still to be done: better information and a system for settling disputes out of court.

The following points were discussed at the hearing:

- The role of the insurance sector is **fundamental to society**. The subject of insurance and consumers is a very topical one which is on the Portuguese government's political agenda.
- Taking up positions already adopted by the ESC, consumers demand that certain **minimum requirements** be applied to **insurance contracts**, particularly in the case of obligatory insurance. Rather than formal harmonisation of contracts, there is support for harmonisation of some principles and rules, conditions or common clauses regarding rights and guarantees. The opinion could examine the merits of establishing a standard Community contract.
- An overview of the various Portuguese insurance services revealed a high degree of **similarity** which, in principle, served to limit customer choice. The restrictions on publicity and marketing imposed by some countries on foreign companies must be eased.
- Much is still to be done to guarantee the desirable level of **transparency** in the market. Contracts are difficult to understand and compare, making it difficult to choose between them. Consumer information is incomplete: receipts are not itemised and the language is too technical.
- Insurance companies are unable to explain the contract at the pre-contractual stage (for example, the exact amount of the premium payable). In contrast to large companies, the individual consumer does not negotiate a contract, he simply **signs up to it**.

- Disputes may arise because **the client is not immediately aware** of what he is purchasing and has certain expectations when taking out a policy. In the settlement of claims, the insured often feels helpless when complex clauses are adduced.
- There are **unfair clauses in contracts** and there are unfair interpretations of clauses. The Commission had received 250 complaints regarding **clauses in breach of competition law**. There are clauses that are unchanged as a result of the Portuguese Commercial Code dating from 1888 which is still valid in many cases and should be revised. Sometimes foreign companies in Portugal copy local clauses instead of improving them.
- There are cases of "**cross**" **insurance** (to take out one type of insurance a second is also required) which infringe the freedom to negotiate: such cases of imposition occur particularly when taking out a mortgage on property; the lending bank may steer the customer towards taking out a policy with a company the bank has links with.
- Much is still to be done in the field of the education, training and **professional qualification** of **insurance brokers**, and there was support for a code of conduct for brokers. Brokers themselves felt that the new agency law, announced by the State Secretary, would prevent insurance company employees becoming brokers while opening the way for any other person, with no minimal capital requirement, provided he or she had a certain level of schooling. In a context where professional training still leaves a lot to be desired, some therefore consider the law to be a retrograde step.
- There is widespread ignorance of procedures following a **claim**. The IDS system has improved claim settlement. But with claims made abroad, it still takes a very long time to settle, even within the EU.
- In the case of **car insurance**, there are a great many complaints regarding compensation for total write-off or large-scale repairs. There are those opposed to the automatic updating of the market value of cars insured and proportional adjustment of premiums on the grounds that insurance premiums are based on risk and not on the value of the car alone. Another participant was in favour of keeping consumers informed of changes in the value of their vehicles but against adjusting premiums automatically.
- Insurers claim that **health insurance** is an area where fraud is most prevalent, often with the collaboration of doctors themselves. In the case of **workers' insurance**, settlement of all claims involving death or invalidity have to be approved by an industrial tribunal.
- Consumers accuse insurance companies of referring any **disputes** to the **courts**, thereby playing on the cost and long delays involved to try to get the plaintiffs to give in. Sometimes companies propose a settlement just before the case is heard, and the consumer is often forced to accept because the legal process is slow and expensive. Insurance companies regard such accusations as unfounded. The courts penalise insurance companies heavily and the companies themselves see taking legal action as

detrimental to their image. Moreover, 40% of civil cases heard in Lisbon involve this kind of dispute, with the result that such cases take more than a year to be resolved in courts of first instance.

- The Ministries of Economy and Justice and the municipal authorities of Lisbon, Oporto and other cities have created **Arbitration Centres** to settle disputes out of court, although insurance companies are reluctant to participate. Five companies take part in Lisbon and three in Oporto.
- The **Portuguese Insurance Institute** (Instituto de Seguros de Portugal) is a semi-independent body working in tandem with the Ministry of Finance whose brief is to oversee and regulate insurance companies. The Institute has the authority to investigate abuses of the rules, but must exercise caution so as not to intervene in matters which fall within the remit of the legal system proper. Insurance companies are **resistant** to giving out information, such as providing policies for analysis. One participant suggested creating a European body with the task of analysing complaints and, if necessary, imposing sanctions on offenders.
- There is certainly scope for action in the field of **consultation** with consumers to improve the image of insurance companies, but these companies must retain their freedom of action, including their freedom to innovate.
- The lack of **fiscal harmonisation** results in differing competitive conditions in different countries.

V.
Summary of the London hearing held on 2 September 1997

The Single Market Observatory organised on 2 September a hearing in London with the title "The consumers and the Insurance market", where representatives from insurers, intermediaries, consumers and their associations, as well as regulatory bodies took part. The purpose of the hearing was to study remaining barriers to the insurance single market and to listen the actors' special approach to this matter.

Most participants recognised the contribution to the development of the single insurance market of the European Directives on the right of establishment and the right to provide services, but nevertheless pointed to the persistence and identification of some factors limiting cross-frontier trading, such as fiscal representation, language problems, the legal validity of electronic signatures or the lack of EU rules for reinsurance. Many of the technical trade barriers which were observed came from national protectionist attitudes. The general solution should be EU framework legislation with more detailed specification at national level, the development of voluntary measures (e.g. self-regulation) and especially the enforcement of both legal and voluntary measures. An harmonised tax system would contribute in a significant way to reduce distortions of competition.

The following points were made during the Hearing:

- A **dialogue** between the CEA (Comité Européen des Assurances), DG XXIV of the European Commission and the consumers has been established and the ESC's present initiative can contribute to this process.
- Consumer protection in Britain is extensive and comprises the following elements:
  - the **Financial Services Act of 1988**, which sets rules for marketing any product classified as an investment, including most life-insurance and saving or pension products;
  - an **ABI** (Association of British Insurers) **Code of Practice** for the selling of general insurance, covering the marketing of non-life insurance;
  - a similar **ABI Code** covering the very small amount of life insurance not covered by the Financial Services Act;
  - the EU **"Unfair Contract Terms"** Directive, which has been fully implemented in the UK. Guides have been prepared to assist insurers in reviewing their policies and making sure they comply with the Directive;
  - **legislation on data protection**, where the UK complies with the original Council of Europe Convention and is in the process of implementing the recent European Directive;

- an **Insurance Ombudsman**, who provides services free of charge. The PIA (Personal Investment Authority) Ombudsman deals with life assurance and investments, while the general Ombudsman deals with other requests.

- **With regard to non- life insurance**

- Coexistence between more or less **voluntary or legalistic systems** is entirely feasible. Voluntary agreements make sound business sense and are in themselves suitable for all parties.

- Britain's special approach has **laws** regulating not only **agreements** but also the **conduct of firms**. More emphasis should be placed on **enforcement**. Even though the **code of conduct** is not formal legislation, it is used in practice even by those who had not signed up to it.

- The **need to explain the ombudsman's role and existence** was stressed. Only when top management has seen and rejected a customer's complaint does the customer become aware of the ombudsman's existence. This office is financed by charging every insurance company a fee for each case which ends up there. The system is seen as being to the advantage of all, there is therefore a certain interest in paying for it on the part of the users.

- In principle firms from abroad cannot consult the host country's ombudsman. There is then an **inconsistency between the system for supply of products** (cross-frontier) **and the one for complaints** (nationally restricted).

- Consumers are generally well provided with **information when taking out insurance**, but the extent of knowledge declines with the increasing complexity of the product and the contracts.

- The importance of high quality dialogue between brokers and customers deserves to be stressed. The existing legislation does not take account of the important **role of brokers** (98% of the market).

- Legal protection has to be ensured when contracts are concluded without signatures and arranged over the **telephone** or through **Internet**, which is a real innovation. For the moment (and in the near future) the **physical signature** is definitely not on the way out.

- It is particularly important for the **complaints** to be dealt with rapidly, both by the firm and by the Ombudsman. 2/3 of the complaints are settled directly with the firm. Legal cases are expensive and very long drawn out.

- Only a few customers take out **insurance across frontiers.**

- Many firms acquire a blanket licence for operating in all fifteen Member States, not necessarily intending to use it.

- **Language barriers** should not be underestimated, such as the fact that policies are normally drawn up in the language of the parent firm.

- In certain countries the cost of a **fiscal representation** effectively excludes firms from other countries. The costs of operating abroad would decrease if fiscal representation in all countries would be replaced by a notification system at the head office.

- The **various tax systems** tend to distort competition and there are sec-

ond and third generation directives which have confirmed Member States' right to exercise such distortion of competition.

- **Life insurance and pensions matters**

- There is much **EU legislation** in the financial sphere, but **enforcement** at national level often leaves much to be desired. British **Self-regulation** has worked less well than expected as the system is bureaucratic and concentrated on processes rather than results, so an extra effort should now be made to improve it.
- **PIA** is a **regulatory body** established by the British Financial Services Act and responsible for the regulation of the marketing of life-insurance products. Its main role is ensuring that consumers are treated properly by insurers and a key issue in this is the quality of information.
- Much has been done to increase **transparency and comparability** on the British market. There is increased demand for product types where various products are set out for comparison. The material which customers receive from firms is good enough but is voluminous, so customers do not read it carefully enough.
- **Competition** often takes the form of attempts to win competitors' market shares, rather than to enlarge the whole market.
- At present there are signs of **discrimination against lower-income groups**, seen by some companies as not worth prospecting. There is a special problem with people on low and variable incomes who are obliged to surrender insurance.
- Since tax conditions (benefits) are discounted when the insurance is taken out, the consumer is hit later by tax changes.
- The **employees** in the insurance sector have been hard hit by cutbacks in recent years.
- **In France**, mediation is the exception and would therefore often take place very high in the firm's hierarchy. It is also a relatively expensive way of solving problems. In addition, mediation works best when contractual questions are involved, but rather worse when it is a matter of liability, third-party cover etc. The mediator's decisions are respected by the firm, but do not deprive the customer of the right to seek legal redress. French legislation goes beyond the third Directive requirements in regard to a cooling-off period, information for the customer on new forms of cover, the real content of the contract, etc. Moreover, a special effort is being made to train insurance agents and brokers.

Conclusions of the two Hearings

As a general conclusion, in both Hearings the consumers' approach contrasts with the insurers' point of view. Nevertheless, both groups of interest recognise that neither insurers nor consumers benefit enough from the single insurance market yet because of the persistence of many barriers to trade.

The following common points were highlighted in both hearings:

- The matter discussed at the hearings

is a very topical subject at present.

- Coexistence of legalistic and voluntary systems and need to reinforce self-regulation (Codes of Conduct; Mediation; Ombudsman) as a suitable measure for all parties.
- An extra effort should be made to guarantee transparency and comparability on the insurance market. The information provided to the consumers is voluminous but not always comprehensible enough.
- Lack of discussion when taking out insurance, the consumers just accept or reject the policy.
- The legal settlement of complaints is expensive and very long drawn out.
- Need for recognition of the important role played by brokers and other intermediaries.
- Legal protection has to be ensured in the long-distance contracts (arranged by telephone and Internet). The consequences of this new method should be studied. Persistence of the physical signature.
- Persistence of language barriers.
- The non-harmonised tax systems provoke distortions of competition.

The different points of view depend on evident factors such as:

- The composition of the participants: Consumers were better represented at the Lisbon hearing and the representation of insurers at London was dominant.
- Significance of the insurance industry in each country and international vocation of the sector.
- Social and political weight of consumers' organisations.
- Degree of development of the mediation and other self-regulating measures en each country (Ombudsman; Codes of Conduct, etc.). Different ways of financing the ombudsman.
- Training and qualification of insurance agents and brokers.

VI.
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