

EUROPEAN PARLIAMENT

# Working Documents

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DOCUMENT 1-88/84

## Report

drawn up on behalf of the Legal Affairs Committee

on the proposals from the Commission of the European Communities to the Council (Doc. 1-58/83 - COM(83)106 final) for

- I. a decision on the conclusion of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance
- II. a directive on the implementation of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance

Rapporteur: Mr F. D'ANGELOSANTE

PE 87.953/fin.

Or. It



By letter of 15 March 1983, the Council of the European Communities requested the European Parliament to deliver an opinion, pursuant to Articles 113 and 57(2) of the EEC Treaty, on the proposals from the Commission of the European Communities to the Council for:

- I. a decision on the conclusion of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance
- II. a directive on the implementation of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance

On 11 April 1983, the President of the European Parliament referred the proposal to the Legal Affairs Committee as the committee responsible, and to the Committee on Economic and Monetary Affairs and the Committee on External Economic Relations for an opinion.

At its meeting of 25 and 26 May 1983, the Legal Affairs Committee appointed Mr D'Angelosante rapporteur.

The committee considered the Commission's proposals and the draft report at its meetings of 1 and 2 March 1984 and 21 and 22 March 1984.

At the last meeting, the committee decided unanimously to recommend to Parliament that it approve the Commission's proposals subject to the reservations mentioned in paragraph 3 of the motion for a resolution.

The committee then adopted the motion for a resolution as a whole unanimously.

The following took part in the vote: Mrs VEIL, chairman; Mr TURNER, vice-chairman; Mr D'ANGELOSANTE, rapporteur; Mrs BADUEL GLORIOSO, Mrs CINCIARI RODANO, Mr FERRI, Mr FISCHBACH, Mr GEURTSSEN, Mr JANSSEN VAN RAAY, Mr TYRELL and Mr VIE.

The opinion of the Committee on Economic and Monetary Affairs is attached.

The Committee on External Economic Relations has decided not to deliver an opinion but to consider the matter within the context of the report on economic and trade relations between the EEC and EFTA (see Doc. 1-1496/83).

The report was tabled on 27 March 1984.

The deadline for the tabling of amendments to this report appears in the draft agenda for the part-session at which it will be debated.

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MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposals from the Commission of the European Communities to the Council for a decision on the conclusion of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance and a directive on the implementation of the agreement between the Swiss Confederation and the European Economic Community concerning direct insurance other than life assurance

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(83) 106 final),
  - having been consulted by the Council pursuant to Articles 113 and 57(2) of the EEC Treaty (Doc. 1-58/83),
  - having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1- /83),
  - having regard to the result of the vote on the Commission's proposals,
1. Welcomes the fact that it was consulted on the proposals in question which have thus been subjected to a form of democratic control;
  2. Stresses the importance of the draft agreement with the Swiss Confederation which represents the first attempt to draw up an agreement with a third country on the subject of services and right of establishment;
  3. Considers the following provisions of the proposed agreement to be unsatisfactory:
    - the maintenance of Switzerland's wide-ranging powers to control policy conditions and premium rates;
    - the effect of exchange of letters No. 6 concerning assets would be to provide substantial relaxation for Swiss insurers operating in the EEC, but only very minimal relaxation for Community insurers established in Switzerland;
  4. Approves the Commission's proposal on condition that a satisfactory solution is found to the above-mentioned objections.

EXPLANATORY STATEMENT

1. Directive EEC/73/329<sup>1</sup>, which has been in force since 1973, coordinates provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, annuities and other specific types of insurance.

This directive has its legal basis in Article 57, paragraph 2, of the EEC Treaty ('the coordination of the provisions ... of Member States concerning the taking-up and pursuit of activities as self-employed persons. '), as part of the right of establishment.

2. Another proposal in the same sector of great practical importance is however still being considered by the Council: it is a proposal<sup>2</sup> aimed at facilitating the effective exercise of freedom to provide services, in particular by coordinating national provisions. Unlike the 1973 directive, the 1976 proposal aims at facilitating the activity of undertakings which do not intend to establish themselves in a country other than the one in which they are carrying out their activity.

It would be extremely desirable for the proposal to be approved, since it would contribute to the development and complete attainment of the common market in the insurance sector.

3. In the context of economic and commercial relations with the Swiss Confederation, more than 80 agreements have been drawn up by the Community in widely ranging fields: transport, EURONET (Community data network, to which Switzerland has free access), meteorology, protection of the environment, etc.

However, the agreement which the Commission is proposing to the Council is particularly important because it is the first attempt at liberalization in the field of services and right of establishment with a third country.

<sup>1</sup> cf. OJ No. L 228 of 16 August 1973, page 3 ff.

<sup>2</sup> cf. OJ No. C 32 of 12 February 1976, page 2 ff.



4. The proposals on which the European Parliament has been consulted consist of a decision (which embodies the text of the agreement drawn up between the Commission and the Swiss authorities) and a directive to amend national provisions following the entry into force of the agreement. At the end of the document there is a list of points on which the draft agreement departs from Directive EEC/73/239 and a useful comparative table showing the similarities between the provisions of the agreement and those of the directive on which the agreement is modelled.

5. The provisions of the agreement provide for (cf. Article 1) the establishment of 'the conditions which are necessary and sufficient to enable agencies and branches of undertakings whose head office is situated in the territory of one of the contracting parties and which wish to become established in the territory of the other contracting party, or are established there, to take up or pursue the self-employed activity of direct insurance other than life assurance'.

For this purpose, and on the basis of reciprocity and non-discrimination, the conditions for taking up the activity (subject to authorization issued by a supervisory authority on certain conditions) and for pursuing it are laid down in accordance with rules taken in their entirety<sup>1</sup> from Directive EEC/73/239. The conditions and procedure for withdrawing authorization are also laid down.

The general and final provisions lay down an arbitration procedure in the event of a dispute between the contracting parties concerning the operation of the agreement (cf. Article 37). Provision is also made for revision of the agreement or its denunciation (which comes into effect 12 months after notification).

6. The Legal Affairs Committee took the view that although it could not criticize the Commission for the way in which it carried out the task assigned to it by the Council, dangers were however apparent which it would be unwise to underestimate.

In particular, Switzerland's power to intervene with regard to policy conditions and premiums, though balanced by similar powers on the part of the Community, might give the Confederation an excessive preferential concession.

In addition, the freedom retained by the Contracting Parties in respect of the authorized capital of the company, though offset by the obligations of the Contracting Parties as regards the solvency margin and guarantee fund, might give Switzerland an advantage having regard to future Community legislation.

<sup>1</sup> except for the differences inherent in the type of legal measure; it is helpful that the Commission has attached a working document to the proposals indicating the points on which the draft agreement differs from Directive EEC/73/239

7. It is a good idea to define clearly the limits of the procedure for consulting the European Parliament: it seems that no attempt can be made to alter the provisions of the agreement since it is based entirely on a directive already in force in the Community. Any wish to alter the agreement would logically involve a proposal to amend the Community directive itself, which is not a practical possibility.

Moreover, Parliament's role in consultations of this kind should not consist in proposing amendments to the agreement, but - comparable to the role of national parliaments in the ratification of international agreements - in the approval or rejection of the draft agreement.

8. The legal basis of the proposal for a decision is Article 113 of the EEC Treaty which, as part of the title on economic policy provides for the conclusion of trade agreements by the Community, in the context of the common commercial policy, on proposals by the Commission and decisions by the Council.

The draft directive, on the other hand, has its legal basis in Article 57(2) of the EEC Treaty<sup>1</sup>, as part of the Title on the free movement of persons: in order to guarantee the right of establishment of self-employed persons, Article 57 lays down that directives shall be issued, aimed at coordinating the national provisions of Member States on the subject.

9. The legal Affairs Committee declares its agreement with the legal bases chosen by the Commission.

It should be noted that Article 113 of the EEC Treaty does not provide for the compulsory consultation of the European Parliament. It is true that consultation on the proposal for a directive<sup>2</sup> would have no sense if Parliament had not been called upon to give an opinion also on the proposal for a decision, since the two proposals constitute an indivisible whole; however, it is possible to have doubts as to whether consultation on the proposal for a decision is obligatory.

However, still on the subject of consulting Parliament, it should be remembered that in May 1982 the Commission published a communication<sup>3</sup> giving

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<sup>1</sup> By analogy with Directive 73/239/EEC (see par. 2 above)

<sup>2</sup> Based on Article 57, under which consultation of Parliament is compulsory

<sup>3</sup> COM(82) 276 final, 27.5.1982; in particular P. 3 par. 2(a) points (i) and (ii)

its views on Parliament's role in international agreements: apart from agreements of an administrative or technical nature or those adopted in connection with existing agreements, the Commission wished Parliament to be consulted on all agreements having an important effect on the determination and implementation of Community policies; this would mean a nearer approach to the system used in Member States, in which it is Parliament that ratifies international conventions.

10. The Legal Affairs Committee is especially glad that the European Parliament has been consulted on the proposals by the Commission, in view of the importance of the subject matter; furthermore, it is extremely important for Parliament to be able to express its opinion on proposals under consideration regarding which the national parliaments will not be consulted, in accordance with the procedure for agreements negotiated by the Community on subjects under its jurisdiction.

Mrs BOOT, as a member of the Legal Affairs Committee, made a speech to this effect at the Tenth Congress of the International Federation for European Law (FIDE) held in Dublin from 24 to 26 June 1982:

'... it is therefore vital that such agreements concluded by the Community should be subject to some form of democratic control, just as treaties concluded by most states may be rejected in their entirety by the national parliament'<sup>1</sup>.

11. To conclude the extension to the Swiss Federation of the rules concerning the establishment of insurance companies as regards direct insurance other than life assurance is beneficial not only for the companies themselves, but also for consumers, who will thus have a larger number of companies to choose from, with all the benefits that this entails.

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<sup>1</sup> cf. Note to Members No. 29/82 - PE 79.736, p. 9

OPINION

OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

(pursuant to Rule 101 of the Rules of Procedure)

Draftsman : Mr Karl von WOGAU

At its meeting of 20 April 1983, the Committee on Economic and Monetary Affairs appointed Mr von Wogau draftsman of the opinion.

The committee considered the Commission's proposal at its meetings of 4 and 29 November 1983.

At the latter meeting, the committee adopted the conclusions in the opinion unanimously.

The following took part in the vote: Mr Moreau, chairman; Mr von Wogau, rapporteur; Mr von Bismarck, Mrs Desouches, Mr Halligan, Mr Heinemann, Mr Mihr, Mr Müller-Hermann, Mr Nordmann, Mr Rogalla (deputizing for Mr Wagner); Mr Wedekind (deputizing for Mr Franz) and Mr Welsh.

1. The Committee on Economic and Monetary Affairs would stress from the outset that it is in principle in favour of agreements with third countries on matters such as insurance in addition to its general conviction of the desirability of establishing the closest possible economic relations between the Member States of the EEC and EFTA. In Switzerland's case, in particular, account should be taken of the fact that the Community has a substantial surplus on its trade balance.

2. However, members of the committee have also pointed out that the agreement proposed by the Commission benefits Switzerland more than the Community in that the Community would be opening a market with a population of 260 million to be extremely competitive Swiss insurance companies, whereas the insurance companies in the Member States of the EEC, which are not yet established in Switzerland, would expand their market by a mere 6.5 million people.

It was also pointed out that this was potentially the first agreement in this field and that it might therefore create a precedent for future agreements, either in other fields or with other states. A relatively thorough discussion is therefore necessary.

3. During the committee's deliberations, extremely critical remarks have also been voiced by one of the Member States, in particular, to the effect that the proposed agreement entails substantial benefits for Swiss insurance companies whereas it does not facilitate the activities of European insurance companies on the Swiss market.

This position was justified during discussions as follows:

- the agreement is concerned with the right of establishment only; Community provisions relating to co-insurance for instance are not covered by the agreement;
- Switzerland is allowed to retain the cantonal monopolies, in particular in fire insurance, and very wide-ranging powers of control over premiums and other conditions of insurance;
- the Swiss insurance companies are not subject to EEC competition rules (in particular Articles 85-86 of the EEC Treaty).

## Conclusion

(a) notwithstanding these misgivings, the members of the committee support the Commission's proposal (subject to the reservations below) in view of the desirability of intensifying economic relations between the Member States of the EEC and EFTA and taking into account Switzerland's negative trade balance with the Community;

(b) the Commission and the Council should make final endorsement of the agreement contingent upon Switzerland's willingness to renounce the cantonal monopolies in fire insurance ;

(c) the agreement should not create a precedent for the content of any similar future agreements with other third countries.