COMITÉ EUROPÉEN DES ASSURANCES

CEA POLICY REPORT ON

PROSPECTS FOR SIMPLIFYING EUROPEAN INSURANCE LEGISLATION

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Prospects for simplifying European insurance legislation

1. – Towards a Single Insurance Market

a) An incomplete and complex legislation

The establishment of a single direct insurance market in the European Union required the legislative authorities to undertake long and exacting work. This began in the 70s with the approval of the two so-called first generation directives which introduced freedom of establishment in life and non-life insurance. This work has not yet been completed although these directives have been followed since then by some twenty other sectoral directives and a few broader enabling directives (cf. annex 1).

Throughout this work, the community legislative authorities have had to confront problems associated with the specific features of Member States. These were sometimes insurmountable and consequently meant, on the one hand, that the legislator did not co-ordinate very important sectors of insurance legislation, such as contract law but, on the other, continued to work towards minimum harmonisation together with a broader application of the principle of subsidiarity. This left national legislative authorities with appreciable discretionary powers often underlined in the different directives by the specific options open to Member States.

If a list of the pros and cons of this enormous harmonisation effort were drawn up, on the asset side we would have to show the creation of a broad, joint legislative platform for all Member States which, whilst not totally wiping out the identity of their respective markets, has managed to weld them together into a continental-wide single market with much more marked consistency than the North American market. The European market's links are growing stronger and stronger from a strictly economic point of view because of the increasing osmosis of its different territorial entities.

However, unquestionably in the eyes of insurers and their clients, this intense legislative productivity has defects. One of them, of primary importance, is the serious gaps which need to be rapidly filled and another the overabundance of texts and standards. The latter needs to be codified into a single regulatory framework which is consistent, clear and lightweight.

Concentrating this examination of European insurance legislation on contract law and supervisory law reveals that they are at one and the same time incomplete and complex.

With regard to contract law, the lack of harmonisation other than for pre-contractual information means no insurance products are designed for sale throughout the Union. This is because, with regard to cross-border products, the adoption (and therefore a detailed knowledge thereof) of applicable national legislation is made obligatory depending on the provisions of international private law laid down individually by the Member States within limits fixed by the community legislator.

On the other hand, with regard to supervisory law, the uncoordinated proliferation of legislative instruments based on the three generations of life and non-life coordination directives, together with numerous other texts, does not facilitate an overall view either of community legislation or, furthermore, of its transposition by Member States, given its minimum nature and the many options they have.

b) Rationalisation and simplification

The requirements of legislative rationalisation and clarification were quickly perceived by CEA which began to work on this in the 80s. It firstly undertook a comparative study on insurance contract law in force in the different Member States which was published in 1990 with a view to boosting harmonisation. It then codified the first, second and third generation life and non-life directives, (published in 1994) and finally drafted two Vademecums for life and non-life operators under the single licence. To this was added a list of options available to Member States (some forty in life insurance and fifty in non-life insurance) with an indication of each Member State choice (completed in 1997).

These same requirements were also perceived by the community legislative authorities which began two parallel initiatives to simplify and codify supervisory law. The first resulted in the SLIM procedure (Simplification of the Legislation of the Internal Market) which was completed in 1998. Its conclusions have not subsequently, with a few exceptions, led to any modification of the "acquis communautaire". The second initiative recently resulted in publication of a life insurance directive combining and codifying into one single text all directives promulgated to date in this area. This will soon be followed by its opposite number for non-life insurance.

Such an exercise however has limits not only because of its restricted scope and lack of unity but also because it is a constant law codification which adds little to the new simplification exercise recently announced in a communication by the Commission.
With this in mind, the community legislator should modify his approach by establishing the following objectives:

- extending current codification to the Motor, Winding-up, Accounts and Insurance Group directives as well as any horizontal provision applying to insurance in order to combine into one single code all of the "acquis communautaire";
- mobilising Member States in order to unify country per country (where this has not already been done) the instruments transposing the "acquis communautaire" into their national legislation;
- in co-operation with Member States, putting on an ad hoc web site the "acquis communautaire" and national provisions related thereto, based on a uniform classification to facilitate comparison.

The resulting transparency obtained by implementing these proposals would make it possible to highlight the gaps and complexities of the "acquis communautaire". It would also show up the contradictions and inconsistencies of national transposition instruments and the effective degree of non-harmonisation arising out of specific (option regime) or tacit recourse to the principle of subsidiarity. Consequently, in-depth work could be started to simplify community legislation and, at the same time, harmonise national legislation which should result in its revision.

Clearly, the visibility acquired by European insurance legislation would not only benefit the community legislator and national authorities but also operators and insurance users who could check the provisions at any moment.

As far as future insurance legislation is concerned, the requirements of coherence and simplicity could be ensured:

- with regard to community own-initiative texts, by strict verification of the cost/benefit ratio in the study phase and the correct application of the various levels of the Lamfalussy procedure in the preparatory and transposition phase of Member State legislation;
- with regard to national own-initiative texts, by subjecting them to the Commission's current prior notification procedure for the product sector, soon to be applied even to the information society.

2. – Simplifying insurance contract law

In this area, real simplification can only be achieved by harmonising the different national legislation governing insurance contracts. This would make a significant contribution to the completion of the European insurance market because it would make it possible to design products subject to the same provisions for sale throughout the European Union.

The failure, despite its limited scope, of a proposal for a directive to harmonise non-life insurance contract law some thirty years ago temporarily stopped further initiatives of this type. However, over the last few years, different forms have surfaced pursuing or proposing either global harmonisation of civil law, harmonisation limited to certain parts of contract law or the preparation of a common core or even a new regime applicable to products commercialised across frontiers.

Pending a specific solution regarding harmonisation, on the one hand community provisions on international private law governing choice of law applicable should be made more flexible and, on the other, the "acquis communautaire" concerning pre-contractual information for policyholders should be rationalised and simplified.

a) Choice of law applicable

Contrary to the general rule whereby the choice of law applicable to contractual obligations is governed by the provisions of international private law laid down in the 1980 Rome Convention, for insurance they only apply to reinsurance and direct insurance contracts covering risks situated outside the European Union.

Concerning the choice of law applicable to direct insurance contracts for risks situated within the European Union, this is governed by very complicated rules on conflict established by the second generation sectoral directives, in order to give policyholders greater protection, in view of the sector's specific features.

The Rome Convention establishes the principle of free choice of law applicable and, failing this choice, the application of the law of the subject providing the characteristic service. It envisages limits to the protection of consumers whereby, under certain conditions, free choice of law may not deprive them of the protection of the mandatory provisions of the law of the country of their normal residence. In the absence of choice, the contract must be subject to the law of that country.

On the other hand, the conflict rules in the insurance directives establish the principle of the application of the law of the country of the commitment in life insurance and the law of the country of the risk in non-life insurance (and therefore normally the law of the country of the policyholder's residence). They allow minimum freedom of choice of law, in the first case, compared with the heterogeneity between the policyholder's country of residence and that of his nationality and, in the second, the internationalisation of the contract given the country of the risk, the policyholder's country of residence and the country of occurrence of the claim. They do so by ignoring however large risks for which there is total freedom of choice of law.

Consequently, benefiting from studies done by the European Commission to convert the Rome Convention into a community instrument and modernise it, the possibility of harmonising the system envisaged in the Convention and simplifying conflict rules on the choice of law applicable to contracts in the insurance directives - whilst safeguarding the sector's specific features - should be examined.

With this in mind, new provisions should be drafted. They should apply to all insurance contracts based on the Convention's principles, in particular regarding the protection of the weakest party to the contract. This means the consumer ("any natural person acting outside the framework of his professional or commercial activity") whilst envisaging an ad hoc discipline for certain categories of insurance contract such as compulsory and life insurance contracts.

– General regulation. As a general rule, the choice of the law applicable to insurance contracts should be governed by the following principles, unless the country whose law is applicable offers a wider choice:

  (i) like other contractual obligations, insurance contracts should be subject to the law freely chosen by the parties (principle of autonomy); if, however, all the other elements of the situation were localised in one single country, the choice of a foreign law should not affect the mandatory provisions of the law of that country;

(ii) in the absence of choice, the insurance contract should be governed by the law of the country with which it has the closest links, i.e. the law of the country of the risk, rather than that of the country of the party providing the characteristic service as envisaged in the Rome Convention;

(iii) with regard to insurance contracts concluded by consumers, they should be governed by the law of the country of the risk, unless: (i) the law of this country authorises the parties to choose the law of another country, or (ii) the contract includes heterogeneous elements, in which case the parties would have a wider choice without affecting the mandatory standards of the law of that country. Among these elements, there could be: the localisation of the risk in two or more countries; its localisation in a country different either from the one of residence or nationality of the policyholder or from the country where the loss will probably occur.

– Compulsory insurance contracts. Because of their particular features, they should continue to come under the provisions of the 2nd Non-life directive, 88/357/EEC, according to which, when a country lays down the obligation to take out insurance the contract only meets this obligation if it conforms to the specific provisions relating to such insurance envisaged in that country.

– Life insurance contracts. Because of their duration and their importance from a social point of view, they should also continue to be subject to the provisions of international private law in the Life directive, 2002/83/EC, which establishes that the law applicable is that of the country of commitment, unless (i) the law of that country authorises the parties to choose the law of another country or (ii) the policyholder as a natural person has his usual residence in a country other than that of which he is a national, in which case the parties may choose the law of that country.

With regard to the localisation of these provisions, they could continue to be covered by the insurance directives or added as an annex to the future community instrument intended to replace the Rome Convention, because of the specific features of the sector.

Moreover a pure and simple integration of the aforementioned provisions in the Convention would not be desirable even given the difficulty of reconciling different rules on conflict where those currently figuring in the Convention continue to be strictly harmonised and those in the insurance directives come under minimum harmonisation.

Finally, as long as harmonisation of contract law remains incomplete, Member State legislation should be as transparent as possible. This could be achieved by putting it on a simple and immediately accessible Internet site for those interested, facilitated by the preparation of synoptic tables. This would allow comparative examination and highlight the mandatory standards in force.

b) Pre-contractual information

Another area where rationalisation and simplification are important is the "acquis communautaire" on pre-contractual information for policyholders. This is the first part of European contract law to be completed to date.

The regulatory frenzy, stimulated by the – praiseworthy in itself – wish to provide the policyholder and, a fortiori, the consumer prior to the contract with clear information over the last decade, led the community legislator to issue three sectoral directives (Nos. 2002/83/EC, 92/94/EEC and 2002/92/EC) and two horizontal directives (Nos. 2002/65/EC and 2000/31/EC). They resulted in a discipline which was extremely topheavy and difficult to implement because of its lack of consistency. This has probably discouraged the legislator from undertaking any similar exercise in this respect in the future.

Although the aim was to reinforce policyholder confidence without affecting the proper operation of the sector, the results were disappointing. The number and complexity of provisions implemented raise serious problems for insurance companies and their intermediaries. Faced with this confusion of standards, they are unable to determine clearly what information to provide to their clients and the latter, faced with the overabundance of information, might not grasp all their right and obligations.

In order to correctly assess the gravity of the situation created by this regulatory frenzy, European institutions should undertake a reasoned analysis of the "acquis communautaire" on pre-contractual information in the directives and related documents along the lines adopted by French insurers: (i) the first exercise, in the form of an outline, should determine, in the light of the policyholder's quality and sales methods, the provisions applicable compared with the directives in force; (ii) the second exercise, in the form of a synoptic table, should show in parallel these same provisions according to the directives from which they came for comparison purposes.

This dual exercise should highlight the multiplicity of situations regulated by the community legislative authorities given the number of categories of policyholder and sales methods considered. This covers, as far as policyholders are concerned, consumers who are natural persons, non-consumer natural persons, legal entities taking out risks linked to the person etc., and, as far as the selling methods are concerned, face-to-face sales, telephone sales or e-sales etc., with or without intermediaries.

The extreme complexity of the regulations in force is obvious from a specific case shown in the annex (cf. annex 2). This covers pre-contractual information due to a consumer who is proposing to take out a life insurance contract at a distance via a broking company. The person concerned is entitled to some fifty bits of information covering, in order, the insurance undertaking, the broker, the contract, his operational framework and technical elements relating to the sales method chosen. Some of information is also required at the same time by various directives in a non-uniform way which results in legal uncertainty.

Although the situation outlined is unacceptable, no revision of the provisions in force seems possible because of their localisation in directives of a different nature; consequently, the possibility of rationalising and simplifying them, based on the following proposals, should be explored.

- Adoption of a common terminology. One of the most difficult problems in this mass of standards of different origin resides in the use of significantly different terminology from one directive to another and which could be solved by using the same terminology.

  In particular, the various categories of policyholder, envisaged to date by the community legislator, should be reviewed by adopting the concept of consumer as indicated in the paragraph above, by replacing the concept of natural person both in life and non-life insurance and by adopting in the latter area the concept of holder of industrial, commercial or professional risks including all "non-consumer" risks and large risks.

  As an example, in accordance with the above proposal, information in art. 31 and 43 of the 3rd Non-life directive concerning respectively the law applicable to contracts in the absence of choice or freedom of choice granted to the parties, and the country of the head office or the branch of the insurance undertaking with which the contract will be taken out under FOE or FOS, should only be provided when the policyholder is a consumer.

- Establishment of uniform regulations. In parallel, a choice of norms applicable to insurance must be made, possibly by recognising the supremacy of the provisions in the sectoral directives on the basis of "lex posterior generalis non derogat priori speciali". The information on non-life insurance should be incorporated, based on the provisions in force for life insurance, as proposed by CEA in a recent study (cf. annex 3).

  This uniform regulatory basis should also include, for distance or electronic sales, specific pre-contractual information as shown in the distance selling and e-commerce directives, providing, of course, that it does not repeat the sectoral provisions.

  Last but by no means least, so as to cut short any debate regarding cross-border business on the application of the above provisions, in accordance with the conflicting principles of "home" or "host country control" the community legislative authorities should clearly establish that they constitute a corpus of strict harmonisation rules from which Member States will be allowed no derogation.

3. – <u>Simplification of supervisory law</u>

As indicated above, taking into account the considerable number of directives on supervisory law, any serious simplification initiative should be preceded by an in-depth analysis of the legislation in force at community and national level once the required transparency has been achieved.

Furthermore, the establishment of a simple, clear and coherent legislative framework requires action to be taken not only in respect of the "acquis communautaire" to remove all incongruity, complexity and loopholes but also in respect of Member States' national legislation. The aim is to verify, on the one hand, that it conforms to community legislation and, on the other, to promote its harmonisation by acting appropriately on the number and range of options granted to Member States so far.

Pending action by the competent European and national authorities to ensure the legislation in force becomes transparent, below are a number of ideas which would be worth pursuing in the meantime in an effort to take the first steps towards simplification. These ideas fall within the scope of general measures, liberalisation regulations and "solo plus" supervision.

a) General measures

At this level, measures to be taken in the first phase might concern the areas described below.

- Modernising current administrative procedures by the adoption of new computer technology. Such modernisation should facilitate all administrative procedures where documents need to be transmitted or information exchanged and where, until now, this has been done by letter, between the supervisory authorities and between the supervisory authorities and insurance companies as well as between the latter and their users. Carrying out these operations by electronic means, and thus in real time, would mean that the majority of current administrative procedures would be shortened and become more manageable.

- Simplifying the rules concerning asset investments representative of the technical reserves of life and non-life insurance companies. This exercise, advocated by the SLIM report, is still topical even taking into account the appearance of new products and the way that supervisory regulations have changed in other financial sectors. It could usefully be started – as anticipated in the third generation directives – by means of the procedures established in the "Comitology" directive (n. 91/675/EEC), in preparation for the work on this aspect in the framework of Solvency II.

- Standardising supervision of the acquisition of qualified participation in insurance companies. In this respect, current life and non-life legislation stipulates that any natural or legal person wishing to acquire or increase a qualified participation in an insurance company must inform the country of origin supervisory authorities beforehand. They have three months to oppose the plan if they judge, on the basis of information supplied, that the person in question is not able to guarantee a sound and prudent management of the company. The application of these provisions in the different Member States should be subject to in-depth checking in order to define and eliminate all requests for supplementary information which turn out to be unjustified with regard to the principles of "home country control" and mutual recognition.

- Relaxing standards governing portfolio transfers. The provisions governing portfolio transfers of life and non-life insurance contracts date back to the second generation of directives which explains why they are so heavy and complex, making cross border transactions very difficult. In accordance with the SLIM report, these provisions should preferably be relaxed and revised in the light of "home country control". This is the principle inspiring current insurance legislation, by attributing the role of "leader" and of co-ordinator to the ceding company's country of origin authorities vis-à-vis the authorities of the cedent and the authorities of other countries where it is active, whilst at the same time safeguarding the protection of insurance users.

b) Liberalisation regulations

Even in this context, it is possible to envisage several ways of simplifying the acquis communautaire which would be likely to accelerate integration of the internal insurance market

- Notification of and publicity for cross-border activities. Access to any cross-border insurance activity – whether under FOE, for an agency or branch, or FOS – should be subject to an indispensable notification procedure in order to guarantee market transparency and inform all interested parties (supervisory authorities, insurers, agents and, of course, insurance users). This being the case, every national supervisory authority should show on its site a complete list of companies and insurance agents qualified to operate in that market (for the latter with reference back to the competent body) and keep it up to date so that it can be consulted at any time.

- Notification procedure for the opening of an agency or branch. This procedure could benefit from some modifications to make it clearer and more flexible. On initial examination, it seems appropriate for the company, in its plan of operations, to simply indicate the classes of insurance which it is authorised to write, and for the same solution to apply to notification under FOS. This would avoid the current divergence between the two systems (agencies and branches have to indicate the "type of operations"; companies operating under FOS have to indicate the "nature of the risks"). On closer examination, taking into account the considerable advantages of adopting new computer technology, it should be possible to shorten the time allowed the home country authority (three months) and the host country authority (two months) for defining the procedure.

- Notification procedure for business carried out under FOS. In accordance with the suggestion made above, a company which wishes to operate under FOS should simply indicate which classes of insurance it is authorised to write. Furthermore, it should be stipulated that the notification procedure can be completed, if necessary when the first contract is concluded, on condition, however, that the insurer pays the anticipated premium taxes in the country of operation.

- Methods for the payment of premium tax collected under FOS. Applying the principle of tax territoriality, community legislation authorises Member States to instruct insurers who propose to operate under FOS within their territory, to nominate a tax representative responsible for payment of indirect taxes and parafiscal charges imposed on premiums collected. However, in transferring such a condition into their national legislation, some Member States have subjected the nomination of the tax representative to conditions likely to dissuade companies who might otherwise be interested in operating by way of FOS. This problem should be resolved either by the Member States concerned or by means of community legislation.

- Updating community coinsurance. Although the operations carried out as a result of the system established by the directive of this name (no. 78/473/EEC) have had some success, it would be a good time to update it with the aim of giving it a new impetus. For this purpose, as suggested by the SLIM report, some of the directive's provisions should be revised to align them on the principle of "home country control" and to extend its sphere of application to include, on the one hand, operations in which all coinsurers are based in the same Member State, other than that in which the risk is situated, and, on the other, operations involving life insurance and group accident insurance.

- Statistical information concerning cross-border insurance business. Despite widespread reluctance regarding the application of provisions concerning passing on to the supervisory authorities statistical data indicating the volume of cross-border premiums collected via FOE or FOS (and, possibly, via community coinsurance), this source of information should be maintained and improved. It could be used to measure from one year to the next the degree of internationalisation of the different markets that make up the European Union.

c) "Solo plus" supervision

In this context, the co-existence of the two directives on the supplementary supervision of insurance groups (no. 98/78/EC) and of financial conglomerates (no. 2002/87/EC), highlights the requirement for a fundamental coordination between the two schemes to be achieved as soon as possible given the date of entry into force of the latter directive. After an initial examination of both directives, the following questions should be addressed first and foremost.

– Simultaneous application of both directives to the same economic entity. As matters stand at present, in cases where the economic entity is complex, such as when a financial conglomerate has an insurance group within it, the companies included on the outskirts of the insurance group would be subjected to double "solo plus" supervision resulting in a considerable increase in their costs. In these cases, the possibility of adopting the same principle as that established by the directive on conglomerates should be explored. This states that when a financial conglomerate is a sub-group of another financial conglomerate, supplementary supervision only applies to those regulated companies which belong to the latter.

– Introduction in the directive on groups of the notion of a co-ordinator. With the aim of facilitating the choice of supervisory authority charged with carrying out the supplementary supervision of insurance groups as well as the definition of its role, the directive on groups should look to the provisions which appear in the directive on financial conglomerates with respect to both the nomination of the single co-ordinator and the scope of its mission.

– Duplication of supplementary supervision of insurance groups. As emphasized above, the financial conglomerate directive expressly excludes from its scope companies which are members of a financial conglomerate which is a sub-group of another financial conglomerate in order to spare them unnecessary administrative surcharges. For the same reason, a similar provision should be incorporated in the directive on insurance groups.

– Duplication of information requirements. The insurance group directive does not address the question of avoiding duplication of information which companies subject to supplementary supervision are required to provide; it would therefore be a good idea if this directive were to be based on the standards on this subject in the financial conglomerate directive.

– The imprecise nature of certain notions contained in the financial conglomerate directive. It should be emphasized that this directive fails quantitatively to define either the notion of "concentration of risks" or that of "intragroup transactions", confining itself to authorising Member States to set limits in this area pending subsequent coordination of community legislation. Such an approach raises serious concerns since it does not appear to be in line with the requirement to achieve standard regulations on this subject.

4. – Evaluation of the cost of regulation

Given the serious defects characterising European insurance legislation, in particular its complexity arising out of frequently adopted excessive regulation, the community legislator should, before launching any new initiative, undertake a more detailed cost/benefit analysis than in the past for the sector concerned.

If properly implemented, such an assessment should identify the stakes, outline the aims of the initiative to be examined, list the principal options for achieving them and weigh the respective pros and cons as well as the synergies and compromises necessary. This would avoid undertaking superfluous, disproportionate and costly regulatory activity with its adverse effect both on operators and policyholders.

This requirement to be more strict in assessing the costs and benefits of regulation can clearly be seen in the study on integrated impact assessment adopted by the Commission in its communication on "Impact assessment" and its "Internal guidelines on the new procedure for undertaking impact assessment studies". Their content clearly marks a positive trend by the new system compared with the old from a qualitative and a consistency point of view.

However, whilst it is true that the Commission in its communication establishes, at least in theory, an apparently effective evaluation mechanism, it is also true that in practice this mechanism raises serious questions for the following reasons:

– the absence of binding provisions concerning the implementation of the assessment procedure as well as the lack, vis-à-vis the Commission's services, of tools which could really guarantee the effectiveness of such a procedure;

- the arbitrary nature of consultation undertaken by the Commission and the European Business Test Panel (EBTP) which, consequently, do not guarantee an objective and full examination of the situation;

- the procedure's total lack of transparency where assessment reports are only published following the adoption of the proposal by the Commission;

- the absence of any binding value of the impact assessment study on the Commission's decisions consequently leaving the Commission with very wide discretionary powers.

With regard to the latter point, even though there is no doubt that the impact assessment cost/benefit analysis cannot replace a political decision, the absence of proof proving that the conclusions of these analyses are effectively taken into account by the Commission in its final decision is regrettable.

As an example, the impact assessment made when the data protection directive was prepared showed that this new directive would mean enormous costs for undertakings, out of all proportion to the subsequent advantages of its adoption. The Commission nonetheless decided to proceed without trying to demonstrate the contrary.

Consequently, there is reason to fear that the new Commission communication will have no real moderating influence on the community legislator's regulatory frenzy as long and until the problems indicated above are adequately solved.

Good sense would seem to imply that any new European regulatory initiative should be preceded – even before the impact assessment is begun – by a comparative legal analysis undertaken both within Member States and vis-à-vis the most developed third countries. This would check whether the provisions under study existed and, if so, whether they would be useful and inexpensive.

5. – Conclusions

The legislative activity which contributed to the creation of the internal insurance market has given rise to a regulatory framework which is both incomplete and complex.

In such a situation, the Commission should concentrate its efforts on simplifying the "acquis communautaire" and harmonising Member State legislation by taking the following steps: (i) listing European contract and insurance supervisory law and their transposition into national legislation; (ii) putting on a web site the abovementioned legislation so that the gaps, the inconsistencies and the complexities can be spotted more easily; (iii) identifying action to be undertaken from a simplification point of view by targeted intervention; (iv) incorporating all community insurance legislation into one ad hoc code and, in parallel, national legislation.

With regard to insurance contract law, pending its harmonisation which will give a decisive boost to the integration of the internal market, simplification should be developed in two directions:

- on the one hand, sectoral conflict rules governing choice of law applicable should be made more flexible by bringing them into line with the general regime in the 1980 Rome Convention, safeguarding at the same time the specific features of insurance particularly by referring, in the absence of choice, to the law of the country of the risk;

- on the other hand, to rationalise the hotchpotch of pre-contractual information due to the policyholder by replacing dissimilar terminology in the directives by common terminology (including, in particular, the concept of consumer) and establishing a corpus of strict harmonised rules the basis of which should be constituted by the sectoral provisions in force plus, in the event of distance or electronic selling, the specific provisions contained in the two directives in this respect.

With regard to supervisory law, simplification should not only cover the "acquis communautaire" but also national legislation, in particular in order to promote further harmonisation. Initially, this task should cover respectively provisions of a general nature, rules on liberalisation and "solo plus" supervision:

- with regard to provisions of a general nature, the action to be undertaken could include: modernising administrative procedures by adopting new computerised technology, uniformisation of the control of acquisition of qualified participation in insurance companies, clarifying standards governing portfolio transfers, etc.;

- as far as the rules of liberalisation are concerned, it might be possible to envisage intervention to accelerate the integration of the internal market such as: improving publicity of cross-frontier activities, more flexible notification procedures for FOE and FOS business, updating the community coinsurance system, etc.;

- with regard to "solo plus" supervision, the two directives on supplementary supervision of insurance groups and financial conglomerates could be co-ordinated in order to avoid the simultaneous application of both directives to the same economic entity as well as the duplication of supervision of insurance groups and requests for information on the same groups, etc..

However, these efforts to simplify and rationalise will not give the expected results if, in future, community legislation continues, as has been the case over the last few years, to be produced to excess.

The recent Commission communication on "Impact Assessment" vis-à-vis future regulatory initiatives is undeniable proof of the fact that the Commission is conscious of the seriousness of the problem; however, this new system can only play an effective role if it is based on objective and reliable evaluation criteria (including firstly, detailed studies of comparative law) and that its conclusions are given binding value.

To conclude, in order to achieve an optimum regulatory environment, the community legislative authorities should, on the one hand, undertake the simplification and rationalisation requested and, on the other, practice prudent legislative policies by exercising strict control over their own initiatives. Initiatives should only be adopted when they are based on the well-understood interests of operators and customers.

Annex

Simplification of European legislation

Key Messages

The legislative activity which contributed to the creation of the single insurance market has given rise to a regulatory framework which is both incomplete and complex.

In such a situation, the European Commission should concentrate its efforts on simplifying the "acquis communautaire" and harmonising Member State legislation by taking the following steps:

(i) **listing** European **contract and insurance supervisory** law and their transposition into national legislation
(ii) **putting on a website the abovementioned legislation** so that the gaps, inconsistencies and complexities can be spotted more easily;
(iii) **identifying action to be taken** from a simplification point of view by targeted intervention;
(iv) **incorporating** all community insurance legislation into one ad hoc code and, in parallel, national legislation.

Areas affected by simplification work

I. Contract law

Pending its harmonisation which will give an important boost to the integration of the internal market, simplification should be developed in two directions:

– on the one hand, **sectoral conflict rules governing the choice of law applicable should be made more flexible** by bringing them into line with the general regime in the 1980 Rome Convention, modulating appropriately the choice by consumers of insurance and of course, safeguarding the specific features of the sector, particularly by referring, in the absence of choice, to the law of the country of risk;

– on the other hand, to **rationalise the hotchpotch of pre-contractual information due to the policyholder,** by replacing dissimilar terminology in the directives by common terminology (including, in particular, the concept of consumer) and establishing a corpus of strict harmonised rules the basis of which should be constituted by the sectoral provisions in force plus, in the event of distance or electronic selling, the specific provisions contained in the two directives in this respect.

II - Supervisory law

Simplification should cover not only the "acquis communautaire" but also national legislation, in particular in order to promote further harmonisation. Initially, this task should cover respectively provisions of a general nature, rules on liberalisation and "solo plus" supervision:

- with regard **to provisions of a general nature**, the action to be undertaken could include: modernising administrative procedures by adopting new computerised technology, uniformisation of the control of acquisition of qualified participation in insurance companies, clarifying standards governing portfolio transfers, etc;

- as far as the **rules of liberalisation** are concerned, it might be possible to envisage intervention to accelerate the integration of the internal market, such as: improving publicity of cross-border activities, more flexible notification procedures for FOE and FOS business, updating the community coinsurance system, etc.;

- with regard to **"solo plus" supervision,** the two directives on supplementary supervision of insurance groups and financial conglomerates could be coordinated in order to avoid the simultaneous application of both directives to the same economic entity as well as the duplication of supervision of insurance groups and requests for information on the same groups, etc.

However, these efforts to simplify and rationalise will not give the expected results if, in future, community legislation continues, as has been the case over the last few years, to be produced to excess.

The Commission communication on "Impact Assessment" vis-à-vis future regulatory initiatives is undeniable proof of the fact that this institution is conscious of the seriousness of the problem; however, it must be stressed that this new system can only play an effective role if it is based on objective and reliable evaluation criteria (including, firstly, detailed studies of comparative law) and that its conclusions are giving binding value.

To conclude, in order to achieve an optimum regulatory environment, the community legislative authorities should, on the one hand, undertake the simplification and rationalisation requested and, on the other hand, practice prudent legislative policies by exercising strict control over their own initiatives. Initiatives should only be adopted when they are based on the well-understood interests of operators and customers.

Sub-annex 1

INSURANCE LEGISLATION IN FORCE

Life

- Directive 2002/83/CE, Life assurance (recast version)

Non-Life

- Directive 73/239/EEC, First Council Directive - Taking-up and pursuit of the business
- Directive 73/240/EEC, Abolition of restrictions on freedom of establishment
- Directive 76/580/EEC, Amending 73/239/EEC
- Directive 78/473/EEC, Community co-insurance
- Directive 84/641/EEC, Amending 73/239/EEC - Tourist assistance
- Directive 87/343/EEC, Amending 73/239/EEC - Credit insurance and suretyship insurance
- Directive 87/344/EEC, Legal expenses insurance
- Directive 88/357/EEC, Second Council Directive amending 73/239/EEC - Provisions to facilitate effective exercise of freedom to provide services
- Directive 90/618/EEC, Amending 73/239/EEC and 88/357/EEC - Motor vehicle liability insurance
- Directive 92/49/EEC, Third Council Directive amending 73/239/EEC and 88/357/EEC
- Directive 95/26/EC, Amending 73/239/EEC, 92/49/EEC, 79/267/EEC and 92/96/EEC - Post-BCCI
- Directive 2000/26/EC, Fourth Motor Insurance Directive amending 73/239/EEC and 88/357/EEC
- Directive 2000/64/EC, Amending 92/49/EEC and 92/96/EEC - Exchange of information with third countries
- Directive 2002/13/EC, Amending 73/239/EEC - Solvency margin for non-life insurance undertakings

E-Commerce

- Directive 2000/31/EC, Electronic commerce

Distance Selling

- Directive 2002/65/EC

Insurance mediation

- Directive 2002/92/EC on insurance mediation

Insurance groups

- Directive 98/78/EC, Supplementary supervision of insurance undertakings in an insurance group

Financial conglomerates

- Directive 2002/87/EC, Supplementary supervision of financial conglomerates

Motor insurance

- Directive 72/166/EEC, Insurance against civil liability in respect of the use of motor vehicles
- Directive 72/430/EEC, Amending 72/166EEC
- Recommendation 73/185/EEC
- Recommendation 74/165/EEC
- Recommendation 81/76/EEC
- Directive 84/5/EEC, Second Motor Insurance Directive
- Directive 90/232/EEC, Third Motor Insurance Directive
- Decision 91/323/EEC, Relating to the application of 72/166/EEC
- Decision 93/43/CEE relating to the application of 72/166/EEC
- Decision 97/828/EC relating to the application of 72/166/EEC
- Decision 1999/103/EC relating to the application of 72/166/EEC
- Directive 2000/26/EC, Fourth Motor Insurance Directive amending 73/239/EEC and 88/357/EEC
- Decision 2001/160/EC relating to the application of 72/166/EEC - Cyprus
- Decision 2003/20/EC on the application of Article 6 of the Directive 2000/26/EC

Winding-up

- Directive 2001/17/EC, Reorganisation and winding-up of insurance undertakings

Accounting

- Directive 91/674/EEC, Annual and consolidated accounts of insurance undertakings
- Directive 78/660/EEC, Fourth Council Directive - Annual accounts of certain types of companies
- Directive 83/349/EEC, Seventh Council Directive - Consolidated accounts
- Directive 2003/51/EC

Reinsurance

- Directive 64/225/EEC (Abolition of restrictions)

Insurance Committee

- Directive 91/675/EEC

Sub-annex 2

PRE-CONTRACTUAL INFORMATION FOR CONSUMERS CONCLUDING A UNIT-LINKED LIFE INSURANCE CONTRACT AT A DISTANCE[1] VIA A BROKER (COMMERCIAL COMPANY)

INFORMATION ABOUT THE INSURANCE COMPANY	
Name	Article 36 and annex III a.1 of life directive 2002/83 Article 5 §1 a) of e-commerce directive 2000/31 Article 3 §1 1) a) of distance marketing directive 2002/65
Legal form	Article 36 and annex III a.1 of life directive 2002/83
Name of the Member State where the head office is established	Article 36 and annex III a. 2 of life directive 2002/83
Name of the subsidiary with which the contract is concluded	Article 36 and annex III a. 2 of life directive 2002/83 Article 3 §1 1) b) of distance marketing directive 2002/65
(Postal and electronic) address of the head office	Article 36 and annex III a. 3 of life directive 2002/83 Article 3 §1 1) a) of distance marketing directive 2002/65 Article 5 §1 1) b) and c) of e-commerce directive 2000/31
(Postal and electronic) address of the subsidiary	Article 36 and annex III a. 3 of life directive 2002/83 Article 3 §1 1) b) of distance marketing directive 2002/65 Article 5 §1 b) and c) of e-commerce directive 2000/31
Details of the supervisory authority	Article 3 §1 1) e) of distance marketing directive 2002/65 Article 5 §1 e) of e-commerce directive 2000/31
Registration in the trade register Registration number	Article 3 §1 1) d) of distance marketing directive 2002/65 Article 5 §1 d) of e-commerce directive 2000/31

[1]) I.e. that the offer, negotiation and conclusion of the insurance contract have been done at a distance (see recital 15 of directive 2002/92, Distance marketing of financial services)

INFORMATION ON THE INSURANCE INTERMEDIARY	
Identity of the intermediary	Article 12 §1 a) of insurance intermediation directive 2002/92 Article 5 §1 a) of e-commerce directive 2000/31 Article 3 §1 1) a) of distance marketing directive 2002/65
(Postal and electronic) address of the intermediary	Article 12 §1 a) of insurance intermediation directive 2002/92 Article 3 §1 1) a) of distance marketing directive 2002/65 Article 5 §1 b) and c) of the e-commerce directive 2000/31
Name of the register	Article 12 §1 b) of insurance intermediation directive 2002/92 Article 5 §1 d) of e-commerce directive 2000/31 Article 3 §1 1) d) of distance marketing directive 2002/65
Registration number	Article 12 §1 b) of insurance intermediation directive 2002/92 Article 5 §1 d) of e-commerce directive 2000/31 Article 3 §1 1) d) of distance marketing directive 2002/65
Means of verifying the registration number	Article 12 §1 b) of insurance intermediation directive 2002/92
Existence of financial links between the intermediary and the insurance company	Article 12 §1 c) and d) of insurance intermediation directive 2002/92
Existence of out-of-court complaint and redress procedures for claims between the policyholder and the insurance intermediary	Article 12 §1 e) of insurance intermediation directive 2002/92 Article 3 §1 4) a) of distance marketing directive 2002/65
Information on the nature of advice (degree of impartiality)	Article 12 §1 of insurance intermediation directive 2002/92
Specification of the client's demands, needs and reasons motivating the advice given	Article 12 §3 of insurance intermediation directive 2002/92

INFORMATION ABOUT THE INSURANCE CONTRACT	
Definition of each guarantee and option	Article 36 and annex III a. 4 of life directive 2002/83 Article 3 §1 2) a) of distance marketing directive 2002/65
Information on price	Article 36 and annex III a. 10 of life directive 2002/83 Article 3 §1 2) b) of distance marketing directive 2002/65 Article 5 §2 of e-commerce directive 2000/31
Details on taxes, charges and commission	Article 3 §1 2) b) and d) of distance marketing directive 2002/65 Article 5 §2 of e-commerce directive 2000/31
Information on premiums for each (principal or supplementary) guarantee	Article 36 and annex III a. 10 of life directive 2002/83
Basis for calculating the price[2]	Article 3 §1 2) b) of distance marketing directive 2002/65
Modalities and duration of payment of premium	Article 36 and annex III a. 7 of life directive 2002/83 Article 3 §1 2) f) of distance marketing directive 2002/65
Indication of surrender and reduction values and nature of guarantees related thereto	Article 36 and annex III a. 9 of life directive 2002/83
List of the reference values used[3] (unit-linked)	Article 36 and annex III a. 11 of life directive 2002/83
Indication of the nature of representative assets[4]	Article 36 and annex III a. 12 of life directive 2002/83
Notification indicating that the contract is related to instruments involving risks related to future operations the price of which depends on financial market fluctuations	Article 3 §1 2) c) of distance marketing directive 2002/65
Methods of calculation and allocation of bonus sharing	Article 36 and annex III a. 8 of life directive 2002/83
Any limitation of duration during which the information provided is valid	Article 3 §1 2) e) of distance marketing directive 2002/65
Duration of the contract	Article 36 and annex III a. 5 of life directive 2002/83 Article 3 §1 3) b) of distance marketing directive 2002/65
Methods of cancelling the contract[4]	Article 36 and annex III a. 6 of life directive 2002/83 Article 3 §1 3) c) of distance marketing directive 2002/65
Existence of out-of-court claims settlement procedures between the policyholder and the insurer	Article 3 §1 4) a) of distance marketing directive 2002/65

[2]) When the exact price cannot be indicated
[3]) For variable-capital contracts
[4]) In the framework of distance marketing directive 2002/65, information must also cover any penalties to be paid

INFORMATION ON THE PERFORMANCE OF THE CONTRACT	
Law applicable to the contract	Article 36 and annex III a. 16 of life directive 2002/83 Article 3 §1 3) f) of distance marketing directive 2002/65
Law applicable to pre-contractual relations	Article 3 §1 3) e) of distance marketing directive 2002/65
Competent court in the event of a claim	Article 3 §1 3) f) of distance marketing directive 2002/65
Language in which contractual conditions and pre-contractual information are communicated Language in which the insurer undertakes to communicate during the duration of the contract	Article 3 §1 3) g) of distance marketing directive 2002/65 Article 10 §1 d) of e-commerce directive 2000/31
Existence of a right to cancel	Article 3 §1 3) a) of distance marketing directive 2002/65
Modalities for exercising the right to cancel/withdraw[5]	Article 36 and annex III a. 13 of life directive 2002/83 Article 3 §1 3) d) of distance marketing directive 2002/65
Practical instructions on the exercise of the right to withdraw	Article 3 §1 3) a) of distance marketing directive 2002/65
General indications on the tax scheme applicable to the type of policy	Article 36 and annex III a. 14 of life directive 2002/83
Existence or absence of out-of-court claim procedures	Article 3 §1 4) a) of distance marketing directive 2002/65
Modalities of access to out-of-court dispute procedures	Article 3 §1 4) a) of distance marketing directive 2002/65 Article 36 and annex III a. 15 of life directive 2002/83
Existence of a good practice guide	Article 10 §2 of e-commerce directive 2000/31
Modalities of consulting good practice guides electronically	Article 10 §2 of e-commerce directive 2000/31
Existence of a guarantee fund	Article 3 §1 4) b) of distance marketing directive 2002/65

[5]) The insurer must inform the consumer of the amount he may have to pay as well as of the consequences arising if this right is not exercised

TECHNICAL INFORMATION[6]	
Technical stages to be followed in concluding the contract	Article 10 §1 a) of e-commerce directive 2000/31
Existence of archiving for insurance contracts	Article 10 §1 b) of e-commerce directive 2000/31
Accessibility to the archived contract	Article 10 §1 b) of e-commerce directive 2000/31
Technical means of identifying and correcting errors committed in processing data	Article 10 §1 c) of e-commerce directive 2000/31

[6]) This information is specific to the electronic conclusion of an insurance contract

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Sub-annex 3

Information for the policyholder[1] in non-life insurance

The following information must be communicated to the policyholder before the contract is concluded and during its term. It must be worded clearly, accurately and in year easily understandable fashion.

It shows the key elements for each heading envisaged, the details and methods of implementation being quoted fully in the contract, the terms of which are valid.

A series of identical elements must be given to the consumer whatever the methods of selling the contract (agent, broker, banking network, Internet, automatic terminal...). The provision of this information must be done by the means most suited to the distribution channel used.

I. Before concluding the contract

a) Insurance undertaking

1. name and title of the insurance company
2. when the insurance is offered under FOS, name of the Member State and address of the head office or, where appropriate, branch with which the contract is concluded

b) Life of the contract

3. date of entry into effect
4. duration of the contract
5. law applicable to the contract
6. provisions relating to the consideration of complaints about the contract including, where necessary, the existence of a body responsible for examining complaints without prejudice to the possibility for the policyholder to begin legal proceedings

c) Object of the contract

7. sums declared; sums insured
8. premium to be paid, including all taxes, or when year exact premium cannot be indicated, the basis for the calculation of the premium; methods of indexing the premium
9. methods of payment of the premium
10. essential features of the cover
11. amounts of excesses

II. During the contract

12. any change of the name or title or legal form of the insurance company or of the address of the head office or, where appropriate, the agency or the branch with which the contract was concluded
13. information shown in points 7. to 11., in the event of year additional clause to the contract or modification of the legislation applicable

[1]) "Policyholder" must be taken to mean here any natural person who concludes an insurance contract for private purposes which do not come within the framework of his commercial or professional activities.