

COMITÉ EUROPÉEN DES ASSURANCES



CEA POLICY REPORT ON THE EUROPEAN RETAIL INSURANCE MARKET(S)

2004

Rapporteur Mr Yves Bertoncini

Rapporteur: Yves Bertoncini
Head of International Affairs
at the Fédération Française des Sociétés d'Assurances (FFSA)

The European Retail Insurance Market(s): **key messages**

	Page
<u>1ST PART - RETAIL INSURANCE MARKETS ARE BOTH NATIONAL AND EUROPEAN</u>	9
<u>I – European retail insurance markets are operating satisfactorily</u>	9
A – Price differences between markets reflect differing realities	
B – The large number of companies active on national retail insurance markets shows their competitive dimension	
<u>II – Insurance companies' transnational establishments have strengthened the European dimension of retail markets</u>	11
A – Many European companies have acquired significant shares in markets in other EU countries	
B – The development of transnational establishments comes up against economic and regulatory obstacles	
<u>III – Cross-border retail insurance commerce is experiencing development which is of necessity limited</u>	14
A – Cross-border demand for insurance is still embryonic	
B – The diversity of national legal frameworks impedes cross-border insurance transactions	
C – Cross-border retail insurance commerce therefore concerns specific cases	
<u>2ND PART – SEVERAL PRACTICAL AND LEGAL ROUTES SHOULD BE TAKEN IN ORDER TO WORK TOWARDS THE ESTABLISHMENT OF A EUROPEAN RETAIL INSURANCE MARKET</u>	19
<u>I – Allowing retail insurance companies to expand their establishments in other EU markets</u>	19
A – Offering insurance companies pan-European legal structures	
B – Establishing effective, coherent supervision of insurance companies operating in several European markets	
C – Improving the legal regime of "freedom of establishment"	
D – Guaranteeing fair competition in Europe	
<u>II – Facilitating the development of cross-border retail insurance trade</u>	24
A – Improving the legal regime of "freedom to provide services"	
B – Improving the provision of information on the possibilities offered by the single retail insurance market	
C – Working towards the development of a common legal framework	
<u>SOURCES</u>	28

The European Retail Insurance Market(s): the position of the Comité Européen des Assurances

On several occasions in the recent past, the Comité Européen des Assurances has issued position papers setting out its members views regarding the internal market for insurance¹. In line with its previous position papers, it now wishes to set out its vision for the European retail insurance market, since the community authorities have indicated that this would be given special attention over the next few years.

It was with this aim in mind that a working group was formed, comprising representatives from the different European insurance markets (the composition of this group is shown on the last page). This working group met during 2003 and its work led to this report. The contacts and documents mentioned on the last page also contributed to discussions held by this working group.

This report covers the retail insurance market, which will be understood here as the insurance market targeted at natural persons acting outside their professional or commercial activities (often referred to below as "consumers"). It does not therefore mention the business insurance or reinsurance sectors.

In contrast to these other two sectors, the retail insurance situation still exhibits little integration, as will be seen in the first part of this report. Although the EU retail insurance market, or rather markets, remain relatively national, the existence of a considerable amount of europeanisation will be noted, particularly via the establishment of companies originating from other EU countries. It will be stressed in passing that the establishment of a "single" retail insurance market could not under any circumstances amount just to the prospects provided by the development of still limited cross-border trade.

Based on this statement, the second part of this report attempts to determine the ways and means of working towards the europeanisation of the European retail insurance market in the short and medium term. It emphasises that, from this viewpoint, the strategic priority must be to facilitate the development of retail insurance companies within other EU markets and calls for the development of cross-border retail insurance trade to be encouraged.

¹ See for example : "Obstacles to the operation of the single insurance market" – CEA 2001 / "Single European insurance market": the way forward" – CEA 2002 www.cea.assur.org

1ST PART

RETAIL INSURANCE MARKETS ARE BOTH NATIONAL AND EUROPEAN

Most analyses highlight the fact that it is difficult at present to talk of or even envisage the existence of a "single" retail insurance market. The relatively unintegrated nature of the retail insurance market has several explanations and is due to obstacles noted in the past², which will be partly mentioned below.

Going beyond a mere listing of these obstacles, we will try to stress here that national markets are relatively competitive and Europeanised, on the basis of the following indicators:

- national retail insurance markets operate satisfactorily (§-I);
- the transnational establishments of European companies have strengthened the competitive dimension of retail insurance markets (§-II);
- cross-border retail insurance commerce is developing (§-III).

I – European retail insurance markets are operating satisfactorily

National retail insurance markets are developing in varying sociological and legal contexts which largely explains the price variations seen in the different markets (§-A). They are all characterised by a relatively significant degree of competition (§-B).

A – Price differences between markets reflect differing realities

It is not possible to carry out an international comparison of the price of an insurance product without taking account of the underlying realities revealed by these prices. For example, just because a motor insurance policy is twice as expensive in a given country, it cannot be assumed that the margin of the insurance company selling it is twice as high, or its productivity is only half as high.

1 – Firstly, it is difficult to compare the products offered in the various European retail insurance markets.

The motor liability package proposed in a given country can thus include guarantees which do not exist in the neighbouring market. It is the same with "householder's all risks" insurance which includes cover against natural catastrophes in certain countries but not in others.

² See "Obstacles to the operation of the single insurance market" CEA 2001

2 - The rating of an insurance product is much more "sophisticated" than that of numerous other services

It is based on a whole series of elements which vary substantially from one country to another – which is also demonstrated by the example of motor liability insurance:

- risk profiles are very different depending on the European country (driver habits, average age, road condition, soundness of vehicles...) and claims rates are therefore very different;
- the size of the population, and hence the number of insureds concerned, affects the possible level of risk sharing, and therefore the tariffs applied;
- the same applies to compensation rates: given the higher level of wages and higher social and tax charges, it is for example twice as costly to repair a vehicle involved in an accident in Denmark as in Germany or Sweden; similar differences can be recorded with regard to care costs or compensation for moral tort - hence the unavoidably varying premium levels in given EU countries;
- the varying importance of fraud may also explain differences in price;
- finally, the different tax systems in the various EU countries, which also impact on rates for motor insurance products.

All these variables considerably affect the rates applied by retail insurers. Their inclusion largely puts into perspective the use of price indicators to compare different national retail insurance market situations.

B – The large number of companies active on national retail insurance markets shows their competitive dimension

It is important to analyse the number of companies and market shares they hold to establish the competitive dimension of European retail insurance markets. The need for the Union to have available large insurance companies capable of facing greater competition at international level should also be taken into account.

1 - EU member country insurance markets have experienced a marked tendency to merge in recent years, but finally the number of active companies still remains very high including in the retail insurance sector

- a – The number of companies operating on European retail insurance markets varies between several dozen companies in the smaller or average-sized markets to several hundreds on the large European insurance markets. This can be expected to give rise to real competition between the players present.

Most European countries intending to join the EU have themselves experienced a very marked increase in the number of companies operating in their retail insurance market. This economic development is itself also likely to guarantee competition within these markets.

- b – CEA has gathered data relating to commerce in several leading retail insurance products (personal life, personal health, motor liability, householder's all risks insurance) within EU countries.

This data indicates that turnover for the five largest companies operating in the markets does not generally exceed 40 to 55% in most of the large European insurance markets and 60 to 70% in the medium-sized markets.

The degree of concentration of the retail insurance markets seems relatively reasonable in relation to that recorded in other sectors representing a substantial part of household expenses.

2 - The degree of concentration must also be assessed in an international perspective

Like all other economic sectors, the insurance sector must be analysed Europe-wide by combining the requirements of competition and the need to have internationally competitive industrial groups. The degree of European retail insurance market concentration must be assessed bearing in mind this necessary equilibrium.

It goes without saying that one cannot at the same time seek fragmented national markets and the rapid development of sufficiently large insurance companies capable of establishing themselves in other EU markets but also capable of facing competition at international level.

II – Insurance companies' transnational establishments have strengthened the European dimension of retail markets

The europeanisation of retail insurance markets has increased markedly over the past 15 years. Many companies have become established in other EU countries, either through subsidiaries or by relying on branches (under "freedom of establishment")³.

This important entry of foreign players onto national retail insurance markets highlights by itself their "contestable", and therefore competitive, nature. It has to be underlined that these transnational establishments are the main vehicle of competition brought about by the creation of the insurance internal market.

A – Many European companies have acquired significant shares in markets in other EU countries

1 – Several large European companies have made the strategic choice of relying on subsidiaries, frequently obtained by means of mergers/acquisitions, to ensure the European development of their activities.

These large insurance companies have made heavy financial and human investments in order to benefit from the opportunities offered by the internal retail insurance market to become genuine pan-European groups.

³ For a statistical description of these developments concerning insurance in general (including "large risks"), see for example Eurostat / August Götzfried, Statistics of the insurance services 1999

CEA then strongly rejects the idea that no europeanisation of this market has taken place, since it thinks it is wrongly based on the inclusion only of cross-border commercial business recorded under freedom to provide services (which will be mentioned below).

2 – Establishment in the form of branches and via freedom of establishment has remained more limited.

It is difficult for insurance companies to establish themselves in a market in which the economic and legal environment differs from that of their home market (see §-IIIB). Rather than setting up new structures and new teams there, they have therefore often preferred to directly acquire already operational companies or structures familiar with this market and which become their subsidiaries.

3 – Whatever legal form they have adopted, the establishment of many insurance companies in other EU countries has strengthened competition in retail insurance markets.

European companies have captured market shares which vary from a few percent to more than 10% of some national market's total retail insurance turnover. Some of these companies even occupy first or second position in the life or non-life markets of some EU countries, thus demonstrating the vigour of the competition on European retail insurance markets.

B – The development of transnational establishments nonetheless comes up against economic and regulatory obstacles

Several economic and regulatory elements limit the development of transnational retail insurance establishments:

1 – The economic development of retail insurance companies does not necessarily mean involving the European internal market

- a - A very large number of insurance companies focus their activities on their domestic market, at national, regional or even local level. These companies do not feel directly concerned by the europeanisation of European insurance markets, since they do not intend to develop their business at an international level. They may only consider this europeanisation in terms of the threat it poses (arrival of new competitors on their traditional market).
- b - Companies wishing to develop their international ventures must carry out a degree of arbitration which also has a bearing on other international insurance markets. In this respect, the prospect of penetrating already mature and saturated European markets may very often appear less attractive compared with the conquest of emerging markets (especially in Asia), where the chances of making a profit seem much more significant in the medium term.
- c - Companies which have chosen to develop their ventures within the internal market also do so to achieve greater and more diversified sharing of the risks they cover. This desire for risk sharing frequently encourages them to establish themselves in three to five countries with different risk structures and different economic situations. It will rarely encourage them to set up establishments in all EU markets.

2 – Transnational establishments in retail insurance comes up against regulatory obstacles

- a – The large pan-European retail insurance groups are in particular faced with the diversity of supervisory practices in Europe⁴

Because they are mainly constituted by means of mergers-acquisitions, these pan-European groups do not benefit from the single supervisory principle established for companies operating by way of "freedom of establishment". The subsidiaries of these groups are thus considered as separate companies subject to the supervisory authorities of the countries in which they are established.

The pan-European groups concerned are therefore confronted by a multiplicity of standards, procedures and supervisory practices which still differ significantly from one country to another. The duplication of supervision and the divergence of practices constitute genuine obstacles to their move towards europeanisation and adversely affect their costs, to the detriment of the creation of a single retail insurance market.

The recent adoption of directives relating to "group" and "financial conglomerates" solvency has unfortunately not helped to solve the problems encountered by pan-European retail insurance groups which will have therefore to be dealt with specifically (see 2nd part - §-IB).

- b – Medium-sized insurance companies must be able to benefit more easily from the system of "freedom of establishment".

Since large insurance companies have for the most part already opted for transnational establishments by means of a merger or an acquisition, the europeanisation of the insurance market in the future could come from the development of smaller companies.

Since they do not have the means to acquire subsidiaries in other EU countries, it is by establishing branches in these countries that they will be able to europeanise their activities. This presupposes in particular that the legal regime of freedom of establishment will be as easy to use as possible for these companies (see 2nd part - §-IC).

⁴ For further information on this subject, see Vincenzo Floridi – Simplification of European insurance legislation – Report for CEA 2004 and Peter Vipond – Prudential regulation and supervisory structure – Report for CEA 2004

III - Cross-border retail insurance commerce is experiencing development which is of necessity limited

It is mainly because many insurance companies have made the strategic choice of giving preference to transnational ventures that cross-border retail insurance commerce under "freedom of services" (FOS) remains little developed for the present.

Data gathered by CEA shows that cross-border commercial transactions generally vary between 0.001% of the total turnover of some national markets and 1 to 2% for some others. It underlines the fact that serious psychological and technical problems hinder the development of cross-border retail demand (§-A) and supply (§-B).

Consulted on this subject, the European Consumers' Organisation (BEUC) also confirms that, in this context, the development of cross-border retail insurance trade can only today intervene in specific cases (§-C).

A – Cross-border demand for insurance is still embryonic

A "Eurobarometer" poll recently highlighted the problem European consumers have in using suppliers of goods and services located in another EU country⁵. It is obvious that this reluctance on the part of consumers is all the greater when they have recourse to financial services, particularly in order to conclude an insurance contract.

1 – Insureds are not economically attracted to cross-border insurance

Most European insureds are not aware of the insurance offer to which they could have access across frontiers. This lack of a clear and complete vision of the different insurance offers proposed throughout the internal market arises from ignorance which economists would describe as "rational": the search for better information on offers available would actually be costly in time and money for insureds, and this "expenditure" is hardly worthwhile.

The sums which consumers are prepared to spend to take out an insurance contract are in no way comparable to those which companies will use: in non-life insurance, the risks to be covered are much more modest; in life insurance, the financial investments are appreciably less significant. Although a large Italian company may be well advised to find an insurance policy at Lloyd's or elsewhere in Europe, this may not necessarily be worthwhile for an ordinary individual.

It can also be noted that consumer behaviour is characterised by a large degree of inertia. As long as they have no real difficulties with their insurance company, they have a priori no reason to change it and even less to approach a foreign insurance company.

⁵ See European Commission - Press release IP/03/1632 "A poll shows consumers still do not trust cross-border shopping"

2 – Insurance commerce is based on confidence which presupposes a certain degree of proximity

- a - The insurance service is much more intangible than many other services. In the first instance, it comes down to the conclusion of a contract specifying the rights and obligations of both parties, and yet gives rise to the immediate payment of a more or less substantial sum for a deferred benefit (even if the benefit of being protected is given immediately). This imposes a high degree of proximity between the consumer and the insurer since it is difficult to entrust one's money to a person or a company that one hardly knows. It is therefore even more difficult to do this within an extremely extended internal market, which already comprises 15, soon to become 25, countries.
- b - The main part of the insurer's job is ultimately in the "after-sales service" which they provide to their customers. They will be even more anxious to obtain an impeccable and rapid service which they need when the risk they wish to protect themselves against has occurred. When a claim occurs, whether this is in the form of a motor accident or a flood in their apartment, insureds want to be able to rely on a service provider who is immediately available and present to assist them. This naturally encourages them to rely on an insurer located close to their home and dissuades them from calling on the services of an insurer located in another country.

B – The diversity of national legal frameworks impedes cross-border insurance transactions

The liberalisation established by the sectoral "insurance" directives led to a distinction between insurance for "large risks" and retail insurance. For "large risks" (concerning undertakings), free choice of law applicable to the insurance contract was established. For retail business, the insurance directives defined a series of complicated rules whose application leads more often to the application of the law of the country in which the consumer has his habitual residence, with the aim of guaranteeing the protection of the consumer by the law which is most familiar to him⁶.

This concern for protection consequently means that insurance companies must propose contracts which comply with the insurance law of the insured's country which is particularly difficult given the dissimilarity of national legislations prevailing in this area.

1 – All components of contract law remain effectively very different from country to country.

This diversity of contract laws remains marked today despite the initiatives taken at community level. It is visible at the pre-contractual information stage, the level of the formation of the contract (contractual information), for the execution of the contract (withdrawal periods etc.) as well as for the methods of cancelling the contract. It is extremely penalising for insurance business which essentially can be summed up as the sale of a contract and not a product or a material service.

⁶ On this subject, see Vincenzo Floridi – Simplification of European insurance legislation – CEA 2004 and Ulf Lemor – The protection of insureds within the European Union – CEA 2004.

2 – The content of the insurance contract is also dependent on other classes of law which have not been harmonised

This concerns fiscal law, family law, inheritance (life insurance), social security law (health insurance), liability law (liability insurance) and legal systems concerning natural catastrophes (non-life insurance) etc. These various classes of law are defined by strictly national law and jurisprudence. This means that insurance products differ greatly from one country to another, which is an obstacle to their being traded at European level.

C – Cross-border retail insurance commerce therefore concerns particular situations

The entry into force of the provisions of the "intermediation", "distance marketing of financial services" and "e-commerce" directives should ease the contacts between supply and demand for insurance at European level and therefore contribute to the development of cross-border retail insurance commerce. In the short term, one must nevertheless envisage that this will remain limited to specific clients and particular economic situations.

1 – Cross-border retail insurance commerce primarily concerns very specific customers

It is not surprising to note that the limited data showing a slight rise in cross-border commerce concerns very specific types of clients:

- a - Expatriates on the one hand, who are used to calling upon an insurer from their country and have decided to retain this insurer when they are expatriated (hence the subsequent cross-border nature of their commercial relationship). Similarly, there is the case of owners of holiday homes in another EU country who also sometimes opt for householders' cover taken out in their home country.
- b - The residents of a frontier zone in the Union on the other hand, to whom the service is proposed by a company established a few kilometres distant and on whom they have been able to call as if it were a national company. The growth of cross-border retail insurance commerce also benefits from cultural and linguistic proximity between countries or regions of the Union: this proximity largely explains the cross-border movements between France, Belgium and Luxembourg or between Ireland and the United Kingdom. On the other hand, it is hampered in countries and regions belonging to different cultural and linguistic zones.
- c – A third group of customers is likely to have recourse to cross-border commerce for insurance products: high net worth individuals which are interested in maximising their life insurance investments by taking advantage of offers throughout the European market. In the past, some of this commercial business also reflected attempts at tax evasion - practices which the intervention of the national and community authorities seem to have drastically reduced.

2 - Cross-border supply in retail insurance can sometimes benefit from favourable economic and legal contexts

- a – Two important cross-border movements should be noted covering retail insurance commerce. They concern, on the one hand, life insurance contracts sold by British companies in Ireland and, on the other, life insurance contracts (and more marginally non-life insurance) sold from Luxembourg by Luxembourg companies whose parent company is established in another European Union country.
- b – In both cases, the development of cross-border commerce in retail insurance products has benefited from the following economic and legal conditions:
 - presence of distribution networks controlled by foreign companies in the insured's country of residence (companies or subsidiaries controlled by British companies in Ireland or by foreign companies using Luxembourg as a veritable bridgehead for their pan-European distribution). These networks can therefore offer the products of their parent company (alongside their own products) and at the same time carry out transactions which are cross-border in nature.
 - possibility of applying the law of the country of origin to the life insurance contracts concerned (case of nationals from EU countries with freedom of choice of law applicable – life insurance not being compulsory) so that these products can be considered as products originating from another country.
- c - This economic and legal configuration is only rarely present and at all events could not apply to other insurance products (compulsory non-life insurance, in particular). This explains the development of such commercial cross-border business, but also its relatively exceptional nature within the internal market.

2ND PART

SEVERAL PRACTICAL AND LEGAL ROUTES SHOULD BE TAKEN IN ORDER TO WORK TOWARDS THE ESTABLISHMENT OF A SINGLE RETAIL INSURANCE MARKET

CEA stresses that in order to work towards the europeanisation of the retail insurance market it is necessary to measure the realities and obstacles described in the first part of this report.

On the basis of this description, it considers at all events that it is not desirable for European institutions to launch themselves into a major new legislative undertaking in the retail insurance sector, and that it is rather necessary to take a series of legal and practical measures in order:

- on the one hand, and this is the strategic priority, to allow retail insurance companies to expand in other EU markets (§-I);
- on the other, to facilitate the development of cross-border retail insurance commerce (§-II).

I – Allowing retail insurance companies to expand their establishments in other EU markets

The development of insurance companies' transnational establishments contributed to the europeanisation of the retail insurance market over the last few years. European institutions' priority must therefore be to facilitate this movement :

- on the one hand, by offering companies with subsidiaries in several Union countries a framework which measures up to their activities both by defining suitable legal structures (§-A) and by co-ordinating the supervisory practices to which they are subject (§-B);
- on the other hand, by modifying the system of "freedom of establishment" so as to make it more easy to use (§-C);
- finally, by guaranteeing fair competition within the Union which will allow efficient functioning of retail insurance market (§-D).

A – Offering insurance companies pan-European legal structures

1 – European company statute: limited progress to be confirmed

The texts relating to the European company, which represent the culmination of thirty years of negotiations between Member States, marked progress welcomed in due course by CEA. CEA furthermore encourages the Commission to continue to work toward the adoption of a statute for a European mutual company and facilitate recourse to the statute of the European Economic Interest Grouping (EEIG) which small-sized insurance companies might use.

However, texts relating to the European company contain faults which should be corrected: on some very important aspects of company management (social and accounting areas, for example), they refer to the law of the Member State in which the company has its registered office (central administration office), so that fifteen different statutes are applicable today. CEA also regrets the fact that the statute of the European company does not contain any agreement on a suitable tax system which will mean that double taxation situations may still arise within a legal structure having a pan-European basis.

Finally, the adoption of this statute has not solved all the problems facing the insurance sector, in particular because many decisions taken by the head office of an insurance group remain subject to too strict supervision by the authorities of countries where a group subsidiary can be found. This supervision for example hinders the geographical mobility of insurance group training staff; CEA then calls for it to be made more flexible.

2 – The urgent need to facilitate cross-border mergers

CEA welcomes the recent publication of the proposal for a directive on cross-border mergers and the resumption of discussions on this subject. According to this proposal, any company participating in a cross-border merger could do so in accordance with the legislation of its own Member State. This would have the effect of facilitating this type of merger by eliminating the obstacles inherent in the coexistence of different national legislations. If it were to be successful, this legislative initiative could provide an interesting answer to some of the questions left in abeyance by the texts relating to European company statute, particularly for small and medium-sized insurance undertakings.

B – Establishing effective, coherent supervision of insurance companies operating in several European markets

CEA has recently devoted two other reports to the supervision of European insurance companies: one calls for the definition of prudential standards and methods of supervision adapted to current European reality⁷, the other reviews the need to simplify the supervision to which European insurance companies are subject⁸.

The present report will therefore only highlight the supervisory elements which prevent the expansion of insurance companies within the European internal market by calling upon the community authorities to ensure a higher degree of coherence.

1 – Need to ensure the coherence of provisions relating to the supplementary supervision of insurance groups and to the supervision of financial conglomerates

The coexistence of the directives on the supplementary supervision of insurance groups (98/78/EC) and financial conglomerates (2002/87/EC) highlights the need to ensure coherence between the two specified regimes, so that European insurance companies are not subject to unnecessary supervision. This coherence should in particular cover the following points:

⁷ Peter Vipond – "Prudential regulation and supervisory structure" CEA 2004

⁸ Vincenzo Floridi – "The simplification of European insurance legislation" - CEA 2004

- a - The financial conglomerates directive expressly excludes from its scope undertakings belonging to a financial conglomerate which is itself a sub-group of another financial conglomerate in order to avoid unnecessary administrative constraints. It would be desirable to incorporate a similar provision in the "groups" directive.
- b - The "groups" directive does not set out to avoid duplication of the requests for information sent to undertakings subject to supplementary supervision: it would therefore be appropriate for this directive to take its inspiration from the provisions on this subject in the financial conglomerates directive.
- c – Finally, the concept of a coordinator should be introduced into the "group" directive, modelled on the one envisaged in the "conglomerates" directive, in order to ensure that transnational European companies are no longer subject to unnecessary and costly supervision.

2 - Achieving simplification of the supervision of insurance undertakings engaged in transnational activities:

This simplification should in particular imply :

- a – The effective implementation of the provisions of the "Helsinki protocol", which envisages close cooperation between national supervisory bodies.
- b – Additionally in the medium term, the implementation of a "European insurance supervisory system" (EISS): this system would be based on the appointment of teams of supervisors originating from different EU countries who would operate under the management of a "leading" supervisory body.

C – Improving the legal regime of "freedom of establishment"

In order to be better used in future by insurance companies, and especially medium-sized companies, freedom of establishment regime should be corrected on the following points:

1 – Clarifying the notification procedures to which companies are subject for the opening of an agency or a branch.

Opening a branch or an agency requires prior notification of a range of information to the authorities in the host and home states. Although the principle is not in dispute, the implementation of this requirement does, however, prove to be complex in practice. CEA would like to draw the attention to the complexity created by their content the drafting of the different documents which the undertaking has to send to the host state authorities via its home state authorities. In practice, the insurer not only has to draw up this information in relation to the requirements of the home state which is ultimately responsible for supervising its activities, but it must also meet any requirements which might be imposed by the host state on the basis of general interest. The respective expectations of the two authorities may differ on some items and complicate the notification process. It is then necessary to proceed to a clarification on these points.

2 – Simplifying the information to be provided in relation to the types of operations envisaged under freedom of establishment

Any insurer wanting to establish a branch in a member state must notify the competent authorities of the home state with a very detailed "schedule of activities" stating in particular the nature of the commitments which it proposes to make, the guiding principles with regard to reinsurance and forecasts concerning set-up costs for administrative services and production networks. The amount of information and documents to be communicated in relation to this "schedule of activities" acts as a deterrent, in cost terms, for insurance undertakings.

The appointment of a general representative capable of committing the company also constitutes an impediment for some insurers to opening an establishment within the Union, especially for medium-sized companies.

CEA then calls for a simplification on these two points.

3 - Reducing deadlines between notification by companies and authorisation given by the supervisors

When the required information has been notified to the home state authorities, they then have in principle three months to communicate it to their counterparts in the host state. The insurer's home state authorities may, however, refuse to communicate this draft information to the authorities of the state where the branch is to be opened if they express a doubt on the project's viability or the adequacy of its structures. There is, therefore, no effective binding obligation on the home state to comply with this deadline since any refusal or lack of response can only be the subject of judicial recourse and is not penalised by a presumption of validation if no reply is received, unlike the procedure in the host state.

The host state authority then has two months to indicate to the insurer whether there are any general interest conditions to which the proposed activities are subject. The insurer can only start its activities when these conditions have been notified by the host state or, if no reply is received from this state, after the expiry of the period of two months from communication by the home state. A minimum period of five months is therefore required for a company to establish itself in another Member State, or even more if the home state delays the procedure.

CEA then calls for the organisation of the shuttling between the States involved and the period required to obtain authorisation to be reviewed in order to better meet the objectives of speed sought by insurers.

D – Guaranteeing fair competition in Europe

The national and community authorities must guarantee fair competition on the different retail insurance markets throughout the Union so as not to impede the development of the efficient companies and offer consumers the products most suited to their needs.

1 – Removing ambiguities from the concept of general interest

In a concern to guarantee fair competition in Europe, CEA calls for clarification of the conditions under which the concept of general interest is likely to be applied to the insurance sector, at both community and national levels.

- a - In publishing its Green paper on services of general interest⁹, the European Commission has launched a vast debate on services of general interest and on whether it is appropriate to legislate in this field. This Green Paper relates in the first place to services of general economic interest provided by large industrial networks such as transportation or energy. The basic statutory social protection schemes are also referred to (health, old-age).
CEA has noted with satisfaction that the private insurance sector is not, as such, concerned by this text. Nevertheless it considers that it would be useful to make the community authorities aware of the risks of too broad a definition of services of general interest: for example, this definition should not include the market activities carried out by undertakings governed by a mutual statute which would then be exempted from the application of competition rules. CEA reaffirms in this respect the view that all companies subject to the community "insurance" directives should comply with the same competition rules, which is the prerequisite for the effective operation of an internal insurance market.
- b - CEA is, moreover, concerned by a recent European Commission decision concerning the Irish health insurance market. The approval of a risk equalisation system set up by the Irish government in the health insurance field risks creating a "precedent" and artificially extending the concept of general interest, contributing to confusion and distortions of competition between operators.

2 – Ensuring uniform application of community legislation

The full and uniform application of community legislation in the field of insurance would itself contribute to the establishment of fair competition between European insurance companies.

- a – The community directives on insurance should no longer be applied late, incompletely or unsatisfactorily: this leads to distortion of competition between EU countries.
- b - The options allowed to Member States often make it more difficult to know which law should be applied to insurance sector. They have often led to a rise in legislative and regulatory differences between EU countries whereas the original aim was to harmonise them. This prevents insurance companies from effectively organising the expansion of their activities in other EU countries.
- c – The addition of 10 new countries will extend the limits of the retail insurance internal market and could also contribute to the development of trans-European commerce. For this to be so, CEA calls on European institutions to ensure that the "acquis communautaire" in insurance is applied by the political and administrative authorities of these countries with the same force as that which they are deploying vis-à-vis countries already members of the Union.

⁹ See Commission Green Paper on Services of General Interest COM (2003) 270 final

II – Facilitating the development of cross-border retail insurance trade

As has already been underlined in the first part of this report, the entry into force of the provisions of the "intermediation", "financial services distance selling" and "e-commerce" directives will perhaps contribute to attenuating the importance of the psychological and legal obstacles to cross-border retail insurance trade. It will lead effectively to closer contacts between supply and demand in retail insurance, which could encourage cross-border business to take off.

It is because the development of cross-border retail insurance business will remain without doubt difficult in the mid-term that it should however be encouraged, based on the guidelines described below.

A – Improving the legal regime of "freedom to provide services"

In order to increase its use by insurance companies, including small-size companies, the legal regime of freedom of services should be improved on at least three points:

1 – Preventing the national authorities from adopting dissuasive supplementary legal and financial conditions regarding the area covered by the tax representative designated by the companies

Due to the principle of submitting the insurance contract to the tax regime of the State where the risk is situated, some States require a tax representative to be designated who is personally liable for collecting the taxes and charges applicable on their territory in situations where this requirement is nevertheless questionable. The legislation of these Member States indeed deviates from the principles governing FOS in that it requires this designation in a concern to prevent the relocation of savings and to supervise policyholders and/or beneficiaries, and not for the purposes of supervising the taxation of insurance agreements as envisaged by community legislation.

In an Interpretative Communication on "FOS and general interest in the insurance sector", the European Commission clearly indicates that the presence of a tax representative is only legitimate if there is a tax on insurance premiums. CEA then urges the European Commission to remind the Member States of their obligations.

On a subsidiary basis, CEA would like to draw the European Commission's attention to the minimum requirement for harmonisation of the status of tax representatives (joint liability with the taxpayer, personal solvency, declaratory obligations, etc.). The lack of harmonisation of their status is an obstacle to the development strategy of the companies, which may go as far as blocking their activities in different Member States in which no representative accepts the risks relating to such a mandate or only accepts them under excessively onerous conditions. CEA therefore invites the European Commission to issue a position paper in order to clarify the status of the tax representative.

2 – Defining more precisely the framework of "FOS" in order to avoid small-scale operations not resulting in the establishment of a branch from being requalified and subject to freedom of establishment

The concept of freedom of services differs from that of establishment in relation to its temporary nature, with the latter requiring a permanent establishment in the host state. Since the European Court of Justice specified that the "temporary nature" of FOS did not prevent the insurer from setting up a local structure if this proved necessary for the provision of the services (the temporary nature being assessed in relation to the duration, frequency, periodicity and continuity of the service), a grey area now exists between these two concepts. The risk of requalification for insurance undertakings which have recourse to an independent intermediary in the host state then remains a source of uncertainty for insurers.

The interpretation given by the European Commission in its Interpretative Communication on "FOS and general interest in the insurance sector" is admittedly useful but, being not legally binding, it does not determine in advance subsequent qualifications adopted by the European Court of Justice. CEA then invites the Commission to consider the adoption of a binding text which will clarify the regime for some cases not falling within the scope of the either of the above two regimes - such as the opening of offices with the aim of making contacts and studying possible long-term establishment.

3 – Combating "bogus" companies operating illegally by way of "FOS"

In several Union countries (and in particular Spain) it has been noted that companies offering insurance products under cover of FOS had not complied in fact with the notification procedure and were not as serious and reliable as they should be.

CEA therefore calls on the national supervisory authorities to combat practices which adversely affect the image of the insurance but also the image of "FOS", further use of which will only be possible in a climate of confidence. CEA suggests improving exchanges of information between supervisory authorities and wider circulation of the list of insurance companies authorised to operate by way of FOS.

B – Ensuring better information as to the possibilities offered by the single retail insurance market

Insurers and insureds are often not aware of the possibilities offered by the internal insurance market: the community authorities should ensure more effective circulation of information on the subject.

1 – This improved information should be directed at consumers

The large majority of them are not now aware that they have the option of approaching a company in another country to obtain the insurance contract they are seeking. Sectoral or more general information campaigns could give rise to an awareness which is a prerequisite for any development of cross-border retail insurance commerce.

2 – Better information could also be aimed at insurance companies wishing to conduct cross-border retail insurance commerce

The differences in legal environment and the complexity of the rules are at present such that only very large companies are able to devote the necessary financial and human investment needed for the development of their European activities.

The establishment of reference documents will make the legal framework governing insurance activity in different EU countries more accessible: this could be a guide compiling the European insurance codes, a glossary explaining the meaning of terms used in this or that country, or even a practical tool ensuring that operators are informed of the mandatory national provisions applicable in each Member State. These documents would in all cases be such as to open up cross-border commerce to a greater number of companies.

3 – It is finally important that assistance systems be better publicised as well as all the means that insurers and insureds have available when they encounter obstacles:

- a – The "SOLVIT" system, the aim of which is to assist insurers and insureds when they encounter obstacles for which States are responsible.
- b – The "FINNET" system, which gives insureds recourse to a European mediation network when they have a dispute with an insurance company from another country.

C – Working towards the development of a common legal framework

The adoption of legislations common to all EU countries would contribute to the establishment of a genuine single retail insurance market. It will be all the more difficult to promote in a 25-member Union.

In this context, CEA notes that it is at all events essential to leave the theological debates on the comparative merits of maximum harmonisation and mutual recognition behind by trying to reason in the light of specific problems and by going down several complementary paths.

1 – Work could begin on maximum harmonisation in some cases

Even though it will be more difficult to achieve in a Union of 25 countries, maximum harmonisation of some legislative provisions should be sought in several areas:

- a – The regulations on unfair commercial practices, in order to create a climate of trust necessary to the development of retail insurance commerce – the EU is already discussing a directive on this subject;
- b – Mandatory or public order provisions applicable to insurance contracts;
- c – Provisions on precontractual information;
- d – Taxation of insurance products.

2 - Mutual recognition after minimal harmonisation could also be sought in certain cases

- a - As already indicated, the legal framework of retail insurance activities remains very different from one country to another. The principle of general mutual recognition of the different national legislations applicable does not therefore seem very appropriate.
- b - The principle of mutual recognition could, however, be applied in a targeted way to certain types of insurance products whose characteristics are already very similar from one country to another. This could be applied:
 - in insurance of the person : repatriation insurance, medical assistance and term insurance;
 - in non-life insurance : householders' all risks.

3 – The establishment of a "26th regime" applied solely to cross-border retail insurance commerce could be studied

The attempts to harmonise numerous state legislations have frequently faced inextricable difficulties so that it may be tempting to establish a specific regime dedicated to cross-border commercial operations which could in particular cover contract law. If there could be no definition of cross-border contract law for retail insurance, common rules applied to the methods of concluding and forming contracts could at least be drafted. Based on national provisions in force today, these rules could then be applied to all cross-border commercial transactions. They would be optional. For more coherence, this 26th regime applied to cross-border business could exclude the application of national provisions contrary or supplementary to areas covered.

European Retail Insurance Market(s)

Sources

Members of the "Comité Européen des Assurances" working group:

- Yves Bertoncini, International Affairs Manager, Fédération française des sociétés d'assurances (FFSA) - Rapporteur
- Nuria Castaner, International Affairs Manager, Union Espanola de Entidades Aseguradoras y Reaseguradoras (UNESPA)
- Josef Cizek, European Integration Secretary, Czech Insurance Association
- Zulmiro da Costa, European Affairs, Association des Compagnies d'Assurances du Grand Duché du Luxembourg (ACA)
- Susanne Czech, "Community Affairs" Manager, Comite Européen des Assurances
- Vincenzo Floridi, Manager of International Department, Associazione Nazionale fra le Imprese Assicuratrici (ANIA)
- Ulf Lemor, General Manager of European Affairs, Gesamtverband der Deutschen Versicherungswirtschaft (GDV)
- Wauthier Robyns de Schneidauer, Manager, Union Professionnelle des Entreprises d'Assurances (UPEA)
- Stephen Sklaroff, Deputy General Manager, Association of British Insurers (ABI)
- Christiaan Smits, Public Relations Executive, Verbond van Verzekeraars in Nederland (VVN)
- Eva Varouhaki, Legal Advisor, Association of Insurance Companies (Greece)

Other contacts:

- Jean-Paul Coteur, Budget & Laws, Test Achats (Belgium)
- David Deacon, Head of Insurance Department, Directorate General Internal Market, European Commission
- Dominique Forest, Economic Advisor, The European Consumers' Organisation (BEUC)
- Guy Soussan – Attorney, “Leboeuf, Lamb, Green & Mac Rae” (LLGM) Brussels
- Marie Remy-Betolaud, Executive Assistant - Legal Department, Fédération Française des sociétés d'assurances - Paris
- Irmfried Schwimann, Head of Financial Services Department, Directorate General Internal Market, European Commission

Main documents consulted:

- Rainer Beckmann, Ruhr-University Bochum, "Financial integration within the European Union: Towards a single market for insurance" - January 2002
 - Bureau Européen des Unions de consommateurs - Annual report 2002
 - Comité européen des assurances – Obstacles to the operation of the single insurance market – CEA 2001 (see www.cea.assur.org)
 - Comité européen des assurances – "Single European insurance market: the way forward" – CEA 2002 (see www.cea.assur.org)
 - Comité européen des assurances / Vincenzo Floridi – Simplification of European insurance legislation – CEA 2004
 - Comité européen des assurances / Ulf Lemor – Consumer protection in the European insurance market - CEA 2004
 - Comité européen des assurances / Peter Vipond - Prudential regulation and supervisory structure CEA 2004
 - European Commission "Report on the state of the internal services market" COM (2002) 441 - 2002
 - European Commission - Press release IP/03/1632 "A poll shows consumers still do not trust cross-border shopping"
 - European financial services Round Table – Harmonisation of regulation and supervision of the European financial sector – October 2003
 - Eurostat / August Götzfried, Statistics of the insurance services – Theme 4, 18/1999
 - Friedrich Heinemann / Mathias Jopp, Institut für Europäische Politik, "The Benefits of a Working European Retail Market for Financial Services"
 - Bertrand Labilloy, "La régulation du Marché européen de l'assurance" - Economica 2003
-