



**Markt/2516/05  
June 2005**

**COMPULSORY INSURANCE PROVISIONS IN ARTICLE 27  
OF THE PROPOSED DIRECTIVE ON SERVICES  
IN THE INTERNAL MARKET**

**AGENDA ITEM REQUESTED  
BY THE NETHERLANDS AND UNITED KINGDOM DELEGATIONS**

Mr Karel Van Hulle  
Head of Unit, Insurance Pensions and Financial Institutions  
DG Internal Market  
European Commission  
Rue de la Loi 200  
B-1049 BRUSSELS

14 June 2005

Dear Mr. Van Hulle,

### **PROPOSED DIRECTIVE ON SERVICES IN THE INTERNAL MARKET**

The Ministry of Finance of the Netherlands and HM Treasury of the UK wish to draw your attention to Article 27 of the proposed Directive on services in the internal market (the "Services Directive"). Although financial services are excluded from the Services Directive, it introduces new obligations on some providers of other services to buy insurance.

More specifically, Article 27 requires that suppliers of both domestic and cross-border services presenting health, safety or financial risks to the recipient, or to a third person, should be insured (please refer to Article 27 attached).

It is important to protect consumers, but the insurance industry has raised important legal and technical issues. The Comité Européen des Assurances says that the market in many Member States is unable to provide appropriate cross-border cover<sup>1</sup>. The proposal risks mandating forms of cover that are not available. In doing so, it may create obstacles to the free movement of services.

We believe it would be useful at this stage to harness the expertise of the European Insurance and Occupational Pensions Committee (EIOPC) to advise on the best approach.

Our main concerns are that the Commission needs:

- to develop a reasonable understanding of the nature and extent of the insurance obligations that will be created;
- to assess the claims of the insurance industry that the capacity to insure risks such as those referred to in Article 27 across borders is not developed;

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<sup>1</sup> The position of the CEA is set out in a paper at <http://www.cea.assur.org/cea/v1.1/posi/pdf/uk/position255.pdf>

- to clarify significant differences in the operation of liability insurance in Member States;
- to consider the consequences if services provided in the home Member State or coming from outside the Community are not subject to the same obligations.

There is a risk that an obligation to buy insurance that is not available will be a barrier to the single market if service providers are unable to meet those obligations. The Commission has said that it does not intend to create a situation whereby Member States have to intervene to provide insurance if commercial cover is not available. It is not clear how it is proposed to deal with the gap that the insurance industry believes may exist between the obligation to buy insurance and the availability of insurance.

We hope you will agree with us about the importance of this issue, and of ensuring that the proposals are reasonable and capable of being met by the market. We would like to bring these issues to the attention of the members of EIOPC for their consideration at the 29 June meeting.

To facilitate this, we would be happy for you to circulate this letter ahead of the meeting. At the meeting on 29 June we intend to suggest that the EIOPC take note of the concerns identified in this letter and any additional concerns raised in the meeting and ask DG Markt to carry out a more detailed assessment of the feasibility of Article 27, and consider alternative options, before the proposal is considered further.

Following the meeting the Commission's Insurance Unit could develop a short note communicating EIOPC's concerns to the Commission Services, DG Markt to inform the future drafting of the Directive.

Copies of this letter are sent to Alex Schaub and Elemer Tertak.

**Clive Maxwell**  
Director  
Financial Services  
HM Treasury  
United Kingdom

**Dirk Schoenmaker**  
Deputy Director  
Financial Markets  
Ministry of Finance  
The Netherlands

## Annex

Extract from the Commissions proposal of 10 January 2005 for a Directive establishing general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

The Commission's latest proposal is available in full at:  
<<http://register.consilium.eu.int/pdf/en/05/st05/st05161.en05.pdf>>

### *Article 27*

#### **Professional insurance and guarantees**

1. Member States shall ensure that providers whose services present a direct and particular risk to the health or safety of the recipient or a third person, or to the a particular financial security of risk to the recipient, are obliged to subscribe covered by professional indemnity insurance appropriate to the nature and extent of the risk, or to provide by any other guarantee or compensatory provision which is equivalent or essentially comparable as regards its purpose.
2. Member States shall ensure that providers supply a recipient, at his request, with information on the insurance or guarantees referred to in paragraph 1, and in particular the contact details of the insurer or guarantor and the territorial coverage.
3. When a provider establishes himself in their territory, Member States may not require professional insurance or a financial guarantee from the provider where he is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose and the coverage it provides in terms of the insured risk, the insured sum or a ceiling for the financial guarantee and possible exclusions from the coverage, in another Member State in which the provider is already established.  
Where equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered.
4. Paragraphs 1, 2 and 3 do not affect professional insurance or guarantee arrangements provided for in other Community instruments.

5. For the implementation of paragraph 1, the Commission may, in accordance with the procedure referred to in Article 42(2), establish a list of services which exhibit the characteristics referred to in paragraph 1 and establish common criteria for defining, for the purposes of the insurance or guarantees referred to in that paragraph, what is appropriate to the nature and scope of the risk.

***Recital 63:*** Any operator providing services involving a direct and particular health, safety or financial risk for the recipient or a third person should be covered by appropriate professional indemnity insurance, or by another form of guarantee which is equivalent or comparable, which means, in particular, that he should have adequate insurance coverage for services provided in one or more Member States other than the Member State of origin. A direct and particular risk for the health of the recipient is present in the field of health services. A direct and particular risk for the safety of the recipient or third persons is present where a service can cause serious injuries to the physical integrity of the recipient or of third persons. A direct and particular risk for the financial security of the recipient is present where a service concerning advise or transactions carried out on behalf of the recipient can cause significant financial losses.

***Recital 63 a:*** Providers whose services present a direct and particular risk for the health of recipients of their services are in particular the providers of medical and hospital infrastructures and the medical and related professions, given the risks associated with inappropriate and erroneous treatment. Services which present a particular risk for the safety of recipients are certain tourism, sports and leisure activities where accidents can occur frequently such as horse riding schools, fun parks and fairgrounds. Services which can create a risk for the safety of third parties are for example private security services or services in the field of construction including services of architects or services relating to electricity and gas installation. Services which create a particular risk for the financial security of recipients are services which involve the handling of clients' funds such as real estate agents, furthermore services which consist in advise on or the handling of transactions on behalf of a client as well as the representation of clients before courts or authorities such as services of the legal professions.

***Recital 63 b:*** The insurance or guarantee has to be appropriate to the nature and extent of the risk. That means that service providers need cross-border coverage only if they actually provide services into other Member States. It is not necessary to lay down more detailed rules concerning the insurance coverage and to fix for example minimum thresholds for the insurance sum or limits on exclusions from the insurance coverage. Service providers and insurance companies should maintain the flexibility to negotiate insurance policies precisely targeted to the nature and scope of the risk. Furthermore, it is not necessary that an obligation of appropriate insurance is laid down by law. It is sufficient if an insurance obligation is part of deontological rules laid down by professional bodies. Finally, there is no obligation for Member States to provide for an obligation for insurance companies to provide insurance.