



MARKT/2518/07
November 2007

General good requirements

Background

At the meeting of the EIOPC held on 4 July 2007, the Committee had a brief discussion (on the basis of Document MARKT/2509/07) of the retail insurance market and the Commission's Green Paper on retail financial services (see point 5 of the minutes of the 7th meeting – Doc. MARKT/2514/07).

The Commission referred to a number of possible obstacles to the exercise of cross-border business that had been raised by insurance undertakings, one of these being general good requirements.

In its recent Single Market Review Communication (and its retail financial services annex), the Commission refers to the need to draw up an inventory of the national good requirements laid down by the Member States in the insurance sector.

In order to pursue this work, the Commission wishes to establish this inventory prior to an assessment of whether the various national requirements respect the criteria laid down by the Court of Justice.

In its Interpretative Communication on the freedom to provide services and the general good in the insurance sector (OJ C 43, 16/02/2000 P. 0005 – 0027), the Commission reported on the conditions laid down by the Court of Justice which must be met if a national provision is to validly obstruct or limit exercise of the right of establishment and the freedom to provide services. These conditions for each provision are as follows:

- "- it must come within a field which has not been harmonised,
- it must pursue an objective of the general good,
- it must be non-discriminatory,
- it must be objectively necessary,
- it must be proportionate to the objective pursued,
- it is also necessary for the general-good objective not to be safeguarded by rules to which the provider of services is already subject in the Member State where it is established.

These conditions are cumulative. A national measure which is claimed to be compatible with the principle of the freedom of movement must satisfy all the conditions. If a national measure does not meet one or other condition, it is not compatible with Community law.

The concept of general good is an exception to the fundamental principles of the Treaty with regard to free movement and must, therefore, be interpreted in a restrictive fashion so as to ensure that recourse is not had to it in an excessive or abusive manner. In the event of a dispute, the Member State imposing the restriction has anyway to show that the measure meets the aforementioned conditions."

Commission request for information

The Commission is therefore requesting the assistance of each Member State in drawing up a full inventory of the general good requirements which, as the host State, it notifies via the home Member State to insurance undertakings from other EEA States intending to open a branch or provide cross-frontier services into its territory. Where the requirements differ for life and non-life insurance and for specific insurance branches, full details of all requirements are requested.

Certain of the EEA States clearly make available on their supervisory body websites the general good rules which they require to be respected by incoming insurance undertakings. Where this is the case, the States in this category are requested to inform the Commission services of the exact weblink, with details of the language versions that are accessible.

Where this material is not available on the website of the supervisory authority, the EEA States in this category are requested to provide the Commission with the documentary material that would be provided to the home State in the case of the notification by an insurer under the directives of its intention to open a branch or provide cross-border services. Again the Commission would request details of any language versions available.

The Commission would ask Member States and EEA States to provide the requested information by 31 March 2008.