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**Discussion paper by United Kingdom**

**Effective implementation and enforcement of legislation  
affecting the insurance sector**

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## **Introduction**

1. The European Commission's progress report of 2 June 2003 on the FSAP recognised the "tangible political progress" made to complete by April 2004 the adoption of legislative measures under the FSAP. But it also highlighted the need for timely implementation and subsequent consistent enforcement of common financial services legislation. The purpose of this short paper is to stimulate a preliminary discussion by the Insurance Committee of implementation and enforcement, and in particular to propose practical steps that would help achieve this agreed goal. This paper has focused on matters affecting insurance. However, the same issues are also likely to arise in future with regard to pensions.

## **Setting the scene**

2. There are several good reasons to focus on effective implementation and enforcement at this time:
  - all Member States are needing to consider how they implement the series of measures being adopted under the FSAP;
  - before pressing ahead with any further legislation we need to be clear what implementation of FSAP measures has achieved;
  - tackling some barriers within the single market by the FSAP is also throwing into greater relief other remaining difficulties, including some due to weaknesses in implementation or apparent breaches of Community law, being encountered by firms and customers wanting to take advantage of an integrated market;
  - the new level 2 and level 3 committees offer excellent opportunities for Member States governments, the Commission and supervisors to work closely together to ensure that implementation happens as effectively as possible;
  - the tackling of barriers within the single market by the FSAP is also throwing into greater relief some remaining difficulties being encountered by firms and customers wanting to take advantage of an integrated market; and
  - enlargement of the EU to 25 Member States will shortly also create further challenges for implementation and enforcement.

## **Analysis**

3. A range of different difficulties has been experienced with implementation and enforcement of legislation affecting the insurance sector in the EU, including:
  - failure of Member States to implement directives effectively in national law in good time;

- serious inconsistencies in the implementation of directives in different Member States;
  - the introduction or retention of additional rules on the insurance sector that are incompatible with Community law, including for example the freedoms to provide services and of movement of capital in the EU.
4. Poor implementation and enforcement puts at risk the benefits that the FSAP and related legislation should achieve. It also poses risks for financial supervision.
  5. In addition to the supervisory risks that might arise from poor implementation and enforcement, difficulties for the financial sector that have been argued to arise as a result of such problems include issues such as:
    - requirements imposed by Member States relating to residency of professionals engaged in the actuarial profession;
    - difficulties with establishing branches in Member States, or requirements for establishment to provide services;
    - difficulties in insurance firms selling a mixed range of products (eg pensions and life insurance, or life insurance and health insurance);
    - barriers to issuing marketing material in some Member States.
  6. Commission Communication on Better Monitoring of the Application of Community Law (COM(2002)725 final) stressed that “complaints are a vital means of detecting infringements of Community law”. Nevertheless, recent data suggests that the volume of complaints has tailed off since the maximum reached in 1999. There is anecdotal evidence that businesses are unwilling to pursue complaints, for reasons of cost and reputation. This represents a problem for the Commission in particular in conducting its enforcement role. The proposed Internal Market Problem Solving Network (“Solvit”) should offer one route to resolve complaints from businesses and individuals, but it appears to be tailored more for small individual cases rather than more serious enforcement issues.

### **Further action**

7. In COM(2002)725, the Commission proposes a number of action points to facilitate effective monitoring of the application of Community law and taking action against infringements. The Communication also highlights the need for closer cooperation between the Commission and Member States to prevent situations of non-compliance.
8. The UK welcomes the commitments made by the Commission in this respect. It suggests that the Insurance Committee should consider how to take forward these commitments in respect of legislation affecting the insurance sector. Annex A suggests some specific actions points relating to the insurance sector to take forward the commitments made in COM(2002)725.

## **Questions**

9. Given agreement between Member States and the Commission on the importance of effective implementation and enforcement of legislation:
- Do members of the Insurance Committee agree with the proposals contained in Annex A? Do they have any other practical suggestions?
  - Do members agree that this should be a regular item on the agenda of the Insurance Committee, including regular monitoring reports?

**HM TREASURY**

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## ANNEX A

### PRACTICAL SUGGESTIONS TO IMPROVE IMPLEMENTATION AND ENFORCEMENT OF EU LEGISLATION AFFECTING INSURANCE

<b>Actions points from COM(2002)725</b>	<b>UK suggestions</b>	<b>Comments</b>
Improve cooperation and communication between Commission and Member States	(Many of the following contribute towards achieving this in the field of insurance)	In this field, good cooperation and communication will also need to involve supervisors and CEIOPS, as well as Member State governments. Also need to have good links between different DGs within the Commission
Monitor proper transposition of directives	Commission to prepare six-monthly “scorecards” showing implementation of relevant directives in each Member State, to be discussed at Insurance Committee	Develops idea already used by the Commission to cover all single market directives, and the approach currently used in the Insurance Committee newsletter
Facilitate proper transposition of directives	Hold discussions about transposition of specific directives at an early stage after adoption, to involve relevant authorities from each Member State, to allow them to learn from best practice	As already used in some cases, such as financial services under the E-Commerce Directive. Where this is a matter solely for supervisors, this might be handled best through CEIOPS. Where ministries are involved, ad hoc groups bringing together different authorities might be necessary. Important not to allow reopening of directives. The Commission is already offering some help in the case of solvency directives

Monitor application of Community law	Research into why private sector is failing to make effective complaints or take legal action against Member States not applying Community law	Evidence that some private sector businesses are not making complaints effectively to the relevant authorities, including the Commission
	Set up clear, accountable, responsive complaints mechanism for businesses to use to report difficulties to Commission, perhaps using trade associations	Key individual or "post box" required within DG-Markt to receive complaints and ensure that they are dealt with, including scope for trade associations to raise issues on behalf of members without (initially?) revealing their identity
	Send clear messages to trade associations about their role in assisting this process	Develop approach already being followed by Commission and some other authorities in pressing trade associations to take on role
	Develop and use market indicators to identify markets which appear to be lacking competition	Continue to develop Commission's monitoring indicators to allow comparisons between different local markets (eg show profitability, price and choice in different national markets) to identify poor competition perhaps due to breaches of Community law. Need to involve different DGs within the Commission, and the work of the FSC.
Tackle infringements of Community law	Commission to prepare six-monthly reports showing alleged infringements reported or investigated affecting the insurance sector, and the state of progress in dealing with them	Reports will need to distinguish between those complaints that have reached the infraction process and those that are under more preliminary investigation, and perhaps need to respect the confidentiality of firms
	Joint actions by DG-Markt and DG-Comp, both in analysing and developing market indicators and approaching individual cases and complaints	Recognise that breaches of Community law can include failures to respect competition and state aid law, as well as failures to transpose and implement financial services regulation
	Review role of FIN-NET in providing solutions to problems of retail customer in insurance, and consider options for improvement	FIN-NET currently offers a joining-up of national ombudsman services, but is patchy and not well understood