



Room document
Orig. EN

EU-U.S. REGULATORY DIALOGUE

Questions for the IC:

1. *Does the IC have any comments on:*
 - *the procedure and process outlined?*
 - *the draft agenda of topics for future discussion?*
2. *How does the IC feel that Member States and their supervisors can be most efficiently associated with this process?*
3. *What is the IC's opinion of the Washington DC consultative document?*

Annexes:

- 1) *Letter from Mr. Thébault of 23.1.2002 to Ms. Terri Vaughan and reply of 27.03.2002*
- 2) *US presentation as well as a list of NAIC model laws given to the Commission*
- 3) *Consultative document for recognition by Washington DC of "alien insurers"*

1. Introduction

The IC has previously¹ discussed the idea of a Regulatory Dialogue with US authorities on insurance and expressed its support. This dialogue has now been launched at expert level.

On 23rd January 2002, Mr. Thébault, Director MARKET/C – Financial Institutions, addressed a letter to Ms. Terri Vaughan, State Commissioner of Insurance for Iowa and President of the NAIC, proposing the launch of this regulatory dialogue. A first list of items were proposed to the US authorities for an initial meeting between Commission officials and NAIC representatives. *(See attached letter and reply from US authorities in Annex 1.)* These preliminary discussions will continue in 2002 and will be followed by a more intensive dialogue- to be completed during 2003.

2. Objective of the US-EEC Regulatory Dialogue

The primary objective of the dialogue is to enhance knowledge of each others' insurance regulatory and supervisory regimes. A full understanding remains a pre-requisite for any moves that could lead to an improved business environment for EU companies active in the US. As the regulatory and other challenges facing the US and EU insurance industries are largely the same, both parties could learn significantly from each other. At this stage the scope of discussions would be exclusively devoted to regulatory and supervisory issues; trade related issues are not to be discussed at this stage. However, in the longer term the EU-US dialogue should lead to tangible benefits.

The concept underlying the regulatory dialogue is a discussion forum for regulators and supervisors; it is not foreseen that the insurance industry will be involved in the discussion, unless the dialogue partners deem this useful. The EU delegation to the dialogue will consist of officials from the European Commission in Brussels as well as officials and supervisors from Member States, when appropriate.

Before embarking on a detailed dialogue, it was agreed that an exchange of information on basic rules and regulations in Europe and in the US would be highly appropriate to better understand the whole insurance framework as well to understand how legislation at State/Member State level is adopted and implemented.

3. Initial Regulatory Dialogue Meeting

The first meeting was held in Washington on 5-6th March. The US delegation was led by Mr. L. Mirel, Commissioner of Insurance and Securities for Washington DC, Mr. A. Gross, Commissioner of Insurance for Virginia, Mrs C. Lamar, from the Department of Insurance of Illinois, and Mr. G. Brady, responsible for international affairs at the NAIC. The EU delegation was led by Mr. Deacon, Head of the Insurance Unit in Internal Market DG with Manuel de Frutos and Ulf Linder, along with Matthew King from the Commission's Washington office.

¹ Cf discussions at 27th IC (MARKT/2108/00) and 25th IC (MARKT/2018/00)

Both sides exchanged copies of their relevant laws and regulations. This first meeting was devoted to a general presentation of the EU-US insurance legislative framework, highlighting the main aspects of each system (EU legal system, the EU Insurance framework, US insurance framework, main aspects of insurance supervision: solvency, accreditation process, conduct of business (supervision of policy conditions, tariffs, etc), insurance guarantee schemes, etc). *A copy of the US presentation as well as a list of NAIC model laws given to the Commission are attached.*

4. Next steps

Both parties have agreed to continue discussions on a regular basis. It is expected that a second meeting with a NAIC delegation will take place shortly in Brussels (date still to be confirmed). The Commission considers that EU supervisory/regulatory authorities may wish to participate at this meeting.

The following issues need to be discussed in detail at future meetings:

1. Motor insurance (uninsurable risks, systems developed to deal with)
2. Insurance guarantee schemes
3. Health insurance issues
4. E-Commerce
5. Insurance groups and financial conglomerates
6. Rules on technical provisions (calculation, admissible assets, spread rules) (The European Actuaries Association – Groupe Consultative – could perhaps be involved in this process)
7. Early warning system mechanisms
8. Outsourcing: supervision
9. Winding up procedures
10. Enforcement of court decisions across the Internal market/US states.
11. Supervision
 - Accreditation in US
 - EU system
12. Greater co-operation within IAIS and IASB

5. Washington DC

The Insurance Commissioner for Washington DC has provided a consultative document for the recognition by Washington DC of “alien” (ie non-US) insurance supervisory systems to facilitate this jurisdiction as a “port of entry” to the US market (*attached*). This is an issue that will need to be discussed later with Trade officials, but the IC is invited to express its opinion.



EUROPEAN COMMISSION

Internal Market DG

FINANCIAL INSTITUTIONS

Director

Brussels, **23.01.02 0369**
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Ms Therese M. Vaughan
President
National Association of Insurance
Commissioners (NAIC)
2301 McGee
Suite 800
Kansas City, MO 64108-2604

Dear Ms Vaughan,

Subject: Initiation of a regulatory dialogue between the US and the EU

The NAIC and the European Commission have always enjoyed an excellent working relationship on many international issues, notably IAIS. During recent contacts between the US and the EU in the insurance field it has become apparent that there is a need for a deepened understanding of the respective supervisory and regulatory systems. Therefore a full dialogue between US and EU supervisors and regulators should be initiated in order to increase our knowledge of each other's approaches and systems. Our Commissioner Frits Bolkestein has also expressed his support for initiating such an action.

Following some preliminary contacts with staff at NAIC, the European Commission would therefore propose starting such a regulatory dialogue at the level of specialists. The objective of the exercise would be to enhance the knowledge on both sides, of each others prudential and supervisory systems for insurance and reinsurance. As the challenges facing the US and EU insurance industry as well as its regulation are to a large extent the same, we believe that we can learn significantly from each other. The scope of the discussions would be regulatory and supervisory issues. Trade related issues are not to be discussed in this context.

The exact issues to be included in the dialogue would have to be elaborated further, and to stimulate the discussion the Commission Services have prepared a memorandum with some ideas (annexed to this letter). The discussions should focus on the overall approach to regulation and supervision in the US and in the EU, as well as different procedures for problem resolution. As a first step, delegations could exchange current regulations and other supervisory material in order to prepare more detailed discussions. There could also be useful discussions on likely regulatory and market developments and on other issues such as the EU enlargement and NAFTA.

The regulatory dialogue is a forum for regulators and supervisors, and it is not foreseen that the insurance industry will be involved in the discussion, unless the dialogue partners deem this useful. The EU delegation to the dialogue will consist of officials from the European Commission in Brussels as well as supervisors from Member States when appropriate. Similarly, a US delegation is likely to involve specialists from the NAIC as well as representatives of state supervisors. It may be decided that it is useful to involve other bodies such as NCOIL at a later stage of the dialogue. For practical reasons, the participation of EU Member States' delegates will be larger for the meetings taking place in Europe.

In order to start off the process we would suggest a first meeting in Washington 5-6 March 2002. The EU delegation would be led by David DEACON, head of the Insurance Unit of the European Commission, and include insurance specialists from the Commission. The following meeting could be held in Brussels later on during the spring, perhaps to coincide with a meeting between EU supervisors in order to ensure a wide-ranging and high-level participation.

It is difficult at this time to foresee exactly the time frame in which this work should proceed. We believe that the discussions would continue during the remainder of 2002, and that the intensive phase of the dialogue could be wrapped up during 2003. It is however also useful to regard the dialogue as the start of regular exchanges between the US and the EU on insurance related matters.

We trust that you share our interest in initiating this process, and we are looking forward to hearing from you at your earliest convenience. We remain at your disposal for questions and clarifications.

signed
Jean-Claude Thébault

Contact:

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Encl. Memorandum on the launch of a regulatory dialogue between the US and the EU

cc. DG RELEX
Commission Delegation, Washington
Ms. De Richeumont, Cabinet Bolkestein
Mr Merlin, Assistant of Mr Mogg

Launch of the regulatory Dialogue on Insurance Memorandum

This note intends to set out the key objectives of the regulatory Dialogue and to propose some arrangements for the practical organisation.

1. OBJECTIVE

To get a full understanding of each others' regulatory and supervisory systems. The scope is therefore of a regulatory nature, not trade issues.

The means to achieve that objective is to have full and comprehensive exchange of information and dialogue.

2. CONTENT OF THE DIALOGUE

Discussion should focus the whole approach to regulation and supervision, in the EU and in the US. Discussion could also touch on the issue of problem solving at company and supervisor level.

Before embarking on such dialogue, exchange of information on basic rules and regulations in Europe and in the US would be highly appropriate to better understand the whole insurance framework as well as any other information necessary to understand how legislation at State/Member State level is made and implemented. Information about enlargement/NAFTA prospects could also be useful at a later stage.

2.1. Regulation

Exchange of information would be particularly interesting on the following points:

- Decision-making process: How are rules prepared, discussed, passed and implemented? How is proper implementation controlled?
- What is the role of the different jurisdictions (State/Member States)? What is the role of professional bodies in the preparatory phase?
- What is their content? Differences and similarities between US and EU regulatory framework/basic prudential rules (from licensing to withdrawal). What are their strength and weaknesses? What are the accounting implications?
- Are there any significant differences in the approach followed between legislation on retail insurance and regulation concerning large risks?
- Are there any major reforms envisaged?

2.2. Supervision

- How is supervision effectively carried out – structure and role of different parties? Is there any early warning mechanism in place?
- Is there any trend towards some convergence in supervisory structures?
- What is the level of co-operation/co-ordination between national/State supervisors?
- How are subsidiaries/branches of foreign companies treated?
- What powers of intervention and sanction are available to supervisors?
- Is there any control of supervisors?

2.3. Problem solving (at an individual or industry level)

- Which mechanism of appeal does exist in case of disagreement?
- Are there any out-of-Court system of settlement in case of litigation?
- Link to winding-up/guarantee schemes

3. FIRST STEP – EXCHANGE OF INFORMATION

All relevant documents (legislation and others) should be exchanged by electronic means by the end of January.

4. NEXT STEPS

The Commission proposes to start the process in Washington on 5-6 March. This could be organised with a two-day exchange of views on market developments and regulation, with each delegation presenting its case for one day. The Commission delegation could also then meet the key players in Washington.

5. PRACTICAL ORGANISATION OF THE DIALOGUE

Composition of the delegations on both sides will have to be discussed, as well as the format of the meeting. A provisional and approximate timetable could then be envisaged. This could be discussed in detail in Washington on 5-6 March.

Reply from Ms. Vaughan

VIA E-MAIL

Mr. Jean-Claude Thébault
Director, Financial Institutions
Internal Market DG
European Commission
Brussels
Belgium

March 27, 2002

Subject: Initiation of a regulatory dialogue between the US and the EU

Dear Mr. Thébault:

It was my pleasure to receive your correspondence regarding the initiation of a regulatory dialogue between the U.S. and the European Union. While we continue to interact informally with our colleagues in Europe on regulatory matters, this initiative to formalize our interaction has become more necessary as national and international boundaries slowly give way to an international marketplace for insurers. As regulators of two of the world's largest markets, it is imperative that we further our mutual understanding and strive toward increasing cooperation as regulators, outside the context of trade negotiations.

As you know, immediately upon receipt of your letter, I charged the NAIC's International Counsel, George Brady, with securing arrangements to receive your delegation of insurance specialists. I am delighted to report that the NAIC members who participated in the meetings on March 5-6 found the exchange of information to be productive and quite enlightening. Our commissioners and staff who work most closely on international issues continue to review the vast amount of information imparted at those meetings, and recently reported on the preliminary results of their analysis at our Spring National Meeting in Reno, Nevada.

On behalf of the NAIC, we look forward to working with your office on this important endeavor following the guidelines set forth in the Memorandum for the Launch of a Regulatory Dialogue on Insurance – to exchange information, to discuss regulatory issues of common interest, and to enhance our individual participation in international groups like the International Association of Insurance Supervisors (IAIS) and the International Accounting Standards Board (IASB).

As the NAIC works with your office to arrange for the next opportunity for a regulatory dialogue in Europe, please receive my thanks for your efforts to ensure our ongoing communication, and my commitment to dedicating the resources necessary to make our exchanges productive and meaningful.

Yours sincerely,



Terri M. Vaughan
President, NAIC
Commissioner, Division of Insurance, State of Iowa

1) NAIC presentation

(slideshow – available on request)

2) List of NAIC model laws given to the Commission

- Business transacted with Producer controlled Property/Casualty Insurer Act
- Credit for Reinsurance Model Law
- Credit for Reinsurance Model Regulation
- Criminal Sanctions for failure to report Impairment Model Bill
- Financial Regulation Standards and Accreditation Program
- Insurance Holding Company System Regulatory Act
- Insurers rehabilitation and liquidation Model Act
- Investments of Insurers Model Act (Defined Limits Version)
- Investments of Insurers Model Act (Defined Standards Version)
- Life and Health Insurance Guaranty Association Model Act
- Life and Health Reinsurance Agreements Model Regulation
- Managing General Agents Act
- Model Law on Examinations
- Model Regulation Requiring Annual Audited Financial Reports
- Model Regulation to define Standards and Commissioner's Authority for Companies deemed to be in hazardous financial condition
- NAIC Policy Statement on Financial Regulation Standards
- Post-assessment Property and Liability Insurance Guaranty Association Model Act
- Reinsurance Intermediary Model Act
- Risk-based Capital (RBC) for Insurers Model Act
- Standard Valuation Law
- State post-assessment Property and Liability Insurance Guaranty Association Model Plan of Operation

REGULATORY “DUE DEFERENCE”

**A PROPOSAL FOR RECOGNITION AND DEFERRAL TO FELLOW INSURANCE
REGULATORS UNDER CERTAIN CONDITIONS**

EXPOSURE DRAFT

January 1, 2002

Summary of Proposal

The Commissioner of Insurance and Securities for the District of Columbia proposes to accept, for purposes of granting authority to operate in the District of Columbia, the determination by a commissioner or supervisor of another jurisdiction that a particular insurance company is qualified to conduct such business. The applicant insurance company will be required to submit evidence of good standing in its domestic jurisdiction and in the jurisdiction where it conducts the largest share of its business activities, if different. The Commissioner must find that the regulators of the domestic and major jurisdictions meet or exceed the regulatory standards of the District of Columbia. Finally, the applicant insurance company must certify that it meets and will continue to meet all applicable District of Columbia legal and regulatory requirements. Non-American insurers must, in addition, agree to submit to the authority of District and U.S. courts, and to waive any defenses to legal actions brought against them based on lack of jurisdiction.

Status of Proposal

This proposal is being circulated widely among regulators and the insurance industry in draft form, in order to stimulate discussion and criticism. It is the intent of the D.C. Commissioner to refine the proposal in light of comments received, and to implement it as soon as possible.

Background

The growth of a global market in insurance and other financial activities has led to calls for uniformity and reciprocity in the regulation of such activities. Currently companies that operate in a variety of jurisdictions face a range of regulatory requirements that delay and greatly increase the cost of doing business. Within the United States alone the state-based system of regulation can require an insurer to deal with 51 or more individual regulators in order to operate across the country. Organizations such as the National Association of Insurance Commissioners (NAIC) in the U.S. and the International Association of Insurance Supervisors (IAIS) are working to establish and enforce standards and common methods of regulation, but progress towards these goals is slow, especially when compared to the rapid globalization of the industry.

The European Union has developed a system for mutual recognition by insurance regulators of the member states—and even of some non-member European states—of the actions of fellow regulators, known as a “passport” system. Nothing comparable has been attempted in the United States, where each state retains the right to license all companies that sell in that state, even if the company is already licensed in one or many other states.

In an effort to break down the barriers that prevent insurers from operating on a nationwide or worldwide basis, while maintaining efficient and effective regulatory authority necessary to protect the insurance-buying public, the District of Columbia Commissioner of Insurance and Securities is prepared to defer to the determinations of fellow regulators that a particular company is qualified to operate as an insurer, and not subject that company to an independent review of its qualifications as a prerequisite to licensure in the District of Columbia. The Commissioner will retain all lawful authority to monitor, investigate and discipline, when necessary, any insurer doing business in the District of Columbia.

Although the District of Columbia Commissioner proposes to take this action unilaterally, it is his hope that other jurisdictions will reciprocate and will recognize the validity of approval by the District of Columbia Commissioner for purposes of licensing in their jurisdictions. Widespread acceptance of such a scheme of reciprocity holds the promise of much faster and less expensive approval, without compromising the authority of any regulator to monitor, investigate, punish or close down any company found not to be abiding by local law and regulation.

A conceptual model for this program is the American system of licensing automobile drivers. Each state issues its own drivers license—there is no United States drivers license—and other states accept those licenses and allow drivers licensed elsewhere to operate vehicles in their jurisdictions. Regardless of where licensed, however, drivers must obey the laws of the states where they are driving, and all states retain the right to enforce their laws against licensed drivers from other jurisdictions.

Proposal details

District law requires that only a company licensed as an insurer by the Commissioner may sell insurance in the District, but provides latitude for the Commissioner to determine qualifications for such licensure. The District of Columbia Commissioner proposes to consider a license granted by the home jurisdiction regulator as *prima facie* evidence of qualification to receive a District of Columbia license, and any insurance company seeking licensure in the District of Columbia after the implementation date may be licensed upon presentation to the District of Columbia Department of Insurance and Securities Regulation of (1) a copy of the license and a certificate of compliance from its domestic jurisdiction *and* from the jurisdiction where it conducts the largest share of its business, if different; (2) a statement, signed by a corporate officer, that the applicant complies and will continue to comply with all relevant laws of the District of Columbia; and (3) certain statutorily required documents (such as articles of incorporation and bylaws) and licensing fees.

In addition, if the applicant is licensed by a non-United States jurisdiction, it must execute a power of attorney and undertaking, in a form acceptable to the Commissioner, stating that it will not set up any defense to any claim, action, or proceeding brought against it arising from an insurance contract entered into in the District of Columbia, or in any other United States jurisdiction, nor refuse to obey any lawful order of the Commissioner, or pay any fine or penalty imposed upon it by the Commissioner or any court of competent jurisdiction, on the ground that it is not subject to the laws of the United States of America and of the District of Columbia.

To be accepted as *prima facie* evidence of qualification for a D.C. license, the applicant must provide proof of licensure by a regulator that maintains a regulatory system meeting or exceeding the standards of the District of Columbia Department of Insurance and Securities Regulation. For other United States jurisdictions, this standard will ordinarily be met by any state accredited by the NAIC. For non-American jurisdictions the qualifications of the regulator will be determined, at least initially, on a case-by-case basis, although the D.C. Commissioner will be prepared to take into full account existing standards set by institutions such as the European Union.

The NAIC has developed and maintains a rigorous system of accreditation of state insurance departments. Any jurisdiction that meets the high standards set by the NAIC should be deemed worthy of deference by other regulators. The regulator of that state has exactly the same obligations to protect its citizens as the District's Commissioner has to protect the people of the District of Columbia. A company that has been licensed by an NAIC-accredited insurance department, therefore, should be acceptable to the District of Columbia. The same is true of a company that has been licensed in any non-United States jurisdiction that maintains standards comparable to those required by the NAIC of U.S. jurisdictions. Of course the licensed company will still be required to conform to all D.C. laws and regulations, including solvency requirements and the mandates of the unfair trade practices statute.

Your comments on this proposal are invited. Please respond by e-mail to lawrence.mirel@dc.gov.