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COMMISSION OF THE EUROPEAN COMMUNITIES

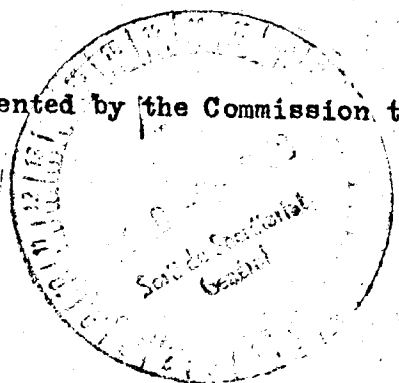
COM(78) 736 final

Brussels, 19 December 1978

RECOMMENDATION FOR A COUNCIL DECISION

concerning the position of the Community within the Organisation for Economic Co-operation and Development on a draft recommendation concerning institutional co-operation between authorities of member countries of OECD responsible for supervision of private insurance

(presented by the Commission to the Council)



COM(78) 736 final

Recommendation for a Council Decision concerning the position of the Community within the Organisation for Economic Co-operation and Development on a draft recommendation concerning institutional co-operation between authorities of member countries responsible for supervision of private insurance.

I. Objective and background

The Insurance Committee of the Organisation for Economic Co-operation and Development (OECD) has for many years devoted itself to achieving freedom of insurance transactions among its member countries.

It appeared to some of these countries that the development of a system of co-operation between the supervisory authorities of these countries was indispensable if further progress was to be made in that direction.

Several drafts have been examined by the Insurance Committee, the last one having been drawn up by a limited working party composed of representatives of France, Austria and Spain. The text produced by this working party is annexed; it was examined by the Insurance Committee on 17 and 18 May 1977. It takes the form of a draft recommendation, which has still to be submitted to the OECD Council, and on which the Community must adopt a position.

II. Contents of the OECD draft recommendation

The recommendation urges the member countries of the OECD

- (1) to require the responsible authorities to exchange information of a general character relating, inter alia, to national provisions relevant to the supervision of the solvency of concerns,
- (2) to conclude bilateral conventions with a view to enabling those authorities to exchange information and to lend one another assistance.

A model bilateral convention is contained in the recommendation. It provides for a minimal degree of co-operation as regards exchange of information and reciprocal assistance. It also specifies that "The rules as to secrecy to which the authorities of the Contracting States are subject shall not impede co-operation between such authorities and reciprocal assistance as provided for in the present Convention," and "The information exchanged may be used by those authorities solely for carrying out their task of supervision." (Article 4(1)).

III. Role of the Community as regards this draft recommendation

The importance of this recommendation for the Community must be appraised in the light of the coordination of laws achieved by application of the Council Directive of 24 July 1973 (OJ L 228 of 16 August 1973) and by reference to the following considerations:

- Collaboration between supervisory authorities is provided for in the directive on co-ordination of liability insurance of 24 July 1973 as an essential component of the co-ordination, which is thus not limited to a harmonization of the substantive law. In particular, they have the obligation of granting authorization to the branches of undertakings having their head office in another Member State which satisfy the requirements of the directive.
- This directive expressly stipulates that "The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community ..." (Article 33).
- Branches of undertakings of non-member States are covered by the directive, which subjects them to precise substantive rules. For this reason, they must furnish information and documents emanating from the supervisory authorities of non-member countries.
- Collaboration between a supervisory authority of a Member State and the supervisory authority of a non-member State may thus be such as to facilitate the implementation of this Community directive.

As regards the application of the recommendation to the conclusion of a convention with a non-Community Member State of the OECD, for example following a proposal made by that State or a request presented by one or more Member States, the Commission will submit appropriate recommendations with a view to opening negotiations with such third country or countries.

The Commission considers, in this connection, that there may be cases where it will not be necessary, at least at a first stage, to extend the co-operation to the authorities of all the Member States of the Community, for example where the activities, within the Community, of another State or the activities of Community-based enterprises within that State do not, at that stage, affect all the Member States.

The Commission will take account of such cases in its recommendations to the Council, so that such recommendations may, as the case requires, provide that the authorities of certain Member States are not included in the agreement, or indeed that negotiations shall take place between a Member State and the non-Member State concerned.

The Commission considers, finally, that it is in the interest of the Community that Member States, for their part, adopt a common position and also give their support to this draft OECD recommendation.

IV. Conclusions

In conclusion, the Commission recommends that the Council should decide:

1. that the Community shall for its part accept the OECD draft recommendation concerning institutional co-operation between authorities of member countries responsible for supervision of private insurance;
2. that for this purpose the Commission, in the name of the Community, shall make the following declaration to the OECD: "The European Economic Community approves the recommendation concerning institutional co-operation between authorities of member countries responsible for supervision of private insurance. As regards more particularly the conclusion of bilateral conventions envisaged in point 2 of the recommendation, the Community is ready to engage in appropriate negotiations with other Member States of the OECD who so desire."

RECOMMENDATION OF THE COUNCIL
CONCERNING
INSTITUTIONAL CO-OPERATION BETWEEN AUTHORITIES
OF MEMBER COUNTRIES RESPONSIBLE FOR SUPERVISION
OF PRIVATE INSURANCE

The Council,

HAVING REGARD TO Article 5(b) of the Convention (on the Organisation for Economic Co-operation and Development of 14th December, 1960);

HAVING REGARD TO the Report by the Insurance Committee of on co-operation between authorities of Member countries responsible for supervision of private insurance, and, in particular, to paragraph 3 thereof ;

RECOMMENDS Member countries:

- (1) to require their administrative authorities responsible for supervision of private insurance, whenever they receive a request from another supervisory authority of a Member country, to exchange directly between themselves information of a general character relating, inter alia, to legislative, regulatory and administrative requirements in the field of insurance, in order to permit of comparisons between countries such as might promote, as applicable, voluntary alignments of the relevant national provisions;
- (2) to conclude, in the light of the developments of their economic relations in the insurance sector, bilateral conventions, in accordance with the attached model, in order to exercise their function of supervision and to lend one another assistance reciprocally.

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MODEL CONVENTION

Preamble

States (A) and (B),

Being desirous of facilitating the operations of insurance concerns carrying on business in their countries and of strengthening as much as possible the protection of policy-holders and beneficiaries under contracts of insurance;

Considering that for such purpose it is essential to increase the means of obtaining information which are available to supervisory authorities in order that they may, through better knowledge of the overall situation of a concern undertaking insurance in their countries, exercise their function with the maximum effectiveness;

Have agreed to conclude the present Convention concerning co-operation and reciprocal assistance in the field of supervision of private insurance concerns.

Article 1

General Provisions

1. Co-operation and reciprocal assistance as provided for in the following provisions relate to direct insurance.
2. The administrative authorities responsible for co-operation and reciprocal assistance are :
 - in (State A):
 - in (State B):

The said administrative authorities are in the following Articles termed "authorities".

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Article 2

Exchange of information

1. The authorities of the Contracting States undertake to give each other such information as they need for the exercise of their function, and in particular for the exercise of supervision of private insurance concerns.
2. The foregoing provisions shall neither entitle the authorities of the Contracting States to request nor oblige them to give information which they are not entitled to obtain under their national law.

Article 3

Reciprocal Assistance

1. The authorities of the Contracting States shall reciprocally lend each other assistance in order to facilitate as far as possible the application of each State's own law relating to supervision of insurance concerns.
2. Should the situation of a concern carrying on insurance business in the Contracting States be such that it is expedient to take measures to safeguard the interests of its policy-holders, the authorities may consult together with a view to taking, if possible by mutual agreement, appropriate measures in accordance with their national law.

Article 4

Secrecy

1. The rules as to secrecy to which the authorities of the Contracting States are subject shall not impede co-operation between such authorities and reciprocal assistance as provided for in the present Convention.
2. Nevertheless, any request for information, any information provided or any consultation shall be kept secret in relation to third parties, unless the authorities concerned decide by mutual agreement that it is not of a confidential character.

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3. The provisions of Articles 2 and 3 may in no case be construed as obliging a Contracting State to communicate any information which would reveal a commercial secret of the concern in question, or any information the communication of which would be contrary to public policy ("ordre public").

Article 5

Application of the Convention

1. For the purpose of applying the present Convention, the authorities of the Contracting States shall communicate directly between themselves.
2. If oral exchanges of views should appear likely to facilitate the application of the Convention, then such exchanges of views may take place in a Commission composed of representatives of the authorities.

Final provisions

(Provisions concerning: ratification, entry into force, termination of the Convention).