European insurers meet consumers' expectations

This speach was held by Mr *Francis Lohéac*, Secretary General of the Comité Européen des Assurances (CEA), on the annual assembly of the Swedish Insurance Federation in May 1997.

Firstly, I should like to thank the Swedish Insurance Federation for having invited me to present, on the central theme of "Insurance for consumers" adopted by its Annual Assembly, the data, challenges and stakes at issue in this Europeanwide dossier. I see this as a manifestation of the Swedish market's concern – as the birthplace of the "*ombudsman*" – to incorporate into its daily consideration, fruit of a long traditional culture, the new European dimension which recent developments at Community level have given consumer policy.

Reinforcing the European consumer policy: a decision in the Treaty of Maastricht

Although consumer policy in insurance has long occupied a prime position in national debates and the daily concerns of insurers, the completion of the Single Insurance Market in July 1994, the gradual development of the "Information Society" and the prospect of the move to Economic and Monetary Union on 1 January 1999 has led the Community authorities to pay particular attention to this at European level over the last few years.

The inclusion, via the Maastricht Treaty of February 1992, of a "consumer protection" aspect (article 129A) in the Treaty of Rome, marked the start of a vast process of consultation, dialogue and action to back up and complete, in compliance with the principle of subsidiarity, national policy in this area. The work being currently done by the IGC, responsible for forging the guidelines for a third revision of the founding Treaty (after those undertaken by the Single European Act of 1985 and the 1992 Maastricht Treaty) should in all probability – according to the draft Treaty formally tabled at the Dublin Summit in December last year – reinforce these guidelines via a significant broadening of the scope and the capacities for action (including legislative) of the European Commission in consumer protection; particular emphasis should therefore be put, under the heading of aims sought by Community action, on the recognition of the "economic

interests of consumers" and the "promotion of their rights to information, education and representation" (new article 129A in draft).

The Green Paper: "Financial services: meeting consumers' expectations": the beginnings of a dialogue sought by European insurers

To bring this policy to a successful conclusion in financial services, the European Commission began a vast campaign involving DG XXIV (Consumer Policy) – quite recently given for this purpose a "Financial Services" Unit – DG XV (Internal Market) and DG IV (Competition), based on a general consultation document presented in May 1996: the Green Paper on "Financial services: meeting consumers' expectations". This document, having listed the "balance-sheet of the acquis communautaire" in terms of consumer policy in European regulations adopted for financial services, was intended to list the essential concerns of consumers in their financial cross-frontier transactions, in insurance in particular: difficulty in obtaining cross-frontier insurance cover; different insurance conditions for residents and non-residents; lack of tax harmonisation (the result of the *Bachmann* decision in particular); quality of the service offered by certain intermediaries; difficulties, slowness and cumbersomeness of compensation procedures in the event of a road accident abroad (cf. the European Parliament *Rothley* Resolution)... Lastly, the Green Paper was an opportunity to open up a wide-ranging debate on the "challenges for the future", more precisely on the cultural and technological revolution brought about by the emergence on a growing number of markets of new techniques (increasingly instantaneous and non-material) of communication and distance selling of financial products.

The "Insurer/Consumer" dialogue organised by CEA: a première in the history of financial services in Europe

As the time seemed ripe to open a constructive dialogue on European consumer policy in insurance, CEA – having favourably welcomed the Commission's consultation initiative whilst underlining in particular the importance and the richness of measures at market and insurance company level to take the consumers' situation into account – organised on 17 December last year a European "Insurer/Consumer" dialogue – the first of its kind in the history of financial services in Europe... – in the presence of Commissioner Bonino (responsible specifically for consumer policy) and representatives from DG IV, XV and XXIV; the frank and constructive dialogue which began on this occasion continued, on the basis of the same tripartite representation, at a second dialogue at the European Commission on 16 April.

The initial aim was to assess the different feelings ("five" families) of the European consumer movement and better define the new approach by the European Commission in the field of consumer policy; then – and above all – to identify clearly consumers' queries and concerns in the Single Insurance Market. The background is now well-known and the time has come to examine possible initiatives at European level, subsidiary to – and in close symbiosis with – action undertaken at market level and action which is the responsibility of insurance companies themselves.

An "ex ante" policy of partnership, made of "soft" and "hard" law...

The new action framework defined by the Maastricht Treaty led the Community authorities to revise the general conception of con-

sumer "policy" – a word now more "politically correct" than "protection"... – (in insurance in particular): an "*ex ante*" policy of partnership (in lieu and place of the previous "*ex post"* policy of consumer protection) involving the "citizen-consumer" more in the decision-making process, encouraging dialogue on certain themes (such as for example, information for consumers and the processing of complaints), dialogue and "Codes of Conduct", and linked to a European statutory framework on points which it seems cannot be resolved by consultation.

"S*elf-regulation"* and "*soft law",* which have already successfully been used on a large number of markets, obviously offer an interesting alternative to statutory intervention which could be excessive and insufficiently adapted to the interests of the sector. Whilst being conscious of the difficulties and sensitivity of the exercise, every chance and opportunity should be given to consideration of possible codes or lines of conduct if we want solutions specific to insurance (and not "diluted" in an horizontal regulation which would ignore sectoral particularities) taking into account the "acquis communautaire", considered at great length in the light of existing national experience and complying with the principle of subsidiarity.

Without referring to the difficulty of properly defining the subjects which it could involve – to which I will refer at a later stage – we must not forget its limits at European level: CEA is a "goodwill club" which does not have, and does not wish to have, any investigative powers or powers of constraint vis-à-vis its member associations and operators to ensure compliance with guidelines or codes defined at European level; in addition, there are subjects – the *Rothley* issue relating to compensation of *visiting motorists* is a perfect example – where statutory action seems preferable to the conventional method if guaranteed standardised application is sought on all markets of a given solution without risking discrimination between operators.

The four "hot issues" in European consumer policy in insurance

As is often the case, a significant number of consumer queries and concerns are due to misunderstanding, lack of communication or difficulties in understanding insurance and poor information about it – a complicated activity by its nature, techniques, constraints, forms of distribution, legal – national or European – economic and social environment... Hence the need, clearly felt during the European dialogue, to develop Europe-wide – over and above the measures used at market and insurance company level – training and information. This is the idea behind, for example, the CEA proposal to draft a "Guide for victims of road accidents abroad" which will explain the (future) *Rothley* system by making consumers aware of the precautions to take when travelling abroad. This is also why CEA is closely participating in the information campaign which the European Commission has just begun on the practical aspects for consumers of the move to the Euro. Other information initiatives or awareness campaigns could also be envisaged on European themes of mutual interest (principles of the functioning of the Single Market; specific local features in contract law; cultural diversity of out-of-court recourse systems...).

Over and above these issues – which should be able to be resolved by appropriate training and information action – and those which are specific to some markets and come therefore under subsidiarity, four subjects are the "hot issues" in the current European dialogue with consumers; they cover all markets and all classes and are in line furthermore basically with the key ideas around which the Swed-

ish Association has chosen to organise today's debate on insurance and consumers.

The – shared – wish to see fewer malfunctions in the Single Insurance Market [1]

The majority of questions raised by consumers during the first few years of operation of the Single Insurance Market are due – like a good number of the obstacles identified by insurers when operating across frontiers – to the absence of harmonisation of the fundamental aspects of insurance (taxation, contract law, distribution...) and to uncertainties which currently surround the concept of "general good". Where any significant advance in terms of tax co-ordination is directly dependent on institutional developments (modification of unanimity voting on tax areas) over which no one has control and where clarifying the conditions of application of Community general good for insurance comes under the interpretational powers of the European Commission (under the ultimate control of the EC Court of Justice), consideration could be given to two lacunae. These are felt by all sides – for different reasons and at different degrees – to be obstacles to the proper functioning of the Single Insurance Market: the lack of harmonisation of insurance contract law and the absence of an ordered European legal framework in the distribution sector.

The growing sophistication of insurance contract law makes any ambitious attempt to harmonise at European level illusory ; so why not to agree, for the information of the Community authorities, on the few essential aspects of the contractual insurance relationship on which an attempt at minimum co-ordination (of the sort undertaken in stages to guarantee minimum cover in motor liability insurance) could (once again) be tried?

The same approach could be envisaged for distribution, at a time when the European Commission, drawing the lessons from the 1991 Recommendation, is getting ready to adapt the 1976 directive on insurance intermediaries to suit the new stakes and operating principles of the Internal Market.

The transparency of insurance products... or how to enlighten the consumer on the essential points of an insurance product

The significant deregulation brought about by the third generation directives appreciably revived rating competition in all classes of insurance and considerably expanded the range of products available from all over Europe. All positive developments which are supposed to be of direct benefit to consumers, all the more so in that at the same time the companies' duty of information was reinforced under the directives and major efforts were employed by insurers on all markets to improve the transparency of their products – a growing part of their commercial policy. So many factors which may help to confuse consumers who see more and more products on offer, therefore less and less comparable...; hence the wish of the European Commission to reflect jointly on how to improve market transparency and consumer information to enable consumers to choose clearly from the large range of products on offer.

This exercise deserves a successful outcome although it brings into play important reservations. How, in a context of growing diversification of products, can guarantees and rates (which are increasingly "tailor-made") be compared at European level where the personalisation of premiums and contractual conditions is as refined as possible (depending on criteria which differ from one

[1] The Commission is about to present a draft interpretative Communication on freedom of services and general good in insurance which will help to clarify the conditions of application of Community general good in insurance.

insurer to another) in the very interests of the consumer? How to compare rates and conditions for insurance guarantees when the risk components can vary appreciably from one country to another? How to sum up information in a few lines (or on a "card-file" according to some) on the essential characteristics of an insurance contract? Where is the dividing line between general information, of no practical interest for consumers, and "nit-picking" and exhaustive information which would reinforce the impression of opacity and complexity of insurance products? How to be sure that we are not unduly encroaching on the role of existing intermediation structures on all insurance markets?

In this context, CEA considers it preferable, more realistic and in the final analysis more useful for the people concerned to try to seek out the key elements of an insurance product (the equivalent, in a way, of the "lubrication points" on a car...) on which consumer vigilance is required in the pre-contractual negotiation phase; this is the exercise which CEA motor insurers are currently undertaking on a test basis on the fundamental aspects of liability cover and contractual insurance mechanisms.

Out-of-court procedures for dealing with insurance disputes: winning acceptance for the richness of European cultural diversity

It often suits us to underline the fact that the diversity of cultures is one of the riches of the Old Continent; a fact which can also be seen in the field of out-of-court insurance disputes. Over time – and depending on their cultural context – the various insurance markets have organised (some, such as the Nordic markets, more rapidly than others; "o*mbudsman"* is after all a Swedish "appellation d'origine", is not it?) mechanisms for the out-of-court treatment of disputes to meet the concerns of insureds more effectively and more flexibly than court-based methods: public bodies (public Ombudsman, supervisory authority, public authority responsible for consumer protection, public arbitration body...); professional bodies (Mediator, industry Ombudsman, Claims Bureau for the trade association, conciliation body, professional arbitrator...); joint bodies set up following a joint initiative by consumer organisation and insurers and/or public authorities; internal company recourse system; simplified and non-contentious methods of access to the ordinary courts... In short, there are as many formulae as market and company cultures... amongst which there can be no question of identifying "the" ideal formula universally applicable throughout Europe.

At the very least, we could look for agreement on some essential criteria or lines of conduct which should govern the establishment of out-of-court procedures for settling disputes, to guarantee their effectiveness, their independence, their publicity, their transparency... This is precisely the aim of a European Recommendation which the European Commission, further to its Action Plan on access to justice, is getting ready to formulate in the area of consumer disputes and whose applicability to insurance will be looked at by CEA in attempting to ensure the preservation, in compliance with the principle of subsidiarity, of specific national features and freedom of companies and markets to opt for the method(s) of recourse most appropriate to their own culture.

Insurance and contracts negotiated at a distance: taking the heat out of the discussion

Finally, there is the issue of "distance selling" for which the Commission - visibly bound by its political "promise" to the European Parlia-

ment, following the exclusion of financial services from the scope of the "general" directive adopted last January, to present a specific legislative device for distance selling for financial services – is encouraging the statutory approach to *soft* law; a draft directive on financial service contracts (including insurance) negotiated at a distance should be presented this summer. In this context, CEA – having commented at length as the general directive progressed along its legislative route, on its inappropriate, even inapplicable, nature for insurance and underlined its overlap with existing sectoral legislation – is beginning an overall examination intended to illustrate the specific features of insurance vis-à-vis the legal adaptations obviously required by the development of new distribution techniques on a distance basis in insurance. This consideration will in due course involve all the parties concerned in a climate where the heat will have been taken out of the somewhat passionate declarations made following the agreed exemption of financial services from the general directive

The resurgence of interest in consumer policy at European level should lead insurers to extend action developed at company and market level by considering the new dimension of the Internal Market and its stakes. Where difficulties arise – or are tending to arise – from consumer circles as major developments occur along the route to construct Europe with the turn of the century approaching (Single Market, Information Society, Single Currency...) wherever possible, the misunderstandings caused by the growing complexity of the European insurance framework should be dissipated by properly targeted information campaigns whilst emphasising the richness of a multi-cultural (insurance) Europe.

As for the more sensitive concerns listed in the course of the European dialogue, priority must be given to a search for concerted solutions in line with the "acquis communautaire" and the principle of subsidiarity, limiting statutory action to the "hard core issues" on which consultation seems inopportune, impossible or ineffective.

Such an approach should make it possible to co-ordinate the three "pillars" of the consumer policy which in insurance are the companies' commercial policy, market initiatives and the European dialogue: it should enable European insurers to negotiate in the best circumstances possible the major change in direction being taken by European consumer policy.