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Regulation Formulation in the European Union: A Case of the Life Insurance Industry

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ABSTRACT

This paper provides an illustration of the difficulties in harmonising European Member State legislation and explores the intricacies and practicalities of successful decision-making in the European Union [EU]. In the aftermath of the Single European Act [SEA], the beginnings of the Single European Market [SEM] and the initiation of monetary union it has become evident that financial service sectors need to involve themselves in the creation of the EU. Through a study of the discussions that revolved around the creation of the Third Life Assurance Directive this paper investigates the extent of sector involvement in EU decision-making and in doing so, analyses the utilisation of interest groups and supranationality in the process of European regulation formulation.

> *Behaviour is ultimately a social matter . . . and thinking in terms of what 'we' should do, or what should be our strategy, may reflect a sense of identity involving recognition of other people's goals and the mutual interdependencies involved [Sen, 1992; p 85].*

INTRODUCTION

This paper provides an overview of the workings of the EU decision-making processes in the negotiations and formulation of the Third Life Assurance Directive. In this context, the paper examines whether supranationalism is apparent in EU institutions and the extent to which interest groups are used in legislation formulation[1].

Interest groups will be defined as non-governmental organisations that attempt to have an influence on public-policy. They will be seen as entities that provide an institutional linkage between sectors and government. 'More specifically . . . those types of organisations whose political task it is to reflect the interests of the economic or occupational sections they represent' [Lieber, 1974; p 29].

> It designates those organisations which are occupied . . . in trying to influence the policy of public bodies in their own chosen direction. . . . European interest groups . . . are centrally organised associations of interest groups . . . each of which represents either a number of similar groupings or both national groupings and European industry committee groupings [Kirchner, 1980; p 96].

Interest groups apply pressure. Consequently, the terms pressure and interest group will be used inter-relatedly. Interest groups can either be of a sectional or of a promotional nature. This paper will concentrate on the sectional interest group category which usually represents the interests of a profession, producer group, occupations or trade unions. In particular, we shall concentrate on the sectional interests of the life insurance industry.

'Wyn Grant has noted that the relationship between pressure groups and the European Community has, so far, been a relatively neglected subject. In Britain, there are very few general studies of groups trying to influence EC decision-making' [Mazey and Richardson, 1993; p 93]. 'Direct lobbying of EC institutions constitutes an important part of the decision-making process within the Community and has the effect of increasing EC autonomy over the interests of Member States. There has been a rapid expansion of such activities over the last few years. However, although this phenomenon has attracted a lot of attention, there is surprisingly little systematic research on the topic' [Andersen and Elliassen, 1991; p 173].

In the 1990s, following the Single European Act [SEA] and the Maastricht Treaty, a number of research projects on European business interest groups were undertaken. Mazey and Richardson [1993] undertook a number of empirical studies but according to Grant [1995] and Kohler-Koch [1994] overall the research picture was still opaque.

> There is little consensus about the importance of different types of interest groups, about the influence they can exert on the politics and policies of the EC and the effect their activities have on the development of the integration process [Kohler-Koch, 1994; p 166 cited in Grant, 1995; p 99].

However, the importance of interest groups in the European decision-making process had been recognised, hence the time and effort that is now being exerted on them.

> Since the early 1980s . . . growing numbers of organised interests . . . have come to recognise the increasing importance of European Community legislation . . . It is no longer possible to understand the policy process . . . without taking account of the shift in power to Brussels [Mazey and Richardson, 1993; p 191].

In addition to a number of recent studies this paper undertakes an analysis of this process [see Greenwood *et al*, 1992; Greenwood and Cram, 1996; Greenwood, 1995; 1997; Howell, 1997; 1998; Mazey and Richardson, 1996; McLaughlin *et al*, 1993; McLaughlin and Greenwood, 1995; McLaughlin, 1995]. Camerra-Rowe (1996) pointed out that different sectors can undertake different strategies when it comes to lobbying European institutions. She considered that the insurance and pharmaceutical sectors have well run interest group representation at the EU level. While the likes of the biotechnological and automobile sectors companies represent themselves directly at the EU level. Direct lobbying more accurately indicates a company's choices. However, this is expensive and there is no certainty that the Commission or European Parliament will listen to an individual company if its proposals are not similar to the EU's or the sectors objectives. But this does illustrate that on certain matters the concerns of individual companies will be taken into consideration. "While the Commission prefers dealing with associations, its officials have been relatively open to lobbying by individual large firms. Thus, firms often have an incentive to lobby directly . . . However, it is rare for a firm, even a large one, to rely on one channel of representation" (ibid, p 6). This provides the basis for a number of difficulties. Companies that lobby directly: undermine the role of interest groups because the message they carry may not represent the whole sector; have limited incentives to compromise their positions in the collective because they are able to lobby themselves; force the association to reach consensus, this may lead to the acceptance of the lowest common denominator and undermine the effectiveness of the interest group.

Small and medium-size enterprises or companies that are incapable of lobbying the EU directly extend the roles of the interest group. Members are coerced into accepting sector compromises and they cannot use the interest group to pursue private advantage. European interest groups ". . . therefore have greater flexibility in the types of positions they take . . . it means that the association has greater political weight because it can claim to speak on behalf of all members" (Camerra-Rowe, 1996; pp 6-8). Of course, the other extreme is where the interest group is so diverse in its membership that agreement can never be reached.

The European insurance sector is mainly made up of small and medium-size enterprises and with the exception of Allianz, lack the political weight and resources to undertake direct action in Brussels. As a result, both national and European interest groups have a greater influence on the Commission and their membership. Companies need to accept the interest group's ". . . policy position even if it does not take account of their particular interests because they cannot effectively represent their own views. As a result, and paradoxically, the more fragmented insurance sector was better able to undertake collective activity in pursuing Community policy" (ibid, p 21).

As noted above, the SEA has created an impetus for the use of interest groups. With Qualified Majority Voting [QMV] and the SEM programme, lobbying in Brussels became imperative. 'However, as several groups discovered to their cost, lobbying in the European Community is far from a simple matter' [ibid]. In

Europe the process of lobbying is far from a ‘cloak and dagger’ scenario, it is quite the opposite. In Brussels lobbying is open, uncertain and unpredictable. ‘Thus, in order to be effective Euro-lobbyists, groups must be able to co-ordinate their national and EC level strategies, construct alliances with their European counterparts, and monitor changing national and EC policy agendas’ [ibid, pp 191-192]. In this paper we examine the initial discussions regarding the legislation and regulatory regimes that should be pursued to create the market most amenable to all Member State life insurance industries. And how effective interest groups were in the creation of legislation and the consequent regulatory environments.

A SINGLE EUROPEAN MARKET IN LIFE INSURANCE

The discussions about a single market in life insurance began in earnest between 1987 and 1988, and it was at this time, that interplay between the different elements of the decision-making apparatus became clearer. A greater emphasis was put on creating a Single European Market [SEM] in financial services because of the political impetus given by the SEA. This indicated a streamlined decision-making process which necessitated compromise and interaction between the Member States on most issues.

The starting point was the realisation that regulation differences were the main factors undermining the creation of a SEM in insurance. With regard to this, the Commission considered that its main objective was to create co-ordinated insurance supervision throughout the EU. Little work needed to be done on reinsurance because Member State legislation and regulatory structures in this area were relatively compatible. However, at the other end of the spectrum,

> . . . divisions appeared most marked in life insurance, where national ideas on consumer protection, the promotion of the economy, currency protection, social objectives and taxation were combined with different attitudes to composite insurers and even divergent conceptions on the scope of life insurance itself . . . for this reason . . . life insurance has been left until last at each subsequent stage [Pool, 1992; p 179].

It is the responsibility of the Commission and the European Parliament to pursue the tenets of the treaties and bring to the formulation of legislation ideas of their own. To enable this there needs to be an interaction between the life insurance industry [in European and national terms] and the Commission. However, there are differences between the Commission, the European Parliament, the European life insurance industry and among the separate Member State insurance industries. This is because of the national perspectives of what insurance is and how the industry should be governed. Hence the need for interest groups and concerted lobbying.

LIFE INSURANCE AND EUROPEAN INTEREST GROUPS

Pool [1992] considered that '. . . insurers are certainly much better organised as a pressure group than the other players in the insurance markets. Even they, however, have not always found it easy to arrive at a common perception of what a common market should mean for them' [p 11]. There are two main insurance interest groups at the EU level. The Comité Européen des Assurances [CEA] and the Bureau International des Producteurs D'Assurances et de Réassurances [BIPAR] both have act on behalf of their membership at the European level. There are also Member State national interest groups that are affiliated to the CEA and BIPAR.

It has been argued that the main objectives of European interest groups are two-fold. Firstly, they should '. . . promote the exchange of information and try to find common denominators [consolidate strength]' [Kirchner, 1980; p 109]. And secondly, 'co-ordinate and exert pressure for adopted policies through the European organisations and the national affiliatiations on both the EC and the national government' [ibid].

European interest groups attempt to keep their membership informed about developments in the sector and on EU activities. They achieve this through holding seminars and conferences on important issues. Essentially, they try to '. . . instil a spirit of co-operation and cohesion into their affiliates' [ibid p 110]. In this context, interest groups enable a means of integrating ideas, creating compromise and interacting with a supranational body. They act as a catalyst in the transferral of allegiances by national actors away from the national to the European decision-making arena. The supranational entity in this context is the European Commission, the Council of Ministers and the European Parliament. Haas presented the European dimension as one where,

> . . . political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states [Haas, 1958; p 16].

This is the shift toward a supranational decision-making entity. It is in this context that this paper questions the formulation of the third life assurance directive and the actions of those involved in its creation.

In 1995, the Director General of the Association of Brithish Insurers [ABI] asked whether or not the Single European Market had arrived for insuarance and if interest groups and legislators could '. . . sit back and let insurance companies get on with putting the new freedoms to practical use' [Boleat, 1995; p 45]. His answer to this was 'no': the industry needed to remain diligent because insurance is a complex financial service and has the potential to impact on many parts of our existence. To this extent, many proposed directives would have implications for the industry which should consequently '. . . influence the debate . . . be aware of new proposals and . . . submit their views at an early stage so that the implications can be properly considered and any necessary changes made before the proposals become set in stone' [ibid].

'Commerce, which has enriched English citizens, has helped to make them free, and this freedom in its turn has extended Commerce, and that has made the greatness of the nation' [Voltaire, 1980; p 51]. Frangoulis [1988] points out that such a heritage is still apparent and for the

> . . . British insurer freedom is the 'zero option', meaning minimum interference with market forces in a capitalist society and the right of free choice for the buyer. Without free choice, commerce cannot be extended, whether within or outside the Community [ibid p 1].

He considered that the most difficult element in creating a single market in life insurance '. . . is the existing differences in supervisory regimes' [ibid, p 2]. However, it was recognised by the CEA that differences '. . . in the supervisory practices of Member States could lead to distortion of competition between insurance undertakings. Harmonisation of supervisory methods therefore appears necessary' [CEA Working Paper, 1990; p 4].

In 1988, Frangoulis indicated that over the first four to five years there would be little change. Initially, '. . . buyers, brokers, carriers of insurance, will have some difficulty in coming to terms with the rules of the game' [ibid p 6]. This is because '. . . the structure of future programmes of insurance will call for a totally new approach in terms of comparability of cost, contract terms, quality of security etc. These things take time' [ibid, p 7]. Indeed, there will be difficulties for insurers when they attempt to formulate new strategies as new regulations are bound to affect operations. It was felt that this would also be the case for UK insurers and that they would need to revisit their tactical and strategical operations in a post-1992 environment.

Initially, it was thought necessary to revisit the accepted division between home and overseas markets; that companies are not interested in offering cross-border services because they are designed to operate through establishments: this leaves a large hole in the corporate structure. 'The market place is not there to accommodate insurers, it is the insurers who should fit the market' [ibid]. Additionally, new skills would be necessary to enable market penetration i.e. the EU markets would need to be understood.

O'Leary[2] [1988] drew attention to the feelings of many UK insurers and their inability to take the SEM as seriously as their continental counterparts. His hope was that such would not continue to be the case as change is continual in the creation of the SEM and it was crucial that the UK had an input into the formulation of the market. He recognised that in each Member State the two main areas legislation was concerned with were consumer protection and limitation of policy-holder risk. 'However, the way in which this is done differs from country to country' [ibid, p 1]. For instance, in the UK, companies were allowed a large amount of freedom in relation to some of their EU counterparts.

In other Member States, this was not the position. Instead, the regulatory structure was much tighter.

O'Leary considered that there were a number of problematic differences between the UK and more prescribed Member States with regard to legislation covering the Third Life Assurance Directive. These included problems with uniform premium rates: this is where the supervisory authority indicate the bases to be used in premium calculations so creating nearly identical premium rates across the product. The UK does not have these restrictions. Secondly, he pointed out that in most Member States the authorities also control policy conditions and this has undermined the adaptability and range of products. Thirdly, in a number of Member States, the authorities indicate the extent of the companies' investment policies. In each of these areas, the UK has less regulation and in most cases no such restriction. Consequently, for a free market to be established, a harmonisation process has to be undertaken. Other difficulties that were being dealt with at the time [1988] included a uniform approach to reserving and the transmission of premiums from one Member State to another. Additionally, insurance contracts were problematic, an area which remains difficult[3] .

In the field of insurance services, the concept of the *general good* has come to play an important role. This is so, '. . . first of all, because Community insurance directives regulate only partially cross-border insurance activities, and leave room for Member State regulation. Secondly, these insurance directives refer explicitly to the general good in relation to the regulation of insurance activities in general and insurance products in particular' [ibid, p 152]. Fundamentally, it would be necessary to monitor the concept of general good very closely if it was not to be an Non Tariff Barrier (NTB).

Another area felt to undermine the idea of the creation of an SEM in life insurance was taxation;

[a] taxation on premiums.
[b] taxation of benefits.
[c] taxation on the insurance companies.

Theoretically, these problems could be overcome by taxing the policy-holder in terms of residence and taxing the company with regard to where the head office is situated. However, this was largely academic because tax legislation was excluded from the third life directive because its inclusion would have necessitated unanimity instead of a qualified majority[4] .

In 1988, it was unclear what would be included in the Third Life Assurance Directive. What was necessary was dialogue with the insurance industry. When Pool spoke at a meeting of the Double Century Club with regard to the directive he contended that

> . . . he did not know what was going to be in the directive and that he was open-minded and listening to the views of the market . . . he feels that research is required to identify the legal framework or frameworks existing in each Member State . . . and he has asked the CEA to study the position [Cited by O'Leary, 1988; pp 4-5].

However, at a later date Pool pointed out some fundamental problems in the pursuit of a SEM in life insurance. 'One such pair of apparently incompatible goals is the desire for increased competition coupled with greater consumer protection' [Pool, 1990; p 9].

Indeed, market forces alone are seldom perceived as the most satisfactory solution. However, the problem is, controls both reduce competition and create protectionism. ‘It is also true, however, that different perceptions of public interest and different degrees of State intervention produce a situation in which mutual recognition . . . is hard to attain’ [ibid, p 10]. Consequently, a degree of harmonisation was necessary to bring separate Member State industries into the same legislative realm. Pool, felt that there was a growing view in some Member States ‘. . . that some of the tight controls exercised in the past had been too restrictive of competition and of little practical use in protecting the public interest’ [ibid].

‘In the UK there is considerable opposition to any illiberal restrictions. In the continental countries there is a great fear of the UK as competitors and a, genuine if misguided, belief that strict supervision is the only effective method of consumer protection [ibid, p 6]. Ultimately, it was considered that there was ‘. . . the need for a high degree of harmonisation’ [ibid]. The interests of the UK lay with a free liberal regime and the British Insurers International Committee [BIIC], the negotiating arm of the Association of British Insurers [ABI], with regard to Europe, pushed for this position to be adopted. However, other Member States also pursued their ideal solution.

The problem, of course, was to enable a single market in life insurance through the harmonisation of the legislation on which the regulations were to be based.

> In insurance the existing national markets differ significantly in the nature and amount of regulation. They also differ in the nature and variety of products that can be offered. The problem we confront is therefore how to reconcile the objective of liberalising the markets, and of offering the consumers as wide a range of choice as possible

> with that of satisfying the authorities in all Member States that there is adequate protection for the policy-holder and third parties [Fitchew, 1988; p 1].

Gale [1988] emphasised the role of Bureau International des Producteurs D'Assurances et de Réassurances [BIPAR] in the creation of legislation and the extent to which this organisation interacts with the Commission. He indicated that the treaties have supremacy over national law and that Member States cannot be part of the club and disobey the rules. 'Suffice it to say that as a result of representations made by me and my BIPAR Common Market Committee, Directorate-Generale XV [DG XV] will be mounting a concerted exercise, initially of persuasion, to establish a more level legislative playing field . . .' [ibid p 7]. Primacy of EU law, for Gale, should benefit the whole of the EU '. . . since it must result in the rapprochement of our diverse legal systems which will eliminate many doubts and disparities which currently bedevil us, particularly at the commercial level' [ibid]. Indeed, Gale pointed out the supranational aspect of the EU in that it negotiates on behalf of the Union at the international level e.g. GATT now the World Trade Organisation [WTO]. Given the importance of the negotiations to the insurance industry, he [Gale] had regular contact with those in the Commission that were responsible for negotiations. Ultimately, as Deputy Secretary of BIPAR, Gale looked to the interests of his membership who through interest group membership ensured that their interests were on the table. '1992 equals opportunity . . . but only if you understand exactly what you are doing and are well aware of the details of the environment in which you will be operating . . .' [ibid]. In this context, each industry will be pursuing legislation as near to their own as is feasibly possible given the remit of the Treaty. Therefore, each Member State should be involved in the creation of each directive to ensure their advantage in the embryonic SEM.

This had become much clearer by 1990 and was illustrated by the extent to which interest groups were involved in the European decision-making process. It was accepted that the industry could learn from itself as the CEA, and other European insurance interest groups, were invited by the Commission to give their views. And where the European insurance industry as a whole was supportive of the opinions expressed by the Commission, one had a strong suspicion that they would shape the outcome.

INTEREST GROUPS, THE COMMISSION AND THE EUROPEAN PARLIAMENT

This section of the paper will overview the interactions between the interest groups the Commission and the European Parliament [the supranational institutions]. 'A major problem for groups is the unpredictability of the EC policy-agenda . . . Keeping track of EC policy initiatives is therefore a major undertaking for groups' [Mazey and Richardson, 1993; p 206]. For instance, changes may be brought about because of European Summit decisions or because of different political agendas that certain Member States may have. Indeed, the Commission's policy agenda is also unpredictable because of its make-up or its compartmentalisation into Directorate Generals [DGs]. In the national sphere, interest groups face similar difficulties to those indicated above. However, the difference is of degree and the difficulties incorporated in dealing with [now fifteen] Member States' inputs to the policy process and its openness and size [it is relatively small and lacks expertise and technical knowledge regarding all Member States]. 'It is therefore reliant upon external evidence from groups or experts . . . the desire on the part of Commission officials is to consult as wide a range of groups as possible, means that it is virtually impossible for any single interest or national association to secure exclusive access to the relevant officials' [ibid, p 209]. Interest groups provide information for the

Commission and give an overall picture in this instance [a compromised view] of the most amenable regulatory structure for European life insurance industry. Only European interest groups can do this as only they are able to have even a marginal inkling of what the majority wish to pursue.

Leon Brittan outlined the Commission's position at a CEA meeting in November 1989. He contended that there were two broad objectives: firstly, policy-holder protection in terms of the products offered and the financial position of the insurance undertaking; and secondly, ensuring the maximum flexibility of product in terms of nature, price and service. This should allow the policy-holder a wide choice of products at competitive prices. The problem was that most Member States considered that this was exactly what their regulatory regime achieved. Obviously, this agreement hides underlying discord with regard to the means applied by the separate Member States. The problem reflected the historical and cultural differences within the Member states. In general, there are two broad approaches; the liberal approach and the prescribed approach. The UK, Netherlands, Luxembourg and Eire illustrate gradients of the former and the other eight Member States tend towards the latter [with Italy, France, Greece and Portugal indicating different gradients of state-control]. These differences of opinion can be identified in the overall stance of the CEA and become explicit in the negotiation processes. Obviously, the more different viewpoints, the greater the difficulties for the Commission in its task of creating a system which is both agreeable to them and allows mutual recognition of the different systems. Consequently, agreement has to be reached at the industry level through the CEA and this agreement needs to be compromised with Commission objectives. Effectively, the European insurance industry along with the Commission and Parliament is looking for agreements and compromises that will carry a qualified majority in the Council of Ministers.

Initially, a broad framework was proposed by the Commission; then through the CEA, the European life insurance industry responded [this was the collective opinion of twelve Member State industries].

The Commission concentrated on three areas: a single licence, home country control and the abolition of prior approval of premium rates and conditions. Additionally, technical provisions needed to be standardised. The CEA's response to this came under five areas.

[a] Assets
[b] Reserves
[c] Premium rating
[d] Policy conditions
[e] Supervision

The non-life insurance directive enabled the framework for CEA discussions in the area of assets. Agreement was close to unanimous on a majority of important issues.

In terms of supervision, some Member States considered that an environment with a proponent of supervision would be best for the SEM. This would mean the Member State authorities stipulating a maximum technical interest rate which, following consultation with the EU, would be fixed by the supervisors. The more liberal states, including the UK, thought that this was too rigid and that a more flexible system, that gave more of a role to the company and actuarial judgement would allow local economies to be taken into consideration. This problem needed to be overcome if mutual recognition was to be realised, and all Member States were to feel that the supervisory provisions throughout the EU gave adequate security. This area proved a sticking point and much negotiation was necessary. On other matters concerning reserves, the Member States were unanimous, e.g. no need for a European mortality table, or local regulation of tables.

In the area of premium rates, once again, there were differences of opinion. In a number of Member States it was the practice to apply the same technical rate to both premiums and technical reserves with the supervisors placing ceilings on the rates that can be adopted. In the more liberally regulated countries, such was not the case; companies were free to fix premium rates, subject to prudent mathematical reserves, as there was no need for the rates used to calculate premiums and mathematical reserves to be the same.

The more regulated Member States wanted the supervisory authorities to continue determining policy conditions and in some instances the host Member State should be allowed to intervene and have some say in policies sold in their own Member State. Whereas, on the other hand, the UK wished to minimise legislative interference in the regulatory process; this implies minimum host country control and intervention. The CEA fully supported the abolition of prior approval for contractual conditions and rates as outlined by the third framework directive and its replacement by a system of notification [CEA, 1990]. The CEA considered that under a system of single licence it becomes the responsibility of the authorities in the Member State where the head office is to supervise its activities.

The basic principle sought by the Commission was one where policies would be written under the regulations of the country of risk or normal country of residence. However, with regard to life insurance one is dealing with long- term contracts which may be taken out in different periods and will co-exist. Consequently, it was acknowledged that individuals should be able to take out contracts in line with their own Member State regulation even though they had changed their residence. It was agreed that profit sharing should be left to the company as this would enhance competition. However, the CEA did note that there was a minority that considered a more prescribed attitude in this context; in that profit-sharing should be co-ordinated for long-term contracts.

With regard to supervision, the majority of Member States considered that the host Member State should have a part in the determination of contracts to be sold in their territory. They thought that unless they could control contracts they would be unable to protect policy-holders. The UK, of course, did not share this viewpoint. However, the majority agreed terms which allowed supervisory co-operation so host countries could be aware of products being sold in their Member States. With regard to business rules it was agreed that the host Member States would take responsibility.

During the CEA discussions, it was evident that the UK contended that the continental system in general was too restrictive and anti-competitive. The main difficulties revolved around:

[a] Prior approval of policies versus post notification checking.
[c] The maximum reserving rate of interest.
[d] The control of premium interest rate assumptions.

In these cases, the arguments centred on liberal [free market] and prescribed [regulatory intervention] attitudes. The UK and its supporters pursued the more liberal objectives and the Germans and French, along with their supporters, a system of prescription and intervention. The creation of the insurance directives in general and the third life directive in particular should not indicate winners and losers, but one where all Member States give and take to maximise their own and the consumers' positions within the newly evolving market. This is where the interest groups come into play: they are consulted on the proposed legislation and forward changes to the Commission. They are a pivotal entity with regard to the decision-making institutions and the insurance industry [for further see, CEA Working Papers, 1990].

Through an interaction with the life insurance industry, the Commission had been attempting to '. . . lay down rules for the exercise of cross-frontier life assurance, balancing the needs of freedom to provide services and consumer protection and thereby developing the internal market in life assurance' [Commission Report, 1992; p 43]. This was illustrated in the negotiations that enable the third life directive and the accepted need for '. . . the co-ordination of laws, regulations and administrative provisions relating to direct life assurance' in the SEM [ibid, p 46].

The treaties outline the necessity of a single market in insurance if a true SEM is to be realised. Indeed, as early as 1957 the treaties emphasise that its objective was to create an internal market in the then European Community. This objective was outlined by Articles 52-59. These indicate the freedom of establishment and freedom of services.

In its proposal for the third life insurance directive, the Commission contended that the

> . . . completion of the internal market in insurance represents a primary goal of the Commission in view of the importance of this strongly expanding sector, particularly in life assurance, and the work already carried out in other financial services fields with

> regard to the creation of a single financial market [European Parliament Working Paper, 1992; pp 25-26].

Effectively, the Commission considered that the

> . . . European financial common market is an essential part of the frontier-free single European market, and encompasses not only the free movement of money and capital for all citizens but also freedom of establishment and the freedom to provide cross-border services for brokers and financial undertakings. If the Community succeeds. . . . Banks and insurance companies will be free to offer their financial products without restrictions . . . in all Community countries [European Documentation, 1989; p 5].

Thus the financial common market was a cornerstone of the SEM programme.

Financial markets and particularly the life insurance market are highly regulated. One reason is to protect clients against institutional failure. Another is to protect the individual in relation to the life insurance company. However, '. . . sharing the same objectives does not mean that these are obtained by the same means and you will be aware that insurance legislation differs from country to country' [Drabbe, 1994; p 135][5].

> The very specific nature of financial services is a . . . reason for particular difficulties in the integration of financial markets. In contrast to trade in goods, insurance and banking services in the individual Member States are strongly influenced by varying traditions of company supervision and investor and consumer protection [European Document, 1989; p 6].

‘With regard to whether an SEM in life insurance is attainable the answer is yes. Even without the harmonisation of contract legislation the legal framework created by the directives gives the industry the opportunities to realise it in practice’ [Drabbe, p 141]. The EU has set up a Community filter to enable the protection of consumers on the one hand and competition on the other. The Community filter encompasses the need for restrictive practices not only to adhere to the general good but additionally to two further criteria. ‘Firstly, there should be no duplication of Member State rules or controls. And secondly, the same protection cannot be met through less restrictions. Basically it needs to meet a proportionality test’ [ibid, pp 139-140]. However, Drabbe points out that the difference in ‘. . . tax treatment of insurance products clearly raises major difficulties for a proper functioning of the single market [ibid, p 141]. If life insurance products can only be sold in a Member State if it ‘qualifies’; i.e. it ensures that policy-holders benefit from a favourable tax treatment, ‘. . . the tax regime effectively determines policy conditions and the marketability of assurance products. These have to be geared to the different tax requirements of each Member State . . . this is an infringement of the fundamental Treaty principles of free movement of persons and the free provision of services’ [ibid]. Indeed, harmonisation of tax bases and levels could overcome the problem [in principle at least]. However, with taxation closely tied to the concept of sovereignty, in the short term, it is unlikely that Member States would clamour to take this road. Yet it does point in the direction of closer ties in the area of financial services. Initially, one may consider pragmatic solutions, where ‘. . . harmonisation is not a realistic option, a pragmatic answer could possibly be provided by ensuring that the tax authorities concerned receive the information necessary to draw up the tax form and collect the tax due’ [ibid]. However, further talks are still underway in this area.

By 1992, the specifics of the Third Life Assurance Directive were generally understood. Some considered it to be a 'cultural revolution' [Loheac, 1992; p 2]. The Third Life Assurance Directive removed '. . . *a priori* control of policy and rating conditions and replaces it with a non-systematic *a posteriori* communication system; this means that a long continental tradition of material control is abandoned and the essence of - which is attributed to the authorities of the countries office - no longer focuses on the products . . . but the undertaking itself, its solvency, its shareholding and its management' [ibid, p 3]. This should maximise competition in terms of products and increase innovation. However, there is a problem in terms of the 'general good' where Member State supervisory authorities may outlaw a product if it is deemed risky. Obviously, this allows Member States with more prescriptive regulatory structures a modicum of protection.

In general terms, the directive outlined a compromised agreement which once in place relies on the concept of mutual recognition [given the concept of the general good]. Once harmonisation has taken place, a form of confrontation will take place and '. . . this confrontation with regulations should result in the different national rules being brought into line with each other: states which have a tradition of strict control will have to ease their regulatory constraints if they want to avoid penalising their own national undertakings . . . In the final analysis, the logical consequence would be that a less strict system of control would, in time, set the European standard' [ibid].

This, of course, could only occur following an initial period of harmonisation or re-regulation. Indeed, the Commission saw the creation of the SEM as being pursued through three fundamental means; minimum harmonisation, mutual recognition[6] and home country control

Basically, in each specific sector there needs to be agreement on basic rules and these minimum harmonisations are only possible because'. . . common interest, mutual confidence and a degree of economic convergence exist between EEC Member States' [ibid, p 409]. It is on the agreement of this basic legislation that mutual recognition relies.

The liberalisation of the system should suit the UK life insurance industry and Loheac is correct when he noted that '. . . for British operators, an integrated European insurance market functioning on the basis of rules similar to the model they are used to . . . should be a favourable environment' [Loheac, 1992; p 4]. However, although this may be the case, the UK would also need to make changes to its supervisory structure and the lack of contract legislation may negate any advantage. Finally, it was recognised that it was '. . . essential to overcome . . . differences in legal systems and regulations in individual Member States in order to create an integrated European insurance market' [ibid].

CONCLUSION

This paper has presented an overview of the interplay between the life insurance industry and the supranational aspects of the EU decision-making institutions. The most fundamental problem is the absence of a single decision-making body and that twelve [now fifteen] Member States have to be dealt with in the creation of policies. Those interest groups that are involved in the policy-making process as representatives of an industry/sector are a means of overcoming this. However, the paper also recognises that interest groups, should take care not to neglect the national dimension of lobbying since the final decisions on policies are taken not by a directly elected European government, but by national officials and ministers.

The evidence suggests that the insurance industry relies heavily on European-wide interest groups and the notion of collective action. Indeed, this paper considers that the less concentrated a sector, the less difficulty it has in overcoming the problem of collective action. For instance, the automobile, biotechnological and consumer electronics sectors interest groups have been relatively weak, whereas in the pharmaceutical and insurance sectors interest groups have greater influence (Camerra-Rowe, 1996; Greenwood *et al* 1992; McLauchlin, *et al* 1993; McLauchlin and Greenwood, 1995; McLaughlin, 1995). The EU is evolutionary as are its institutions and this is illustrated by the uncertainty regarding relations between interest groups and the EU. Camerra-Rowe (1996) considers that it is unlikely that interest groups will be the prime movers in interest representation in the EU. That the ". . . initiatives the Commission and other EU institutions undertake to regulate interest groups will be critical in determining the future form and shape that business representation takes. . . . In short, effective collective action may originate not from the desire of firms in these sectors to speak with a common voice on common interests, but from the desire of EU officials to create common collective interests from a multitude of private ones" (p 23).

The institutional interplay provides an illustration of how a harmonisation process is at work between the Member States and how the Third Life Assurance Directive was formulated. Each institution attempts to prioritise its understanding of what type of legislation should exist for the evolving SEM.

The paper has identified interactions between industries/sectors and political institutions in the decision-making process at the EU level. This provides an example of supranationalism in the European integration process. Overall, through the interaction between interest groups and the EU certainty and clarity are provided. The ground rules are indicated and the parameters of policy formulated. However, the EU institutions are still developing, consequently the interest group system surrounding it has yet to reach a stable equilibrium. The EU is still in the early stages of interest group use and adjusting to supranationality, it is therefore not surprising that the process of interest group intermediation is in the process of modification.

NOTES

1 Supranationality may be defined as ". . . neither federalism nor intimate intergovernmental co-operation, even though the institutions it employs resemble those of a federation more than the United Nations or NATO. Supranationality is a unique style of making international decisions, unique because of the nature of the participants, the context in which decisions are made and the quality of decisions produced (Haas, 1964; p 64).

2 O'Leary was the representative of the British Insurers International Committee (BIIC).

3 Article 25 contains a marketing rule for insurance products . . . to the single case of contracts in conflict with legal provisions protecting the general good in the Member State in which the risk is situated. The concept of general good . . . must be understood in the light of . . . derogations to freedom laid down by the EEC Treaty (which) are only allowed where there exists in the area considered, mandatory reasons linked to the general good, consumer protection rule providing that this interest is not already safeguarded by rules to which the undertaking is subject in the Member State in which it has its head office . . . and providing that the same result cannot be obtained by less stringent rules" (CEA Working Paper, 1990; p 2 author's brackets. For further details on this see ECJ's decision case no 205/84, in particular recitals nos 27-29).

4 Tax issues are still impeding the development of a single market for insured and non-insured pensions in the EU. Barriers have only been partially removed ". . . some member states allow tax deductibility of premium only on insurance contracts bought from domiciled insurers, meaning that non-domiciled insurers cannot compete on a level playing field" (Shapiro, 1997; p 23).

5 Humbert Drabbe was head of the team that drew up the Third Life Assurance Directive. He was a key figure in DG XV.

6 Mutual recognition encapsulates an important mechanism in the pursuit of the SEM as it gives a framework for the enablement of compromise. However, where diversity is so great, there will be a need for greater rather than less harmonisation of Member State legislation. The principle of mutual recognition. . . pre-supposes agreement on a number of basic rules. . . these minimum harmonisation requirements. . . are only possible because common interest, mutual confidence and a high degree of economic convergence exist between EEC member states (Loheac, 1991; p 409). One has to question if "minimum harmonisation requirements" have been met in respect of the life insurance market. The achievement of such requirements is extremely rare and even if there is a "high degree of economic convergence" in the life insurance market, the practical realities of achieving an SEM through mutual recognition alone are apparent. A convergence process must be undertaken prior to the actions of mutual recognition coming into play (ibid). The idea behind mutual recognition suggests spontaneous legislative adaptation; however, it does not deal with all regulation and as a convergence point is necessary for it to be effective it could be conceived as an impetus that encourages legislative change and compromise.

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