International Chamber of Commerce
The world business organization

Department of Policy and Business Practices

Commission on Financial Services and Insurance

ICC Comments on the European Economic and Social Committee (EESC)'s questionnaire about a European legal framework for insurance contracts.

The International Chamber of Commerce (ICC) is the world's largest and most representative business organization that speaks on behalf of enterprises from all sectors in every part of the world.

ICC appreciates the opportunity to provide comments on the EESC questionnaire on this issue. ICC's diverse membership, which includes both the suppliers and the users of insurance services, puts ICC in a unique position to build and provide a global business consensus on these issues.

ICC wishes to stress that insurance contract law should always be considered in the context of general contract law since it constitutes nothing else but a specific field of the law of obligations. Thus, any initiatives should be carefully analyzed to make sure that the basic principles of contract law are not tampered with.

Freedom of contract must be respected. Party autonomy goes to the heart of business, and the binding nature of contracts and the enforceability of their terms form the very foundation of modern business. In this regard, it is essential to make a clear distinction between business-to-consumer (B2C) and business-to-business (B2B) contractual relationships. In a B2C relationship, there may be good reasons for protecting consumers as the weaker party. Such protection should not be extended to a relationship between two professionals.

ICC hopes that these comments are helpful, and stands ready to work with EESC on this most important issue.

Please find below ICC's answers to the EESC questionnaire.

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International Chamber of Commerce
38, Cours Albert 1er, 75008 Paris, France
Telephone +33 1 49 53 28 28 Fax +33 1 49 53 28 59
Internet www.iccwbo.org E-mail icc@iccwbo.org

5 April 2004 JA/FBL/ad
Document 113/130rev1

I. Mandatory rules of insurance contract law are not yet harmonised in the EC/EEA. Therefore, insurance products sold cross-border must be adapted to the environment of insurance contract law of each Member State.

1. Does this situation constitute a barrier to cross-border provision of insurance services?

1a) Yes/No?

The lack of harmonization of insurance contract law is an inconvenience for the cross-border provision of insurance services, in particular to consumers (B2C). However, business does not see the lack of harmonization in European insurance contract law as the only obstacle to the creation of the European single market. In practice, the national differences in solvency requirements, accounting standards, tax law, social security legislation and in some cases also property and family law are equally important for the cross border flow of insurance services. Insurance products are legal services which, depending on insurance class and risk, have to be based on legal provisions applicable. For example, in life insurance, the possibilities of tax relief and corresponding requirements for products are material. Thus, the impact of a harmonization initiative only focused on the mandatory rules of insurance contract law would have limited effect.

1b) Please give examples.

However, ICC believes that areas of particular importance include, in general, (i) a limitation of the scope for mandatory rules for consumer (B2C) insurance contracts with the objective to limit costs and reduce obstacles for competitive product development and (ii) the abolition of all mandatory rules for business (B2B) insurance contracts. In detail, important areas are the obligations for insurers in some jurisdictions (for example Sweden) to provide insurance to consumers on demand, restrictions on contract periods, rights of termination granted to the policyholder, information requirements, statutes of limitation, and rules on penalties for breach of obligations by the policyholder.

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In addition, there are examples of court rulings that transform even optional rules of insurance contract law into mandatory rules for users of general terms and conditions. Examples of such court rulings include the rulings on the so-called transparency for life assurance.

1c) What (mandatory) rules of insurance contract law are most relevant (all of them, rules on specific branches, general insurance contract law)?
ICC finds it difficult to reply to this question with a clear prioritization. Mandatory rules of insurance contract law are important but also quasi-mandatory rules and, as stated above, optional rules of insurance contract law are relevant parts of the legal framework business is faced with.

2) Does this situation form an obstacle to obtaining coverage from foreign insurers by customers seeking insurance?

2a) Yes/No?
There is a risk that the lack of harmonization, not only of insurance contract law but of other national regulations, will form an obstacle for customers to obtain coverage from foreign insurers. This risk will probably become more apparent as the use of e-commerce develops.

Usually, distribution of insurance products (i) requires local presence in the country where the services are offered, (ii) is burdened with costs for local adaptation of products and marketing and (iii) has limited possibilities to benefit from international synergies. This is especially the case for insurance services designed for consumers, i.e. in B2C relationships. For this reason, even cross-border activities mainly work through local subsidiaries or companies partly controlled by the foreign provider.

2b) Please give examples.
Cf. 1., b).

2c) What (mandatory) rules of insurance contract law are most relevant (all of them, rules on specific branches, general insurance contract law)?
Cf. 1., c).

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3) **Does this fact form an obstacle to insurance intermediaries (e.g. brokers) providing their services cross border? I.p.: Does it pose a problem to intermediaries in evaluating, comparing and recommending a foreign insurance product?**

3a) **Yes/No?**
Although the Directive on insurance mediation basically eliminates obstacles in the field of insurance mediation, the lack of harmonization, not only of insurance contract law but of other national regulations, does increase insurance mediation costs and reduce a good deal of the interest in cross-border provided insurance services to the disadvantage of the policyholders.

3b) **Please give examples.**
Cf. answer on 1., b).

3c) **What (mandatory) rules of insurance contract law are most relevant (all of them, rules on specific branches, general insurance contract law)?**
Cf. answer on 1., c).

II. Harmonization of mandatory rules of insurance contract law would make it possible for the insurer to provide services in every member state without any need to alter its terms because of a different environment for insurance contract law.

1. **Would such harmonisation help insurers in providing their services cross border?**
Harmonization of mandatory rules of insurance contract law is indispensable if insurers shall be able to provide insurance services in every member state without any need to alter its terms. In that way, harmonized rules of insurance contract law would in itself provide important benefits for the insurance industry. However, as stated above, a broader approach would be necessary to address the equally fundamental barriers to cross-border provision of insurance services.

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Further, a greater freedom to choose the applicable law to the contract would provide a useful solution for overcoming differences between national laws. For instance, the possibility to choose an applicable law could be provided for in cases where insurers want to insure domestic customers that are living abroad. In such cases it should be possible to conclude contracts in accordance with the law of the home country of the provider and user, and to stipulate domestic legal venues. For business (B2B) insurance contracts, full freedom to choose applicable law should be provided.

2. **Would such harmonization help customers seeking insurance in obtaining coverage from foreign insurers?**
The proposal on II.,1. would, in this respect, also help to obtain insurance coverage from foreign insurers. Cf. answer on I., 2., a).

3. **Would such harmonization help insurance intermediaries (e.g. brokers) in providing their services cross border; e.g. because it would become possible to compare foreign and national products?**
Cf. answer on I., 3., a).

III. There are various possible types of harmonization: Regulations, directives, recommendations, other instruments ("guidelines"); minimum and full harmonization; harmonization of national laws or provision of an optional instrument; codification or pointillistic harmonization.

1. **Which instrument of harmonization (regulation, ...) should be used?**
ICC thinks it is premature to speculate about different types of instruments before the issues that the instrument is supposed to deal with have been identified. ICC wishes to recommend that, as a first step, it would be more needed and also more feasible to check existing legal instruments for consistency. This concerns primarily information requirements to be found in the Directives on insurance, the Directive on distance marketing of financial services and the Directive on insurance mediation. These information requirements have not been harmonized. The most comprehensive obligations can be found in the Directive concerning life assurance, on which other Directives should be based.

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2. **Should harmonization relate to national laws or provide an optional instrument?**
The creation of a so-called 16th or 26th contract law regime should be rejected. This would impose additional administrative burdens on insurance companies since such a regime would require special arrangements in administration, distribution and data processing. This would lead to increased prices for users of insurance services.

3. **Should European rules on insurance contracts form a minimum standard or fully harmonize mandatory rules of insurance contract law?**
Neither at this stage.

4. **Should harmonization only cover mass risks or also large risks?**
For large risks, there is in practice no need for consumer protection provisions since all transactions are between businesses (B2B). However, the level of mandatory rules, including limitations of the choice of applicable law, should be kept to an absolute minimum also for mass risks and be limited to consumer (B2C) insurance contracts.

5. **Should harmonization cover all mandatory rules, only mandatory rules of general insurance contract law or mandatory rules of specific branches?**
As outlined above, there is no clear ranking of the rules of insurance contract law, which is why such categorization is difficult. However, the general rules would probably be the best starting point, if any is needed. ICC wishes to underline that before any steps are taken, an appropriate scientific inventory in this area should be developed, and the relationship to general contract law should be carefully examined.

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IV. Do you think that the Commission proposal for a directive from 1979 is still a good basis for discussion? If not, in your opinion, what are the main aspects, which should be improved, amended or deleted?

There are many good reasons why the Commission's proposal for a directive from 1979 has not been followed up on. For example, the context of general contract law has not been sufficiently addressed. Appropriate scientific work with a wider scope would seem more promising.

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