



2.9.2010

NOTICE TO MEMBERS

Subject: Petition 0791/2008 by Mr Christopher Stockwell (British), on behalf of Names' Action for Compensation in Europe, on request for infringement proceedings against United Kingdom for alleged failure to implement Directive 73/239/EC in connection with the Lloyds' case

1. Summary of petition

The petitioner strongly criticizes the rejection, by the House of Lords of the Parliament of the United Kingdom, of the petition of the association Names' Action for Compensation in Europe (Names petition) requesting to refer their case alleging failure to implement EC Directive 73/239 by British government to the European Court of Justice. The petitioner explains that the rejection of the Names' petition came before the President of the European Parliament could write a letter to the House of Lords on the matter as decided after examination of previous Lloyds' petitions. The petitioner states that none of demarches taken by the Names association through national Courts, European Commission and European Parliament led to the referral of the case to the European Court of Justice for a preliminary ruling on the alleged failure of the British government to implement EC Directive 73/239. The petitioner asks the European Parliament to have the European Commission review this case and start infringement proceedings against United Kingdom.

2. Admissibility

Declared admissible on 23 October 2008. Information requested from Commission under Rule 192(4).

3. Commission reply, received on 2 September 2010.

The Commission's comments on the petition

The fundamental question raised by this Petition relates to the scope of Directive 73/239/EC, of 24 July 1973, on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (the first non-life Directive), OJ L 228 of 16 August 1973 ("the Directive").

The objective of the Directive (and its successors) is to create a single market for insurance business and to allow insurers to exercise their activity whilst also protecting the insured.

The Commission has in the past responded to a written Parliamentary Question on the meaning of the term "third parties" and specifically on the appropriate treatment of shareholders of insurance companies and members of *Lloyds of London* in the context of the Directive. In this respect the Commission has specified that:

"The term "third parties" is used in the insurance Directives to denote natural or legal persons who are distinct from the parties to an insurance contract, namely the insured and the insurer. Third parties may include, for example, the beneficiaries of life insurance contracts, the victims of road accidents or more generally, parties who, while being separate from an insurance undertaking, have dealings with that undertaking.

The shareholders are the owners of insurance companies while Lloyd's Names provide the capital on the basis of which risks are underwritten and indeed assume themselves the insurance obligations. As a result, both of these categories participate in the profits or losses of the insurance enterprise and are thus closely associated or even synonymous with the insurer.

Accordingly, the Commission does not consider that the term third parties, as used in the insurance Directives, would normally cover insurance company shareholders or Lloyd's Names acting in either of those capacities. There could of course be cases where such shareholders or Names could be third parties within the meaning of the insurance Directives, for example where they were beneficiaries under an insurance contract or were accident victims." (Commission's reply to Written question E-2200/05).

On the basis of the position previously adopted by the Commission, it is clear that the Directive does not confer any rights on the *Names*. This is also the approach followed by the English courts.

It is then appropriate to determine whether the House of Lords infringed article 267 TFUE (ex 234 EC) paragraph 3 by not making a request for a preliminary ruling to the ECJ in this situation.

According to European case-law, the obligation to refer under article 267 TFUE paragraph 3 is not necessary in the following circumstances:

- where the question posed is identical to a question which has already been the subject-matter of a reference for preliminary ruling;
- where the question raised is irrelevant;
- where the provision in question has already been interpreted by the ECJ, or
- where there is no reasonable doubt as to the correct application of Community law.

In this particular instance, whilst the national court made it clear that there was no scope for any reasonable doubt, it did not take into account whether it would be equally obvious to other courts dealing with the same question. Therefore, in principle, the interpretation of the point of Community law in question could have been resolved by referring the question to the ECJ.

The question is therefore whether the Commission should have referred the matter to the Court on the basis of article 258 TFUE (ex 226 EC).

In this respect, in light of the Commission's wide discretionary powers, Commission practice is to start an article 258 TFUE action for breach of article 267 paragraph 3 TFUE only when there is evidence of a recurring problem, a manifest breach or a deliberate attitude by the national Courts.

In this instance and given the specific circumstances of the case, there is no reason to commence infringement proceedings against the United Kingdom. In particular:

- the House of Lord's approach is, in the opinion of the Commission, correct;
- there is no recurrent problem, manifest breach or deliberate attitude by the House of Lords (or by its recent successor, the Supreme Court) in this area; the Commission would naturally keep the situation under review and consider further whether to start infringement proceedings if a more widespread problem were confirmed, and
- the Commission has expressly stated its position on the matter in its response to a Parliamentary Question (see above).

Conclusions

The Commission considers that this petition (as well as the parallel complaint brought by the petitioner, also in 2008, on the same subject) shows no breach of EU Law and, consequently, the petitioner's complaint was closed on 8 October 2009. The Petitions Committee has already been informed about this, as well as of the Commission's position, orally at its meeting on May 4th 2010.