EUROPEAN PARLIAMENT

1999 *2004*

Session document

FINAL
A5-0203/2003

10 July 2003

REPORT

on the petition declared admissible on the Lloyd's Petitions (Petitions 1273/1997, 71/1999, 207/2000, 318/2000, 709/2000, 127/2002)(2002/2208(INI))

Committee on Petitions

Rapporteur: Roy Perry

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PROCEDURAL PAGE

At the sitting of 26 September 2002 the President of Parliament announced that he had referred the Lloyd's petitions 1273/1997,by Mrs X. 71/1999 by Mr M. Anstey, 207/2000 by Mr R. Harrisson, 318/2000 by Mrs C. Mackenzie-Smith, 709/2000 by Mr G. Stamp, 127/2002 by Dr F. Scleicher to the Committee on Petitions as the committee responsible.The Committee on Petitions declared the petitions admissible and decided to draw up a report pursuant to Rule 175(1).

The Committee on Petitions appointed Roy Perry rapporteur at its meeting of 24 January 2002.

The Committee on Petitions considered the draft report at its meeting(s) of 22 January 2003, 20 February 2003, 20 March 2003, 29 April 2003 and 21 May 2003. .

At the last meeting it adopted the motion for a resolution by 12 votes to 6 votes with 0 abstention.

The following were present for the vote: Vitaliano Gemelli, chairman Roy Perry, rapporteur and vice-chairman, Proinsias De Rossa and Astrid Thors, vice-chairmen; Roger Helmer, (for Richard A. Balfe), Rodi Kratsa-Tsagaropoulou (for Christian Ulrik von Boetticher), Neil Parish (for Felipe Camisón Asensio), Marie-Hélène Descamps, Janelly Fourtou, Ioannis Marinos, The Earl of Stockton, Rainer Wieland, Stavros Xarchakos, Michael Cashman, Peter William Skinner (for Glyn Ford) William Francis, Newton Dunn (for Luciana Sbarbati), Laura González Álvarez, Jean Lambert, and Eurig Wyn.

The report was tabled on 10 July 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Petitions declared admissible on The Lloyd's Petitions (Petitions 1273/1997, 71/1999, 207/2000, 318/2000, 709/2000, 127/2002) (2002/2208 (INI))

The European Parliament,

– having regard to Petitions 1273/1997, 71/1999, 207/2000, 318/2000, 709/2000, 127/2002,

– having regard to Rule 175 of its Rules of Procedure,

– having regard to the report of the Committee on Petitions (A5-0203/2003),

A. Bearing in mind the provisions of EC Directive 73/239. (First Non-Life Insurance Directive) and subsequent relevant Directives, notably 79/267 and 91/674;

B. Mindful of the obligations of the institutions of the European Union and of the EU Member States towards their citizens, as contained *inter alia* in Articles 155, 226, 288 and 232 of the EU Treaty,

C. Having regard to Article 138d of the Treaty which gives the right to citizens to address "individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly",

D. Considering the substantial issues raised by the following petitions:

- 1273/1997 by Madame X
- 71/1999 by Mr M Anstey
- 207/2000 by Mr R Harrisson
- 318/2000 by Mrs C Mackenzie-Smith
- 709/2000 by Mr G Stamp
- 127/2002 by Dr F Schleicher,

E. Whereas on December 20th 2001 the European Commission launched formal infringement proceedings under Article 226 of the EEC Treaty with regard to the prudential regulation and supervision of the Lloyd's insurance market by the UK authorities - highlighting in particular though not exclusively, their concerns with respect to auditing arrangements at Lloyd's and the verification of solvency, and whereas the Commission has stated to Parliament that there is evidence suggesting that the UK has failed to fulfil certain of its obligations under the first non-life insurance Directive 73/239 as amended;

F. Whereas on April 30th 2002, the UK authorities lodged their formal response to the letter of formal notice announcing the opening of infringement proceedings, having sought and obtained a two month extension;

G. Whereas on 21 January 2003 the European Commission sent a second letter of formal notice under Article 226 of the EC Treaty;

H. Whereas the European Commission on 30 January sent an administrative letter concerning any residual financial relationship between Lloyd's and Equitas;

I. Whereas the UK authorities sent their reply to the second letter of formal notice on 24 March 2003;

J. Whereas the UK authorities have requested an extension to the time they have to reply to the administrative letter;

K. Whereas the European Commission informed the Parliament that it intended to complete its analysis of the UK authorities response to the second letter of formal notice by October 2003.

L. Whereas the European Parliament and its competent committee have so far been denied access by the European Commission and the UK authorities to the relevant documents referred to above even though they have been pertinent to the debates held in the committee responsible in the presence of the petitioners, notably in June and October 2002,

M. Considering that the investigation currently being conducted by the European Commission is concerned with two phases, according to the Commissioner responsible for the Internal Market,: a first phase concerning the 'past régime' of regulatory and supervisory arrangements - Article 13(2) of the Directive and Articles 15, 16 & 19, relating to Lloyd's prior to December 1st 2001; and a second phase relating to new arrangements, and in addition the situation as regards "*Equitas"*;

N. Bearing in mind that the issues addressed by the petitioners, and by others who have lodged complaints directly with the European Commission on the same issues, are more specifically concerned with the period extending from 1973 to 1995; and it is in this period that specific and precise allegations have been made concerning the alleged failure of the UK authorities not only to correctly transpose into national legislation the relevant EU Directive, but also to correctly apply the Directive as regards the Lloyd's insurance market,

O. Emphasising that the responsibilities for any failure in the correct application and implementation of the said EU Directive lie with the European Commission and the

UK authorities, and not with Lloyd's as a regulator, nor with individual members of Lloyd's, known as "Names", who constitute the Lloyd's market which insures risk,

P. Whereas the petitioners, and other Lloyd's names, accept and do not question their unlimited liability as insurers, but have a right to expect that the framework within which they act is a proper and legal regulatory framework as defined by the relevant EU Insurance Directives, and is properly applied;

Q. Recognising the fact that asbestos liabilities developed in a way which was unanticipated by anyone in the insurance industry, in large part as a consequence of the development of such claims in the US and as a result of US court decisions in favour of policyholders and the impact this had on the worldwide insurance market from the 1980s onwards, including underwriters at Lloyd's;

R. Whereas, in the opinion of the European Parliament certain aspects of previous legal proceedings in the UK concerning Lloyd's are relevant to this case, including the Judgement of 26 July 2002, by the Court of Appeal in the 'Jaffray Case' (which concerned questions of fraudulent misrepresentation,) where the Court noted *inter alia* that claims that a "rigorous, or otherwise, system of auditing existed, which involved the making of a reasonable estimate of outstanding liabilities including unknown and unnoted losses during the relevant period (ie 1978-1988), were untrue." (Point 584), and whereas the Court found that there had been misrepresentation;

S. Whereas Lloyd's of London, although criticised in legal rulings brought in the UK, has not been found guilty of fraud or any other crime or tort,

T. Bearing in mind that Lloyd's of London launched a Reconstruction & Renewal Plan in 1996, to which a vast majority of Names subscribed, in order to ensure the viability of the Lloyd's market and limit the liability to a certain extent of Lloyd's Names for such claims, in return for a commitment not to enter into litigation, a fact which does not remove the fundamental democratic right to petition the European Parliament;

U. Considering that some of the petitioners testify to the fact that acceptance of this scheme was made frequently under duress, and that non-acceptance could lead to crippling financial penalties and/or personal bankruptcy, which some petitioners and complainants have since experienced,

V. Considering that many questions raised by the petitioners have yet to receive an adequate response from the European Commission or the British authorities including the following:

- the nature of audit certificates provided from 1981 onwards in the light of the letter of the Chairman of the Panel of Auditors to the DTI of February 24th, 1982 which contained a request for guidance resulting from difficulties in the determination of liabilities, believing them to be "unquantifiable",
- the extent to which the Lloyd's Act 1982 was compatible with the Directive 73/239;
- the degree to which the Names recruited into Lloyd's syndicates from 1973

onwards were properly informed about the extent of losses and liabilities as well as solvency margins given the provisions of Directive 73/239;

- how it was possible, under the terms of the Directive 73/239, to sign off an audit certificate after 1982 given that the British authorities were aware of the impossibility of determining liabilities in respect of asbestosis claims in particular, bearing in mind that many new Names, including some of the petitioners, were still signing up and unaware of such facts;
- the way in which 'incurred but not reported' reserves were calculated and whether such reserves gave a true and fair opinion;
- whether undisclosed liabilities carried forward were ever in fact tested during the period in question by the auditors and whether adequate solvency margins were established in line with the requirements of the Directive 73/239 Article 16;
- the effect of the assessment made in New York in 1993 of an $18 billion solvency deficit of Lloyd's syndicates;
- the follow-up given to allegations made to the Treasury and Civil Service Committee enquiry in February 1995, referring to the absorption rate of minimum reserves, especially for non-marine business;

W. Considering that already in 1977 the Commission was not entirely satisfied with the transposition of the Directive and a draft letter of formal notice had been prepared at that time and that instead of transposing the directive in 1978 as should have been the case, the UK only transposed it (correctly or not) in the 1982 Insurance Companies Act;

X. Bearing in mind the fact that the first petition on this subject reached the European Parliament in 1997 and that a resolution of the issue is long overdue;

1. Calls upon the Commission to inform the European Parliament of its considered opinion on the responses of the UK authorities to the letters of formal notice and administrative letter without delay.

2. Requests access to all documents retained by the Commission in the conduct of their investigation of this issue as far as is compatible with the relevant regulation;

3. Insists that a specific response is provided in writing by the Commission to the European Parliament and its competent committee regarding any shortcomings and omissions the Commission believe to have occurred in the proper transposition and application of the Directives referred to in this Report, for the period 1973 - 1995;

4. Failing that, suggests that the Conference of Presidents prepares a mandate covering the issues raised in this report - namely the application of the Insurance Directives with respect to Lloyd's from 1973 - 1995 - for the establishment of a Committee of Enquiry, after the reception of a request, pursuant to Rule 151 of the Rules of Procedure, and Annex VIII with regard to the Treaty provisions for such an enquiry, and the Decision of the European Parliament, the Council and the Commission of 19 April 1995;

5. Instructs its President to forward this resolution and accompanying explanatory statement to the Commission and Council, to the petitioners, to the Speaker of the House of Commons and to the United Kingdom Financial Services Authority.

EXPLANATORY STATEMENT

"A COMPLEX ISSUE" or "VERY STRAIGHTFORWARD"?

Introduction

If there was one word that dominated Commissioner Bolkestein's presentation to the European Parliament's Petitions Committee in June 2001, on the matter of the "Lloyd's Petitions", it was the word "complex". He used it over 20 times - but is the issue raised by the petitioners so complex? Petitioners have said it is very straightforward.

The central issue is whether the British Government properly transposed into British law and then consistently applied Council Directive 73/239/EEC. If it has so done - when did it do so, and did it subsequently consistently apply and enforce the directive?
Did the petitioners have a legitimate right to expect the British Government to observe the requirements of the Directive and for the Commission to check for that compliance?

At the time of drafting this report your rapporteur is unable to assert categorically that all is as it should be, if for no better reason than, the British Government and the European Commission, albeit for different reasons, both resolutely refuse to allow members of the European Parliament to have access to the British Government's response to the Commission's various questionnaires. Even the Commission's questions posed in 2001 and 2002 are not freely made available to MEPs. Members of the Petitions Committee alone have been allowed to see the questionnaires but then only under conditions of stringent control and with no ability to examine them with the benefit of expert advice.

The British Government, at ministerial and civil service level, claims to be absolutely confident in its case but it is not so confident that it will make its case public!

The Commission is bound by the framework agreement between the European Parliament and the Commission (Article 1.5 Annex III) on public access to documents but there is no such obligation on the British Government. They could make their responses public if they chose. That they refuse to do so begs the question of whether their responses would stand up to parliamentary or public scrutiny.

However from the facts currently known two points are very clear:
The requirements of EEC Directive 239/73 were not fully transcribed into UK law until 1982, contrary to EC Treaty requirements.
The Directives audit requirements in respect of Names and consequently Lloyd's solvency, whilst being transcribed in 1982, by the Lloyd's Act, were not correctly applied.

As things stand (August 2002), the Commission has issued a formal letter of notice (Dec 2001) of its intention to launch infringement proceedings against the UK government. The Commission is currently considering the UK government's latest response, received in April 2002. A response which both the Commission and the UK government continue to keep secret.

The Petitions

The Petitions Committee currently has under consideration 6 petitions:
Petition 1273/1997 Mme X
Petition 71/1999 M. M Anstey +111 others
Petition 207/2000 M. R Harrisson
Petition 318/2000 Mme. Mackenzie-Smith
Petition 709/2000 M.G Stamp
Petition 127/2002 Dr F Schleicher

In essence each of the petitions addresses the question of whether the British Government has properly applied the requirements of EEC Directive 239/73 with respect to Lloyd's of London - other issues are however raised by the petitioners and may require further consideration which is not undertaken in this report.
Additionally there are quite separate complaints that have been addressed directly to the Commission

One petition stretches back some 5 years and a proper response is long overdue.
In an earlier interim response to the Parliament on petition 71/99, the Commission indicated that it had opened infringement proceedings on this matter as long ago as 1978. It has subsequently admitted it was in error in making that statement and that no formal proceedings were launched at that stage. However, the Commission has confirmed in an annex to a letter sent in 2002 to the rapporteur, that in 1977 the Commission was not, at that time, satisfied with the transposition of Directive 73/239/EEC. Although the Commission apparently held back from formal action at that stage because it was satisfied that the UK authorities were operating supervision "in line with" the directives. Although 1978 was the final date for the transposition of the Directive into UK law, actual transposition did not take place until the 1982 Insurance Companies Act. ie a further 4 years after the initial 5 years tolerance allowed for transposition. A pertinent question is whether any notification of this extension was given to insurance companies, or to potential names who may have thought they were joining Lloyd's under the cover of EU regulations.
This whole saga is characterised by delay and obfuscation leading your rapporteur to the conclusion that time is long overdue for a clear resolution of the issue on the part of the Commission.

Whilst the British Government has prime responsibility for transposition and application of the Directive, by its long drawn out procedures the Commission is laying itself open to charges of maladministration, possible collusion and culpability.

Background

Lloyd's was established in the 17th century, and in many respects its procedures are archaic. It describes itself as a "market" and it must be understood in this light rather than as a conventional insurance company. To place insurance a client must access the market via a broker. The brokers are nominally approved by Lloyd's. The traditional providers of capital to Lloyd's are "the Names" who operate in groups known as "Syndicates".
All Names appoint a "Members Agent" who acts for individual Name's affairs at Lloyd's, inter alia recommending to which syndicate he or she should subscribe and to what extent.

Lloyd's syndicates are run by Managing Agents who appoint the Underwriters. The Underwriters conduct the actual insurance business of their Syndicate dealing with such issues as the exposure the syndicate is prepared to accept in respect of a particular risk and the premium to be levied.

According to the House of Commons Treasury Select Committee between 1970 and the late 1980s the number of individual Names rose from approx 6000 to 17000 in 1979 and peaking at 32,433 in 1988. By 1994 it had fallen back to just over 17000 and the number of active names is now just over 3000. In the early 1990's when Lloyd's clearly faced financial difficulties, most of the former names(over 90%) accepted the so-called "Reconstruction and Renewal plan" under which 1992 and prior year liabilities were reinsured into a new body named "Equitas".

Up to the present day, Lloyd's has traditionally operated a three years in arrears accounting system for the purpose of closing a syndicated year of account at the end of the third year, through purchase of a reinsurance to close.(RITC). It was on that basis that petitioners accepted their unlimited liability risk, believing there were no undisclosed liabilities.
The system appears to have allowed however, for old, closed years of accounts to come back into life, and it is now recognised by the Court of Appeal of England and Wales, that there was underreserving within those accounts.
This system is now undergoing a change.

Regulation of Lloyd's

Traditionally Lloyd's has been self regulated, under its own successive Acts of Parliament. The latest of these being the Lloyd's Act of 1982. For the first time, this brought in persons from outside Lloyd's to sit on a governing council. The Council includes members whose appointments are confirmed by the Governor of the Bank of England and has power to supervise and manage the whole Lloyd's market. In order to protect the Society, the Council and its employees from damages claims, the 1982 Act included a section granting limited protection against liability to damages in certain types of case arising in relation to the exercise of functions under the Act.

It has been the successive responsibility of the UK Department of Trade and Industry, HM Treasury and now the Financial Services Authority to undertake the prudential supervision of the association of underwriters known as Lloyd's in accordance with applicable EC Directives. As part of this supervision, the regulator was required to monitor the solvency of the Society in accordance with UK Law. The Commission has confirmed, in response to parliamentary question E-0334/00 by Mr John Bowis MEP, that it considers the requirements of Directive 73/239 were eventually transposed into UK Law by the 1982 Act. The bigger question remains of whether the terms of the Directive were then properly applied.

Responsibility for application of EC regulation ultimately rests with HM Treasury but the Financial Services and Markets Act 2000 designated the Financial Services Authority as the competent authority for the supervision of UK financial services business (including Lloyd's), with effect from midnight on 30th November 2001.

Over the critical period between 1973 and 2001 there seems to be a lack of clarity over just

which Department and office was responsible for what.

The FSA chairman, Sir Howard Davies, in a letter to the rapporteur, dated 15.11.2001, stated, referring to the period 1.1.1999 until 30.11.01 only, that,
"In this period, based on the information available to us, Lloyd's has complied with the statutory requirements to which it is subject and for which the FSA is responsible. These include, for example, the requirement to submit annually a Statutory Statement of Business, certifying that Lloyd's continues to meet its statutory solvency requirements."
The same letter makes clear that the FSA was not then responsible for the implementation by the UK of EC Insurance Directives or any others.

It would seem however that whilst such a statement of business has been received by the FSA at times and by the Department of Trade and Industry at other times, the only obligation on them has been to **receive** the statements but with no corresponding obligation to check their validities. This point was confirmed in evidence given by the DTI in 1995 to the UK House of Commons Treasury and Civil Service Select Committee.
The Annual statement, signed by the Chairman of Lloyd's states
"A certificate complying with sub section 5 of section 83 of the Insurance Companies Act of 1982 has been furnished to the Council of Lloyd's and the Secretary of State pursuant to subsection 4 of that section in respect of every underwriting member of Lloyd's."
Sub section 5 states that the certificate (to be furnished by an auditor approved by the Council of Lloyd's)
"shall in particular state whether in the opinion of the auditor the value of assets available to meet the underwriting liabilities in respect of insurance business is correctly shown in the accounts and whether or not that value is sufficient to meet the liabilities."
Your rapporteur questions whether this procedure, in particular, has been properly applied.

In its conclusions the House of Commons Treasury Select committee stated,
"there is much evidence to suggest that the performance of the regulation at Lloyd's in the recent past has fallen well below acceptable standards".
In its final conclusion the Select Committee called for,
" a wider investigation of events at Lloyd's".

No such wider investigation has taken place nor did that Committee consider the question of application of EU directives, although in its evidence to the Select Committee, the DTI confirmed that Lloyd's has been under-reserved(cl 3196) and also confirmed that the solvency margin rules in use in the UK were those set down by the EC going back to the 1970's. (cl 3224).

Lloyd's and EU solvency requirements - Directive 239/73

i At present, the Commission clearly has reservations, as evidenced by their formal letter of notice, dated December 20th 2001.

ii Equitas has since 1997 reinsured 1992 and prior year losses. Each year its accounts have been "qualified" since the auditors were, and still are, unable to quantify its liabilities. As was recognised by the Treasury Select Committee (cl 62) -there will remain a residual liability, should Equitas fail. This could fall not only on those underwriters who remain active but also on those who signed a contract of acceptance of the R&R proposals. Opinions differ

over the solvency of Equitas but clearly asbestosis and other on-going claims, especially from the USA, give no grounds for complacency in that respect.

iii In February 1982 the firm of Chartered Accountants, then named Neville Russell, being the spokesmen for all the Lloyd's auditors at that time, wrote to Lloyd's stating, "the impossibility of determining the liability in respect of asbestosis".

Since the Equitas liabilities in respect 1993 to the present day are recognised by the Equitas auditors as being unquantifiable it is impossible to adjudge the long term solvency of Equitas. Equally it is impossible to relate the resources of the Names, with the 'residual liability' to future claims.

Time Magazine in February 2000 estimated the total asbestosis exposure to be $100 billion- of which $37 billion was otherwise estimated as the Lloyd's/Equitas share, a figure far in excess of the reserves of Equitas.

According to a recent report published in the Financial Times (9.9.02) actuaries estimate that asbestos related cases will cost companies and their insurers $200bn-$275bn in the US and between $32bn-$80bn in Europe. Of course not all of this is covered by policies offered by Lloyd's.

In January 1999 Mr A M Blake of the accountants now named Mazars Neville Russell, wrote a letter to one of the Names, subsequently made bankrupt - with reference to responsibility of auditors at Lloyd's. In it he said, "It was not part of the auditors responsibility to calculate the value of the assets or the liabilities, nor would an auditor have signed a certificate certifying that... assets covered... liabilities at Lloyd's."

Given this statement one has to ask how then could "names solvency" be certified as required by EEC Directive 239/73?

iv Whilst it found there was no deliberate fraud, the UK Court of Appeal's Judgement , July 2002, was quite clear that there was under-reserving at Lloyd's. In its conclusions, the court presided over by Lord Justice Waller, said,
"..the facts speak for themselves. The mere fact that ultimately when the R&R was carried out, so many syndicates were shown to be massively under-reserved demonstrates that the system simply had not been producing reasonable estimates of outstanding liabilities over the years.

It follows that the answer to the question posed in paragraph 344 above, namely whether there was in existence a rigorous system of auditing which involved the making of a reasonable estimate of outstanding liabilities including unknown and unnoted losses, is NO. Moreover the answer would be NO even if the word "rigorous" were removed."

The European and American connections

Whilst the correct application of EU regulations with respect to the Lloyd's issue can be viewed as primarily a British problem the existence of the single market in insurance as well as the specific requirements of EU directive 239/73 make it a European problem as well.

There are also hundreds of names from EU countries outside the UK, in particular Eire, Denmark and Germany. One of the petitioners is a German citizen.

In the broader context it has a worldwide impact on the finances of tens of thousands of Lloyd's investors (Names) and of course on policy holders across the world.

In the United States of America the problem is no less troubling for U.S. Names or for U.S. Insurance carriers re-insured into Lloyd's.

Lloyd's does a significant portion of its non-life business in the U.S. and large damage awards by U.S. juries, both compensatory and punitive, have given a particular American flavour to the problem. A second generation of asbestosis sufferers are now filing lawsuits in the USA seeking compensation from U.S. juries for what they will surely describe as a death sentence for themselves. Claims will be made from the open ended all-risk cover offered by Lloyd's to American corporations prior to the 1970's.

Annual conventions are now held by the American plaintiff's bar exchanging evidence, strategies and, most importantly, discussing how to " enlighten those exposed to asbestos to the problems they face in the future both here and abroad".

Conclusions

This whole saga has been characterised by secrecy and delay bringing into question the reputation of the UK Government and the European Commission.
The procedure of Petitioning the European Parliament has ensured that these issues could not be ignored.
The complaints procedure to the Commission, in itself, has shown major flaws that need attention.

In the UK, some aggrieved Names, have alleged fraud. That claim has been dismissed in the courts and on appeal as recently as July 2002. Although the Appeal Court did find there was under-reserving and it confirmed the failure of the audit system. The petitioners are, however, not addressing the issue of fraud, they are addressing the matter of the application of EU directives, in particular EEC 239/73, its subsequent changes and following directives.

Your rapporteur has asked the US Attorney General for copies of the documentary evidence held by the US Justice Department with respect to the criminal case that was started in the USA. The case was subsequently closed after a grand jury had already been sworn in.

To the satisfaction of the Commission, the EU insurance directive was said to be transposed into British law, albeit 9 years late. However there is evidence that shows
it was not actually properly and fully applied. The Petitioners who suffered loss, complain of that late transposition and lack of application and are justifiably aggrieved. The question must arise whether they are entitled to compensation for loss suffered as a result of late transcription and non application.

The Commission may or may not now find itself satisfied with current UK regulatory practice but that there was failure to observe EU directives up to 1982 and failure to correctly apply

them after 1982 is a matter of fact.

British Courts have so far found in cases relating to these matters:
"Gross negligence"
"Misrepresentation"
"Staggering incompetence"
"Behaviour that has brought shame onto the City of London"
"Failure to properly audit"

The Commission reaction, to the delayed reply it received from the UK government to its formal letter of notice, sent December 2001, is still awaited. In the meantime Names continue to be rendered bankrupt by Lloyd's. British courts refuse to stay their hand in this respect, despite the possibility of impending action before the ECJ. In this matter the Commission has refused to respond to requests to provide evidence of its letter of formal notice to the British courts, even although advice from the British Bankruptcy Court has stated that the "consent order" sent to the Commission asking it to provide details of its actions, was the correct British legal practice. Instead, the Commission insist that people, whose total livelihood is at stake, rely simply on a press release, which is deemed inadmissible by the British Courts.

The request by the Treasury Select Committee for a full inquiry remains unfulfilled.

Is this a European scandal to rival Enron and Worldcom, or is it just a few aggrieved people who made a loss on an unwise investment where the risk was always known as unlimited liability?

As one petitioner told your rapporteur,

"I knew the risk was unlimited, but only a fool would take such a risk in a market place that was unregulated. I took the risk in this market, believing they would respect and would have to respect British and EU law"

The question for the European Parliament as for the Commission is: has EU law been respected?

The pivotal points are the Names and Syndicate's solvency certification and its compliance with EEC Directive 239/73.

The Parliament also has the responsibility to assess whether the Commission has properly discharged its responsibilities, given that Art 288 of the Treaties states,
" In the case of non contractual liability, the Commission shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties"

Recommendations

that

1.The Commission determine its reaction to the UK response to the formal letter of notice with no further delay.

2.Once the decision is taken by the Commission to the response by the UK government, the full terms of all questionnaires, the replies and other correspondence and minutes of meetings must immediately be made available for parliamentary and public scrutiny, unless the matter becomes "sub judice".

3. A committee of inquiry be established, according to Rule 151, of Parliament's Rules of Procedure to fully investigate all aspects of the application of European Insurance Directives with respect to Lloyd's of London from 1973 to the present day including the handling by the Commission of its responsibilities in this matter and its procedures for consideration of formal complaints.

MINORITY OPINION

Author: Mr Michael Cashman

This report fails to give a balanced assessment. Insurance is a risk business and losses an inevitable incident of underwriting.

1. The quotes used are ***highly selective***, without context and therefore fail to give a fair summary of the situation. For example, the UK Court of Appeal found that there ***was*** a regulated audit system at Lloyd's throughout the relevant period.

2. There are ***errors of fact,*** for example relating to the Lloyd's accounting system. Closed accounts do not "come back to life" - rather, as with all insurance, claims may be made against a policy after it has ended.

3. The report states that directives have not been implemented. This ***has not been proven***. Furthermore, it does not follow that the Names' losses were a direct result of any alleged supervisory failing.

4. The report does not detail the ***substantial efforts*** made by Lloyd's to alleviate the Names' losses, discounting as much as 70% of their debts. 97% of Names affected accepted a settlement agreement.

5. There is no case for a Committee of Inquiry on this UK-centric issue, which has been exhaustively dealt with by the UK Courts and is being investigated by the European Commission.