

LUNCHTIME ADDRESS

"THE EEC - WHAT HAS IT DONE FOR US SO FAR" - By W. E. Pool

This was the arresting title of the topic for discussion at the last lunch-time meeting of BILA held at the Institute of London Underwriters on Wednesday, 17th February. Pat Saxton was in the Chair and explained that the title had been chosen by the BILA Committee and not by the speaker, Mr. W.E. Pool, Head of the Insurance Division of Taxation, European Commission, who jocularly shrugged off any guarantee of compliance by observing that a decade could elapse before promise was transformed into performance within the Commission machine.

Mr. Pool (who began his career with the Inland Revenue in 1954 and transferred to the EEC in 1974) outlined the intermediate stages through which Directives were developed - via the Social and Services Committee and Council - and explained that the Commission itself had no power of mandate. Articles 52/58 of the Treaty of Rome dealt with the right of establishment i.e. a national individual or corporation of country A to set up an organisation in country B whereas Articles 59 ff concerned the provision of services in B and A without the related establishment. All projected legislation was subject to a transition period for eventual compliance but the insurance programme (originated in 1961) was a prime example of failure to maintain momentum. By 1963 only the Reinsurance Directive had been produced and apart from one or two minor points affecting certain countries, it merely redefined the "status quo". The first major achievement in the insurance field was the Establishment Directive for non-life business - adopted by the Council in 1973 and scheduled for implementation by 1975. Supervision had been the main objective coupled with solvency but it was left to individual Member States to evaluate their technical reserves underlying the solvency margin. The differential between Members and non-members had to be considered but in each case world-wide operations were the criterion. On the other hand when it came to the business of foreign insurers in a domestic market, the host country was permitted to impose its own sanctions. Difficulties encountered in practice had created the need for collaboration between the various Member Supervisory authorities: this took the form of regular meetings in different countries (one was being held in Dublin shortly) and a valuable report on technical reserves had been submitted by a Study Group.

Directives of minor import included one on Units of Account and plans were in hand for alleviating the position of German companies whose operations were limited to one class of business only e.g. legal expenses and credit insurance, although subsidiaries could be created. The area of sickness insurance was one of continuing perplexity. Some Members' domestic legislation was inhibiting schemes for assistance to tourists and a Directive in this area was pending. Turning to the Life Directive, Mr. Pool stressed the twin import of the investment and long-term aspects. While existing composite companies in the U.K., Belgium and Luxemburg could continue, new ones were prohibited in all States; but companies with licence for composites could not extend into other territories, although the formation of subsidiaries was permitted.

The speaker then sketched the difficulties surrounding the Services Directive on which the transitional period had expired in 1969. Despite the decisions of the International Court of Justice in the Rayners and Van Binsbergen cases, the Commission were still bemused by the extent and divergence of domestic law but continued to "Hack at the thicket"! Some system of rules might assist the groundwork. In the meantime the Coinsurance Directive, although adopted by the Council in 1978, continued to be an area of non-co-operation and debate on the meaning of nature and size of risk. The revised text of the Services Directive was the subject of perpetual controversy, although some pressure had been applied towards agreement during the period of the British Presidency. In regard to the Directive on Insurance Contract Law, the choice of law was delaying progress but steps were being taken to extend the Directive of 1972 (under which Green cards were no longer required within the EEC) to include compulsory property damage insurance: in this field the U.K. was out of line with all other Members.

Reverting to the Services Directive, Mr. Pool referred to the difficulty in reconciling "material control" (enshrined in the domestic laws of other countries but strange to the UK) which involved policy wordings and the powers of executives. On the pretext of protecting the public, it seemed inevitable that local courts would continue to show prejudice which was contrary to the spirit of the Treaty of Rome. He concluded by stressing the importance of the dichotomy between the continental system of premium taxes and VAT. In some countries taxes comprised 1½% of national income and the issue of policies without the tax was naturally resisted on the ground of unfair competition. This seemed likely to remain an insoluble problem.

In reply to a question concerning the Directive on Door-step selling, Mr. Pool said that insurance had now been excluded and would become the subject of a separate one. On the subject of Intermediaries (which had been on the stocks since 1976) delay had occurred because of the need to harmonise qualifications and certificates.

A. McC.