

**THE EU REGULATION AND THE VOLUNTARY HEALTH  
INSURANCE**

**A BELGIAN PERSPECTIVE...**

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**September 2007**

## **STRUCTURE OF THE SPEECH**

1. Failure on the part of the Belgian State according to the European Commission in the context of the recent formal notice regarding the organisation of the free and complementary insurance by the mutualist sector
2. Precedent from 1992 and closing of the file by the European Commission
3. Considerations on the substance and on the timing of the aforementioned formal notice
4. Reminder of the Belgian mutualist entities' main characteristics and their consequences as to the relation between these entities and their members and as to the rules applicable
5. Argumentation developed by the Belgian government in its answer to the formal notice on the basis of EU regulation
6. Subsidiary argumentation: the absence of necessity to extend to mutualist entities the system applicable to the private insurance companies
7. General conclusions

**1. FAILURE ON THE PART OF THE BELGIAN STATE  
ACCORDING TO THE EUROPEAN COMMISSION IN THE  
CONTEXT OF THE RECENT FORMAL NOTICE  
REGARDING THE ORGANISATION OF THE FREE AND  
COMPLEMENTARY INSURANCE BY THE MUTUALIST  
SECTOR**

= the mutualist activities in the field of the free and complementary insurance were not subjected to the rules provided for by the first and third "non-life insurance" directive whereas these services, which organisation is competing with private insurance companies, fall under the sickness insurance that represents one of the branches covered by the aforementioned directives

## **2. PRECEDENT FROM 1992 AND CLOSING OF THE FILE BY THE EUROPEAN COMMISSION**

= request addressed to Belgium in order to explain the organisation of the treatment abroad service, organised both by mutual health funds and private insurance companies

= closing of the file by rallying to the argument developed in the judgement 23/92 of 2 April 1992 given by the Belgian Court of Arbitration which states that:

*in view of the limited value and complementary nature of the free and complementary insurance services and regarding the mutualist entities characteristics as to their structure and functioning, the legislator was entitled to consider that it was necessary to provide for a treatment different from these activities in comparison with the treatment reserved for the insurance sector*

= it considers that if the law of 6 August 1990 is interpreted in accordance with the aforementioned Court of Arbitration judgement, this law would not risk having the effect of extending the mutualist aims and activities, but would rather limit its activities at national level and to operations falling under the field of health care

### **3. CONSIDERATIONS ON THE SUBSTANCE AND ON THE TIMING OF THE AFOREMENTIONED FORMAL NOTICE**

#### **3.1. On the substance**

- The elements on which the formal notice is based were present in the 1992 file closed by the European Commission

#### **3.2. On the timing**

- The formal notice follows a Commission notice, dated 26 April 2006, named "Implementing the Community Lisbon programme – Social services of general interest in the European Union" and by virtue of the subsidiarity principle, Member States can freely determine what they mean by social services of general interest

**4. REMINDER OF THE BELGIAN MUTUALIST ENTITIES'  
MAIN CHARACTERISTICS AND THEIR CONSEQUENCES  
AS TO THE RELATION BETWEEN THESE ENTITIES AND  
THEIR MEMBERS AND AS TO THE RULES APPLICABLE**

**4.1. REMINDER OF THE BELGIAN MUTUALIST ENTITIES'  
MAIN CHARACTERISTICS**

- 4.1.1. Their missions are national and are to be related to the concept of health as defined by the WHO
- 4.1.2. Their activities are non-profit-making
- 4.1.3. Their activities are exercised in a spirit of solidarity
- 4.1.4. The members' rights and obligations are mentioned in the statutes

## 4.2. CONSEQUENCES OF THESE CHARACTERISTICS

### 4.2.1. CONSEQUENCES AS TO THE RELATION BETWEEN THESE ENTITIES AND THEIR MEMBERS

- = members are supposed to agree on the amendments to the statutes as long as they are affiliated
- = no continuity of service in principle since statutes can be amended by the general meeting
- = no obligatory building up of reserves for increasing age

### 4.2.2. CONSEQUENCES AS TO THE RULES APPLICABLE

According to the Belgian legislator, the aforementioned peculiarities justify the application of rules different in comparison with those applicable to private insurance companies

#### Examples:

- **law of 11 May 2007 amending the law of 6 August 1990**
- **article 43ter inserted in 1998 in the law of 6 August 1990**
- **control of respective activities by different organisms: Control Office and Banking, Finance and Insurance Commission (CBFA)**

**5. ARGUMENTATION DEVELOPED BY THE BELGIAN GOVERNMENT IN ITS ANSWER TO THE FORMAL NOTICE ON THE BASIS OF EU REGULATION**

5.1. FREE AND COMPLEMENTARY INSURANCE SERVICES ARE PART OF THE SOCIAL SECURITY SCHEME

5.2. THE DIRECTIVES IN QUESTION RELATE ONLY TO ECONOMIC ACTIVITIES, WHICH THE CONCERNED MUTUALIST ACTIVITIES ARE NOT

5.3. IF COMPLEMENTARY INSURANCE SERVICES ARE TO BE CONSIDERED AS ECONOMIC SERVICES, QUOD NON, THEY ARE SERVICES OF GENERAL ECONOMIC INTEREST

## 5.1. FREE AND COMPLEMENTARY INSURANCE SERVICES ARE PART OF THE SOCIAL SECURITY SCHEME

- Court of Justice case law does not interpret strictly the notion of "insurance forming part of a social security scheme"
- Belgian law requires mutual health funds to provide at least one of these services
- These services completes and/or fill the gaps in the compulsory insurance, being therefore of general interest and contributing to social cohesion and to enhanced social protection

## 5.2. THE DIRECTIVES IN QUESTION RELATE ONLY TO ECONOMIC ACTIVITIES, WHICH THE CONCERNED MUTUALIST ACTIVITIES ARE NOT

The Court of Justice specified that activities to be exercised in a spirit of solidarity cannot be qualified as economic

Every free and complementary insurance service presents several characteristics listed below, which, under the Court of Justice case law, allows concluding that the principle of solidarity is complied with

- system based on sharing and not on capitalisation
- no individual link between contributions and benefits
- no link between benefits and risk (health, age, etc.)
- obligation to affiliate
- no risk selection
- existence of State control

5.3. IF COMPLEMENTARY INSURANCE SERVICES ARE TO BE CONSIDERED AS ECONOMIC SERVICES, QUOD NON, THEY ARE SERVICES OF GENERAL ECONOMIC INTEREST

These services are an essential complement to the compulsory insurance which gaps are filled

Consequence: application of article 86, § 2, of the Treaty of the 3/25/1957 establishing the European Community

= the rules of competition are not applicable if they have the effect of obstructing the legal or factual fulfilment of the particular mission assigned to mutual health funds

**6. SUBSIDIARY ARGUMENTATION: THE ABSENCE OF NECESSITY TO EXTEND TO MUTUALIST ENTITIES THE SYSTEM APPLICABLE TO THE PRIVATE INSURANCE COMPANIES**

The specific regulation applicable to mutual health funds already includes requirements similar to those provided for in the non-life insurance directives, however adapted to the mutualist sector's way of operating regarding:

- the approval of the mutual health funds and the complementary insurance services which they provide
- the building-up of reserve funds

## **7. GENERAL CONCLUSIONS**

The Belgian government:

- thinks that the first and third "non-life insurance" directives are not applicable to the free and complementary insurance mutualist services
- is glad with the 2006 Commission notice named "Implementing the Community Lisbon programme – Social services of general interest in the European Union"
- suggests that a directive be taken in order to confirm the services of general interest specificity
- asks to take no further action as to the procedure introduced against the Belgian State