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Press and Information

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Judgment of the Court of First Instance in Case T-289/03

*British United Provident Association Ltd (BUPA) and Others v Commission of the European Communities*

### **THE COURT OF FIRST INSTANCE CONFIRMS THE COMMISSION'S DECISION APPROVING IRELAND'S RISK EQUALISATION SYSTEM FOR THE PRIVATE MEDICAL INSURANCE SECTOR**

*Such a mechanism is a necessary and proportionate means of compensating the insurers required to cover, at the same price, all persons person living in Ireland, independently of their state of health, age or sex*

Between 1957 and 1996 the Voluntary Health Insurance Board (VHI) was the only operator on the private health insurance (PMI) market in Ireland. Between 1994 and 1996 the Irish PMI market was liberalised and on 1 January 1997 BUPA Ireland commenced activities. BUPA is now the VHI's main competitor.

The provisions which liberalised the sector provided for the establishment of a risk equalisation system (RES) administered by the Health Insurance Authority (HIA). In essence, the RES is a mechanism providing, first, for payment of a levy to the HIA by PMI insurers with a risk profile below the average market risk profile and, second, for a corresponding payment by the HIA to PMI insurers with a risk profile higher than the average. The mechanism in place specifies different thresholds at which RES payments may be activated. As matters now stand, the application of the RES would essentially lead to funds being transferred from BUPA to the VHI.

On 23 January 2003, the Irish authorities formally notified the RES to the Commission, in accordance with the Community rules on State aid. On 13 May 2003, the Commission decided not to raise objections to the establishment of the RES. It decided that the compensation provided for by the RES constituted an amount intended as compensation for the obligations associated with a service in the general economic interest (SGEI), namely obligations aimed at ensuring that all persons living in Ireland would receive a minimum level of PMI services at the same price, independently of their state of health, age or sex (the PMI obligations).

BUPA brought an action before the Court of First Instance of the European Communities for annulment of that decision.

**In its judgment today, the Court of First Instance has dismissed the action.**

As a preliminary point, the Court notes that the Member States have wide discretion as to the definition of SGEIs, particularly in the field of health, which falls almost exclusively within their competence. In that context, the control which the Community institutions are authorised to exercise is limited to ascertaining whether there is a manifest error of assessment.

However, where a Member State invokes the existence and the need for protection of an SGEI mission, certain minimum criteria must be satisfied, in particular, the presence of an act of a public authority entrusting the operators in question with an SGEI mission and the universal and compulsory nature of that mission.

The Court considers that in the present case those conditions are indeed satisfied. The Irish legislation, which defines the PMI obligations in detail, is an act of a public authority. Furthermore, the fact that the insurers are required to cover any person requesting insurance means that the PMI services are compulsory and universal.

The Commission was thus entitled, in this case, to consider that the imposition, in the public interest, of the PMI obligations on the PMI insurers relates to an SGEI mission.

Finally, the Court finds that BUPA has not shown that the Commission had erred in concluding that the compensation system provided for by the RES was necessary and proportionate by reference to the costs incurred in discharging the PMI obligations. The Court considers that there is no error in the finding that risk equalisation is necessary on a PMI market where insurers are required to cover any person at the same price and independently of the individual risk in order to ensure the cross-subsidy of premiums between the generations and to permit every PMI insurer to bear only the burdens linked with the average market risk profile. In addition, the RES seeks only to compensate PMI insurers for the financial consequences arising from the PMI obligations, which prohibit them from setting premiums according to the risk insured and from rejecting the 'bad' risks.

**REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.**

*Unofficial document for media use, not binding on the Court of First Instance.*

*Languages available: DE, EN, FR*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-289/03>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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