

In this context the objective of the Dutch Government is to guarantee health care as a basic social right. This means that all residents in the Netherlands should have access to health insurance, guaranteeing a basic package of essential care in return for an acceptable premium. To ensure that goal, the Dutch Government wishes to require that the proposed health insurance regime is based on the following principles :

- open enrolment,
- a basic minimum cover defined by the government and which must be provided by any health insurer,
- the right of insurers to set their own premium rates as long as there is no discrimination on the basis of the age, sex, health status and social circumstances of the insured and
- an equalisation fund to compensate insurers' losses because of the risk profile of their portfolio.

As I said during our meeting, I believe that these principles could be justified under Article 54 of the Third Non-Life Insurance Directive, as they appear necessary to ensure the legitimate objectives pursued by the Dutch Government.

However, I would underline that these principles must be applied in a manner which safeguards the proper functioning of the Internal Market. Therefore such measures should be confined to what is objectively necessary. In the absence of a detailed and definitive legal text, it is not possible to say whether the Dutch system would meet these principles. In that context, I do not think that it would be proportionate to apply the requirements to any complementary insurance cover offered by private insurers which goes beyond the basic social security package of cover laid down by the legislation.

In addition, the setting up of a risk equalisation scheme, which will be funded by a wage related employers' contribution and a government contribution to cover the cost incurred by insurers may need to be considered under the provisions of the Treaty concerning state aids.

With respect to an obligation imposed by the law on insurers to provide insurance cover by means of benefits in-kind to insured persons, rather than through payments of the cost incurred by the insured, it cannot be excluded that such a requirement could be in conflict with the provisions on the freedom to provide services. Indeed, it could create an important barrier to non-Dutch insurers who intend to conduct business in the Netherlands, as they would be obliged to pass appropriate agreements with local care providers in order to meet this obligation. It is not excluded that the burden of such a requirement could have a dissuasive effect on these insurers who would then be in a difficult position to provide their insurance cover in the Netherlands. Such a requirement may therefore need to be analysed against the principles of proportionality and necessity, according to the case-law of the Court of Justice.