such as that which operates in Belgium, where *vis-à-vis* the Insurance Inspectorate, which is a public body participating in the exercise of official authority and endowed with powers of regulation, supervision and direction, the approved commissioner, who is freely appointed by the insurance undertaking and is remunerated by it, has merely an auxiliary and preparatory role to play, notwithstanding the fact that his activities are subject to the supervision of the Insurance Inspectorate, that he must swear an oath and that he may impose a veto with suspensory effect on the implementation of decisions adopted by the undertaking.

REPORT FOR THE HEARING
in Case C-42/92 *

I — Facts and procedure

Legal background

1. The Belgian Law of 9 July 1975 on the regulation of insurance undertakings (*Belgisch Staatsblad,* 29 July 1975; hereinafter 'the Law') established the Controledienst voor de Verzekeringen, or Insurance Inspectorate (Articles 29 to 37), the office of approved commissioner (Articles 38 to 40), and a consultative committee, the Insurance Commission. The Insurance Inspectorate has 'the task of supervising the application of this law and its implementing regulations' (Article 29, second paragraph). It has the power to issue regulations for the purposes, *inter alia*, of imposing obligations and restrictions on insurance undertakings 'in order to ensure that their activities are conducted in accordance with the principles of insurance practice, the precepts of equity and the general interests of insured parties and beneficiaries under contracts of insurance' (Article 29, fourth paragraph).

2. Article 38 of the Law provides that Belgian insurance companies or associations must appoint at least one commissioner from among the members of the Institute of Auditors who have been approved by the Insurance Inspectorate. Belgian undertakings which are in the form of mutual insurance societies or non-profit-making associations are required to appoint an approved commissioner from among either those persons specified in the abovementioned Law or persons specially approved by the Insurance Inspectorate. Foreign insurance undertakings are required to appoint, for the particular purposes of managing their operations in Belgium, an approved commissioner selected from the same group of persons.

3. Article 40 of the Law describes the duties of the commissioners as follows:

* Language of the case: Dutch.

'Approved commissioners shall carry out their duties under the supervision of the Insurance Inspectorate.

The approved commissioners shall immediately bring to the notice of the directors, managers or general agent of the undertaking, and of the Insurance Inspectorate, any infringement of this Law or of its implementing regulations, as well as any matter which appears to them capable of prejudicing the financial position of the undertaking.

In addition to their general duties as commissioners, as laid down in the legislation on commercial companies and the undertaking's own statutes, the commissioners shall, whenever the Insurance Inspectorate so requests, and in the absence of such a request at least once a year, provide the Inspectorate with a report on the financial position and management of the undertaking.

Should an approved commissioner obtain knowledge of a decision by the undertaking the implementation of which might constitute an offence, he shall veto such implementation and refer the matter to the Insurance Inspectorate forthwith. His veto shall have suspensory effect for a period of eight days.'

4. Article 39 of the Law provides that approved commissioners must personally take a written oath. The rules governing the approval of the commissioners were originally laid down in Regulation No 2 of 20 November 1978 concerning the admission of and disciplinary rules relating to approved commissioners in insurance undertakings, which was introduced by the Insurance Inspectorate and approved by Ministerial Decree of 27 November 1978 (*Belgisch Staatsblad*, 15 December 1978). Article 3(1) of Regulation No 2 provided that:

'In order to be approved by the Inspectorate for the purpose of carrying out the duties of approved commissioner in insurance undertakings, a candidate must

1. be of Belgian nationality or a citizen of a Member State of the Community whose national legislation has been adapted to comply with Community obligations, or a citizen of a country which guarantees, on a reciprocal basis, that Belgians will receive treatment equal to that enjoyed by its own nationals;

...'

5. Regulation No 2 was repealed by Regulation No 6 of 15 January 1986 (*Belgisch Staatsblad*, 26 March 1986). Article 2(1) of Regulation No 6 provides as follows:

'In order to be approved by the Inspectorate for the performance of the duties of approved commissioner in regulated undertakings, a candidate must

1. be of Belgian nationality;

...'

Facts and procedure in the main action

6. By letter dated 24 September 1986, and in response to an advertisement inviting applications which had been placed by the Insurance Inspectorate in the *Belgisch Staatsblad*

of 30 August 1986, Adrianus Thijssen applied for the office of approved commissioner in insurance undertakings and private pension funds. The documents submitted with the application included a testimonial of good character and a certificate of nationality showing that he was a Netherlands national.

7. By letter of 6 November 1986, the President of the Insurance Inspectorate informed Mr Thijssen that his application had been turned down because he did not satisfy the condition of nationality laid down in Article 2(1)(1) of Regulation No 6 of the Insurance Inspectorate.

8. On 2 January 1987, Mr Thijssen brought an action before the Raad van State for annulment of that decision. The sole submission of the applicant in the main proceedings is that the rejection of his application on the ground that he did not satisfy the nationality requirement is contrary to Articles 52 and 55 of the EEC Treaty. More specifically, he submits that Article 52 has direct effect, in accordance with the judgment of the Court of Justice in Case 2/74 *Reyners* v *Belgian State* [1974] ECR 631.

9. The defendant in the main proceedings argues on the basis of the first paragraph of Article 55 of the EEC Treaty that the principle of freedom of establishment does not apply to approved commissioners.

The question referred for a preliminary ruling

10. By order of 21 January 1992 the Raad van State (Brussels) referred the following question to the Court of Justice for a preliminary ruling:

'Does the derogation from the principle of freedom of establishment provided for in the first paragraph of Article 55 of the EEC Treaty apply to the office of approved commissioner introduced by Articles 38 to 40 of the Law of 9 July 1975 on the regulation of insurance undertakings?'

Procedure before the Court of Justice

11. The order referring the question was registered at the Court on 17 February 1992.

12. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted

— on 17 April 1992 by Adrianus Thijssen, the applicant in the main proceedings, represented by Georges van Hecke, Avocat,

— on 18 May 1992 by the Government of the Kingdom of Belgium, represented by J. Devadder, Director of Administration in the Ministry of Foreign Affairs, External Trade and Cooperation, and by J. Putzeys, S. Gehlen and X. Leurquin, Avocats,

— on 11 June 1992 by the United Kingdom, represented by Nicholas Paines, Barrister, and S. Cochrane, acting as Agents,

— on 27 May 1992 by the Commission of the European Communities, represented by Antonio Caeiro, Legal Adviser, and Ben Smulders, of its Legal Service, acting as Agents.

13. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry and to assign the case to the Fifth Chamber.

II — Written observations submitted to the Court

14. *Mr Adrianus Thijssen*, the applicant in the main proceedings, begins by examining the professional rules and duties of internal auditors, the duties of the Insurance Inspectorate and the professional rules and duties of approved commissioners in the light of the applicable law.

15. The duties of internal auditors, who are members of the Institute of Auditors, are governed by the Law of 22 July 1953 (*Belgisch Staatsblad,* 2 September 1953), as amended by the Law of 21 February 1985 (*Belgisch Staatsblad,* 28 February 1985), implementing the Eighth Council Directive (84/253/EEC) of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents (OJ 1984 L 126, p. 20). Part of the task of an internal auditor is to audit a company's annual accounts, its book-keeping and its annual report. The commissioner-auditor, who is generally accepted as not exercising 'official authority' within the meaning of the first paragraph of Article 55, is vested with wide powers. He can require the directors, agents and officers of a company to provide him with all the documents, explanations and written accounts he needs in order to carry out his supervisory duties. In order for those duties to be properly performed, Mr Thijssen submits, the Law of 22 July 1953 (Article 8(1); Articles 7a and 18b) must guarantee the independence of auditors *vis-à-vis* their clients.

16. He maintains that the differences between the offices of internal auditor and approved commissioner are not such as to justify the conclusion that the latter is connected with the exercise of official authority.

17. Mr Thijssen argues that the task of the Insurance Inspectorate is to supervise insurance undertakings. The Inspectorate has the right to make regulations and, by virtue of Article 26(4) of the Law on the regulation of insurance undertakings, to take measures if an insurance undertaking is not operating in accordance with the provisions of law to which it is subject. Mr Thijssen accepts that the Inspectorate exercises official authority.

18. The approved commissioners, on the other hand, perform their duties in complete independence. An approved commissioner is appointed and remunerated by the insurance undertaking, and occupies a position of trust *vis-à-vis* both the undertaking and the supervisory authorities. The fact that approved commissioners have regular contacts with the Insurance Inspectorate and even contribute to its proper functioning does not mean that they exercise official authority (see *Reyners*, paragraph 51). Approval of a commissioner by the Insurance Inspectorate provides confirmation that he has attained a certain level of professional competence but does not affect his complete independence. Only the Insurance Inspectorate itself exercises official authority and has the decision-making powers to safeguard the interests of insured parties.

19. The reasoning adopted by the Court in interpreting Article 48(4) on the free movement of workers should also be applied to the first paragraph of Article 55 of the EEC Treaty (see Opinion of Advocate General Mayras in *Reyners*, at p. 664). The difference between the content of Article 48(4) and that of the first paragraph of Article 55 reflects the difference between, on the one hand, employees in the public service and, on the other, self-employed persons who establish themselves abroad in order to pursue a profession which is necessarily private (see the Opinion of Advocate General Mancini in Case 307/84 *Commission* v *France* [1986] ECR 1726, at p. 1731).

20. According to Mr Thijssen, the case-law of the Court has confirmed that the first paragraph of Article 55 forms an exception to the right of establishment laid down in Article 52 of the EEC Treaty and is therefore to be strictly construed (*Reyners*, paragraph 43). The phrase 'activities connected with the exercise of official authority', moreover, must be given a Community law definition (*Reyners*, paragraph 50).

21. Official authority may be defined as that which emanates from the sovereignty, the majesty of the State; for those who exercise it, it implies the power to use prerogatives outside the general law, privileges of official power and powers of coercion over citizens (see Opinion of Advocate General Mayras in *Reyners*, especially at p. 664, and that of Advocate General Jacobs in Case C-41/90 *Höfner and Elser* v *Macrotron* [1991] ECR I-1979 at p. I-1994, paragraph 22, and especially at p. I-2000). It is further submitted that official authority involves functions whose purpose is to safeguard the general interests of the State or of other public authorities and which therefore require a special relationship of allegiance to the State on the part of persons entitled to exercise such authority and reciprocity of the rights and duties forming the foundation of the bond of nationality (Case 66/85 *Lawrie-Blum* [1986] ECR 2121, at paragraph 27, and Case 33/88 *Allué* [1989] ECR 1591, at paragraph 7).

22. Nor is the oath taken by approved commissioners in itself sufficient indication that the activities of their office are such as to come within the first paragraph of Article 55 of the Treaty (see *Reyners*).

23. The duty to report to the undertaking and to the Insurance Inspectorate, it is argued, does not make any material difference to the duties of any ordinary company auditor. Mr Thijssen relies, moreover, on the Opinion of Advocate General Mayras in *Reyners*, in which he discusses the example of the *avocats* at the Cour de Cassation, who, though appointed by the Government, do not take part directly and specifically in the exercise of official authority (see especially p. 667). Likewise, the duty to report to the Insurance Inspectorate does not elevate the approved commissioners to the status of holders of official authority. On account of their independence and responsibilities, however, the approved commissioners do assist the body, namely the Insurance Inspectorate, which by virtue of its powers of decision represents official authority, in carrying out its functions.

24. With regard to their right of veto, the approved commissioners are obliged to

suspend the implementation of a decision if it could constitute an offence, although they themselves do not possess any freedom of judgment or right of decision. Mr Thijssen relies in his argument on the order of the Raad van State of 21 January 1992 referring the question to the Court, in which the explanatory notes to the Law of 9 July 1992 are cited:

'In certain cases, [the approved commissioners] have the power to oppose for a limited period decisions made by undertakings so as to allow the authorities in the meantime to take such measures as the situation requires'.

25. The exceptions allowed by Article 55, it is submitted, cannot be given a scope that would go beyond the objective of this provision (see *Reyners*, at paragraph 43; Case 152/73 *Sotgiu* [1974] ECR I-153, at paragraph 4; Case 225/85 *Commission* v *Italy* [1987] ECR 2625, at paragraph 7). In other words, the condition of nationality must be in keeping with the principle of proportionality (see the Opinion of Advocate General Mancini in Case 307/84 *Commission* v *France* [1986] ECR 1725, especially at p. 1732).

26. Regulation No 2 of 20 November 1978, which was repealed by Regulation No 6, provided that it was necessary to be Belgian or a citizen of a Member State of the European Communities. Thus the bond of loyalty created by being of Belgian nationality was not, apparently, a prerequisite for performing the duties of approved commissioner. The nationality requirement violates the principle of proportionality.

27. In addition, since the entry into force of Regulation No 6, foreign approved commissioners who are citizens of a Member State of the European Communities have retained their approved status (Article 20 of Regulation No 6). They may continue to perform their duties.

28. Mr Thijssen therefore proposes that the Court reply to the preliminary question in the negative.

29. The *Belgian Government* observes that the Law on the regulation of insurance undertakings provides not only for the regulation of the latter (in financial, legal, technical and economic respects) but also for the internal supervision of those undertakings. The role of the Insurance Inspectorate consists mainly in supervising, in the widest possible sense, the implementation of this Law, which is based on the notion that an insurance undertaking is not an undertaking like any other. Moreover, every authorized insurance undertaking has an approved commissioner whose task it is to exercise more or less constant supervision in order to be able to detect in due time any irregularity or negligent act that could be prejudicial to the undertaking.

30. It is incontestable that the three institutions established by the Law on the regulation of insurance undertakings are involved in the exercise of official authority for the purpose of protecting the rights of insured parties and of third parties affected by the performance of insurance contracts (see Article 1 of the Law on the regulation of insurance undertakings). The approved commissioners have as much a role to play as protectors of equity and of the public interest as do the Insurance Inspectorate and the Insurance Commission.

31. In this regard, the Belgian Government emphasizes the duty of the commissioners to give a report to the Insurance Inspectorate whenever it so requests, their right of veto with suspensory effect for eight days and, as a follow-up to this veto, their emergency report for the Insurance Inspectorate. Furthermore, the commissioners are authorized by the Insurance Inspectorate to take an oath in written form, dated and signed, which is addressed to the Inspectorate, and to perform their duties under the supervision of the Inspectorate itself.

32. The condition of nationality introduced by Article 2(1) of Regulation No 6 does not amount to a new restriction on the right of citizens of other Member States to establish themselves on Belgian territory, and thus does not infringe Article 53 of the EEC Treaty; rather, it is a strict and accurate application of the provisions of the first paragraph of Article 55, as approved commissioners take part on an occasional basis in the exercise of official authority. Article 53 does not apply when a Member State invokes Article 55 of the Treaty because Article 53 applies '... save as otherwise provided in this Treaty'. Thus, the fact that a number of foreigners were admitted by the Insurance Inspectorate under the provisions of Regulation No 2 of 20 November 1978 is not relevant.

33. The Belgian Government concedes that Article 55 is to be strictly construed and applies only to activities involving direct and specific participation in the exercise of official authority. A distinction must be drawn, however, between, on the one hand, the *avocat* and the ordinary auditor (Articles 65 et seq. of the Commercial Code, Book I, Title IX), who do not exercise official authority, and the approved commissioner on the other.

34. The Belgian Government observes that the Treaty does not define the expression 'exercise of official authority' and submits that the concept entails the implementation of prerogative powers outside the general law, powers of coercion in respect of persons and property, such as are not enjoyed by ordinary citizens, which allow those entitled to exercise official authority to act independently of the consent, or even against the will, of others.

35. The right of veto, which has a mandatory effect, proves that the approved commissioners take part in the exercise of official authority, in contrast to 'ordinary auditors', who, within commercial undertakings, enjoy no such right of veto. It follows that the right of veto represents the application of a privilege which belongs only to holders of administrative powers acting as representatives of official authority under the auspices of the Insurance Inspectorate. The power of the Insurance Inspectorate to impose disciplinary penalties on approved commissioners who fail in their professional duties testifies to the existence of a supervisory relationship.

36. The exception provided for in Article 55 cannot encompass a whole profession when certain activities which may involve the exercise of official authority form a distinct, or even only incidental, part of the activities of the profession in question. It is necessary to identify those activities which are 'typical' of the profession and then to examine these in the light of the exception provided for in the first paragraph of Article 55.

37. Referring to the opinions expressed by the Advocate General and the Commission of the European Communities in *Reyners*, the Belgian Government argues that when an *avocat* is called upon to replace an absent

judge in the course of a hearing, he thereby exercises judicial powers directly and thus takes part in official authority. However, this function does not belong to the usual activities of the profession of *avocat*, which are not covered by the exception contained in the first paragraph of Article 55. It is both distinct and separable from them.

38. It would, however, be both illogical and impossible not to allow every approved commissioner to use the right of veto, given that they exercise vigilance as regards the general interest, the performance of insurance contracts and the rights of all insured parties. It follows that this function is not separable from the profession as such.

39. Accordingly, the Belgian Government concludes that by reason of their particular duties the approved commissioners take part in the exercise of official authority and that the profession as a whole comes within the scope of the first paragraph of Article 55.

40. The Belgian Government invites the Court to reply to the question referred in the affirmative.

41. The *United Kingdom* also proposes that the question be answered in the affirmative.

42. It argues that three principles must be applied in interpreting Article 55. First, the provision must be construed narrowly and the concept of official authority is a concept of Community law; a Member State cannot extend the scope of the provision unilaterally.

43. Secondly, Article 55 covers activities which involve the *de facto* exercise of official authority, and it is for the Member States to decide on whom they will confer it.

44. Thirdly, when an activity involves the exercise of official authority, that activity comes within the scope of Article 55 if that exercise of official authority forms an inseparable part of the activity in question, even though it may only be exercised occasionally (see *Reyners*, paragraph 46).

45. According to the United Kingdom, some aspects of the office of approved commissioner may be termed 'internal' and others 'official'. The 'internal' aspects cover the general duties of the commissioner as laid down by company law and in the statutes of the undertaking (Article 40(3) of the Law on the regulation of insurance undertakings); besides that, he is a member of the company structure.

46. The 'official' aspect consists of two elements: on the one hand, the approved commissioners owe distinct duties to the Insurance Inspectorate; on the other hand, they have powers conferred upon them by public law, in the exercise of which they are called upon to apply their own judgment. The United Kingdom then gives three examples of official powers.

47. First, the compiling of reports represents an intrusion into the private commercial sphere of the undertaking. That is as true of the regular annual reports as of the

additional reports which an approved commissioner may compile either at the request of the Insurance Inspectorate or on his own initiative.

48. Secondly, if an approved commisionner exercises his right of veto, his decision is closely analogous to an interim measure of a court, designed to preserve the position pending a fuller investigation. The approved commissioners themselves are therefore vested with the powers of a public authority granting such measures.

49. Finally, an approved commissioner has the power, which is necessary for the performance of his duties, to require information from the undertaking. This power, too, permits the commissioner to intervene in the private commercial sphere of the undertaking.

50. The United Kingdom concludes that each of these powers is conferred on the approved commissioners by an act of a public authority, the Insurance Inspectorate, whose own powers are in turn derived from public law. These powers are conferred on the commissioner when he accepts, under oath, public duties. It is immaterial that an approved commissioner does not always exercise official authority, as the first paragraph of Article 55 applies to activities exercised 'even occasionally'. Thus, the United Kingdom argues, the exercise of this power is not 'separable' from the commissioner's remaining activities; the commissioner indisputably exercises 'official authority' within the meaning of Article 55.

51. The *Commission* submits that the case-law of the Court limits the scope of the first paragraph of Article 55 to what is 'strictly necessary' to safeguard the interests which this provision allows the Member States to protect, that is to say, to preclude foreigners from exercising official authority (see *Reyners*, paragraph 43, and Case 147/86 *Commission* v *Greece* [1988] ECR 1637, at paragraph 7). However, the Court has never given a general and abstract definition of what is to be understood by 'activities which are connected ..., even occasionally, with the exercise of official authority' (first paragraph of Article 55 of the EEC Treaty).

52. The Commission derives the following principles from the case-law of the Court (in particular *Reyners*, the abovementioned judgment in *Commission* v *Greece* and Case C-3/88 *Commission* v *Italy* [1989] ECR 4035).

53. Article 55 of the EEC Treaty must be appraised for each Member State separately, having regard to its national law, but this appraisal must take into account 'the Community character of the limits imposed by Article 55 ... in order to avoid the effectiveness of the Treaty being defeated by unilateral provisions of Member States' (see *Reyners*, at paragraphs 49 and 50, and *Commission* v *Greece*, at paragraph 8).

54. Article 55 permits the Member States to derogate from the Treaty only in respect of the exercise of certain activities but not in respect of professions as such. Activities which involve a direct and specific connection with the exercise of official authority may be restricted to nationals (see *Reyners*, at paragraph 54, and *Commission* v *Italy*, at paragraph 13). The Commission submits that this restriction has two consequences.

55. First, participation in the functioning of a public body — even when this is prescribed by law — cannot be considered to come within the scope of Article 55 if such participation leaves the discretion of judicial authority and the free exercise of judicial power intact (see *Reyners*, at paragraph 53, and *Commission* v *Greece*, at paragraph 7).

56. Secondly, to apply the exception provided for in Article 55 to a whole profession is permissible only if the activities described as being connected with the exercise of official authority are linked with that profession in such a way that the Member State concerned would find itself under an 'obligation to allow the exercise ... by non-nationals of functions appertaining to official authority' (see *Reyners*, paragraphs 45 to 47).

57. The Commission concedes that the Insurance Inspectorate has to do with official authority. However, approved commissioners merely assist and support the Insurance Inspectorate in the exercise of its public function; they do not, therefore, participate directly and specifically in the exercise of official authority. The performance of a commissioner's task leaves intact the precautionary supervision exercised by the Insurance Inspectorate and the sanctions it may impose on undertakings. Once he has notified the Insurance Inspectorate or has suspended a decision by an undertaking, an approved commissioner may not be actively involved in any subsequent criminal prosecution.

58. The Commission considers the imposition of a nationality requirement unnecessary in this case, given that comparable legal offices in the Federal Republic of Germany ('Treuhänder') and the United Kingdom ('appointed actuary') are not subject to any such requirement. The Kingdom of Belgium did not impose any such condition for eight years, between 1978 and 1986, although the description of the approved commissioners' duties laid down in Article 40 of the Law of 9 July 1975 was not amended during that period.

59. Article 2(1), sub-paragraphs (2) to (9), of Regulation No 6 also made admission to the office of approved commissioner subject to a number of other very strict conditions, for example the obligation to elect Belgium as one's domicile and requirements relating to good character, expertise and independence. The Commission fails to see either what the condition of nationality adds to the other conditions contained in Article 2(1), or how the approval procedure, the taking of an oath and the commissioner's submission to the supervision and disciplinary authority of the Insurance Inspectorate could justify the conclusion that only Belgians could properly exercise this office. There is no indication that nationals of other Member States would be unable to offer the necessary, or equivalent, guarantees in this respect.

60. In consequence, the Commission is of the view that the Court should reply to the question referred by the Raad van State in the negative.

III — Replies to questions put by the Court

61. By letter of 18 December 1992, the Belgian Government was invited to reply to two questions put by the Court. It replied as follows:

First question

62. The Court asked for what reasons the Belgian Government had in 1986 made Belgian nationality an express requirement for admission to the office of approved commissioner.

63. The Belgian Government replied that, as already stated in its written observations, the activities of approved commissioners are connected with the exercise of official authority, the duties of approved commissioner being an extension of the supervision exercised by the Insurance Inspectorate in insurance undertakings.

64. As this activity is connected with the exercise of official authority, it was judged necessary in 1986 to add possession of Belgian nationality to the requirements for admission to the office of approved commissioner.

Second question

65. The Court asked for precise details of how the activities of approved commissioners in insurance undertakings differed from those of internal auditors in commercial companies.

66. The Belgian Government replied that the different aspects of the office of approved commissioner are defined in Article 40 of the Law of 9 July 1975. The office involves both the usual duties of a commissioner (internal auditor) as laid down in the legislation on commercial companies and duties which go beyond those of an ordinary commissioner. Article 38 of the law provides that at least one of the commissioners must be approved by the Insurance Inspectorate. There is therefore a difference between the duties of an approved commissioner and those of an ordinary commissioner.

67. Besides his usual duties as commissioner, an *approved* commissioner has, according to Article 40 of the Law of 9 July 1975, a duty *to bring to the notice* of the directors, managers or general agent of the undertaking, and of the Insurance Inspectorate, any infringement of the rules regarding supervision and any matter capable of prejudicing the financial position of the undertaking. The approved commissioner must provide the Insurance Inspectorate with a *report* on the financial position and management of the undertaking whenever the Inspectorate so requests, and, in the absence of any such request, at least once a year. The approved commissioner can *veto* the implementation of any decision by the undertaking if such implementation could constitute an offence.

68. According to the Belgian Government, it follows from the analysis of these different points that the office of approved commissioner goes well beyond that of an ordinary commissioner. The office of approved commissioner represents in fact an *extension* of the supervision which is exercised over undertakings by the Insurance Inspectorate itself.

D. A. O. Edward
Judge-Rapporteur