Freedom of Services in the field of Insurance as treated by the OECD and Common Market

by

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1. Concept of freedom of services

At first sight it might seem an easy matter to define the freedom of services which exists, or which it is hoped to create, in the field of insurance or insurance supervisory law. Indeed, it would seem that freedom of services always exists when an insurance carrier constituted and established in accordance with the relevant national or supra-national insurance supervisory legislation and with company law, can offer its services - the insurance coverage of certain perils - freely and without official restriction to any member of the public in its own country and in other countries and when this public is for its part free to avail itself of these services to the extent that it wishes.

We shall see, however, that freedom of services, as currently contemplated by the relevant international organisations, presents a rather more complicated picture and evidently can only be achieved with numerous reservations and conditions.

2. Freedom of services in the OECD

2.1. The Organisation for Economic Co-operation and Development (OECD), which is situated in Paris and whose membership comprises all the Western European countries as well as the U.S.A., Canada and Japan, has to a certain extent prescribed freedom of services for insurance several years ago. Article 1 of the Code of Liberalisation of Current Invisibles Operations, issue of December, 1964, requires the OECD member countries to remove all restrictions on current invisible operations and associated transfers between these member countries. The transaction of insurance business and the corresponding transfers fall in the category of "current invisible operations". Indeed, Article 2 of the Code of Liberalisation states that such provisions apply to all current invisible operations which are listed in Annex A to the Code.

2. Items D 2 - 4 of Annex A carry the headings

- Insurance relating to goods in international trade
- Life assurance
- All other insurance

At the same time it is stated that insurance transactions between insurance proposers and insurers resident in different OECD member countries, in other

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words the conclusion of insurance contracts across the frontiers of member countries, are only admissible within the limits laid down in Part I to Annex A.

2.3. Consequently the detailed rulings for freedom of services are contained in Part I to Annex A, and are as follows:

Item D 2: In insurance relating to goods in international trade, the conclusion of insurance contracts between parties in different member countries shall be automatically free.

Item D 4: In all other insurance branches, excluding Life assurance, the conclusion of an insurance contract with an insurer resident in another member country of the OECD is free, provided that it is not possible to cover the risk in question in the member country in which it exists. The associated formalities are to be reduced to a minimum.

2.4. This then has been the situation as regards freedom of services in the OECD until quite recently. Now, however, after protracted and painstaking preliminaries, the OECD has succeeded in extending the freedom of services in insurance to a significant degree (Resolution of the Council on the 27th July, 1966, OECD Document C (66) 81 Final). However, it must at the same time be mentioned that, for the time being at least, many member countries will in some cases decline to apply this latest resolution, by the depositing so-called reserves. As a result of the said decision, two items of Part I to Annex A now assume a new significance:

Item D 3: Life assurance:

- If the beneficiary under a Life assurance contract resides in a member country other than the country of residence of the proposer, and

- in all other cases (for example, when a proposer prefers of his own free will to seek cover with a foreign insurer), with the exception of Group assurance,

then the conclusion of a Life assurance contract between the proposer and the insurer resident in two different member countries shall be free. However, the member countries retain the right to regulate the canvassing and acquisition operations of the foreign Life assurer or of independent intermediaries.

Item D 4: All other insurances (except insurance relating to goods in international trade, which has already been declared free): If the insured risks do not concern

- any persons resident in the same country as the proposer or

- any property, or responsibilities in respect of such property, situated, registered or incurred in the country of residence of the proposer, and

- in all other cases, with the exception of Group insurance, the conclusion of an insurance contract between the proposer and the insurer, resident in different OECD member countries, shall be free. Here too, however, the member countries reserve the right to regulate the canvassing and acquisition activities of the foreign insurer himself or of independent intermediaries.

The stage which has now been reached in the OECD with regard to freedom of services in insurance is therefore quite advanced, at least theoretically. However, two factors sharply reduce the practical importance of these provisions. One factor is that of the numerous reserves of the member countries and the other is that many countries contemplate a ban on any form of active canvassing by foreign insurers and independent brokers not officially admitted into the country in question.

3. Fundamentals of the freedom of services planned in the European Economic Community

3.1. The provisions of the Treaty of Rome

Let us first consider the provisions of the Treaty of Rome of the 25th March 1957 with regard to freedom of service generally.

The second part of the Treaty concerns the "Principles of the Community", and section III of this governs the aspects particularly important for insurance, namely liberalization and the free supply of services and movement of capital. Chapter I, dealing with the free movement of workers, has no bearing in the present context and Chapter 2, on freedom of establishment, will be deferred for later, more cursory discussion; Chapter 3 "Services", is the one of immediate interest to us.

In this chapter, Article 59 is of fundamental importance, providing as it does that during the transitional period the restrictions on the free supply of services within the Community are progressively to be abolished for nationals of member states which are domiciled in some other state of the Community than that of the recipient of the service.

The Treaty of Rome does not contain an actual definition of "Services", in that Article 60, para 2. merely states that services within the meaning of the treaty are "services provided normally against payment inasmuch as they are not subject to the provisions affecting the free movement of goods and capital, and the freedom of persons".

The specification of services contained in para.2, namely "activities in industry, commerce, trade, and the liberal professions", leads to the assumption that insurance falls under the heading of commercial activities.

It is, moreover, reasonable to assume that the concept of "invisible transactions" established by the OECD in its "Code de la Liberation"

of 12th December, 1961 will be adopted by the EEC; this is all the more likely in that under Article 106 of the Treaty of Rome and with regard to the transfer of payments, reference is made to an appendix containing a list of invisible transactions which tallies with the approach of the OECD. Two of the items contained in this appendix are

- Transactions and transfers of direct insurance business

- Transactions and transfers in connection with reinsurance and retrocession treaties and agreements.

Thus the EEC interpretation of "services" is economic activities which are outside the sphere of production of goods or of trade, and which also do not come under the heading of movement of capital and persons. It is also important to note the indication given that any operations in the field of invisible transactions which involve a business establishment in another member country, or are dependent upon such an establishment, fall under the heading "Freedom of establishment" and not under "Freedom of services". It is also significant that the best commentary * on the Treaty of Rome considers that binding provision has been made for the removal of restrictions, so that at the end of the transition period the member states would have to proceed autonomously if the necessary EEC council decisions could not be taken in good time. However there is some doubt today, after the great EEC crisis of 1965, whether the member states would be prepared to recognise such an interpretation of their obligations.

The substance of Article 59 appears at first to contain a clear indication of the purpose underlying the attempt to establish freedom of services. It represents an endeavour to remove any restriction on the free supply of services - with the aim of liberalization in this sector. The provisions refer to services which the resident of a member state wishes to provide to a resident of another member state. This therefore relates to the provision of services across national frontiers, not to domestic services. The restrictions in question are to be removed in stages during the so-called transitional period of the Treaty of Rome (1958-1969).

In practice, however, the implications of Article 59 are much less far-reaching when Article 60 is considered. Paragraph 3 of Article 60 states that the provision of services in another member state is "subject to the requirements prescribed by that state for its own residents". In a general way, therefore, the postulate of freedom of services applies merely to the removal of the requirements normally applicable to foreign organisations; it would thus be more correct to speak of the removal of discriminations against foreigners than of absolute freedom of services. This limiting of the basic concept is very important, especially in the field of insurance, because almost all member states of the EEC impose appreciable commercial restrictions upon the activities of their own domestic insurers or subject them to careful control and supervision (insurance

* Wohlfarth-Everling-Glaesner-Sprung "Die Europaische Wirtschaftsgemeinschaft Kommentar", Berlin and Frankfurt 1960, page 194

supervisory legislation); even according to the authoritative commentary on the Treaty of Rome, the domestic regulations remain unaffected by this Treaty*).

Article 60, para. 3, further specifies that the party providing the services can operate only temporarily in another member state, namely in the states in which the service is suppled or the recipient of the service resides. It is therefore laid down that with the introduction of freedom of services a foreign service enterprise can reside temporarily in the country of the receiver of the service in order to facilitate its provision. However, since it is also laid down that this is without prejudice to the provisions regarding freedom of establishment, it is made quite clear that freedom of services cannot be used to evade the requirements regarding freedom of establishment. We shall see that these provisions have a considerable bearing upon the practical application of freedom of services in insurance.

3.2. The requirements of the General Programme

It is planned to achieve freedom of services in a general way, and therefore also for insurance, by a gradual and somewhat involved procedure. Article 63, paras 1 and 2, of the Treaty of Rome provides that before the end of the first phase (31st December, 1961) the EEC Council must draw up a unanimously agreed General Programme for removal of restrictions. This programme must be based on proposals of the Committee and prepared in consultation with the Economics and Social Committee and the Parliament. The programme must set out the general requirements and the time-table for stage-by-stage implementation.

The relevant General Programme was ratified by the EEC Council on the 25th October, 1961; as regards insurance it is stipulated that freedom of services in non-Life business must be introduced by the 31st December, 1967 and in Life business by the 31st December, 1969.

It should be noted, however, that in direct insurance the introduction of freedom of services is dependent upon a number of pre-conditions, particularly

- the introduction of freedom of establishment
- harmonization of the texts of the special laws of insurance contract, inasmuch as divergent rulings on the legal relationship between insurer and insured within the Common Market could operate to the detriment of the insured, or of the injured third party, and
- simplification of the formalities with regard to mutual recognition and enforcement of court decisions in transactions between the member states of the Community (the so-called "Exequatur").

* Wohlfarth-Everling-Glaesner-Sprung loc.cit, page 193

It will be shown that the fulfilment of these pre-conditions is a severe obstacle to the achievement of freedom of services in insurance and that extremely important problems still remain to be solved. Moreover the insurers of EEC countries have regarded it as very regrettable that the pre-conditions do not require some harmonization with regard to the taxibility of premiums. Indeed it is difficult to see how the insurers of the various lands can become more widely competitive under a system of freedom of services without there being some injustice if the extremely differential taxation of premium payments from country to country continues as it exists to-day. For example, the premium tax on Fire policies in the Federal Republic of Germany is 5%, whereas in France it is 30%.

3.3. The probable tenor of future guiding principles for freedom of services

3.3.1. The legal and practical implications of freedom of services in the EEC will naturally depend on the guiding principles which still have to be decreed. As regards this instrument of the activities, it should first be explained that according to Article 189 of the Treaty of Rome the Council and the Committee of the EEC may issue guiding principles in addition to rulings and decisions. For the member states, these guiding principles are binding as regards the aim to be achieved, but the member states remain free to decide the form and means by which they will achieve the established aim.

Unfortunately it is not possible to give a concrete indication as to how freedom of services will be treated in the forthcoming guiding principles, because these principles do not at present exist, even in draft form. One thing is certain, however, and that is that the insurance associations of the EEC countries some time ago began a quite intensive study, within the appropriate working group of the "Comite Europeen des Assurances (CEA)", of the problem of freedom of services in non-Life branches. In Life assurance this has barely been discussed however. General Management Number 3 of the EEC has also put this matter in hand. As documentation on the discussions and deliberations is meagre, one is forced here to build up a picture of the current situation and of opinions expressed from various quarters by reference to isolated and necessarily imprecise information and rumours.

3.3.2. As regards the substance of the EEC concept of freedom of services, there would seem to be two extreme and mutually exclusive propositions.

a. One the one hand it would appear that competent bodies of the EEC administration advocate the view, based on the wording of the Treaty of Rome, that the provisions of this Treaty as regards introducing freedom of services are valid for the insurance industry without any material reservations. According to the Treaty of Rome, any restrictions on the free supply of services are to be progressively abolished, with the aim of eventually achieving complete

equality of treatment for all residents of the EEC member states. In no case is it intended to make any appreciable differences between the individual sectors of the economy. On the other hand, the EEC authorities do admit that insurance presents a rather special situation inasmuch as the member states do not permit unlimited freedom of insurance operations for their own domestic organizations. Insurance is in fact subject to some form of licencing or admission requirements and to state supervision on a legal and financial plane. In the circumstances therefore, freedom of services in insurance does not necessarily mean unrestricted freedom, but perhaps refers rather to a very extensive co-ordination of the individual national rulings governing insurance operations.

A pointer to the eventual standpoint of the EEC on this problem may be a resolution taken by the EEC Council of Ministers at the time of passing the General Programme for implementation of freedom of services (see para. 3.2.) This resolution is worded to the effect that in insurance freedom of services must be reconciled with the interests of the insured and of the injured third party. However, the question is still completely open as to whether the Council of Ministers wishes to indicate that, in the interests of the insured and of the public, freedom of services should be interpreted as widely or, conversely, as narrowly as possible.

In any event, this would seem to indicate that the EEC Aministration itself does not yet have any clear conception as to the direction to be taken in the matter of freedom of services.

It should only be added that this resolution of the Council of Ministers of the EEC contains a reservation in favour of Luxembourg. In elaborating the guiding principles which are to be produced, the EEC Committee is instructed to give consideration to the special situation obtaining in that country (meaning, in fact, the compactness of the market and the close proximity of the foreign insurers in adjoining countries). Consequently, one should not anticipate the integral application of the forthcoming EEC rulings on freedom of services when applied to Luxembourg.

b. At the other end of the scale, the opinion has also been expressed in EEC insurance circles that there will no longer be any room and certainly no longer any need, for a specific provision for freedom of services in insurance if freedom of establishment for insurance concerns is eventually introduced. As we shall see later (cf. Section 3.7.), the EEC intends to allow an insurance concern resident in a member country the right of admission, i.e. the right to establish agencies and branch offices, in another EEC member country, provided that the conditions laid down by the EEC are fulfilled. (These conditions include the production of evidence of a margin of solvency.)

In view of the fact that extensive freedom of establishment is

envisaged for insurers by the removal of regulations discriminating against foreign insurance concerns of the EEC, the supporters of the proposition which was first mentioned and which essentially rejected freedom of services, have made the following observations:

- If an insurer wishes to conclude insurance contracts in some other country than that of his domicile, he will need a permanent organization to handle these contracts and , in particular, to advise the policyholder and to settle the relevant insurance claims. This means that he must become established in that country, bearing in mind the provisions regarding freedom of establishment.

- In view of the substantial differences of a legal, economic and financial nature which will persist even in the insurance markets of the EEC, an insurer can only operate in a given insurance market with success and to the satisfaction of his customers if he possesses an establishment enabling him to acquire the necessary information and special market knowledge.

- In the interests of the policyholder and of the injured third party, it must be required that compensation claims for insurance losses should in every case enjoy the protection of the national law and be subject to the supervision of the national government. The country cannot permit that, by taking out insurance abroad, policyholders become exposed to risks which they themselves are unable to appreciate upon conclusion of the contract.

From these observations it is concluded that purely temporary insurance activities in another country are out of the question. Therefore, it is felt that no specific freedom of services, in addition to freedom of establishment, can or should be implemented, at least not until the insurance supervisory legislation and a large number of other legal factors have been largely co-ordinated within the EEC.

Certainly nobody would wish to assert that these arguments are unfounded, from the standpoint of the insurance industry. On the other hand, it must be said that the views just expressed are chiefly based on national considerations and tend away from the idea of a supranational insurance market. In fact, the tendency is to regard the policyholder in a paternal way as a person in need of protection, someone who must be protected in his own interests from hasty and unwise decisions. An additional argument for this way of thinking is the recognized fact that it is difficult for the man in the street to obtain a clear picture of the market facilities and conditions.

c. The discussion which is under way in various circles inside and outside the EEC ranges between these two above-mentioned extremes.

Although this discussion is really only just developing and so far has only reached the initial stage of being tabled for preliminary discussion (Conference of the Six Supervisory Offices of the EEC, Common Market Working Group of the CEA, and Special Working Group of the relevant General Management III of the EEC), appearances are that the majority of the persons involved in these deliberations will probably be inclined towards a solution along the following lines (at the same time it cannot be over-emphasized that the following is merely an attempted synthesis of the situation given with every reservation in view of the lack of original documents and the fact that at present the situation is still completely fluid):

c. 1) It must first be stated that, according to the EEC doctrine itself (preamble to the General Programme of freedom of services), a service may be given by the supplier of the receiver of the service making a physical change of his customary location, or also without the need of a change in location. Consequently, services between nationals of different EEC member countries may take three forms:

- The supplier of the service may make a physical move towards the receiver of the service.
- The receiver of the service may make a physical move towards the supplier.
- Neither the supplier nor the receiver may make any physical change of location of their customary operations.

c. 2) There seems to be an increasing tendency to permit the party insuring to make the physical move towards conclusion of an insurance contract with an insurer resident in another EEC member country. However, this freedom would only be allowed to the insuring party if

- his decision is reached without the intermediary of an agent or broker, and if
- the risks involved are not risks for which insurance is statutorily prescribed (compulsory insurance lines).

It is an open question whether freedom of services with the above limitations would have any great practical value or not. Individual persons, householders, etc., would certainly seldom (except perhaps in frontier area) be in a position to, or hit upon, the idea of seeking out insurers in another EEC member country merely for the purpose of taking out an insurance policy, but it is conceivable that business enterprises would make more frequent use of this possibility. In any case, there is still the fact that it would be practically impossible to determine whether, say, a travel insurance had been taken out with or without the intermediary of an insurance agent or broker. On the other hand, it is only fair to mention that freedom of insurance services

even to this extent would be a step forward from the present legal situation in various EEC member countries. In these countries it is currently a principle, subject to the relevant provisions of the OECD (see Para. 2), to prohibit the taking out of insurance abroad.

c. 3) For the EEC the great source of difficulty from the legal aspect arises from the insurance services which might be provided through a physical change of location of the insurer or without any such change of location.

As regards the insurance associations of the EEC countries, at least, there seems to be a leaning towards the following basic attitude:

- Even in the field of insurance, the concept of freedom of services must at least have some substantial basis.
- Freedom of services in insurance is only acceptable on the proviso that the existing national system of insurance supervision of the EEC member country is not thereby undermined or robbed of its purpose and effectiveness.
- Freedom of establishment and freedom of services are not permissible in combination, i.e. an insurance concern which has established a branch in a particular EEC member country (on the strength of its official admission and with the benefit of freedom of establishment for a particular line of insurance) would no longer have the right to take advantage of the introduction of freedom of services for this line of business by simultaneously concluding insurances for its head office with the nationals of the other EEC member country in question.
- The interests of policyholders and of injured third parties must be safeguarded.
- With regard to insurance contracts whose conclusion is legally prescribed in a particular EEC country, insurers resident in other EEC countires may not take advantage of the freedom of services. This restriction is based on Articles 55 and 66 of the Treaty of Rome, which exempts from the provisions of freedom of establishment and freedom of services any activities or operations which are connected with the exercise of public authority.

c. 4) On the basis of these considerations, the partial achievement of freedom of services would perhaps be possible rather along the following lines:

- The insurance enterprises domiciled in the EEC could conclude and administer insurance contracts with policyholders resident in other EEC countries, provided this was by way of a temporary activity, without being required to establish an agency or branch for this purpose. A temporary activity is one which

may be considered as sporadic and occasional; any systematic canvassing of a wide cross-section of the public is therefore precluded.

- EEC insurance companies permitted to operate in other EEC countries in certain lines of insurance, and therefore having established a branch there, could not take advantage of the freedom of services in that particular EEC country and for the particular lines of business for which the branch was established.

- EEC insurance companies wishing to take advantage of freedom of services as defined above in a particular EEC country would have to notify the insurance supervisory authority in the country in question and make certain particulars of their business operations available to this authority. They would also have to keep a record of the policies concluded in that particular EEC country with the benefit of freedom of services and submit to certain controls by the above-mentioned, competent insurance supervisory authority. This would thus represent a freedom of services which called for a form of authorization or admission formality and which would also involve a certain measure of (simplified) supervision by the authority of the country of residence of the policyholders concerned ("petit agrement"). It should be added that any such occasional business operations by an insurance concern in another EEC country would have to be entirely controlled from the head office; on the other hand, the appointment of special authorized representatives in the EEC country in question, or the opening of advisory and enquiry offices or of claims adjustment agencies, would fall under the heading of freedom of establishment, i.e. it would require proper admission and licensing.

c. 5) Further, the question still looms as large as ever whether it should be permitted for a contract of insurance to be concluded between a policyholder of one country and an insurer of another without any physical change of location by one or the other party. Such insurance contracts are usually termed "correspondence insurances", as they are contracted exclusively by way of correspondence. Where such cases arise, it is reasonable to assume that the requirement would be imposed that the conclusion of the contract should occur without the intervention of an independent agent or broker and without active canvassing on the part of the insurer, the proviso also being made that the business in question was not a compulsory line of insurance.

c. 6) From the viewpoint of the insured, the coverage of risks with an insurer not admitted to the insured's country of residence might be particularly interesting if the insured had branches abroad.

For a number of reasons the insurance proposer in such cases often wishes to cover the risks to which his business is exposed with the same insurer and at the same conditions, regardless of the country in which the subject-matter of insurance is situated. Freedom of services permitting such comprehensive covers would also be considered as an interesting business proposition for the insurance industry.

3.4. Pre-conditions for freedom of services

3.4.1. In paragraph 3.2. we have referred to the fact that the introduction of freedom of services is dependent upon certain pre-conditions being fulfilled. We shall confine ourselves here to stating that the fulfilment of these pre-conditions presents very difficult problems and will undoubtedly take a considerable time.

Working groups of both the EEC and the CEA have for some time past been studying the question of how the special rules governing the contract of insurance for member countries will have to be co-ordinated in order to avoid prejudicing the interests of the policyholders or the injured third parties of particular member countries. We must decline to enter into details of the interesting problems of insurance contract law which have been on the agenda for discussion by the competent bodies and which have already led to searching discussions and analyses. On the other hand, it should be mentioned that, in the event of the United Kingdom joining the EEC, particular problems would arise because to our knowledge this country has no special law of insurance contract, except for Ocean Marine insurance and for industrial Life assurance. Thus, even in this sector there will be the difficult task of finding some means of reconciliation between the English common law and the codified legal system on the European Continent.

3.4.2. Moreover, the relevant General Programme has called for simplification with regard to the mutual recognition and enforcement of court decisions in dealings between the EEC member countries. This has been considered a prerequirement for the implementation of freedom of services. It is understandable, after all, because the insured, who is - permissibly - covering his risks with an insurer resident in another EEC country, should not have to contend with insuperable difficulties of a formal and procedural nature in legally establishing his claim. Of course, this is a problem which applied not merely to contractual relations in insurance but in a completely general way. There will undoubtedly be some difficulties in achieving this aim and to our knowledge these problems have, as yet, hardly been touched upon in the EEC.

3.5. Freedom of services of the independent insurance intermediary

3.5.1. At this point it is appropriate to point out that the requirements contained in the Treaty of Rome with regard to freedom of establishment and freedom of services also apply unreservedly to independent insurance intermediaries (brokers). Of course, it is not necessary

to have special provisions for the salaried agents, as these are merely members of an insurance concern and thus their activities must be governed by the requirements applicable to insurance concerns.

The General Programme (cf. Para. 3.2.) provided for the introduction of freedom of services for independent intermediaries at the same time as that for insurance companies writing non-Life business, i.e. by the 31st December, 1967. As regards the problem of brokers, the speaker is only aware that this is being studied within the EEC and the CEA services and also the International Association of Insurance Brokers (B.I.P.A.R.). That the Organization of Brokers and General Agents should wish to achieve the widest possible freedom of establishment and services for independent intermediaries is, of course, just as understandable as the fact that the insurers, on the other hand, adopt a very reserved approach to this question. As this controversy is still at its height and the speaker is not fully acquainted with all the details, let us confine ourselves here to two observations:

- It should be noted that, formally, the provisions of the Treaty of Rome with regard to the introduction of freedom of services only allow an independent intermediary resident in the EEC to operate in another EEC country on a temporary basis and even then only subject to the requirements imposed on domestic concerns in that country. Moreover, this must represent the export of a service to another EEC country. Such an export is considered to take place when an independent intermediary resident in Country A arranges the conclusion of an insurance contract between an insuring party resident in Country B and an insurer also resident in Country B (or in Country C). However, if the intermediary resident in Country A establishes contact between an insurance concern in Country A and an insurance concern in Country B, then the provisions of freedom of services with regard to insurance concerns will apply, i.e. for such an operation the intermediary in question can only claim the freedom of services which is available also to the insurer of Country A with regard to his activities in Country B (The CEA and the B.I.P.A.R. seem to be agreed on this principle).

- The competent bodies of the B.I.P.A.R. are of the opinion that independent intermediaries should also be allowed a wide freedom of services. At the same time, in order to promote the quality and reliability of these services, they would like to introduce a set of professional regulations for intermediaries by setting EEC requirements applicable to all EEC member countries. Such professional regulations, which already exist to a certain, limited extent in France, Belgium and the Netherlands, would require the conduct of the profession of broker to be subject to official authorisation and approval which could only be obtained

by the fulfilment of certain conditions regarding personal circumstances and training. Moreover, the independent intermediaries should be given quite extensive rights in regard to the insurance business supplied through them and the insurance concerns themselves should not be permitted to employ occasional, part-time agents in addition to their full-time agents.

The opposition of the insurance associations of the six EEC countries to the idea of strict professional regulations for the entire EEC region is evidently very strong, by and large. In fact it is further strengthened by the view taken by the EEC Parliament during the discussion of the General Programme for introduction of freedom of services that such professional regulations are unnecessary. This view has been supported by the EEC Committee, at least for the time being and without prejudice to the final solution.

3.6. The danger of distortion of competition

This discussion as to what form freedom of services will take in the field of insurance cannot conclude without reference to the great importance which the Treaty of Rome attaches to the creation not only of a Common Market but also of equal or similar starting conditions for all Market participants. According to Article 101 of the Treaty of Rome, the EEC Commission must take remedial measures if it finds that differing legal and administrative requirements in the individual member countries tend to distort the conditions of competition on the Common Market. Such measures could take the form of negotiations with the Governments concerned or the issue of guiding principles.

Although Article 101 has made no specific reference to the insurance industry, and although the Treaty of Rome does not expressly prescribe the creation of a "Common Insurance Market", it is reasonable to assume that measures to counteract distortions of competition through differing legal requirements in the member countries must be taken by the EEC Commission in any and all of the sectors of activity affected (Commentary by Wohlfahrt-Everling-Glaesner-Sprung, p.305).

3.7. The provisions of the EEC with regard to freedom of establishment

Although freedom of establishment is not the main theme of this discussion, the achievement of this "freedom" is one of the pre-requisites for introduction of freedom of services within the EEC (cf. para. 3.2.). Brief reference must therefore be made to the fact that agencies and branches can only be set up by foreign insurance companies in EEC countries if specific official permission has been granted. Moreover the insurance companies

operating in the EEC are required, both at the time of admission and also in the later course of operations, to produce various items of evidence of their acceptability and to submit to State supervision on a legal and financial basis. One very important item which must be evidenced is a margin of solvency, i.e. a minimum level of capital and free reserves which is in principle related to the volume of business but at the same time involves certain absolute minima. It has not yet been conclusively decided whether the requirements as to minimum capital and free reserves apply to all insurance companies resident in the EEC or only to those concerns which operate abroad, i.e. in other EEC member countries (compagnies "a vocation europeenne").

3.8. The effects of the EEC freedom of services on the insurers of "outside" countries

The foregoing reserves have concerned the freedom of services to be introduced in the EEC exclusively from the viewpoint of insurers and insured resident in that region. In view of the large number of insurance companies of "outside" countries which have maintained agencies and branches in the six EEC member countries for many decades in some cases, the question arises whether and to what extent any freedom of services introduced within the EEC could or should be extended to the agencies and branches of "outside" companies.

Article 59, para. 1, of the Treaty of Rome specifically states - quite naturally - that the progressive abolition of restrictions on the supply of services only applies to nationals of the EEC member countries who are resident in one of these countries. However, para. 2 of the same Article adds that the EEC Council can, by unanimous decisions and upon the proposal of the Commission, apply the provisions regarding freedom of services also to those suppliers which are nationals of "outside" countries but resident within the Community. Where the EEC Council of Ministers so resolves, the agencies and branches established in an EEC member country by "outside" insurance companies may take advantage of the provisions for freedom of services. This, however, prompts the question whether such an extension is desirable or even necessary.

It is felt that the problem here is mainly one of psychology and business policy. Quite apart from the question of whether the introduction of freedom of services would offer the EEC insurers themselves substantial additional opportunities of business, there is the danger that the agencies and branches set up in an EEC country, by, say, British or Swiss insurers could be regarded as technically and financially unequal to the domestic competitors. This might be so if the domestic companies of the EEC countries in question were allowed, to some extent, to offer insurance coverage even beyond the frontiers of their country,

whereas this opportunity was not given to the overseas representatives in the EEC of "outside" countries. It is felt that such a discrimination against the branches or agencies representing non-EEC companies should be avoided, even allowing for the fact that it might perhaps only be a slight, moral discrimination. Quite apart from this, it is in the interests of the insuring public that the suppliers of services in one and the same domestic market should not have different rights.

All enquiries concerning the British Insurance Law Association should be addressed to the Honorary Secretary, 21, Aldermanbury, London, E.C.2.