



Master of European Affairs Programme

Ekaterine Egutia

**EC LEGAL REGULATION OF THE INSURANCE MARKET; CHALLENGES OF
INTEGRATION**

Master Thesis

10 points

Supervisors: Henrik Norinder and Lars Carlman

European Business Law and Business Administration

Spring 2006

TABLE OF CONTENTS

ABSTRACT	1
1. INTRODUCTION.....	2
1.1. PURPOSE	3
1.2. RESEARCH METHOD AND LIMITATIONS	3
1.3. DEFINITION OF INSURANCE	4
PART 1: LEGAL ANALYSIS.....	7
2. COMMUNITY LEGISLATION	7
2.1. NON-LIFE INSURANCE	7
2.2. LIFE INSURANCE	9
2.3. RELEVANT CASE-LAW	11
2.3.1. <i>Competition</i>	12
2.3.2. <i>Taxation and VAT</i>	14
2.3.3. <i>Insurance and Other Commercial Activities</i>	16
2.3.4. <i>Member State Failure to Comply with the Treaty Freedoms and Insurance Directives</i>	17
3. IDENTIFIED PROBLEMS OF THE “SINGLE INSURANCE MARKET” AND THE COMMISSION ACTION PLAN	20
3.1. CONSUMER PROTECTION ON INTERNAL MARKET	22
3.2. COMMISSION FINANCIAL SERVICES POLICY (2005-2010).....	24
3.2.1. <i>Commission Green Paper</i>	24
3.2.2. <i>Commission White Paper</i>	25
4. RECENT LEGISLATIVE INITIATIVES AND SUGGESTED FRAMEWORK	26
4.1. SCHEME FOR ACCOMPLISHMENT OF THE SINGLE INSURANCE MARKET; ‘26 TH REGIME’	27
5. SUMMARY	30
PART 2: BUSINESS ANALYSIS	31
6. THE INSURANCE MARKET OVERVIEW (EUROPEAN FOCUS).....	31
7. PORTER’S DIAMOND OF NATIONAL ADVANTAGE; CASE OF THE EU INSURANCE	35
8. MARKETING INSURANCE OFFERINGS	37
8.1. MARKETING COMMUNICATIONS MIX FOR INSURANCE PRODUCTS	39
8.2. FACE-TO-FACE OR DIRECT MARKETING; CUSTOMER PREFERENCES	40
9. OBSTACLES TO CROSS-BORDER MERGERS AND ACQUISITIONS	42
10. RESULTS OF QUESTIONNAIRES.....	45
CONCLUSION.....	48
BIBLIOGRAPHY	50

List of Figures and Tables

Figure 1. Europe Insurance Market Value.....	32
Figure 2. Europe Insurance Market Segmentation.....	32
Figure 3. Number of Companies in 2004.....	33
Table 1. Face-to-face v. Direct Marketing: household survey.....	40
Table 2. Summary of the EC Insurance Market Barriers.....	49

Abbreviations

CEA	Comité Européen des Assurances
EC	European Community
ECJ	European Court of Justice
ECOFIN	European Council of Ministers for Economic Affairs and Finance
EEC	European Economic Community
EU	European Union
M&A	Mergers and Acquisitions

Abstract

Over the last decade, the insurance market has undergone a stable growth in turnover and growing demand for insurance products in all Member States of the European Union.¹ Therefore, the creation of a single market in insurance will enable consumers to have access to wider choices of insurance products, and insurance companies will gain access to markets in various Member States and compete effectively.

The EU legal framework for the insurance industry embraces the Treaty² freedoms of services, establishment and capital, the EC Directives and the ECJ case-law. The present thesis identifies numerous factors that hinder the Community insurance market integration and offers possible remedies. Barriers of legal and attitudinal nature impede the creation of the genuine single European insurance market. Some of these can be solved at the level of private insurance market players and others are under the competence of the EC legislature. This thesis supports the legal initiatives assumed by the Commission. The research also presents the overview of the European insurance industry and offers relevant marketing tools to the insurers willing to expand their activities on the Community market. The summary of the market obstacles is all-inclusive and reflects the responses to the questionnaires and the Commission surveys.

Current welfare state trends in most of the Member States, namely increasing healthcare costs, declining birth rates and aging population, as well as unfavourable employment rates may lead to the situation whereby the state statutory insurance systems cannot afford to fully subsidise the social benefits for the entire population. This explains the significance of the proper functioning of the European Community private insurance market. The EU legislative activities in the financial services sector are aimed to alleviate some of the serious challenges related to the market integration process.

¹ See <http://europa.eu.int/scadplus/leg/en/lvb/l24021.htm>

² Consolidated Version of the Treaty Establishing the European Community, OJEC 2002 C 325 p. 33-184.

1. Introduction

This thesis concentrates on legislative and business dimensions of the insurance market in the European Union, identifies common arrangements and regulation in this field, and examines the challenges of the creation of the single market in insurance. Treaty freedoms of establishment and of movement of services and capital are the key dimensions in the analysis of the insurance market integration. Taking into account that the sphere of insurance is very wide and diverse, this research focuses on the private insurance market and excludes state social security arrangements from the scope of analysis. Moreover, the study recognizes general problems associated with the single market in financial services and argues in favour of the benefits of such integration. The Community action plan for the financial services industry is analysed in detail as a possible scheme to overcome difficulties of the integration process.

Insurance is generally understood to be an arrangement of risk distribution and transfer. Due to the fact, that insurance supports most social and business activities, this field is regulated comprehensively throughout the world. Objectives of insurance regulation are mainly as follows: to avoid overreaching by insurers (e.g. marketing practices), to assure equitable rating classification or rate regulation (to ensure that premium charges are equitable for the individual purchasers; a fair return for the risks undertaken), and to guarantee solvency. Forms of insurance organisations, maintenance of secure financial status and policy forms adopted by various types of insurance providers constitute areas of insurance regulation. In addition, insurance undertakings are subject to licensing provisions.³

Legal regulation of insurance on the Community level mainly takes the form of harmonising Directives. The So-called ‘three generations’ of Directives were adopted over the past few decades to achieve a single market for the insurance industry: 1) right of establishment (1973, 1979); 2) freedom to provide insurance by way of services (1978, 1988, 1990); and 3) the above two principles converted into single market (1992), which introduced Single European License.⁴ Community legislature addressed life assurance and non-life insurance spheres separately.

³ Keeton, R. E. and Widiss, A. I., *Insurance law: a guide to fundamental principles, legal doctrines, and commercial practices*, Student Edition, St. Paul, Minn. West, cop. 1988, 4th reprint 2001, pp. 938-940.

⁴ Merkinand, Robert and Rodger, Angus, *EC Insurance Law*, European Law Series 1997, p. 3.

1.1. Purpose

This research identifies challenges of the European Community insurance market integration and presents some of the solutions to the observed problems. The results of the questionnaires as well as the outcome of the Commission public consultations clearly reflect the problems encountered by the European insurance market players. Prevailing market obstacles are of legal and attitudinal/cultural nature. This thesis analyses the legal landscape for the EU insurance market and illustrates current legislative steps that need to be taken in order to eliminate some of the market integration barriers. Business part of the research on the other hand presents the industry overview and offers some of the marketing tactics to the European companies willing to enter the Member State insurance markets.

1.2. Research Method and Limitations

This thesis analyses statutory law and case law to explain the problems of EC insurance integration. Statutes are often supplemented by case law because the former cannot possibly cover every situation that may arise. Sometimes, statutes reflect the definitions and principles of the common law,⁵ which is also the case with the EC Directives replicating some of the doctrine established by ECJ rulings. The existence of judicial precedent is in principle applicable to the European Court of Justice, as the Court usually follows its previous decisions, although this practice is not binding.⁶

Current legal study of the EU insurance market mainly employs secondary sources of EC law – Directives, and the ECJ case-law as the basis for its analysis. These in its turn are based on the Treaty freedoms on services and establishment (primary sources of EC law).

The business part of this thesis offers a general analysis of the insurance sector of the economy. The research is supported by a combination of results from interviews (questionnaires) and an examination of secondary data. Respondents of the open-ended questionnaires are the major insurance players (particularly, company management) of the EU market. Secondary literature sources utilized in this

⁵ Strong, S.I., *How to Write Law Essays and Exams*, Oxford University Press 2003, Ch. 2, p. 18.

⁶ McLeod, I., *Legal Method*, 2nd Edition, Macmillan Law Masters, 1996, p. 212.

study include periodicals and academic text-books. Primary literature sources such as market research reports are used to illustrate the characteristics and structure of the single European insurance market.⁷ With regard to mergers and acquisitions, the business analysis merely describes the obstacles to the cross-border consolidation from the point of view of market players; EC law governing the M&As is therefore beyond the scope of this research.

Questionnaires were distributed via Email to the major European insurance market players, who were asked to highlight the role of the EC legal framework for their business and problems they encountered during market entry within the Community. More than half of the target companies cooperated and provided valuable responses for the present research.

The present research is limited to analysis of the private insurance sector and highlights more general implications brought about by the common market. The state social security organisation of Member States is therefore excluded from the analysis. The focus is on human insurance rather than the insurance of goods, excluding for example European motor-vehicle insurance from the scope of this thesis. The areas of insurance are diverse and vary in terms of insurance products, consumers and risks involved. Therefore, this thesis does not attempt to conduct an in-depth assessment of each insurance sector (health, pension, annuity, etc.). The aim of this research is to offer a broad understanding of the EC insurance market integration process and identify challenges related to this endeavour. This thesis emphasizes possible solutions to the current problems of the single insurance market and argues in favour of the Commission's financial services action plan for next five years.

1.3. Definition of Insurance

Insurance is described as an arrangement for transferring and distributing risks. "Insurance transfers risk from individuals to a larger group that is better able to pay individual losses from a pool of money collected from all members of the group."⁸ Insurers aim to pool their large number of risks so that the theory of risk distribution holds adequately. "An insurance contract generally involves an agreement by which one party is committed to do something which is of value for another party upon the occurrence

⁷ The categorization of business research sources and data is based on Saunders, M., Lewis, P., and Thornhill, A., *Research Methods for Business Students*, 3rd Edition, Prentice Hall 2003, Ch. 3.

⁸ <http://www.small-business-dictionary.org/default.asp?term=INSURANCE>

of some specified contingency.”⁹ In exchange for the premium, the policy holder obtains a degree of certainty for the unique situation that might occur in the future.

The most common elements of insurance regulation throughout the world are as follows:

- a) The administrative authorization of persons wishing to carry on the insurance activity;
- b) Regulation of the solvency of insurers;
- c) Post-authorization supervision of insurers;
- d) Material control of insurers (i.e. approval of policy terms and premium levels).¹⁰

The Community legislature, however, consequently moved the focus of regulation from material (control type of business and level of premiums) to financial control; the latter ensures the solvency of the insurer.¹¹

According to the US system, life insurance is usually understood as a contract to make a specific payment upon death of the person whose life is insured. Life insurance includes personal accident and health insurance, as well as annuity contracts.¹² An annuity contract insures against the economic problems resulting from a long life, rather than an early death; it provides for a payment of a fixed yearly amount (or with greater frequency) beginning at a specified date.¹³ With a health insurance policy the insured is indemnified for all losses resulting from illness or injury, whereas disability insurance offers coverage for lost wages resulting from illness or injury, containing general and occupational types of disability.¹⁴ Under Community laws, life and non-life insurance are treated separately. It is noteworthy that unlike the system described in the US literature, EC law regulates accident and sickness areas by means of non-life insurance directives.

⁹ Keeton, R. E. and Widiss, A. I., *Insurance law: a guide to fundamental principles, legal doctrines, and commercial practices*, Student Edition, St. Paul, Minn. West, cop. 1988, 4th reprint 2001, p.4

¹⁰ Merkinand, Robert and Rodger, Angus, *EC Insurance Law*, European Law Series 1997, p.2.

¹¹ Mossialos, E. and Thomson S. M. S., “Voluntary Health Insurance in the European Union: A Critical Assessment”, Baywood Publishing Co., Inc. 2002, *International Journal of Health Services*, Volume 32, No. 1, pp. 39-40.

¹² Keeton, R. E. and Widiss, A. I., *Insurance law: a guide to fundamental principles, legal doctrines, and commercial practices*, Student Edition, St. Paul, Minn. West, cop. 1988, 4th reprint 2001, p. 21.

¹³ Dobbyn, John F., *Insurance Law in a Nutshell*, Fourth Edition, 2003, pp. 7, 24.

¹⁴ *Ibid.*, pp. 35, 42.

EC Legal Regulation of the Insurance Market; Challenges of Integration

Reinsurance allows an insurer to secure adequate risk distribution by transferring part of the risk to other insurer(s); it usually takes place if an insurer is unable to sell enough policies to pool a sufficient number of policyholders. Thus, the insurer collaborates with another insurer to reinsure part of the risk undertaken.¹⁵ This field was initially regulated by the Community legislature in 1964.¹⁶

The ECJ, following the Advocate General's opinion, clarified the essentials of insurance transaction "... the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded."¹⁷

Loss-prevention measures known as the 'bonus-malus system' is widely utilised by insurance companies all over the world, including those in the European Union. The ECJ has ruled that the bonus-malus practice is compatible with the Community legislation; the Court declared lawful the bonus-malus systems established in France and Luxembourg for motor-vehicle insurance contracts.¹⁸ The principle of the bonus-malus system is as follows: policyholders are assigned to merit classes, with potential annual movement to other allocated classes, conditioned by the number of accident claims brought over the previous year. Rate of premiums are increased or reduced, depending on the assigned merit category.

¹⁵ Keeton, R. E. and Widiss, A. I., *Insurance law: a guide to fundamental principles, legal doctrines, and commercial practices*, Student Edition, St. Paul, Minn. West, cop. 1988, 4th reprint 2001, p. 13.

¹⁶ Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession.

¹⁷ C-349/96 Card Protection Plan Ltd (CPP) v. Commissioners of Customs & Excise [1999] ECR I-973 para. 17.

¹⁸ C-347/02 Commission v. French Republic [2004] ECR-0000 and C-346/02 Commission v. Luxembourg [2004] ECR-0000.

Part 1: Legal Analysis

2. Community Legislation¹⁹

The Treaty freedoms of services and establishment are the basis for insurance market regulation at the EC level. Particularly, Articles 47(2) and 55 (ex. 57(2) and 66) mandate the Community legislature to adopt legal acts in the sphere of free movement of services and freedom of establishment, subject to the procedure determined by Article 251 of the Treaty.

The regulation of the EC insurance market mainly takes the form of the three generations of harmonizing Directives. The first and second array of Directives regulates the right of establishment and freedom to provide insurance by way of services, respectively. The third generation of Directives combine the above two principles into a single market dimension. Besides the non-life and life insurance framework directives, the Commission adopted the Insurance Companies Accounts Directive²⁰ in 1991, amended in 2003. Below the historical sequence of the Community acts in the field of insurance will be further discussed.

2.1. Non-life Insurance

The Reinsurance and Retrocession Directive 64/225/EEC was adopted in 1964. At present reinsurance is governed by Directive 2005/68/EC,²¹ which is due to be transposed into national legal systems by 10 December 2007.

In the field of non-life insurance, the Council adopted Directive 73/239/EEC²² in 1973 setting up the legal framework for exercising the freedom of establishment in the Community with respect to direct non-life insurance. The Community legislature explicitly addressed fields other than life insurance in

¹⁹ Information based on Commission internal market website:

http://europa.eu.int/comm/internal_market/insurance/index_en.htm

²⁰ Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings.

²¹ Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.

²² First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.

EC Legal Regulation of the Insurance Market; Challenges of Integration

the Annex: accident, sickness, land, vehicle, property damage, credit suretyship, miscellaneous financial loss, third party liability, aircraft, ships, railway, etc. Article 2(1)(d) states that the Directive does not apply to “insurance forming part of a statutory system of social security” of the Member states. The non-life insurance establishment Directive 73/240/EEC was adopted the same time.²³

- Other Directives auxiliary to the initial stage of non-life insurance market integration were adopted gradually: The ECU Directive 76/580/EEC, The Insurance Agents and Brokers Directive 79/92/EEC, The Co-Insurance Directive 78/473/EEC, The Tourist Assistance Directive 84/641/EEC, The Credit Insurance and Suretyship Insurance Directive 87/343/EEC, and The Legal Expenses Insurance Directive 87/344/EEC.²⁴

Directive 88/357/EEC provides necessary arrangements to guarantee the exercise of freedom to provide non-life insurance services within the Community. This Directive covers all non-life insurance, including compulsory insurance. The important development here is to allow the insurer, without establishing itself, to provide services from another Member State.²⁵

The Third Non-life Co-ordination Directive 92/49/EEC²⁶ removed the distinction between large and mass risks, stipulating home state control to all insurers (subject to authorisation of competent home country authorities). The financial supervision of the insurance undertaking is to be carried out solely by the home state, although host state authorities have the right to participate in the supervision of a branch of the undertaking. When setting up a secondary establishment, an undertaking is required to notify the competent authorities of the home state about the details of the intended establishment. The information must be then communicated to the host state authorities.

The Directive also binds Member States to gradually abolish monopolies in certain areas of insurance. In terms of control of the ownership of insurance companies the home state is obliged to set up a

²³ Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance.

²⁴ Maitland-Walker, J., *EC Insurance Directives*, Lloyd's of London Press, 1992-2001, Ch. 3.

²⁵ Following the judgments of 33/74 Van Binsbergen [1974] ECR 1299 and 205/84 Commission v Germany [1986] ECR 3755; see subsequent analysis of case-law.

²⁶ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC.

EC Legal Regulation of the Insurance Market; Challenges of Integration

notification procedure whereby acquirers inform the competent authority about the intended purchase. In case the ownership change affects ‘prudent and sound management’ of the company, the Member State authority may exercise specific sanctions.

With regard to technical reserves, the home state may set asset requirements and solvency margins for the insurance undertaking, after which the company is entitled to conduct business throughout the Community without further conditionality. The list of assets included in the technical provisions is addressed in detail. Directive 91/674/EEC further stipulates asset evaluation rules. It sets standards and conditions for profit and loss accounts and balance sheets of the insurance undertakings.

Choice of law of the contract must not prejudice the rules related to public policy considerations (“general good” first defined by ECJ). Generally, the law of the state where the risk is located applies, unless the parties explicitly opt for another legal order.

In 1995, the Prudential Supervision Directive 95/26/EC²⁷ was adopted, amending several previous Community acts with the aim to enforce effective supervision and enhance collaboration between the Member States in terms of data exchange.

The recent amendments to the previously listed Directives includes: Directive 2005/68/EC²⁸ that introduced changes in Directives 73/239/EEC, 92/49/EEC, 98/78/EC and 2002/83/EC.

2.2. Life Insurance

In 1979 the Council adopted the first coordinating Directive on direct life assurance (Directive 79/267/EEC repealed by Directive 2002/83/EC), regulating the exercise of the right of establishment with respect to direct life assurance activities. The aim of the second coordinating Directive on life

²⁷ European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non- life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision.

²⁸ Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC

EC Legal Regulation of the Insurance Market; Challenges of Integration

assurance (Directive 90/619/EEC, also repealed by Directive 2002/83/EC) is to regulate the exercise of the right to supply life assurance services.

The EC Life Assurance Directive 92/96/EEC²⁹ (third generation) was implemented in July 1994. Third generation acts aim to achieve the internal market in the insurance sector for individual consumers in the area of mass-risks.³⁰ The introduction of the Single European License is related to home country authority control, whereby single licenses granted to the undertakings are valid throughout the common market (the insurance firm is solely under supervision of home state). However, principle of “general good” allows the Member States to impose certain standards on foreign insurance providers. In this regard, the case-law of the ECJ is noteworthy; in 1986 the Court ruled that a Member State may impose certain requirements on foreign insurers, if this falls within the scope of ‘public interest’.³¹ The concept of “general good” proved to be confusing; therefore the European Commission adopted guidelines to clarify the ambiguities.³²

The third generation of Directives allows companies to establish a branch or an agency anywhere in the European Union (freedom of establishment), sell their products throughout the Union (freedom to provide services) and compete on price, products and services.³³ As for the approval of premium rates offered by insurers, the principle of freedom to set rates is established by the Directive 92/49/EEC. It prohibits Member States from requiring notification, prior approval or systematic disclosure of premium rates which an insurance undertaking intends to apply, or of increases in those rates which it intends to implement, in a Member State. The only derogation from this principle allowed by Directive 92/49/EEC concerns prior notification and approval of ‘increases in premium rates’ in the framework of ‘general price-control systems.’

²⁹ Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (the latter repealed by virtue of Directive 2002/83/EC).

³⁰ McGee, A. and Heusel, W., *The Law and Practice of Insurance in the Single European Market*, Trier Academy of European Law 1994, Volume 11, p. 5.

³¹ See subsequent analysis of the ECJ case-law.

³² European Commission, *Freedom to Provide Services and the General Good in the Insurance Sector*. Commission interpretive communication C (1999) 50-46, Brussels, February 2, 2000.

³³ Mossialos, E. and Thomson S. M. S., “Voluntary Health Insurance in the European Union: A Critical Assessment”, Baywood Publishing Co., Inc. 2002, *International Journal of Health Services*, Volume 32, No. 1, p. 40

In the area of consumer protection, Directive 2001/17/EC³⁴ is noteworthy. The Insurance sector was expressly excluded from the scope of Regulation No. 1346/2000.³⁵ This Directive was adopted to address the most important issues of consumer protection in case of insolvency or the winding-up of the insurance undertaking.

On 5 November 2002 the European Parliament and the Council adopted Recast Life Assurance Directive 2002/83/EC³⁶ consolidating all previously adopted insurance directives. By virtue of two recent Decisions (2004/6/EC and 2004/9/EC) the Committee of European Insurance and Occupational Pensions Supervisors and the European Insurance and Occupational Pensions Committee was set up (replacing Insurance Committee, Directive 91/675/EEC), consisting of the representatives of the Members States.

2.3. Relevant Case-law

This section will present some of the relevant case-law of the European Court of Justice relating to the insurance industry.³⁷ Community law does not extend to state social security arrangements. In the *Jose Garcia* case,³⁸ the national court referred questions for a preliminary ruling invoking Treaty freedoms and the Directives 73/239/EEC, 88/357/EEC and 92/49/EEC. The Court ruled that the EC Directives on insurance did not apply to state social security schemes of the Member States; instead it is under Member State's discretion to organise its own social security system based on the solidarity principle. A similar decision was delivered in number of other cases.³⁹ In cases where competition provisions were invoked⁴⁰ the ECJ, as was predicted, ruled that the Dutch II pillar/supplementary pension scheme (compulsory affiliation to a sectoral fund) was compatible with Articles 82 and 86 EC, because it dealt with the statutory insurance arrangement (collective agreement) covering a particular sector of the economy. Only in certain circumstances are EC Directives applicable to insurance forming part of a

³⁴ Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings.

³⁵ Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

³⁶ Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

³⁷ Excluding insurance of goods (e.g. motor vehicles).

³⁸ C-238/94 *José García and others v Mutuelle de Prévoyance Sociale d'Aquitaine and others* [1996] ECR I-1673.

³⁹ See joined cases C-159/91 and C-160/91 *Poucet and Pistre v Assurances Générales de France and Others* [1993] ECR I-637 and 238/82 *Duphar v Netherlands* [1984] ECR 523.

⁴⁰ See cases: *Albany* C-67/96, *Brentjens' Joined Cases C-115/97 to C-117/97*, *Drijvende Bokken* C-219/97 and *Van Der Woude* C-222/98.

statutory scheme of social security when *offered by insurance undertakings at their own risk*.⁴¹ As mentioned previously, analysis of mandatory state social security schemes of Member States is excluded from the scope of the present research.

The ECJ developed a principle of ‘general good’ in 1974, which sometimes serves as an impediment to the cross-border insurance operations. The situation whereby the Member States may rely on the general good when introducing national requirements for certain businesses or individuals was first addressed in *Van Binsbergen* case.⁴² However, in this case the Court did not uphold Member State’s discriminatory rules concerning the habitual residence of the professional. The ECJ defined the concept of general good, which may restrict the freedom to provide services: “*The freedom to provide services, as one of the fundamental principles of the Treaty, may be restricted only by provisions which are justified by the general good and which are applied to all persons or undertakings operating within the territory of the state in which the service is provided in so far as that interest is not safeguarded by the provisions to which the provider of a service is subject in the member state of his establishment.*”⁴³ This justification for a Member State’s restrictive measures creates major uncertainties for the firms operating on the common insurance market, as indicated by some of the respondents in the research questionnaire.

2.3.1. Competition

The ECJ case-law in the area of insurance competition is not very extensive, compared to other branches of the economy. An explanation for this could be the existence of the Block Exemption Regulation for the insurance companies, and the understanding of the Community legislature that this sector of the financial industry is very peculiar, involves social risks and calls for closer cooperation between undertakings in various fields of the insurance business. Therefore, in terms of competition, the insurance cases have seldom been brought to the attention of the European Court of Justice. However, insurance undertakings must be aware that since 1977 EC competition law does indeed apply to the insurance industry. In terms of abuse of dominant position, such cases in the insurance sector are hardly identifiable, “it is only really in very unusual situations that an insurer will ever have real

⁴¹ See C-206/98 *Commission v. Belgium* [2000] ECR I-3509 para. 44.

⁴² 33/74 *Van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299.

⁴³ *Ibid*, para. 4.

EC Legal Regulation of the Insurance Market; Challenges of Integration

opportunities to become dominant.”⁴⁴ The reason behind could be the existence of low entry barriers (e.g. capital requirements) and highly imitable insurance products/services.

In 1977 the ECJ applied Article 85 in the *Van Ameyde* case,⁴⁵ dealing with the incompatibility of Italian laws on the national insurance bureaux and insurance of motor vehicles.⁴⁶ Later on, in the *Fire Insurance* case,⁴⁷ (a recommendation concerning fire insurance premiums) the Court declared: “*The Community Competition system, as set out in particular in articles 85 and 86 of the EEC Treaty and in the provisions of Regulation No 17, applies without restriction to the insurance industry.*”⁴⁸ The collaboration between the insurance undertakings that aimed to increase the premium in the territory of one Member State (Germany) was nevertheless deemed to be anti-competitive, restricting trade within the Community.

The case concerned the recommendation of the association of fire insurance providers in Germany that aimed at a price increase on premiums charged by the members of the association. This case is important because: a) the scope of Community competition rules (ex Articles 85 and 86 EEC) was clarified and deemed applicable to the insurance industry; the express derogation provided for by the EEC Treaty applies to agricultural products only; b) even if the concerted practice (increase in premiums) was restricted to German territory, and was allowed by Bundeskartellamt (federal cartel office), it was still capable of restricting intra-Community competition, because decision affected foreign branches⁴⁹ as well (therefore affecting financial relations with the parent company established in another Member State); moreover, the position of foreign insurance providers was also affected and made it harder to penetrate German insurance market; c) although it was acknowledged that some industries carry very specific characteristics, and that cooperation between undertakings is necessary, the concerted practice at issue went beyond what was necessary to achieve service improvement objectives and aims to safeguard the profitability of this sector of economy; the disadvantages brought

⁴⁴ Fitzsimmons, A., *Insurance Competition Law; A handbook to the Competition Law of the European Union and the European Economic Area*, European Law Library, Graham & Trotman 1994, p. 31.

⁴⁵ 90/76 *Van Ameyde v. UCI* [1977] ECR 1091, paras. 18, 22.

⁴⁶ Fitzsimmons, A., *Insurance Competition Law; A handbook to the Competition Law of the European Union and the European Economic Area*, European Law Library, Graham & Trotman 1994, p. 7.

⁴⁷ 45/85 *Verband der Sachversicherer e.V. v. Commission* [1987] ECR 405.

⁴⁸ *Ibid*, para. 14.

⁴⁹ Para. 44 of the judgment defines the branch: “... branch must be regarded, from a competition point of view, merely as an extended arm of the foreign insurer”.

about by the co-ordinated conduct of insurance providers was greater than the sought advantages, therefore, it was judged as anti-competitive.

2.3.2. Taxation and VAT

Taxation has been referred to be one of the obstacles to cross-border service provision for insurance undertakings. The Court has ruled several times about the incompatibility of some of the Member States' legislation discriminating foreign private insurance companies with regards to tax exemptions. This issue was raised for example in the *Danner* case,⁵⁰ where Finnish legislation was deemed incompatible with EC provisions on free movement of services and capital. Similarly, in the *Skandia II* case⁵¹ on Swedish taxation, national tax law favouring occupational pension insurance policies purchased from domestic undertakings over the policies taken out with an insurer established in another Member State was deemed incompatible with Article 49 EC.

The *Card Protection Plan Ltd* case⁵² is noteworthy in relation to the definition of insurance transactions, and whether 'assistance' or intermediary services can be defined as insurance transaction for the purposes of applying exemptions under Sixth VAT Directive.⁵³ Indeed, the Court held that the Member States could not limit the VAT exemption benefits to actual insurers lawfully authorized to assume the risks; the Sixth VAT Directive and exemptions therefore are applied to lawful and unlawful transactions (insurance or reinsurance) in accordance with the fiscal neutrality principle. Paragraph 15 of the judgment states: "... it is settled case-law that the exemptions provided for by Article 13 of the Sixth Directive constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another." The company's (in this case CPP) operation holding the 'block insurance,' or a group insurance policy for its customers, though insurance itself was provided by a third party, was still deemed as equivalent to insurance transaction, eligible for a tax exemption.

⁵⁰ C-136/00 Rolf Dieter Danner [2002] ECR I-08147.

⁵¹ C-422/01 Försäkringsaktiebolaget Skandia (publ) and Ola Ramstedt v Riksskatteverket [2003] ECR I-06817.

⁵² C-349/96 Card Protection Plan Ltd (CPP) v. Commissioners of Customs & Excise [1999] ECR I-973.

⁵³ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment.

EC Legal Regulation of the Insurance Market; Challenges of Integration

Similar legal grounds were invoked in the case of *Skandia*,⁵⁴ concerning the Sixth VAT Directive exemption for insurance and reinsurance transactions. The commitment assumed by the undertaking at issue to run the operations of its 100% subsidiary (in this case Livförsäkringsaktiebolaget Skandia), in return for remuneration at market rates, was regarded to be a service provided for consideration within the meaning of Article 2(1) of the Sixth Directive and not an insurance transaction; therefore no VAT exemption was applicable. The subsidiary maintained the status of insurer and assumed the risks in their entirety. Skandia's plan to run its subsidiary, which continued to assume all liabilities, deemed not to constitute an insurance service, but merely activities of an administrative and management nature. In paragraph 13 the Court stated that "...the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person." The fact that the provisions of insurance directives stipulate that an insurance company must not undertake other commercial activities does not mean that these undertakings are only carrying out insurance transactions; they also undertake activities that arise from or relate to insurance operations. Paragraph 36 of the judgment clarified that "... the exemption provided for in Article 13B(a) covers insurance transactions in the strict sense." Unlike the case discussed above, where the CPP was regarded to have provided insurance services by holding 'block insurance' for its customers, the same reasoning was not applied to the *Skandia* case. The relationship between Skandia and the clients of its subsidiary would not be the same as in the CPP case; Skandia would not have assumed risks and liabilities related to Livförsäkringsaktiebolaget Skandia's policyholders. This case is important in a sense that an insurance transaction for the purposes of the VAT exemption was not construed broadly.

The latest case on this subject is the *Arthur Andersen & Co* case⁵⁵ concerning the scope of insurance transactions by brokers and agents and applicability of the VAT exemption under the EC directive. The preliminary ruling again dealt with the interpretation of Article 13B(a) of the Sixth Vat Directive. The company at issue was active in the life assurance business and was refused by The Netherlands authorities to grant the VAT exemption for their 'back office' operations. The collaboration between the ACMC company under the defendant undertaking and the life assurance company UL aimed at 'back office' activities, such as handling the insurance applications, amendments to contracts,

⁵⁴ C-240/99 *Försäkringsaktiebolaget Skandia* (publ) [2001] ECR I-01951.

⁵⁵ C-472/03 *Staatssecretaris van Financiën v Arthur Andersen & Co. Accountants c.s.* [2005] ECR 0000.

management of policies and claims, etc. Delegated activities were entrusted to the division of the ACMC sharing the premises with partner life assurance undertaking. Although the co-operation between the two companies was related to the joint management of insurance services, the question was which one of them assumed the risks for the purposes of granting the VAT exemption. Nevertheless, the ACMC seemed to take part in the cooperative activities as an insurance agent, which is also regulated by the EC provisions invoked in the case. The Court went on to assess whether the ACMC activities at issue corresponded to those of an insurance agent's. In paragraph 34 of the judgement the Court ruled that the activities undertaken by the company at issue did not constitute an insurance transaction within the meaning of the relevant article of the Sixth VAT Directive, and the services provided by this undertaking did not correspond to the activities of the agent either. The Court followed the AG's opinion and noted in paragraph 36: "... *essential aspects of the work of an insurance agent, such as the finding of prospects and their introduction to the insurer, are clearly lacking in the present case.*" This case is of importance determining the insurance agent's activities and the scope of insurance related operations that qualify for tax exemption.

2.3.3. Insurance and Other Commercial Activities

In 2000 the ECJ delivered the preliminary ruling on the *ABBOI* case.⁵⁶ The First Council Directive 73/239/EEC is based on the Treaty provisions on establishment. This case is important because the said Directive, particularly Art. 8(1)(b) was declared to have a direct effect. Moreover, provisions of the Directive were deemed applicable to the organisation at issue, despite the fact that the association (mutual benefit societies) was engaged in non-profit-making business. The said Article stipulates that insurance undertakings must limit their operations to the business of insurance, to the exclusion of all other commercial activities. However, the Court held that mutual benefit societies cannot be prevented to create a body having distinct legal personality in order to pursue other type of commercial business (optical sector in this case). The primary purpose of the prohibition laid down in Article 8(1)(b) of Directive 73/239 is to protect the interests of policyholders against the risks of insolvency of those undertakings that are engaged in other businesses. Nonetheless, as stated in *C-241/97 Försäkringsaktiebolaget Skandia* [1999] ECR I-1879, paragraph 46, the Court ruled that the wording of

⁵⁶ C-109/99 *Association basco-béarnaise des opticiens indépendants v. Préfet des Pyrénées-Atlantiques* [2000] ECR I-7247.

Article 8(1)(b) does not prohibit insurance undertakings from holding, as their free assets, shares in a company involved in another business.

2.3.4. Member State Failure to Comply with the Treaty Freedoms and Insurance Directives

The first insurance case connected with Treaty freedoms was raised before the European Court of Justice in 1984. The judgment was delivered in 1986 whereby the Treaty freedoms of establishment and the provision of services and Directive 78/473/EEC were applied.⁵⁷ The *Commission v. Germany* case concerned the Commission's direct action against Germany for failure to fulfil its obligations under Treaty provisions on services and the Directive 78/473/EEC in the field of direct insurance and re-insurance. German insurance supervision law stipulated that insurance undertakings from other Member States must establish themselves in Germany in order to provide services in its territory, including salesmen, agents or other representatives that shall also be duly authorized by the German authorities. National law prohibited intermediaries established in Germany to arrange contracts for German residents with insurance providers from another Member State. The Court ruled that Articles 59 and 60 (now 49 and 50 EC) were directly applicable and that Member States were obliged to prevent discrimination on the grounds of nationality and all restrictions on services on the grounds of the undertaking's establishment in another Member State. The defendant asserted that the insurance sector is a very sensitive area in terms of consumer protection, as contracts are related to future events and if the insurance claims are not met when the contingency occurs, the policyholder is placed in a 'precarious position.' The Court pointed out that indeed, certain insurance contracts cover vast numbers of policyholders whereby "...the protection of the interests of insured persons and injured third parties affects virtually the whole population."⁵⁸ Because of the special characteristics of the insurance industry, Member States set up legal frameworks to extensively regulate this branch of economy; it "...led all Member States to introduce rules both as regards their financial position and the conditions of insurance which they apply, and to permanent supervision to ensure that those rules are complied with."⁵⁹ The Court categorised the risks into consumer (mass) and industrial (commercial) types.

⁵⁷ 205/84 *Commission v. Germany* [1986] ECR 3755.

⁵⁸ *Ibid*, para. 31.

⁵⁹ *Ibid*, para. 32.

EC Legal Regulation of the Insurance Market; Challenges of Integration

The ECJ held that German restrictions could only be justified when applied in the light of imperative reasons such as public interest, which is not adequately safeguarded by the home state legal system of the service provider. However, in the case when conditions of general good were not met, the restrictions imposed by German rules were deemed disproportional. At that time, this judgement did not apply to compulsory insurance and situations whereby the undertaking maintains permanent presence in the country (by way of branch or agency) or conducts its insurance operations entirely within that territory.

During the same period, the Commission brought cases against France⁶⁰, Denmark⁶¹ and Ireland⁶² in connection with similar infringements.

The French national measures imposing notification requirements of insurance contracts when first marketed was challenged by the Commission in 1998 in the case *Commission v. France*.⁶³ Freedom to provide services and Directive 92/49/EEC, its amending directives, and Directive 92/49/EEC were invoked against French national legislation providing for systematic notification to the competent ministry of the conditions of a standard form of insurance contract ('marketing information sheet'). Article 29 of the Directive 92/49 provides: "*Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policyholders.*" Article 5 of Directive 92/96 on life assurance provides for the same prohibition. The Court held that any obligation systematically to submit marketing information sheets to the authorities is contrary to the freedom to market insurance products within the Community; this notification procedure required undertakings to provide information such as: the features of the contract/insurance policy, premiums, duration, risks covered, profits and interest. The Court did not regard the systematic notification by means of marketing information sheets as a procedure necessary for enabling the normal exercise of insurance supervision.

⁶⁰ 220/83 *Commission v. France* [1986] ECR 3663.

⁶¹ 252/83 *Commission v. Denmark* [1986] ECR 3713.

⁶² 206/84 *Commission v. Ireland* [1986] ECR 3817.

⁶³ C-296/98 *Commission v. France* [2000] ECR I-3025.

EC Legal Regulation of the Insurance Market; Challenges of Integration

In 1998, the Commission brought direct action against Belgium for failure to fulfil its obligations under the Third Non-Life Insurance Directive. The Belgian government maintained that the case at issue concerned a statutory social security scheme, in particular the insurance of accidents at work, therefore excluded from the provisions of freedom to provide services. Article 55 of the said Directive is particularly noteworthy to the facts of the case: *Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.* Hence, the insurance companies under the right to establishment and services can participate in mandatory insurance schemes, on the same terms as undertakings authorised within the Member State territory. This case is important for the reason that it was held that in some circumstances, mainly where the insurance undertakings assume risks on their own, although within the statutory social security system, the EC insurance directives still apply.

3. Identified Problems of the “Single Insurance Market” and the Commission

Action Plan

Based on various surveys and public consultations conducted by the Commission, as well as Email questionnaires distributed for the purposes of this thesis, a number of problems were identified that impede the creation of the single European insurance market. These barriers will be discussed in detail below, but it would be appropriate to list some of them here: legal barriers including taxation, consumer protection laws, company law, prudential supervision, data protection, principle of ‘general good’ established by the Court; cultural and attitudinal barriers that are impossible to regulate on the European Union level: consumer needs and preferences, mistrust in foreign insurance providers, language, culture, etc.

Another issue that needs to be addressed here is the EC competition law, particularly when it comes to cooperation between the insurance providers through sharing or pooling the risks. In the 1984 Decision on the *Nuovo Cegam* case⁶⁴ the Commission applied EC competition provisions to the insurance industry. Hence, concerted practices such as tariff agreements or agreements on standard conditions might be judged as anti-competitive and declared void. Invalidity of an insurance contract may cause major problems for third parties, in relation to outstanding claims. Presumably “in terms of legal position of third parties however, such derivative contracts themselves are unaffected.”⁶⁵

Until 2003, Council Regulation 1534/91 was in force for the application of Article 85(3) of the Treaty to agreements in the insurance industry. Currently, the Insurance Block Exemption is applicable to various forms of cooperation between insurance undertakings, particularly in relation to common risk premium rates, standard policy conditions, risk classification, settlement of claims, etc.⁶⁶ According to the Regulation 358/2003, the undertakings of parties to the agreement are exempt if they pursue: a) the joint establishment and distribution of: calculations of the average cost of covering a specified risk in the past and in connection with insurance involving an element of

⁶⁴ *Nuovo Cegam*, OJ 1984 L 99/29, para.12.

⁶⁵ Fitzsimmons, A., “The Application of EC Anti-Trust Law to the Insurance Industry”, *The Law and Practice of Insurance in the Single European Market*, edited by McGee, A. and Heusel, W., Trier Academy of European Law, 1994, Volume 11, p. 28.

⁶⁶ Commission Regulation (EC) No 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector, OJ 2003 L053/8.

EC Legal Regulation of the Insurance Market; Challenges of Integration

capitalisation, mortality tables, and tables showing the frequency of illness, accident and invalidity; b) the joint carrying-out of studies on the probable impact of general circumstances external to the interested undertakings; c) the joint establishment and distribution of non-binding standard policy conditions for direct insurance; d) the joint establishment and distribution of non-binding models illustrating the profits to be realised from an insurance policy involving an element of capitalisation; e) the setting-up and operation of groups of insurance undertakings or of insurance undertakings and reinsurance undertakings for the common coverage of a specific category of risks in the form of co-insurance or co-reinsurance; f) the establishment, recognition and distribution of: technical specifications, rules or codes of practice concerning those types of security devices for which there do not exist at Community level technical rules, etc. and technical specifications, rules or codes of practice for the installation and maintenance of security devices.⁶⁷

It is also noteworthy that most of the EU states provide publicly financed social security benefits for the population. Exceptions can be found in The Netherlands, where the government excludes a third of population from statutory healthcare coverage, and in Germany and Spain, where high earners (Germany) and civil servants (Spain) are permitted to opt for voluntary health insurance as a substitute.⁶⁸ In these countries governments may invoke public interest protection and restrict certain activities of private insurers. Concept of ‘general good’ causes confusion, even with the existence of Commission guidelines, which are open to interpretation. Examples of Germany and Netherlands⁶⁹ illustrate the difficulty of determining whether the national regulatory framework unfairly discriminates against some insurance undertakings.⁷⁰

Furthermore, present state of EU private insurance market is not very well integrated, is characterised by inefficiencies and prevailing obstacles to intra-Community trade. Various market barriers are highlighted in the Commission Green Paper: “Fragmented and under-performing financial markets and/or a patchwork of national pools of liquidity subject to divergent, uncoordinated risk-management

⁶⁷ *Ibid.*, Article 1.

⁶⁸ Mossialos, E. and Thomson S. M. S., “Voluntary Health Insurance in the European Union: A Critical Assessment”, 2002, *International Journal of Health Services*, Baywood Publishing Co., Inc., Volume 32, No. 1, p. 20.

⁶⁹ For example in Netherlands health insurance laws oblige voluntary health insurers to make solidarity contributions to statutory insurers to spread the cost of covering older people and high-risk individuals.

⁷⁰ Mossialos, E. and Thomson S. M. S., “Voluntary Health Insurance in the European Union: A Critical Assessment”, 2002, *International Journal of Health Services*, Baywood Publishing Co., Inc., Volume 32, No. 1, p. 41.

practices and a higher cost of capital”.⁷¹ This is true especially for Community retail financial services (e.g. insurance) market that is sometimes described as impenetrable. These market imperfections highly impede not only freedom of services and establishment but also freedom of movement of capital enshrined in the EC Treaty.

3.1. Consumer Protection on Internal Market

Among the problems and challenges that the harmonisation of insurance within the EU is facing is consumer protection, i.e. the different levels of protection from state to state in relation to policyholders and legal framework for insurance contracts. Community law defines mass or consumer risks and commercial/industrial risks in relation to policyholder protection.⁷² Insurance policyholder protection extends to three dimensions: protection against unfair contract, protection against unfair selling practices, and against the insurer becoming insolvent.⁷³

Policyholder protection is one of the major concerns of insurance regulation. In 2001 the Commission initiated a complaints network for out-of-court settlement (FIN-NET) in the financial services sector. This initiative is intended to assist dissatisfied consumers to resolve a problem where the service provider is established in another Member State. The scheme is in line with the Financial Services Action Plan 1999-2005 (FSAP).

Problems of transposition and implementation of the community acts into the domestic legal systems are very prevalent in most of the Member States, especially in the field of common insurance market. For instance recently, on 22 January 2004 Commission referred eight Member States to the Court over failure to implement EU insurance law.

“The European Commission has decided to refer Belgium, Greece, France, Luxembourg, the Netherlands, Finland, Sweden and the UK to the European Court of Justice as they have not yet implemented Directive 2001/17/EC, designed principally to guarantee consumer protection when

⁷¹ Commission Green Paper on Financial Services (2005-2010), published on 3 May 2005: http://europa.eu.int/comm/internal_market/finances/docs/actionplan/index/green_en.pdf (p. 5).

⁷² ECJ definition; 205/84 Commission v. Germany [1986] ECR 3755.

⁷³ Ellis, H., “Policyholder Protection in the Single European Market”, *The Law and Practice of Insurance in the Single European Market*, edited by McGee, A. and Heusel, W., Trier Academy of European Law, 1994, Volume 11, p. 41.

insurance companies are wound up. The deadline for writing the Directive into national law was 20 April 2003.

Under the Directive, where an insurance undertaking with branches in other Member States fails, the winding up process is subject to a single set of proceedings initiated in the Member State where the insurance undertaking has its registered office (known as the home state) and governed by a single bankruptcy law that of the home state. This approach is consistent with the home country control principle that is the basis for the EU Insurance Directives. In addition, the Directive ensures the protection of insurance creditors (such as policyholders and insured persons) by granting them preferential treatment when an insurance undertaking is wound up”.⁷⁴

Policyholder protection against the insolvency of the insurer is the main purpose behind the extensive regulation by Member States of the areas of life and non-life assurance. The legal norms aim at guaranteeing that these companies are financially sound, managed by proper persons and run in a responsible manner.⁷⁵ In addition, at EC level the consumer protection is safeguarded by several directives in the areas such as unfair contract, selling practices and product safety. The Directive on Unfair Terms in Consumer Contracts 93/13/EEC⁷⁶ is noteworthy with respect to consumer protection in general. In cases of cross-border disputes, Brussels Convention of 27 September 1968 is applicable for deciding the jurisdictional matters in civil and commercial fields. This also covers insurance transactions and policyholder contracts. Section 3 of the Convention is entirely devoted to insurance and Section 4 refers to the jurisdiction of consumer contracts.

Policy-holders in the EU are entitled to approach insurance providers across borders and purchase services from the establishment outside their home-country. This calls for the extensive regulation and need for safeguarding consumer interests. Individual customers are entitled to receive due information on the offered insurance product and have right to withdraw from the contract within 14-30 days period.⁷⁷

⁷⁴ Commission press release of 22.1.2004: http://europa.eu.int/comm/internal_market/insurance/infring_en.htm

⁷⁵ Ellis, H., “Policyholder Protection in the Single European Market”, *The Law and Practice of Insurance in the Single European Market*, edited by McGee, A. and Heusel, W., Trier Academy of European Law, 1994, Volume 11, p. 44.

⁷⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

⁷⁷ Kendall, V., *EC Consumer Law*, Chancery Law Publishing, London, 1994, p.127.

3.2. Commission Financial Services Policy (2005-2010)

Completing the single market in financial services (including insurance) is an essential part of the Lisbon Strategy and the EC economic reform initiative.⁷⁸ The European Commission sets the financial services policy agenda for the next few years to improve the common insurance market operation and eliminate some of the obstacles impeding intra-Community trade in the financial services sector.

3.2.1. Commission Green Paper⁷⁹

Green Paper on Financial Services Policy (2005-2010) formulates the strategic policy objectives and roadmap to attain them over the next five years. It indicates four scenarios whereby retail financial services are provided on the internal market: “(i) a consumer purchases the service from a provider in another Member State by travelling to that Member State; (ii) a firm markets/sells to consumers in another Member State without establishing; (iii) a firm establishes in more than one Member State and adapts its offerings to local markets; and (iv) services being designed on a pan-European basis, even if delivered locally”.⁸⁰

The paper highlights importance of better regulation and enforcement of Community acts, need for consolidation of EC legislation in the field of financial services, ex-post evaluation and enhancement of supervisory system. In order to achieve “better regulation”, transparent consultations and economic impact assessments must be conducted prior to Community legislative initiatives in the field. The paper underlines the Member State practice of “*goldplating*” and the need for avoiding it. This tendency is exemplified as follows: “... Member States should avoid adding layer upon layer of regulatory additions that go beyond the Directives themselves – so-called ‘*goldplating*’ – thus stifling the benefits of a single set of EU rules and adding unnecessary burden and cost to European industry”.⁸¹ The Commission welcomes public participation and is interested in stakeholder opinion concerning the

⁷⁸ “Common Actions for Growth and Employment: The Community Lisbon Programme”, COM(2005) 330 final, 20.7.2005: http://europa.eu.int/growthandjobs/pdf/COM2005_330_en.pdf

⁷⁹ Commission Green Paper on Financial Services (2005-2010), published on 3 May 2005: http://europa.eu.int/comm/internal_market/finances/docs/actionplan/index/green_en.pdf

⁸⁰ *Ibid*, p. 11.

⁸¹ *Ibid*, p. 6.

priorities formulated in the policy paper; annex III to the Commission White Paper summarizes the viewpoints of market participants concerning the Commission initiative.

3.2.2. Commission White Paper⁸²

The White Paper elaborates on priorities and objectives of the Commission in the field of financial services supported by the stakeholders that took part in public consultations. The document addresses the urge for “better regulation” and identifies practical processes to ensure the implementation and transposition of the EC law, mainly through extensive monitoring and evaluation. The Commission also offers some practical measures to improve the Pan-European supervision mechanisms of financial industry. Ongoing projects include: retail banking, solvency II legislation, as well as amendments to the Insurance Directive (Art. 15), cross-border clearing and settlement framework Directive. As for the insurance guarantee schemes, the Commission will take decision on this matter in the course of this year.

It is important to note, that the Commission action plan aims at codification of the existing EC legislation on the financial services: “Without renegotiating the existing *acquis*, sixteen insurance directives will feed into the new single EC Insurance Directive.”⁸³ As illustrated above, the legislation in this area is extensive and abundant, with frequent amendments over time. Thus codification efforts would definitely simplify the current state of insurance law on the EC level and safeguard the legal certainty for the market actors.

⁸² Commission White Paper on Financial Services (2005-2010), published on 5 December 2005: http://europa.eu.int/comm/internal_market/finances/docs/white_paper/white_paper_en.pdf

⁸³ *Ibid*, p.7.

4. Recent Legislative Initiatives and Suggested Framework

The EU-level legislative proposals were recently initiated in the following insurance areas: capital requirements, solvency II (to be adopted by July 2007), reinsurance supervision, guarantee schemes, accounting, and insurance mediation.⁸⁴ Some of these already entered into force.

The Reinsurance Directive 2005/12/EC sets up a home-state supervision of reinsurance providers, on the basis of which they can operate throughout the EU by virtue of single passport.⁸⁵

The European Commission established a working group to study the problems associated with the guarantee schemes for policyholders in case of the winding-up of an insurance company. Presently, no official decision is adopted whether or not to proceed further with the preparation of a draft proposal in this field.⁸⁶

Solvency II project envisages the importance of same solvency margin rules applicable throughout the EU. It offers amendments to solvency margin requirements for the life and non-life assurance companies. This will provide efficient protection of policyholders as well enhance the level-playing competition for the insurance providers. The new proposal introduces new risk transfer techniques and reflects recent developments in financial reporting. The mandatory margin is designated to face the unforeseen contingencies or unanticipated rates of claims that might occur in future.

In the area of insurance mediation, EC legislature adopted the Mediation Directive 2002/92/EC⁸⁷ replacing the Directive 77/92/EEC. This act sets guarantees for insurance intermediaries to freely take up their business activities throughout the Community, subject to the uniform registration rules and professional requirements. Due to failure to transpose this Directive into the national legal systems, some of the Member States were taken to Court by the European Commission. Cases are pending.

⁸⁴ Insurance Committee Newsletter April 2005: http://europa.eu.int/comm/internal_market/insurance/docs/2005-markt-docs/markt-2509-05_en.pdf

⁸⁵ Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.

⁸⁶ http://europa.eu.int/comm/internal_market/insurance/guarantee_en.htm

⁸⁷ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

EC legislation on accounting is comprehensive and numerous. It dates since 1978. The work is still in process to modernise general accounting framework in the EU, which also covers insurance industry. It is noteworthy to mention very recent legislative acts that updated some accounting rules: Commission Regulation 707/2004⁸⁸ and Directive 2003/51/EC⁸⁹ amending previous EC legal acts.

The EU is also reviewing the rules on supervisory assessment of transactions in shareholdings in the financial institutions, including insurance. Currently those willing to acquire shares of the financial organisation must notify the relevant authority (prudential supervisor) in order to obtain an approval. The prudential supervisor may deny the right to acquire the shareholdings if it deems it unreasonable. These rules are enshrined in Third Non-life Insurance 92/49/EEC, the Recast Life Assurance Directive 2002/83/EC, in the Reinsurance Directive 2005/12/EC and Market in Financial Instruments Directive 2004/39/EC.⁹⁰ These rules are considered by the market players as obstacles to market entry or cross-border consolidation. In the absence of the uniform assessment rules, each authority may interpret the prudential legislation in its own way. Consequently, the Commission is presently working on revising some of the prudential supervision provisions. It will publish the report on suggested legislative amendments in summer 2006.

4.1. Scheme for Accomplishment of the Single Insurance Market; ‘26th Regime’

The ‘26th regime’ initiative of the Commission aims to create an entirely distinct legal framework for cross-border financial products such as for example life insurance.

“The ‘26th regime’ idea can be seen as a case where the Commission feels that it can bring home the benefits of a single European market in financial services to EU citizens – the Commission has acknowledged that the main beneficiaries of the single market have so far been large financial

⁸⁸ Commission Regulation (EC) No 707/2004 of 6 April 2004 amending Regulation (EC) No 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

⁸⁹ Directive 2003/51/EC of the European Parliament and of the Council of 18.6.2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings.

⁹⁰ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

institutions active in wholesale financial markets. The Green paper acknowledges that retail financial services remains an area where considerable progress needs to be made both in terms of creating a true single market.”⁹¹

The European Commission asked the stakeholders their opinion about the overall objectives presented in the Green Paper. This is illustrated in Annex III to the White Paper on Financial Services Policy (2005-2010).⁹² Among others, the respondents of the consultation are the major European players of the financial services and the insurance industry.

The main concerns elaborated in the Green Paper were acknowledged and supported by most of the stakeholders, as indicated in the Commission White Paper. Following issues were outlined: better regulation and consultation policy, the Commission’s assistance on implementation/enforcement of the Community acts (currently, the speed of transposition of the Directives is rather disappointing), ex-post evaluation of the EU legislation, inclusion of the consumers in policy-making⁹³, matters related to the role of competition policy, etc. One concern expressed by the respondents came out to be so-called ‘goldplating’ pursued by some Member States, which is related to the problems of minimum harmonisation and refers to over-legislation pursued by the Member States. In addition, the accomplishment of priorities of Financial Services Action Plan (FSAP), which are pending legislative initiatives (Solvency II, Payments, Capital requirements and possibly Clearing & Settlement), gained support. With respect to the EU solvency legislation, one of the respondents to the thesis questionnaire (Lloyd’s) underlined: “The solvency regime created by the Directives is less risk based than seems likely to be the case under the Solvency II regime.”

The respondents of the Commission consultation pointed out that the interpretation of the EC law may differ from state to state, therefore, supervision and evaluation by the Community legislature is desirable following the transposition into domestic legal systems (*ex-post* evaluation).

⁹¹ <http://www.hillandknowlton.be/ahead/article1.html>

⁹² Annex III: Resume of Contributions Received from Market Participants on the Green Paper on Financial Services Policy (2005 – 2010): http://europa.eu.int/comm/internal_market/finances/docs/white_paper/annex_3_en.pdf

⁹³ For example, the Commission established a “Users’ Forum Group” to reflect the users’ perspective (small businesses and consumers) on integrated financial services market.

EC Legal Regulation of the Insurance Market; Challenges of Integration

To tackle the problem of the EU level regulation of financial services and insurance, which is characterised by overlapping legislative acts and vagueness, the Green Paper proposed ‘financial services rulebook’ aiming at codification of the EU legislative texts. However, initially it was not met by the overwhelming support of the stakeholders, due to the unclear cost-benefit relationship and the fact that the national legal systems have already incorporated provisions of those acts. Later on, the idea gained some support. As the Annex III of the Commission White Paper puts it: “The key idea is to get rid of regulatory overlaps, conflicts, duplication and ambiguities; in other words, to introduce an overall legal consistency check, ‘reading-across’ Community directives and regulations. Even while the aim is to establish a comprehensive consolidation of Community law alone (and not of national law), one would still need to pay close attention to what existing national law is, this being the only way to shine light on the effects of, and embedded problems within, Community law” (p.10). An uncertainty caused by regulation of similar issues by different Directives is also highlighted in the Commission White Paper. Interesting example is offered for illustration: “... a given insurance intermediary providing his services on-line would have to respect four sets of EU information requirements, namely those contained in the Insurance Directives, in the Insurance Mediation Directive, and in the Distance Marketing and E-commerce Directives”. (*Ibid*, p.10)

Number of respondents claim that taxation constitutes a considerable impediment to cross-border provision of financial services. Hence, fiscal harmonisation in the field of company taxation and VAT matters might prove beneficial.⁹⁴

‘26th regime’ leaves the 25 sets of national norms intact and is designed for market participants engaged in cross-border operations. The Green Paper concludes that the benefits of this regime are unclear and agreeing on optional European set of rules for particular products will not be easy. Nevertheless, the Commission believes that the above regime is worth exploring (as do some of the respondent multinational firms) and carries out a feasibility study, for instance in the field of simple (term-life) insurance. As noted in the White Paper: “Consultation has shown widespread scepticism about the feasibility and usefulness of optional instruments (‘26th regimes’) in the area of financial services. Its promoters need to explain their ideas and the legal and practical feasibility and advantages of such optional instruments in more detail”.

⁹⁴ This concern was also raised by the respondents of the thesis questionnaire.

5. Summary

The legal analysis of the EC insurance market presents the legislative framework governing the insurance operations on the Community market. By virtue of the primary legislation of the EC, particularly provisions on freedoms of establishment and services, the Community legislature adopts legal acts regulating the insurance industry. These mainly take form of three generations of harmonising directives that were amended, modified, or replaced over time. The case-law of the European Court of Justice reflects some of the problems identified on the common insurance market. However, it is noteworthy that only a very few insurance competition cases has been brought to the Court, presumably due to the reasons related to the peculiarities of the insurance industry. Taxation and VAT rules, as well as Member States' failure to comply with the Community law tend to be the prevalent grounds for the insurance litigation at the EU level.

This study identifies number of inefficiencies attributed to the single European insurance market. Among the barriers to integration are: national legal requirements and taxation rules applicable to the insurance undertakings, 'general good' consideration that might justify a discriminatory treatment of the foreign companies, different levels of consumer protection in each Member State. The obstacles are also identified by the Commission and possible remedies are offered by way of further legislative initiatives. This thesis argues in favour of the Commission's action plan designed to facilitate the process of insurance market integration. The endeavour to eliminate the obstacles of the EU common insurance market is already imminent; the Commission sets the action plan to remedy the existing market inefficiencies.

Moreover, cultural and attitudinal differences (consumer tastes, mistrust in foreign insurers, etc.) throughout the Community are said to impede the cross-border trade in insurance products. The latter barriers cannot be solved via legal means, but rather by efforts from the part of the insurance companies through different marketing and communication strategies. Subsequent chapters address business implications of the EC insurance market and offer various marketing tactics for the European insurance undertakings.

Part 2: Business Analysis

6. The Insurance Market Overview (European Focus)⁹⁵

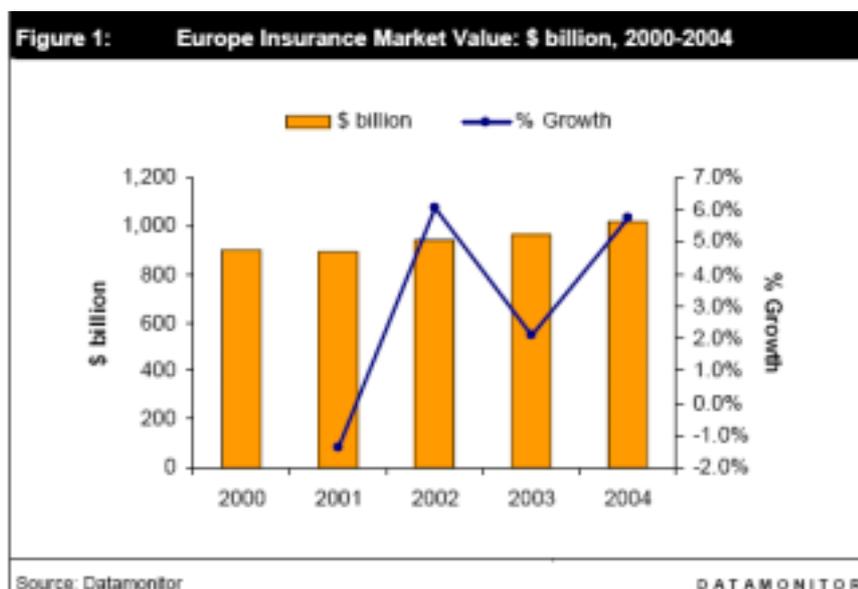
The global insurance industry profile is comprised of both life insurance and pensions and non-life insurance. In Europe, the life insurance and pensions market includes life insurance and retirement savings products.⁹⁶ The EU non-life insurance industry consists of the market for accident and health insurance, as well as, the market for property and casualty insurance. Europe is the second largest regional insurance market (after the USA), accounting for 33.9% of global market share.

The overall market for insurance in Europe has fluctuated over the last five years resulting in a relatively weak performance compared to particular Member State markets. The market expanded 13% during 2000-2004. The European regional market enjoyed a declining share of the global market's revenues, from 35.3% in 2000 to 33.9% in 2004. The European insurance market generated total revenues of \$1,021.5 billion in 2004, representing a compound annual growth rate of 3.1% for the five-year period (2000-2004). This growth was lower comparing to the global market growth rates. Growth was significant in the newly acceded countries, particularly the Czech Republic and Hungary. An exception to this is Italy, whose market also went through a noteworthy growth. Life insurance forms the leading segment of the European market. The property and casualty insurance segment also contributed considerably to the market's value, with revenues of \$333 billion in 2004, reaching 32.6% of the market's aggregate revenues.

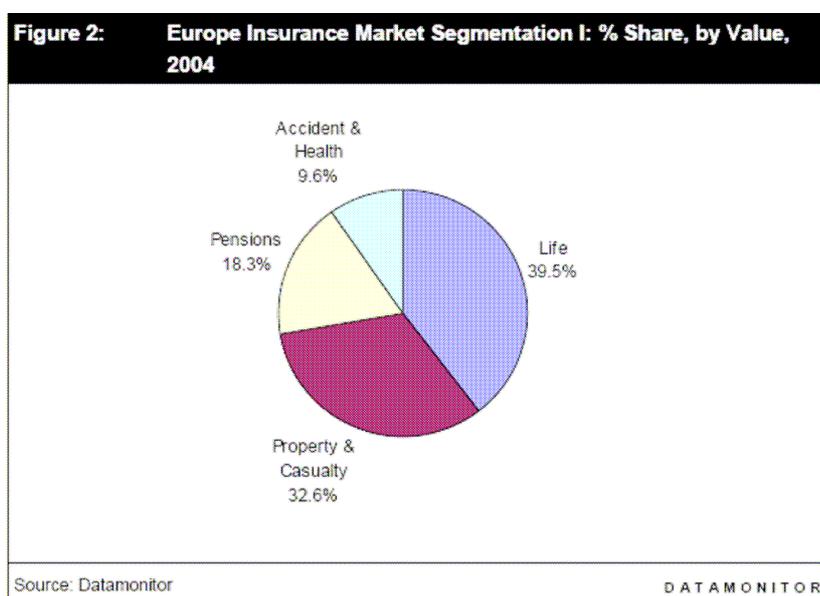
⁹⁵ Information in this section is based on industry review series of <http://www.datamonitor.com> October 2005.

⁹⁶ The contributions made to the state social insurance are not included.

EC Legal Regulation of the Insurance Market; Challenges of Integration



The increase recorded from 2003 onwards is presumably related to the expansion and the growth rates of private insurance markets in Eastern European Member States. Life insurance forms the leading segment in this market, generating 39.5% of the market's value in 2004. Figure 2 illustrates this trend:

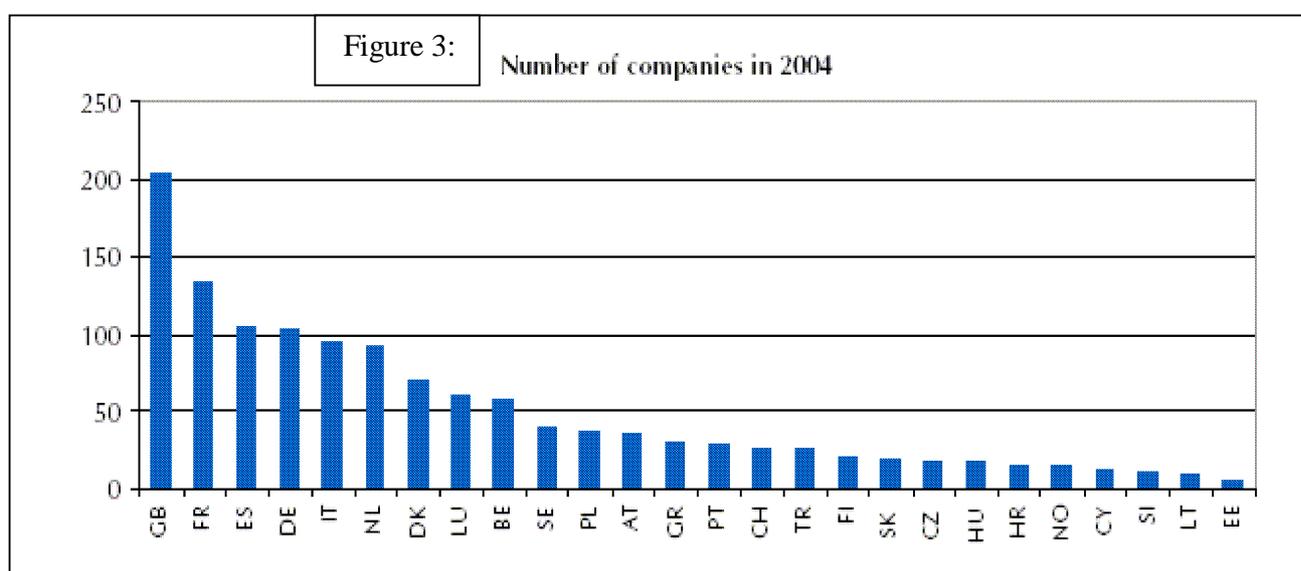


While growth in continental Europe's larger markets has remained static over the last five years, emerging markets in Central and East Europe have undergone a significant growth. As the market develops in this region, it is expected that the increasing domination by multinational providers will

EC Legal Regulation of the Insurance Market; Challenges of Integration

cause further mergers and acquisitions, as domestic companies strive to maintain market share on the competitive landscape.

The leading players of the European insurance market are Allianz, AXA, R&SA, AVIVA plc, Assicurazioni Generali, ING Groep N.V., Lloyd's and Standard Life. The opening up of the European insurance market, as proposed under the EU Solvency II project, will influence the market climate for all of these key competitors in the forecast period. The ultimate aim of the scheme is to create a Europe-wide risk-related solvency policy. Figure 3⁹⁷ displays the number of life-insurance companies operating in the European countries.



Source: CEA

Cross-border mergers and acquisitions in financial services sector are more widespread than the establishment of branches in other countries. M&As are perceived to offer rapid and more successful market penetration. Economies of scale and scope are said to be the main advantages of the mergers and acquisitions, especially on the domestic market. In the European Community, organizations enter into cross-border alliances as an alternative strategy. These can take forms of product/distribution agreements between a successful product provider from abroad and an efficient distribution network at home. On the EC market strategic alliances among the financial institutions are more common and

⁹⁷ See CEA website: <http://www.cea.assur.org>

EC Legal Regulation of the Insurance Market; Challenges of Integration

probably better way to achieve cross-border business expansion.⁹⁸ This can be explained by existence of various obstacles, such as legal and political prevalent on the insurance markets of the Member States.

According to the recent online survey that the Commission undertook, different product mixes were identified as one of the top barriers to cross-border business operations of the share capital, cooperative and savings institutions. Among other top ranked barriers were legal matters, taxation, non-overlapping fixed costs and employee reluctance (see Appendix 1).⁹⁹

Studies show that the distribution channels are particularly important for the insurance companies, reflecting the changing nature of marketing in this industry. For instance, the decreasing number of independent financial advisers and the emergence of direct marketing as an important distribution channel represent shifts in the marketing practices of insurance products. Moreover, the insurance companies tend to be substantially affected by innovativeness and product distinctiveness.¹⁰⁰ Most customers of the insurance and other financial services are very risk-averse; therefore being innovative can bear detrimental effects on the company's sales performance.¹⁰¹

⁹⁸ Kiriazidis, T. and Tzanidakis, G., "New Development and Prospects of the European Financial Services Industry", *European Business Review*, 1995, Volume 95, No. 1, pp. 24–31.

⁹⁹ Commission Staff Working Document Part II; Cross Border Consolidation in the EU Financial Sector, Annex: Survey Results. Brussels, 26.10.2005: http://europa.eu.int/comm/internal_market/finances/docs/cross-sector/mergers/survey-results_en.pdf

¹⁰⁰ Storey, C. D. and Easingwood C. J., "Determinants of new product performance: A study in the financial services sector", *International Journal of Service Industry Management*, 1996, Volume 7, Issue 1, pp. 32-55: <http://80-www.emeraldinsight.com.ludwig.lub.lu.se/10.1108/09564239610109401>

¹⁰¹ *Ibid.*, p. 44.

7. Porter's Diamond of National Advantage; Case of the EU Insurance

For the purposes of the analysis of the European insurance industry Porter's determinants of national competitive advantage¹⁰² will be applied to the EU market as a whole. As the previous section reflects, the EU insurance industry is lagging behind its US counterpart in terms of market turnover. There are number of reasons explaining this phenomenon, first and the most obvious is the state subsidised insurance schemes prevalent in most of the EU countries as opposed to the private insurance market dominance in the US.

In his work Porter argues that nation's competitiveness depends on the capacity of the industry to innovate and the factors such as culture, economic structures, institutions influence the competitive success of a particular nation. The nation's industry must possess competitive advantage relative to the best worldwide competitors in order to be successful on the international marketplace. National competitiveness is attributed to the productivity, which stands for the value of output produced by a unit of labour or capital. A country's high productivity performance raises the standard of living for the population. According to Porter, continuous innovation and upgrading is needed in order to sustain productivity growth.

Indeed, the Lisbon European Council 2000 launched the process of economic reforms which envisages making the EU the most competitive and dynamic economy in the world by 2010. The significant part of this agenda is the accomplishment of the single European market in services, including the insurance industry.

Porter's diamond of national advantage will be used here to apply to the EU insurance market. The determinants of the advantage are: 1. Factor conditions; 2. Demand conditions; 3. Related and Supporting Industries; and 4. Firm Strategy, structure and rivalry.¹⁰³

Applying this model to the EU insurance market, the following can be argued:

¹⁰² Porter, Michael E., "The Competitive Advantage of Nations", *Harvard Business Review*, March-April 1990.

¹⁰³ *Ibid.*, p. 78.

EC Legal Regulation of the Insurance Market; Challenges of Integration

1. In terms of factor conditions, for instance labour and infrastructure, the EU insurance sector possesses skilled labour, scientific and technological base, and the necessary infrastructure vital for competing on the world insurance market;
2. Demand conditions on the home-market (the Community) are currently favourable for the private insurance companies. The aging population is growing and the EU welfare states will not be able to fully cover statutory insurance schemes for the entire population. That is when the private insurance market must be utilised to cover the deficit. The nature of domestic buyers (e.g. EU consumers of commercial or personal insurance) has a significant pressure on the business performance; sophisticated buyers of a particular financial service/product may influence the companies to upgrade and innovate in order to respond to challenges. Such a situation will arise when some of the EU welfare states will face difficulties to fully finance social security benefits for their citizens, who will then opt for the private insurance arrangements;
3. The presence of the related and supporting industries of the insurance on the EU market is significant; for example banking is very well-developed and other supporting industries such as reinsurance and brokerage are present to facilitate the proper functioning of the insurance business. Existence of the internationally competitive supporting industries (e.g. suppliers) creates favourable conditions for the business activities. Supporting and related industries are also capable of facilitating the innovation of the partner companies (for instance joint R&D efforts, collaboration in technical matters; creation of banking-insurance-mutual funds cluster, etc.);
4. Firm strategy, structure and rivalry are related to the domestic arrangements for the creation and organisation of the companies, and the nature of home-market competition. These factors are currently subject to the EU level harmonisation; convergence of some of these norms (e.g. company laws, prudential supervision, solvency rules, competition law) across the Community will certainly facilitate the level-playing field for the competition on the insurance market. With regard to organisational types, the EU insurance market is dominated by the large insurance companies and certainly most of them are highly competitive on the world market. These companies are competing with each other domestically, on the EU insurance market. Moreover, with the further market integration the rivalry will increase forcing the companies to innovate in order to achieve efficiencies and gain global competitiveness.

8. Marketing insurance offerings

Insurance product offerings are characterised with intangibility and complexity in the consumer's perception. Despite the core value of the product, the insurance policy itself, the important factors influencing buying decisions are perhaps accompanying package of services, price to some extent, and the image of the company. Although, it has been argued, that price variable is more important when purchasing simple rather than complex offerings,¹⁰⁴ with the general insurance products, price does indeed matter for the policy buyers. Predictably, price merit is less important when it comes to life assurance products.

Value-adding activities are important factors in differentiation efforts, especially in the context of today's deregulated and competitive EU market for insurance. Consumers are exposed to wider choice of the financial services products, and thanks to freedoms of establishment and services they can easily purchase insurance product from another Member State, or a foreign company established in their home state. Companies offer their value proposition (set of benefits) to customers. The offering will be successful if it delivers value and satisfaction to the target buyer. Value is seen as combination of quality, service and price (customer value triad). Customer value increases with quality and service and decreases with price.¹⁰⁵

The studies on EU single insurance market show, however, that the consumers tend to trust their domestic insurance providers more. Furthermore, language barriers and need for proximity of service provider are identified to influence the low rates of cross-border insurance purchases. This situation is applicable to consumer risks only; business to business trade in insurance products mostly takes place on international market place and substantially differs from the peculiarities of the individual insurance products, such as pensions and health care insurance, annuity provision, etc. As the responses to the questionnaire reflect, the industrial insurance providers have no difficulties in approaching and trading

¹⁰⁴ Devlin, J. F., "Adding value to retail financial services", *International Journal of Bank Marketing*, 2000, Volume 18, Issue 5, pp. 222-232: <http://80-www.emeraldinsight.com.ludwig.lub.lu.se/10.1108/02652320010356780>

¹⁰⁵ Kotler, P., *Marketing Management*, International Edition, Prentice Hall, 2003. Upper Saddle River, NJ. P.11.

with the foreign undertakings. For them, single insurance market is only a facilitator of increased trade in such products (see questionnaire analysis section).

Positioning is important when companies try to differentiate their products in the eyes of consumers. To deliver the offering which is of superior value to the customer is rather complicated when it comes to such intangible product as insurance. Consumers generally make purchasing decisions after quality and price evaluations, and similarly companies strive to achieve cost-effective differentiation to produce added value to the buyers. The marketing mix decisions clearly affect the commercialisation of the insurance products on the European single market. Choice of marketing communications and channels of distribution in addition to designing the core product and price obviously matter in gaining competitive advantage on the insurance market. Nevertheless, the obstacles of legal and non-legal nature are said to impede the level-field competition among the EU insurance companies. For instance, customer relationship management, especially with the products involving social risks, often requires insurer- policyholder proximity and common language for effective communication. As for the core product characteristics itself, in the financial services industry, products are easily imitated and the competitive advantage does not last very long.¹⁰⁶ Services are intangible by nature, so customer assessment of nature and quality of services depends on various circumstances such as physical context and personnel of the insurance company. Significance of the services aspect is caused by the fact that some insurance products are realised at a later stage, and some are never realised. In the case of insurance, actual service can be handled from the distance (filling the applications, etc), and only when claims are due, the outcome of service becomes important.¹⁰⁷ The communication strategy (advertising and promotion) in retail financial services, especially insurance (which is intangible by nature) must explain the potential benefits of the offering as consumers are not able to test the product before purchase. The communication must be consistent with the overall marketing strategy of a firm, emphasizing the brand image and reputation, due to the risks involved in each insurance offering. In areas such as pensions, health care and annuity provision, customer retention is much easier than with regard to short-term insurance policies. In those cases, long-term contractual obligations or switching costs might discourage customers to change their insurance providers.

¹⁰⁶ Storey, C. D. and Easingwood C. J., "Determinants of new product performance: A study in the financial services sector", *International Journal of Service Industry Management*, 1996, Volume 7, No. 1, p. 34: <http://80-www.emeraldinsight.com.ludwig.lub.lu.se/10.1108/09564239610109401>

¹⁰⁷ *Ibid.*

8.1. Marketing communications mix for insurance products

Marketing communications mix consists of advertising, personal selling, public relations and sales promotion (Kotler, 1997). When entering new markets managers must decide on the mode of marketing communication that will help commercialise the offering. In the context of technological innovations, market deregulation and increased competition in the financial services industry, expanding business activities and serving new customer segments are of importance for survival.

In their research on marketing communications in the financial services industry, George J. Avlonitis and Paulina Papastathopoulou identified several tools used to market the retail financial products, which correspond to four tools of marketing communications mix. The exploited tools by the companies were grouped in the following clusters:

1. *Intensive selling efforts*, ('cross-selling', fairs and trade shows, indoor advertising);
2. *Below-the-line advertising* (pamphlets, leaflets, articles about the product, product manuals for the salesforce, etc.);
3. *Above-the-line advertising* (TV, radio, newspaper and magazines advertising);
4. *Direct marketing* (via Internet and direct mail);
5. *Trained direct salesforce*, (e.g. the training seminars for the salesforce);
6. *Telemarketing*;
7. *Public relations*;
8. *Outdoor advertising* (product advertising through opinion leaders);
9. *Sales promotion*, (e.g. offering low value company gifts to customers).¹⁰⁸

The study revealed that intensive selling is the most important marketing communications tool leading new retail financial products to success. Below-the-line advertising follows second in the success list of promotional efforts for launching new financial products. Telemarketing holds a significant role in

¹⁰⁸ Avlonitis G. J. and Papastathopoulou P., "Marketing communications and product performance: innovative vs non-innovative new retail financial products", *International Journal of Bank Marketing*, 2000, p. 35: <http://80-proquest.umi.com.ludwig.lub.lu.se/pqdweb?did=115719276&sid=1&Fmt=3&clientId=53681&RQT=309&VName=PQD>

commercialisation of retail financial products. Some of the tools described above appeared to have no impact on performance outcomes for some companies.

These communications efforts can be applied not only to the banking sector but also to insurance undertakings willing to expand their activities on the markets of different Member States. Some of the tools can be utilised in combination with the others, thus increasing chances for the successful product launch.

8.2. Face-to-face or direct marketing; customer preferences

This section will discuss direct and face-to-face marketing methods used by the insurance companies as part of their marketing strategy. Choice of marketing mode depends on the types of customers and financial products offered.

The study by Jinkook Lee¹⁰⁹ investigated financial products/services that are purchased through face-to-face means and those that consumers tend to buy directly by phone, mail or Internet. In the insurance sector, the survey results¹¹⁰ reflected the following customer preferences to purchase various insurance products:

Table 1. Face-to-face v. direct marketing: household survey

Products/services	Face-to-face	Direct means	Uncertain	Total (%)
Disability insurance	46,9	23,0	31,1	100
Life insurance	59,6	23,5	16,9	100
Retirement savings	58,4	19,3	22,3	100
Annuity	48,3	13,0	38,8	100

¹⁰⁹ Lee, J., "A key to marketing financial services: the right mix of products, services, channels and customers", *Journal of Services Marketing*, Santa Barbara, 2002, Vol. 16, No. 3, pp. 238-258: <http://80-proquest.umi.com.ludwig.lub.lu.se/pqdweb?did=246322711&sid=1&Fmt=4&clientId=53681&RQT=309&VName=PQD>

¹¹⁰ Conducted on the US market. *Ibid.*, p. 245.

EC Legal Regulation of the Insurance Market; Challenges of Integration

Overall, the table shows a strong preference toward face-to-face interaction when it comes to purchase of the insurance products/services. As for the other types of insurance (e.g. motor, home insurance), consumers are willing to purchase those products by direct means. Only a quarter of the respondents show such willingness with life and disability insurance, whereas customers of retirement plans and annuity provision are less inclined to buy these products through direct means. The study also reveals that the respondents that are open to direct marketing are younger and with higher education, and more affluent. Other demographic factors such as marital status and gender do not have any significant impact on consumer attitudes on channels of purchase of financial products. Therefore, managers must make decisions on how to approach various consumer groups and select appropriate mode of delivery for certain types of financial products.

If applied to the EU context, the insurance undertakings conducting cross-border trade will find it useful to cluster customer groups in various Member States in terms of their preferences for direct or face-to-face product/service delivery. Due to the heterogeneity of consumer tastes and buying behaviour, companies aiming to expand their business across the Community market will need to identify those characteristics and utilize appropriate modes of insurance product delivery.

9. Obstacles to Cross-Border Mergers and Acquisitions

Various barriers to the cross-border M&As are identified to be the cause of very low percentage of the cross-border consolidation on the EU financial market. These issues were addressed by the ECOFIN informal meeting at The Hague in the year 2004. This concern applies not only to the banking but insurance sector as well. Misuse of supervisory powers by the Member State authorities was highlighted among other obstacles to cross-border M&As.

The Commission Background Paper on obstacles to M&As identifies three fundamental categories of impediments to the EU cross-border consolidation in the financial sector: a) Execution risks; b) One-off costs; c) Ongoing costs. The obstacles are also clustered under legal, tax, supervisory, economic and attitudinal barriers.¹¹¹ It is argued that these costs do not exist in the context of domestic consolidation.

Under the legal category, execution risks correspond to legal uncertainty that the bidder might encounter and that might complicate a merger process. Other legal matters identified as obstacles are: so-called 'opaque decision making process' (e.g. unaccountability, uncertainty on the body in charge of rejecting or accepting the takeover bid), different legal structures of the companies in different Member States, restrictions on non-resident participation in the shareholding (e.g. capping practices, imposition of prior authorised approval), defence mechanisms to prevent hostile takeovers in order to protect national markets, impediments to effective control realisation even after the consolidation, and divergent national reporting rules (accounting). Some of these concerns are already dealt with on the Community level. Some examples include: adopting the International Accounting Standards for all EU companies, the ECJ ruling concerning the incompatibility of 'general good' consideration when capping the non-resident shareholding.¹¹² Ongoing EC legislative process is currently attempting to solve the cross-border consolidation problems discussed above.

One-off costs under the legal category are said to be restrictions on certain types of offers that do not necessarily discriminate foreign companies, but may cause obstacles to cross-border bids. As for

¹¹¹ DG Internal Market and Services, "Background Paper: obstacles to cross-border mergers and acquisitions in the financial sector," April 2005, p. 2: http://europa.eu.int/comm/internal_market/finances/docs/cross-sector/mergers/consultation_en.pdf

¹¹² C-367/98 Commission v. Portugal [2002] ECR I-4731 and C-463/00 Commission v. Spain [2003] I-4581.

EC Legal Regulation of the Insurance Market; Challenges of Integration

ongoing costs under the legal category, Commission identifies costs relating to domestic legislation on employment, data protection, consumer protection, accounting systems and private law.

As for the tax barriers,¹¹³ the Commission points out VAT regimes of the Member States and uncertainties concerning general tax arrangements. This issue has been underlined by the respondents to the questionnaire as well. At present the modernisation of 6th VAT Directive is being considered by the Commission. In addition, the EC legislature proposed amendments to Mergers Directive to improve the situation of the capital gains taxation. Exit taxes are mentioned to be a one-off cost for a company when transferring establishment from a particular Member State market. Divergent rules for allocating profits are considered as obstacle of 'ongoing costs' nature. Other ongoing costs are as follows: VAT penalty on the inter-group supply of services, different rules for loss compensation, national 'tax breaks', discriminatory taxation on foreign dividends or products/services (e.g. fiscal treatment of transfer pricing). Nevertheless, Member State taxation system still remains the prerogative of the national legislature, unless it proves to be discriminatory.

Next category of obstacles described by the Background Paper corresponds to supervisory rules and certain requirements practiced by Member States. Some of the obstacles include: mandatory reserve requirements, to safeguard financial stability, which may be unclear in the cross-border context; supervisory approval process and misuse of supervisory powers (mentioned by some respondents as well). In addition, multiple reporting requirements and divergent supervisory rules are said to cause uncertainties for the cross-border consolidation. The latter are categorised under one-off and ongoing costs that a company might be forced to incur.

In terms of economic exposure that the companies might face, the Background Paper underlines the fragmentation of the EU equity markets causing increase in transaction costs (classified under the execution risks and one-off costs category). As for ongoing costs, the following factors are revealed: differences in products mix, non-overlapping costs (expenses related to local environment adaptation), lack of middle size institutions (because most of the mergers are large organisations), market power, and differences in economic cycles on various Member State markets.

¹¹³ Unlike the Commission categorisation, this thesis classifies taxation rules under the category of legal obstacles.

EC Legal Regulation of the Insurance Market; Challenges of Integration

Attitudinal risks that the companies might encounter are listed as follows: political interference, in order to promote national industries, employee resistance to be managed from outside, and acceptance of place of quotation after the takeover. Political concessions and mistrust in foreign entities are said to cause one-off as well as ongoing costs for the companies intending to merge with or acquire a firm in another Member State.

It can be concluded that the inefficiencies of legal nature can be surmounted by the EU level legislative initiatives; other obstacles such as political risks might be overcome by way of intergovernmental consensus (basic taxation issues are already dealt with by double-taxation agreements). As for the attitudinal and customer/employee behaviour difference, these cannot be solved on the supranational level, and companies must utilise their human resource and marketing strategies to operate successfully in these market realities.

10. Results of questionnaires

For the purposes of this study, qualitative research was undertaken by way of questionnaires that were sent to the biggest insurance providers of the Community market. The questions posed were related to the influence of the EU insurance legal order on the respondent companies (in total five out of nine multinational insurance companies responded), the advantages and disadvantages of the single European insurance market and the problems encountered during the cross-border trade in insurance products. The identification of problems related to offering insurance products on other Member State markets was very important information for the present research. Unsurprisingly, the respondents indicated those obstacles that were addressed in this study, and that are subject to EC level discussions; Commission Financial Services Plan clearly reflects the concrete steps that are to be taken to resolve them in the coming five years. In addition, the Commission consultations and surveys are important sources to understand the problems of integration; the results are all-inclusive and detailed (see Appendix 1).

Following three questions were asked to the target companies:

1. Does the European Community legal order of the insurance market affect your company? In what way? Please, highlight pros and cons from the business perspective.
2. Have you encountered problems in expanding insurance business activities on other EU markets? Which barriers can you identify?
3. Does the creation of the European single market in insurance (Single European License, home state control principle) overall help your business to offer insurance products on other Member State markets? Please, indicate the insurance products that your company offers outside the home state.

Different accounting standards were referred by some of the respondents as an obstacle to cross-border trade. International Accounting Standards (particularly, International Financial Reporting Standard) was decided by ECOFIN to be mandatory for the EU listed insurance providers. On the German proposal, the deadline was extended to 2007 for those companies that use US GAAP. This endeavour is crucial for the creation of the integrated EU financial market.

EC Legal Regulation of the Insurance Market; Challenges of Integration

One respondent notes: “A lot of our clients [...] would be happy to have only one source of insurance in Europe for death coverage or health, disability and retirement. We strongly depend on European regulation for that. The freer the market is the easier our contracts will be”. That is still an unresolved issue, due to the divergent social security rules of the Member States and tax treatment of occupational pensions which also differ across the Community. In practice it is very complicated to transfer acquired pension rights upon taking up the job in another Member State; often administrative, fiscal and legal (especially social law) barriers impede the procedure significantly. “The EU recently published a legislative proposal to improve the portability of acquired pension rights. However, as long as taxation remains a national competence, it is difficult to address the issue at EU level.”¹¹⁴

Tax law and social legislation were identified almost by all respondents as major impediments to cross-border insurance trade. These barriers add costs to the insurance products, as one of the respondents (MAXIS) underlines: “these difficulties result in complex products which are not cheaper (or more efficient) than series of local products.” With regard to employee benefits some of the insurers mentioned cultural differences and this certainly applies to other types of insurance products: “For instance French employees like health coverage including optical, dental while Belgians for instance consider it superfluous”. Due to the described problems, although the respondent companies maintain that they wish to sell their products outside their home state, they still “don't sell frequently pan European products.” Indeed, Comité Européen des Assurances indicates that the rate of cross-border insurance trade within the EU is very low, only about few percentages of annual premium income.

AXA, among the biggest of the European insurance companies, in the questionnaire highlights the importance of the EU legal order for their activities and that the insurance regulation on the Community level is an opportunity for them; however, it maintains that the single insurance market is not completed in practice yet. The respondent highlights the following market barriers: a) The difficulties of drawing precise frontiers between freedoms of establishment and services; b) The national legislations applicable to insurance activities and the interpretations of ‘general good’ concept for example; c) The variable requirements by the supervisory authorities and their attitudes

¹¹⁴ Comité Européen des Assurances, “The Single EU Insurance Market: How Does It Work?”, Brussels, 10 January 2006, p. 4: <http://www.cea.assur.org/cea/v1.1/actu/pdf/uk/annexe262.pdf>

EC Legal Regulation of the Insurance Market; Challenges of Integration

(accounting/statistical/reporting issues...); d) The fiscal differences. Among other complaints, the incomplete transposition of the insurance directives and the limits of the 'European company' status (general governance/control, rules of registration, advertising) is underlined. The AXA group promotes and supports the idea of '26th regime' and the creation of real single European insurance market.

The companies mention that they favour national distribution of the insurance products through subsidiaries and other local establishment, rather than from distance by way of freedom to provide services. This issue is also highlighted in the analysis above.

Providers of industrial insurance show the trend of not encountering major difficulties in their endeavours to expand EU-wide. Although the only interesting point is that they "do not do much business in the new EU Member States". As for the other considerations, the company (Gerling General Insurance Company) sees the EU insurance legal order as the opportunity to operate in various Member States and "that is only an advantage". For the target clients the respondent company offers "the same tailor-made products in Germany as the home market, as well as in other EU countries".

In terms of advantages of the European Community legal order of the insurance market one of the respondents (Lloyd's) lists the following points:

- Lloyd's legal form is recognised ('the Association of Underwriters known as Lloyds');
- Authorisation to trade ('the passport') throughout the EU is granted by a single regulator, namely the Home State;
- Member States are required to recognise the licence provided by the Home State;
- The Home State is exclusively responsible for financial supervision of the insurer;
- The procedures surrounding exercise of the right to provide freedom of services and to establish are straightforward;
- Ex-ante systematic approval of policy conditions and pricing is prohibited.

These are indeed the benefits that the EC legal regulation of the insurance market brings for the private insurance undertakings. Further reinforcement of the Community-wide harmonisation of the existing financial services rules and elimination of unfair obstacles to cross-border trade in insurance products are on the agenda of the Commission.

Conclusion

The EC insurance market regulation is founded on the Treaty freedoms of services and establishment. The three generations of harmonising Directives adopted by the Community legislature regulates life and non-life insurance industries. Apart from these acts, other auxiliary directives, such as in the field of solvency, reinsurance, accounting and others are also enforced. These acts are transposed into the national legal systems of the Member States. Other source of the EC law such as the case-law of the European Court of Justice is noteworthy in the area of insurance. It must be observed that the amount of cases before the Court is quite limited, especially in the field of insurance competition. Reasons behind could be the unique characteristics of the insurance market, whereby an insurance undertaking can hardly exercise the dominant position on the market because of the relatively low barriers of market entry (mainly, capital requirements) and the imitable nature of the products/services offered. However there are major problems reflected in the case-law in relation to the VAT and general taxation of the insurance on different Member State markets. Other major concern is the failure of the national implementation of the Community insurance acts. The Commission has been active bringing cases before the ECJ on these grounds.

In my opinion, the discussion on the importance of functioning of the integrated private insurance market in the EU is influenced by the current trends in public insurance arrangements. An ageing population combined with low birth rates, rising healthcare costs and declining employment rates, are making it difficult for statutory insurance schemes to subsidise all social security benefits for the population. Therefore, the regulation of the insurance industry at the EU level and the insurance market integration process has gained significance.

In this thesis I identified some major obstacles impeding the EC insurance market integration: national legal requirements and taxation rules applicable to insurance, 'general good' consideration that might justify a discriminatory treatment of the foreign undertakings, different levels of consumer protection and labour laws in each Member State; other barriers to market integration are of attitudinal or cultural nature. These are: language, varying consumer needs and preferences, mistrust in foreign insurers, etc. The latter category of problems can be solved by the market penetration efforts of the companies, but not by the EU legislation. Business analysis part of this thesis presents the marketing strategies that can be utilised by insurance undertakings in order to expand in new markets throughout the Community.

EC Legal Regulation of the Insurance Market; Challenges of Integration

The former category of problems is acknowledged by the stakeholders and is addressed in the current EC legislative initiatives and proposals. The below table reflects the summary of the questionnaire results as well as the outcome of the survey undertaken by the European Commission.

Table 2. Summary of the EC Insurance Market Barriers

<i>National Legal Barriers</i>	<i>Cultural / attitudinal Barriers</i>
Taxation	Consumer preferences
Consumer laws	Mistrust in foreign insurers
Supervision mechanisms, administrative procedures, reporting	Varying needs for insurance products
Data protection	Managerial differences (in case of M&As or alliances between companies)
Company law	Language of communication
Employment and labour laws	Employee resistance (in case of M&As)
Principle of 'general good' introduced on the EC level	

Present EU efforts to eliminate the existing obstacles and facilitate the Community financial market integration are elaborated in the Commission Financial Services Plan 2005-2010. My thesis argues in favour of the EU legislative action in the field of insurance market integration. However, I believe that the EU legislative harmonisation in this area will take several years and some of the issues will stay unresolved because the taxation arrangements constitute the sovereign right of each Member State where the Community legislature cannot directly interfere. In other matters such as services and establishment, prudential supervision, common accounting standards and solvency requirements, challenges can certainly be alleviated at the EU level.

Bibliography

Avlonitis G. J. and Papastathopoulou P., “Marketing Communications and Product Performance: Innovative vs Non-Innovative New Retail Financial Products”, *International Journal of Bank Marketing*, 2000.

Devlin, J. F., “Adding value to retail financial services”, *International Journal of Bank Marketing*, 2000, Volume 18, No. 5.

Dobbyn, John F., *Insurance Law in a Nutshell*, Fourth Edition, 2003.

Ellis, H., “Policyholder Protection in the Single European Market”, *The Law and Practice of Insurance in the Single European Market*, edited by McGee, A. and Heusel, W., Trier Academy of European Law, 1994, Volume 11.

Fitzsimmons, A., “The Application of EC Anti-Trust Law to the Insurance Industry”, *The Law and Practice of Insurance in the Single European Market*, edited by McGee, A. and Heusel, W., Trier Academy of European Law, 1994, Volume 11.

Fitzsimmons, A., *Insurance Competition Law; A handbook to the Competition Law of the European Union and the European Economic Area*, European Law Library, Graham & Trotman, 1994.

Keeton, R. E. and Widiss, A. I., *Insurance law: a guide to fundamental principles, legal doctrines, and commercial practices*, Student Edition, St. Paul, Minn. West, cop., 1988, 4th reprint, 2001.

Kendall, V., *EC Consumer Law*, Chancery Law Publishing, London, 1994.

Kiriazidis, T. and Tzanidakis, G., “New Development and Prospects of the European Financial Services Industry”, *European Business Review*, 1995, Volume 95, No. 1.

Kotler, P., *Marketing Management*, International Edition, Prentice Hall, 2003. Upper Saddle River, NJ.

Lee, J., “A key to marketing financial services: the right mix of products, services, channels and customers”, *Journal of Services Marketing*, Santa Barbara, 2002, Vol. 16, No. 3.

Maitland-Walker, J., *EC Insurance Directives*, Lloyd’s of London Press, 1992-2001.

McGee, A. and Heusel, W., *The Law and Practice of Insurance in the Single European Market*, Trier Academy of European Law, 1994, Volume 11.

McLeod, I., *Legal Method*, 2nd Edition, Macmillan Law Masters, 1996.

Merkinand, Robert and Rodger, Angus, *EC Insurance Law*, European Law Series, 1997.

EC Legal Regulation of the Insurance Market; Challenges of Integration

Mossialos, E. and Thomson S. M. S., “Voluntary Health Insurance in the European Union: A Critical Assessment”, Baywood Publishing Co., Inc. 2002, *International Journal of Health Services*, Volume 32, No. 1.

Porter, Michael E., “The Competitive Advantage of Nations”, *Harvard Business Review*, March-April 1990.

Saunders, M., Lewis, P., and Thornhill, A., *Research Methods for Business Students*, 3rd Edition, Prentice Hall 2003.

Storey, C. D. and Easingwood C. J., “Determinants of new product performance: A study in the financial services sector”, *International Journal of Service Industry Management*, 1996, Volume 7, No. 1.

Strong, S.I., *How to Write Law Essays and Exams*, Oxford University Press, 2003.

The European Commission web-pages visited in April 2006:

<http://europa.eu.int/scadplus/leg/en/lvb/l24021.htm>

http://europa.eu.int/comm/internal_market/insurance/index_en.htm

http://europa.eu.int/comm/internal_market/finances/docs/actionplan/index/green_en.pdf

http://europa.eu.int/comm/internal_market/insurance/infring_en.htm

http://europa.eu.int/growthandjobs/pdf/COM2005_330_en.pdf

http://europa.eu.int/comm/internal_market/finances/docs/actionplan/index/green_en.pdf

http://europa.eu.int/comm/internal_market/finances/docs/white_paper/white_paper_en.pdf

http://europa.eu.int/comm/internal_market/insurance/docs/2005-markt-docs/markt-2509-05_en.pdf

http://europa.eu.int/comm/internal_market/insurance/guarantee_en.htm

http://europa.eu.int/comm/internal_market/finances/docs/white_paper/annex_3_en.pdf

http://europa.eu.int/comm/internal_market/finances/docs/cross-sector/mergers/survey-results_en.pdf

http://europa.eu.int/comm/internal_market/finances/docs/cross-sector/mergers/consultation_en.pdf

Other Web-pages visited in March 2006:

<http://www.small-business-dictionary.org/default.asp?term=INSURANCE>

<http://www.hillandknowlton.be/ahead/article1.html>

<http://www.datamonitor.com>

EC Legal Regulation of the Insurance Market; Challenges of Integration

<http://www.cea.assur.org>

<http://www.cea.assur.org/cea/v1.1/actu/pdf/uk/annexe262.pdf>

<http://80-www.emeraldinsight.com.ludwig.lub.lu.se/10.1108/09564239610109401>

<http://80-www.emeraldinsight.com.ludwig.lub.lu.se/10.1108/02652320010356780>

<http://80->

[proquest.umi.com.ludwig.lub.lu.se/pqdweb?did=115719276&sid=1&Fmt=3&clientId=53681&RQT=309&VName=PQD](http://80-proquest.umi.com.ludwig.lub.lu.se/pqdweb?did=115719276&sid=1&Fmt=3&clientId=53681&RQT=309&VName=PQD)

<http://80->

[proquest.umi.com.ludwig.lub.lu.se/pqdweb?did=246322711&sid=1&Fmt=4&clientId=53681&RQT=309&VName=PQD](http://80-proquest.umi.com.ludwig.lub.lu.se/pqdweb?did=246322711&sid=1&Fmt=4&clientId=53681&RQT=309&VName=PQD)

The ECJ Case-law:

33/74 Van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid [1974] ECR 1299

90/76 Van Ameyde v. UCI [1977] ECR 1091

238/82 Duphar v Netherlands [1984] ECR 523

220/83 Commission v. France [1986] ECR 3663

252/83 Commission v. Denmark [1986] ECR 3713

205/84 Commission v Germany [1986] ECR 3755

206/84 Commission v. Ireland [1986] ECR 3817

45/85 Verband der Sachversicherer e.V. v. Commission [1987] ECR 405

C-159/91 to C-160/91 Poucet and Pistre Joined Cases [1993] ECR I-637

C-238/94 José García and others v Mutuelle de Prévoyance Sociale d'Aquitaine and others [1996] ECR I-1673

C-67/96 Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie [1999] ECR I-5751

C-349/96 Card Protection Plan Ltd (CPP) v. Commissioners of Customs & Excise [1999] ECR I-973

C-115/97 to C-117/97 Brentjens' Joined Cases [1999] ECR I-6025

C-219/97 Drijvende Bokken [1999] ECR I-6121

C-222/98 Hendrik van der Woude v Stichting Beatrixoord [2000] ECR I-7111

C-206/98 Commission v. Belgium [2000] ECR I-3509

C-296/98 Commission v. France [2000] ECR I-3025

C-109/99 Association basco-béarnaise des opticiens indépendants v. Préfet des Pyrénées-Atlantiques [2000] ECR I-7247

C-240/99 Försäkringsaktiebolaget Skandia (publ) [2001] ECR I-01951

C-136/00 Rolf Dieter Danner [2002] ECR I-08147

C-422/01 Försäkringsaktiebolaget Skandia (publ) and Ola Ramstedt v Riksskatteverket [2003] ECR I-06817

C-346/02 Commission v. Luxembourg [2004] ECR-0000

EC Legal Regulation of the Insurance Market; Challenges of Integration

C-347/02 Commission v. French Republic [2004] ECR-0000

C-346/02 Commission v. Luxembourg [2004] ECR-0000

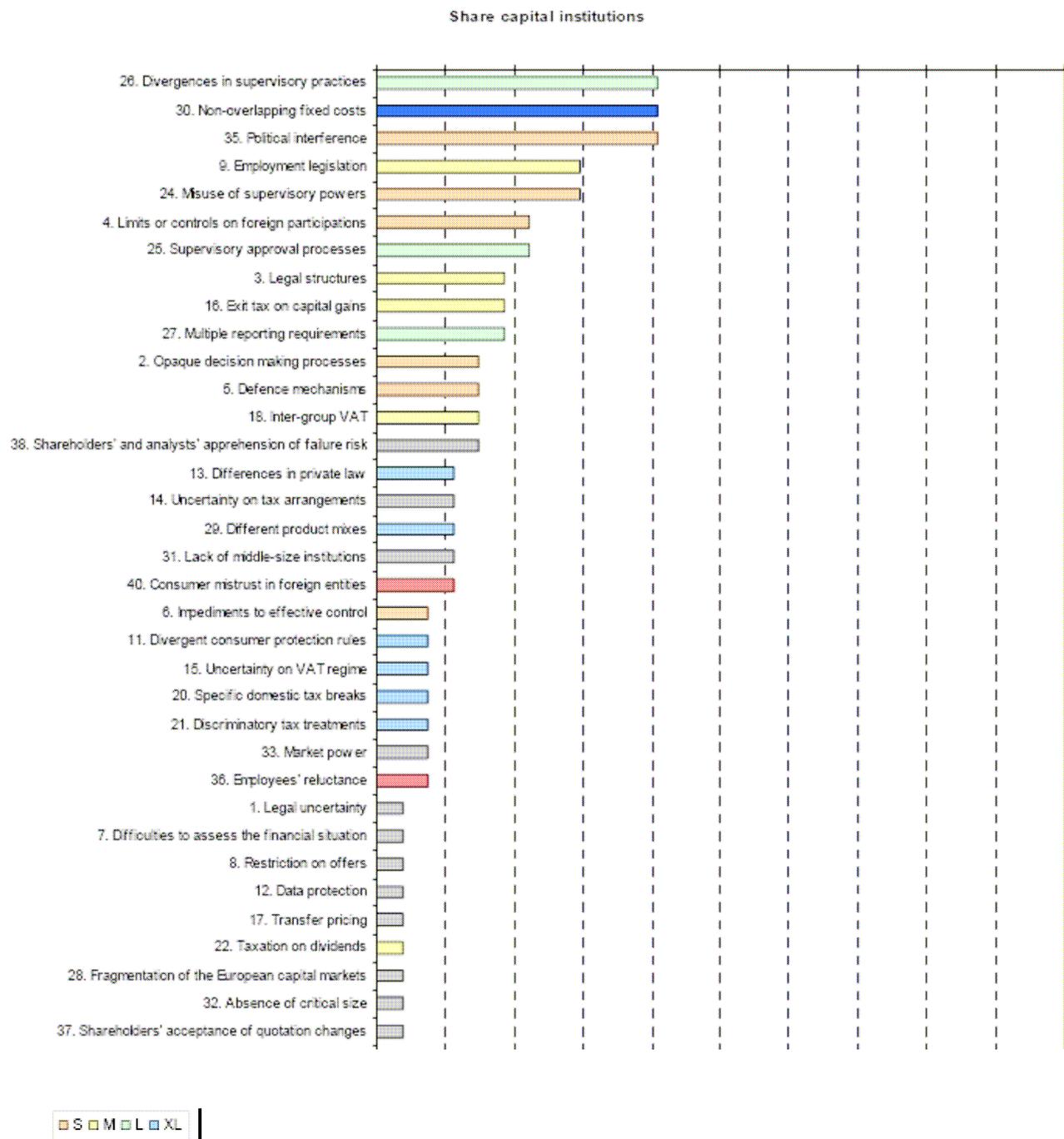
C-472/03 Staatssecretaris van Financiën v Arthur Andersen & Co. Accountants c.s. [2005] ECR 0000

Decisions:

Nuovo Cegam, OJ 1984 L 99/29.

Annex 1. Results of the Commission Public Consultation: Barriers to Cross-Border Consolidation

(Source: http://europa.eu.int/comm/internal_market/finances/docs/cross-sector/mergers/survey-results_en.pdf)



Cooperative institutions



Savings institutions (and related)

