INSURANCE REGULATION AND EC INTEGRATION (Ⅱ)

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3. THE INTEGRATION OF EC INSURANCE MARKET

In this part, the integration of EC insurance market will be examined in terms of the general principles of insurance regulation those we concluded in the above analyses. The main subjects of this part will comprise the concept of the single insurance market, the fundamental principles for achieving a single insurance market, the development of EC insurance integration and the EC legislation on insurance.

3.1 The Concept of the Single Insurance Market

Essentially, the European Community (EC) is an economic union, taking the term in its technical sense. According to the Art. 2 of the Treaty of Rome, signed by the six original Member States in 1957, the object to create a common market was established as following:

"The community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."

Generally speaking, there are three main objectives amongst the articles of the Treaty: [33]

(1)the elimination of customs duties and quantitative restrictions on import and export of goods between Member States;

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(2)the establishment of a common customs tariff towards third countries; and

(3)the abolition of obstacles to the freedom of movement for persons, services and capital.

Under sush a secnario, as the progressive implementation of the objectives of the Treaty, the persons and business enterprises, goods, services and capital in the common market are free to flow and go across the frontiers of the Member States. Meanwhile, there is also a system of law ensuring that competition within the Community is not distorted. On the other hand, by creating such a common market, the community would benefit from the size and economies of large scale operations. In the view of Josephine Steiner, "the purpose of EC competition policy is to encourage economic activity and maximise efficiency by enabling goods and resources to flow freely amongst Member States according to the operation of normal market forces. The concentration of resources resulting from such activity functioning on a Community, rather than a national, scale is intended to increase the competitiveness of European industry in a world market.[34] Accordingly, if the primary goal can be achieved, the citizens in Member States can not just benefit from the freedom in the Community but also a larger economic scale of the single market.

From the point of view of the insurance industries in Member States of EC, the creation of a single European Insurance Market means essentially implementing the economic freedoms introduced in the Treaty of Rome. In the process of achieving the goal, there are three prerequisites which should be fulfilled:

(1)the freedom of establishment (Arts 52 ~ 58)

(2)the freedom to provide services (Arts 59 ~ 66)

(3)the free movement of capital (Arts 67 ~ 73)

The articles related to these prerequisites are respectively stipulated in Title 3 of the Treaty of Rome: Article 52 provides the abolition of restrictions on nationals of one Member from establishing themselves in another. Article 59 provides for the abolition of restrictions on Member State nationals who are established in one Member State from providing services into another. Article 67 provides for the abolition of restrictions on the movement of capital belonging to persons resident in one Member State and any discrimination based on the nationality or the place of residence of parties or on the place where the capital is invested.

If we examine the basic freedoms introduced in the Treaty of Rome associated with the main considerations of insurance regulation we mentioned earlier, it is submitted that following objectives need to be achieved in the single insurance market.[35]

(a)For the Policyholders Protection:

(1)the purchaser of insurance, whether business or individual, must be able to buy his insurance wherever he likes in the Community and must have access to the full range of products available anywhere in the community;

(2)the market must be transparent enough for purchasers of insurance and their advisers to make their choices;

(3)adequate and comparable financial information about all insurance undertakings must be available in the market;

(4)if an insurance undertaking is compulsorily wound up, there must be an equal

treatment for policyholders regardless of their location within the Community and regardless of the location within the Community of the establishment through which their contracts were concluded;

(5)the main purpose of regulatory rules must ensure that insurance undertakings are always able to meet their financial commitments;

(6)there would be enough control over selling methods and the nature of the products to prevent the public from misled.

(b)For the Promotion of Competition:

(1)insurance undertakings having their headquarters in any one Member State must be free to set up their branches in any other Member State;

(2)insurance undertakings must be able to market the full range of their insurance products throughout the Community, without having to use their branches;

(3)insurance undertakings ought to compete on price, the nature of product and the services offered, on a fair and equal basis;

(4)insurance undertakings should be subject to essentially the same main regulatory rules, which can still be applied by separate national authorities.

(5)the control must not be so heavy that it stifles innovation, which indeed ought to flourish in the competitive atmosphere;

(6)insurance intermediaries must be free to operate on equal terms throughout the market and should be motivated to seek out the most suitable insurance wherever it may be in the whole Community;

(7)there must be no restrictions on the currency movements of any of the parties involved in the transactions.

(c)For the Policies of Government:

(1)the regulators in all the Member States must, by way of cooperation, achieve the economic objectives of the Community, such as public finance, monetary policy and debt management.

(2)the regulators of the Community must recognise the changes in and out of insurance industry and constantly revise their insurance regulation to meet the current social needs of the Community.

In order to complete these objectives, the harmonization amongst the different legal systems and regulations of all Member States is essential in the process of creating a single European insurance market. With respect to insurance sector, most coordination was achieved by the adoption of the "Directive"[36] under Article 100. At first, unanimity within the Council to the proposed Directives was originally required. However, a new system of majority voting was introduced after the Single European Act 1986 came into force and made the legislative procedure more efficient. Nowadays, it can be said that the goal of a single insurance market is nearly completed. In the following paragraphs there will be more discussion in this respect.

3.2 The Fundamental Principles for Achieving a Single Insurance Market

In the process of the integration of EC insurance market, there are four fundamental

principles which had been established to achieve the aims of the single insurance market. "They include principle of harmonization of essential standards", "principle of mutual recognition", "principle of home country control" and "principle of single licence system". In fact, these principles are not independent but highly related to each other even though they have different functions towards the goal. Therefore, when we intend to analyze the basic concept of these principles, it seems necessary to consider their relationship concurrently.

3.2.a Harmonization of Essential Standards

As we mentioned above, the difference of legal systems and regulations amongst Member States is a major obstacle to the freedoms of movement for persons, services and capital. Harmonization in this respect is therefore an important task in the process of integration. In the early years of EC integration, the Community proposed to implement the policy of full harmonization which intended to bring all national regulations into line and agree the standard EC rules. Gradually, the Community realized that a comprehensive policy of often detailed harmonization was impractical. This was because the decision-making process was often delayed by a lot of unnecessary negotiations and the inefficient legislative procedure amongst Member States. Therefore, in order to avoid some detailed negotiations on unimportant items and accelerate decision-making process, the Community only examined and harmonized the essential standards of insurance regulation. In other words, the harmonization in respect to EC insurance regulation only emphasized on the essential parts of insurance regulation. For the insurance sector in EC legislation, the first generation Directives, namely "the Non-Life Establishment Directive" (73/239/EEC) and "the Life Establishment Directive" (79/267/EEC), were stipulated in the light of this principle.

3.2.b Mutual Recognition

Owing to the diverse regulations and standards in different Member States, it is difficult to require each individual or enterprise to meet all rules required by the Member State in which they intend to carry on their business. Consequently, the principle of mutual recognition was introduced to overcome this problem. It means "that given a sufficient degree of harmonization of diverging Member State regulations (but without standardising them completely), countries will allow nationals from other Member States to carry on business in the territory of host Member State, provided they comply with regulations in their own Member States."[37] The principle had to be widely accepted because of the difficulty in reaching agreement on full harmonization.

3.2.c Home Country Control

Apparently, the principle of mutual recognition is a more practical approach for achieving the goal of a single market than full harmonization on the regulations of Member States. However, it is essential to introduce another principle called "home country control" to assist the implementation of the principle of mutual recognition. The principle of "home country control" introduces that the regulatory controls should principally be carried out by the supervisory authorities of the Member State where the head office of the

insurance undertaking concerned is established, rather than by any other Member State in which the insurance undertaking is carrying on business, either through a branch or an agency on a services basis. If we amalgamate it with the principle of mutual recognition, the host country (host Member State) must recognize the rules and standards to home country (home Member State) and provide a national treatment to the insurance undertakings which set up in any other Member State. Meanwhile, the principle of home country control is also the foundation of the single licence system.

3.2.d Single Licence System

During the earlier stage in the process of EC integration, the freedoms of the Treaty of Rome has in practice been subject to compliance with the domestic requirements of host Member State in which the business was exercised. However, since the single licence system was introduced, the regime of insurance regulation had been totally changed. Under such a new regime, "the single licence means that the insurance undertakings will only need to be authorised in the Member State where its head office is located. The Member State in which it is located will have responsibility for making certain of the financial stability of the insurance undertaking, if necessary on the basis of being able to practise throughout the Community."[38] In other words, insurance undertakings will be granted a "European Passport", enabling them to carry out their business throughout the Community on the basis of the licence granted to them, according to the insurance regulation of their own country. In addition, the single licence system has the advantage to avoid the complexity for insurance undertakings to be authorized by and to satisfy the financial requirements of each Member State where they carry on their business.

3.3 The Development of EC Insurance Integration

As we mentioned earlier, the Treaty of Rome introduced three fundamental freedoms to promote throughout the Community a harmonious development of economic activities. Meanwhile, the Article 8 of the Treaty also provided that the common market should be "… progressively established during a transitional period", ending on 31 December 1969. According to the decisions of the European Court of Justice in 1974,[39] the freedom of establishment and the freedom to provide services had a direct effect after the end of the transitional period and that, accordingly, restictions which discriminated against those seeking to exercise these two freedoms from another Member State could not be enforced, notwithstanding the absence of specific Directives. However, Directives were still required to harmonize regulatory requirements so that these rights could be exercised more easily.[40] After the transitional period, in respect of insurance sector, the first generation Directives of insurnace, (73/239/EEC) and (79/267/EEC), were issued for dealing with freedom of establishment.

Another significant step was the decision of European court of Justice in the *Cassis de Dijon*[41] case in 1978. In the case which concerned the free movement of goods, the court established an important principle (the second principle) that there was no valid reason why "provided that [goods] have been lawfully produced and marketed in one of the Member States,[they] should not be introduced into any other Member State". In other words, each Member State should recognise that a product made and marketed according to

legal requirements in any other Member States must be accorded the same recognition within its own boundaries. This principle had come to be known as "mutual recognition" and had been applied to the commercial sectors, including insurance.

In 1985, the "White Papre on Completing the Internal Market", issued by the Commission, had revealed that despite the Community's long existence, many barriers still existed to the achievement of the single internal market. If the Community wanted to achieve the full economic benefits of the single market and meet the challenge and competition in the world, further progress must be made. Therefore it outlined a programme for the removal of physical, technical and fiscal barriers which involved approximately 300 Directives. It stressed the new emphasis on the free circulation of financial products, including insurance, and recognised the principle of "mutual recognition" was a more practical approach for achieving the single market than full harmonization. It also introduced the principle of "home country control" for the regulation of financial institutions.[42]

In 1986, the Single European Act was signed to amend the Treaty of Rome and its principal purpose was to eliminate the remaining obstacles to the single internal market. The act is significant because it incorporated into Community law the deadline of 31 December 1992 by which the single market was to be achieved. Article 13 of the Act added the following as a new Article 8 to Treaty:

"The Commission shall adopt measures with the aims of progressively establishing the internal merket over a period expiring on 31st December 1992··· The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provision of this Treaty."

Accordingly, the Act imposed a commitment on Member States to implement a massive programme of harmonization.

On the other hand, the Article 18 of the Single European Act 1986 provided a significant change from unanimous voting at the Council to a qualified majority voting on the matters concerning the completion of internal market. In this way, the Act removed the veto by any one Member State which had been used to prevent or delay the process of integration. Consequently, the legislative procedure became more efficient and the single market could be achieved more rapidly. After the Single European Act came into force in 1987, the second generation Insurance Directives (88/357/EEC & 90/619/EEC) dealing with the freedom to provide service and the third generation Insurance Directives (92/49/EEC & 92/69/EEC) dealing with the single licence system were issued continuously.

In December 1989, two intergovernmental conferences were convened pursuant to cooperation procedures introduced by the Single European Act 1986 to consider the questions of "economic and monetary" and "political" union. These conferences resulted in the signing, at Maastricht in December 1991, of a Treaty on European Union (TEU). Like the Single European Act 1986, the Maastricht Treaty enlarged the scope of the Community competence and strengthened the decision-making process, particularly increasing the Parliament's powers. It pledged Member States to full economic and monetary union and to the development of a common foreign and security policy with a view to the eventual creation of a common defence policy. If the aims of the Maastricht Treaty are achieved the Community will have taken a historical step towards a federal system.[43]

3.4 The EC Legislation on Insurance

Theoretically, the sources of EEC law comprise the following:[44]

(1)The EEC Treaty and Protocols, as amended by the succeeding Treaties;

(2)EEC secondary legislation in the form of Regulations, Directives and Decicions.

(3)Such international agreements as are entered into by Community institutions on behalf of the Community pursuant to their powers under the EEC Treaty.

(4)Judicial legislation. This comprises the entire jurisprudence of the European Courts, embracing not only decisions, but general principles and expressions of opinion, provided they concern matters of Community law.

Under such a hierarchy, EEC law originates from either the original Treaties or additions and amendments to them. These are known as the "primary" sources of Community law. The reason is that the Treaties are the nearest thing to a written formal Constitution that the Community possesses. On the other hand, Community law is also derived from either executive or judicial legislation which followed the principles of the Treaties. They are generally referred as the "secondary" sources of Community law.

As we mentioned earlier, except for the fundamental rules which had been set up in the Treaties, the Commission's programmes for the integration of insurance markets were introduced by means of the implementation of the relative Directives. Therefore, Directive is the most common form of EC legislation used in the insurance sector. Meanwhile, when we talk about the issue of creating a single market, we should remember what we are dealing with is not a single coherent activity, but rather a group of comprehensive business. As a result, it can be foreseen that there are a large number of Directives in the field of insurance business, including non-life (general) insurance, life (long term) insurance, reinsurance, motor insurance, insurance intermediaries, miscellaneous and other activities related to insurance. In this paper, the writer intends to focus on the discussion of two main categories of Insurance Directives, namely non-life insurance and life insurance, to prevent this paper from being involved in some detailed items of other Insurance Directives.

Furthermore, if we examine the history of EC insurance legislation, we can find that there were three "generations" of Insurance Directives covering non-life and life insurance. The purpose of the first generation Directives is to deal with the affairs of the freedom of establishment, the second with the freedom to provide services and the third with the single licence system. Each generation had two Directives, one dealing with non-life insurance and the other with life insurance. Traditionally, there is a distinction between non-life and life insurance even though some kinds of insurance product may overlap. The main purpose of this distinction is to protect the long term assets of life insurance policyholders from being jeopardized by the fluctuations in the non-life insurance sector. In following paragraphs the writer will chronologically introduce the development of EC insurance legislation in respect to non-life and life insurance and discuss majorcontents of these Directives respectively.

3.4.a The First Generation Directive —Freedom of Establishment

The Non-Life Establishment Directive (73/239/EEC) and the Life Establishment Directive (79/267/EEC) were introduced in 1973 and 1979 respectively. Their full title

in common is: "first Council directive··· 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 (or direct life insurance)."

They have formed the basis of insurance regulation in Member States for many years and are important to an understanding of subsequent legislation. Generally speaking, the key provisions of these two Directives are:[45]

(1)to impose common basic authorization procedures for the establishment of insurance undertakings;

(2)to lay down the right for EC insurance undertakings to establish branches or agencies in other Member States, subject to local authorization but without taking into account economic conditions;

(3)to harmonize the standards of solvency margins so that the home Member State is solely reponsible for an insurance undertaking's solvency in respect of its entire business ;

(4)to leave other regulation of branches and agencies, including regulation of technical reserves, to the host country;

(5)to abolish the future authorization of composite insurance undertakings.

3.4.b The Second Gereration Directives — Freedom to Provide Services

The Second Generation Directives comprise the Non-Life Service Directive (88/357/EEC) and the Life Service Directive (90/619/EEC). The full title of these two Directives is:

"second Council Directive ··· on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (or direct life assurance) and laying down provisions to facilitate the effective exercise of freedom to provide services and amending directive 73/239/EEC (or 79/267/EEC)."

The main purpose of thse two Directives is to deal with the freedom to provide (insurance) services throughout the Community. They involved a lot of detailed regulatory rules in respect to entitlement to cross-frontier insurance on a services basis and different regimes for the provisions of cross-frontier services. Therefore, they have a different emphasis because of the different natures of risks.

For the Non-Life Service Directive, its purpose is to provide further harmonization of laws relating to the business of non-life insurance, and in particular to provide a regulatory framework within which most non-life risks may be covered by the provision of cross-frontier services. The key provisions of this Directive are:[46]

(1)insurance undertakings can cover large risk on a services basis without the need for authorization by the host country;

(2)to provide a distinction between large risks and mass risks;

(3)to make the host country's control of all risks partially restricted;

(4)the rules governing choice of law applicable to insurance contracts;

(5)to require greater cooperation between Member State insurance supervisory authorities;

(6)to provide the basic provisions relating to freedom of services.

On the other hand, the purpose of Life Service Directive is to provide a framework for

the provisions of life assurance by an insurance undertaking in one Member State to a policyholder in another Member State. The key provisions are:[47]

(1)to introduce freedom of services for life insurance business, closely following the pattern of Non-Life Service Directive;

(2)to provide two regimes for the provisions of cross-frontier services, namely the liberal regime and the restrictive regime;

(3)to extend the freedom of services to policies taken out by individual , employment-related policies and pension schemes which are not provided for in social security legislation.

(4)to provide that, under the host country control, "own initiaitve" risks will have to be justified by reference to public policy in the hose country;

(5)to include reciprocity provisions for non-EC countries.

3.4.c The Third Generation Directives — The Single Licence System

The purpose of the Third Generation Directives is to accomplish the single market in insurance by way of adopting a single licence system. There are two Directives on this stage, one (92/49/EEC) covers non-life business, the other (92/96/EEC) life business. Their full title in common is:

"Council Directive...on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (or direct life assurance) and amending Directives 73/239/EEC and 88/357/EEC (or Directives 79/267/EEC and 90/619/EEC)."

The spirit of these Directives is that, on the basis of a licence from the regulators of the Member State where their head office is established, insurance undertakings can set up branches or agencies and provide services in any or all other Member States. For the Third Non-Life Directive, its objective is "to introduce a single authorization system whereby any insurance undertaking whose head office is in one of the Member States of the Community can establish branches in other Member States and carry on business by way of provision of cross-border services under the supervision of the Member State in which its head office is situated and to enable persons seeking insurance to find the cover best suited to their need."[48] The key provisions are:[49]

(1)to establish a common basis for the determination or calculation of technical reserves, and harmonise rules governing other aspects of technical reserves;

(2)insurance undertakings will be authorized, and subsequently mainly controlled and supervised, by their home Member States;

(3)the hose Member State, whether it be a Member State in which the insurance undertaking has established a branches or into which it provides cross-border services, will be left the residual powers of control only;

(4)an insurance undertaking is able to establish branches and to provide services in other Member States without being subject to the requirements by those Member States;

On the other hand, the objective of the Third Life Directive is "to enable potential policy-holders to have access to any assurance undertaking whose head office is in the Community, while at the same time guaranteeing them adequate protection."[50] The key

provisions are:[51]

(1)A system is introduced whereby a single official authorization is granted by the competent authorities in the home Member State.

(2)The financial supervision of the insurance undertaking is the exclusive responsibility of the home Member State.

(3)The Directive strengthens the competent authorities' supervisory powers and provides that Member States must take all steps necessary to enable those authorities to make detailed enquiries regarding an insurance undertaking's situation.

(4)The Directive brings about such harmonizaiton of national laws as is necessary to permit mutual recognition and home-country control in relation to the establishment and calculation of technical provisions, and lays down rules on the choice, valuation, diversification and location of the assets covering those provisions.

(5)The life insurance purchaser will have access to any life insurance product lawfully marketed in the Community, provided it does not contravene the legal provisions protecting the "general good" in force in the Member State of the commitment.

(6)Any insurance undertaking wishing to pursue business by way of the cross-border provision of services must indicate to its home-country authorities the Member State or States in which it intends to provide services, and the nature of the business it proposes to transact there.

(7)As far as indirect taxes and parafiscal charges are concerned, insurance undertakings are subject to the territoriality principle, that is to say the tax rules of the Member State of the commitment apply, for the benefit of that state.

4. CONCLUSION AND COMMENTS

It is clear from the above that insurance is a financial product which is highly concerned with public interest. Today, the regulation of insurance becomes an improtant task for the government. The regulators in the government have a duty to implement prudential supervision on insurance industries to protect different interests in the insurance market. Before making the decisions in respect of the insurance sector, it is suggested that the regulators should consider various interests in the market. With the respect to these interests, we can easily recognise in the first instance that insurance undertakings (the seller)and policyholders (the purchaser) are two basic groups of players in the market because they are the essential parties of an insurance contract. In addition, an insurance intermediary and government also play important roles in the market. It dose not seem to be comprehensive if regulators neglect these interests in the process of decision-making.

In this paper, two conventional hypotheses for the justification of insurance regulation, the public interest hypothesis and the capture hypothesis, were adopted to induce certain fundamental considerations of insurance regulation. The writer divided these considerations into three categories: namely policyholders' protection, promotion of competition and government's policy objectives.

First of all, with the respect to policyholders' protection, the general interest of policyholders is financial adequacy of their insurers. The reason is that only solvent insurance

undertakings can provide policyholders with financial security and maintain their peace of mind. Accordingly, it is submitted that financial solvency is the most fundamental requirement for insurance regulation. On the other hand, an insurance service is an invisible product related to many complicated factors, such as calculation of premium and legal wording in insurance policies. Thus, it often results in an unfair position between policyholders and insurance undertakings due to the asymmetry of information in insurance transactions.

Secondly, it has always been argued that too much regulation stifles the innovation and hampers the natural functions of market mechanism. However, the question often arises as to whether a perfect competition insurance market exist in the real world. According to the experiences of USA in 1910s and reinsurance markets in the emerging countries, it is suggested to observe that this argument in doubt. In contrast, certain regulations can even promote the insurance market to a more competitive mode on a fair and transparent basis. The single insurance market in the European Union seems a good example in this respect.

Finally, in addition to the above objectives, the government also has other considerations related to its economic and social objectives in the process of decision-making for insurance regulation. The government can make use of insurance as an instrument to achieve certain policy objectives, such as monetary and public financing policies, or social security systems. For instance, the national health insurance becomes an essential part under the social security systems of some countries.

Broadly speaking, the forms of government regulation operate through three divisions: the legislative sector, the judicial sector and the administrative sector. Different government authorities have their own duties in respect of insurance regulation affairs. The legislative sector should consider different interests in details to make the law suitable to the real world. The administrative sector should prudentially supervise the operations of insurance undertakings with the authority delegated by the legislative sector. The judicial sector, the last resort of policyholders, should protect an innocent party by way of construcion of laws when the above sectors fail in dealing their jobs. In addition, self-regulation, which can be construed as one part of administrative control, is the fourth regulatory regime. This regime develops itself as an alternative method instead of inefficient public regulation. In recent years the Lloyd's of London, the most controversial self-regulated insurance institution, suffered a disastrous failure and was involved in some scandals so as to jeopardize the interests of its Members and even the whole insurance market. Accordingly, it is submitted that the Government should undertake some stricter measures to control this unique insurance institution.

Insurance regulation also plays an important part in the integration of EC insurance market. In 1957 the Treaty of Rome was signed to introduce a scenario for the establishment of the European Economic Community. One of its objectives is to achieve the freedoms of movement for persons, services and capital so as to create a single market within the territory of the Community. With respect to insurance, the creation of a single insurance market means essentially implementing the economic freedoms of the Treaty of Rome. In order to achieve these freedoms, the coordination in respect of the rules of insurance regulation is an necessary prerequisite. However, harmonization amongst different Member States is difficult because of the variety in the laws, regulations and administrative provisions of all Member States.

In the process of the integration of EC insurance market, four fundamental principles have been established to achieve the aims of the single insurance market. They include:

(1)Harmonization of Essential Standards

The harmonization in respect of EC insurance regulation only emphasizes on the essential standards of insurance regulation to avoid certain detailed negotiations of a comprehensive harmonization.

(2)Mutual Recognition

Every EC Member State must recognize the regulation of other Member States and allow nationals from these Member States to carry on business in its territory, as long as they can comply with the regulation in their own Member States.

(3)Home Country Control

The regulatory controls will principally be carried out by the supervisory authorities of the Member State where the head office of the insurance undertaking concerned is established, rather than by any other Member State in which the insurance undertaking is carrying on business, either through a branch or agency or on a sevices basis.

(4)Single Insurance Licence

Insurance undertakings only need to be authorized in their Home Member State rather than the Host Member States where they carry on business. In other words, provided insurance undertakings are authorized in any EC Member States, they can have a "European Passport" to carry on insurance business throughout the Community.

After the Single European Act 1986 was signed, the Community developed the integration of the insurance market more efficiently. As we mentioned above, a series of Insurance Directives were introduced progressively in respect of different categories of insurance business. Up to the present time, the single insurance market in respect to the life and non-life insurance sector has nearly been accomplished. In the opinion of the writer, the progammes in the process of integration is efficient and remarkable. However, the following factors remains potential obstacles to further integration of the market in the future:

(1)Insurance Contract Law

Insurance contract law affects the legal relationships between the parties of an insurance contract because most insurance disputes will be judged by its context. If we make a comparison amongst the Member States, we can find some differences between common law and civil law systems related to the basic principles of insurance contract law, such as the principle of "Utmost Good Faith". If any litigation deals with this kind of issues, it should be noted that there may be different results under various governing laws or jurisdictions of Member States. In this respect, the Community had ever proposed a draft of Insurance Contract Law Directive to harmonize essential provisions of insurance contract law, but this draft made no progress in the Council. Under such a circumstance, the governing laws or jurisdictions may be a predominant factor for both parties when they consider their insurance transactions.

(2)Taxation of Premium

As regards to the taxation of premium, the Community still applies the territorial-

ity principle which was eatablished in the Second Generation Directives. Thus, insurance policies sold by way of freedom of services across national frontiers will, initially at least, be subject to the policy taxes and levies prevailing in the host Member State.[52] Obviously, this is another factor which perhaps affects the competition of the insurance market in the community.

(3)Currency of Insurance Proceeds

For most policyholders, they nonmally prefer to receive their insurance proceeds in the currencies of their own Member States, particularly in the case of long-term insurance or pension schemes. Therefore, the currency of insurance proceeds is an important consideration when prospective policyholders select their insurance products. The issue of the unification of currencies amongst Member States is still controversial, especially for the UK. If the Single European Monetary System (i.e. the European Currency Unit, ECU) can be achieved in the future, this problem will be solved automatically.

It has to be hoped that the political sectors of the Member States will deal with these residual difficulties so as to achieve a real single insurance market in the community.

NOTE :

33.Nicholas Paul & Richard Croly, EC Insurance Law, (Chancery Law Publishing, London, 1991) p4.

34.Josephine Steiner, Textbook on EEC Law, (Blackstone, 3rd ed., 1993) p116.

35.Bill Pool, The Creation of the Internal Market In Insurance, (Commission of European Communities, Luxembourg, 1990) pp8~9.

36.According to the Article 189 of the Treaty of Rome, "A Directive is ··· binding, as to the result to be achieved, upon each Member State to Which it is addressed, but shall leave to national authorities the choice of form and methods.

37.Paul and Croly, op. cit. p5.

38.J.M.A. Kilby, The EC and Insurance, (Redwood, England, 1991) p10/5.

39.Case 2/74 Reyners v Belgian State [1974] ECR 631, regarding Art. 52. Case 33/74 Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid [1974] ECR 1229, regarding Art. 59.

40.Paul and Croly, op. cit. p4.

41.Case 120/78, Rewe-Zentral AG v Bundesmonopolverwaltung fur Branntwein [1979 ECR 649].

42.Paul and Croly, op. cit. p5.

43.Josephine Steiner, op. cit. pp4~5.

44.Ibid, pp21~22.

45.Paul and Croly, op. cit. p19.

46.Ibid., p41.

47.Ibid., p65.

48.See the abstract of 92/49/EEC.

49.Paul and Croly, op. cit. p76.

50.See the abstract of 92/69/EEC.

51.Ibid.

52.R. L. Carter; Handbook of Insurance; (loose-leaf, London, 1994)A.5.5-04-05.

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