

Adapting to the Community

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What repercussions will EEC membership have for Spain's domestic insurance industry? Ignacio Hernando De Larramendi, chairman of Mapfre Corporation, foresees few immediate changes, but the market structure and its legal framework are bound to be affected in the long run

Beyond all the legal modifications necessary for Spain's adaptation to the EEC, it must asked to what degree the domestic insurance industry is going to see itself affected by stronger competition or increased penetration of European businesses. In reality, "freedom of establishment" already exists in Spain. The creation of branch offices and agencies by foreign companies has always been possible. The large European insurers are operating in Spain, and there are no substantial changes foreseeable in their operations due to the new situation. Moreover—except for a few instances—although European companies may in the future pay closer attention to their activities here, it will be difficult for them to increase their penetration. This has, no doubt, decreased in recent years, while that of the leading local insurers has seen an upswing.

Penetration levels

Future penetration levels will depend on three basic factors. First is the decentralisation of operations bringing decision-making closer to the insured in all major population centres. Second is the putting down of local roots as a consequence of the above. Third is the ability to utilise the data-processing involved in operating such a policy. None of these factors will undergo any substantial change due to the fact that Spain is joining the EEC.

The "freedom to render services" that to a certain extent looms before us as the big problem, and which is producing conflict within the EEC itself, should affect Spain to quite a lesser degree than has been predicted. It will increase competition in the insuring of major industrial risks, but that is already happening. As an example, the largest fire disaster in Spanish history, which took place in the Jerez wine cellars in 1984, had no effect on Spanish insurance firms, since it was mainly

covered by foreign concerns—the sole Spanish company involved had totally reinsured its part in the London market.

The same thing has happened, almost without exception, in the major disasters of the past three years, indicating that this situation will scarcely change upon entry into the Community. From another standpoint, a shift in life insurance to other countries or foreign companies could take place

Will Spanish insurance bloom in the EEC?

in the future, but I am of the opinion that this will happen only in a few cases involving very wealthy people, and its repercussions will be insignificant for Spanish life insurance as a whole.

On the other hand, it is predictable that in the coming years other important changes in the market will take place—an increase in acquisitions of Spanish companies by foreign ones, more domestic mergers, and greater stress on cost reduction. This latter is in the light of the necessity to compete



...in foreign countries which can distort the market by dumping in the large insurance sectors, as indeed is already happening elsewhere.

Perhaps it is also worth asking if entry into the EEC is going to increase the presence of Spanish insurers in the rest of Europe. This seems unlikely, but it is possible that there will be an increase in technical cooperation agreements. And there is bound to be some "political" exchange of reinsurance with European companies, imparting—at an extremely slow pace—greater harmony all round.

Nor can it be expected that entry will produce spectacular changes in reinsurance activity, which is completely liberalised in our country, whereby one can freely accept and transfer risks with every country in the world—though there are difficulties that we must overcome in the transfer of funds. Changes in this area will be due to other reasons, especially to the necessary restructuring of worldwide reinsurance as a consequence of its heavy losses and of the dubious practices that have appeared during recent years. Quite to the contrary, it is widely believed that Spanish reinsurance will become more important in Latin America, and that

...of the publication of the second Directive relating to civil liability in the area of automobiles. In spring of that year, Spain agreed to incorporate the terms of this Directive into its internal legislation, though basing total application on the time periods for adaptation granted to Greece by the Directive.

The Directive of 10 December 1984, was subsequently issued, which modifies Directive 73/239 in that it considers the "tourist assistance" branch to be one that is different and independent, thus requiring a margin of solvency and a guarantee fund for those companies involved in this area. This insurance is defined as an "agreement, by means of advance payment of a premium, to come to the immediate aid, in kind, or *in natura*, of the beneficiary of an assistance contract who finds himself in difficulties as a consequence of an unforeseeable act."

In principle, incorporation into the EEC should not present Spanish insurance with serious problems from the legislative standpoint inasmuch as it has been adapting to Community financial requirements in the area of solvency margins and guarantee funds since 1979; thus the Private Insurance

...incorporate the provisions of the Directive into our internal laws. At any rate, this poses no major problem, since the new Insurance Law foresees the subordination of "activities preparatory or complementary to those of insurance," while Article 3 of the Regulations Project, currently being ruled on by the Council of State, refers to this subordination, "in regard to repercussions that such activities may have on the finances of the insurance company undertaking them."

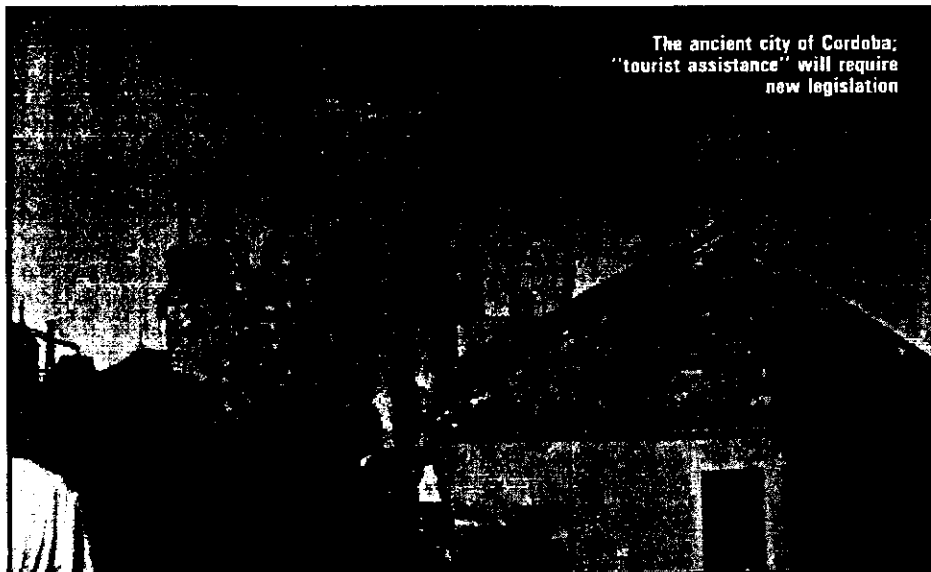
Freedom to render services

The impact of membership could be greater concerning the *freedom to render services*. This will be particularly true should the Court of Justice in Luxembourg ratify the doctrine stating that once the start-up period has ended for the programme dealing with the freedom to render services, such freedom will be demandable in any EEC country—with or without a Directive—that implemented this programme, since Articles 59 and 60 of the Treaty of Rome are considered to be directly applicable.

Taking the case of *Community co-insurance*, for example where the 30 May 1985 Directive has been accepted by Spain, a six year transition period for its full application has been obtained. The first three are without coverage, and the remaining three are to be applied in stages, with a regressive percentage for risks located within Spanish territory being reserved for insurers established in Spain—75% in the fourth year; 40% in the fifth, and 20% in the sixth. The practical problem posed by the application of this Directive is the possibility that major industrial risks will be insured from abroad, without the need for the leader to be established in our country.

However, the interpretation of the Directive is far from uniform. France and Denmark have set quantitative limits in order to determine which risks are to be covered by international co-insurance. West Germany and Ireland have stated their interpretation that the leader must be established in the risk country. The Commission has brought this question before the Luxembourg court so that a definitive decision may be handed down.

Space does not allow the question of automobile insurance and the future role of the state-run Insurance Compensation Consortium to be dealt with here, but it is certainly an issue worthy of coverage at a later date as the process of day to day integration gets in motion. It will be, in conclusion, a fascinating time for both the Spanish and the EEC markets, and a spirit of cooperation can be expected.



The ancient city of Cordoba; "tourist assistance" will require new legislation

there will be a growing number of agreements with companies in that continent. They have very special problems which Spaniards can understand better than many other people.

Going on to the legal modifications, negotiations between the EEC and Spain in matters pertaining to the insurance sector were largely completed in 1982. On 22 March of that year, Spain agreed to accept application of the entire Community package (*acquis communautaire*) beginning on the date of entry, with the exception of a six year transition period for applying Directive 78/473 regarding international co-insurance.

There were further negotiations in

Planning Law of 2 August 1984 embodies the terms of Directives 73/239 and 79/267.

Nonetheless, membership will emphasise the need for a number of adjustments or modifications in the legal framework of our insurance.

For example, there apparently exists no special problem in the *right of establishment*, since the new Private Insurance Planning Law foresees the possibility of adapting current guidelines to the terms of treaties signed by Spain, which involves an implicit reference to EEC membership.

Another example will be the tourist assistance branch mentioned earlier, which will require a Spanish regulation