

FREEDOM OF SERVICES

by Dr. Jur. Wolfram Rohde-Liebenau

1. National Insurance Markets

Professional Insurance has always had two faces.

- The national market, servicing locally the needs of citizen and of commerce and industry locally
- International markets, servicing international trade and in particular commercial risks on the high seas.

Valuable products sold into foreign markets will need international insurance cover, whilst the local needs and local, national insurance restricted to the walls of a city or to the imagination of a mediaeval duchy will say that without any recourse to foreign markets they will be very able to satisfy the insurance needs of their customers.

Here, in the principality of Monaco, we are well aware that we are not dealing with the needs of national markets.

2. International Cover

International production, exports, the whole concept of "multinational corporations" demands international insurance-cover.

It is unthinkable that a multinational company can be satisfied with a multitude of insurances supplied by the local insurance markets.

We discover, however, that some insurance markets think they can restrict multinationals to the walls of a city or to the protection of those, who want to stay safely home.

However, we realize that, e.g., in the sphere of automobile traffic and with the green card providing international cover, there are no boundaries which cannot be crossed and there are no liabilities that can be restricted to one national market.

Product liability and automobile liability are risks, which are not "domiciled" in one country only.

When we realize that countries like Belgium, the Netherlands or Germany have some 25% of their national products and of their national consumption in international trade in the way of exports and imports, it is unthinkable for such nations and for commerce and industry associated with these activities

to have national covers only which stop at the national frontiers. There are constantly goods and services crossing our frontiers, and if we need any insurance protection at all, we will need some beyond customs controls.

3. Buyers' Demand/Sellers' Supply

The buyers of insurance need international cover. Their demand in all fields of insurance, and that does not only mean liability cover, is for international protection. Some markets were willing and able to supply these covers, and our friends in American multinational corporations have even been used to such covers, which were then prescribed to their foreign subsidiaries as part of the way of life of a multinational corporation.

There were relatively few sellers, who had the same international approach to their business -- the international providing of insurance cover. Most insurers grew with international markets, and, as their customers went abroad, they slowly followed them, extending covers which were originally conceived on the local level.

At the same time the cooperation existing between national supervisory authorities and national insurance markets has led to suggest that foreign, alien insurers should be kept out of national markets.

We therefore see a traditional contrast between the willingness to accompany a customer to foreign markets and the resistance as a national insurer to let foreign insurers enter national markets. This is the scenario for the legal constraints which often enough are artificially superimposed upon willing markets.

4. Extended Covers Versus Restricted Covers

Supervision within the national markets in many continental European countries is preoccupied with insurance conditions. Whilst the buyers require the widest possible cover, the sellers are interested in restricting the risk assumption to those risks which they consider calculable, e.g., with a known loss frequency and a limited extent of possible losses. This is another natural clash of interests between buyers and sellers. In a buyers' market it has led to really and literally the widest possible covers imaginable, whilst now in a sellers' market we are back where we started: with cover for specific, named perils or with a multitude of far-reaching exclusions. Within the German concept of a business plan for insurance companies, the extent of the cover provided has to be reported to the supervisory office, which may demand insurers not to underwrite certain risks. This is the case, for example, in Germany for earthquake and flooding, and also with kidnap and ransom insurance.

As all industrialized nations are grouped together within the OECD and as the OECD code of liberalisation has provided that insurances can be freely taken out if national markets do not provide the cover needed, we have here already a good excuse for obtaining freedom of services in present markets.

This example shows at the same time that the supervision by the country where the risk is located, is not the general rule.

5. Special Situation in Germany/Insurance by Correspondence

The legislature in imperial Germany passed in 1901 an insurance supervisory law (Versicherungs-Aufsichtsgesetz) that demanded registration of all companies transacting business inside Germany. The concept of transacting business -- carrying on insurance -- has never been clearly defined. Until 5 years ago, it was the most natural thing in the world that industry could provide self-insurance without a registered insurance company. Later on, this privilege was removed. However, foreign captive insurance companies (in particular those working for American industry) have been responsible for the terms and conditions of many German insurance policies, in spite of their not being registered inside Germany. In this field freedom of services seems to exist without any question.

On the other hand a second field of freedom of services had been left open -- free from any kind of supervision -- by the imperial legislature of 1901:

The freedom of taking out insurance by correspondence.

The intention was in 1901 that insurances taken out with foreign insurers should continue to exist without necessarily demanding registration and admission of such foreign insurance companies that were used to dealing directly with their German customers. The home-foreign business of British insurers, e.g., did not need a registered insurance company in Germany or a branch office there. The policy, its renewal and its handling was easily agreed upon between the parties (of industry and commerce). As a matter of fact, the legislature of 1901 had even provided in the insurance law that industrial insurance could be freed from some of the restrictions which the insurance contract law would otherwise provide for the mass class risks.

It was only in 1967 that qualms and doubts arose as to such insurances. It was then argued that claims settlement for policies concluded under the freedom of insurance by correspondence would not be tolerated.

This argument actually seems quite absurd. The legislature knew already in 1901 that insurers would need inspection on the site of a claim, loss assessment and further appraisals which reasonably could be carried out only locally, if insurances were to have any practical meaning at all.

The additional restraint introduced only in the late 1960's by the Bundesaufsichtsamt upon the suggestion of certain forces in the German market did not make any sense for those who were used to working practically in insurance.

Practically now German insurers try to maintain that the utmost they are willing to concede in freedom of services would be the restricted kind of insurance by correspondence that I just have described. This is nothing new. This attitude does not allow freedom of services, but only freedom of

establishment plus insurance by correspondence. We certainly will have to wait for the Court in Luxemburg to decide the Schleicher case, as the legal restraints presently are applied with the utmost strictness.

As a pre-condition to the introduction of freedom of services, German insurers now try to discuss the possibility of a screening method (Rasterlosung) for testing insurance conditions, which seems far from being explainable and even further from being acceptable to industry and commerce. This does not lead us anywhere, but we can discuss this, if anyone wishes to do so.

6. Outlook/Conclusion

It is fully recognized that freedom of services in insurance means that the constraints upon domestic insurers cannot be completely disregarded.

On the other hand corporations working internationally in commerce and industry cannot be hindered by taking out the insurance they need in the country which seems most fit to provide such insurance and by taking out such insurance on a global scale.

If we discover now that the restrictive attitude of many insurance markets and their change into sellers' markets will not really allow any appreciable degree of mobility between different international markets, we would have to maintain that freedom of services cannot restrict reasonably multinational corporations to taking out the insurance cover they need where they need and at the prices and conditions they can negotiate. Any effort of individual countries within the EEC or elsewhere to impede such freedom would be condemned to failure at least at some point in time.

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