I. Introduction

The purpose of this chapter is to discuss the extent to which the regulation of marine insurance in different European countries encourages or discourages the attainment of perfect competition in the marine insurance market. Since this seminar is focused mainly on the shipping business, the discussion here relates to hull insurance. I will approach the issue by discussing the various insurance regimes in the context of economic efficiency. Since economic efficiency is the goal of perfect competition, this approach will also describe the effect of the various regimes on competition in shipping.

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The framework for the discussion is a theory in law and economics known as the theory of the perfect contract. However, the framework will also include some aspects of the EU’s regulation of competition. Although it is not the intention here to discuss these rules in detail, some basic features of the regulation are outlined in section 2 as background to the legislative position in relation to marine insurance. Thereafter section 3 describes the theory of the perfect contract. A major issue raised in the context of this theory is the extent to which legislation is mandatory: this issue of mandatory legislation is discussed in relation to marine insurance in section 4. Section 5 discusses the marine insurance product in different countries in order to shed light on two other important issues, both in relation to the theory of the perfect contract and in relation to EU law: namely the question of transaction costs and the issue of cooperation among companies.

The discussion covers the marine insurance regimes in Norway, Denmark, Sweden, Finland, the United Kingdom, Germany, Belgium, France, Spain, Italy and Greece.1 The material on which this chapter is based has been gathered mainly through my work in the CMI’s working group on the harmonisation of marine insurance clauses. This means that some of the information has been gathered from questionnaires sent by the CMI to the various Member States, rather than by studying the provisions themselves.2 This is particularly true in relation to national insurance legislation, which is often not translated into English. Most of the insurance policies, on the other hand, have been translated and have therefore been consulted directly.

II. EU Regulation: Some Starting Points

The starting point when considering EU regulation of marine insurance is that insurance is defined as a financial service and, accordingly, Articles 49 et seq of the EU Treaty apply. Further, the rules on the right of establishment

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