

BIPAR Press

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CONTENTS:

Europe

- European Commission adopts work programme for 2010
- European Commission abandons full harmonisation for Consumer Rights Directive
- UEAPME's survey shows SMEs' confidence rising
- European Commission's consultation on the European Company Statute
- European Payments Council releases its Annual Report on SEPA
- European Commission's latest Consumer Markets Scoreboard
- Insurance Block Exemption Regulation - New rules applicable
- CEIOPS EU-wide stress test for the insurance sector
- European Court of Justice interprets Environmental Liability Directive

France

- Intermediaries' number stable in 2009

Germany

- GDV's code of conduct on responsible selling methods

Italy

- New mediation law for insurance disputes

United Kingdom

- BIBA's new publication on limitation of liability when advising clients

International

- Sigma study on natural catastrophes

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BIPAR Secretariat

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BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 45 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

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EUROPE

European Commission adopts work programme for 2010

On 31 March 2010, the European Commission adopted its legislative and work programme for 2010, which sets the scene for the major policy commitments that it will make in the coming years.

The Commission has agreed a list of 34 strategic priorities that will be implemented before the end of the year. Those of interest to our sector are mainly a Green Paper on pensions that will look *“at options for ensuring the sustainability and adequacy of pensions in the light of ageing, mobility patterns in Europe and the functioning of the financial markets”* and a Communication on the relaunch of the single market. This Communication aims at *“laying the foundation for a major package for tomorrow’s single market on the 20th anniversary of the single market in 2012”*.

The work programme also contains a non-exhaustive list of 280 major proposals under consideration during 2010 and beyond. Among these proposals, some will affect our sector directly: a White Paper on the protection of insurance policyholders/ insurance guarantee funds that aims *“at maintaining and enhancing consumer*

confidence and at preparing the ground for a policy decision on possible future legal proposals”. There will also be Solvency II implementing measures including remuneration provisions, a review of the Markets in Financial Instruments Directive (MiFID) accompanied by legislative proposals (including dark pools’ issue) and new directives on disclosure and selling practices for packaged retail investment products (PRIIPs) and, of course, the IMD revision on which BIPAR is currently working. The work programme further stresses the need to ensure full implementation of the Services Directive and announces for 2010 the in-depth analysis of policy coherence in the field of collective redress and a public consultation on the common legal principles and concrete issues which should guide any future proposals for collective redress in EU legislation.

It also announces measures on responsible lending and borrowing which will include topics such as the role played by credit intermediaries.

BIPAR will be monitoring these measures carefully.

☞ **The Commission’s work programme is available in English, French and German at the BIPAR Secretariat upon request.**

European Commission abandons full harmonisation for Consumer Rights Directive

Due to pressure from European governments and from the European Parliament, the European Commission has decided to move away from full harmonisation for the new Consumer Rights Directive. This Directive aims at improving cross-border business and increasing consumer confidence and pulls together the existing Directives on unfair contract terms, sales and guarantees, distance selling and doorstep selling.

The provisions in the Commission’s proposal cover contracts related to financial and

insurance services, only insofar as this is necessary to fill regulatory gaps:

- Provisions on consumer rights concerning contracts terms apply to financial services.
- Provisions on consumer information and withdrawal right for distance and off-premises contracts do not apply to insurance and credit agreements (The latter are covered by the current distance marketing of financial services and consumer credit Directives). However, mortgage and other loans on real state negotiated at the consumers’ home are covered by these provisions.

Full harmonisation would have brought more legal clarity as to the applicable rules but the fear of reducing existing national levels of consumer protection proved too strong.

For distance contracts a targeted full harmonisation would still be applied but face-to-face contracts would be governed by minimum harmonisation.

Business associations have already criticised this diverse treatment and although

consumer associations want a high level of protection - which could be threatened by full harmonisation - they are also concerned about the distinction between distance or face-to-face contracts.

A high-level expert group set up by the European Commission is now going to rewrite the current proposal to produce a more workable text.

UEAPME's survey shows SMEs' confidence rising

An EU-wide survey conducted by UEAPME, the European craft and SME employers' organisation, which was published on 23 March 2010, shows that small businesses' confidence is on the rise for the second semester in a row but remains well below its pre-crisis levels. SMEs remain nevertheless overly cautious about a possible recovery. The data for this survey was collected between December 2009 and February 2010 from around 25,000 small businesses in the

eurozone. The survey recorded few differences between SMEs according to their size class, but significant dissimilarities appeared among different sectors. Expectations remain low in construction and in manufacturing but the outlook is better in the services sector. As for investments, the survey recorded negative expectations in all sectors. According to UEAPME, *"the recession may be behind, but an upswing does not seem to be near"*.

☞ **UEAPME's full survey results are available in English at the BIPAR Secretariat upon request.**

European Commission's consultation on the European Company Statute

The European Company Statute (commonly known by its Latin name of "Societas Europaea" or SE) gives companies operating in more than one Member State the possibility to reorganise their cross-border business under one European label. This enables them to work within a stable legal framework, reduce the internal costs of operating in several countries and be more competitive in the Internal Market. The SE has proved to be very popular in some

Member States but it has not taken off in others. In order to determine whether changes are needed to make the SE Statute work better, the European Commission has launched a public consultation. The deadline for responses is 23 May 2010.

The SE was adopted on 8 October 2001 after more than 30 years of negotiation and became available for use on 8 October 2004.

☞ **If you wish to take part in the Commission's consultation, please click on the following link: http://ec.europa.eu/internal_market/consultations/2010/se_en.htm**

European Payments Council releases its Annual Report on SEPA

On 17 March 2010, the European Payments Council (EPC), the coordination and decision-making body of the European payments industry, published its 2009 Annual Report “Driving forward the SEPA¹ vision”. The EPC delivers the payment schemes and frameworks necessary to create SEPA. SEPA is currently defined as consisting of the EU

27 Member States plus Iceland, Norway, Liechtenstein, Switzerland and Monaco. The EPC 2009 Annual Report highlights further substantial progress achieved in the areas covered by the EPC work programme.

¹ SEPA: Single Euro Payments Area

☞ **The EPC’s 2009 Annual Report is available in English at the BIPAR Secretariat upon request.**

European Commission’s latest Consumer Markets Scoreboard

The Consumer Markets Scoreboard published on 29 March 2010 by the European Commission reveals that EU consumers are still not reaping the full benefits of the internal market due to barriers to cross-border commerce. There is a growing gap between cross-border and domestic e-commerce. The national conditions for consumers – measured for instance by consumer trust in consumer authorities and NGOs, and the effectiveness of handling disputes – have declined in many

countries. Some Member States have improved their scores despite the difficult economic period. The ability of consumers to afford goods and services varies greatly from one country to another: in six countries, affordability is less than half the EU average. Life in the richer EU countries is more affordable for consumers, despite higher price levels. The Commission is working to tackle existing barriers, based on a catalogue of measures, including simplifying rules for retailers.

☞ **The Commission’s Consumer Markets Scoreboard is available in English at the BIPAR Secretariat upon request.**

Insurance Block Exemption Regulation - New rules applicable

After a review of the functioning of the current Block Exemption Regulation (BER) adopted in 2003 and which expired at the end of March 2010, the European Commission adopted on 24 March 2010 new rules that continue to exempt two forms of cooperation specific to the insurance sector, namely agreements in relation to joint

compilations, tables and studies and co(re)insurance pools. This new Regulation came into force on 1 April 2010 and will be valid until 31 March 2017. BIPAR, together with its national member associations, is studying the consequences of BER on the sector.

☞ **The new BER and the Commission’s related Communication are available in all EU languages on the following website:**
http://ec.europa.eu/competition/sectors/financial_services/legislation.html

CEIOPS EU-wide stress test for the insurance sector

On 16 March 2010, CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors) presented the findings of its European-wide stress test exercise for the insurance sector. It was commissioned to conduct this study on behalf of the EU Economic and Financial Committee (EFC), an EU institutional body dealing with financial services.

The stress test exercise aims at assessing the overall resilience of the insurance sector under several stresses to the economic and

financial market environment. 28 large and important European insurance groups, covering above 60% of premiums of the European insurance market, took part in this exercise.

The outcome of the survey indicates that the large and important European insurance groups would remain resilient even in severe scenarios. In all scenarios, the aggregated level of available capital exceeds the regulatory requirements.

☞ **The results of CEIOPS stress test exercise is available in English at the BIPAR Secretariat upon request.**

European Court of Justice interprets Environmental Liability Directive

On 9 March 2010, the European Court of Justice (hereafter called “the Court”) ruled on preliminary questions in three cases regarding the Environmental Liability Directive.

The importance of these cases for the insurance sector lies in the fact that the Court specifies and extends the application of the “polluter pays principle” to diffuse pollution, and accepts the presumption of a causal link between the damage and the activity of an operator as sufficient to decide on the liability of the operator. Hereby the Court makes it easier for competent authorities to decide on the liability of operators and on the measures they see fit for remedying the damage.

The three cases before the Court concerned recurring incidents of pollution dating back as far as the 1960s, on sites occupied by the petroleum industry. This means there is a diffuse pollution as there is uncertainty with regard to the precise timing of pollution, which was spread over several decades, as well as uncertainty regarding the liability for pollution.

The Court stated that competent national authorities are allowed to operate on the presumption of a causal link between environmental damage and the vicinity of an operator, provided there is plausible evidence for this presumption and provided a prior investigation into the origin of the pollution has been carried out.

The Court confirmed that competent authorities are also allowed to alter already agreed and/or already launched remedial measures on their own initiative, provided the grounds for this decision are stated and that the operators are heard and the land-owners are invited to comment.

Finally, in the circumstances of the specific case, the Court accepts national legislation which allows authorities not to permit operators/owners to work on their non-polluted or already decontaminated land, until they have carried out remedial work on the land for which the operators/owners are liable for contamination or risk for contamination. The authorities can only set this condition, however, if the aim is to prevent deterioration or damage.

☞ **The texts of three cases are available in all EU languages at the BIPAR Secretariat upon request.**

FRANCE

Intermediaries' number stable in 2009

The intermediaries register (ORIAS) in France, which was set up in 2008, listed at the end of last year 41,508 registered intermediaries compared to 40,734 in 2008. The number of intermediaries remains therefore stable. On the other hand, an evolution can be seen in the categories of intermediaries: the number of insurance agents continues to decrease (12,494, -3.5%) as a result of ageing agents and merging of agencies. The number of brokers (18,510, +3.8%) and of insurance intermediary representatives (14,750, +12.8%) is on the up and can be mainly explained by

regularisations. As for insurance representatives, at the end of 2008, their number totalled 3,867 and decreased to 3,589 at the end of 2009 (-7%). This is due to the fact that an important network of several hundreds of insurance representatives changed its category in 2009.

ORIAS has a rotating presidency, which is currently held by AGEA's (French Federation of insurance agents, BIPAR member association) deputy Chairman, Mr Gérard Lebègue who is also the Chairman of BIPAR Agents' Standing Committee.

GERMANY

GDV's code of conduct on responsible selling methods

The German insurance association (GDV – Gesamtverband der Deutschen Versicherungswirtschaft) is currently working on a code of conduct to encourage the insurance industry to adopt a more responsible approach to its selling methods. Consumer activists and politicians are increasingly backing calls for customer-paid, fee-based counselling, instead of commission-driven sales methods. Commission churning is especially bad in life

and health. According to the GDV, some intermediaries, who are driven by the desire to rake in a commission, encourage clients to change insurers or cancel a contract and buy a "better" contract from the same company. GDV has not indicated when the code of conduct would be established but said that *"speed is needed, if the industry wants to avoid major regulatory action beyond the effects of the European Union's intermediary directive"*.

ITALY

New mediation law for insurance disputes

Italy has introduced new legislation requiring parties to civil and commercial disputes to attempt to resolve their disputes through mediation. The law applies inter alia to insurance disputes and enters into force in March 2011.

The process will be limited to four months and carried out by an independent and professional body, set up and recognised by the Ministry of Justice. If a settlement agreement is found, it can be validated by court and will become enforceable. If no

agreement is found, the case can still be brought before the court by either party.

This new way of alternative dispute resolution is expected to be a commercially realistic alternative to traditional litigation and save insurers and intermediaries time and money.

SNA and AIBA (Italian member associations of BIPAR) are currently assessing the potential advantages for insurance intermediaries.

UNITED KINGDOM

BIBA's new publication on limitation of liability when advising clients

The London Market Region Committee (LMRC) of the British Insurance Brokers' Association (BIBA, member association of BIPAR) has launched a new report entitled "*Facts about limitation of liability*" to help brokers to manage their financial risk and

ensure that it is proportionate to client engagement. The publication provides background on the regulatory and legal position, information on what a limitation of liability clause or agreement might contain and what it should not contain.

☞ **If you wish to have a copy of this report, please contact BIBA at enquiries@biba.org.uk**

INTERNATIONAL

Sigma study on natural catastrophes

According to Swiss Re's latest Sigma study "*Natural catastrophes and man-made disasters in 2009*" published in February 2010, 133 natural catastrophes and 155 man-made disasters occurred in 2009. Six events each triggered insured losses in excess of USD 1 billion (± €748 million). The costliest event was the European winter

storm Klaus, which struck France and Spain in January, and led to insured losses of €2.35 billion. In 2009, more than half of the natural catastrophe loss burden was caused by secondary perils, i.e. flooding, landslides, hail storms, tornadoes, winter storms outside Europe, snow and ice storms, droughts and bush fires.

☞ **The Sigma study is available in English, French, German and Spanish at the BIPAR Secretariat upon request.**