

LEGAL SPECIAL: THE IMPACT OF EU REGULATION

Channel hopping: European regulation

The considerable impact of European Union legislation on the insurance industry is undeniable – but LIZ BOOTH asks if there are still risks waiting for the unwary

IN THE past couple of years there has been huge activity in the European Union, with a new reinsurance directive, sector enquiries and preparation for Solvency II. But how many of these events present a risk to the insurance industry as a whole?

Guy Soussan, a partner – avocat (Paris) established

pose legal risks for the companies involved in handling the subsequent investigations and should not be ignored as a possibility.

Meanwhile, David Whear, a partner in the corporate insurance unit at Norton Rose, says the impact has already been felt simply through the arrival of ques-

while in the UK the Financial Services Authority (FSA) has produced an 800-page book on the subject. This, he says, gives insurers huge headaches as they try to establish what they need to do in each jurisdiction. For example, his firm is working with a firm looking to operate in five or six European countries. They have decided to use the FSA rules as a benchmark and then to hone the operation for each country after that.

They are not the only ones to use the FSA as a standard – Woolfson believes that a few regulators across Europe are looking at how the FSA rules are working and will use them as a benchmark for their own national rules.

Ashley Prebble, a partner in the corporate insurance unit at Norton Rose, adds that it also depends on the type of business involved. For example, he says, France and Germany have been late in implementing the Insurance Mediation Directive because the type of business carried out made it hard to move towards implementation.

Passporting rights

But he says some insurers have been able to take advantage of the opportunities offered by the new passporting rights in Europe. “People are starting to see it as a useful tool,” he says, “Certainly

in the UK people are better at passporting because they are starting to see the opportunities available.”

David Whear adds that it has been interesting to watch “industry’s approach to the new world of regulation”. Some players have been more aggressive than others – for example, Munich Re and Swiss Re, which have both been involved in discussion and talks from the early stages so positioning themselves to influence the final outcome.

Markets too have been jockeying for position, particularly as the Reinsurance Directive develops. Ireland has been quick to implement the directive and is promoting itself as a jurisdiction of choice.

The Norton Rose team also expects similar developments out of Gibraltar and Malta, while Prebble says: “Do not ignore some of the accession states. Latvia may have a new reinsurer, for example. I think people are more sophisticated and are realising you can do a lot at the planning stages to give yourself a commercial advantage.”

The pace is quickening across Europe ahead of formal proposals for Solvency II, which are expected to be published by next July.

Soussan says the industry should be focusing on the



In the past couple of years there has been huge activity in the EU



Nobody can afford to ignore what is happening in Brussels

Brussels for Steptoe & Johnson LLP, believes the industry still has a lot to learn.

Looking at the sector enquiry into business insurance launched this summer, he says: “First of all it was a chance for the Commission to review co-operation that may exist between insurers but also to look at the block exemption that exists for the insurance industry.”

Soussan explains that although it is called a block exemption, it is not perhaps as wide an exemption as insurers may believe and such an enquiry gives the Commission the opportunity to remind the industry of the limits of the exemption.

Course of action

“The report, expected later this year or early in January, is likely to propose some course of action – from ways to revise the exemption itself, or as opportunity for the Commission to clarify the scope of the exemption to the possibility of the Commission pushing the industry into self-regulation,” he adds.

Philip Woolfson, an avocat (Paris and Brussels) established in Brussels for Steptoe & Johnson LLP, warns: “The Commission has sent out questionnaires for this enquiry – it could still launch dawn raids on individual companies as it did during its enquiry into the energy sector.” He adds that these could

questionnaires. “It was a significant disruption and caused a lot of concern about what information was required,” he says.

“The lessons that come out of that for insurers is that their ability to retrieve sensitive commercial information is critical. A lot of them are not geared up to do that.

“The wider issue is that it has raised awareness of the competition issue. It has made insurers more careful about talking in an open forum – it is very easy to give a message to the market about pricing. People now realise some activities may have inadvertently been on the wrong side of the rules.”

Insurers across Europe have been subject to directives for years but it was only recently that the first reinsurance directive came into force. The impact of such an imposition will not be limited to Europe because of the global nature of the business but there are also considerations closer to home.

Woolfson explains: “The problem is that each directive is the lowest common denominator with a set of rules containing various options, each to be interpreted by each member state.”

He gives the example of Belgium, where the Reinsurance Directive looks to be heading for a fairly straightforward implementation,

issue for the next few months as the Commission whips through a series of planning stages to meet that July deadline “because the next couple of months will be critical”.

He says there is already resistance to the introduction of new ideas from the Commission while there are many technical issues, which are far from clear from an industry perspective. For example, it is not yet clear if pensions will be covered.

“There is some issue over what will form the content of the framework. It could include principles as opposed to introducing measures but you will not be able to get the measure of Solvency II until the implementation process is designed,” he warns. And Woolfson adds: “This may be seen as mostly an actuarial

process but senior management should ignore this at their peril given its volume and complexity.

“There is a question over the responsibility of directors who take this on board in their business and there are possible legal risks associated with this.”

Implementation arrangements

Norton Rose’s Whear agrees the implementation arrangements could be key. “Theoretically it should create a more level playing field because everybody will be using the same solvency calculations but we do not know a lot of the detail.” He predicts that if regulators strive for that equal playing field, there may well be a lot of smaller insurers who struggle with the capital requirements and “raising further equity capital is not straightforward”, he says.

The impact of Solvency II and other European initiatives resonate across the world as global businesses adapt to the changing regulatory environment. Already European insurance interests have been lobbying in the US to reduce collateral requirements for European reinsurers in the wake of the Reinsurance Directive.

The message from the lawyers is that nobody can afford to ignore what is happening in Brussels nor can they afford to ignore careful consideration of the impact on their individual businesses even if it at first appears that they meet the requirements.

And the next year could well prove pivotal in shaping the industry for years to come. As Woolfson concludes: “This is a once-in-a-generation exercise.”



People are starting to see European passporting rights as a useful tool