Status and Prospects for EU Legislative and Policy Initiatives in the (Re)insurance Sector

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A European Perspective on (Re)insurance

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- The impact of tax policies, treaties, and legislation on the (re)insurance sector

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INTRODUCTION

The European insurance industry is the largest in the world\(^1\), with a 33% share of the global market in 2012. Premiums amounted to 33% of global life premiums and 30% of global non-life premiums respectively in the same period. The sector is the largest institutional investor in Europe, with more than 50% of all European institutional assets under management in 2011\(^2\). The European Commission reports that insurers held an estimated €13.8 trillion of assets, more than 100% of EU GDP in 2012\(^3\).

French, German and UK insurers hold the largest share of investments, with a significant component held in government and corporate bonds.

The sector is also an important source of employment. Over 5000 insurance companies, of which 30 are large groups, operate in Europe\(^4\). Of the nine insurers identified by the International Association of Insurance Supervisors ("IAIS") as Globally Systemically Important Insurers ("G-SIls"), five are EU-domiciled: Allianz, Aviva, Axa, Generali and Prudential plc. Together they directly employ nearly one million individuals. As many outsourced employees and independent intermediaries\(^5\) work in the sector.

Bancassurance is the main life distribution channel in many European countries, whereas sales of non-life policies are dominated by agents and brokers\(^6\).

The sections below describe some of the main EU legal and policy developments of interest to the (re)insurance sector. In view of the complex reform in the EU of the financial sector following the financial crisis and given the continuing difficulties in achieving political consensus at the EU level, they do not pretend to be exhaustive.

REGULATION

Sources and Territorial Scope

Currently more than 14 separate EU Directives are the principal sources of EU insurance and reinsurance law. The Solvency II Directive, which will apply throughout the EU (and the EEA\(^7\)) from 1 January 2016, will codify much, but not all, relevant legislation. In addition, national legislation will continue to apply in important areas.

Switzerland is not part of the EEA. Relations between the EU and Switzerland are underpinned by a series of bilateral agreements. A 1989 bilateral agreement on non-life insurance facilitates establishment in the EU through branches. However, Switzerland is not otherwise subject to EU (re)insurance law and Swiss insurers do not enjoy any market access rights to conduct business within the EU on a direct cross-border basis. Switzerland is a candidate for equivalence\(^8\) under Solvency II.

The taking-up of (re)insurance activities in the EEA is subject to prior authorisation. The conditions and procedure for authorisation are harmonised under EU law, but the authorisation itself is granted by the supervisory authority of the home Member State\(^9\).

(Re)insurance undertakings authorised in their home Member State may carry on their activities throughout the EU by establishing branches on the territory of another Member State or by providing services on a cross-border basis\(^10\).

Although EU law promotes cross-border operations, undertakings must still comply with extensive EU and national law safeguards regarding retail product offerings and consumer protection (where applicable and often referred to as "general good")\(^11\).

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\(^1\) Insurance Europe, the European insurance and reinsurance federation, takes its figures from Swiss Re’s “World insurance in 2012” publication which includes western, central and eastern Europe, including non-EEA members: Switzerland, Turkey, Serbia, Belarus, Russia and the Ukraine.

\(^2\) Insurance Europe “European Insurance Key Facts, August 2013”.


\(^4\) Insurance Europe “European Insurance Key Facts, August 2013”.

\(^5\) Insurance Europe “European Insurance Key Facts, August 2013”.

\(^6\) Insurance Europe “European Insurance Key Facts, August 2013”.

\(^7\) The EEA (European Economic Area) comprises the 28 EU Member States, as well as Iceland, Liechtenstein and Norway.

\(^8\) i.e. recognition by the EU that its insurance supervisory regime is equivalent to the Solvency II regime.

\(^9\) See, for example, Title 1, Solvency II Directive.

\(^10\) See, for example, Chapter VIII, Solvency II Directive.

\(^11\) In 2000, the European Commission set out criteria for determining whether Member State general good rules conform to EU law in an Interpretative Communication, which also includes useful examples.
Regulatory Developments


In January 2011, the European Commission proposed a revision to the Directive (known as Omnibus II). Omnibus II proposes amendments to certain areas of Solvency II such as:

- the implementation date;
- transitional arrangements; and
- the form and basis of implementing measures, based on the 2009 Lisbon Treaty.

Changes were also necessary to reflect the establishment of the new European financial supervisory architecture (see below), and certain concerns following the financial crisis, in particular the treatment in Solvency II of long-term guaranteed products.

The Omnibus II proposal was subject to protracted negotiation between the European Parliament and Council. Agreement was finally reached on 13 November 2013, but the legislative process is still not complete, although the European Parliament has voted in favour of the text in plenary session in March. The Council must also adopt the text before it is published in the Official Journal. Thanks to additional legislation, which was passed in the interim (the so-called “Quick-fixes” I and II), the Solvency II Directive will now apply from 1 January 2016.

Solvency II is a framework Directive: this means that, following technical advice from EIOPA, the Commission must adopt detailed rules in a series of “delegated acts” or “implementing acts”. The Commission will formally adopt these measures once the Omnibus II Directive enters into force; drafts are already circulating and will cover more than 40 separate areas of the Framework Directive.

Insurance Regulation: Actors and Instruments

The European Commission initiates EU legislative proposals. They are generally adopted using the “ordinary legislative procedure”. This requires agreement between the two co-legislators, the European Parliament (766 Members) and Council (the 28 EU Member States).

For the past ten years, as financial services legislation has become ever more complex, and, therefore, more difficult to negotiate, a new, four-level approach has been developed, known as the Lamfalussy process (named after the chair of the advisory committee which initially created it): framework legislation (“level 1”), usually a directive (cf. the Solvency II Directive) or a regulation, is adopted setting out the main legal provisions and identifying areas for delegated acts (“level 2”). These are developed and adopted by the Commission in the form of directives, regulations or decisions, or technical standards (so-called “level 2.5”), developed by EIOPA and adopted by the Commission by means of delegated or implementing acts in the form of Commission regulations or decisions. The third level covers non-legally binding guidelines and recommendations issued by EIOPA to ensure consistent implementation and cooperation between the supervisory authorities and the fourth level covers compliance and enforcement, including through the Court of Justice of the European Union. As a result in particular of the financial crisis, both banking, with successive revisions to the Capital Requirements Directive, and insurance, with the Solvency II Directive, will be subject to more granular capital/solvency requirements in the years to come. As summarised below, standard-setting and supervisory oversight across the financial market are also more developed than before the crisis.

The New European System of Financial Supervision

Following the work of the De Larosière group in 2009, three new independent European Authority.
Supervisory Authorities ("ESAs") came into operation in 2011:

- the European Banking Authority ("EBA");
- the European Insurance and Occupational Pensions Authority ("EIOPA"); and
- the European Securities and Markets Authority ("ESMA").

Together with the European Systemic Risk Board ("ESRB"), which oversees risk in the financial system as a whole, and the Member State competent authorities, they comprise the European System of Financial Supervision ("ESFS"). This will be complemented in autumn 2014 by enhanced bank supervision, led by the European Central Bank ("ECB"), as part of Banking Union (there are currently no plans to extend ECB direct supervision to (re)insurers). A review of the ESFS is under way and legislative proposals may follow. EIOPA Chairman, Gabriel Bernardino, has called for EIOPA to have an "enhanced supervisory role for the largest important cross-border insurance groups" in the medium term. Leading Members of the European Parliament share his view.17

New Instruments

The ESAs have been described as "some of the most powerful autonomous institutions ever established at EU level" and for good reason: not only do they contribute to the legislative process by, *inter alia*, advising the Commission on draft level 1 legislation, they also play a key role in the development of "technical standards" ("TS"). These comprise "Regulatory Technical Standards", which in effect harmonise key provisions of EU law, and "Implementing Technical Standards", which are to be applied in the Member States.18

Of the three ESAs, EIOPA is the most relevant for (re)insurers, although given the interconnectedness of financial markets, the work of the others may apply, depending on the subject matter. Its mission is to promote sound regulatory supervision; avoid regulatory arbitrage; and protect consumers.

All three ESAs may develop TS, which apply to financial market undertakings. They may also develop guidelines and recommendations for national supervisors (on a "comply or explain" basis). They have a mediation function to settle disputes, a role in crisis management, and monitor market activity.

Third Country Insurers

Not all EEA Member States permit non-admitted insurers to cover risks in their territory. Some restrict activity according to business lines. This is not expected to change with Solvency II.

Third-country undertakings with significant operations in the European insurance market and European undertakings with substantial non-EU business have, however, monitored closely developments under Solvency II. The equivalence process has been a particular focus, because of the promise of significant benefits for such firms, depending on whether the relevant jurisdictions in which they operate are deemed "equivalent" by the European Commission.

Third countries are encouraged to seek "equivalence" - a verification procedure to determine whether the third country's legislation and supervisory practices are broadly equivalent to Solvency II – under three Articles of the Directive (Articles 172 on reinsurance, 227 on EEA group solvency calculation and 260 on group supervision of EEA insurers with parents outside the EEA).

Switzerland is the only third-country jurisdiction to have applied for the full equivalence procedure. Japan has only applied for reinsurance and Bermuda is only seeking equivalence for its commercial insurance sector, not its captives. Other countries have expressed interest in a "temporary equivalence" regime, a process introduced under Omnibus II; still others have refused to engage (e.g. Canada) or have insisted on doing so on their own terms (e.g. USA).19

Fears that EU insurance groups would have to hold much more group capital to compensate for potentially lower requirements in the third countries in which they operate led to a last-minute deal in the Omnibus II negotiation, at the European Parliament's initiative, to introduce an additional form of equivalence. “Provisional equivalence” will be available for 10 years, renewable for further periods of 10 years, where the criteria continue to be met.

Further work is needed before the final equivalence framework is complete, and no final decisions on the candidate jurisdictions have yet been made.

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17 See "Recommendations to the Commission on The European System of Financial Supervision (ESFS) Review", an own-initiative report drafted by leading German Green MEP, Sven Giegold, which is scheduled for plenary vote in March 2014.


19 In accordance with the “Meroni doctrine”, final competence and accountability rests with the European Commission, but in practice the ESAs provide a great deal of technical expertise and drafting input.


IAIS standards scheduled for 2019 will complete the picture.

Position of Brokers

The 2002 Insurance Mediation Directive ("IMD") sets out minimum standards for (re)insurance intermediaries and (re)insurance mediation/conduct of business. It does not currently cover direct sales.

Intermediaries must register with a competent authority in their home Member State, meet that authority’s professional requirements, and notify it of any intention to establish or provide services in other Member States. The IMD also specifies certain pre-contractual and contractual information the intermediary must provide and the form in which the intermediary must provide it to the customer.

The IMD includes basic provisions on sanctions, complaints-handling, and other redress mechanisms. Cooperation arrangements between the Member State competent authorities are set out in the IMD, but have been subsequently supplemented by an EIOPA text, the Luxembourg Protocol.

Review of the IMD ("IMD II")

The IMD is being reviewed. The Commission would bring direct sales forces within its scope, as well as claims management and loss adjusting (although the European Parliament would exclude the latter). Special information requirements are proposed where suppliers "bundle" products together, and restrictions are expected on product "tying". The chapters on professional qualifications, as well as administrative sanctions and penalties will also be revised.

Disclosure of Remuneration

A central theme in the review is management of conflicts of interest, notably through disclosure of remuneration, and is linked to a wider initiative designed to review the sales process for sales of retail investment products.

The lead proposal in this regard is the review of the Market in Financial Instruments Directive ("MiFID II"), which only indirectly affects insurers, in that sales of insurance investment products such as unit-linked life insurance, are excluded from the scope of MiFID II. However, MiFID II imposes a ban on third-party commissions for independent advice, as well as other provisions, which are likely to be "written across" in equivalent provisions for the insurance sector. It is still not clear whether a total ban, as in MiFID II, will be introduced into IMD II, or whether Member States will retain a measure of flexibility.

The IMD II proposals also revise disclosure requirements for sales of non-life products. The Commission proposed that, after a five-year transition period, intermediaries should disclose whether the payments they receive are on the basis of: (i) a policyholder fee; or (ii) a commission included in the insurance premium; or (iii) a combination of both. Intermediaries would also have to disclose the total remuneration, or at least the basis for calculation of the fee or commission.

The European Parliament has resisted this approach, stating that intermediaries should only be required to disclose the source of remuneration, leaving the consumer to ask for more detailed information on request. EIOPA guidelines would be developed and Member States could maintain (or introduce) additional requirements, provided that distribution channels are treated equally, and the requirements are proportionate to the consumer benefits.

For direct sales, an insurance company would have to tell the consumer whether variable remuneration is paid to the employee for distributing and managing the insurance.

For large risks, both Commission and Parliament agree that no EU-wide disclosure requirements should apply. The definition of large risk remains as previously defined.

"Professional customers", as introduced by the proposal, would also not benefit from automatic EU-wide disclosure. However, the Parliament would significantly narrow categories of organisations on the list and would allow professional customers to request information from the intermediary regarding the "nature of the risk".

The Council has not yet taken a firm position on IMD II and negotiations look set to continue until at least the end of the year.

Key Information Document for Life Insurance Savings Products

Complementary to reforms through IMD II are new product disclosure requirements, namely a “Key Information Document” ("KID"), which consumers will need to be given before they buy a retail investment product, such as unit-linked life insurance.

22 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0092:EN:HTML

23 Article 13 (27), Solvency II Directive.
The proposal for a Packaged Retail Investment Products Regulation (“PRIPs”) sets out the form and contents of the KID as well as the responsibilities of product manufacturers and intermediaries, and the sanctions and redress regimes. The negotiation process has been protracted and tense. It (still) remains unclear which products are within the Regulation’s scope. Until this is resolved, similar products may be subject to different disclosure requirements resulting in arbitrage. In addition, during the negotiations, the KID contents have become increasingly elaborate and unsuitable for certain products. A balance will need to be struck if product manufacturers are to meet their legal obligations and retain consumer interest in the document. If the document is too complex or incomprehensible, the entire exercise risks failing in its objectives.

TAXATION

Life Insurance

A major priority for the Commission is to ensure that automatic exchange of information between tax authorities becomes the European standard for all forms of income by 1 January 2015. This would reflect global and Member State interest in acting against tax fraud and tax evasion, as expressed in the G-20, G-8 and in recent European Council and ECOFIN conclusions. Recent US pressure via the Foreign Account Tax Compliance Act (“FATCA”) – has revitalised the global push. Following a G-20 request, the OECD published in mid-February the global standard for automatic exchange. This is expected to provide additional pressure on Europe to complete the EU legal framework, which would then comprise:

- an amended Savings Taxation Directive (“EUSD”),
- the existing Directive on administrative cooperation (“DAC”); and
- an amended DAC.

Progress, however, on EU tax matters is never speedy, since unanimity between the Member States is necessary and Member States remain concerned about their competitive position, particularly as regards certain third countries. The following sections set out the current status of the negotiations.

Directive on Administrative Cooperation (“DAC”)

The DAC was published in the Official Journal in April 2012 and Member States were bound to implement its provisions by 1 January 2013. It introduces automatic exchange of information from 1 January 2015 in five categories of income and capital, based on available information: income from employment, director’s fees, life insurance products not covered by other EU legislation (i.e. the EUSD), pensions, and ownership of and income from immovable property.

During the negotiation process, Austria and Luxembourg – two Member States with rules on banking secrecy – managed to secure exemptions. Luxembourg, for example, will not be exchanging information on life insurance.

The new DAC proposal was published in June 2013. It is concise and highly political in tone. The proposal extends the scope of the existing DAC to dividends, capital gains and any other financial income, and account balances. It removes the condition of “availability” for the new items as it is presumed this information is already exchanged with the USA under FATCA. The new DAC would apply from 1 January, 2015 on taxable periods from 1 January, 2014.

Despite pressure to adopt the DAC proposal rapidly, i.e. before FATCA triggers a series of “most favoured nation” claims between the Member States based on Article 19 of the existing DAC, the legislative process is not complete.

Savings Taxation Directive (“EUSD”)

Proposals to revise the 2003 EUSD were published in 2008. They included provisions to expand the definition of interest income to include, for example, benefits from life insurance contracts. By 2009, political agreement had been reached on most of the text, including the provisions on benefits from life insurance contracts.

Since then, the focus of the negotiation has been on the third-country dimension, particularly arrangements with Switzerland. Currently five third countries (Switzerland, Liechtenstein, San Marino, Monaco and Andorra), and ten dependent or associated territories of Member States (e.g. the Channel Islands), have agreed either to supply information or levy a withholding tax on the interest paid to customers who are individuals resident in EU countries. The agreements underpinning this cooperation need to be amended to reflect the proposed amendments to the EUSD. It is not clear what impact the recent Swiss referendum to restrict the free movement of EU citizens in Switzerland will have on key Swiss-EU negotiations such as the EUSD agreement, though its adoption in the EU is imminent.
Financial Transaction Tax

The Commission published proposals for an EU-wide Financial Transaction Tax ("FTT") in September 2011. At the time, there was also considerable political pressure to impose such a tax globally. The Commission insisted on what it called the "triple A" approach. The tax would apply to:

- all markets (regulated markets or over-the-counter transactions);
- all instruments (shares, bonds, derivatives etc.);
- all actors (banks, shadow banks, asset managers, insurers etc.).

By the end of 2012, it was clear that, for a variety of reasons, there would be no agreement between Member States, but that a group of eleven ("EU11") would wish to pursue negotiations.

A revised proposal was tabled in February 2013. The scope and objectives are essentially unchanged except to account for the reduced geographical scope, but the anti-relocation and anti-abuse rules have been revised. There has been a great deal of criticism, including from the Council's Legal Service, and the EU11 appear far from agreement. Of the 17 Member States outside the negotiation, the UK is the most outspoken, having initiated court proceedings.

The lack of progress in adopting the FTT is lamented by both the Commission and certain leading Members of the European Parliament (MEPs). Tax Commissioner Algirdas Semeta, recently recalled that the FTT is a "highly popular initiative, which Europeans believe in." He cited opinion polls which suggest 64% of EU citizens support it. The Greek Presidency is aiming to achieve political agreement by the 6 May ECOFIN Council meeting, but this depends on whether the main proponents of the tax – France and Germany – can provide sufficient new impetus to the project.

Insurance Contract Law

There is no harmonisation of the law of insurance contracts in the EU24. This area of law remains a matter of national competence, but the Commission has been considering how to introduce a form of European contract law, while retaining national law, for more than a decade. The Commission is also reviewing differences in national contract law and whether these restrict cross-border trade in insurance products, and, if so, how any barriers may be addressed; an Expert Group on Insurance Contract Law, managed by DG Justice, has recently reported its findings25.

In 2011 the Commission published a Communication (a non-binding policy paper), setting out the state of play and a proposal for a Regulation on an optional common European sales law ("CESL"). It is in the process of being adopted by the Commission, Parliament and Council, but is rather controversial and it is not certain whether the process will be concluded before the European elections in May. It does not cover insurance in its scope (since it governs cross-border contracts for the sale of goods, for the supply of non-financial digital content and for the provision of related non-financial services), but has provided additional impetus for closer consideration of obstacles to cross-border trade in insurance products.

Protection of Personal Data

In 2012, the Commission published radical proposals to overhaul EU legislation and policy on protection of personal data. The proposals consist of a fully-revised Directive and a new Regulation. Their negotiation is highly sensitive, in particular following the emergence of certain practices in the social media sector and recent media revelations about the US government’s monitoring of non-US citizens’ communications. The revelations risk further complicating insurers’ efforts to find solutions which enable them to process and transfer personal data according to client needs.

Once adopted, the new personal data protection regime will force companies, including (re)insurers, to revise their IT strategies to prevent hacking and other data breaches, or face significant fines. Firms will also have to review in detail the way they control and process personal data, particularly if...
they transfer such data to a third party located outside the EU.

Certain concepts in the proposals represent the cutting edge in global personal data protection law; others are more controversial, or still require clarification. The proposed Directive places new obligations on both data controllers and processors. This could pose difficulties, as personal information, including sensitive information, must be shared between many actors for the smooth servicing of an insurance policy. As the proposal is currently drafted, legal liability is difficult to determine for each actor.

Of additional concern is the treatment of international transfers, i.e. out of the EU to “third countries” (such as the US). Certain data such as health data, vital to travel and health insurance, are considered “sensitive data” and may be particularly vulnerable to stricter rules, particularly following persistent comments by senior EU politicians suggesting that localisation of data within the EU is the logical response to the NSA/PRISM incident.

**DISPUTE RESOLUTION**

**Alternative Dispute Resolution**

New legislation on Alternative Dispute Resolution (“ADR” in the form of a directive) and Online Dispute Resolution (“ODR” – a regulation) was published in June 2013.

The Commission had put forward legislative proposals following years of cajoling to encourage the development of schemes across the EU. Few Member States have no ADR at all (Slovenia, Slovakia), but few have schemes for all sectors. Most have a mix of public and private schemes, of varied quality. The public is not generally aware of what exists and business tends to be reluctant to participate, despite the potential cost-savings.

Consumers seeking redress from financial institutions may find further information about national schemes from the EU Financial Dispute Resolution Network (FIN-NET). Current members come from only 21 of the 28 EU Member States, as well as the three EEA/EFTA countries, with some countries hosting more than one scheme. However, as Member States must implement the new legislation by July 2015, new schemes should be introduced imminently where they are currently lacking.

An EU-wide platform to resolve cross-border disputes will be set up, based on the ODR Regulation. Although cross-border disputes are currently at a relatively low level, they may be expected to rise as more commerce is conducted on-line. The ODR platform should be operational by January 2016. Meantime, FIN-NET continues to process cross-border complaints using an on-line form, available from its website.

Community collective redress (“CCR”) – EU jargon for class actions – is a much more sensitive topic. Although supported by consumer groups, the Commission has backed away from binding proposals. In June 2013 it published a Recommendation (a set of common, non-binding principles) for the Member States, which are encouraged to set up national mechanisms, including for financial services. The Recommendation complements the proposal for a Directive on antitrust damage actions, designed to encourage private enforcement and which is close to adoption by the EU institutions.

Finally, as noted above, EIOPA has an increasingly important role in the EU institutional structure. Its activities in 2013 included publication of guidelines on complaints-handling by insurance undertakings and insurance intermediaries26.

**Litigation**

As described in the previous section, the European institutions are in the process of revising requirements for pre-contractual disclosures. The Commission used “market evidence of a very high number of complaints” in France and Hungary, and an example of mis-selling of equity-linked insurance products in the Netherlands as justification for its IMD2 and PRIPs proposals. Similarly, it is a well-known phenomenon that, as soon as the Commission begins to develop policy in a given area, national legislatures and competent authorities frequently intervene with their own initiatives in order to “stake their claim” and shape the debate. By way of example, certain Member States have already extended MiFID-type rules to the life insurance sector.

At the same time, national and EU supervisors have been active in alerting consumers to the risks inherent in financial products, including certain insurance contracts27.

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27 By way of 2013 EIOPA examples, payment protection insurance and beneficiary protection arrangements regarding life insurance contracts at: https://eiopa.europa.eu/publications/eiopa-opinions/index.html
The (re)insurance sector is not a serial litigator before the Court of Justice of the European Union ("CJEU"). Cases are sporadic. 2013 highlights before the CJEU include:

- **DKV** interpreting the scope of freedom to set rates in the health insurance sector, in particular unexpected premium increases;[26]
- **RVS** and liability for insurance premium tax where the policyholder has taken out an assurance contract in the Netherlands and transferred his habitual residence to Belgium after the contract was concluded;[27]
- **Csonka** confirming that the requirement to set up a compensation scheme for victims of road accidents does not extend to insolvency of the insurer;[28]
- **Citroën Belux** on exceptions in unfair commercial practices legislation to a prohibition of combined offers involving at least one financial service;[29]
- **Spedition Welter** interpreting the 2009 motor insurance directive in relation to a claims representative’s powers to accept service of judicial documents;[30]
- **EEAE** where the CJEU interpreted the scope of the IMD in relation to the employee of an insurance undertaking;[31]
- **Haasova and Drozdovs** on the scope of coverage for compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident;[32] and
- **Endress** regarding extension of cancellation rights in a contract of life insurance following failure to disclose the existence of this right to the policyholder.[33]

A separate court, the EFTA Court, hears disputes referred from national courts in Iceland, Liechtenstein and Norway.[34] In a judgment of 13 June 2013,[35] the Court interpreted the insurer’s duty of pre-contractual disclosure under the Consolidated Life Directive, in particular whether information is “complete, clear and accurate”, and sufficient to enable the policyholder “to choose the contract best suited to his/her needs”; it suffices that the information is communicated to the policyholder by a third party, for example, an insurance intermediary.

### OUTLOOK AND CONCLUSIONS

Given the range and potential effects of the various proposals summarised above, it is evident that 2013 has been an intense year for EU law-making and supervision. (Re)insurers have faced the dual challenge of keeping abreast of developments under current law while watching the horizon, and reacting in a timely fashion, to proposals with direct and indirect effects on their business.

As for 2014, the European Parliament elections in May, followed by renewal of the European Commission, will temporarily shift attention in Brussels from legislative proposals to campaigning. It will offer some respite from the legislative process until the autumn. Before year-end, however, there will be a new Commissioner responsible for insurance, many new Members of the Parliament, and the Italian Presidency of the Council to be briefed on (re)insurers concerns. Simultaneously, the sector will continue to implement Solvency II and the continuous flow of national regulations.

In conclusion, the 2013 “Insurance Banana Skins” reported that, “The top risk identified...is the burden of regulation that is being placed on the industry by a wave of regulatory reform at international and local levels, in particular the EU’s Solvency II Directive. The fear is that these initiatives will load the industry with heavy costs, and distract management from the task of running profitable businesses.”

2014 does not appear to offer any lasting respite.

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26 Case C-577/11, DKV Belgium SA v Association belge des consommateurs Test-Achats SA.
27 Case C-243/11, RVS Levensverzekeringen NV v Belgische Staat.
28 Case C-409/11, Gábor Csonka et al v Magyar Állam.
29 Case C-265/12, Citroën Belux NV v Federatie voor Verzekeringen- en Financiële Tussenpersonen (FvF).
30 Case C-306/12, Spedition Welter GmbH v Avansur SA.
31 Case C-555/11, Enosi Epangelmation Asfaliston Ellados (EEAE) et al v Ipourgos Anaptixis, Omospodria Asfalistikon Sillogon Ellados.
32 Case C-22/12, Katarína Haasová v Rastislav Petrík, Blanka Hulingová and Case C-277/12, Vitalijs Drozdovs v Baltikums AAS.
33 Case C-209/12, Case C-209/12, Walter Endress v Allianz Lebensversicherungs AG.
34 Although judgments of the EFTA Court are not binding on the EU Member States, they deserve attention since the EFTA Court’s analysis may influence the decisions of the CJEU.
35 Case E-11/12, Beatrix Koch, Dipl. Kfm. Lothar Hummel and Stefan Müller v Swiss Life (Liechtenstein) AG.
36 “Insurance Banana Skins 2013. The CSFI survey of the risks facing insurers” in association with PwC.
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