

News Release

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Guy Carpenter Update Addresses Legal and Legislative Developments Across European Union

Global Financial Crisis Continuing to Resonate within EU, National Parliaments

London, September 9, 2009

Guy Carpenter & Company, LLC today published its annual update on legislative and legal developments affecting insurers and reinsurers in Continental Europe. The report, available at www.GCCapitalIdeas.com, addresses the implications of the ongoing global financial crisis and highlights key trends, laws, and reforms that have been introduced or are expected in the region.

Developed with the insurance practice of law firm Heuking Kühn Lüer Wojtek, the report indicates that both the European Union (EU) and national parliaments continue to revise and institute laws to align insurance law throughout the EU, increase corporate responsibility and protect policyholders. The report details the latest legislative and legal developments in Austria, Belgium, France, Germany, the Netherlands, Norway, Spain, Sweden, and Switzerland.

“This report contains the latest developments in insurance legislation, from mandatory self-insured deductibles in D&O insurance in Germany, to the rights of direct access against liability insurers in Switzerland,” said David Lewin, Managing Director, Guy Carpenter & Company.

Mr. Lewin added, “Of particular interest are the findings of the Rome II study, which highlight the variations of compensation levels and claims limitation periods across EU countries. This study will likely have a significant impact on the final content of the 6th EU Motor Liability Insurance Directive.”

AUSTRIA

- The 2009 Austrian Federal Environmental Liability Act, which creates a legal framework to prevent and remedy environmental damage, potentially exposes companies in the Austrian market to increased environmental damage liability risk.
- Only one major Austrian insurer has introduced an additional coverage component for property losses caused by environmental damage. Most insurance companies in the region have yet to adapt their coverage, creating possible gaps for commercial insures with no contract for complementary insurance.
- Application of the Corporate Law Amendment Act 2008, which raised reporting requirements for companies operating in Austria, could create stronger demand for D&O liability insurance.

BELGIUM

- Regulation 864/2007 of the Law Applicable to Non-Contractual Obligations (“Rome II”) entered into force in January 2009 with significant implications for motor insurance. In the case of a non-contractual obligation arising out of a tort, Rome II states that the laws of the country where the damage occurred is applicable.

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- As a result of the European Commission's Rome II study, various policy options including compulsory insurance for drivers are needed to mitigate the negative impact of divergent compensation schemes and limitation periods among EU countries.

FRANCE

- In a decision that could adversely affect insurers and reinsurers, the Commercial Division of France's Supreme Court, the Cour de Cassation, ruled that although an arbitral award is not binding on third parties and does not bar a subsequent lawsuit against them, the findings made in the award are effective against them.
- This position has been criticized as a potential violation of a third party's due process rights by preventing that party from contesting findings made in a proceeding where it did not have the opportunity to be heard.

GERMANY

- The revised German Stock Companies Act established that companies providing insurance coverage to members of the Management Board for risks resulting from occupational activities must include a mandatory deductible, personally borne by the Management Board.
- It remains to be seen whether this mandatory deductible will alter decision-making processes and lead to the sustainable growth of stock companies, possibly delivering the most benefit to companies developing a new line of business selling German deductible insurance.

THE NETHERLANDS

- The Dutch legislature is expected to approve a new proposal about procedures for extrajudicial settlement of personal injury and untimely death claims. The article gives interrupting force to any form of negotiation between the insurer and aggrieved party or policy beneficiary. As long as the parties are negotiating, the claim will not become time-barred.
- Liability insurers must be aware of the revision because if they reject a claim, they will have to refrain from any action that may qualify as a deed of negotiation.

SPAIN

- The Spanish Supreme Court has addressed the ongoing question of the punitive interest that insurers must pay if a delay in settling claims is unjustified, resulting in guidelines that may now be regarded as consistent doctrine.
- An insurer is liable for any delay in settling a claim that exceeds the time limits established by the Insurance Contract Act of 1980. Failure to pay will result in a special interest rate, unless the insurer can prove that justified causes prevented a more timely settlement.

SWEDEN

- The Swedish Supreme Court overturned a longstanding insurance practice regarding the concurrent causes of loss of income, after finding on behalf of an injured woman who received insurance from a traffic accident and stopped receiving compensation after suffering from a second, non-related illness.
- The Court also decided two cases on requirements for right of consideration, finding that an adjustment in wage levels in the injured person's former occupation qualifies for reassessment, but the basis should be the accumulation of total wages, not of each separate relevant year.

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SWITZERLAND

- The Swiss Insurance Contract Act, which governs the contractual relationship between policyholders and insurers, is currently undergoing revisions to strengthen the policyholder's position and align Swiss insurance law with that of neighbouring states.
- The current draft of the Act includes two crucial stipulations. The first entitles the damaged third party to a direct claim against the insurer, with the previous lien to be abolished, while the second seeks to streamline the claims settlement process by committing the insurer to offer the third party a claim for adjustment within three months. Should the insurer fail to make such an offer, the burden of proof shifts in favor of the policyholder.

TAGS/KEYWORDS

Guy Carpenter, European Union, reinsurance, D&O, financial, casualty, claims, Solvency II, Rome II

LINKS/URLs

Recent Legislative and Judicial Developments in Continental Europe:

<http://www.gccapitalideas.com/2009/09/09/guy-carpenter-update-addresses-legal-and-legislative-developments-across-european-union/>

Charts Available for Download: <http://www.gccapitalideas.com/category/chart-room>

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