

# Recent Legislative and Judicial Trends in Continental Europe Affecting the Casualty Insurance Industry

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**GUY CARPENTER**

Guy Carpenter Casualty Specialty is a global practice within Guy Carpenter created to provide a working environment where the combined skills within our firm are harnessed for the benefit of our clients.

We are greatly indebted to DLA Piper LLP for their very considerable assistance in preparing this review of the main legal and judicial developments in Continental Europe to impact the casualty insurance and reinsurance industry during the period May 2007 to September 2007. DLA Piper was awarded 'Global Law Firm of the Year' by the Lawyer Awards in 2006 and has one of the largest insurance and reinsurance practices in Continental Europe.

## Introduction

This review is the third in a biannual series, designed to provide our international clients and markets with a concise overview of key trends in the legal environment that have already had or will shortly have an impact upon insurers and reinsurers covering legal liability risks in Continental Europe.

Guy Carpenter asked the local Continental European offices of DLA Piper to highlight what they consider to be of greatest impact in each territory. Where there have been no significant legislative or judicial developments during the last year in a territory, no report is included. It has not been our objective to produce an exhaustive review of the entire scope of legislative changes and judicial rulings in Continental Europe, but rather to highlight the main developments that we and our expert legal colleagues from DLA Piper perceive as being worthy of attention, and where necessary, further in-depth study.

What follows is a series of short reports highlighting the most notable legislative/judicial issues to have impact on the casualty insurance and reinsurance industry in Continental Europe during the period May 2007 to September 2007. We have divided them by territory.

## Austria

Transposition of the Environmental Liability Directive	The EU directive on environmental liability will be transposed into Austrian law by a federal act (Bundes-Umwelthaftungsgesetz (B-UHG)). The Council of Ministers passed the draft bill on 9 May 2007, and it is now subject to debate in Parliament. Assuming that Parliament will not make substantial amendments, the new legislation will be in full accordance with the Directive.
Scope	<p>The B-UHG only applies in the event of damage to water or soil, or where there is imminent danger of such damages through occupational activities as defined by the legislation. Such activities include:</p> <ul style="list-style-type: none"> <li>&gt; operation of facilities subject to licensing, e.g. the IPPC Directive;</li> <li>&gt; waste management/control;</li> <li>&gt; boiler plants;</li> <li>&gt; disposal of mining refuse;</li> <li>&gt; withdrawal or embanking of water;</li> <li>&gt; production, use, storage and transport of hazardous chemicals;</li> <li>&gt; transport of hazardous products or products for which transportation is detrimental to the environment;</li> <li>&gt; any activity involving genetically modified micro-organisms;</li> <li>&gt; intentional release of genetically modified organisms into the environment;</li> <li>&gt; use of hazardous substances, pesticides and biocide products.</li> </ul> <p>However, the B-UHG does not cover traffic, agriculture or environmental damage associated with nuclear energy, nor does it cover operations regulated under the Soveso II regime.</p>
'Polluter Pays'	The B-UHG sets out the 'polluter pays' principle, in accordance with the EU Directive. This means that in cases of environmental damage the holder of an operational facility, as outlined above, must notify the authorities, act to control, minimise and mitigate the damage, and undertake decontamination and remediation measures.
A Definition for 'Significance'	The B-UHG defines damage to water as that which has 'significant' detrimental effect on the ecological, chemical or quantitative condition of water; damage to soil is defined as contamination of soil that poses a 'significant' risk to human health. However, the Act does not give a clear definition of the term 'significant'. This will make it hard for insurance companies to calculate the risks an insurance policy should cover. Given that the law defines 'costs' as all costs necessary for the due and efficient enforcement of the law, a very broad meaning of 'costs' has been incorporated which renders the insurer's risk calculation all the more difficult. It is possible that Parliament will introduce a more precise provision.
Transposition of the Motor Insurance Directive into Austrian Law	In the wake of the 2006 general election and the change of government in January 2007, the EU motor insurance directive has not yet been implemented. At the time of writing it was impossible to forecast when the directive will be transposed into Austrian law.

## Belgium

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### Alternative Dispute Resolution

Before the reform of the dispute resolution system in June 2006, a client could submit a formal complaint regarding insurance matters to the Ministry of Economic Affairs, to the Insurance Ombudsman, or to the Banking, Finance and Insurance Commission (BFIC) – the industry supervisory body in Belgium. This system lacked transparency and caused confusion, with clients often submitting the same complaint to several authorities.

The system was reformed by the Royal Decree of 21 June 2006, and now the Insurance Ombudsman is the sole authority that handles complaints in insurance matters. The Insurance Ombudsman can only mediate between parties to terminate the dispute by putting forward suggestions or recommendations. It does not have the authority to adjudicate a dispute in a formal judicial setting. The new system entered into force on 3 July 2006. The reform does not limit the BFIC in determining whether insurance companies and insurance intermediaries are compliant with relevant prudential rules and regulations, as applicable.

Similar rules apply in banking and financial matters. The BFIC does not intervene between, for instance, a credit institution or an investment firm and a given client, unless it is required to do so for the purposes of prudential supervision. Complaints in matters of banking and financial services are handled by the Belgian Mediation Service Banks-Credits-Investments, although the Ministry of Economic Affairs also remains competent to handle complaints regarding, for instance, consumer credit and leasing services.

It must be noted that a client may still file a claim with the Belgian courts. However, general terms and conditions may dictate that the client seeks assistance from the Insurance Ombudsman or the Mediation Service Banks-Credits-Investments first before turning to a Belgian court.

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### Architect's Liability Insurance

The Belgian Constitutional Court recently examined whether the Law of 15 February 2006, concerning the profession of architect, violates the relevant provisions of the Belgian Constitution on equal treatment and non-discrimination.

The Law of 15 February 2006 modernised the rules and regulations governing the profession. To protect architects against excessive damage claims, the profession of architect can now be practised within the framework of a legal entity with limited liability. Further, each architect, whether operating as a legal entity or not, must have adequate liability insurance in place and such insurance is considered to be in the interest of the owner of the building to be constructed.

There can be several architectural and engineering professionals involved in a construction project, making it hard to pinpoint responsibility for any damage. Therefore in practice, all parties are considered jointly responsible. However, because architects must now have adequate liability insurance in place, it is likely that architects will be asked to take sole responsibility for all damages in connection with the casualty. The Belgian Association of Architects therefore appealed to the Constitutional Court to declare the provisions of the Law of 15 February 2006 null and void to the extent where they are less favourable to architects compared to other parties in the construction project.

After careful consideration, the Constitutional Court ruled, in its 12 July 2007 judgment, that architects were indeed discriminated against but that this discrimination was not due to the architects' insurance obligations under the Law of 15 February 2006. Rather it was due to the absence of similar obligations for other parties involved in the construction process. The Association of Architects' appeal was declared valid but ill-founded. This means that further legislation is required to extend the liability insurance to other parties involved in the construction process.

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**Insurance Intermediaries'  
Obligations**

On 27 April 2007, the BFIC sent a letter to all (4,938) natural persons in Belgium that are registered with it as insurance intermediaries.

The letter set out all the obligations for insurance intermediaries following the Law of 22 February 2006 on the reform of insurance mediation and the distribution of insurances. This law implements the European Directive on insurance mediation into Belgian law. The insurance intermediaries were further urged to update their registration with the BFIC within one month of receipt of the letter.

To this end, they must demonstrate compliance with the more extensive procedure by providing a copy of their liability insurance or guarantee, and proof of good character and reputation. By 25 June 2007, the BFIC had received only 2,124 responses (approximately 40%). The remaining 2,814 natural persons were informed that failure to reply could result in a termination of their registration and the prohibition to further distribute insurances.

A similar letter to all legal persons (approximately 20,000) that are registered in Belgium as insurance intermediaries with the BFIC is scheduled for September 2007.

## France

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### Legal Protection Insurance

As discussed in the May 2007 edition of this update, Law number 2007-210, of 19 February 2007, introduced controversial reforms in legal protection insurance (*assurance de protection juridique*). This law has now become effective with its publication in the 21 February 2007 *Journal Officiel* (the official French publication in which the text of laws and regulations appear).

Under this legislation, an insured with legal protection coverage must be assisted or represented by legal counsel (and not only by their insurer) if they or their insurer are informed that the opposing party is being assisted or represented by counsel. The related legal fees are to be negotiated by the lawyer and the insured (and not the insurer). In addition, an insurer is not permitted to provide an insured with the name of a lawyer unless such information is requested by the insured in writing.

In the context of the current debate regarding legal aid reforms, the French Justice Ministry has since reinforced support for these controversial legal protection measures by highlighting their role in facilitating citizens' access to justice.

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### Transposition of the Reinsurance Directive into French Law

The Reinsurance Directive (2005/68/EC), which is designed to harmonise the regulatory framework for the reinsurance sector in the various EU member states, provides that member states must transpose its provisions into national law by 10 December 2007, at the latest. At the time of writing, the French Ministry of the Economy, Finance and Industry indicated that the related implementation provisions are still being drafted and that draft implementing legislation is expected to be introduced this autumn.

The transposition of the Reinsurance Directive will bring significant changes to the French reinsurance sector (e.g. phasing out of existing collateral arrangements in respect of EU reinsurers), which is, as a general matter, subject to limited oversight and regulation.

## Germany

### Liability for Damage to the Environment

Formerly in Germany, the concept of environmental liability covered injury to persons or damage to property inflicted via an environmental route (i.e. air, water or soil). The new environmental damages Act (Umweltschadensgesetz (USchadG)) extends to damage to the environment itself. The new concept of damage to soil and water as well as ecosystems is independent of questions of ownership. This means that there is liability even where the damage does not belong to anyone, or where it belongs to the polluter.

The new Act pursues three objectives: loss prevention, loss minimisation and loss rehabilitation.

### Duties

The perpetrator of the environmental damage must notify the authority of environmental damage that is imminent or that has already taken place. The authority coordinates the actions taken to prevent, minimise and rehabilitate environmental damage. The person responsible for the environmental damage has to bear the costs resulting from it. Normally this will be a company. Either the company executes the measures itself or it may face a claim for reimbursement by the authority that arranged the appropriate measures. The Act on Environmental Damage constitutes a final regulation for damage to species and natural habitat, and to water and soil where there is risk to human health. Although the German legislation will not enter into force until 14 November 2007, it includes environmental damage having arisen from occurrences and incidents from 30 April 2007. This regulation was necessary in order to comply with the time limit for the latest possible implementation of the EU Directive set by the EU.

The Act on Environmental Damage sets a liability for occupational activities exclusively but not for purely private acts.

The Act focuses on entrepreneurial activities that are particularly hazardous to the environment, as defined in the enclosure of the Act. Certain activities require special permission, such as the operation of industrial and agricultural plants subject to authorisation; the introduction of pollutants into water; the manufacture, storage and utilisation of hazardous chemical substances; and the utilisation, transport and release of genetically modified organisms (GMO). All entrepreneurial activities listed in the enclosure of the Act are subject to absolute liability. For all other occupational activities, not listed in the enclosure, the new law results only in liability for damages to ecosystems, provided that a fault such as intent or negligence has occurred.

As already mentioned, the person responsible for the environmental damage must bear the cost of rehabilitation, prevention and limitation of the damage. It is possible that there may be conflict with existing operating licences for undertakings subject to permission (Enclosure 1) under the Act, which, moreover, are liable to absolute liability. It is at present unclear how such operating licences will affect the obligation to reimburse costs in both legal and actual terms. The Act on Environmental Damage authorises Germany's federal states to regulate certain exceptions to the liability to bear the costs. It is currently not known to what extent the federal states intend to exercise this power.

### Responsible Persons

Both legal and natural persons may be liable under the Act, depending on whether the occupational activity causing the environmental damage is performed or determined by the person. This means that managerial staff as well as other employees performing activities for a company, can be held liable.

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**Environmental Associations**

Another important right granted by the Act is that not only persons directly affected by environmental damage, but also recognised environmental associations have the right to apply for intervention with the competent authority. This is uncommon in the German legal system. Furthermore, the competent environmental authority is also authorised, and in certain cases has an obligation, to take action of its own accord.

At present it cannot be forecast to what extent the new law entails new liability risks for companies.

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**Insurance Coverage for the New Risks**

The insurance products currently available in the German insurance market do not fully cover the new risk created by the Act on Environmental Damage. Firstly, until now only impairments of property and health caused via an environmental path were insurable, but not damage to the environment itself. Secondly, under German Third Party Liability Insurance Law cover is only offered for liability claims through private (civil) law. The liability from the Act on Environmental Damage, however, constitutes a responsibility subject to public law. Moreover, in third party liability insurance, cover is only offered for damages occurring with third parties but the Act on Environmental Damage does not distinguish between third party damage and own damage. This means that the industry needs to create an overall insurance solution for the liability created by the Act on Environmental Damage.

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**GDV Recommendation**

In May 2007, the Association of German Insurers (Gesamtverband der deutschen Versicherungswirtschaft (GDV)) published a recommended wording (non-binding) to cover damages under the Act on Environmental Damage. This recommendation follows the Environmental Liability Insurance Conditions of 1992. Cover is only offered for damage that is the result of interruptions in operation. It is possible that not all insurers will adhere to the recommendations of the GDV, but will try to launch their own wording, probably with coverage extensions compared to the GDV wording.

Further development remains to be seen.

## Italy

Transposition of the EU Directive on Environmental Liability	Italy has implemented EU Directive 2004/35/EC through the Legislative Decree 03/04/2006 number 152.
Definition of Environmental Damages	<p>The Legislative Decree defines 'environmental damage' as any significant worsening of a natural resource or of any utility the same may offer, even if indirectly caused, and provided that the damage itself may be measured or otherwise ascertained. Such damage may affect natural species, natural habitat, sea and inland waters or soil.</p> <p>The precautionary principles provided for by the EC Treaty apply whenever potential damage threatens the environment or human health. Under the Legislative Decree, an economic operator has a duty to inform the local public bodies (Municipality, Province and/or Region) and the Prefect of such potential damage. The local authorities in turn inform the Ministry for the Environment and the Safeguard of the Territory, who are authorised to undertake any necessary steps.</p>
Duties of those Responsible in case of (Imminent) Environmental Damage	The operator is obliged to implement, at own expense, the necessary measures to prevent damage from taking place within 24 hours of the threat becoming evident. The operator must also immediately inform the local public bodies and the Prefect of actions he has undertaken. The Ministry for the Environment and the Safeguard of the Territory may require the economic operator to provide relevant information and/or put in place specific measures.
Competencies of the Authorities	<p>In case of default by the operator or whenever the situation requires, the Ministry may also itself take the most suitable action, with costs to be borne by the operator.</p> <p>The Decree entitles the Ministry to commence proceedings for compensatory damages in any case where it was unable to prevent the damage and without prejudice to the actions for the restoration of the previous environmental conditions, as regulated by the Decree. In cases where it is not possible to quantify the damage without prejudice to the actions for rehabilitation, the damage is to be liquidated by an amount three times the monetary sanction applied.</p>
Effects on Criminal Law	On 24 April 2007, the government approved a bill of law concerning the reorganisation, coordination and integration of criminal offences that affect the environment. The bill, which is currently being discussed by the Parliament, provides for a new set of articles to be included in the criminal code. Anyone who unlawfully attempts to introduce into the environment substances or gases that may damage the environment or the flora and fauna, is punished with imprisonment from one to five years and a fine from € 5,000 to € 30,000. For actual damage the tariff is imprisonment from two to six years and a fine from € 20,000 to € 60,000. The Decree also covers natural disasters, any conduct that may result in damage to the environment but does not constitute 'introduction' of polluting substances or gases, illicit trafficking of pollutants, forgery of documents provided by environmental legislation, and negligence.

## Netherlands

### Content and Objectives of the Directive on Environmental Liability

On 21 April 2004, the European Parliament and the European Council adopted directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. The Directive applies to environmental damages caused by any of the occupational activities listed in Annex III to the Directive and to any imminent threat of such damage occurring by reason of any of those activities. If an activity is not listed in Annex III, the Directive is still applicable when damage to species and natural habitats is caused and whenever the operator has been at fault or is negligent. Without prejudice to relevant national legislation, the Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage. The leading principle behind the directive was that the polluter should pay for the damage caused as a result of his activities. This should induce operators to adopt measures and develop practices to minimise the risk of environmental damage. Article 19 of the Directive required member states to implement the directive in national law by 30 April 2007.

### Current Legal Situation regarding Protection of the Environment

At time of writing the Dutch parliament was in the process of adopting a law to implement the directive. The protection of the environment is primarily regulated in the Environmental Management Act (Wet milieubeheer) and the Soil Protection Act (Wet bodembescherming) concerning pollution of the soil. The Environmental Management Act contains a general duty to protect the environment and allows the competent authorities to take measures to prevent environmental damage. If environmental damage has occurred as a result of activities, the competent authorities at present need to resort to the provision of the Dutch Civil Code regarding wrongful acts to claim damages from the polluter. With regard to incidences of soil pollution, the Soil Protection Act provides for a separate provision to reclaim damages with the polluter (or any third party that benefited from remediation measures).

### Transposition of the EU Directive on Environmental Liability into Dutch Law

To implement the Directive, the government proposes to incorporate its provisions into the Environmental Management Act. This means that the government is implementing the directive through public law and not by means of a civil law instrument. When it comes to reclaiming any costs the competent authorities have incurred in restoring the environment, the proposed provisions of the Environmental Management Act provide that the competent authorities will make a decision regarding these costs. The polluter may appeal against this decision through the usual public law channels. This means that the competent authorities no longer need to follow the wrongful act procedure of the civil code – an expensive, lengthy and complicated procedure. In addition, the competent authorities do not have a choice to reclaim damages: they are required to do so.

### Exception: Soil Pollution

The only exception pertains to soil pollution. The government proposes to leave the Soil Protection Act intact, so that to reclaim damages with regard to soil pollution, the competent authorities have a choice to reclaim these damages based on the specific provisions in this act or through the wrongful act provisions in the Dutch Civil Code. Since the Directive stipulates that the competent authorities must reclaim damages in the instances specified by the Directive, the government proposes that in those instances the competent authorities must start proceedings against the polluter to reclaim damages.

## Spain

### Implementation of the Motor Insurance Directive into Spanish Law

Under Spanish law, motor vehicle insurance is regarded as a variation of third-party liability insurance. Such insurance may be voluntary or compulsory. Compulsory insurance is regulated by Decree number 632/1968 of 21 March in the Civil Liability and Insurance in the Circulation of Motor Vehicles (*Ley de Responsabilidad Civil y del Seguro en la Circulación de Vehículos de Motor*), as modified by Law Number 30/1995 and Royal Decree 8/2004, 29 October. The Decree number 632/1968, as modified by Law Number 30/1995 and Royal Decree 8/2004, remains in force, although its constitutionality has been disputed by means of several appeals brought to the Constitutional Court.

Following the approval of Directive 2005/14/EC, the Spanish regulation on motor vehicle insurance will be partially amended. In this regard, it is important to note that, currently, the Spanish government has not implemented the Directive into Spanish law, although a draft of motor liability law (hereinafter, the 'Draft') has been provisionally approved by the Spanish Parliament and has been published in the Official State Bulletin.

Notwithstanding the above, the Draft has been prepared on the basis of the following provisional points:

- > Currently, the Spanish motor liability rules only allow the damaged party to address a claim directly to the insurance company of the party responsible for the motor accident. However, the new regulation will give the damaged party the option to address a claim (a) directly to his insurance company or (b) to the insurance company of the vehicle in which the damaged party has suffered the accident.
- > Before Directive 2005/14/EC, the Spanish government had introduced, in connection with other insurance classes, the obligation for insurance companies to collaborate with and assist the insured party in preparing the indemnification request and the relevant attached documentation providing all necessary data to calculate the liquidation damages. The new regulation will formally establish the aforementioned obligation in connection with motor liability insurance. The aim of this obligation is to reduce the costs (both legal and non-legal) which the insured party incurs in the preparation and calculation of the indemnification request.
- > The new legal regime will also oblige the insurance companies to justify their indemnification offers and to communicate to the insured party said offers within three months. If the insurance companies do not fulfil the aforementioned obligation (in the context of insurance companies that have admitted their civil liability) the new regulation will impose on the insurance companies default interest which will increase the indemnification amount.
- > The new legal regime will also impose other obligations on the insurance companies, including the establishment of a formal procedure for the regulation of indemnifying payments.
- > The new regulations provide recourse to a fiscal representative in Spain (who must be a native person resident in Spain, or a company established in Spain), in connection with motor liability activities, for insurance companies operating in Spain under the freedom-to-provide-services regime.

## Sweden

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### Directive on Environmental Liability

Directive 2004/35/EC was set to be implemented into Swedish legislation on 1 August 2007. This required some changes to be made to the Swedish Environmental Code (Sw: Miljöbalken (1998:808)). In addition, a new ordinance, also set to enter into force on 1 August 2007, was issued that supplemented the Environmental Code with regulations regarding grave environmental damage defined in the Directive.

Implementing the directive will primarily entail an extended environmental responsibility to cover grave environmental damage as well as responsibility for the threat of such damage. Liability for severe environmental damage will be extended to those operating the business. Operational personnel will be obliged to take preventive measures and to remedy grave environmental damage or threat of such damage. An extended duty to inform will apply to responsible personnel, covering greater demands of more precise help measures and the order in which such measures are to be taken. Exceptions to the rules of remedying damage apply to military authorities, the agricultural sector, forestry, reindeer industry, fishing for a livelihood and road maintenance in certain cases.

The new regulations regarding responsibility for remedying environmental damage, which will be unlimited in time, will apply only to damage that has occurred after 30 April 2007. Penalty clauses regarding transgression of the EC ordinance 'REACH' were also to be incorporated in Swedish law and set to enter into force on 1 August 2007.

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### Directive on Motor Insurance

The current provisions in Swedish legislation largely comply with the requirements set out in Directive 2005/14/EC. Therefore, the Swedish government decided that only article 4.4 of the directive needed to be implemented. The implementation will have an effect on the Traffic Damage Act (Sw. Trafikskadelagen (1975:1410)), the Insurance Business Act, (Sw. Försäkringrörelselagen (1982:713)), the Act concerning the Law Applicable to Certain Insurance Contracts (Sw. lagen (1993:645) om tillämplig lag för vissa trafikförsäkringsverksavtal) and the Act on Foreign Insurers' and Pension Institutions' Business in Sweden (lagen (1998:293) om utländska försäkringsgivares och pensionsinstituts verksamhet i Sverige).

The changes are, however, mostly formal. The changes entered into force on 1 July 2007.

## Switzerland

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### EU-Compatible Product Safety

The current Law on Safety of Technical Equipment and Facilities (Gesetz über die Sicherheit von technischen Einrichtungen (STEG)), will be modified to take in an adjustment to European product safety standards. The new Product Safety Law (Produktsicherheitsgesetz (PSG)), currently being debated in parliament, will cover all products, not only technical equipment and facilities.

The new PSG concerns public law, comprising certain duties for manufacturers and importers, such as a product monitoring duty. Thus, together with the competent authorities' ability to order a recall of dangerous products, it will affect product liability for manufacturers and importers, if only indirectly.

Moreover, the new PSG directly affects the Swiss Product Liability Law (PrHG) for the agricultural sector. Currently, products from agriculture and livestock breeding are subject to the PrHG under certain conditions, such as transplant products for people. This restriction will be abolished, so that all agricultural products will be subject to the new legislation.

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### Compulsory Insurance for Mountain Guides?

For Switzerland as a holiday destination, the tourism sector is of particular importance. Parliament is currently debating a legislative initiative for the introduction of particular duties of care for mountain guides and skiing instructors

This legislative initiative provides for the introduction of a compulsory insurance (liability insurance). The Swiss Insurance Association (Schweizerischer Versicherungsverband) has argued against a compulsory insurance for this professional group, as such insurance cover is quite difficult to obtain on the Swiss insurance market, if at all.

Further development remains to be seen.

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### Merger of Banking and Insurance Supervision

Following international developments, insurance and banking supervision in Switzerland are to be merged in the form of a Financial Market Supervisory Authority (Finanzmarktaufsichtsbehörde (FINMA)). The new authority is to assume the duties and responsibilities of the Federal Banking Commission (Eidgenössische Bankenkommission (EBK)) and the Federal Office for Private Insurances (Bundesamt für Privatversicherungen (BPV)). The legislation governing the introduction of this integrated financial supervision is expected to enter into force on 1 January 2009.

## Conclusions

The dominant theme of this latest set of reports is the transposition of the new Environmental Liability Insurance Directive into the local law of each EU territory. It will be noted that most of the EU countries focused on here failed to meet the 30 April 2007 deadline for transposition of this law as per the EU Directive, and indeed some countries have not yet even submitted their draft local law for parliamentary approval. It will also be noted that there are differences in the way in which the EU Directive is being transposed in the various EU countries observed here.

Whilst it is understood to be the desire of EU legislators to create a uniform and level playing field in relation to liability for environmental damage, the provisions of the Environmental Liability Directive for its transposition into local law leave sufficient room for differing levels of liability to apply; insurers and reinsurers will need to be alert to this.

It is interesting to note that Switzerland continues its trend of broadly following EU legislation. We see this in relation to the latest product safety legislation highlighted in this update, and in due course we are likely to see EU environmental liability regulations similarly reflected in Swiss law.





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