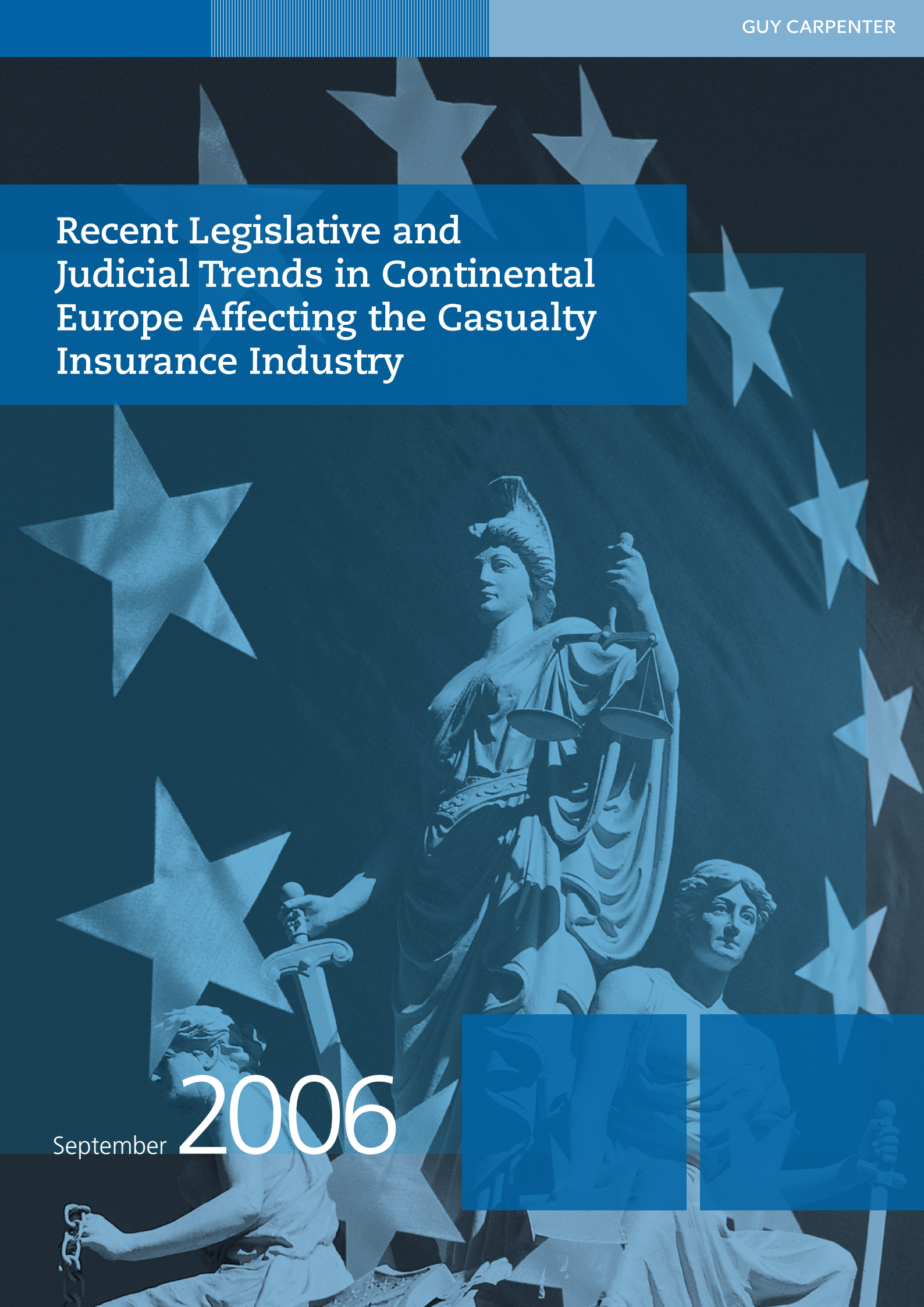


# Recent Legislative and Judicial Trends in Continental Europe Affecting the Casualty Insurance Industry

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## Foreword

This report was prepared by DLA Piper UK LLP ('DLA Piper') in conjunction with Guy Carpenter & Company Inc. ('Guy Carpenter').



## GUY CARPENTER

### DLA Piper

DLA Piper is one of the largest global law firms with 3,100 lawyers across 59 offices in 22 countries forming a close network around the globe. With offices in all major centres of commerce and an equal number of lawyers working in the US and European markets, DLA Piper accompanies its clients wherever they choose to do business, and was awarded 'Global Law Firm of the Year' by the *Lawyer Awards* in 2006. Its geographical reach enables DLA Piper to offer a truly international service to the insurance and reinsurance industry, including seamless advice between relevant practices in other fields of law, for example corporate (M&A), regulatory, banking and finance, insurance and reinsurance intermediation. DLA Piper has one of the largest insurance and reinsurance practices in Europe, and acts with extensive experience for many of the world's major insurance and reinsurance companies as well as insurance brokers, self-insured entities and public sector bodies, Lloyd's syndicates, insurance and reinsurance intermediaries. DLA Piper assists its clients in all areas of insurance and reinsurance-related legal services in Continental Europe and worldwide, from claims services in all lines of business, to corporate and regulatory matters, including development and policy wording in each jurisdiction in which DLA Piper operates.

### Guy Carpenter's International Casualty Specialty Practice

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. Guy Carpenter's Casualty Specialty is a global practice group created as part of Guy Carpenter's client-centric business model to provide expert resources to our clients in the fields of Public and Product Liability, Motor Liability, Professional Liability, Environmental Liability and Employers' Liability/Workers' Compensation. Globally, the Casualty Specialty is responsible for structuring and placing the reinsurance of one third of the world's Professional Liability business, handling annual premium volumes of US\$2bn. The International Casualty Specialty focuses on the UK, Continental Europe and Asia Pacific, with casualty product, underwriting and analytical experts based in London, Cologne, Hong Kong and Sydney. The International Casualty Specialty team works closely with Guy Carpenter's Insurat<sup>®</sup> actuaries and modellers to provide clients in the UK, Continental Europe and Asia Pacific with transactional expertise, peer reviews, strategy reviews, disaster scenario assessment, benchmark pricing, research and knowledge management, advice on wordings, clauses, definitions and triggers, access to new casualty products and markets. Close co-operation between the International Casualty Specialty and account executives in Guy Carpenter's local offices ensures that advanced techniques and solutions are linked to an in-depth understanding of local legislative and coverage issues.

## Introduction

This review is designed to provide our international clients and markets with a concise overview of key trends in the legal environment which 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 of the past year 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 last year. We have divided them by territory.

## Austria

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### Extent of Cover Within Public Liability Insurance

The Supreme Court of Austria (Oberster Gerichtshof (OGH)) in 7 Ob 111/05 g in 2006 clarified the extent to which public liability insurance should be expected to cover entrepreneurial risks. In effect, the court ruled that entrepreneurial risks should not be transferred to liability insurers. Not only the costs of removing defects in products/services but also those preparatory measures that are necessary for the removal of those defects have been defined as guarantee claims. In addition to this, the court ruled that insurance should not be expected to indemnify third party damages which should more correctly be the subject of warranty coverage.

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### Voidance of Third Party Liability Insurance in the Event of a Violation of the Law or Provisions of an Authority

In the terms and conditions of third party insurance, it is generally set out that the insurer is released from his obligations if the third party losses in question were caused by gross negligence and by deliberate contravention of applicable laws, regulations or provisions of authorities on the part of the insured or his legal representative or managing employee. The OGH ruled, in 7 Ob 136/05 h that even if the prerequisites for deliberate contravention have been fulfilled, an insurance company can be released from its obligations under the insurance contract if there is an increase of risk within the meaning of Sec. 23 of the Insurance Contract Act. It qualifies as an increase in risk if a new and lasting condition of higher danger is created. The prerequisite for this is a condition which lasts for a long time and through which the new, dangerous situation stabilises at a new, higher level, thus forming the basis for a new, natural course of damaging events. Such an extended duration is not deemed to exist if certain elements of the agreement are not met. For example in the construction industry, if scaffolding is used in a different way than agreed, over a short period of time, ie for a few days.

## Belgium

Law of 15 February 2006  
Concerning the Practice  
of the Profession of  
Architect in the Framework  
of a Legal Person  
*(published Belgian State Gazette  
25 April 2006)*

According to Articles 1792 and 2270 of the Belgian Civil Code, the architect and the building contractor are liable for defects of a building for ten years after completion. Unlike building contractors, architects are personally liable for damages resulting from a professional fault. The architect's insurance policy often does not provide sufficient cover for the potential damage. Further, it is not legally required, although Belgium's Federation of Architects requires its members to be insured.

The Law of 15 February 2006 enables the architect to practise his or her profession as a legal person rather than as a private individual. Thus architects enjoy the advantage of limited liability. The architect's client is consequently in a much weaker position as he only has a limited recourse, namely the assets of the limited liability company. To solve this, Article 3 of the Law of 15 February 2006 sets out the conditions with which the legal person should comply in order to practise the profession of architect. Practising as a legal person places the architect in a stronger position when dealing with the increasingly complex aspects of the profession. It also gives clients a degree of guarantee as there are often several architects practising within a limited liability company.

Another advantage for the architect is that it is easier to transfer his or her clients to another architect when he or she retires. Further, by selling his or her shares, the architect going into retirement avoids a further ten years of personal liability. Architects' professional liability is now subject to obligatory insurance (Article 4 of the law), with exact terms and conditions to be determined by the Crown (see below). Uninsured legal persons are not allowed to practise the profession of architect and shall be subject to sanctions.

The Law of 15 February 2006 comes into force on a date to be specified by the Crown and no later than 1 October 2006. The legislation will not take effect before the Royal Decree comes into force, as referred to in Article 4 of the law (obligatory insurance). Articles 11 (change in the composition of the National Council of the Society) and 14 (contribution and budget), however, came into force on 5 May 2006.

Insurance Brokerage

The Law of 22 February 2006 converts the Directive of 9 December 2002, concerning insurance brokerage, into Belgian law. The new regulation emphasises the duty to provide information and intensifies the supervision of the brokerage industry.

Article 33 of the Law of 22 February 2006 amends article 13 of the Law of 25 June 1992 concerning insurance contracts. The amended provision provides clients with an additional financial warranty. Until now, payment of the premium to an intermediary discharged the insured. From now on, the sums paid by the insurer to the intermediary are only deemed to be paid to the insured or the eligible party, when this person has actually received these sums. The term 'eligible party' needs to be understood in a broad sense and contains, as the case may be, inter alia the beneficiary or the affected party.

## France

### Product Liability Insurance – Responsibility of Suppliers in Respect of Defective Products

In its 14 March 2006 decision, the European Court of Justice found that by continuing to regard the supplier of a defective product as liable on the same basis as the manufacturer in the event that the manufacturer cannot be identified, even though the supplier has informed the injured party within a reasonable time of the identity of the party who supplied it with the product. France failed to take the necessary measures to comply with the Court's 25 April 2002 judgment regarding the transposition of the Council Directive 85/374/EEC of 25 July 1985. This directive relates to the approximation of laws, regulations and administrative provisions of the Member States concerning liability for defective products. Also, in its 14 March 2006 decision, the Court ordered France to pay a penalty of €31,650 for each day that it failed to comply with the aforementioned 2002 judgment of the Court.

In response, France introduced into law on 5 April 2006 provisions clarifying the responsibility of suppliers, as opposed to manufacturers, in respect of their liability for defective products (Law no. 2006-406). This law amended Article 1386-7 of the French Civil Code to specify that if it is not possible to identify a manufacturer, the seller, among others, is then responsible for a lapse in product safety. Unless the seller is able to identify his appropriate supplier or manufacturer within three months from the date that such seller is notified of the victim's demand, the seller is liable in the same way as the manufacturer.

### Medical Liability Insurance – Gynaecologists and Obstetricians

Three decisions of the French Supreme Court (Cour de Cassation), all dated 24 January 2006, have impacted medical liability insurers, most notably in respect of coverage of gynaecologists/obstetricians. In these decisions, the Court reviewed the applicability of the provisions of Article 1 of the so-called 'Kouchner law' (Law no. 2002-303 of 4 March 2002) concerning damages that may be recovered in certain cases following the birth of a child with a disability.

The Kouchner law, which is applicable to pending claims, was implemented in an effort to end the doctrine created following the French Supreme Court's 17 November 2000 decision in the Perruche matter. In this decision, the Court granted compensation for damages caused to a child who was born disabled as a result of an illness suffered by the child's mother that remained undetected during the pregnancy. However, under Article 1 of the Kouchner law, those damages that may be recovered are limited to those which are suffered by the child's parents in respect of their child being born with a disability that had gone undetected during pregnancy due to the fault, (*faute caractérisée*), of a medical professional. These damages are not to include those costs which might be related to the child's special needs throughout his or her lifetime. Compensation in respect of such costs is to be provided by a national fund.

The French Supreme Court decided in the aforementioned January 2006 decisions that the Kouchner law should not be applicable to claims that had been initiated and that were pending when the Kouchner law came into effect on 7 March 2002. As a result, the French Supreme Court recognised not only the rights of the parents, but also of disabled children, in these cases to claim damages pursuant to the laws and jurisprudence in effect prior to the Kouchner law. In making this decision, the French Supreme Court reasoned that applying the Kouchner law to such claims would be contrary to European law (Article 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms).

It is important to note that in its decision of 6 October 2005, in the case of *Draon vs France*, the European Court of Human Rights had ruled against France insofar as the retroactive effect of the Kouchner law had deprived the parties, without reasonably proportionate compensation, of a substantial portion of the damages which they had claimed. On 21 June 2006, the European Court of Human Rights issued a subsequent decision in this matter acknowledging the withdrawal of this case subsequent to a settlement having been reached among the parties (including the payment of approximately €2,000,000 in damages (plus interest) to the claimants).

As a result, medical liability insurers are expressing concerns that they will face significant exposure in respect of additional claims relating to matters that were closed in light of the provisions of the Kouchner law. Considering additional costs, some liability insurers are weighing up whether or not to issue additional policies in this area and whether or not to renew those policies which are currently in effect. Moreover, medical professionals are increasingly concerned that they will face significantly higher premiums, which they will not be able to recuperate through increased fees.

## Germany

### The AHB Reform

The German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft (GDV)) revised the General Terms and Conditions of Insurance for the Liability Insurance (Allgemeine Versicherungsbedingungen für die Haftpflichtversicherung (AHB)) in 2004, with further revision in 2006 (AHB 2004/6). The objectives of the AHB reform were to:

- resolve certain problems occurring in practice, which led to the elimination of systematical and structural discrepancies;
- reflect new legislation and jurisdiction.

From a legislative point of view, both the Act to Modernise the Law of Obligations (Schuldrechtsmodernisierungsgesetz), which took effect on 1 January 2002, and the second law for the modification of indemnification provisions, which took effect on 1 August 2002, made it necessary to reform the AHB. On the question of jurisdiction, transparency requirements were implemented. Finally, some major risks had emerged recently and became the subject of additional exclusions in AHB 2004/6.

Some facets in Sec. 1–7 AHB 2004/6 on the extent of insurance coverage deserve to be looked at in more detail.

### Extent of Insurance Coverage

- Sec. 1.1 AHB 2004/2006 now clarifies that the moment when the loss event (Schadenereignis) was caused is of no relevance. Rather it is the event, which proximately generates the damage of the third party. The controversy in the past whether it is the causative or the consecutive event which counts for coverage triggering purposes has been resolved by this amendment under AHB 2004/6.
- Sec. 1.2 AHB 2004/2006 states that claims to execute primary obligations under contracts and associated claims do not fall under the cover. In the former version of AHB this topic had been wrongly included in the catalogue of exclusions. The current wording well adapts language as used in the Act to Modernise the Law of Obligations, thus avoiding the use of ambiguous terms in liability and coverage law.

### Exclusions

As regards the set of 18 exclusions in Sec. 7 which, of course, prevents the AHB 2004/6 from qualifying as an all risks cover, there is a trend to offer separate coverage for risks excluded, subject to additional premium. This is particularly the case in four loss categories that have only now become excluded, namely those originating from gene technology (Sec. 7.13), data processing (Sec. 7.15), breaches of personal rights or rights to a name (Sec. 7.16), and discrimination (Sec. 7.17).

However, it is less true, for the fifth newly introduced exclusion which covers asbestos-related losses since this risk is nowadays not insurable. On the other hand, the exclusion of third party property loss generated by gradual environmental effect like temperature, gas, vapours or humidity, which was always part of the AHB previously, has finally been removed. With the meaning of loss event this exclusion is no longer in force.

## Italy

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**The Italian Insurance Code** The Italian insurance sector has recently undergone significant legislative changes with the adoption of Legislative Decree n. 209/2005, approved by the Italian Parliament on 7 September 2005, (Insurance Code), and partially entered in force on 1 January 2006.

The Insurance Code replaces over a thousand provisions and related laws with a single Code, divided into 19 sections (so-called 'Titoli') and containing 355 articles. As anticipated, many of these are not yet in force as the Italian Regulatory Authority for the Insurance Sector (ISVAP), has to implement them, adopting ad hoc regulations by the end of 2006.

The Insurance Code reinforces the role of ISVAP and not only reorganises existing legislation but also updates Italian insurance legislation, making it compliant with European legislation. Many alterations have been introduced, including:

- transparency and protection of the policyholder (from both a pre-contractual and a contractual perspective);
- mandatory insurance for civil liability (motor vehicles)/introduction of direct compensation scheme/reimbursement of premiums;
- access to insurance business;
- distribution.

## The Netherlands

New Dutch Insurance Law	<p>On 1 January 2006, a new statutory regulation governing contracts of insurance came into force. The regulation is part of the Dutch Civil Code, replacing the stipulations in the old Dutch Commercial Code of 1838.</p> <p>The greater part of the amendment comprises codification of existing case law. Several stipulations follow from standard case law of the Dutch Supreme Court. On the other hand, the Supreme Court has at times also been reluctant to anticipate certain issues of the new insurance law.</p> <p>The following gives an overview of the most important changes as well as the consequences for insurance contracts.</p>
Perspective	<p>One of the most important changes is the altered perspective. Whereas the old Commercial Code of 1838 focused on protecting the insurance companies against fraudulent actions of their insured, this approach has been completely abandoned. The new insurance law – recognising the social function of insurance – aims to balance the interests of both insurers and insured. The insured's position has thus improved.</p>
Disclosure	<p>The obligation to disclose has remained unaltered. However, the consequences of non-disclosure have completely changed. In the old days, the article 251 of the Commercial Code, with no recourse for the insured, gave the insurer a one-sided possibility to nullify the contract in the case of non-disclosure. Henceforth, the options for the insurer are limited. The insurer can terminate the policy in the case of non-disclosure where the insured intended to mislead the insurer or where the insurer would not have agreed to this policy had he known all the relevant facts. Unlike nullification, however, a termination has no retrospective effect under Dutch law. Furthermore the insurer has to act within two months of the discovery. If the insurer fails to react within this two-month period, he can no longer invoke the legal effects of non-disclosure afterwards.</p> <p>The effects on the entitlement to claim under the policy have also changed. If the non-disclosure only relates to a minor issue and therefore is of no relevance for the evaluation of the risk, the insured's rights remain untouched. The same principles, more or less, apply to the proportionality of the matter at hand. If it was the undisclosed facts that triggered the insurer to ask for higher premiums or perhaps to accept the risk against different terms, the insured's claim would still exist, but then only in accordance with these altered conditions.</p>
Limitation of Action	<p>The new insurance law prescribes a general period of limitation of three years. However, there is an important exception. In the event of rejection of coverage by the insurer by means of a registered letter, the claim of the insured under the policy becomes time-barred after six months. The insurer will, however, have to inform the insured explicitly about the consequences of this – very short – time bar. Both the three-year time bar as well as the six-month time bar can be interrupted by explicitly reserving all rights and remedies under the policy.</p> <p>The major change is that this three-year period is mandatory. This implies that different (shorter) periods of limitation are null and void.</p>
Direct Action	<p>The legislator has taken the first steps on the path to direct action. The option for recourse to direct action already existed for the compulsory insurance of motorised vehicles, but it is a new remedy for voluntary insurances. Henceforth, the injured party may in certain circumstances claim the damages directly from the liability insurer. This option is, as yet, limited to personal injuries, but the situation may change in the near future.</p>

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**Concurrence**

Where several insurance contracts cover the same risk, there is concurrence. Where the insured used to claim coverage under the oldest insurance, it can now address both insurers at the same time. Naturally, the insured is not allowed to profit from the fact that it is insured under multiple contracts (principle of indemnity).

One insurer paying out under the policy has a right of recourse against the insurer that did not pay out. In the end, all insurers pay proportionally. However, the frequently used 'after you clauses' and 'unless elsewhere covered clauses' remain valid. The stipulations on concurrence are directory law. Parties may still deviate, and do therefore still deviate accordingly.

## Spain

There have been no significant changes to affect the casualty insurance industry in Spain during the last year, but it is perhaps helpful to provide an overview of the current legislative and judicial status quo.

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### Nature and Extent of Legal Liability in Private Liability Insurance

In Spanish private liability insurance, the insurer undertakes to cover the risk of the insured, being obliged to indemnify a third party for the damage caused by an event foreseen in the contract, the insured being liable for the consequences.

Under Spanish law, private liability includes public, product, environmental and professional liability as well as contractual and professional liabilities and extra-contractual liabilities arising in law, obligating the person who causes the damage to indemnify another person. Cases involving extra-contractual liability are regulated by Articles 1902 to 1910 of the Civil Code. Article 1902 of the Civil Code establishes the extra-contractual liability of the person who, by action or omission, causes damage to another and there is fault or negligence; Articles 1903 to 1910 refer to specific cases where extra-contractual liability exists, not arising from the insured's own actions or omissions, but from the damage caused by persons, animals, or objects under the responsibility of the insured.

In private liability insurance, if a loss covered by the policy occurs, unless otherwise agreed, the insurer will take over the legal defence against the claim made by the prejudiced party, and it will bear the costs of defence.

Recent case law has strengthened the rights created under Law Number 50/1980. The prejudiced party or its heirs have a direct right of action against the insurer to demand the fulfilment of the obligation to indemnify, without prejudice of the right of the insurer to claim against the insured in the event that the damage caused to the third party was due to the fraudulent conduct of the insured. For the purpose of exercising a direct action, the insured is obliged to inform the prejudiced party or its heirs of the existence of the insurance contract and its contents.

In 2005 – 6, no important legislative developments affected Spanish private liability insurance. However, the Courts have developed certain aspects of private liability insurance, which we will explain below.

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### Professional Liability Insurance

In Spanish law, professional liability insurance is part of general liability insurance, and there is no obligation to insure, except in very specific cases.

Taking into account recent case law, the lawyers' professional liability is based exclusively on negligent and/or guilty acts or omissions carried out by lawyers in the performance of their professional activities. In this regard, a claimant will only be entitled to obtain compensation for damages suffered as a consequence of the negligent conduct of the lawyer where the Court has declared the following:

- that the conduct or acts carried out by the lawyer have directly or indirectly led to damage to the client;
- the amount of said damages suffered by the client.

The compensation comprises both the costs of the judicial claim and subsequent legal proceedings and the amount of the damages suffered by the client.

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Public Liability and  
Pollution Liability Insurance

Public liability and pollution liability insurance is compulsory for certain activities that could entail serious damage to the environment. An example is Act Number 10/1998 of 21 April 1998 on waste, the granting of authorisation for transfers governed by Regulation Number 250/93/EEC and for the management activities contemplated in the Law, especially the handling of toxic and dangerous waste.

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Statutes of Limitation,  
Coverage Issues and  
Policy Wording

Law 50/1980 is applied in all types of insurance contracts and its provisions are obligatory. In accordance with this Law 50/1980, the insurance policy conditions may not be prejudicial to the insured and must be drafted in a clear and precise manner and the policy clauses that restrict the rights of the insured – in connection with the designation of the contracting parties, the property insured, the amount of the premium – must be specially highlighted and be specifically accepted in writing. In this regard, if the Supreme Court establishes that any of the general conditions of the contract are void, the competent public administration will oblige the insurers to modify the identical clauses contained in their policies.

Recent appeal cases show that the Supreme Court is interpreting policy coverage increasingly in favour of the consumer and ensure that insurance coverage is made available to individual third parties.

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Relevant Case Law  
Developments

The Spanish courts recently analysed the so-called 'claim made clause', in connection with claims against lawyers for professional liability. The majority of insurance companies in Spain provide 'exclusions' in their insurance policies for 'late accidents'. The insurance policy only covers the acts or omissions of the lawyers during the life of the insurance policy even though their effects become apparent after the term of the policy. The Supreme Court – in its judgments dated 14 July 2005 and 20 March 2005 Cn b7 – has ruled in certain cases that such clauses are null and void because they limit the rights of the claimant to obtain compensation for damages which are known about after the policy has expired.

## Sweden

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**New Insurance Contract Act** On 1 January 2006, a new Insurance Contract Act came into force in Sweden. The new Act is the result of more than ten years' work to modernise the old Swedish Insurance Contract Act of 1927 and the Consumer Insurance Act of 1980.

The provisions of insurance law are, in principle, mandatory with respect to consumer insurance contracts. As regards commercial insurance contracts, many of the provisions are not mandatory and the regulation may thus be diverted from in such insurance contracts and insurance policies. The new Act presents three major material changes:

- information to policyholder;
- cancellation and amendments of commercial insurance contracts;
- third party claims/direct action. This latter development is of particular interest to the casualty insurance market.

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**Third Party Claims/  
Direct Action**

According to the new Act, in certain cases third parties are entitled to claim compensation directly from the insurer under liability insurance. This third party right to claim compensation directly from the liability insurer is restricted to when third party insurance is compulsory and to situations in which the insured lacks means to pay compensation to the third party for damages caused, i.e. if the insured is insolvent and subject to receivership, insolvent liquidation or composition with its creditors, or when the insured has been dissolved.

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**New Case Law**

One issue is the subject of much discussion in Swedish tort law. It concerns the limits of liability for damages of a strictly patrimonial character. In Swedish law, such damages are classed in a special damage category, i.e. pure economic loss. Under the Swedish Tort Act, the right to claim compensation for pure economic loss is restricted to cases where such loss has been caused by a criminal act. Other Swedish legislation, such as the Companies Act, the Act on Financial Advice and regulations on competition and prospectuses, also contain specific provisions according to which pure economic loss can be claimed and compensated for if caused by negligence. In addition, the right to claim compensation for pure economic loss in torts has been extended in Swedish case law. These cases concern, inter alia, a situation in which a valuer of real estate negligently provided incorrect information in an evaluation of real estate. A third party, on the basis of this incorrect evaluation, suffered a pure economic loss. The Swedish Supreme Court recently ruled that a third party, which has been acting in liaison with one party to a lease agreement to the detriment of the other party to the lease agreement thereby was liable to pay compensation to the other party of the lease agreement for pure economic loss that this party suffered. The Supreme Court held that if a third party under such circumstances acts in a deceitful manner that cannot be deemed acceptable from a competition perspective, the third party is liable to pay compensation for the pure economic loss caused.

## Switzerland

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### Revision of the Insurance Contract Law

The Swiss Insurance Contract Law (Versicherungsvertragsgesetz (VVG)) of 1908 was partly amended in 2006. The aim of the modifications is to adapt some vital provisions on the insurers' protection to the changing demands of contemporary law. A significant item of revision was the reorganisation of the consequences of a breach of the disclosure duty. According to the new legal position, insurers are only allowed to refuse claims payments if, upon the conclusion of the contract, the risk-related circumstance, not at all or not correctly notified (Gefahrstatsache), influenced the occurrence or the extent of a loss. Furthermore, the changes concern the divisibility of premium in case of early termination of the insurance contract as well as the fate in case of a passage of title of the insured object. The partial revision largely became effective on 1 January 2006. On 1 January 2007, the new regulations regarding the insurers' duty to furnish information will come into force. From this date on, insurers are obliged to inform their clients before signing the contract about their identity, the tenor of the insurance contract and issues regarding the processing of data.

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### Further Revision of VVG in Sight

In a parallel development to the partial revision, a commission of experts was assigned in February 2003 to compile a draft for a totally revised VVG together with an explanatory report. According to the Swiss Federal Finance Department (EFD), the commission requires more time for drafting the revision than originally scheduled due to the complexities of the matter. However, it is expected that the draft and the report will be completed before the end of 2006.

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### Revision of the Nuclear Energy Law

The projected revision of the nuclear energy liability law will – in connection with the revised Paris Convention regarding third party liability in the field of nuclear energy – lead to an increase of the sum insured. Although specific sums have so far not been determined, the pool, in collaboration with the international pool community, is already preparing itself for the anticipated legal provisions, which it will need to satisfy.

## Conclusions

The constituent territories of Continental Europe share a common ancestry in Roman Law and in the Napoleonic Civil Code but today they present a diverse picture of legislation. The European Union is seeking ways to gradually harmonise these laws as they relate to the rights of the consumer, protection of the individual and the liability insurance coverage available. Evidence of this trend towards greater harmonisation can be seen in the territorial highlight reports presented here. New insurance contract law, transparency and the rights of both insureds and third parties to derive benefits from casualty insurance coverage are common traits of development in many territories.

The pace and volume of legal and especially judicial change is slower than in territories such as the US, UK and Australia where common law principles apply and case law drives developments. Nevertheless, globalisation is influencing the ways in which local governments and judiciaries can impact liability insurance practice.

We shall continue to track these developments and to report on significant additional legal and judicial trends as they emerge.

For additional copies of this report, please contact us at [marketing@guycarp.com](mailto:marketing@guycarp.com)

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