

Warnings can be read between the lines: Lawyers

Commission report may spark capacity shortfall and regulatory moves: Experts

By Rick Mitchell

[BRUSSELS, Belgium]—Stern warnings by the European Commission on premium alignment in co-insurance could rattle the market enough to cause capacity contraction for certain lines, particularly in the London market (see story page one).

The Commission may yet take regulatory steps to address other areas of concern, legal experts note.

"There is a potential contraction of capacity as some insurers might be less willing to take lines when they do not have expertise. This could happen fairly quickly," said Guy Soussan, Brussels-based partner at the Belgium arm of Washington-based law firm Steptoe & Johnson LLP.

Warnings

Analysts said the report, "Sector Inquiry under Art 17 of Regulation 1/2003 on business insurance," is short on details and conclusions, while frequently inviting the market to self-assess its compliance with E.U. competition rules.

"Although you will have to read

carefully between the lines to find the warnings, they are there," said Mr. Soussan. For example, on the subject of alignment of premiums by co-insurers and reinsurers, "the Commission clearly wants to see changes, and if they do not see them it is probable that enforcement actions will take place," said Mr. Soussan.

"I am advising my clients to make a distinction between normal exchanges of information and exchange that could lead to problems. I recommend resisting invitations from brokers to simply align on premiums suggested by leading co-insurers and reinsurers," he said.

The report could give rise to complaints against insurers.

"Competitors, customers and new entrants could use the report as the basis for potential complaints," said Jacques Derenne, a Brussels-based partner in the competition and E.U. law practice for international law firm Lovells LLP.

"The report gives the Commission thorough knowledge of the sector and points out problems the industry needs to respond to, but by

adding transparency it also shows outsiders where the sector's weaknesses and deficiencies are. The message is: adapt your behavior or take the risk of being sued," he added.

The Commission said it would examine the insurance industry's "block exemption" from certain E.U. competition law in a separate report to be published in March 2009.

Amendments possible

In a statement, the Commission said it is "yet to be persuaded that the [block exemption] regulation—which treats the insurance industry differently to other industry sectors—is still necessary."

"It will be an uphill struggle to maintain the block exemption regulation and there is increasing legal uncertainty, but I do not think industry should put its flag down. We should give our own assessment," said Mr. Soussan.

The decision not to renew the exemption—which is slated to lapse in 2010—would be made at the Commission level, with coordination of the member states, not by the

European Parliament, Mr. Soussan said.

Mr. Derenne said that, since 2004, the Commission has moved away from individual exemptions, as sectors have matured.

Regulatory intervention on the question of broker remuneration is possible, sources said. The Commission said it would consider the issue of broker remuneration during an ongoing review of the Insurance Mediation Directive (2002/92/EC).

"The Commission seems to say that amendment of the intermediation directive is possible, to add more stringent guidelines for disclosure of remuneration," said Mr. Soussan.

"I think the Commission is probably looking for a regulatory solution to the problem of contingent commissions. They are not saying they are absolutely illegal, but very close. The implication is pretty clear: Where there is a conflict of interest, you want to stop that. There could be enforcement at the national or European Union level," said Mr. Soussan.

While the Commission's report contained warnings for the insur-

ance industry, enforcement actions will not necessarily follow, sources said.

Other Commission sector reports, for the banking and energy sectors have led to almost immediate enforcement actions, Mr. Soussan said.

"In this case, the Commission is opening a round of observation. They want to see what will happen. This report is not likely to bring action on legacy practices. It is looking forward, not backward," he said.

Questions

Sharon Bowles, Liberal Democrat Member of European Parliament for the southeast of England, and a member of the committee on economic affairs, agreed that, generally, "Parliament has less of a say on competition issues. That is enforcement and, thus, up to the Commission. However, the committee might decide to do its own initiative report in response to the Commission's.

Neelie Kroes (European Commissioner for competition) is coming to speak to us ... and we [are] likely to have questions for her," she said.

France moves to transpose directive to meet deadline

Rules will clarify legal situation for reinsurers

By Rick Mitchell

[PARIS]—The French Parliament will soon debate last-minute legislation to allow the government to fast-track the E.U.'s Reinsurance Directive (2005/68/EC) into national law in time to make the Dec. 10 deadline, according to a government spokesman.

In addition to several other measures transposing insurance-related E.U. directives, and a French measure on risk securitization, the so-called DDAC (diverses dispositions d'adaptation au droit communautaire) bill will enable the government to transpose the reinsurance directive by "ordinance," said the spokesman for the ministry of economy, finance and employment, which drafted the bill.

Approval expected

"[By ordinance] means that the government can submit the transposition measure to Parliament for ratification *en bloc*. Parliament will not debate the text article-by-article," said the spokesman. "It can theoretically reject the text, but this happens very seldom. The council of ministers approved the bill in mid-September, and it will be debated in October and probably approved soon after," he said.

"We expect [the reinsurance ordinance] to be approved by mid-December and in force by mid-2008," he said. Explaining the fast-track approach, the spokesman said: "It has become somewhat urgent to transpose the directive in time to make the E.U. deadline."

The directive transposition creates a European passport for reinsurers, allowing any reinsurance company authorized in an E.U. member

state to operate throughout the European Union. The ministry said the bill affects some 31 French companies, of which two rank among the top 20 reinsurers worldwide. It said the reinsurance business totaled €7.2 billion in premiums in 2004, about 7% of the world reinsurance market.

Uncertainty

"Transposition will clarify the legal situation for reinsurers in France regarding regulation on the European level. There has been some uncertainty because France has been late to enact the directive," said François Vilnet, president of the reinsurer association, l'Association des Professionnels de la Réassurance.

"[Transposition] does not create any specific advantage for the Paris market, but it is certainly a disadvantage for French reinsurers if the directive is not part of French law," said Mr. Vilnet, who is also deputy head of global business development for Pembroke, Bermuda-based Partner Reinsurance Co. Ltd.

"We are very satisfied to see the directive finally on its way to transposition. We have pushed for it to be transposed in France, and the government consulted us as they prepared this bill," said Mr. Vilnet.

An additional law in the DDAC package, will establish the mechanisms of securitization of insurance risks into French law by modernizing the legal framework of debt mutual funds, the ministry said.

In particular, the new law would widen application of this framework to include securitized insurance risks, the ministry said in a statement accompanying the text of the bill. "These funds will be renamed securitization funds (fonds communs de titrisation)," it said.



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Following protests in 2006, the French government withdrew the 'first employment contracts' law, similar to the new-hire contracts.

FRENCH TRIBUNALS PENALIZE FIRMS FOR 'ABUSIVE LAYOFFS': REPORT

By Rick Mitchell

[PARIS]—French industrial tribunals have hit companies with stiff financial penalties for what they term as "abusive layoffs" of people hired under so-called new-hire contracts, according to a report. The *contrats de nouvelles embauches*, or CNEs, were introduced by the government of then-Prime Minister Dominique de Villepin, in 2005 to encourage recruitment, especially in small firms, and allow them to fire people for any reason in the first two years.

However, during an 18-month period the tribunals—called *conseils de prud'hommes*—ordered companies to pay damages and interest to ex-employees, averaging more than €7,000 each, for contract terminations they considered abusive for various reasons, according to the report, "Le contrat nouvelles embauches à l'épreuve du contentieux prud'homal" (New-hire contracts tested by prud'homme courts).

Conseils de prud'hommes are local tribunals made up of an

equal number of salaried workers and employers, which "makes their decisions all the more surprising," said Evelynne Serverin, a Nanterre, France-based research director at the Centre National de la Recherche Scientifique, and one of the report's authors.

Ms. Serverin argued that, because the government's legal basis for the CNE was flawed, the law in effect has exposed employers to potentially unlimited penalties imposed by local tribunals, who based their decisions on common law.

"The law tried to say that, during a two-year initial period, companies could fire employees without giving any reason whatsoever. But what they did not consider was that if a terminated employee filed a complaint anyway, the tribunal would require the employer to provide a justification for the firing, and then it would proceed to decide whether it was justified or not," she said.

"The fact is that work contracts are contracts, just like any others, and an abrupt breaking of any legal contract can always be contested in court," said Ms. Serverin.