

OVERVIEW

The long debate over the future of Europe's **supervisory structure** for financial services is almost over. Parliament and Finance Ministers confidently expect to reach agreement in September on the powers of the new European authorities. When these Authorities start work, this will represent a significant shift of power from national regulators such as the FSA to the new European bodies through the binding standard-setting powers. The FSA's main task as regulator in future will be to negotiate in Brussels, and this change of role needs to be taken into account in the new UK structure.

Both the Pan European Insurance Forum and CEIOPS have written recently to Commissioner Barnier about **Solvency II**, in fairly vehement language, following the publication of the specification for QIS5. The battle lines are now clearly drawn between the industry and the regulators. The latter seem to be prepared to try any argument to ensure that capital requirements for insurers are as high as possible, with no regard for the consequences for the cost or availability of insurance. To his credit, in his reply, Commissioner Barnier demonstrates that the European Commission is well seized of these points. Mark Hoban at the Treasury is also supportive. The task over the next six months will be to point out to other Finance Ministries the political risks of following without question their regulators' arguments.

The shape of the Commission's review of the legislation governing **capital markets** is now clearer. The review of MiFID is the centrepiece, with promising signs that the Commission has recognised the need for improved post-trade transparency. There are also reviews of the Prospectus Directive, the Transparency Directive and the Market Abuse Directive (MAD to its devotees). In the autumn we expect new proposals on short selling and on derivatives. In the post-crisis climate, both proposals carry a significant risk of increased regulation and cost.

Meanwhile, the issues for review in the **retail market** are clearer, though the process is as clear as mud. In the autumn, separate units of DG Markt are conducting a consultation on PRIIPS, a review of the Insurance Mediation Directive and a review of MiFID. Products may fall into some or all of these reviews, and we can only hope that the units talk to each other sometimes. The issues in all cases will be disclosure and selling practices. It is also worth remembering that this will be a significant review of the retail market, as the Commission is highly likely to write into the Directives – whichever they are – powers for the new Authorities to make binding standards. This will represent a decisive shift in regulatory influence towards the EU level, in the retail market that has always been considered local in nature.

As a result, the ABI European team hopes you had a refreshing holiday.

EUROPEAN SECOND QUARTER UPDATE 2010

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1. Cross-border Healthcare

ABI Contact: Erin Flood 020 7216 7396, Elisabeth Hoskins 020 7216 7505

ABI lead Committee: Health Committee

Other interested committees: European Committee

Issue: In July 2008, the Commission issued a draft Directive on patients' rights in cross-border healthcare. The aim of this Directive is to help create legal certainty in the field of cross-border healthcare in the light of European Court of Justice (ECJ) rulings that create a right for patient reimbursement when seeking health care in other Member States. The issue for the British insurance industry is whether the Directive applies to the provision of voluntary private health insurance.

Status: On 8th June the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council reached political agreement on the cross-border healthcare directive. The EPSCO discussions focused on four main issues:

1. The definition of the Member State of affiliation with regard to pensioners living abroad;
2. Reimbursement of costs and prior authorisation;
3. The legal basis of the Directive and
4. Provisions on e-health.

An exclusion for voluntary private medical insurance from the provisions of reimbursement of costs and prior authorisation was agreed in the text finalized by the Council. The main objective of British insurers has therefore been met. Long-term care and organ transplants were also excluded from the scope of the Directive.

The EPSCO Council will adopt its first reading common position as soon as the agreed text is translated. Once Council has adopted this common position, it will forward the text to the European Parliament for a second reading.

ABI action: The Secretariat engaged with other key stakeholders including the Department of Health, European Commission, other National Associations and the CEA to lobby for voluntary private medical insurance providers to remain outside the scope of the reimbursement provisions.

Background: The proposed Directive set out that a patient travelling to another Member State with the purpose of getting healthcare should be reimbursed up to the level of costs had the same/similar healthcare been provided in their Member State. It leaves unchanged the current arrangements for incidental health treatment abroad (EHIC card). The draft Directive falls into three parts including common principles for healthcare, a specific framework for cross-border healthcare and European cooperation on healthcare.

In previous drafts there was reference to compulsory professional liability insurance. This decision is now left up to Member States to ensure a system of professional liability insurance or a guarantee scheme or similar arrangements are in place for treatment provided in their country.

Useful documents

[European Commission Proposed Text on Cross Border Healthcare](#)

[HOL report on Cross Border Healthcare](#)

[Final text adopted by the European Parliament](#)

[Council agrees on new rules for patients' rights in cross-border healthcare](#)

2. Revision of the Insurance Mediation Directive (IMD) and Packaged Retail Investment Products (PRIPS)

ABI Contact: Elisabeth Hoskins, 020 7216 7505; Shradha Patel, 020 7216 7431; Alexander Smith; 020 7216 7633

ABI Lead Committees: European,

Other interested committees: Distribution & Regulation, General Distribution; General Insurance Regulatory Steering Panel

Issue: The European Commission (EC) is undertaking a review of the IMD and are aiming to issue a legislative proposal "IMD2" in late 2011 consisting of a revision of the existing provisions in the IMD (with a possible extension to direct sales) and the inclusion of rules for PRIPS selling practices. PRIPS product disclosure rules are to be dealt with in a separate Directive.

Status: The EC has stated three main objectives in the review of the IMD; modernisation, increasing consumer protection, and eliminating obstacles to the functioning of single market through greater harmonisation. In order to achieve these, in March 2010 the Commission wrote to CEIOPS requesting advice on a review of the current provisions in the IMD. This letter was useful as it demonstrated their thinking on a number of important issues, including a view that the current minimum harmonisation approach of the IMD, combined with gold plating by Member States and the use of the general good rules has created "undesirable obstacles" to the Single Market. They also expressed a desire to see the IMD transformed into a Lamfalussy Directive to provide a level playing field between all actors selling insurance.

The Commission also asked for advice about including direct sales in the scope of IMD2 to ensure a level playing field in the sales of insurance products. This does not necessarily mean that all the provisions of the current IMD will be applied to insurers, but rather the Commission have said that any application to direct sales will be proportionate to risk and reasonable.

CEIOPS were due to respond to the Commission in the summer, but because of the differing views amongst the supervisors around the CEIOPS table, they will now finalise their advice in November. The Commission can choose to accept this advice or ignore it.

Also to be included in IMD2 are rules regarding selling practices for PRIPS. At the current time there is still no agreement on the definition and scope of a PRIP, but once this is decided the Commission have said they intend to use the Markets in Financial Instruments Directive (MiFID) as a basis for these rules.

The Commission are planning to issue a consultation paper on IMD2 in late November with a view to having further discussions at a stakeholder workshop in early December. The Commission will also issue a consultation on PRIPS in October, which will hopefully set out the scope of a PRIP and set out their intentions for rules regarding selling practices and product disclosure.

ABI Action: The ABI has met with the European Commission, HM Treasury and FSA to discuss the revision of the IMD. We have stressed the importance of having a risk based and proportionate approach to the review of and a need to preserve the progress made in the UK on the RDR. We have also stressed that there is a need to align the revision of the IMD with the planned revision of MiFID. A holistic and co-ordinated approach is essential to avoid overlapping and potentially inconsistent regulatory frameworks emerging at European level imposing unnecessary costs on financial services providers and creating confusion for consumers.

Additionally, in light of the EC's intention to extend the IMD to direct sales and a potential outcome that directive sellers of personal lines general insurance products could be required to disclose commission (or commission equivalents) to retail customers, the ABI has commissioned Charles River Associates (CRA) to carry out research on the potential impact of direct sales being included within the scope of the IMD. The research will look at the impact of disclosing commissions on specific product lines such as extended warranties, motor and travel insurance. CRA are carrying out this research now and will report back to the ABI by November. This research will help prepare for the ABI's response to the Commission's consultation due out in November.

Background: The IMD introduced a set of requirements for the regulation of insurance intermediaries across Europe. Recital 95(c) of the Solvency II Directive set down a requirement that the European Commission revised the IMD before the end of 2010.

Useful documents

[Insurance Mediation Directive](#)

3. Block Exemption Regulation

ABI Contact: Elisabeth Hoskins, 020 7216 7505; Shradha Patel 020 7216 7431

ABI Lead Committee: European Committee

Issue: Following the partial renewal of the Insurance Block Exemption Regulation (BER) for joint compilations, studies and tables and for insurance pools, the European Commission (EC) is now consulting on revised horizontal guidelines regarding the applicability of Article 101 of the EU Treaty to the development of specifications regarding the installation and maintenance of security devices and the establishment of Standard Policy Conditions (SPC) following their exclusion from the BER.

Status: In March, the EC issued a partial renewal of the BER for joint compilations, tables and studies as well as insurance pools, valid until 31st March 2017. This final Regulation did not contain provisions for the development of specifications regarding the installation and maintenance of security devices and the establishment of SPC's. The Commission concluded that neither was specific to the insurance sector, and therefore that they should be subject to self-assessment under Article 101 of the Treaty (this provision governs Competition Law and provides a legal framework to assess whether industry agreement or cooperation has actual or potential anti-competitive effects). The partial renewal was nonetheless a substantial win for insurers.

In order to assist the industry in assessing whether a cooperation agreement in the field of SPCs or security devices complies with Article 101, the EC issued for consultation revised horizontal guidelines setting out principles how to apply Article 101 to the most common types of cooperation agreements between competitors. The revised guidelines also included a new section on the assessment of information exchange, in the form of eg direct sharing of data between competitors or through a trade association. The guidelines were open for consultation until the end of June.

There are further requirements in the revised guidelines that add an additional layer of criteria to be met in order to satisfy Article 101(1) they are:

Standard setting:

1. The insurers have brought the specific need for such standards to the attention of the relevant EU standards body.
2. The insurers are involved with the relevant EU standards body to put an EU harmonised standard in place and address this need.
3. The standards are discussed with the majority of installers in the affected countries and their views are taken on board prior to finalisation of the standards.
4. Competition restriction effect, ie negative effects on the downstream market (eg some installers might be excluded because they cannot meet some unjustified requirements for installation).

Standard terms: (SPCS)

1. A consumer organisation is involved in the process of laying down the SPCs.

Whilst the guidelines are not legislation, it is extremely important to be aware that they will be interpreted and used as an equal to legislation.

ABI action: The ABI saw no reason for the Commission to develop guidelines or guidance for the areas that were not renewed under the BER, arguing that these alternatives are not legally adequate and do not provide sufficient legal certainty for the insurance market. Instead, we have always maintained a preference for self assessment under Article 101 as we were confident that insurers' activities comply with this provision.

Despite this request, the EC maintained their wish to provide further guidance and issued the revised guidelines. As the guidelines are currently written, the ABI has broad concerns about the clarity of drafting and the ability to provide sufficient direction to assess the compatibility of cooperation with Article 101 of the Treaty. In the ABI response to the EC we ABI made the following points:

1. Insurer cooperation on the establishment of standard terms allows for legal clarity and efficiency when dealing with many clients and when considering extending into cross border business. The requirement in the guidelines to involve consumer bodies in the process raises many questions around how this is carried out and who is involved. The ABI believes that the conditions already contained in the guidelines regarding transparency and effective access provide suitable and sufficient safeguards for consumers without requiring further consumer involvement in the establishment of the terms.
2. The current cooperation between insurers to establish non-binding standards regarding security devices and safety equipment allows insurers to manage their risks along with protecting property and life. The additional requirements in the guidelines that cooperation must result in keeping insurance premiums low and that voting rights be apportioned to installers working on the standards, are not justified. These requirements only serve to slow down development and implementation of the standards, and possibly to lower quality specifications, to the detriment of the consumer.
3. A new requirement for assessment of information exchange in the guidelines, outside the scope of the BER, is a concern. This new section makes sweeping assertions that transparency in the market can facilitate collusion. This is not the case. No information on individual company pricing is collected by the ABI members. Further no aggregated data published by the ABI provides insurers with information on the commercial strategy of any other insurer.
4. The guidelines place extra and unjustified restrictions on insurer cooperation with no explanation of what the consumer benefit would be.

The ABI submitted a response at the end of June and now wait for the EC to summarise the responses received and set out their intentions for further action.

Background: The EC has spent the last two years consulting with the industry on the future of the BER. There was a general consensus from both the UK and European insurance industries to support the retention of the BER and we lobbied for a full renewal, explaining the benefits it provided for competition, how it provided legal clarity and certainty and how it had led to the opening up of the insurance market to new businesses and to the development of new products. Despite these arguments, in March 2010, the EC issued only a partial renewal for the BER.

Useful documents:

[Final Regulation – March 2010](#)

[Horizontal Guideline Agreements](#)

4. **Review of Insurance Guarantee Schemes**

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020 7216 7505

ABI Lead Committees: Financial Regulation & Taxation

Other interested committees: European

Issue: The European Commission (EC) has issued a White Paper on Insurance Guarantee Schemes (IGS) setting out options for a European solution concerning IGSs.

Status: The EC published its White Paper on IGS in mid July. The White Paper is part of a package to boost consumer confidence in financial services, which also includes proposals to revise the existing directives on Deposit Guarantee Schemes (DGSs) and Investor Compensation Schemes (ICSs). It is accompanied by an impact assessment and a methodological report.

In the White Paper, the EC concludes that current differences between national IGSs across the EU (including the total absence of any such schemes in some Member States) create insufficient and uneven levels of protection for insurance policyholders, and sets out a framework for EU action on IGS protection for policyholders and beneficiaries. The Paper therefore suggests introducing a Directive to ensure that all Member States have an IGS that complies with a minimum set of design requirements including:

- the establishment of an IGS as a last-resort mechanism in each Member State
- On the basis of the 'home country' principle;
- Covering both life and non-life insurance policies, but excluding pension funds and reinsurance;
- For the benefit of natural persons and selected legal persons;
- Based on ex-ante funding by insurers (possibly complemented by ex-post funding arrangements), calculated according to the individual risk profiles of the contributors.
- The EC favours setting an appropriate target level for funding, with a suitable transition period. The EC suggests a target level of 1.2 % of gross written premiums after a 10-year period, which means an annual contribution of 0.12 % of gross written premiums from each contributing scheme member.

The EC also mention the possibility to introduce a mutual borrowing facility between national IGSs. Such a system would require each national IGS to support an IGS lacking sufficient funds to meet its claims. However, this option is not included in any of the text boxes listing the EC's preferred options.

A public consultation on the content of the White paper runs until 30 November

ABI Action: The ABI has followed developments in this area very closely. In March the ABI met with the Banking Unit in DG Markt to discuss their work on

the Deposit Guarantee Scheme review and explain concerns about a possible read over to insurance. The ABI also meet with the Barnier Cabinet who were reassuring about concerns of a possible read over between insurance and banking protection schemes and said straight away that the sectors raised entirely different issues, and that they had no intention of imposing a one size fits all solution.

On the whole the ABI supports an IGS Directive on single market grounds and, with the exception of the proposals for pre-funding and risk-based levies, we support the proposals presented in the Paper. We favour the proposed minimum harmonisation approach – partly to defend our existing scheme (the Financial Services Compensation Scheme) and partly so that each country can take account of the particular requirements of its market and the inclusion of life and non-life insurance.

Our concerns about the White Paper include the proposal for pre-funding and the suggestion that there be a mutual borrowing facility between national IGS. We would oppose this – if a fund cannot pay then clearly it should borrow from its own government rather than inflicting potential losses on industry and policyholders in other member states. This suggestion presumably arises from the desire that taxpayers (ie governments) should not pick up any of the cost for compensation. We would agree with this in principle but it is clearly going too far to try and push claims onto the industry and policyholders in other Member States.

The ABI will draft a response answering the questions presented in the White Paper and send this around for member comments.

Background: In response to the De Larosiere report in March 2009, the Commission announced its intention to issue a White Paper and a related impact assessment. The Commission intended the White Paper to set out various options for a European solution concerning IGSs and to make recommendations on the way forward.

The ABI is in favour of a Directive in principle, provided it is on a minimum harmonisation basis. However, the CEA and most other National Associations remain opposed to the introduction of a Directive, but accept that there is a need to study the issue and engage constructively with the Commission. ABI's support in principle is based on two conditions: that the Directive should not be detrimental to the UK's Financial Services Compensation Scheme, and that funding mechanisms should be left to Member States. The ABI favours an ex-post funding system.

Useful documents

[Oxera study](#)

[DG Market response to IGS consultation](#)

[European Commission – minutes of IGS Roundtable](#)

[CEIOPS response to the European Commission on IGS](#)

[IGS White Paper July 2010](#)

[Public Consultation July 2010](#)

5. Cross-border crisis management

ABI Contact: John Breckenridge 020 7216 7679, Carol Hall 020 7216 7624
ABI Lead Committee: Financial Regulation and Tax
Other interested committees: European

Issue: The European Commission has issued a consultation on cross-border crisis management in the banking sector.

Status: In November 2009 the Commission published a communication. There are close links with the FSA's Turner II document in the UK, and with papers produced by the Financial Stability Board for the G20. The Commission held a conference in mid March, and are aiming to bring forward a legislative proposal in the autumn to harmonise members states' resolution tools. There was a general recognition that it would be more logical to start with further harmonisation of insolvency rules, but the Commission do not agree, and have set up a working group of experts to consider the insolvency issues.

On 7th July, the European Parliament adopted a non-legislative text in response to the Commission's consultation, outlining recommendations on cross border crisis management in the banking sector.

The Commission is planning to come forward with a communication on a framework for crisis management in the autumn.

ABI Action: The ABI responded to the consultation. The key message is that insurance does not constitute a systemic risk, and that therefore it is not appropriate to apply to insurers tools developed for banks, such as resolution frameworks and "living wills". The ABI also contacted key UK ECON MEPs ahead of the ECON vote on the Ferreira report on "recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector", which was later adopted as a resolution in the Parliament as a whole.

Background: The Commission's communication considers the changes that are needed to make cross-border crisis management effective, and to allow for the resolution/ orderly winding up of a failing cross-border bank. The areas raised are:

- Early intervention tools for supervisors to address developing problems
- The use of "living wills" as a crisis management tool
- A framework for asset transfer across border, and the safeguards for shareholders and creditors
- The objectives, priorities and key tools for an EU bank resolution framework
- Co-operation between authorities, including the feasibility of integrated resolution through an EU Resolution Authority
- Financing arrangements for resolution regimes, and burden sharing
- Harmonisation of the insolvency regime for banks.

It is worth noting that the Geneva Association made a major contribution to the debate on insurance and systemic risk in February. Their report argues that insurance is not systemic, and that there is no justification for reading across banking solutions to insurance.

Useful documents

[Commission consultation document](#)

[European Parliament non-legislative report](#)

[Geneva Association paper on systemic risk](#)

6. Solvency II Directive

ABI Contact: Carol Hall, 020 7216 7624; Paul Barrett, 020 7216 7636;
ABI Lead Committees: Financial Regulation & Taxation
Other interested committees: European Committee

Issue: The Solvency II Framework Directive aims to provide a single set of supervisory requirements for insurers across the EU. By introducing a more risk sensitive approach to setting capital requirements, a more market consistent valuation of the solvency of insurance organisations will be achieved. Together with the proposed 'ladder of intervention' envisaged as part of the supervision process, it is hoped that the ultimate aim of policyholder protection will be achieved.

Status: Work is currently focussed on the implementing measures at Level 2, and the completion of the fifth quantitative impact study (QIS5) exercise which is due to run from August to November 2010. This will provide the Commission with data on the impact on industry and should identify where adjustments are needed to the final level two proposals (anticipated in April 2011).

In the QIS5 specifications, the Commission has made some adjustments in response to industry concerns, but there are still a number of unresolved issues which would lead to serious increases in capital requirements for ABI members. Leading European insurers have written to the Commission complaining in strong terms. It is important that there is a high participation rate from industry in order to give the Commission accurate data. The ABI Chairman has established a Task Force at CEO level to oversee political level work, and held a constructive meeting with Mark Hoban.

On 14th July, CEIOPS launched a consultation on third country equivalence and the first wave of assessments. CEIOPS draft advice is to include Bermuda, Switzerland and (for reinsurance only) Japan. CEIOPS suggests establishing a long transitional period (10 years) with a review clause for the US because of its significance for EU insurance companies. The ABI is supportive of this approach.

ABI Action: ABI is working closely with HM Treasury and the FSA, and is actively engaged in the CEA's work to articulate the industry's contribution. We had regular dialogue with MEPs at Level 1. We are working closely with the Commission and CEIOPS at Level 2.

CEIOPS' draft and final advice have prompted a series of major concerns from the European insurance industry, notably on the reduction of the discount rate, the inclusion of a run off model for technical provisions, the increase in the calibration of the SCR under the standard formula, and capital eligibility which would have severe and costly consequences for insurance providers and policyholders.

Work in the Commission's Solvency II Expert group (made up of representatives of national finance ministries) have also begun. These will be monthly meetings until June, that will help with preparations for the Commission's final proposal (expected towards the end of 2010).

The ABI is therefore working closely with the Commission, CEA, FSA, and HMT to seek a reasonable outcome in the Commission's final proposals for level 2.

The ABI is also expending every effort to secure an appropriate and acceptable outcome at Level 2 on the liquidity premium for long term liabilities, such as annuities. This is a crucial priority for the insurance industry, in particular for the UK,

but also across Europe and we are currently working with the CEA on this issue to ensure an appropriate and effective application of Solvency II recognising the effects of illiquidity.

Following a request from the Commission, CEIOPS agreed to establish a task force to consider how a liquidity premium can be applied under Solvency II. This task force has now published its report which recognises the existence of a liquidity premium in the valuation of illiquid liabilities. ABI is also working closely with the leading UK annuity providers as well as the Spanish industry and has met with the Commission to propose a transitional solution for existing business.

The European Parliament is already engaging in the debate on level 2 measures, organising an ECON workshop so MEPs could question Karel van Hulle, Gabriel Bernardino (Chair of CEIOPS) and Alberto Corinti (CEA). MEPs queried CEIOPS conservative/prudent approach and treatment of the illiquidity premium.

Ahead of the workshop the CEA published a report outlining what the impacts of CEIOPS advice would have on the European insurance industry, policyholder and at a macroeconomic level.

Background: The Commission's Framework Directive was published in July 2007, with a recast published in February 2008 (addressing some technical points regarding the codification of the original version). The framework Directive set out the overall architecture of the regime, to be supplemented by secondary legislation (Level Two), and by guidance from the Committee of European Insurance and Occupational Pension Supervisors (CEIOPS) at Level Three.

Following months of negotiation in trilogues (meetings between the European Parliament, the Council of Ministers represented by the Presidency, and the European Commission), on 22nd April the European Parliament voted an agreed text on Solvency II. The Council of Ministers later adopted an identical text on 5th May. The adoption of a compromise text (identical in both institutions) meant a first reading deal and the opportunity for work on Level 2 (implementing measures) to get fully underway.

Last year the European Commission formally asked CEIOPS to provide advice on the technical details for Solvency II. CEIOPS came forward with its first set of Consultation Papers in April, the second in July (consisting of 24 consultation papers – 1,175 pages!) and a third in November.

The first wave of papers were on Pillar I issues (calculation of the best estimate, segmentation, counterparty default risk, ancillary own funds, future premiums, financial mitigation techniques, management actions), Pillar II and III issues (governance, transparency, valuation of assets and other liabilities, SPVs) and internal models.

The second wave covered internal models, technical provisions, own funds, SCR / MCR, Pillar II and III, and groups.

The third wave included partial internal models, calibration of risk modules, equity risk module, and the treatment of participations.

Useful documents

For a full update of ABI activities on Solvency II and regular bulletins please see

www.abi.org.uk/solvency2

[CEA paper on groups](#)

[CEA paper with case studies on groups](#)

[CEIOPS consultation papers](#)

[Task Force report on Liquidity Premium](#)

[CEIOPS Cover Letter](#)

[CEIOPS Press release](#)

[CEA Report "excessive capital requirements"](#)

[European Commission - QIS5 spec and call for evidence](#)

[CEIOPS consultation paper 81 on third country equivalence](#)

7 Discrimination in the provision of goods and services

ABI Contact: Elisabeth Hoskins, 020 7216 7505, Carl Belgrove, 020 7216 7474

ABI Lead Committees: European

Issue: In July 2008, the European Commission published a draft Directive on anti-Discrimination in access to goods and services encompassing age, disability, sexual orientation, race and religion and belief. The relevant article of the Commission's draft is Article 2(7):

Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.

Status: In 2009, the European Parliament approved in plenary their final report on this Dossier and whilst they only had the power to give an opinion to the Council under the consultation procedure, the amendment for Article 2(7) that gained the support of the Parliament displayed a significant shift in favour of insurance and risk pricing. However, due to the ratification of the Lisbon Treaty there have been changes in the decision making process of this Directive. The decision in Council is still subject to unanimity, but the final wording is also subject to the "consent" of the European Parliament.

The newly appointed Civil Liberties, Justice and Home Affairs Committee (LIBE) Rapporteur on this dossier in the Parliament, Raul Romeva I Rueda, has indicated that the Parliament will put forward the final report agreed in 2009 as the Parliament's advice to the Council. He said the Parliament will not be revisiting the issue at this point in time.

In the Council, discussions have not been progressing as well as the Commission had hoped. The Spanish Presidency was unable to gain agreement on the dossier and passed it onto the current Belgian Presidency (July – December 2010). Whilst the Belgians had initially expressed little interest in working on this issue, the dossier and Article 2(7) was the main point of discussion in the first social affairs council working group meeting held in mid-July. The Belgians circulated a list of questions about how Member States deal with the use of age and disability as factors in risk assessment in financial services at national level. These questions will serve as a basis for the Belgian Presidency to put forward their own version of Article 2(7).

Civic Consulting finally published their long-awaited study on the use of age and disability in the financial services industry at the beginning of August. The report is divided into three parts the main report, country reports and an annex. The study shows a very low level of complaints and court cases on alleged discrimination in insurance especially when compared to other types of consumer complaints in the financial services industry and compared to the total number of insurance policies issued in the EU. Despite these findings,

Civic conclude their study with 7 further recommendations for the EC to consider:

1. Further EU-wide consumer research concerning the scale of the problem;
2. Coordinating reporting of market impacts for the review process according to Article 5(2) of the Gender Directive;
3. Commission guidance for interpretation of key terms;
4. Developing consumer complaints infrastructure and reporting;
5. Establishing codes of good practice;
6. Development of sectoral agreements to make specific products available for high-risk consumers; and
7. Developing a signposting system to help consumers find appropriate insurance products.

The EC will discuss these recommendations at the next Council Working Group meeting scheduled for late August.

The Commission is also undertaking a review of the 2004 Gender Directive, where the insurance industry overturned the Commission's recommendation of a total ban on the use of gender as a risk factor. In 2009, the Commission held two dialogue meetings to discuss how the opt-out in the Gender Directive had been applied in Member States. They are due to hold a meeting in September where they will issue a report and give a summary of views on the different practices and experiences in Member States. This report may contain recommendations for changes, suggest new legislation or propose to issue a white paper. We do not know at this stage what they are planning.

In June, the ECJ held an open hearing on the case on the Test Achats case. Test Achats presented their submission followed by the Belgian, Irish and UK Governments along with the European Council and Commission.

The Judges did not make a summary of their opinions, but rather addressed the following the questions to the submitters:

- Test-Achats were asked what their views were on the use of age in insurance. Taken aback with this question, they responded that the case at hand was about the use of gender and they were not in a position to respond to this question.
- The Commission was asked why they had changed their mind and allowed the use of gender in Article 5(2), when this was not the aim of the original Directive. The Commission explained that whilst they had included a transition period of 6 years in order to implement a full prohibition, that they had changed their position (due to industry lobbying) and included a financial services exemption with a review process. They added that this review process would be useful if it came to a point where, for example, the differences in the life expectancies between men and women might disappear.
- The Commission was asked who would benefit in case of a full prohibition. The Commission explained that an overall estimation was not

possible and that one would have to look into the different insurance products to assess any impact. They did explain that if Article 5(2) was declared void then unisex tariffs would apply.

The Court did not ask any more questions of the submitters, although the questions that were asked did display a certain lack of understanding about how insurance works.

The judge announced that the Advocate General would deliver her legal opinion on 30 September 2010. The Advocate-General is responsible for doing this before the judges deliver their judgment and the intention behind this process is to provide independent and impartial opinion. Whilst these opinions are advisory and do not bind the Court, they are nonetheless very influential and are followed in the majority of cases. Once this legal opinion is delivered, the Court has until Spring 2011 to make their final decision on the merits of the case. If the ECJ declares a provision of the European Union void, all Member States must also consider that provision void. If the ECJ rules this provision to be void then the insurance industry will no longer be able to use sex as a pricing factor in insurance.

ABI Action: In light of the current Test Achats case before the ECJ and the current Commission review of the Gender Directive, the ABI commissioned Oxera to look at the impact of banning the use of gender as a risk factor in the motor, health, and annuities markets. This research will provide a better understanding of the impact on the industry and consumers that a ban on the use of gender as a risk factor would have when pricing insurance. This research is due to be finalised in August and will be presented to the Commission before their September dialogue meeting.

The ABI continues to work closely with HM Treasury and the Government Equalities Office (GEO) to ensure they are appropriately briefed and informed before the Council working group meetings. In light of the recent Belgian Presidency questions, the ABI worked with Treasury to ensure the UK answers correctly represented current practices and highlighted the importance of the use of age bands and age limits. We will continue to work with Treasury during the Belgian Presidency to ensure discussions on the dossier correctly reflect industry practices and that no further limitations are placed on these.

The ABI worked closely with Civic during the research period for their study. We were concerned that the terms of the study were loaded against the insurance industry and therefore made every effort to ensure they were correctly informed about industry practices and the consumer benefit of risk pricing. In response to industry worries about the study, the CEA wrote to the Commission to explain our concerns with the methodology and to explain why we the industry had not responded in full to the questions. The Commission responded with an understanding letter addressing our concerns. Now the report has been released, the ABI will work with the CEA and other national associations to discuss and work up the most appropriate response to the

conclusions and recommendations made. We will also brief HM Treasury on our response.

Background: The Commission's proposal was to extend protection in the Gender Directive to encompass age, disability, sexual orientation, race and religion and belief. Since October 2007, the ABI has actively lobbied the Commission on the need for an insurance-specific exception in any Directive prohibiting discrimination in access to goods and services.

Useful documents

[Proposal for a draft Directive](#)

[Final European Parliament Report](#)

[Main Civic Report](#)

8. Product Tying and Bundling

ABI Contact: Elisabeth Hoskins, 020 7216 7505

ABI Lead Committees: European

Issue: The European Commission (EC) is carrying out research into product tying, bundling and other potentially unfair commercial practices in the retail financial services sector.

Status: In 2008, the Commission contracted the Centre for European Policy Studies (CEPS) and Van Dijk Management Consultants to carry out a study on tying and “other potentially unfair practices in the retail financial services” sector. The study was published in January 2010 concluding that product tying and other potentially unfair practices were widespread in the EU. It said the practices were inefficiently addressed by both EU and national legislation and were harmful to consumers and small businesses across the EU by depriving them of product variety, low prices and control of the consequences of their choice. However, it must be noted that there was a low rate of response to the questionnaire, and that the data cannot be considered as fully representative of the market. Only 66 out of a possible 5500 responded to the survey.

A consultation document was issued in April alongside the report, seeking to collect stakeholders’ reactions to the results of the study, as well as responses to the questions contained in the consultation document. A summary of the responses received (55 in total) was published in June. The main findings were:

- Most responses criticised the low level of survey responses gathered during the fact-finding phase of the study. A few industry stakeholders considered that the low level of responses to the study, particularly on the part of consumers, reflected a lack of interest in the issue.
- A large number of industry responses argued that the disadvantages of the studied practices were emphasised more than the advantages and that the title of the study was misleading since it already considered as ‘unfair’ a number of widespread commercial practices.
- Whilst many industry responses generally disagreed with the findings in the study, suggesting that the study did not provide evidence of any detriment caused by the practices covered and strongly contesting any suggestion of coercive behaviour on the part of the industry, consumer bodies found the findings consistent with experience at a national level. They argued that many of the conditions offered to consumers were on a ‘take it or leave it’ basis and that consumers were not in a position to negotiate the offer of terms.
- Considerable information was provided by respondents, with contributions from the industry focusing on legal and regulatory measures that were missing or incorrectly reported in the study. Consumer bodies provided examples of financial sector practices that they considered unfair for the consumer, some even included practices outside the scope of the report, for example misleading advertising and lack of transparency regarding contractual terms.

- Industry responses highlighted the consumer benefits of such practices and the potential detriment consumers could face if further action was taken to stop product bundling.
- Potential solutions to prevent the anti-competitive or unfair effects of certain practices were included and many industry responses suggested providing further information or financial education for consumers. Further suggestions by consumer bodies included amending the Unfair Commercial Practices Directive (UCPD) to include a list of criteria to assess whether a practice is unfair or not; to guarantee consumers the right of recourse, as well as the right to decline or to cancel the additional product offered; to put in place control and sanction procedures or to introduce annual reviews of bundled products by regulatory authorities.
- Not many contributors responded to the question on complaints received regarding the practices under scrutiny, and those who did stressed that the number of complaints were negligible. Consumer responses pointed to problems faced by consumers in different Member States.
- Unsurprisingly, industry respondents argued strongly against further regulation giving reasons why existing legal and regulatory framework was sufficient. A number of responses also suggested that, as many of the allegations of unfair commercial practices were national examples, that remedies should be addressed at a national level. In contrast to this, consumer bodies emphasised the need for EU legislative action, stating that the UCPD was not sufficient to protect consumers adequately and that a new EU solution was required.

The study and results of this consultation are a first step in the EC's evidence-gathering process in this area. Further discussions with stakeholders are following and the EC is holding a stakeholder workshop in September to debate the most problematic issues from this study with representatives from the financial services industry, consumers and Member States. The CEA will represent the insurance industry at this stakeholder workshop.

ABI Action: The ABI received the questionnaire in 2008, but most members determined that there were risks in replying to the survey and chose not to do so. Instead, the British Bankers Association (BBA) and ABI sent a joint letter to consultants arguing that the questionnaire incorrectly conflated the concepts of tying and bundling. The ABI was not the only national association in refusing to respond; the CEA did not make a response on behalf of the European insurance industry.

In April, the ABI submitted a response to the consultation outlining our concerns about the findings in the study and the failure to present an accurate representation of the current situation in the EU due to the extremely low response rate to the study, which resulted in unsafe conclusions being made. We agreed that coercive tying, which forces consumers to purchase products they do not want, or locks a customer into the product for longer than they want, is undesirable and unfair. However, we explained that there was an unfortunate blurring of a variety of practices addressed and a complete misunderstanding of the terminology used to describe these practices. This

led to misleading conclusions of consumer benefits and advantages of cross selling practices and a lack of focus on them.

We provided the EC with examples of consumer benefits and advantages associated with cross selling of products, highlighting the cost and time savings along with significant consumer convenience and effective cover at a time when a consumer is considering their financial affairs. The potential impact on consumers if a decision was taken to prohibit or restrict cross selling of products would result in an increase in costs and time along with the potential for consumers to be under insured.

Whilst the study was hesitant to acknowledge that current legislation was suitable to address any potentially unfair commercial practices, the ABI pointed to a large amount of European and UK legislation suitable to address any unfair commercial practices. This, coupled with UK industry initiatives and a close monitoring by the UK Competition Authorities, clearly illustrated in the absence of further evidence, the need for no further legislation.

The ABI is now working with the CEA to provide them with appropriate national examples during the stakeholder workshop in September.

Background: As part of its sector inquiry into retail banking, and the following the results of the public consultation on the Green Paper on Retail Financial Services where product tying was identified as a key barrier to the integration of the EU retail financial services market, the EC announced their intention to study product tying and other potentially unfair commercial practices in the sector. The EC was concerned that product tying could reduce competition and increase customer switching costs by forcing customers into the purchase of combined products or services, or by conditioning sales terms to specific actions that should be undertaken by the customer.

The issue links with the FSA's review of ICOB and their general concern about the use of gateway products in the banking sector. The 2010 Business Plan expressed concern about the linkage of cheap gateway products with high margin ancillary products.

Useful documents

[White Paper on the Integration of EU Mortgage Credit Markets 2007](#)

[Green Paper on Retail Financial Services 2007](#)

[Commission Study on Product Tying and Bundling 2010](#)

[Commission consultation on Product Tying and Bundling 2010](#)

[Summary of responses to the Commission's consultation 2010](#)

9. Review of the Capital Requirements Directive

ABI Contact: Carol Hall 0207 216 624, Danka Starovic 0207 216 319

ABI Lead Committees: Investment Committee

Other interested committees: European Committee

Issue: Following the recommendations of the de Larosiere Group and the consultation papers of the Basel committee the European Commission has come forward with legislative proposals (CRD3) amending the Capital Requirements Directive (CRD) and intends to come forward with further changes (CRD4) later in the year.

Status: There are two packages of proposals to be aware of. The **first** is the package “CRD3” of legislative proposals which came out in June 2009 and covered the supervisory review of remuneration and capital requirements for the trading book and re-securitisation.

Work progressed quickly in Council with a general approach adopted by COREPER on 10^h November. With ECON adopting its report on 28th June, trilogues between the Parliament, Council and Commission commenced. An agreement was reached, and adopted by the European Parliament on 7th July. The main issues on remuneration include a minimum of 50% of variable pay to consist of share (or a similar instrument), 40% of available pay to be deferred for 3-5years, clawback in the event of poor performance.

The FSA has now launched a consultation on its revised remuneration code as a result.

The Commission had intended to propose a **second** package (“CRD4”) last autumn covering leverage, liquidity, and through-the-cycle provisioning. The Commission is also looking at excessive procyclicality, and intends minimize national discretions on CRD. However, this package was postponed until the new Commission took office. A consultation was launched on 26th February with a deadline for submissions on 16th April. The consultation also considers how to identify “systemically important” financial institutions.

ABI Action: The Commission launched a very short consultation for the “summer package” in April/May to which the ABI responded. We will continue to monitor developments, mainly for read-across to insurance supervision and as members’ interest as institutional investors.

The ABI was also in contact with the rapporteur’s office on remuneration in CRD3, and is now working with the FSA on implementing measures.

Background: In October 2008, the Commission proposed a review of the CRD. There were a number of changes, the most notorious being the “originate to distribute” model for securitisation (new Article 122a). In order to overcome the “potential conflict of interest” and strengthen due diligence, the Commission has proposed the introduction of a model that ensures all originators retain at least 5% of the total of the credit risk transfers they have underwritten.

Useful documents

[Commission's consultation documents](#)

[Commission's proposal](#)

[Council "general approach"](#)

[CRD3 agreed text](#)

[Commission consultation on CRD4](#)

[FSA consultation on revision of remuneration code](#)

10. International Financial Reporting Standards

ABI Contact: John Breckenridge, 020 7216 7679

ABI Lead Committee: Financial Regulation & Taxation

Other interested committees: European Committee

Issue: Insurance Contracts Phase 2

Status: The International Accounting Standards Board (IASB) issued a draft standard in July. It plans to publish a final standard by mid-2011, with mandatory application from, probably, 2014. This timetable remains challenging, particularly in that it is not clear that the IASB and Financial Accounting Standards Board (FASB) will reach agreement within that timescale. The FASB is to consult separately.

The IASB proposes a current value model for calculating insurance liabilities made up of a discounted best estimate, a risk margin and a residual margin (to eliminate day one profit). This is in line with what the ABI has been arguing for and is similar to, but not identical with, the Solvency II model. There remain a number of controversial issues – notably accounting presentation and the transitional arrangements.

ABI Action: ABI will participate in a joint CEA and CFO Forum response to the ED that will reflect the European industry view and will also respond separately to reflect UK specific concerns and those of its investor community.

Issue: Replacement of IAS39, financial instruments

The IASB has continued its IAS39 replacement project in three phases:

- 1) Classification and measurement of financial assets – IFRS 39 was issued in November 2009. This has not been endorsed in Europe as the EU is waiting for the IASB to finish all three phases before considering endorsement further. The ABI supports the standard as it retains a mixed measurement approach and a business model basis for reporting. However, many European insurers are seeking to reopen the standard in order to reinstate the Available for Sale category.
- 2) Amortised cost and impairment – The IASB consultation on its expected loss approach closed at the end of June 2010. Although there is considerable support in principle for a move to an expected loss approach, many respondents said that the current IASB approach is too difficult to implement.
- 3) Hedge accounting - an exposure draft will be issued in Q3 2010. This part of the project has been subject to considerable delay.

Overall the timetable for completing this standard has slipped considerably, and the final standard is not likely to be finalised before mid-2011.

The US FASB's proposals for financial instrument accounting are very different from those of the IASB – there is a much greater emphasis on the

use of fair values. Initial reactions to the FASB proposals have been largely unfavourable.

Again, it remains unclear whether the IASB and FASB will be able to reach agreement on the issues dividing them – which would damage their overall plans for convergence.

ABI Action: The ABI will continue to monitor developments on the replacement to IAS 39, and to work closely with the CEA and the CFO Forum.

Useful documents

[Latest developments on IASB website](#)

11. Financial Conglomerates Directive

ABI Contact: John Breckenridge 0207 216 679, Carol Hall 0207 216 624

ABI Lead Committees: Financial Regulation and Tax, European

Issue: Following the work of the European Financial Conglomerates Committee (EFCC), the European Commission launched a targeted consultation on the review of the Financial Conglomerates Directive (FCD) and the first legislative proposal has just been published.

Status:

At its public hearing on 7th June 2010, the Commission announced its intention to conduct a two stage approach to the review. In the short term, (this summer) the Commission has published a “quick fix” legislative proposal to resolve the difficulties in some member states in applying supplementary supervision across all sectors equally.

In the longer term, the Commission intends to conduct a more thorough review and consider changing the supervision of complex groups from one of a sectoral manner to one on a more group wide basis, it will also look at identifying financial conglomerates on more risk based principles.

One of the issues being considered is the inclusion of asset management in the identification of FCD. Other issues include: group structures and how these can affect the application of the FCD and the sectoral requirements; definition of financial sector (which seems to be about what should be included in deciding whether a firm is caught by FCD); and treatment of 'participations'.

ABI Action: Following input from members, ABI worked in conjunction with the CEA to respond collectively to both the EFCC and the CEIOPS questionnaires of 2008. We also submitted our response directly. There is a general consensus that the threshold of €6bn stipulated in Article 3 is questionable given the size of groups today and can capture medium sized companies. For the smallest financial sector on section 3 of Article 3 seems a low threshold and we would propose that this was raised.

The inclusion of asset management as a criterion for the definition of a financial conglomerate would add significantly to supervisory costs for ABI members with fund management arms. There is also the risk that the Commission would automatically treat them as systemically significant, with further significance regulatory implications.

Background: At the EFCC's meeting in January 2009, it was deemed that four key issues were outstanding: supervision at the level of the holding company; identification of a financial conglomerate; the definitions of “participation”, “close links” and “groups”; and risk management of minority participations. The Commission had asked the IWCF to consider these issues in its advice.

Considerable work was conducted by the EFCC to identify whether the FCD was achieving the objectives of supplementary supervision.

1) In July 2008 the EFCC called for industry advice on three issues of the FCD – language, scope, internal control measures. The aim of the review was to identify how the FCD is achieving its objectives. The call for evidence was deliberately specific at this first stage as it intended to wait until Solvency II and the CRD Review were complete before launching the second part of the FCD review.

2) However, the European Commission later announced that it intended to advance the timetable with a legislative review of the FCD later this year. It called upon the Interim Working Committee on Financial Conglomerates (IWCFC), the expert working group that feeds in to the EFCC, to come forward with its draft advice by 30th May 2009. This draft advice was released on 28th May 2009, as part of its **public** consultation by the Joint Committee on Financial Conglomerates (the permanent cooperation arrangement between CEBS and CEIOPS, with CESR as an observer). [In order to avoid duplication of work, the IWCFC has been brought into the JCFC].

Useful documents

[JCFC Consultation on FCD review](#)

[EFCC newsletter](#)

[Commission letter on FCD](#)

[Commission consultation on FCD](#)

[Commission Conference details](#)

12 Corporate Governance Green Paper

ABI Contact: Marc Jobling 0207 216 541, Carol Hall 0207 216 624

ABI Lead Committee: Investment Committee

Issue: On 2nd June, the European Commission published its Green paper on Corporate Governance and remuneration which is open for consultation until 1st September.

Status:

Although there is a clear overlap the Commission's paper focuses on regulated financial institutions rather than company law (as the Commission is planning for a further green paper for corporate governance in listed companies early next year).

The green paper considers the full range of issues regarding corporate governance in financial institutions, including the role, composition and function of the Board of Directors, risk management functions, role of external auditors, role of shareholders, remuneration, conflicts of interest.

The ABI will respond to the Commission's consultation and has circulated its draft response to members for comment. Particular focus will be on the need to distinguish the purpose of corporate governance (to ensure the company is run in the interests of shareholders and is successful in the long term) from that of regulation (market stability, consumer protection), the important role of comply or explain, and the need to avoid prescriptive/tick box requirements.

The European Parliament's Legal Affairs Committee (JURI) has recently appointed Alexandra Thien (DE, ALDE) as the rapporteur for the European Parliament's non-legislative response.

ABI Action:

The ABI has met FSA and HMT to discuss the paper, and been working closely with the CEA on its draft response. The ABI has been engaged in informal investor roundtables at the European Commission, and has been coordinating with interest groups in other member states.

Further meetings with the Commission, and MEPs will be organised in the Autumn.

Useful documents

[EC Green paper on corporate governance](#)

13. Commission Green Paper on pensions

ABI Contact: Elisabeth Hoskins 020 7216 7505, Yvonne Braun 020 7216 7414

ABI Lead Committee: European Committee,
Other interested committee: Pensions and Savings Strategy Committee

Issue: The European Commission (EC) issued a Green Paper on Pensions aiming to launch a debate on how the EU pension framework could be adjusted to achieve adequate and sustainable and safe pensions systems.

Status: In early July the EC published the long awaited Green Paper (attached) on Pensions including with it a public consultation and a Commission Staff Working document describing the EU legislation covering the pension pillars.

The aim of the Green Paper is to launch a debate and gather views on how the EU pension framework could be altered in order to assist Member States' efforts to achieve adequate, sustainable and safe pensions systems. The consultation period will run until 15th November 2010.

The Paper clearly acknowledges that the design of pension systems is a Member State responsibility and does not advocate for a particular type of pension system, but rather recognises that private pensions schemes are playing a bigger role in providing sufficient retirement income for citizens.

The Green Paper invites discussion on three main themes:

1. How the EU can best support Member States as they seek to balance periods spent in work with periods spent in retirement;
2. How to remove obstacles to mobility of workers as well as capital, resulting from pension arrangements, including private pension schemes;
3. How to ensure safety of pensions at present and in the future looking especially at mitigating risk and volatility for workers and pensioners.

A total of 14 questions are asked throughout the document covering a variety of issues from portability of pensions, gaps in EU regulation, future of solvency regimes for pension funds to governance at an EU level and further consumer education and protection measures. The Paper does not suggest any legislative proposals; however, the EC has made it clear they will follow up with policy and legislative initiatives after the consultation.

ABI action: The ABI had engaged with Commission officials who were working on the Green Paper before its publication and will continue to engage with these officials during the consultation period. The ABI is working on assessing the issues discussed in the Green Paper and will send out a draft response to Members for comment.

Background: Under the previous Commission, there were a number of regulatory initiatives seeking to amend the framework governing European pensions, including a part review of the Institutions for Occupational Retirement Provision (IORP) Directive and a proposed Pensions Portability Directive. Little progress was made in achieving a more coherent regulatory framework for pensions at the European level mainly and taxation arrangements because pension policy is intimately linked to a country's social security law meaning the Commission has only limited powers to act.

Useful documents

[EU launches public debate on the future of pensions](#)

[On-line consultation website](#)

14. Consumer Rights Directive

ABI Contact: Elisabeth Hoskins, 020 7216 7487; Shradha Patel, 020 7216 7431

ABI Lead Committees: European Committee

Other interested committees: Consumer Strategy, General Distribution Committee

Issue: In October 2008, the European Commission adopted a proposal for a new Directive on Consumer Rights. The proposed Directive is likely to have a limited impact on insurers as financial services are outside the scope of most of the Directive's provisions. There are, however, a number of provisions that do apply to the insurance sector, notably the Articles on unfair contract terms, and there are concerns about the effect of the provision on inertia selling on auto-enrolment of pensions and tacit renewals of insurance contracts.

Status: Responsibility for this portfolio has recently transferred from DG Sanco to DG Justice, Fundamental Rights and Citizenship. Despite this change, discussions are still continuing in the Council. Under the Spanish Presidency there was an on-going discussion about whether financial services should be included within the scope of the Directive at all. A new text was introduced in June excluding financial services from the scope of the Directive, except in Chapter V on unfair contract terms. However, no agreement was reached on this text, and the dossier was passed to the current Belgian Presidency.

In the Parliament, the Internal Market and Consumer Protection Committee (IMCO) is the lead Committee and Andreas Schwab (Germany, EPP) is rapporteur. Other Committees involved in this dossier are the Legal Affairs Committee (JURI) with Dianna Wallis (ALDE, UK) as shadow rapporteur and the Economic and Monetary Affairs Committee (ECON) with Sirpa Pietikainen (EPP, Finland) as shadow rapporteur.

In June Schwab published both parts of his report. Chapters II (on consumer information) and III (on withdrawal rights) were merged and were based on targeted full harmonisation. Other provisions, including on remedies and unfair contract terms, will be subject to minimum harmonisation. There was frustration at the time it took for the report to be published, and that it proposed changes to the structure of the Directive.

Schwab's report proposes to amend:

- Article 4b (consumer information and withdrawal rights for distance and off-premises contracts) to make this Chapter targeted harmonisation and exclude contracts falling in the scope of the Life Insurance Directive and Distance Marketing Directive therefore including non-life insurance contracts.
- Article 5 (information requirements for distance and off-premises contracts) to include the financial services industry, specifically non-life insurance contracts.

- Article 12 (withdrawal period) to have a withdrawal period of 14 days from a distance or off-premises contract and that this period should begin from the day the customer receives a signed contract.
- Article 16 (reimbursement of payment in case of withdrawal) and make this period 14 days instead of the proposed 30 days.
- Article 19 (exceptions from the right of withdrawal) and apply it to non life insurance concluded off-premises, whose coverage starts after the 14 day withdrawal period.

Pietikainen's report states that there is appropriate EU legislation concerning the financial services industry covering consumers' rights and that these should continue to be regulated separately. However, the report does go on to say that consumer information, withdrawal rights and unfair business practices provisions in Chapters III and V, should be extended to cover financial products falling below €200.

ABI Action: The ABI plans to meet with UK MEPs on the IMCO and ECON committee to present arguments against introducing withdrawal rights and information for non-life insurance policies sold off-premises into the Directive. These include:

- The IMD and DMD already contain provisions on consumer information requirements and rights of withdrawal. The proposal to introduce withdrawal rights for all contracts sold 'off-premises' has the potential to result in overlapping and inconsistent regulatory frameworks, increased costs for insurance companies and confusion amongst consumers. Most importantly, we are concerned that the proposal will result in a lower level of protection for UK consumers when purchasing pure protection products.
- The proposed changes will impact on 'tacit renewals' of motor and travel insurance policies. The automatic renewal of insurance policies provides important protection to consumers, for example in motor insurance; it means that the consumer does not unknowingly break the law by driving a motor vehicle without insurance. Or, in the context of travel insurance, it means that the consumer enjoys continuous protection for their overseas travel. In the absence of such provisions there is a risk the consumer will not have sufficient insurance in place. Further, the proposed changes would work against the new Continuous Insurance Enforcement (CIE) scheme (to be enforced in 2011) by the Department for Transport (DfT), which will further reduce the level of uninsured driving.
- Lastly, the European Commission is currently reviewing the scope of the IMD. The review of the IMD is the more appropriate place to consider issues associated with information requirements and withdrawal rights for general insurance products.

The ABI also plans to meet with government officials in London and DG Justice and UKRep in Brussels to discuss these new developments.

Background: The Directive is the result of the Commission's review of the consumer acquis, which considered a number of Directives on consumer protection. The proposed Directive will merge the rules currently set out in the Directives covering unfair contract terms (93/13/EEC), sales and guarantees (1999/44/EC), distance selling (97/7/EC) and doorstep selling (85/577/EEC) into one new Directive.

Useful documents

[Proposal for the Consumer Rights Directive 2008](#)

[Schwab Report IMCO June 2010](#)

[Schwab presentation on Consumer Rights Directive June 2010](#)

[Pietikainen Report](#)

15. Alternative Investment Fund Managers (Hedge Funds and Private Equity)

ABI Contact: Danka Starovic, 020 7216 7613, Carol Hall 020 7216 7624

ABI Lead Committee: Investment Committee

Other interested committee: European Committee

Issue: As part of its response to the financial crisis, the European Commission proposed a draft Directive in April 2009 to regulate Alternative Investment Fund managers (including hedge funds, private equity, property funds, commodity funds and any other collective investment schemes).

Status: ECON voted through its report on 17th May. While the wording on strict liability for depositaries has been improved, restrictions on delegation, leverage, third country access are now more severe. Of particular concern is the introduction of an explicit restriction on the ability of investors to buy assets from fund managers who do not comply with this directive (Article 35a). This will seriously restrict the ability of EU-based institutions to invest overseas. There is also an amendment which calls for a ban on naked short selling.

After months of council working groups, the Spanish Presidency finally secured a “general approach” on 18th May 2010. With the exception of depositary liability, the Council text is overall an improvement.

There have been a number of trilogues between Commission, Council and Parliament, but it has not been possible to get an agreement. The Rapporteur Jean-Paul Gauzes postponed the plenary vote to September.

ABI Action: The ABI has and will continue to meet with representatives from HMT and FSA, officials at the European Commission, UKRep and MEPs. ABI representatives had a successful visit to Paris to visit the Tresor and AMF

The ABI and EUMedion (from the Netherlands) co-signed a letter to Commissioner McCreevy outlining the concerns of institutional investors about reducing choice of investment opportunities, for example through limiting access to third country funds, and the costs of compliance, due to the complexity and duplication of requirements in other legislation being borne by the investor.

A series of position papers has also been drafted and circulated, and the ABI has drafted and circulated amendments to the text for the Parliament.

Background: The proposed Directive seeks to regulate all alternative investment fund managers that are not regulated under UCITS and who market funds to professional investors. It proposes the registration and authorisation of AIFM in the EU, outlines certain information requirements to regulators and investors, and sets out certain risk management and other requirements (such as a limitation of leverage).

We understand the need for regulators, and indeed the market, to have access to information that enables them to anticipate and address systemic risk. We are supportive of this objective. We also strongly support the concept of passporting because this will add to investors' choice across the EU and be a further step forward in the creation of a single financial market.

However, there is still considerable work to be done to ensure a workable and beneficial Directive. Many of the requirements risk stifling the market, reducing choice for investors and raising costs with no added value to investors. We will be working closely with HM Treasury and MEPs to overcome these problems. Some of our primary concerns include: the strict limitations placed on the freedom of third country AIFM to offer/market funds to EU investors, the unlimited liability being placed on the depositary and the need for it to be an EU based credit institution, the possibility of limits on leverage, the overlap with existing legislations such as MiFID and UCITS, and the discriminatory disclosure requirements for private equity companies (vis-à-vis other privately owned companies).

In light of the financial crisis Finance Ministers, both in the European Council, and in the global context at G20 have endorsed, in principle, a system of registration of hedge funds or hedge fund managers.

On 1st March, US Treasury Secretary Timothy Geithner wrote to Commissioner Barnier expressing his concerns at possible EU discrimination against non-EU firms.

Useful documents

[Commission's AIFM proposal](#)

[Gauzès \(ECON\) report](#)

[Council general approach](#)

[ECON Working document](#)

[Swedish Presidency's progress report](#)

[Spanish Presidency compromise text - latest](#)

[ABI's response to the Commission's consultation on hedge funds](#)

[European Parliament Impact Assessment - report](#)

[Letter from Timothy Geithner](#)

16. Short Selling

ABI Contact: Danka Starovic, 020 7216 7613, Carol Hall 020 7216 7624

ABI Lead Committee: Investment Committee

Other interested committee: European Committee

Issue: In response to the financial crisis and market stress, member states have taken a variety of different approaches to short selling. The European Commission intends to come forward with a legislative proposal on short selling in September, that supports greater coordination between competent authorities, greater transparency to supervisors, and to minimise settlement risk.

Status: On 14th June, the Commission launched a one month public consultation. In its response the ABI underlined that:

- Short selling is a legitimate technique which improves market liquidity and aids price formation, and provides benefits to the market as a whole. We are against any ban.
- Any regulatory intervention should focus on market abuse and transparency.
- Issues surrounding market abuse should be covered in the review of the Market Abuse Directive, which already underway and is looking at extending the market abuse directive to OTC derivatives (as is already the case in UK).
- It would not be appropriate to apply the same standards across all instruments. While we support increased disclosure requirements for equities, this would not be feasible for corporate bonds and sovereign debt for example.
- We support rules setting out conditions for uncovered short selling that strike a balance between allowing markets to function efficiently while ensuring the risk of failed trades is minimised.
- In order to minimise compliance cost for investors who trade across the EU we support the need for regulatory convergence as regards to the use of emergency powers given to competent authorities. However, these must be restricted to the scope of the future legislative proposal.

A legislative proposal is expected early September.

ABI Action: The ABI submitted a response to the European Commission's consultation and has met with representatives the European Commission. Further meetings are planned with MEPs.

Useful documents

[Commission consultation paper on short selling](#)

17. European Financial Supervision

ABI Contact: Carol Hall, 020 7216 7624

ABI Lead Committee: European Committee

Other interested committees: Financial Regulation and Tax

Issue: Proposed changes to the institutional framework for the supervision of financial services at EU level.

Status: Despite several weeks of trilogue negotiations between European Parliament, Council and Commission, efforts to reach a package of compromise texts before the summer recess proved difficult, as Parliament and Council stood firmly behind their negotiating positions.

The issues of greatest controversy revolve around the ability of the new European Supervisory Authorities (ESAs) to apply decisions directly to financial companies, in certain circumstances, rather than going via the national supervisor, and around who (Commission or Council) gets to declare an emergency situation.

The Presidency was given a mandate to negotiate on behalf of Council (a “general approach”) in December. Member states agreed to minimise the opportunities for the ESAs to use this direct power, and removed its use in instances where national authorities fail to properly implement EU law (following a formal complaint), and settlement of disagreements between national regulators. It was, however, maintained for emergency situations, but it would be the responsibility of Council (rather than the Commission) to declare an emergency situation.

The European Parliament’s Economic and Monetary Affairs Committee (ECON) report (adopted in May) however kept all three options for direct supervision and extended them one step further to include “cross border institutions that pose a systemic risk”, although who that would include in practice was far from clear. It also provided for the ESAs to call on the Commission to declare an emergency.

The ABI has also argued against a series of ECON amendments to the EIOPA that were lifted across from the report on European Banking Authority (EBA). These included the establishment of a “Resolution Unit” within EIOPA, a European Insurance Guarantee Scheme, and a European Stability Fund (the latter two to be funded by “cross border institutions that pose a systemic risk”). These are complex issues that deserve proper consideration and debate, and should not be artificially tacked on here. Furthermore, these issues cannot simply be read across to insurance. While a Resolution Unit may be appropriate for banking this is not applicable to insurance companies, who are inherently structured so that if they fail they will do so over time.

In the first week of July, both Parliament and Council formally refreshed their negotiating positions in light of progress, moving closer to each other. Despite the failure to reach an agreement before the summer, all sides believe an agreement is close, and Parliament is aiming to vote on an agreed text week of 20th September.

ABI Action: The ABI has been closely involved in this debate since the publication of the de Larosiere report earlier this year. We have submitted notes on the issues raised for insurers by the Commission’s proposal to the Treasury and to MEPs on

ECON. We gave written evidence to the Inquiry by the Treasury Select Committee. Members of the Secretariat have spoken to key British MEPs, in advance of discussions in the European Parliament, and maintained regular contact with them and UKRep throughout the negotiations

Background: In September 2009, the European Commission proposed draft legislation to strengthen the EU framework of supervision and in December, the Council of Ministers reached a first agreement on the legislation. Some significant improvements were made to the Commission's European Insurance and Occupational Pensions (EIOPA) proposal.

The European Parliament took the view that the Council of Ministers had watered down the Commission's proposals, Four rapporteurs were appointed; Peter Skinner (UK Socialist) on EIOPA, Sven Giegold (German Green) on ESMA, Garcia-Margallo (Spain Conservative) on banking, Sylvie Goulard (France Liberal) on the ESRB. The reports would all give powers of intervention to the Parliament at the expense of the Council and the Commission. Peter Skinner's report was more cautious than those by Garcia-Margallo and Giegold, which proposed direct powers of supervision by the European authorities over companies with a European dimension, and the establishment of a European Financial Protection Fund, financed by the private sector. These proposals were subsequently read across into Peter Skinner's report as amendments.

Useful documents

[Commission proposals](#)

[Council revised EBA compromise 22 JUL10](#)

[Revised Parliament negotiating texts](#)

18. Retail market study on motor and home insurance

ABI Contact: Elisabeth Hoskins, 0207 7216 7505; James Dalton, 020 7216 7504

ABI Lead Committees: Motor Committee

Other interested committees: European Committee

Issue: As a follow up to the Green Paper on Retail Financial Services, DG Market has published a report concerning the retail insurance market focusing on motor and household insurance.

Status: The purpose of the study was to examine the reasons for the relatively low volume of cross-border retail insurance business as well as to show what potential there was for pan-European insurance products. Europe Economics carried out the study and focused on:

- the reasons for the low volume in cross-border insurance business;
- the differences in prices for insurance products across Member States;
- identifying good practices to reduce prices (e.g. claims management) and to identify innovative solutions (e.g. pay as you drive);
- studying the impact of the liberalisation of insurance tariffs; and
- drawing a comparison with the US market on the above topics.

Europe Economics published their report in March 2010. The report is very descriptive and the comments made are rather positive and highlight the well functioning European insurance market.

The report discussed cross-border insurance sales and attributes the low amount of cross-border sales to consumers as well as insurers. The reasons identified were little or no consumer demand for cross-border products (main reason); differences in insurance contract; availability of statistical data necessary to popular actuarial models; cross-border claims management remains complex and expensive for insurers; and lastly, cultural and language factors.

The report also highlights the difficulties around creating pan-European products including diverging insurance contract law, supervisory approaches and market practices, but acknowledges that the insurance industry does provide products with cross border cover including rental cars, holiday houses abroad and transport of personal goods. Whilst Europe Economics identifies potential mechanisms they do not take a stance on their suggestions.

Lastly, Europe Economics look at the applicable legislation relating to motor and household insurance including the motor insurance and non-life directives, discrimination legislation and case law. They focus on the issue of discrimination and report that there is no evidence that the use of gender in pricing insurance results in drivers paying more than in member states that do not allow the use of gender. They also directly acknowledge the importance of using age and experience in determining motor premiums.

Whilst the report describes practices in the EU it does not provide for any policy recommendations or further actions to be taken and in fact it quite positive about the functioning of the EU insurance market. We expect that a consultation document will be issued now the report has been released.

ABI Action: The ABI will work with the CEA to respond to the report and provide comments to the Commission in April 2010.

Background: This study is one of the follow up initiatives to the Green Paper on Retail Financial Products and the Single Market Review.

Useful Documents

[European Commission – Green Paper on Retail Financial Products](#)

[Tender for Study on the Retail Insurance Market](#)

[Retail Market Report 2010](#)

19. Review of the Market Abuse Directive (MAD)

ABI Contact: Danka Starovic, 020 7216 7613, Carol Hall 020 7216 7624

ABI Lead Committee: Investment Committee

Other interested committee: European Committee

Issue: The European Commission is due to review the Market Abuse Directive. Legislative proposals are expected at the end of 2010.

Status: On 28th June, the Commission launched a one month public consultation. In its response the ABI:

- agreed that the rules should be extended to include OTC derivatives and instruments admitted to trading on MTFs
- voiced concerns about any attempt to develop a separate market abuse regime for SMEs
- urged the Commission to consider adopting across the EU the dual definition of inside information based on a super-equivalent UK model. This distinguishes between information that can be abused and that which has to be disclosed.

ABI Action: The ABI submitted a response to the European Commission's consultation and has met with representatives the European Commission, HMT and FSA.

Useful documents

[Commission consultation paper on MAD](#)

[ABI submission to Commission consultation](#)

20. OTC Derivatives markets

ABI Contact: Danka Starovic 020 7216 7319

ABI Lead Committee: Investment Committee

Other interested committees: Financial Regulation and Tax

Issue: Commission consultation on initiatives to enhance the resilience of the OTC Derivatives markets, ahead of forthcoming legislative proposals anticipated at the end of September.

Status: On 3 July the European Commission published a consultation document on the central clearing of OTC derivatives and the market infrastructure. This will form the basis of a legislative proposal expected to be published in September.

In addition, the current reviews of both MiFID and MAD, likely to result in legislative proposals by the end of this year, will tackle certain aspects of regulation of OTC derivatives. The main focus will be on pre and post-trade transparency, and which derivatives should be covered by the rules of market abuse.

Separately, CESR is also working on issues unrelated to post-trading, such as standardisation and exchange trading of OTC derivatives.

Taken together, the various initiatives should result in a comprehensive regulatory regime for OTC derivatives across the EU.

The European Parliament has also adopted an Own Initiative Report in response to the Commission's communication.

ABI Action: ABI members are significant users of derivatives and the proposed regulation may have a significant impact on their activities. Our overall position is to welcome the central clearing of OTC derivatives as a way of reducing risk and increasing transparency. However, we are concerned that the demands for initial and variation margins may be structured in a way that ends up being extremely costly for end users. This is because the notional values of insurers' derivative holdings is large and, as the proposals currently stand, would require a large initial margin to be posted, as well as daily collateral in cash or near-cash.

We also believe that regulators should acknowledge that neither central clearing nor standardisation should be a goal for all products as that would lead to unintended consequences and limit flexibility.

Our views on trading of derivatives on organised markets instead of over the counter are similar: if a product is standardised enough to be traded on an exchange or a trading platform, there is no reason why this should not be possible. But users of derivatives should have the choice of how they wish to trade. We also do not believe that costs of either central clearing or exchange trading should simply be passed on to end investors.

Background: The Commission consultation considered a number of tools to strengthen the derivatives markets:

- Further standardisation of contracts

- Strengthening bilateral collateral management for contracts not eligible for central counterparties
- Greater use of central data repositories
- Standardised contracts to be cleared through central counterparties
- Increased transparency of prices, transactions and positions
- Part or all trading to be moved to public trading venues

Finance Ministers' conclusions advocated "a more ambitious and comprehensive regulatory policy", covering all users of derivatives, while recognising different classes of users and contracts. They call for substantial improvement in the mitigation of counterparty risk, requesting legislative proposals from the Commission on conduct of business and governance, risk standards, legal protection to collateral and positions, authorisation, and recognition of third-country CCPs. They recommend higher capital charges for bilaterally cleared derivatives.

Useful documents

[Commission consultation document](#)

[ECON draft report](#)

[Parliament resolution 15 June 2010](#)

21. **Markets in Financial Instruments Directive (MiFID)**

ABI Contact: Danka Starovic, 020 7216 7613, Carol Hall 020 7216 7624

ABI Lead Committee: Investment Committee

Other interested committee: Investment Compliance Committee, European Committee

Issue: The European Commission is due to review the Markets in Financial Instruments Directive which was completed in 2006.

Status: The Commission wrote to CESR indicating its areas of interest in the MiFID review. It has held meetings to discuss technical issues surrounding those issues and these were preceded by questionnaires on discrete topics addressed to industry participants.

Following the Commission's request, CESR issued a series of calls for evidence at the end of May/beginning of June 2010 which included:

- Non-equities transparency
- Conduct of business, including best execution
- Trading venues, including dark pools and broker crossing networks, and microstructural issues in equity markets
- Post-trade transparency and data consolidation
- Client categorisation

The ABI responses to CESR's calls for evidence can be found on the CESR website, but the most pressing issues for members include the need to create consolidated tape (preferably under ESMA) to ensure quality of data, and a support for end of day reporting for large equity trades, and a level playing field across the EU in transaction reporting. CESR has now provided advice to the Commission.

The Commission is expected to formally consult at the end of the year.

ABI Action: The ABI was engaged with Commission officials in early discussions last year, and the ABI was a stakeholder in the Commission's working group on transparency of non-equities in January. We have written to the European Commission and CESR, outlining our key priorities for the MiFID review, and have responded to all consultations and calls for evidence. In the UK, the ABI is engaged with the City of London group which produced a paper outlining the joint sellside and buy-side view of the Directive. We are also in close contact with the IMA. In September we will write to the Commission with further ideas on MiFID.

Background: The review of MiFID is intended to address the perceived deficiencies of the original regulation and bring the Directive up to date with market developments such as the growth of dark pools and high frequency trading.

Useful documents

[European Commission MiFID website](#)
[CESR website](#)

22. Review of the Prospectus Directive

ABI Contact: Danka Starovic, 020 7216 7613, Carol Hall 020 7216 7624

ABI Lead Committee: Investment Committee

Other interested committee: Investment Compliance Committee, European Committee

Issue: The Prospectus Directive which came into force December 2003 required the European Commission to review the application after 5 years of implementation.

Status: After several weeks of trilogue negotiations, the Parliament, Council of Ministers and Commission have agreed to a compromise text. This text was adopted in plenary on 17th June.

The outcome for the four particular areas of interest is:

1. **Short-form prospectus for rights issues** – ABI supported a short form prospectus for pre-emptive rights issues. The result includes a “proportionate disclosure regime” (recital 11, Article 7(2) (b))
2. **Prospectus summary** – ABI did not support the introduction of “civil liability” for the summary. The result is no inclusion liability for the summary. (Recital 10a, Article 6(2).2)
3. **Validity of prospectuses** – ABI was opposed to the Commission’s proposed extension of the 12 month validity period to 24 months. The result is 12 months. (Article 9.)
4. **Wholesale v retail issues of securities: increasing the threshold from 50 000EUR** – The ABI opposed the increased threshold. While an increase to 250 000EUR was averted, the threshold was increased to 100,000EUR.

Background:

In September 2009, the Commission came forward with a proposal which sought to “simplify and improve the application of the Directive”.

In December 2009, Council adopted a “general approach” which included a short form prospectus for pre-emptive rights issues, improvements to the summary, removal of the civil liability for the summary, a 12 month validity period for a prospectus. Unfortunately, it raised the threshold distinguishing retail and wholesale securities from €50,000 to €100,000.

On 19th March, ECON voted on its amendments (including a series of compromises). The thresholds were unchanged with amendments calling for increases voted down, the civil liability for the summary was removed, the summary content was improved although there remained some unhelpful cross reference to KII.

ABI Action: The ABI submitted a response to the European Commission's consultation in March 2009.

We have also worked with HMT/FSA/UKRep ahead of the Council's "general approach", and were in touch with MEPs ahead of the ECON discussions, deadline for amendments, the vote and during trilogue negotiations.

Useful documents

[Commission proposal](#)

[Klinz draft report](#)

[ECON amendments](#)

[Commission general approach](#)

[Final text adopted in plenary \(17th June\)](#)

23. Review of the Transparency Directive

ABI Contact: Danka Starovic, 020 7216 7613, Carol Hall 020 7216 7624

ABI Lead Committee: Investment Committee

Other interested committee: European Committee

Issue: The European Commission is currently reviewing the Transparency Directive. Legislative proposals are expected at the end of 2010.

Status: On 28th June, the Commission launched a two month public consultation.

The Commission's proposals can be divided into three main sections. The first deals with the small and medium sized companies, and whether the cost of complying with the Directive outweighs the benefits of being listed. The ABI view is that listing denotes a certain standard which reflects investors' expectations, and that there should be no attempt to develop a separate, 'lighter' regime for SMEs.

The second part deals with disclosure of shareholdings, and whether the scope of disclosure should be extended to cash-settled derivatives. The ABI is supportive of the extension, as this would replicate the existing UK regime. The mechanics of how the regime should work, including the thresholds and whether holdings of shares should be aggregated with holdings of derivatives, need to be considered carefully. We would prefer to see the UK disclosure at 3 per cent aggregate extended across the EU but it may be that some trade-off would have to be made between scope of the regime and the size of holdings reported.

The third part deals with what could be termed corporate governance aspects of the Directive, in particular empty voting and the disclosure of intentions by investors. Our view is that empty voting, though theoretically possible, is not a major problem across the EU and therefore does not warrant heavy-handed regulatory action. We are against disclosure of intentions when holdings reach a certain threshold.

ABI Action: The ABI will submit (deadline 23rd August) a response to the European Commission's consultation and has met with representatives the European Commission, HMT and FSA.

Useful documents

[Commission consultation paper on Transparency directive](#)

24. VAT Invoicing Directive

ABI Contact: Hayley Slipman 020 7216 7692; Elisabeth Hoskins 020 7216 7505

ABI Lead Committee: Taxation Strategy Committee

Other interested committees: European Committee

Issue: The European Commission has proposed simplifying VAT invoicing, which could pose substantial costs for the industry to make adaptations to their systems in order to meet the invoicing requirements, especially if invoices were introduced for exempt supplies.

Status: At the ECOFIN meeting in March a general approach was agreed on, pending the opinion of the European Parliament. The Directive will only be adopted by the Council once the Parliament has given its opinion. With regard to insurance exempt services, the Council's approach is:

- No invoicing obligation for exempt services pursuant to Article 135 (a) to (g) – new Article 220(2)
- Member States can, however, impose invoicing obligations to these services in case of domestic and non-EU supplies – new Article 221(1)

In practice, this would mean that EU cross-border exempt services would always be released from invoicing obligations whereas domestic and non-EU ones would have to be invoiced, if the Member State opts for it.

ABI action: The ABI participated in the initial Commission consultation, calling for any mandatory requirement for invoicing obligations in respect of supplies of goods or services which are exempt, to be removed. The ABI has submitted representations to both HM Revenue and Customs and HM Treasury, and will continue to work with Government to ensure that the current position is not compromised.

Background: Following their proposal of new rules for VAT invoicing, it has become clear that the Commission did not take the industry's suggestion into account. In article 220(a), there was a proposal for Member States to allow the taxable person to issue a simplified invoice for domestic exempt supplies. The Directive's aim is to simplify VAT invoices for exempt supplies; however, even a simplified invoice would require adaptation of one or more of the related systems. It is difficult to understand what will be gained for either traders or tax administrations from any requirement to issue even simplified VAT invoices for VAT exempt supplies of insurance.

Following intense lobbying on previous proposals, in February 2010 the Spanish Presidency issued a compromise text, which includes provisions allowing cross-border exempt services to be released from invoicing obligations whereas domestic services would have to be invoiced, but only if the Member State opts for it.

Useful documents

[Proposal for a Directive](#)

25. Review of VAT on insurance

ABI Contact: Hayley Slipman 020 7216 7692; Elisabeth Hoskins 020 7216 7505

ABI Lead Committee: Taxation Strategy Committee

Other interested committees: European Committee

Issue: In 2007, the European Commission published proposals for a VAT Directive and Regulation on the financial services and insurance exemption. This defines insurance and the services falling within the exemption when carried out by third parties or intermediaries on behalf of insurance companies.

Status: The Swedish Presidency issued their compromise text on both the Directive and Regulation in September 2009, which was discussed at the Council Working Group. The ABI had some concerns with the compromise text and, through the CEA, asked for clarification from the Presidency. We understand that the Council Working Group's consideration of outsourcing and intermediation definitions has been slow. Discussions have resumed under the Spanish Presidency and they have issued their compromise text which the ABI has responded to through the CEA.

ABI action: The ABI supports the principles behind the Commission's initiative. The current proposals reflect the extensive lobbying carried out by the ABI directly, and through the CEA, with the Commission, HMT, HMRC and other stakeholders. We will continue to work with these organisations to refine the current proposals and ensure certainty and clarity.

Further to the Secretariat's meetings with HMT, it is clear that they are uncomfortable with fighting to keep a wider exemption for intermediation. This is despite the information provided to them by the ABI with details to demonstrate that it is crucial for the industry to have a wider exemption to keep costs down. In light of this, the Secretariat has continued their efforts to convince HMT of the merits of the industry's position in addition to seeking to influence the Council Working Group through the CEA. The ABI has gained support from other Member States by supplying information to the European offices of our members. As a result, HMT are reviewing their position on the exemption and are willing to work with the ABI in order to understand current and future distribution models further.

Background: VAT rules are set by the 6th VAT Directive, which exempted insurance from VAT. As a result of the European Court decision on Arthur Andersen (C-472/03), changes that could cost the UK industry £200 million per annum are required to the existing UK VAT regime for insurance. These changes mainly affect the VAT status of third party supplies of services to insurance companies. Following strong ABI representations, the UK Government has deferred implementing the Anderson case changes until the conclusion of the Commission's review.

The VAT exemption for insurance and financial services has two consequences: VAT is not charged when insurance is sold; and VAT incurred

by the insurer in providing insurance is not recoverable. Insurers must pass this burden on to consumers, whether the customer is registered for VAT or not. The VAT position can also distort insurers' management decisions, for example the Andersen case has had significant influence on outsourcing decisions.

Useful documents

[Draft Directive](#)

26. Climate Change – Natural Catastrophe

ABI Contact: Swenja Surminski, 020 7216 7513, Elisabeth Hoskins 020 7216 7505

ABI Lead Committees: Property, European

Issue: In March, Michel Barnier, European Commissioner for Internal Market and Services, announced that the European Commission (EC) would carry out an in-depth examination of insurance schemes covering natural catastrophes, including flooding.

Status: Commission Barnier has identified differing national approaches with respect to flood cover and the inclusion of this in household insurance and believes these different approaches are leading to inadequate flooding cover for EU consumers. DG MRKT are now carrying out a study of natural catastrophe insurance schemes in all EU Member States focusing on losses to residential properties and asking for information on exposure to flooding, earthquake & storms, past disasters, insurance schemes in place and the penetration rate of private insurance. They have also asked for industry best practices.

The EC intend to hold a stakeholder conference in summer 2011 to follow up on their study and discuss various proposals.

ABI Action: The ABI welcomes the EC's interest in this area and the opportunity to share ideas and best practice. We are working with the CEA to provide information on initiatives in place in the UK to the Commission. We have stressed the importance that any solution identified must reflect local customs, government initiatives and consumers' needs.

Background: The announcement by Michel Barnier came in response to an oral question by Irish MEP, Sean Kelly, regarding the inability of the insurance market to provide adequate cover against flooding in certain Member States.