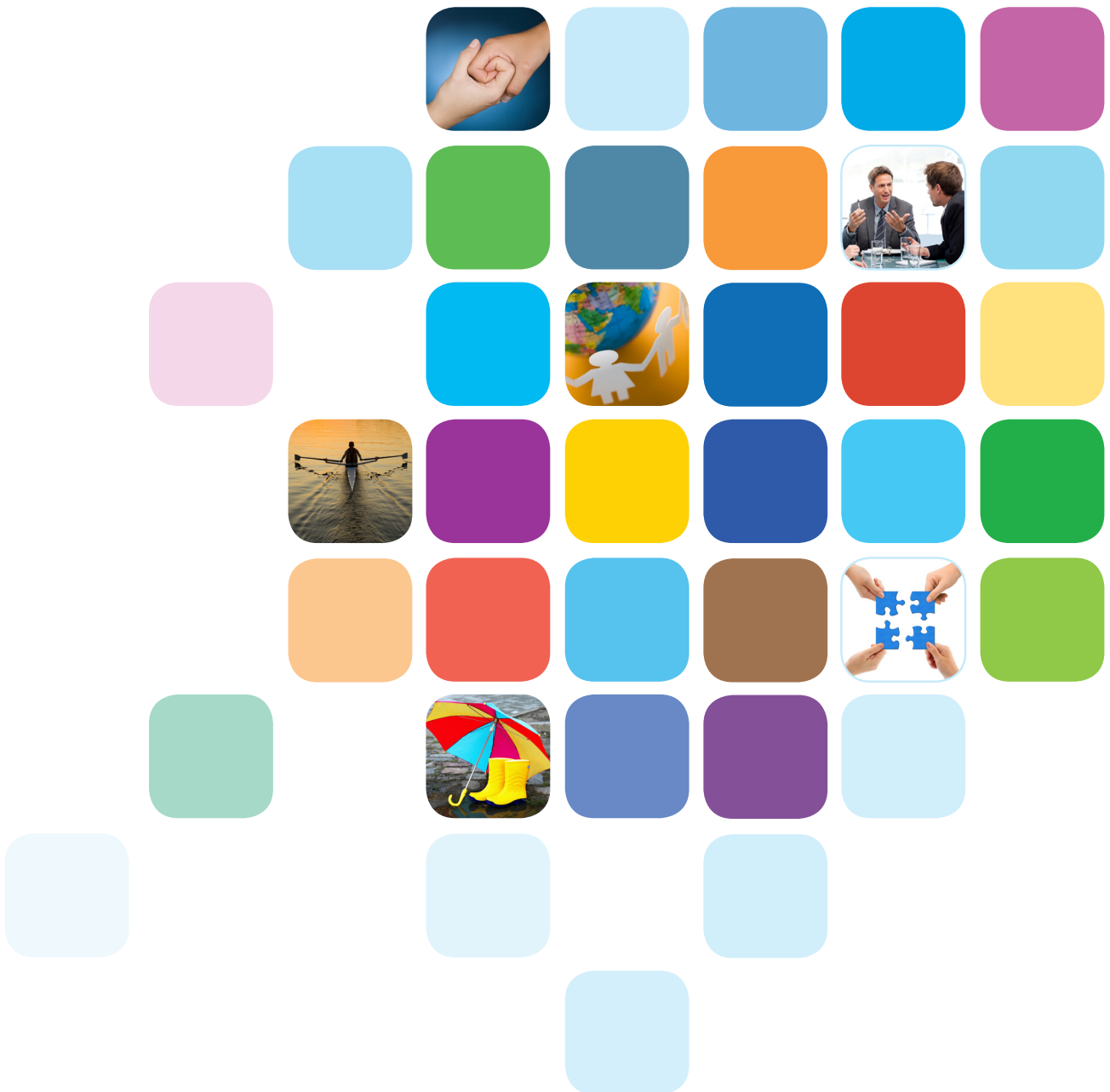


CEA Action Plan 2012



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Introduction



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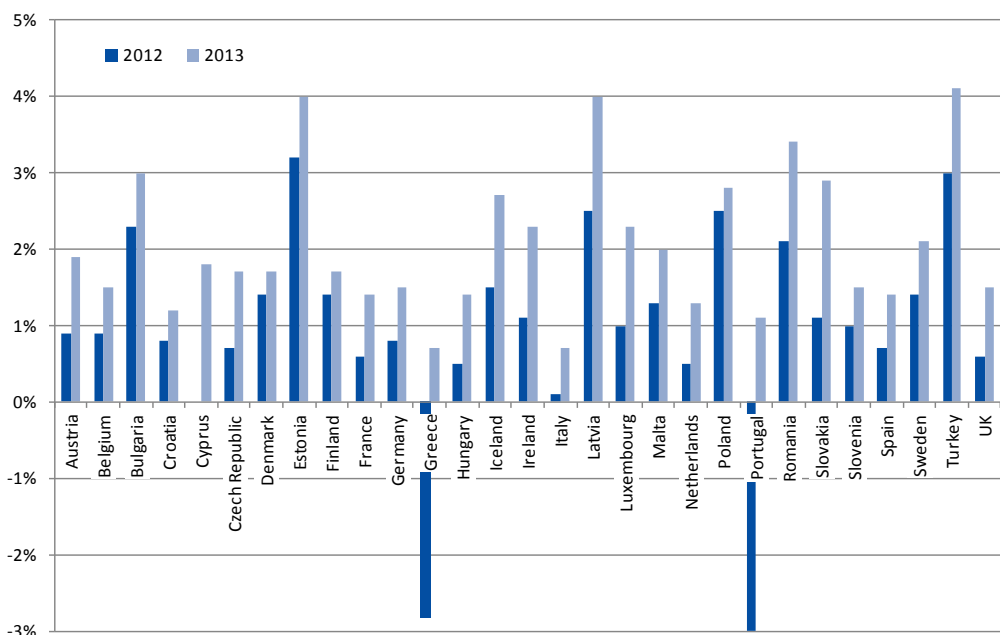
Writing against the backdrop of Europe's economic and political upheavals in late November 2011, reliable predictions about the environment that will face Europe's insurers during 2012 are not easy. What is clear, though, is that the economic turmoil and political uncertainty will make the CEA's lobbying in certain areas far more challenging. Quick, coordinated industry reactions to unfolding issues will be vital.

It is clear from our interactions with regulators, supervisors, legislators and consumers that they recognise the insurance industry's unique role as a risk and volatility absorber through its provision of risk cover, long-term guarantees and its position as a long-term investor. Nevertheless, much more still needs to be done to ensure that the industry's unique value is widely and sufficiently understood.

Top of the CEA's priorities for 2012 remains the continuing work on the details of the Solvency II regime and on the Omnibus II Directive. The federation achieved considerable results in 2011; the most significant of which included raising awareness about the volatility of the framework and keeping the counter-cyclical premium, matching premium and extrapolation on the agenda. It also kept discussions on contract boundaries moving in the right direction as much as possible, and has expected profits in future premiums now being fully treated as Tier 1 capital rather than Tier 3 as original proposed. Despite the tremendous volume of work and the tight deadlines, the secretariat succeeded in responding to every consultation and request from the European Commission and the European Insurance and Occupational Pensions Authority (EIOPA) and this heavy workload will continue in 2012 at both the political and technical level.

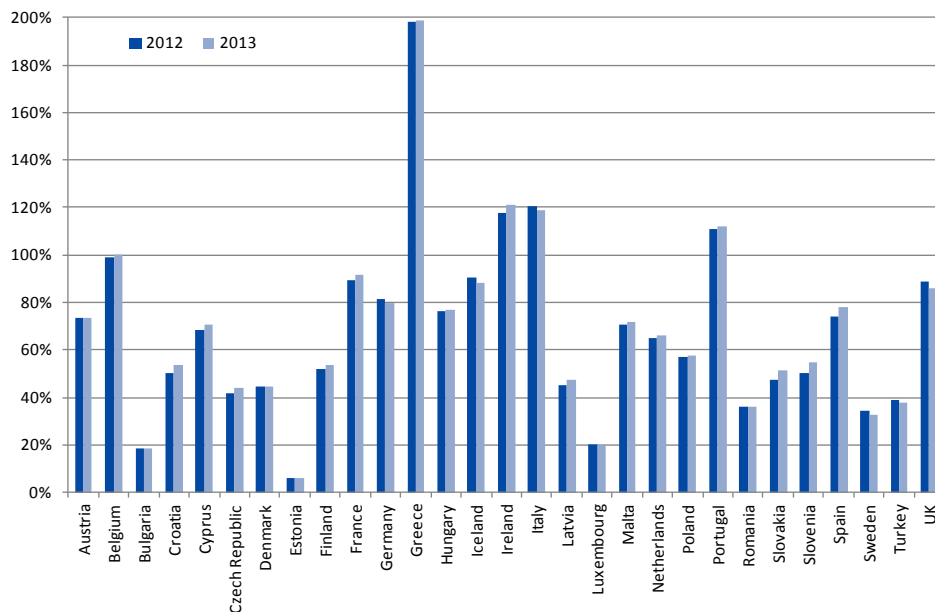
Elsewhere, the work of the G-20, the Financial Stability Board and the International Association of Insurance Supervisors (IAIS) that has arisen from concerns over financial stability is expected to progress considerably in 2012. The desire of politicians to be seen to be responding to the crisis must not be allowed to translate into legislation that is detrimental to our sector. Despite the welcome recognition by the IAIS in its report of

Gross domestic product (GDP) growth forecasts — 2012 and 2013



Source: European Commission Directorate General for Economic and Financial Affairs, autumn 2011

Government debt forecasts as % of GDP — 2012 and 2013



Source: European Commission Directorate General for Economic and Financial Affairs, autumn 2011

November 2011 that traditional insurance does not create systemic risk, 2012 will be the year that we expect to see a list of systemically important insurers and the CEA will need to remain vigilant and active in countering attempts to impose methodologies that have been created for the banking industry on insurance.

A similar danger exists in relation to the proposal for a financial transaction tax. Although there is a lack of consensus on such a tax at global level, it remains on the European agenda, albeit without unanimous support. We will need strong and coordinated lobbying if we are to avoid a tax that could damage the competitiveness of the European insurance industry.

Anti-discrimination will remain a busy file in 2012 due to the review of the Gender Directive and the ongoing work on the draft Anti-Discrimination Directive, for which the CEA is to commission a study on the impact of any ban on the use of age and disability. 2012 will likewise be a key year for the pensions dossier, given the White Paper on Pensions and the review of the IORP (Institutions for Occupational Retirement Provision) Directive. A significant number of taxation issues continue to require the federation's attention and a firm, unified voice will be required on packaged retail investment products and the review of the Insurance Mediation Directive.

Overall, the volume of ongoing and new issues both within the EU and internationally continues to grow. The final shape of the IAIS's ambitious ComFrame project to create a common framework for supervising internationally active groups is still uncertain, offering the industry an opportunity to influence its exact scope, content and application.

Within Europe, EIOPA will considerably increase its resources in 2012 and this will increase the CEA's workload. It is therefore timely for a strengthened secretariat to rebrand and relocate in spring 2012. This relocation to a shared address with a number of CEA members and the possibility of shared desk space for others will improve the all-important liaison between the CEA and the national associations. And thanks to the creation of an investment steering group the strengthened secretariat will be better placed to represent the industry on an increasing number of investment-related issues.



Strategic objective 1

Enhancing the industry's reputation

Promoting the distinct and positive role of insurance in the economy and society to regulators, supervisors, the media and the public.

Action in 2011



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The CEA's **lobbying** efforts continued to be driven by the large number of initiatives stemming from the economic crisis. The 2010 work was maintained and intensified, notably due to the accumulation of legislative work by the EU institutions.

The CEA built up its lobbying messages in a number of ongoing and new areas, as EU and global debates on issues such as financial stability and systemic risk moved on. The strategy has been to continue to distinguish insurance from other sectors and to explain why it is fundamental to avoid any undesired and unhelpful read-across of initiatives from other sectors.

Negotiations and lobbying on the Solvency II implementing measures (see p12) were, of course, a key focus of resources throughout the year. The CEA also built up a stronger profile on important issues such as pensions (see p26) and the European Market Infrastructure Regulation on over-the-counter derivatives (see p24). It was able to present convincing arguments on the need for a level regulatory playing field between pension funds and other sectors and so far there seems to be support for this among legislators.

The CEA's **new website** was launched in February with a fresh, modern design, a more dynamic homepage and improved navigation. The website also carries more information about each of the CEA member associations and provides a platform for promoting members' conferences. Feedback on the new website has been extremely positive and the site is receiving an average of 500–600 visitors a day.

In light of debate in the European Parliament over MEPs' conduct and lobbying rules, the CEA website now carries a clear statement on the federation's lobbying principles and a link to the code of conduct to which it adheres as a signatory to the EU institutions' transparency register.

As decided in 2010, the CEA's annual **International Conference** remains the linchpin of its events programme and it now has a high profile in the industry's event calendar. The Third International Conference attracted a record 330 delegates to Athens in June for a full day of panel debates and speeches focusing on the threats and opportunities resulting from insurance reform.

Together with the American Council of Life Insurers (ACLI), the CEA helped the US Chamber of Commerce to organise a second **Transatlantic Insurance Symposium** in Washington DC in March to promote the convergence of global solvency standards. This event, too, was well attended, attracting 130 participants.

As part of the CEA's strategy to respond to issues with targeted and timely events in a variety of formats, it held the first two of a series of **Pensions Breakfasts**, one in July and one in November. These enabled a selected number of representatives from the industry and the EU institutions to discuss informally the EC White Paper on pensions and the review of the Institutions for Occupational Retirement Provision (IORP) Directive (see p26).

The CEA also gave speeches and presentations at a number of other important industry events, including the annual conferences of the European Insurance and Occupational Pensions Authority (EIOPA) and the ACLI, and at EU institution events and hearings, such as the exchange of views in the European Parliament's FEMM Committee on anti-

discrimination and the European Commission's October natural catastrophe conference (see p38).

The CEA regularly issued **press releases and statements** on important industry issues and provided interviews and articles to leading online and print media. It was also able to carry more regular news updates on its redesigned website homepage. Particularly successful in supporting lobbying efforts at a crucial time in the Solvency II negotiations was the CEA's coordination with the Pan-European Insurance Forum and CFO and CRO Forums of a letter to the "Financial Times" in April, stressing the dangers to the industry, economy and society if elements of the regime were not corrected. To coincide with the letter, the CEA president gave an interview to the FT and a press release was issued. Members supported the CEA messages with concurrent media work at national level.

Publications produced by the CEA during the year included a January paper on ways to ensure Solvency II is workable for small and medium-sized insurers and a paper to coincide with the Test-Achats ruling by the European Court of Justice in March (see p34) explaining the use of gender in insurance pricing. Alongside its Annual Report and annual statistical publications ("Key Facts" and "European Insurance in Figures"), the CEA also produced a booklet showcasing the industry's initiatives in improving financial education and awareness and a paper and a factsheet explaining private medical insurance.

To improve understanding of the federation and what it stands for, the CEA initiated a **rebranding** that will be launched in spring 2012. The key element in the new corporate identity is a name change to "Insurance Europe" that was approved by the Executive Committee in May. A new logo was approved by the Executive Committee in October that combines a fresh, modern design with an element suggesting cover and protection.

Conclusions and strategy for 2012

The current climate has presented significant challenges for the CEA's lobbying. Despite its success in conveying messages about the specific characteristics of insurance and the resulting need for insurance-specific regulation, EU and global institutions have persisted in their approach of beginning work in one area, notably banking, and then proceeding to other sectors such as insurance on the basis of that work. Systemic risk, crisis management and resolution, and financial services taxation are cases in point. It will be vital for the CEA to expand on its current arguments if it is to successfully counter this worrying trend.

The advent of Omnibus II has further complicated the discussions on Solvency II. Now that consensus has been reached on the absolute link between the two, considerable effort will be required to find agreement on key priorities to ensure the industry is content with the final implementing measures and that these and the Solvency II timetable are not negatively affected by Omnibus II.

The landmark European Court of Justice judgement on gender in March led to a concerted effort at all levels of the industry to explain its negative consequences. Although the outcome remains less than ideal, the effort was valuable in conveying the serious effects of the ruling, notably to the European Commission and Parliament, and has been useful groundwork for potential debates on age and disability.

Internal discussions will have to resume on a number of the CEA's other priorities — notably PRIPs, the review of the Insurance Mediation Directive and pensions — to expand on the work done during 2011 in order to ensure the strongest possible arguments are ready when the Commission issues its legislative proposals. Consistency between these lobbying strategies and messages will be vital.

In terms of events, the CEA believes its current approach of holding one major event — the June International Conference — each year, supplemented as required by smaller, more targeted events, is the right one.

Likewise in its publication strategy, the CEA will continue with its combination of annual publications and one-off documents driven by lobbying requirements.

The CEA will also maintain its current levels of pro-active and reactive media engagement. It has continued to make progress in developing its Communications and PR Committee into an active network that coordinates press activity and promotes best practice. Coordination of media activity with members on key industry issues is working well.

2012

The postponement of a significant number of legislative proposals to 2012 will create a heavy legislative agenda and hence a year of intense **lobbying activity**. The CEA will therefore carefully plan and prioritise its actions to ensure that its resources are appropriately allocated.

The consolidation of industry positions and addition of detail to high-level messages will be paramount in the face of the ongoing risk of regulatory spill-over from the banking sector.

The CEA will increase its lobbying through greater interaction with the EU institutions and supervisory authorities, notably the European Insurance and Occupational Pensions Authority, and plans to continue increasing its engagement at international level, in coordination with the International Network of Insurance Associations.

In the early part of the year, the CEA will continue the work it began in 2011 on its **new corporate identity**. The complete rebranding of the CEA's publications, website, events and documents will be finalised in time for the secretariat's relocation to new offices in the spring and the new brand will then be promoted.

The CEA will hold a third **Pensions Breakfast** in the first half of the year and its fourth **International Conference** on 1 June in Amsterdam.

One-off **publications** already planned for the year include a high-level paper to use in negotiations with policymakers that explains how insurance works, setting out the principles of underwriting and risk assessment, and a paper analysing the differences between the Basel II/III regulatory frameworks for the banking sector and Solvency II.

No further events or ad-hoc publications are scheduled for 2012 at this stage, but the need for targeted seminars and papers to support lobbying activities will be carefully assessed and responded to throughout the year. The CEA will, of course, continue to communicate publicly on all major issues for the industry.



Strategic objective 2

Protecting and optimising insurers' business environment

Ensuring that changes to regulation and supervision at EU and global level are measured and appropriate. Defending and promoting an environment in which insurers can remain competitive.

2.1 Prudential issues

Action in 2011



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The principle focus of the CEA's work on **Solvency II** has been its close and intense negotiation with the European Commission and the European Insurance and Occupational Pensions Authority (EIOPA) at both executive and working level on the **Level 2 implementing measures**.

A key part of the preparation for Solvency II was the EC's fifth quantitative impact study (QIS 5), which was run in late 2010 and whose results were released in March. The CEA publicly and privately stressed that significant adjustments were needed to the draft implementing measures if the strong financial position of the industry demonstrated by QIS 5 was not to be undermined.



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In large part due to pressure from the CEA and the industry, both EIOPA and the Commission recognised the need to adjust some measures, particularly related to the sensitivity of the Solvency II framework to market volatility. As a result, the EC set up joint working groups with EIOPA and the industry.

Work in the various groups (detailed below) was often difficult and to tight timeframes, requiring close and regular coordination with members. Alongside the work of the groups, high-level political negotiations continued and in late March the CEA again publicly expressed its concerns to Commissioner Barnier in a joint letter with the Pan European Insurance Forum and the CFO and CRO Forums. Timed to coincide with the letter, at the beginning of April the CEA arranged a joint letter to the "Financial Times" and an interview by CEA president Tommy Persson. This pressure directly led the Commission to create a joint monitoring group to review progress on outstanding issues.



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A week later the CEA submitted over 600 comments and redrafting suggestions on the Commission's consolidated text of the draft Level 2 measures, raising again its concerns that the industry's views were not being taken into account and identifying 11 key issues of concern. A further package of redrafting suggestions was sent in mid-May.

The CEA led the industry's participation in the working group on **volatility issues**, mainly affecting products with long-term guarantees. In May it produced a "package deal" including, in particular, concrete drafting proposals for the discount rate for technical provisions.

In July other industry representative bodies combined with the CEA to back the "industry package deal". This sets out the key issues and resolutions required, based on the proposals from the CEA package deal. It was used as the basis for a series of discussions with Commissioner Barnier and his services.

The calibration of the capital requirements for **non-life underwriting risk** and **catastrophe risk** were also issues identified by QIS 5 as needing further work. After lengthy negotiations, the industry and EIOPA eventually agreed on recommendations for an amended calibration of non-life underwriting risk which reduced the calibration factors for nearly all lines. On cat risk, however, the developments were not so positive. Many of the issues relating to cat risk have now been postponed to Level 3 and the CEA is already providing input on them.

On **contract boundaries** and the **treatment of expected profits included in future premiums (EPIFP)** some progress has been made compared to the initial views of

the EC and EIOPA. The CEA was involved in several consultations and meetings with the EC on contract boundaries. The most recent EC proposal appears to have ironed out some concerns but may still be subject to the wrong interpretations in practice. One specific issue that remains relates to the treatment of unit-linked type products with non-insurance guarantees. On EPIFP, as a compromise, the EC now proposes to recognise EPIFP fully as Tier 1 capital, but with full disclosure to the markets, This is exactly what the CEA argued for but the benefit of this is currently partially offset by the exclusion of unit-linked products and a significant increase in lapse risk calibration.

In late October — and with only one week to respond — the EC issued the third and final of its written consultations to finalise outstanding issues since it ended its Solvency Expert Group meetings in June. This required quick and close coordination by the CEA with members and industry bodies. The key area covered in this last written consultation was the risk-free rate term structure. However, many of the industry's concerns remained unresolved in the Commission's proposals.

The final consolidated draft of the Level 2 measures was presented by the EC to member states later in October and although the CEA managed to ensure it included the elements of the joint industry package to address the volatility issue, it remained disappointing overall. The 600+ amendments proposed by the CEA were mostly ignored. Regarding the key issues and in particular the risk-free rate, the EC proposal remained unchanged from its draft earlier in the month. Notably the text does not provide predictability for the counter-cyclical premium and the matching premium remains too narrowly applied. Without further changes Solvency II risks:

- creating inappropriate/exacerbating volatility
- leading to pro-cyclical behaviour
- charging undertakings for market volatility when they are not exposed to it (only commensurate to the degree of illiquidity of their liabilities)

As the EC cannot formally present its Level 2 measures until the amendments to Level 1 contained in the Omnibus II Directive (see below) are adopted by the European Parliament and Council, the EC intended to “freeze” the implementing measures until the adoption of Omnibus II, which will not be until April 2012.

Likewise, public consultations on **Level 3 measures** cannot officially begin until the Level 2 measures have been finalised. However, EIOPA continued its work via informal pre-consultations, of which the CEA has so far responded to over 30, most importantly on reporting templates but also on the own risk and solvency assessment (ORSA), the system of governance, own funds and internal models.

On reporting, the CEA participated in two extensive pre-consultations with EIOPA, both covering over 60 templates. The CEA has had regular bilateral meetings with EIOPA to provide feedback on key templates and has succeeded in reducing the extent of the reporting requirements in several key areas.

In October the CEA expressed strong concern over possible multiple reporting requirements to the European Central Bank in view of its plans for more statistics on the EU insurance sector.

In parallel, the CEA has been busy on the **Omnibus II Directive**, as the Commission published its draft in January. Omnibus II is crucial to Solvency II as it introduces technical changes, creates new legal instruments (implementing measures become delegated

acts and shift the “pen” (ie power) from the Commission to EIOPA, for example) and introduces transitional implementation provisions. Subsequent amendments by the European Parliament and Council propose a “soft launch” of Solvency II and transfer additional powers to EIOPA.

The CEA published a high level position paper on Omnibus II in April supporting transitional measures in certain areas and expressing concerns over the effect of the timeframe for the adoption of Omnibus II on the time available for work on Solvency II’s Level 2 and 3 measures and for undertakings to implement the resulting changes.

The CEA commented on some of the Council amendments on Omnibus II before it reached general agreement early in October.

In the European Parliament the CEA voiced a number of key concerns. One is the proposal of the rapporteur, Burkhard Balz, to change most of the delegated acts (drafted by the EC and subject to objection by the European Parliament and Council) into regulatory technical standards (drafted by EIOPA but also subject to potential objection by the Parliament and Council). The CEA argued that many of the proposed shifts deal with macro-economic and social issues and therefore require the political input of the Parliament and Council, whereas EIOPA is meant to provide technical input to prepare and facilitate political decisions. The CEA met MEP Balz to explain its concerns.

The CEA suggested a number of amendments to MEPs on selected priority areas and 23 of those tabled fully or partly mirrored the CEA’s suggestions.

The European Parliament was due to vote on almost 500 proposed amendments in the ECON Committee in late November. The CEA analysed the amendments and highlighted key concerns on issues relating to the risk-free rate, transitionals, equivalence and shifts from delegated acts to regulatory technical standards, and on amendments that aim to align Solvency II unduly with banking regulation.

The CEA is concerned that any shift of drafting initiative to EIOPA could reopen the Level 2 negotiations and seriously delay the Solvency II timetable. In close coordination with both members and the Commission, the CEA produced a list of the delegated acts it considers suitable to switch to regulatory technical standards and lobbied for the sunrise clause proposed by MEPs Skinner and Bowles, which would delay the shift to regulatory technical standards until three years after the entry into force of Solvency II.

Omnibus II also includes the legal hook for the inclusion of **transitional equivalence** in Solvency II. This is something the CEA has long advocated; in its responses to EIOPA’s consultations on equivalence last year and also directly through dialogue with the EC. However, many of the proposals in the Parliament’s text, in particular the amendments proposed by MEP Balz, are unduly prescriptive and could deter third countries from engaging in the process.

Ahead of EIOPA’s second Europe-wide **stress tests** for insurers in March, the CEA expressed strong concerns about the scope, methodology, timeline and disclosure of the tests. While it was not successful in having the tests based on Solvency I rather than QIS 5, the CEA was instrumental in bringing about changes to make the tests more workable and in slightly extending the deadline for participation.

The CEA sent a position paper to the EC and subsequent comments on amendments made by the European Council and key MEPs on the EC’s 2010 legislative proposal to amend several directives related to the supplementary supervision of financial conglomerates. The amended directives are the **Insurance Groups Directive**, the

Financial Conglomerates Directive and the **Capital Requirements Directive** for banks. This was described by the EC as a “quick fix” aiming to close any loopholes that would prevent supervisors from having a complete view of both the insurance and banking sides of a conglomerate.

Conclusions and strategy for 2012

2011 was another difficult and intensive year on Solvency II. Pending sight of the final implementing measures, it would seem likely that the CEA, in coordination with its members and other industry bodies, has succeeded in moving the measures a long way from the original advice of EIOPA's predecessor in 2009. That, if implemented, would have led to unsustainable capital requirements and probably the end of certain types of products. In particular, the CEA has had positive results in the retention of the classification of EPIFP as Tier 1 capital and the reduced non-life calibration and there is wide acceptance from the Commission, EIOPA and MEPs of the need for wider measures to resolve issues in the discount rate and volatility issues in the Solvency II balance sheet in general. A strong push in the final stages of negotiation is still needed, however, to ensure that these measures are implemented appropriately.

It is vital that the CEA continues to send strong and coordinated messages. It will continue to use the industry “package deal” as the basis of its lobbying.

The soft launch proposed by the European Parliament and Council in Omnibus II would see transposition of Solvency II into national law on 1 January 2013 but entry into force on 1 January 2014. The CEA has supported this, with the proviso that insurers should get at least 18 months between reporting requirements being finalised under Level 3 and them being used by undertakings. The CEA will also continue to call for an “opt-in” to allow those ready to comply with the new requirements to do so.

With the delay caused by Omnibus II, it is, however, now questionable whether Solvency II rules can be realistically finalised before the end of 2012. Both the European Parliament and Council nevertheless seem confident that transposition of Solvency II into national laws can be finalised by 1 January 2013 and are also agreeing that at least 12 months should be given to the industry and supervisors to prepare for it.

Ambitious growth plans at EIOPA and the ongoing revisions required by the Lamfalussy process that governs Solvency II will make it necessary to further strengthen the CEA's response on prudential issues in the short, medium and long term.

2012

In early 2012 the CEA's top priority will be to work closely with the European Parliament and Council to ensure that the final version of **Omnibus II** is suitable for the industry and does not derail the Solvency II timetable.

A significant challenge on which the CEA aims to convey its concerns will be the proposal by the rapporteur, as set out above, to change a large number of delegated acts into regulatory technical standards. The CEA will lobby strongly for the sunrise clause and limited regulatory technical standards.

As Omnibus II is now not expected to be formally adopted before April 2012, it is only then that the **Solvency II Level 2 implementing measures**, now called delegated acts, will be officially presented by the European Commission. This is, of course, subject to what the co-legislators decide on the proposal to change most delegated acts into regulatory technical standards. The CEA will ensure that the European Parliament is made aware of any outstanding key issues with Solvency II before the Level 2 measures are tabled for approval. It hopes to take advantage of the European Parliament's ability to object to the EC proposal to ensure that any vital outstanding issues are fixed before the Level 2 measures are tabled for Parliament and Council scrutiny.

The public consultations will then begin on the **Level 3 measures**, where the CEA expects to again have the opportunity to comment on the areas already covered during EIOPA's pre-consultations plus new areas, which will in part depend on the finalisation of Omnibus II. EIOPA has, however, not yet communicated a formal plan for this work, although the industry has been told to start making preparations on the basis of forthcoming reporting templates, as — pending progress on Omnibus II — EIOPA plans to finalise the templates in mid-2012.

The European insurance industry will again be required to carry out **stress tests** in 2012, as EIOPA has said it plans to perform annual tests. In addition, the IMF has expressed the intention to set requirements around the use of stress tests. The CEA will continue to engage with both bodies to ensure that stress testing requirements are practicable and appropriately designed and do not duplicate requirements already placed on insurers.

The CEA also plans to engage in the discussions which the European Commission plans to launch early in 2012 with a wider review of the **Financial Conglomerates Directive**. This is expected to have implications on the debates on systemic institutions and systemic risk (see p17).

2.2 Stability issues

Action in 2011

The CEA was involved in the work continuing at both global (eg G-20) and regional levels on measures to avoid a repeat of the events experienced since the start of the financial crisis. One overarching question here is the identification and appropriate treatment of **systemic risk** in general and of **systemically important financial institutions (SIFIs)** in particular.

Throughout the year the CEA has pursued two main goals: to ensure that there is a good understanding of the important differences in the systemic risk presented by banking and insurance and, as a result, to seek to de-link the initiatives in insurance from those in banking. The CEA has consistently conveyed these views to numerous institutions, including the G-20, the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS), both in its own name and as part of INIA, the International Network of Insurance Associations.

The CEA participated in February in the regulatory dialogue organised by the **IAIS** on systemic risk. The CEA reiterated the European industry's long-standing view that traditional insurance activities do not generate systemic risk and that, as such, a specific approach is required for insurance, with a focus on certain potentially systemically risky non-traditional activities. It also called for any measures applicable to SIFIs to be adapted to the specific characteristics of the insurance sector. For instance, a capital surcharge would not be an appropriate response to the regulatory concerns and would be difficult to implement at international level given that there is no global regulatory framework in insurance that is equivalent to banking's Basel II/III.

After the hearing, the IAIS consulted on a methodology for the identification of SIFIs in insurance. The CEA responded to the consultation, expressing concern that the methodology followed was building too much on what is being done in banking and would not work in insurance.

In parallel, the CEA urged the IAIS to take sufficient time to fully understand the specific characteristics of insurance before proposing any measures. The CEA, in cooperation with other international associations, sent a letter to G-20 leaders along similar lines; stressing the need to de-link any work on SIFIs in insurance from the FSB's work on banks.

During the summer, the **FSB** published two systemic risk consultations: one on the recovery and resolution of SIFIs, targeting all types of institutions, and one on the identification of and appropriate measures for systemically important banks (SIBs), with a clear focus on banking. The CEA responded to the first consultation, urging the FSB to take account of the different business models and winding-up processes in insurance and banking. It asked the FSB to clarify the scope of the proposed measures, suggesting that they should only apply to the banking sector. The CEA also drew the FSB's attention to the fact that Solvency II already covers some of the areas proposed in the consultation (group supervision, supervisory coordination and recovery plans).

As chair of INIA's working group on insurance regulation and systemic risk, the CEA also coordinated the INIA response to the FSB. Pleasingly, the IAIS also sent a response to the FSB highlighting the need to take account of the specificities of insurance.



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The importance of having a separate approach in insurance (both in terms of process and content) was likewise reiterated in an INIA letter to the **G-20** in advance of its November Summit.

In parallel, the IAIS pursued its work on the identification of **SIFIs in insurance**. A data collection exercise targeting a selected group of internationally active firms was launched during the summer. In a letter sent to the IAIS, and again at the regulatory dialogue with the IAIS in September, the CEA questioned the proposed methodology and process as well as the legal basis for such an exercise. The CEA and some of its international counterparts also raised confidentiality concerns. Alongside the data collection exercise, the IAIS consulted in October on possible measures applicable to insurance SIFIs, should some insurance companies be identified as systemically important. Both the CEA and INIA responded, expressing concerns about the excessive reliance on the approach taken in banking.

In the US, the **Financial Stability Oversight Council (FSOC)**, newly created under the Dodd-Frank Act, consulted early in the year on proposals for the supervision and regulation of non-bank financial companies considered systemically risky. The CEA reiterated in a position paper that core insurance activities are not systemically risky and that FSOC's proposed methodology for identifying systemic risk was therefore not suitable for the sector. FSOC has launched a second consultation on the same topic to which the CEA is preparing a response.

As regards stability issues from a macro perspective, 2011 was the first year of the **European Systemic Risk Board (ESRB)**, which was set up as one element of the new European supervisory architecture. Among its main tasks, the ESRB has been asked to identify sources of systemic risks and to draft appropriate warnings and recommendations. The CEA has initiated contacts with the ESRB, providing it with an insurance perspective on these issues.

The **European Commission** is also increasingly focusing on stability issues. In particular, the Internal Market and Services Directorate (DG Markt), which up to now concentrated on the integration of financial markets, published a "Financial Stability and Integration Report" for the first time in 2011, looking at both aspects — integration and stability — in parallel. After a chapter dedicated to the banking sector in 2011, the authors are keen to have a chapter on insurance in the 2012 edition. The CEA will therefore contribute to a DG Markt questionnaire that will be sent to a sample of insurance companies. With the questionnaire and follow-up interviews, DG Markt intends to identify stability concerns arising from recent regulatory and market trends.

Conclusions and strategy for 2012

The CEA has achieved results on its two main objectives in the systemic risk debate. Firstly, there seems to be increasing recognition of the fact that traditional insurance activities are not a source of systemic risk. The characteristics of the insurance sector were clearly highlighted, for example, in the IAIS submission to the FSB on the related question of the recovery and resolution of SIFIs. Secondly, it has now been accepted that more time is needed to develop appropriate solutions for systemic risk in insurance, as no decision will be taken at G-20 level before the June 2012 meeting in Mexico.

These are important achievements. Nevertheless, ongoing work at the FSB and FSOC continues to be based on the banking model. The CEA remains convinced that adopting the methodology envisaged for banks would not only be ineffective and costly but also extremely difficult to implement in a coherent manner at international level, bearing in mind that ComFrame (see p20) is still at an early stage of development.

2012

The CEA will continue to participate in the **broad financial stability debate at the G-20, FSB and IAIS and at EU level**, as well as more specifically on the work on **systemic risk**. The process followed by the IAIS is expected to mirror the developments in banking, with the following steps: data collection, development of a methodology to identify SIFIs, public consultation on the methodology and the potential solutions (possibly in March 2012), review of the responses, dialogue with the FSB and finally a recommendation to the G-20 (possibly in June 2012). Regarding banking, a final decision was taken at the November 2011 G-20 Summit, following an FSB recommendation. The solutions are a combination of a capital surcharge and enhanced supervision of banks identified as systemically important, as well as effective resolution mechanisms for all SIFIs. The results of that process will be examined carefully, as the solutions proposed for banking will certainly influence other sectors.

Given that the debate on systemic risk in insurance is still at a preliminary stage and that dialogue on certain key aspects of the discussion, such as the possible remedies, has yet to start, the calendar envisaged is very tight and challenging. A clear milestone in this debate will take place in the first quarter of 2012 when the IAIS releases its consultation on the methodology for identifying insurance SIFIs. The CEA intends to contribute to this and will seek to ensure that INIA develops an appropriate, coordinated and consistent international industry response. Likewise, the CEA will analyse any potential measures on insurance SIFIs to ensure that they do not create a duplicate layer of regulation, taking into account European developments in this area and especially Solvency II.

The CEA will meet the new, transversal unit in DG Markt that is responsible for crisis management, recovery and resolution, and guarantee schemes for insurance, banking and securities, to ensure that the insurance perspective is well understood.

The European Commission is expected to issue its proposals on resolution plans for insurance during the second half of 2012. The CEA will follow the Commission's work very closely, given the clear link between this discussion and those at international level on systemic risk.

The CEA will also further reinforce its contacts with the ESRB, as this institution will play an increasingly important role in European stability and systemic risk.

2.3 Global standard-setting initiatives

Action in 2011



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CEA activities increased during 2011 as a result of the gathering pace of the standard-setting activities of the International Association of Insurance Supervisors (IAIS): the adoption of a full set of **revised Insurance Core Principles (ICPs)** and the publication of a detailed Concept Paper outlining the IAIS's vision for a common framework for the supervision of internationally active insurance groups (**ComFrame**). The CEA contributed to both workstreams through written submissions and participation in the respective IAIS sub-committee meetings.

The IAIS's initial intention is that ComFrame should only apply to a small group of internationally active insurance groups. However, it is clear that the final framework will have a much wider influence, setting enhanced standards for group supervision around the world and driving global convergence in supervisory practices.

To facilitate the CEA's engagement in this important workstream, it established a ComFrame Taskforce under the International Affairs and Reinsurance Committee. The Taskforce, made up of representatives of internationally active insurance groups and CEA members, met five times in 2011, and was key to an early CEA position on the ComFrame project being submitted to the IAIS in February 2011, well in advance of any formal IAIS consultation.

The two-month public consultation on the ComFrame concept paper commenced at the beginning of July, marking the end of the first year of the project's three-year development phase. Against tight timeframes, the CEA submitted a detailed individual submission to the IAIS and also worked with international colleagues through the International Network of Insurance Associations (INIA) to produce a joint letter highlighting key messages from the global insurance industry. The CEA also took part in the ComFrame Dialogue session with the IAIS Technical Committee during the IAIS Annual Conference in September.

The CEA has long advocated the introduction of effective group supervision and remains supportive of ComFrame in the hope that it will reduce the supervisory burden for internationally active groups through regulatory convergence and the establishment of a stronger basis for better international coordination. However, the Concept Paper as released at the beginning of July is far too prescriptive and runs the risk of creating a two-tier regulatory system, with a small number of internationally active groups being subject to more intensive supervisory practices unaligned with those anticipated under Solvency II.

In addition, the CEA is concerned at the inclusion of detailed anticipative recovery and resolution plans in the Concept Paper; proposals more akin to the systemic risk discussions for systemically important banks (see p17). Instead, as highlighted in its response to the Concept Paper consultation, the CEA is arguing for ComFrame to be developed through a step-by-step approach. The first step would be to ensure a common understanding of the aims of the project and to set principles that would meet those aims. Over time, greater similarities are likely to come about in the way specific principles are complied with, but this should be allowed to evolve naturally and not be prescribed at the outset.

Conclusions and strategy for 2012

ComFrame remains a very ambitious project, with many questions outstanding on its final shape. Indeed, even among the supervisory community responsible for the project's drafting, many different interpretations of its purpose and aims can still be observed over a year into its development.

As the exact scope, content and application of the ComFrame is still very uncertain, there remains an opportunity for the European insurance industry to help shape the debate. However, achieving this goal will require the CEA to pursue a flexible, principle-based approach which must have wider appeal beyond insurers located in Europe.

Increased interaction with international industry colleagues through INIA should provide the CEA with a platform to gain global industry support on issues key to European insurers, thus increasing the likelihood of getting key messages accepted by the supervisory community.

2012

The CEA will monitor and push for adherence to the **ComFrame** timetable, which seems likely to come under pressure. It was intended that ComFrame would be developed within three years of its 1 July 2010 start date and be immediately followed by an impact assessment. Elements of the ComFrame project were assigned a priority — A, B or C — depending on the timing of expected delivery. Thus it was envisaged that priority A elements would be consulted on at the end of the first year and finalised soon after, with priority B consulted on on 1 July 2012 and priority C on 1 July 2013. However, as noted above, key strategic questions on the purpose of the ComFrame project still remain. In addition, from discussions in the IAIS Insurance Groups Subcommittee, which is responsible for the detail of the priority A elements, it is clear that critical details also remain to be resolved.

The repositioning of the ComFrame Taskforce within the IAIS Technical Committee in January 2011, a committee which usually conducts its meetings in closed session, is likely to limit opportunities for the CEA and other industry observers to provide input into the process. However, recognising the importance of this workstream, the CEA will continue its involvement throughout 2012, into 2013 and likely beyond, through attendance at the ComFrame drafting sessions of the respective IAIS subcommittees.

The CEA will continue to build its positions throughout 2012 and increased engagement with international industry colleagues will be facilitated by the CEA's participation in the INIA ComFrame Taskforce that was set up in June 2011.

2.4 Accounting

Action in 2011



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The CEA continued to work on the two key priorities on accounting matters: **International Financial Reporting Standard (IFRS) 9** and **Phase II of IFRS 4 for insurance contracts**.

On IFRS 9, the CEA responded to two consultations by the International Accounting Standards Board (IASB) on impairment — the second of the three work phases — asking for simplification of the loss provisioning model. The CEA also asked for the model to be developed so that it is equally applicable to corporate bonds and banking loans (the IASB proposals were mainly focused on banking loans). In its latest deliberations, the IASB considerably simplified its model but it still mainly takes bank loans into account.

On hedge accounting, the third phase of the revision of IFRS 9, the CEA likewise commented on an IASB exposure draft. The CEA welcomed the simplifications compared to current rules, but sought its application to the hedging of credit risk and inflation risk. Again, the IASB was due to issue new proposals in late 2011 or early 2012.

The CEA also commented jointly with the CFO Forum on the IASB's exposure draft on offsetting assets and liabilities. This project is mainly to bring US requirements into line with IFRS.

On **IFRS 4**, the IASB initially planned to issue a standard in mid-2011, then postponed it to the end of the year and finally pushed it back without a deadline. There was speculation over whether the US Securities and Exchange Commission (SEC) would decide whether to permit or require IFRS to be used in the US before the end of 2011. If the SEC were to allow IFRS for US companies, this could severely delay the project further. Indeed, the US standard-setter and the IASB have increasingly different views on key areas such as non-life and they work on different timetables. These issues need to be resolved before IFRS 4 is issued.

In the meantime, the industry has put forward suggestions to try to resolve the major issue of volatility in the profit and loss (P&L) account. If the IASB proposals were to be adopted as they stand, they would severely harm the European industry, as they would lead to very high volatility in earnings, increasing the cost of capital for insurers. The CEA is closely following the initiatives, which are a work in progress with further proposals expected.

The CEA has maintained regular contact with the European Commission on accounting issues, as the EC has frequently requested the industry's point of view, notably on the progress of IFRS 4 and 9.

Conclusions and strategy for 2012

Building on the work done in 2010, the CEA has continued to increase its interaction with the IASB and the Commission. As a result, the insurers' point of view is increasingly heard alongside that of banks. The CEA will invest in

maintaining these key contacts and will seek to ensure that the industry's specific characteristics are taken into account (eg for IFRS 9).

The CEA will continue to push for a high quality standard for insurance contracts as soon as possible. Nevertheless, there is the risk that it could be severely delayed if the US permits the use of IFRS instead of US accounting rules. The CEA will campaign for a robust solution to short-term volatility in the P&L.

Careful monitoring of the work on the detail of Solvency II and its implications for accounting practices will also remain important, particularly in light of the difficult discussions on the treatment of expected profits in future premiums.

2012

On **IFRS 9**, the CEA will comment on the IASB's re-issue of the exposure draft on impairment that is due in the first half of 2012. The CEA will likewise provide comments on the IASB's new proposals on general hedge accounting and on the exposure draft on macro-hedging that are due in the first half of 2012. The IASB's objective is to complete the replacement of International Accounting Standard 39 with IFRS 9 by end of 2012.

The CEA will also monitor closely the implications of convergence or endorsement by the SEC, as the US positions on classification and measurement are significantly different from the IASB's. If required, the CEA will voice its views on this issue. In addition, once IFRS 9 is finalised, the question of its adoption by the Commission will come up again (but not before the second half of 2012) and the CEA will have to express its view on the full text.

Since there is no precise target date for the completion of **Phase II of IFRS 4**, the CEA will maintain pressure on the IASB to ensure that this critical project is not sidelined. Since an increasing number of IASB members no longer consider the project a key priority, it will be vital to maintain a dialogue with them to explain why a new, high quality standard is needed.

In parallel, the CEA will work with the IASB to solve the key issues identified in the exposure draft, in particular that of the volatility in the P&L, which would have a significant impact on the market values of insurers. In light of the differing views among European companies on possible solutions, the CEA will seek to establish common ground in order to present a united view to the IASB. The CEA will also help to find solutions for the transitional measures and for the presentation of the P&L, where again there are differing views depending on the nature of the insurer's business (life, non-life or composite).

Finally, the CEA will participate in the IASB's consultation on its agenda, again insisting the insurance contract project must remain a key priority and asking for post-implementation reviews of new standards.

2.5 Investment

Action in 2011



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The CEA was closely involved in the highly political work on the future **European Market Infrastructure Regulation (EMIR)** for over-the-counter derivatives, on which the European Commission issued a proposal in late 2010.

Over the course of the year, the CEA met several key MEPs and financial attachés to explain its positions. It also published position papers each time a new text was published by the EU presidencies. The CEA expressed its support for insurance being included in the scope of the regulation but also raised several key concerns.



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Firstly, it criticised the fact that the long-term investment perspective was not adequately taken into consideration in the one-size-fits-all regulation proposal. It pointed out that the need for collateral to be cash or highly liquid would force insurers to divest to transfer the cash to the central clearing counterparty, which would mean a lower performance by insurers on, for example, the retirement benefits of annuities.

A second key objective was to avoid an unlevel regulatory playing field, which was a possibility in earlier texts that aimed to exclude pension funds from the scope of the Regulation. The CEA has consistently stressed the need for a level playing field and for insurers as occupational pension providers not to be unduly disadvantaged. Both the European Parliament and the Council texts seem to go in this direction, although neither text is yet fully satisfactory.

Thirdly, the CEA disagreed with the initial proposal that intra-group transactions should be centrally cleared.

The European Parliament's Economic and Monetary Affairs Committee voted on its text before the summer and delayed its plenary vote to allow for an agreement with the Council. One of the key stumbling blocks in Council was the issue of the level playing field between insurers and pension funds, but a general approach was finally agreed in October. This was the basis for the Council's mandate to negotiate in the dialogues with the European Parliament and the Commission that began in October.

Conclusions and strategy for 2012

The CEA was successful in getting some improvements to the EMIR texts of the European Parliament and Council. The CEA will continue to lobby on its key concerns during the dialogues.

The CEA has identified investment issues as one of its priorities for 2012, not least to ensure the interests of long-term investors are adequately represented at EU level. The CEA is increasingly being approached by the EU institutions (most notably the Commission) for information and comment on issues related to insurers' investments. The approved CEA budget for 2012 foresees the recruitment of a full-time staff member to work on these issues.

2012

Lobbying on the outstanding issues on **EMIR** will continue during the dialogues, which were due to continue into 2012. The implementation deadline for the new Regulation is the end of 2012.

A new issue for 2012 will be the Commission's proposal for a **Directive and a Regulation on credit rating agencies**, which was issued in November 2011 and which will modify the Capital Requirements Directive. These proposals will undoubtedly influence the Commission's thinking on the use of external credit rating in Solvency II, where among the current proposals is the need to have an internal credit rating system, which would be very difficult for smaller companies. The CEA will assess the impact of the Directive and the Regulation on insurers and respond accordingly.

The CEA also expects to need to assess and possibly respond to other investment-related legislative projects, such as on infrastructure bonds.

2.6 Pensions

Action in 2011



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Following the CEA's response to the European Commission's **Green Paper on Pensions** in November 2010, in January it provided comments to targeted MEPs in the European Parliament's Economic and Monetary Affairs Committee during the discussions on their report.

In both its various comment papers and subsequent press release after the plenary vote, the CEA emphasised the need to create a level regulatory playing field between life insurers and pension funds, calling for the principle of "same risks, same rules" to be applied to the regulations covering life insurers, institutions for occupational retirement provision (IORPs) and mutual funds offering guaranteed benefits in order to avoid regulatory gaps and prevent regulatory arbitrage. It pointed out that the current regulatory level playing field will cease to exist when insurers move to the Solvency II regime, since customers whose pensions are not with insurers will not benefit from the enhanced protection that will be afforded by the Solvency II framework.

After the vote, the CEA publicly welcomed the European Parliament's contribution to the Green Paper, supporting the Parliament's view that there should be a review of the outdated solvency rules that currently govern IORPs and that risk-based principles such as those that underlie the new Solvency II regime could be a valuable starting point. The Parliament likewise recognised that achieving a level regulatory playing field and consistency between prudential regimes would better serve consumers.

The CEA reiterated these messages on the need for a level playing field and the application of Solvency II-type principles for pension funds at a seminar organised by the European Parliament's Alliance of Liberals and Democrats for Europe (ALDE) in February. In particular, the CEA highlighted the importance of the consumer protection aspects of pension regulation, focusing on the need to safeguard beneficiaries whose pension promises should be guaranteed.

At the beginning of April the EC sent the European Insurance and Occupational Pensions Authority (EIOPA) a call for advice on the **review of the IORP Directive**. This comprehensive document requests EIOPA's advice in areas such as capital requirements, governance and transparency requirements. In the call for advice the Commission explicitly refers to the importance of maintaining consistency across sectors and states so that pension schemes and products with similar risks are subject to similar regulatory requirements.

EIOPA will carry out two consultations. In the CEA response to the first, which was carried out over the summer and covered governance and scope, it stressed the need for consistent regulation of occupational pensions. It argued that occupational pension products should be regulated according to the risks they present, rather than the legal vehicle through which they are provided. While welcoming the willingness of EIOPA and the EC to discuss the scope of the Directive, the CEA expressed concern that insurers were not directly taken into account in EIOPA's draft response to the Commission's call for advice.

The second EIOPA consultation was launched at the end of October — with a later than expected deadline of 2 January — to which the CEA will respond.

To promote debate on the current pension issues, the CEA has organised two “Pensions for Breakfast” events in Brussels for a small number of industry representatives, both from the CEA and national associations, and some of the key players from the European Commission, Parliament and Council and EIOPA. At the first breakfast in July, the review of the IORP Directive unsurprisingly received particular attention and the CEA took the opportunity to share its key messages. A number of more “political” issues were also discussed, including the need to fully inform all working European citizens of their future pension entitlements and the possibility of developing “sustainability indicators” for all national pension systems in Europe. The second breakfast took place at the end of November with a similar agenda.

After successive delays, the EC is expected to publish its **White Paper on Pensions** in December.

Throughout the year the CEA coordinated with the Pan-European Insurance Forum (PEIF) to ensure common responses from the industry on pension issues.

Conclusions and strategy for 2012

2011 was a busy year on the pensions dossier. The CEA’s work proved relatively successful. Its overarching objectives on the review of the IORP Directive were picked up by the European Parliament in its report on the Green Paper on Pensions and the EC incorporated some of the CEA’s fundamental messages in its call for advice to EIOPA.

2012 will be a key year, as the comments and recommendations following the various consultations will serve as the basis for the EC’s final work on its proposal. One of the challenges will be ensuring that the voice of insurance is heard in EIOPA’s Occupational Pensions Stakeholder Group, where the views of pension funds outweigh those of insurance. It will likewise be vital to strengthen the CEA’s engagement with the EC, in view of its White Paper; with the European Parliament, which is likely to work on an own-initiative report on the White Paper; and with EIOPA, which will continue to be informally consulted in the run-up to the final EC proposal.

2012

The CEA will comment on the **White Paper on Pensions** as well as on the expected European Parliament’s report on the White Paper. On the **review of the IORP Directive**, the CEA will continue to call for similar principles for both insurers and other providers of similar products. A public hearing is expected to be organised by the EC early in the year (possibly in March), in which the CEA will participate, and the EC is expected to publish its proposals for a review of the Directive in the autumn.

The CEA plans to hold its third Pensions Breakfast in the first half of the year. It will continue its coordination with PEIF on areas of mutual interest and it will contribute to the OECD Working Party on Private Pensions.

The CEA intends to maintain and, if necessary, intensify its efforts to ensure a level regulatory playing field for insurers and IORPs. Following the publication by the Commission of its proposal for a revised IORP at the end of 2012, the CEA will participate in the EU legislative process.

2.7 Taxation issues

Action in 2011

Since the 2008–09 financial crisis, the question of a contribution by financial institutions to past and future crises has remained high on the agenda of Europe’s policymakers and politicians, and in February the EC issued a public consultation on **taxation of the financial sector**. In its response, the CEA repeated its well-rehearsed argument that the insurance industry was neither the source of the crisis nor the main recipient of subsequent government funds. It argued that insurance companies are not under-taxed, that core insurance activities do not generate systemic risks and that financial stability issues should be tackled by efficient supervision and appropriate regulation rather than taxation. The CEA reiterated those messages at a May meeting with the EC, alongside other financial sector representatives.

In September, in sharp contrast to what had been its position thus far, the EC nevertheless adopted a legislative proposal on the introduction of an EU-wide Financial Transaction Tax (FTT). Under the proposal, a large range of financial institutions — including (re)insurance companies — would be taxed. However, (re)insurance contracts are excluded. The CEA is currently analysing the proposal and developing a position.

The CEA engaged throughout 2011 in discussions with the European Council on the **draft Directive and Regulation on VAT on insurance and financial services**. It commented six times on the Council’s various compromise texts, focusing on the need to have a VAT exemption that covers the key functions of an insurance contract. The CEA succeeded in broadening the scope of VAT exemption in later Council texts, as the “risk pooling” element was deleted from the legal definition of insurance, while services provided by call centres was included within the intermediation exemption.

In May the CEA submitted its response to the European Commission’s December 2010 **Green Paper on the future of VAT**, in which it likewise stressed the need for a comprehensive exemption that reflects the nature of the insurance industry. Specifically, it argued that the exemption should cover both the outsourcing of component parts of the supply of insurance and intermediary services, especially those delivered by means other than traditional broker and agency channels. Moreover, the CEA argued in favour of the introduction of a pan-European VAT grouping and clarification on provisions regarding cost-sharing arrangements.

In the long-running debate on the **EC’s amended draft Directive on the Taxation of Savings** of 2008, the CEA has maintained — among other arguments — that existing reporting obligations should be taken into consideration. Therefore, when the European Council adopted a **Directive on Administrative Cooperation in the Field of Direct Taxation**, which covers the exchange of information between tax administrations on insurance products, the CEA immediately reiterated its concerns over the risk of duplication of reporting requirements in the two Directives, which could damage the competitiveness of the European insurance industry in comparison with non-EU financial centres.

In February the CEA took part in a meeting of the EC’s Expert Group on the Taxation of Savings at which the EC presented the preliminary conclusions of its study of the implementation costs of the existing Savings Taxation Directive. The study suggested,



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as advocated by the CEA, that the information the paying agents need to gather under the Directive is often already available through national legislation, internal business practices and even the Anti-Money Laundering Directive.

The CEA took part in a further meeting of the Experts Group in late October, having coordinated an industry position on the Directive.

The CEA continued to work on the implementing guidance for the **US Foreign Account Tax Compliance Act (FATCA)**. This was passed by Congress in March 2010 and is intended to ensure that the US tax authorities obtain information on US residents' foreign investments. The Act is due to come into force on 1 January 2013.

Throughout the year, the CEA continued to express its serious concerns over the implications of the Act for European insurers in meetings with the EC, the Hungarian and Polish EU Presidencies, the US Internal Revenue Service and Treasury and the US Mission to the EU. At the meetings and in written submissions, the CEA put forward its long-standing arguments that: the objective and design of a typical insurance product is very different from the type of business that the FATCA legislation targets and that European insurers are unable to comply with FATCA until data protection issues are resolved. A joint letter sent by the Council and the EC in March to the IRS reflected the CEA's view that FATCA disclosure and reporting requirements may conflict with a number of European countries' national laws on data protection.

The CEA replied in detail in June and October to an IRS notice on reporting obligations for pre-existing accounts, proposing a practical, risk-based approach that would minimise the administrative burden on insurers and the US administration. The CEA also recommended that the IRS/US Treasury focus on policies presenting the greatest risk of tax avoidance, so-called "segregated accounts with small protection", in other words insurance products with an investment component. Meetings were held with the EC and the US Mission to the EU in November to discuss the CEA's latest submission.

The CEA is also monitoring closely the proposal that the EU Savings Taxation Directive be used to comply with the FATCA obligations. Its position is to call for the same limited scope for both measures.

Long-running attempts in the US to change the rules covering **affiliated reinsurance tax** continued to give cause for concern in 2011. Their objective is to close a so-called "tax loophole" and impose a tax on reinsurance ceded by non-US companies to offshore affiliates. The issue's inclusion in President Obama's 2012 Budget prompted the CEA to write in March to the Committee on Ways and Means of the US House of Representatives and the Senate Committee on Finance, opposing its introduction on the grounds of its negative effects for US consumers and its violation of double-tax treaties and trade policy rules.

The CEA has maintained regular contact with the Commission on this topic, encouraging it to voice its opposition to the proposals. Prompted by the CEA's concerns, in September the EC wrote to the US Congress.

The CEA then strongly opposed the bills introduced in October into the US House of Representatives and Senate by Congressman Neal and Senator Menendez respectively. It issued a press release setting out its objections and co-signed a letter sent by the

Coalition for Competitive Insurance Rates to the Committee on Ways and Means of the House of Representatives and the Senate Committee on Finance.

At a Transatlantic Economic Council stakeholders meeting in mid-October, the CEA raised its concerns about the issue and in response the EC proposed to add the topic to the agenda of the mid-November Market Access Advisory Committee for discussion by the EC, EU member states and business representatives.

Conclusions and strategy for 2012

Although the EC's FTT proposal does not cover standard (re)insurance contracts, it does of course affect insurers as investors and will apply to products such as catastrophe bonds. Given the political will behind the proposal, it will be difficult to counter, despite the apparent lack of a universal appetite at international level for a global tax. The CEA's strategy will nevertheless be to be vociferous in its opposition to an EU FTT, mainly on the following grounds: efficient supervision and appropriate regulation are better ways to ensure financial stability than taxation; it is inappropriate to penalise the financial sector as a whole for risks arising mainly in the banking sector; and the insurance sector is not under-taxed.

On VAT, the latest definition of the VAT exempt services is not sufficiently robust. It does not keep pace with new developments within the insurance sector nor will it remove competitive distortions between insurance and financial services supplied in different EU member states and between EU and non-EU business. The CEA will therefore continue its lobbying in this area.

Despite opposition by the CEA to the proposal in the draft Savings Taxation Directive that the benefits from certain life insurance products be included in the scope of the taxation of cross-border interest payments, it seems likely that life insurance will remain within its scope. However, political negotiations on the Directive have stalled, largely due to opposition to agreeing a text before concluding similar agreements with non-EU countries.

FATCA remains a significant problem for European insurance companies, as its provisions are not well targeted and proportionate. The CEA is particularly concerned about the lack of insurance-specific guidance and regulations, and this problem is compounded by the data protection issues. Many of the CEA's key messages seem to be gaining traction with the US Treasury, which encouraged the CEA to come up with criteria to define an "insurance wrapper product". Since it is now certain that the Act will come into force in 2013, the CEA will seek to minimise the burden it places on European insurers.

The US bills on affiliated reinsurance tax can be enacted into law in three ways: through recommendation by the Joint Committee tasked with reducing the US government deficit, through reform of corporate law and as tax extenders to raise offsetting revenue for tax provisions that would otherwise expire at the end of 2011. Indications are that the bills are not on the Joint Committee list but the introduction of bills at this time and in both the House and the Senate is concerning. The Obama Budget Proposal of early 2011 was scored by the Joint Committee on Taxation as having a revenue raising potential of \$11.8bn over the next 10 years, making it an attractive option for inclusion.

2012

The EC proposal for a **Financial Transaction Tax** will be discussed in 2012 in the Council of the EU and in the European Parliament, which will give its opinion. Discussions on an FTT are also expected take place in international fora such as the G-20. The CEA will prepare a response to the EC's draft regulation and impact assessment, once published, and it will engage in both the EU and international debates.

The CEA will continue to contribute to the European Council discussions on **VAT on insurance and financial services**. In particular, in 2012 the CEA will focus its lobbying activities on ensuring that all functions that are specific and essential to the supply of an insurance contract are included in the VAT outsourcing exemption. Furthermore, the CEA will defend the view that the transfer of (re)insurance contracts should be included in the exemption.

On the longer-term issue of the future of VAT, the CEA intends to respond to the Commission's White Paper, which was expected to be published at the end of 2011 or in early 2012.

On the **Savings Taxation Directive**, the CEA will continue to convey its message that insurance products cannot be regarded as alternatives to savings products. The EC is expected to start negotiations with non-EU financial centres in order to conclude agreements that reflect the principles of the revised Directive and thus unlock the political stalemate on the Directive itself. The CEA will seek to ensure that a level regulatory playing field is maintained between EU and non-EU insurers. The EC is still seeking a provider to carry out its planned second study on the Directive. The CEA will monitor any progress on this tender.

The CEA will lobby to limit the impact of **FATCA** to insurance products that could present a high risk of tax avoidance. This work will take place particularly in the first half of the year, as the IRS is expected to issue draft regulations at the beginning of 2012 and final regulations in the summer.

The CEA will closely monitor the progress of the **affiliated reinsurance tax** bills in the US. It will strongly oppose the adoption of the proposals, continuing to use well-established arguments on: the violation of World Trade Organisation commitments, reduced competition and capacity in the US (re)insurance market, higher prices for US businesses and consumers, and the distortion of competition in the US market.



Strategic objective 3

Safeguarding insurability

Maintaining and enhancing an environment in which insurers can innovate, compete and grow.

3.1 Anti-discrimination

Action in 2011



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The CEA was heavily involved in the debate over the use of **gender** by insurers throughout the year, following the publication in September 2010 of the opinion of an Advocate General of the European Court of Justice (ECJ) on a gender case brought by the Belgian consumer association Test-Achats. The Advocate General concluded that insurers' use of risk factors based on sex in setting premiums and benefits was incompatible with European law on gender equality.

In parallel, the CEA also contributed to the ongoing discussions on the proposed **Anti-Discrimination Directive** on age and disability of 2008 and to the related **EC Dialogue on the use of age and disability in financial services**.

Ahead of the publication of the final ECJ ruling on the **Test-Achats case**, the CEA prepared a policy paper on the use of gender in insurance pricing containing qualitative and quantitative arguments against the obligation to use unisex tariffs. The ECJ ruling was issued on 1 March, invalidating from 21 December 2012 the current derogation in the 2004 Gender Directive that allows for sex-specific differences in premiums and benefits where gender is a determining risk factor. On the same day, the CEA published its policy paper and a press release regretting the detrimental impact the ruling is likely to have on consumers.

Afterwards, the CEA initiated an intensive campaign for legal certainty over the precise effect of the ruling, urging the EC to clarify as soon as possible that the ruling only applies to new contracts concluded as from 21 December 2012. The CEA also provided extensive explanation to the EC and other main players of the way that the ruling will affect how private insurance works and why, for technical reasons, it will result in detrimental consequences for consumers, including women.

As part of its campaign, the CEA met the cabinets of EC Vice-President Reding, Commissioner for Justice, Fundamental Rights and Citizenship, and of EU Commissioners Barnier, Dalli and Andor. The latter is responsible for employment, social affairs and inclusion and was targeted in the CEA's campaign because the EC White Paper on Pensions that was due in December was expected to address the gender gap. The CEA held meetings with other players in the anti-discrimination debate, including the European Network of Equality Bodies (Equinet) and the European Women's Lobby.

The CEA also pursued its lobbying campaign in the European Parliament. In May it took part in an exchange of views on the ECJ ruling in the Women's Rights and Gender Equality (FEMM) Committee, focusing on legal issues and the likely detrimental consequences of the ruling for women. The CEA followed up by liaising closely with key MEPs, assisting them to prepare parliamentary questions and letters to the relevant EU commissioners, which led Zita Gurmai MEP, the rapporteur on the EC report on the implementation of the Gender Directive, explicitly to support the CEA's call for legal certainty as soon as possible both orally and in her working document published in early November.

The CEA played an active part in the EC consultation on the follow-up to the ECJ ruling, participating in the EC Gender Forum meeting in June. Ahead of the meeting,

the CEA coordinated the industry's messages at European and national level, which helped achieve a consensus at the Forum between member states and key stakeholders on the application of the ECJ ruling only to new insurance contracts and on the need for urgent legal clarity. Following the meeting, the CEA sent written responses to the related EC questionnaire, adding that it welcomed the suggestion made by the European Insurance and Occupational Pensions Authority (EIOPA) and some member states during the Forum meeting of a substantial amendment to the Gender Directive, and urging the EC to ensure legal clarity through adequate guidance and a technical amendment to the Directive.

Over the summer, the CEA coordinated the preparations for a meeting organised by Commissioner Reding with invited insurance leaders. During this high-level meeting in September the Commissioner assured the industry that the EC guidelines would be published by the end of 2011 and would confirm the application of the ECJ ruling to new contracts only and not to renewals, but she ruled out any amendment to the Directive. She agreed with the CEA that the ruling does not prevent insurers from using gender in risk assessment, reserving and underwriting. The CEA followed up by meeting Commissioner Reding's cabinet again, explaining further the functioning of private insurance and the consequences of the ECJ Test-Achats ruling, including its effect on consumers. The CEA also hosted a press briefing in December to present the results of a study commissioned by the German association, the GDV, into the effects of the ruling. Zita Gurmai MEP participated in the briefing.

Concurrently, the discussions around the use of **age and disability** in financial services continued. In January the CEA met AGE Platform Europe to discuss age-related insurance issues and the EU and national solutions proposed by the NGO, such as a European code of conduct or intra-EU travel insurance.

At the spring **EC Dialogue** meeting, the CEA arranged presentations by a niche insurer on insurance solutions for senior citizens and by a national insurance ombudsman on dealing with customer complaints.

In parallel, discussions in the Council of the EU continued on the proposed Directive. The Hungarian EU Presidency issued a progress report in June, and the subsequent Polish Presidency then published during the summer a questionnaire on age as well as a consolidated version of the proposal. In light of the ECJ ruling on gender and the risk of spill-over to age and disability, the CEA prepared key messages that were used by national associations to lobby their relevant authorities. These also served as a basis for a CEA letter in September to the Polish Presidency and social attachés, which insisted on the need for absolute legal certainty on continuing to use age and disability in risk assessment and insurance pricing. The CEA stressed that, in order to ensure this, the provisions on insurance should not be constructed as a derogation to the prohibition to discriminate on these grounds and that the option allowing member states to choose should be deleted.

In October, the Polish Presidency issued a new compromise proposal taking the key CEA recommendations into account and thus improving significantly the legal certainty. The CEA subsequently submitted another set of comments. The Presidency issued its progress report in November, underlining that the majority of member states supported its drafting suggestions as a step in the right direction but that further improvements were needed.

These topics are also followed by the new EIOPA Insurance and Reinsurance Stakeholders' Group, which is chaired by CEA director general Michaela Koller and which is to create a dedicated anti-discrimination sub-group to work on discrimination issues.

Conclusions and strategy for 2012

Through intense lobbying directed at the various EC directorates, MEPs and stakeholders in the gender debate, the CEA believes, based on oral reassurances received, that it has succeeded in limiting the detrimental consequences of the ECJ ruling, avoiding in particular the retrospective application of the judgment to contracts concluded before 21 December 2012 that was sought by certain stakeholders, such as Test-Achats. Coordination by the CEA helped to achieve consensus at the Gender Forum on the need for urgent legal certainty and for the ruling only to apply to new contracts.

Once the EC guidelines are published, the CEA will concentrate its lobbying and communication on ensuring a coordinated understanding and implementation of the guidance by insurance companies and — even more importantly — on avoiding the Test-Achats ruling spreading to other factors relevant for risk assessment and insurance pricing. The CEA's key task will be to continue to raise awareness about the negative consequences for insurers — and therefore consumers — of a possible ban on the use of age or disability, and to coordinate CEA members' work to get their national authorities' clear support on avoiding cross-contamination.

2012

Following the publication of the EC guidelines on the implementation of the **ECJ ruling on gender**, the CEA will monitor the enforcement of the ruling, in cooperation with members, and will raise with the EC any gaps in legal clarity in view of the report on the implementation of the Test-Achats ruling that the Commission plans to issue in 2014. Should the EC convene another Gender Forum meeting to ensure consistent implementation of its guidelines across the EU, the CEA will participate.

The CEA will continue to lobby the European Parliament on legal certainty and to promote a better understanding of the functioning of private insurance ahead of the own-initiative report on the application of the Gender Directive that is planned in 2012. As a member of the EIOPA stakeholder group, the CEA will take part in the work of its anti-discrimination sub-group and will use this forum to convey its concerns over the ECJ ruling on gender and the risk it poses to the use of age and disability.

Regarding the draft **Anti-Discrimination Directive**, the CEA will seek to ensure that the incoming Danish EU Presidency takes the industry's concerns into consideration. The objective is primarily to avoid an explicit ban on the use of age and disability in risk assessment and pricing, but also to avoid a wording that could be legally challenged. The CEA will continue to stress that the current insurance business model is at stake; a model that ensures fair pricing and, thus, better access for consumers to voluntary

private insurance. In order to support CEA lobbying, the CEA will also commission an economic study to assess the impact of a ban on the use of age and disability.

The CEA will monitor any developments in relation to the future European Accessibility Act that is announced by the EC for autumn 2012 and based on the European Parliament Employment and Social Affairs Committee's report on mobility and the inclusion of people with disabilities.

Within the framework of the **EC Dialogue**, the CEA will also provide further explanations of how insurance works and why it is vital for insurers to continue using age and disability in risk assessment and pricing. The meeting expected at the beginning of 2012 should focus on disability.

As part of the designation of 2012 as the European Year of Active Ageing, the EC might use the Dialogue meeting to again suggest a code of conduct on age and disability and/or a basic voluntary EU travel policy without age limits and with no health coverage, as proposed by AGE Platform Europe. The CEA has already expressed scepticism about both proposals, and suggested to AGE a discussion of areas of common interest such as pensions or financial education and the provision of information on the ongoing social dialogue regarding the demographic challenge facing the European insurance sector.

3.2 Sustainability

Action in 2011



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Throughout the year, the CEA participated in discussions in various EU and international fora with the aim of increasing policymakers' understanding of natural catastrophe insurance and the need to share responsibility for sustainability among all interested parties, including governments, private business and the public. The CEA reiterated its position that there is no "one-size-fits-all" solution to the variety of natural catastrophe insurance needs in the EU.

The CEA maintained its participation in European Commission workshops and working groups, such as the **EC's steering group on adaptation to climate change**, which was formed in 2010 to carry out the objectives of the EC's Climate Change White Paper, and the **EC's working group on floods**.

The CEA attended the January meeting of the EC's Adaptation Steering Group, where it contributed to the insurance-related discussion. In line with the CEA position, the Group acknowledged that prevention and preparedness are very important to minimise the damage caused by the increasing frequency of natural catastrophes in Europe. The Group also recognised that solidarity could be more effectively addressed through existing policies and funding instruments, rather than insurance.

In March/April the CEA attended a two-day flood workshop hosted by the Hungarian EU Presidency, which discussed the development of a document to serve as a resource for preparing flood risk management plans throughout the EU and which will highlight the costs and benefits of flood management and the prioritisation of prevention measures. The CEA also provided written comments to clarify how (re)insurers cover flood risks and to underline the need for more constructive cooperation between government authorities, policymakers, the private sector and the public to strengthen flood prevention measures and increase access to flood risk data.

At a workshop on the EC's study into the "**Application of economic instruments for adaptation to climate change**" in June, the CEA stressed that insurers are not a tool for financing adaptation measures, but rather that they play an important role in risk management, transfer and awareness. For the study, the CEA also provided the EC with an overview of natural catastrophe insurance schemes in Europe, as well as a list of insurance penetration rates in various EU member states.

In July the CEA provided the Polish Chamber of Insurance with the combined contributions of members to feed into the Chamber's study for the Polish EU Presidency of natural catastrophe insurance cover. The study formed part of the basis for the Presidency's insurance and crisis management conference in October in Warsaw.

The CEA also participated as an expert speaker at the EC's October "**Prevention and Insurance of Natural Catastrophes**" conference. The CEA outlined the principles of insurability, highlighted the importance of public authorities enforcing risk prevention measures and stressed the need for free access to risk data. The conference — part of an in-depth examination by the EC's Internal Market and Services Directorate — brought together policymakers, regulators, consumers and (re)insurance experts.

To support the messages in its presentation, the CEA published a **position paper** on the insurance of natural catastrophes in Europe. This paper will form the basis for future lobbying actions at EU level on sustainable natural catastrophe insurance. In November the CEA also commented on the research paper of the EC's Joint Research Centre, which analysed natural catastrophe insurance cover in Europe and which was presented at the October EC conference.

On general sustainability issues, the CEA spoke at a regional consultation meeting of the United Nations Environment Programme Finance Initiative (UNEP FI) on **UNEP's principles for sustainable insurance** in October.

Conclusions and strategy for 2012

Through the CEA's consistent contribution to EC conferences and workshops it has maintained its role as a key stakeholder in the EU discussions on natural catastrophes and climate change. These events gave the CEA a chance to reiterate its key messages.

Most importantly, the CEA helped to influence the direction of the EC's October conference. Previously, the EC's examination of natural catastrophes in preparation for this conference focused on qualitative data collection and analysis, rather than the factors that might help improve insurability (ie greater access to widespread risk data or prevention measures). Through multiple meetings and contact with the EC, the CEA helped influence a shift in the conference agenda, which resulted in a focus more on the prevention of natural catastrophes than pure data collection. Moreover, the CEA informed EC officials and their consultants about the limits to insurance in this area — especially where risk insurance pricing or adaptation measures are concerned — when there is little or no cooperation from public authorities to encourage insurance take-up or risk prevention measures.

2012

In his concluding remarks at the EC's October 2011 conference, Commissioner Barnier announced his intention to open a consultation on European insurance cover for natural catastrophes which would also benchmark which national system is the most effective. Commissioner Barnier also announced a possible Green Paper to help decide whether EU legislation is required. If these actions go ahead, the CEA will participate in the consultation and submit comments on the Green Paper.

Multiple EU-wide studies concerning natural catastrophes and climate change are also currently taking place, including the EC's ongoing study into risk financing for adaptation measures (led by the Directorate General for Climate Action). Additionally, the CEA will continue to follow developments in the EC's floods working group and adaptation steering group. By remaining in contact with both organisations, the CEA will provide advice and expertise when insurance-related issues arise.

3.3 Liability issues

Action in 2011



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The CEA continued to lobby strongly in the European Parliament and at the European Commission against mandatory insurance schemes and to promote contractual freedom and flexibility in the insurance market.

In May the CEA submitted a response to the European Commission's October 2010 **Communication on offshore oil safety** and related EU debates and provided comments on the **public consultation on improving offshore safety, health and environment** by the EC's Energy Directorate (DG Energy). In both submissions, the CEA stressed that extension of environmental legislation, such as the Environmental Liability Directive (ELD), to offshore oil territories would have a negative impact on the insurance industry, operators, small and medium-sized businesses and citizens. The CEA also argued that a mandatory financial security scheme for oil spills is unfeasible because the scale of these events can far exceed the total financial capacity of insurers.

Following these submissions, the CEA met DG Energy in June to further outline its position and explain that offshore oil risks present a global problem more appropriately dealt with at international — rather than EU — level.

Nevertheless, the EC's Environment Directorate (DG Envi) announced in late October a **legislative proposal to extend the ELD** to pollution caused to all marine waters (the current legislation only covers coastal waters, which does not include offshore oil territories).

In a press release, the CEA stressed that this proposal could have unintended consequences by hindering the growth in ELD insurance products, as the current ELD insurance market is focused on onshore ELD risks and the risks of offshore oil and gas accidents exceed the global insurance capacity available.

DG Energy has the lead on financial security issues and will study the issue over the next year before reaching any conclusions.

In parallel, in the European Parliament, the CEA met the rapporteurs and other key MEPs of the Environment, Public Health and Food Safety (ENVI) Committee and the Industry, Research and Energy (ITRE) Committee. The CEA convinced the Parliament to soften the proposed language for its **Resolution concerning the safety of offshore oil and gas activities**, which initially proposed mandatory insurance for offshore oil risks. However, political pressure meant that the final Resolution adopted in September still included the introduction of some form of financial security legislation in addition to the proposed extension of the ELD to offshore territories.

As a result of its lobbying efforts, the CEA was invited to speak at the EC's annual ELD national experts meeting in November on developments in the European ELD insurance market. The CEA was likewise invited to contribute to the EC's 2011 ELD Stakeholder Workshop, also in November.

Moreover, the CEA was also invited to speak at a seminar on maritime safety — coordinated by the European Parliament in cooperation with the Conference of Peripheral and Maritime Regions of Europe — about the extension of the ELD to offshore waters.

With regard to international liability issues, the CEA continued its lobbying against Section 111 of the **US Medicare Act**, which requires liability insurers to report all claims they have paid to Medicare beneficiaries to the US Centres for Medicare and Medicaid Services (CMS). Failure to report can result in a penalty of \$1 000 a day. The Act's reporting requirements are in direct conflict with the privacy requirements of the EU Data Protection Directive.

The CEA is coordinating its lobbying with the foreign insurers taskforce of the American Insurance Association (AIA). The CEA played a key role in the taskforce's meeting with CMS in July, at which the CEA outlined the European data protection conflict. The CEA also joined the rest of the taskforce in arguing against CMS's lack of clear direction on what constitutes "doing business in the US", which could cause unlawful exercise of CMS's jurisdiction over foreign insurers. The taskforce suggested revised language for these criteria, which was prepared with significant input from CEA, particularly on data protection.

The CEA has also communicated its concerns to the EC's Justice and Internal Market and Services Directorates, as well as to the EC's Article 29 Working Party, which advises it on data protection issues. The CEA lobbied Sophie in 't Veld MEP to table a Parliamentary question in May asking how the EC would address this issue with US authorities and protect European insurers. With further support from the CEA, MEP In 't Veld then wrote to Commissioners Barnier and Reding in September asking about progress.

Conclusions and strategy for 2012

The CEA has established solid lobbying relationships with both DG Energy and DG Envi and is a key player in the offshore oil liability and ELD debates. Through ongoing meetings with both directorates, the CEA has drawn the EC's attention to the concerns of the European insurance industry regarding financial regulation of the offshore oil sector and strengthened the CEA's presence in the related debates. It has also begun outlining the difference between the standard ELD insurance market and the energy and marine insurance markets that cover offshore oil risk.

It has been fully engaged at international level on the US Medicare issue and has succeeded in drawing the attention of the EC and the European Parliament to the Medicare mandatory reporting scheme. It hopes that this will lead to a more constructive dialogue between the EU and the US on the issue.

2012

The CEA will continue to lobby against the introduction of mandatory insurance for offshore oil risks and will seek to ensure that any extension of the **ELD** to offshore oil territories does not have a negative effect on current ELD cover. The CEA will, in particular, address DG Energy's question about why mandatory insurance is possible in other sectors — such as motor insurance — and will aim to demonstrate that the global marine and energy insurance markets function best for offshore oil at a more international level. The CEA also aims to contribute comments and information to DG

Envi as it considers extending the scope of the ELD to offshore territories and to provide suggestions for how to ensure that there is no negative impact on the ELD insurance market if offshore oil risks are introduced into the ELD.

The EC is expected to review the issue of ELD mandatory financial security before its next scheduled ELD review in 2014. The CEA will therefore develop and present to DG Envi its arguments explaining why mandatory insurance is not feasible, as the ELD insurance market's current development and efficiency could be jeopardised by the stringent requirements and need for financial capacity often associated with mandatory initiatives.

As DG Energy has announced that the EC is favouring a multi-stage approach to its proposals on offshore oil safety, including financial security for associated risks, the CEA will continue to build its expertise to be prepared for any upcoming DG Energy activities. To further build its arguments against mandatory insurance, the CEA will maintain its contacts with the various marine and energy underwriting experts that it consulted for the 2011 meetings with the EC.

The CEA will also lobby the European Parliament against the EC's proposal to extend the ELD to all marine waters by highlighting its complexity and its potential to adversely affect the ELD insurance market.

With respect to the **US Medicare Act**, the CEA will remain committed to lobbying against CMS's pursuit of the initiative outside the US, as CMS had not yet modified its January 2012 deadline for mandatory reporting by all foreign liability insurers. The CEA will continue its attempts to engage the EC on the issue and to seek a dialogue between the EC and CMS about the industry's concerns. The CEA will also maintain its relationship with the AIA and its participation in the AIA foreign insurer taskforce.



Strategic objective 4

Championing best practice

Supporting appropriate and workable conduct of business and consumer protection rules.

4.1 Packaged retail investment products and IMD

Action in 2011



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During the first two months of 2011, the CEA finalised its position on the European Commission consultation documents on the **review of the Insurance Mediation Directive (IMD)** and on the **packaged retail investment products (PRIPs)** initiative that were published in November 2010.

At the end of January, the CEA submitted its response to the **PRIPs consultation**. Despite significant differences between members on the scope of the PRIPs initiative, the CEA reached a common position in its response, focusing on the complexities involved in defining the PRIPs scope and stressing the wide diversity in market conditions, products, competition and social and regulatory environments that exists in the EU. No agreement was, however, reached on what the exact scope of the PRIPs initiative should be, so discussions will return to this aspect once the EC proposal is published.

In relation to product disclosures, the CEA developed and proposed a more sophisticated version of its Key Information Checklist (KIC) for unit-linked life insurance, consisting of a short list of simple, clear information headings on key characteristics to help consumers understand and compare products. In contrast to the prescriptive one-size-fits-all Key Investor Information Document (KIID) for undertakings for collective investment in transferable securities (UCITS) that the Commission proposes to use as a benchmark for PRIPs disclosures, the checklist solution offered by the CEA KIC offers the flexibility needed to allow for innovation and adaptation to the needs, expectations, preferences and levels of financial understanding of local consumers, and to local law and product features, as well as to any changes in these fields.

In February the CEA submitted its contribution to the EC consultation on the **review of the IMD**. The CEA's key messages focused on the need for the revised IMD to recognise the diversity of insurance distribution markets and to be flexible enough to accommodate this diversity. As well as calling for a minimum harmonisation regime, the CEA stressed the need for a proportionate approach dependent on the type of distribution channel and the nature of the insurance products. The CEA also fine-tuned its set of six high-level principles on selling practices for all insurance contracts, which aim to guarantee consumers an appropriate level of protection and can be modulated according to the distribution channel, the demands and needs of the customer, the complexity of the product and the level of risk.

With regard to conflict of interest issues, the CEA pointed out that the existing rules under the current IMD and Solvency II provide a strong basis for mitigating any conflicts and that — should the Commission decide to build on them — conflicts can be prevented by the disclosure of a distributor's status. The CEA also made proposals on the mandatory disclosure of the nature and source of an intermediary's remuneration and enhanced transparency in general good rules in the interests of cross-border business.

The CEA met the EC's insurance unit regularly during 2011 to discuss the IMD review and present its position. Following a confidential request from the EC, the CEA informally provided its proposed amendments to the text of the current IMD in May, based on the CEA position. The EC responded positively to the CEA's input and its proposed structure

for the revised IMD, which national associations agreed to use as the basis for their lobbying of national and EU authorities.

The CEA was also in contact with PricewaterhouseCoopers (PwC) in relation to the study it carried on behalf of the EC on the impact of the IMD revision. The CEA provided PwC with CEA publications on distribution, as well as its key messages on the IMD. The study was published in November and the findings were in line with the CEA position on the extension of relevant information requirements to direct writers, disclosure of remuneration and conflicts of interest.

In July the CEA participated in an informal meeting with key EU stakeholders that was organised by the EC as part of its preparation of the impact assessment on the revision of the IMD. Following concerns raised by the CEA, the EC sent a revised questionnaire to all stakeholders, requesting data in order to assess the anticipated costs and benefits associated with the IMD revision. The CEA provided the EC with input at the beginning of September, which was based on data contained in the CEA's statistical publications and further feedback from members.

From September onwards, the CEA began analysing the draft revised Markets in Financial Instruments Directive (MiFID) rules on conduct of business, in view of the likelihood that the EC will use such rules as a guide when drafting the revised IMD chapter on selling practices for insurance products falling within the definition of PRIPs.

The CEA has ensured that it coordinates its work with that related to the discussions on information requirements in the ongoing review of the Institutions for Occupational Retirement Provision (IORP) Directive.

The CEA also continued to contribute to the work of the **International Association of Insurance Supervisors (IAIS) on draft core principles for insurance intermediaries and conduct of business**, presenting its views at the IAIS Market Conduct Subcommittee meetings in January and November. As a result, the IAIS has taken on board most of the CEA's key suggestions in its updated principles, such as recognising the need to take into account the diversity of markets in terms of tradition, culture, regulation and maturity when supervising conduct of business and intermediation. This is fully in line with the CEA position on the IMD revision.

Conclusions and strategy for 2012

In 2011 the CEA made considerable progress in its ongoing work on distribution and successfully reached a common position among members on both PRIPs and the IMD revision. As a result of the significant efforts of its distribution taskforce, the CEA was able to make concrete and constructive proposals to the EC regarding the content and structure of the revised IMD, and also proposed amendments to the text of the Directive to the EC. In addition, the CEA was able to make positive proposals on product disclosures for PRIPs thanks to the revised version of its KIC that was developed through the work of its expert group on disclosures.

This has allowed the CEA to engage in further constructive dialogue with the EC on distribution issues and provides a strong basis for its lobbying activities in 2012 when the relevant legislative instruments are published. Once published, further

efforts will be necessary to achieve a common position among members on the PRIPs scope, which has yet to be precisely defined by the EC.

In 2012 it will be vital that the CEA maintains a firmly unified approach and that members uphold the agreed CEA position, as the lobbying activities of other interest groups, such as insurance intermediaries, asset managers and consumer associations, will — with different objectives in mind — reinforce the pressure to have a so-called level playing field with excessive protection rules, thereby threatening the treatment of the specific characteristics of the insurance market.

2012

In early 2012 the EC will publish its **PRIPs initiative** on pre-contractual disclosures and its **proposal for a revised IMD**, along with UCITS V, as part of the “EC retail package”. The EC will also publish its impact assessment on the IMD revision. The CEA will examine and comment on the EC proposals and impact assessments once they are published.

The legislative process for the revision of the IMD and the initiative on PRIPs disclosures will also begin in 2012, following the one on MiFID that began at the end of 2011, and the CEA will turn its lobbying focus towards the European Parliament and the Council to ensure that the industry’s interests are taken into account. Disclosures and conduct of business rules are expected to be the most controversial areas of negotiation — in particular conflict of interest rules, transparency and rules on advice.

The CEA will also engage in discussions with the European Insurance and Occupational Pensions Authority (EIOPA) to exchange views on planned actions, particularly regarding any implementing measures that EIOPA is asked to prepare for the revised IMD.

On information requirements, the CEA will examine any potential overlap of requirements with other legislative initiatives, such as the review of the IORP Directive. The CEA will continue to liaise on both workstreams to ensure full coordination and consistency.

The CEA will also continue to monitor the work of the IAIS on conduct of business and consumer protection rules throughout the year.

4.2 Insurance guarantee schemes

Action in 2011

The CEA's actions on **insurance guarantee schemes (IGS)** focused on the European Parliament, where an own-initiative report by Peter Skinner MEP began to be discussed by the lead Economic and Monetary Affairs (ECON) Committee in February, and on which the Internal Market and Consumer Protection (IMCO) Committee prepared an opinion.

Contrary to the CEA's position, the draft ECON report supported an EU legislative initiative on IGS as proposed by the European Commission's White Paper of July 2010. The draft also proposed that IGS should cover life and non-life insurance, full compensation, the extension of IGS coverage to fraudulent insurance activities and intermediary mis-selling, putting further strains on concentrated markets. However, in line with the CEA's views, the draft favoured a minimum harmonisation Directive introducing IGS in all national markets and argued for geographical scope to be based on the home-state approach and the principle of subsidiarity for IGS funding.

The CEA met the rapporteurs, shadows, coordinators and key MEPs of both Parliamentary committees in order to present the industry's position and concerns. In particular, the CEA explained the differences between banking and insurance, and that the Solvency II Directive will further enhance the protection of insurance consumers. It called for Solvency II's full implementation before additional layers of protection are considered at EU level.

In April IMCO adopted its opinion on IGS. While calling for minimum harmonisation at EU level, the IMCO opinion suggested aligning the future legislation on IGS with the one on deposit guarantee schemes in banking, which the CEA always opposed. However, IMCO did call for the EC to take an approach consistent with Solvency II, and to treat IGS as a last-resort mechanism after taking into account existing alternatives, which the CEA welcomes. Following the CEA's lobbying, IMCO requested a full impact assessment on funding and for additional strains on insurers and concentrated markets to be avoided.

In the ECON Committee report, the most controversial points related to product scope, ie life vs. non-life, and to funding methods and amounts, which the CEA wanted to be left to member states' discretion. Although initially the CEA faced very little support for its positions, it managed to engage in constructive discussions with key MEPs, commenting on proposed and compromise amendments, providing evidence-based arguments illustrating IGS costs — particularly for concentrated markets — and demonstrating the need for a minimum harmonisation approach because of the diversity in EU markets.

The CEA's lobbying and its coordination of members' activities were successful, leading to a significant improvement in the final ECON report compared to the initial draft. The final opinion, on which ECON voted on 15 July, stressed the complexity of the issue and called on the EC and the European Insurance and Occupational Pensions Authority (EIOPA) to consider any future step on IGS very carefully. ECON called for an urgent impact assessment and public consultation on the inclusion of life insurance and on the practicality of including non-life insurance, highlighting that deposit guarantee schemes and investor protection schemes only cover saving products.



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Furthermore, in line with the CEA's position, ECON asked the EC to revise its preference for *ex-ante* funding and agreed with the CEA that funding is a matter of subsidiarity. It also took on board the CEA's arguments that eligible claimants should only be natural persons; the inclusion of legal persons being at member states' discretion. It agreed that the scope of any Directive should not be widened to insurers' or intermediaries' mis-selling and fraudulent activities. MEPs also shared the CEA's view that markets differ in size and concentration and that additional strain on already concentrated markets must be avoided. The report was adopted by the European Parliament in October.

The EC published a summary of the responses received on its **2010 White Paper on IGS** at the beginning of 2011. According to the EC, a majority of respondents favoured a minimum harmonisation Directive imposing IGS at national level, covering both life and non-life insurance and based on *ex-ante* funding, contrary to the CEA's line. However, the EC decided in May to postpone the adoption of its proposal on IGS from December 2011 until the end of 2012. At the same time, the EC decided to transfer the technical management of the dossier from the insurance unit to the newly created financial stability unit in the Internal Market and Services Directorate General.

Conclusions and strategy for 2012

The likelihood of the European Parliament coming forward with an excessively consumer-friendly report on IGS was always strong. However, with the support of its members, the CEA succeeded in organising a well coordinated lobby approach to this; bringing most of the report's conclusions into line with the European industry's interests. The content of the final report is much more balanced than the initial draft and quite critical of the proposals set out in the EC's White Paper.

It remains to be seen to what extent the EC will take the Parliament's report into consideration when drafting its proposed legislation on IGS in 2012.

2012

The CEA will focus its activities on ensuring that the EC takes adequate account of the CEA and Parliament concerns in any legislative initiative on IGS, and that the specific characteristics of insurance are duly considered. It is expected that the EC will take advantage of the postponement of its **legislation on IGS** until the end of 2012 to fine-tune its impact assessment and the technical and legal details of its proposal. The CEA will therefore continue liaising closely with the Commission, both with the financial stability unit, which is now leading on the file, and with the insurance unit, which is expected to cooperate on the drafting of the legislation.

The CEA will seek to ensure that, if an initiative is unavoidable, the minimum harmonisation approach is kept for the setting-up, the functioning, the scope of protection (both personal and product) and the funding of any IGS. The CEA will also insist that the EC produces an impact assessment of very high quality, evaluating thoroughly the impact of the design options selected by the EC on all types of EU markets.

The CEA will particularly focus on avoiding too tight a parallel between the revised deposit guarantee schemes and investment compensation schemes directives and the

initiative on IGS. The risk of spill-over is even greater now that the same unit of the Commission is responsible for all three dossiers. The CEA will therefore continue raising EC awareness about the differences between the banking, investment and insurance sectors and their respective consumers' specific needs, and will seek EIOPA's support in this endeavour.

The CEA will liaise with EIOPA and its IGS taskforce, which reports to the new EIOPA Committee on Consumer Protection and Financial Innovation. The EIOPA Regulation allows EIOPA to contribute to the assessment of the need for a European network of national IGS that is adequately funded and sufficiently harmonised, and the EC is expected to request EIOPA's support in the preparation of its future legislation.

The CEA expects to devote the end of 2012 to its analysis of the legal and economic aspects of the EC legislative proposal and its impact assessment and to starting its lobbying of the European Parliament and Council. The latter will require close coordination of activities with CEA members.

The CEA will also monitor **developments on IGS at international level** as both the Organisation for Economic Co-operation and Development (OECD) and the International Association of Insurance Supervisors (IAIS) have the issue of policyholder protection schemes on their agenda in 2012.

In particular, the IAIS Market Conduct Sub-Committee plans to produce a concept paper on IGS by June 2013. The paper should focus on consumer protection and it is not clear at this stage whether the IAIS mandate is limited to listing various IGS design options and practices or whether it goes further and would allow the IAIS to issue, for instance, IGS guidelines or standards. The CEA will therefore participate in the IAIS work in its capacity as observer and build alliances with other stakeholders as necessary to ensure that the interests of the European insurance industry are well protected and that the IAIS work does not contradict the reflections and work at EU level.

4.3 ADR and collective redress

Action in 2011



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At the beginning of 2011 the European Commission launched two inter-related consultation papers to which the CEA contributed: one on the use of **alternative dispute resolution (ADR)** and one entitled “Towards a Coherent European Approach to **Collective Redress**”. The CEA also monitored the subsequent developments in the European Parliament and provided input on the own-initiative reports on ADR and collective redress. ADR was identified as one of the key areas of the EC Communication on the Single Market Act published in April.

In its response to the March consultation on **ADR**, the CEA emphasised its support for conciliatory solutions to dispute settlement since — in comparison to court procedures — they are flexible, cheap, fast and less confrontational, and stressed that this is preferable for consumers. The CEA further highlighted the industry’s strong involvement in existing ADR schemes such as FIN-NET, the EC’s financial dispute resolution network. However, it emphasised the importance of improving consumer awareness of existing ADR mechanisms and suggested ways to achieve this.

In parallel, the CEA responded to the EC consultation on **collective redress**, which closed in April. The CEA stressed that there is no evidence to support the need for an EU-wide collective redress system. In any event, it would usually not be appropriate in insurance disputes due to the lack of homogeneity among insurance claims. Since the introduction of an EU collective redress system cannot be excluded, the CEA already called for safeguards to be included in any future system. These include an “opt-in” system governed by the “loser pays” principle whereby claimants are represented by a designated non-profit organisation permitted to bring such actions. The judge should be empowered to admit or deny the collective status of a claim and there should be a separate certification procedure before a collective action can be launched. Likewise, to prevent a litigation culture developing, the CEA has lobbied for the avoidance of features such as punitive damages, recovery of unlawful profits, contingency fees and a financing fund for future claims in any future scheme.

Before the summer, the European Parliament started drafting own-initiative reports on ADR and collective redress aimed at influencing the upcoming EC proposals on these topics. The CEA therefore met several MEPs to discuss the draft reports and opinions issued in the committees involved and to convey its key messages.

In terms of lobbying strategy, it was decided that the CEA should maintain a positive stance on any ADR initiatives and concentrate its efforts on preventing collective redress. The draft report on collective redress presented by the lead rapporteur in the Legal Affairs (JURI) Committee did not raise any concerns as it was broadly in line with CEA’s position. However, the CEA sent to relevant MEPs amendment suggestions and comments on the amendments tabled in both the JURI and the Internal Market and Consumer Protection (IMCO) Committees on collective redress. Broadly, it supported amendments highlighting the lack of evidence of a need for an EU collective redress scheme and the need to encourage the use of ADR. It questioned those amendments that might create an incentive for unmeritorious claims.

The CEA monitored the development of further draft opinions that were issued in the Economic and Monetary Affairs (ECON) and the Industry, Research and Energy Committees but they did not contain any critical proposals.

The European Parliament adopted the ADR report in plenary in October and is expected to adopt the collective redress report in February 2012.

The EC published its ADR package in late November, comprising a Communication and draft Directive on ADR and a draft Regulation on online dispute resolution (ODR).

At a high-level meeting with insurance leaders organised by EC Vice-President Reding (see p34) on 21 September, the Vice-President noted the industry's concerns over collective redress and reassured the leaders that any EU legislative initiative would not turn into a US class action system and that appropriate safeguards would be implemented. On the ADR dossier, she plans to complement Commissioner Dalli's legislative proposal on ADR for consumer disputes with business with one for business to business disputes.

Conclusions and strategy for 2012

Throughout 2011 the CEA contributed to the EC's consultations on ADR and collective redress and lobbied relevant MEPs. The CEA's contacts with the latter in particular have proved fruitful, as many amendments tabled in the various Parliamentary committees reflected the CEA's position. However, as many MEPs still support the introduction of an EU-wide collective redress scheme with an extended scope, the CEA will continue to monitor developments in the Parliament and to lobby in line with member-wide support.

The EC Communication on general principles on collective redress is expected in February or March 2012, with possible EC legislative proposals also in 2012. This will give the CEA the opportunity to fine-tune its position, as work to date has shown a need to review certain aspects.

The CEA's aim will be to ensure that the industry's messages on ADR and collective redress are conveyed in as coordinated a manner as possible for maximum effect.

2012

The focus of the year will be the follow-up to — and the issuance of — EC legislative and related initiatives on both **ADR** and **collective redress**. The CEA will continue to seek to communicate members' concerns and suggestions in order to influence the final outcomes on both topics. In particular, collective redress provisions relating to legal expenses insurers will be carefully considered in the light of the difficulties the CEA had in autumn 2011 reaching a consensus between members on the extent to which they will be able to support the financing of EU-wide collective redress actions. The industry's ability to underwrite this market will depend on the design of any future scheme.

Similarly, the CEA will need to lobby for the avoidance of an extensive scope for any collective redress system, as proposed by some MEPs, and for the introduction of relevant safeguards. Commissioner Almunia, who is in charge of competition policy,

has already expressed his willingness to have a legislative proposal on collective redress in anti-trust in 2012.

Regarding ADR, if a legislative proposal on business to business is indeed published as suggested by Vice-President Reding, this might raise concerns, as some CEA members support an ADR system limited to consumer disputes. The potential consequences of such an initiative for the insurance sector will need to be carefully analysed.

The CEA's key objectives will be to prevent the creation of a litigation culture by avoiding the creation of an EU-wide collective redress scheme or, should there be such a scheme, by ensuring that sufficient safeguards are introduced, and to continue promoting ADR as a valuable alternative to judicial proceedings for consumers.



Strategic objective 5

Meeting members' needs

Satisfying members' service and information requirements in the most comprehensive and cost-effective way possible.

Action in 2011



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The CEA revised its **statutes** in two key areas during the year. Firstly, changes were made to the governance structure to reduce the administrative process related to the legal requirements for the CEA's executive bodies. More importantly, changes now entitle members to proportionate voting rights in line with the CEA membership contribution system.

The new **membership structure** approved by the General Assembly on 15 December 2010 has proved effective for assessing requests for CEA membership. The new structure consists of three categories: full members, associate members and partners. In 2011 the General Assembly approved the membership of San Marino and Serbia as associate members and Kosovo as a partner. Following the regrettable termination of Lithuania's membership, the CEA currently has 32 full members, two associate members and three partners.

The CEA also consolidated the **restructuring of the secretariat** that was initiated in 2010 following member, stakeholder and staff satisfaction surveys. The secretariat is now able to respond more quickly and flexibly to both European and international issues and to place its work in a broader, macro-economic context.

Following the approval of the Executive Committee to **relocate the secretariat** to a new office building in spring 2012, a nine-year rental contract was signed for a building in the EU area and work began on the relocation project. The improved workspaces and upgraded technology in the new offices should create workflow efficiencies.

The CEA office move is a **joint relocation with a number of CEA members**. Not only will this increase and enhance the profile of the European insurance industry, it will also allow greater coordination between the CEA secretariat and its members. The new office also includes a "shared desk" area, which will allow representatives of national associations to temporarily install offices in Brussels and increase liaison with the CEA secretariat.

To coincide with the relocation, the CEA will change its name to **Insurance Europe** and introduce a full, new **corporate rebranding** (see p8). The CEA statutes were due to be amended to reflect the change of address and name change at the December 2011 General Assembly.

Conclusions and strategy for 2012

The CEA will continue to identify ways to improve the secretariat's timely, focused and coordinated responses to members' priority issues. With this in mind, the CEA discussed with the November Executive Committee options for adjusting the CEA's working bodies.

The European Insurance and Occupational Pensions Authority is planning significant increases to its resources during 2012 and beyond. To enable the CEA to respond to the greater workflow that will result, the industry has agreed to a budget increase for the CEA in 2012, which will lead to a strengthened secretariat.

Likewise, the growing number of initiatives at international level that affect the insurance industry have made it important to formalise the existing loose network of international insurance associations, INIA. By creating the proposed International Federation of Insurance Associations, IFIA, the coordination of industry messages at global level will be improved. As the representative of the world's largest insurance market, the CEA will seek to play a leading role in IFIA.

2012

In the early part of the year, the fitting out of the **new CEA office** will continue, as will the work on its **corporate rebranding**. The members and meeting rooms will relocate in February, with the CEA secretariat following in March. Promotion around the relocation and rebranding will be carried out.

The CEA proposes to carry out a further **member, stakeholder and staff satisfaction survey** a year after its relocation.

Following the approval of the November 2011 Executive Committee, the CEA will improve its **committee structure** by establishing an Investment Steering Group, given the increased activity by EU regulators in this area. The CEA will also develop the role of the Statistics Committee to support the secretariat's work on economic and macro-economic issues. As agreed by the Executive Committee, its name has been changed to the Economics and Statistics Committee.



Annex

2011 activity report on previous priorities*

* Annex covers work done on issues that were identified as priorities in the 2010 Action Plan and thus is not an exhaustive list of all areas of CEA work.

Alternative Investment Fund Managers (AIFM) Directive

The CEA continued its lobbying on the liability aspects of the Alternative Investment Fund Managers (AIFM) Directive in 2011. In January the CEA sent comments on professional indemnity insurance for fund managers for the Level 2 implementing measures of the AIFM Directive to the European Securities and Market Authority (ESMA). The comments applied to Article 9 of the Directive, which requires fund managers to have either additional own funds or professional indemnity insurance to cover their potential liabilities arising from professional negligence. ESMA requested the input in order to prepare its technical advice for the European Commission on the Level 2 measures.

The CEA set out the risks that are covered by professional indemnity policies, stressing that such insurance is not a financial guarantee for intentionally negligent acts by the fund managers or investment losses unrelated to professional negligence (eg fluctuations in the market, arbitrary investment decisions). To back its call for flexible measures, the CEA highlighted the complexity of AIFM risk profiles and the difficulty of standardising AIFM risks. Moreover, the CEA stressed that conditions of insurance and adjustments to levels of cover should be decided by the AIFMs themselves and that the implementing measures should remain broad.

The CEA reiterated these messages in its September response to ESMA's consultation on its draft advice to the EC. In November, the CEA also sent the European Insurance and Occupational Pensions Authority a summary of its key messages on Article 9 of the Directive, which noted that ESMA had included in its final technical advice the risk of "misrepresentation and misleading statements" as one to be covered by professional indemnity insurance. In addition to the concerns expressed to ESMA, the CEA asserted that this risk constitutes a fraudulent act that is commonly excluded from professional indemnity policies.

The CEA will review the follow-up to ESMA's final advice that was delivered to the European Commission in November to assess whether further comments are necessary.

Consumer Rights Directive

The CEA's actions on the Consumer Rights Directive focussed on the European Parliament, where the Internal Market and Consumer Protection (IMCO) Committee prepared a report on the draft Directive. In January the CEA sent a suggested voting list and written comments to key members of the IMCO Committee.

The Council of the EU agreed on a general approach in January, while the European Parliament's IMCO Committee adopted its report in February. In line with the CEA position, the IMCO report excluded financial services from the provisions on withdrawal rights for on-premises contracts and for off-premises contracts and withdrawal rights.

The CEA repeatedly expressed its strong concerns about the non-exhaustive lists of terms considered unfair in all circumstances (black list) and the list of terms presumed to be unfair (grey list) that were proposed. If member states were to be entitled to add terms to the lists, the black and grey lists would then vary from one market to another, making it legally uncertain, costly and burdensome for businesses, including retail insurers, to operate cross-border. The CEA was therefore pleased that the negotiations between the European Parliament and the Council to reach agreement on the text at

first reading included the possible deletion of the chapter of the Directive that deals with contract terms.

The European Parliament and the Council reached agreement on the text in June. The final text reflects key CEA views, including the explicit exclusion of financial services from the scope of the proposed Directive and from its provisions on consumer information, and the withdrawal right for off-premises contracts and inertia selling. The proposed Directive now encourages EU member states to draw inspiration from existing EU legislation on financial services to ensure a level playing field for all consumers and all financial services contracts. The CEA also welcomed the fact that the chapter on unfair contract terms and the provisions on liability — which initially required traders to be strictly liable for nonconformity with a contract (ie regardless of actual fault) — have been fully removed from the text .



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