

CEA Action Plan 2011



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Introduction



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As in 2010, the European insurance industry will yet again face a wide variety of regulatory challenges in 2011.

In Europe itself, the new supervisory regime comes into effect at the start of the year. Also high on the agenda are the all-important Level 2 implementing measures for the forthcoming Solvency II regulatory regime, as well as the Level 3 measures and the future Omnibus II Directive, which will not only bring Solvency II into line with the Lisbon Treaty but is also intended to extend the scope of the transitional measures of the new regime.

Conservative regulatory reactions to the ongoing economic turmoil, together with the risks of spillover from banking regulation will continue to be the main challenges and priority workstreams for the secretariat this year.

Beyond Europe, initiatives launched by the G-20, the work of the Financial Stability Board on stability issues and the workstreams of the International Association of Insurance Supervisors (IAIS) all aim to develop an (additional) supervisory toolkit for use by all national supervisors, thus potentially resulting in a supplementary layer of supervisory obligations. This means that measures that were originally developed mainly with globally and internationally active companies in mind might well have an impact on “national champions” as well.

As governments seek ways not only to make the financial services sector pay for past and future economic crises but also to bolster their post-crisis fiscal reserves, the various proposals for a tax on the financial sector will undoubtedly be much discussed in 2011. The CEA will continue to argue against the inclusion of core insurance business in any tax proposals and in favour of systemically relevant risks being managed by micro-prudential regulation.

World gross domestic product (GDP) — 2008–2011 (%change)

	Projections			
	2008	2009	2010	2011
World	2.8	-0.6	4.8	4.2
Advanced economies	0.2	-3.2	2.7	2.2
Euro area	0.5	-4.1	1.7	1.5
<i>of which</i>				
Germany	1.0	-4.7	3.3	2.0
France	0.1	-2.5	1.6	1.6
Italy	-1.3	-5.0	1.0	1.0
Spain	0.9	-3.7	-0.3	0.7
UK	-0.1	-4.9	1.7	2.0
USA	0.0	-2.6	2.6	2.3
Canada	0.5	-2.5	3.1	2.7
Japan	-1.2	-5.2	2.8	1.5
Industrialised Asian economies	1.8	-0.9	7.8	4.5
Emerging and developing economies	6.0	2.5	7.1	6.4
Central and eastern Europe	3.0	-3.6	3.7	3.1
Commonwealth of Independent States	5.3	-6.5	4.3	4.6
Developing Asia	7.7	6.9	9.4	8.4
<i>of which</i>				
China	9.6	9.1	10.5	9.6
India	6.4	5.7	9.7	8.4
Latin America and the Caribbean	4.3	-1.7	5.7	4.0
Middle East and North Africa	5.0	2.0	4.1	5.1
Sub-Saharan Africa	5.5	2.6	5.0	5.5

Source: International Monetary Fund, World Economic Outlook Database, October 2010

This year will be a busy one on accounting issues, since the International Accounting Standards Board has expressed its intention to complete all its existing major projects on international financial reporting standards (IFRS) in 2011. These include the insurance contract project (IFRS 4 Phase II) and all phases of IFRS 9, which replaces IAS 39 on financial instruments.

Level regulatory playing field issues and initiatives related to consumer protection will also be to the fore in 2011. This will be particularly true at EU level, given the European Commission's consultations on the revision of the Insurance Mediation Directive and on packaged retail investment products, as well as the expected White Paper on pensions and the likely Directive on insurance guarantee schemes.

Pensions will loom particularly large on the agenda of European governments this year, due to the pressure on their budgets and the activity at EU level. It will be vital to work towards joint industry messages on pension issues and the CEA will continue its close coordination with the Pan-European Insurance Forum in this area. The CEA is working on a common understanding of what constitutes "pensions", which it believes is important both for this and related debates.

The CEA will also engage in and respond to the various strands of the ongoing anti-discrimination debate this year; the draft Anti-discrimination Directive, the European Court of Justice judgment in the Test-Achats case and the Commission's report on the implementation of the Gender Directive.

Climate change — an issue of personal interest to Internal Market and Services Commissioner Barnier — will be another key workstream for the secretariat, which will seek to ensure that the role of the insurance industry in adaptation and mitigation activities is correctly understood.

Increased prioritisation

Members have expressed a wish for the CEA to focus more of its resources on a smaller number of the absolutely key lobbying issues for the European industry. This message came through clearly in the satisfaction survey carried out by the CEA in early 2010.

In response to this request, the CEA has improved the prioritisation of its lobbying and has restructured the secretariat to ensure that its resources are used in the most efficient and flexible way. Given the increasingly broad, macro-economic nature of the issues with which the CEA is dealing — as described above — this restructuring is also intended to improve the CEA's ability to place its lobbying messages in a wider economic context.

Alongside this increased prioritisation, the CEA will naturally continue to monitor and react to all other relevant issues affecting European insurers. While challenges remain in dealing with the significant number of current and future workstreams, the CEA believes that its restructuring will ensure the optimal use of its resources.

To reflect the CEA's increased prioritisation, this year's Action Plan has been streamlined to focus on key issues. An annex has been included to report on the work that was done in 2010 on the issues that were identified as priorities in the 2010 Action Plan but no longer appear in the main section of this Plan. The annex is therefore not an exhaustive list of all the areas on which the CEA has worked in 2010 or of all the areas on which it will work in 2011.



Strategic objective 1

Enhancing the industry's reputation

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

Action in 2010



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The CEA's **lobbying approach** in 2010 continued to be strongly influenced by the economic crisis. This created the serious challenge for the insurance sector of distinguishing itself from other sectors, as various regulatory initiatives read across from other financial sectors into insurance. The second major challenge was to counter incidents of regulatory/supervisory overreaction as a result of the crisis.

In light of this, a new strand to the CEA's lobbying and communication strategy in 2010 was the production of two **strategic reports**, one on the potential impact of excessive capital requirements to use in discussions on the Solvency II implementing measures and one analysing the differences between insurance and banking to supplement the CEA's arguments in the debates on post-crisis initiatives.

Good coordination with members through the CEA's communications and PR network resulted in significant coverage of the excessive capital report in the media. In addition to the press activity by the CEA, national associations supported the campaign with their own statements and interviews, together with translations of the report. Well over 80 articles on the report appeared in Europe's national and trade press and traffic to the CEA website saw a 45% spike, month on month, in the week of publication. The European Commission and the Committee of European Insurance and Occupational Pensions Supervisors (Ceioops) reportedly faced significant questioning from the media as a direct result of the report, which was also cited during a European Parliament workshop on Solvency II.

As expected, the report on the differences between insurance and banking received less press attention but has been and will continue to be a useful tool in the CEA's lobbying efforts in a number of areas. Other **publications** produced during the year included a report on the insurance industry's contribution to the mitigation of and adaptation to climate change; an analysis of insurance distribution channels; the Annual Report; the annual European Insurance in Figures and Key Facts statistical reports; and an analysis of market trends and developments in the motor market.

The motor report was launched at the CEA's second **Motor Conference**, which was held in Brussels in March and attracted over 100 participants. The conference focused on customer service issues, cross-border business and road safety. The other CEA event in 2010 was the second **International Conference** in London. Building on the success of the first conference in 2009, the event attracted 300 insurance industry representatives, regulators, policymakers, analysts and media from around the world to hear panels of CEOs, regulators and consumer representatives debate the future direction of the insurance market.

The CEA also continued to communicate its key messages through **press releases and interviews**, as well as making **speeches and presentations** at key industry events throughout the year.

Finally, significant work was done in the latter months of the year to redesign and restructure the **CEA's website**, which was last redesigned in 2007 and is now both outdated and unsuited to the CEA's communication needs. The website will be relaunched in early 2011.

Conclusions and strategy for 2011

New initiatives to strengthen financial stability (finding regulatory responses to systemic risk, “resolution” mechanisms, etc.) are on the global and EU agenda for 2011, in addition to the CEA’s existing priorities such as the Solvency II implementing measures, packaged retail investment products (PRIPs) and pensions. The CEA will need to ensure coherency in its lobbying on these various initiatives given the close links between them. The risk of further regulatory spillover between financial sectors will in all likelihood remain, at least to a certain extent. For this reason, the CEA will deepen its lobbying messages to avoid any unnecessary and damaging consequences to the industry of legislation at both EU and international level.

The strategic report on excessive capital requirements clearly demonstrated the value that can be added to our lobbying efforts by coordinating communication campaigns with members to deliver the right messages at the right time. Resources permitting, the CEA will seek to repeat such exercises on key dossiers. The approval for the recruitment of a senior economist to develop macro-economic lobbying arguments is vital in this regard.

After hosting two international conferences, we are convinced that there is an appetite for such an event and we propose to develop this into a major fixture in the industry’s annual conference calendar. While the CEA will continue to hold other events, these will be scheduled on an *ad hoc* basis to ensure that they are driven by current issues and aligned with the CEA’s lobbying objectives.

The CEA will, of course, continue its programme of pro-active and reactive media activity, although extensive and consistent engagement with the media is limited by the CPR team also being responsible for member communications, events, publications and the CEA website, Extranet and documentation centre.

2011

The CEA will identify lobbying issues that can benefit from the support of **strategic reports or research**. One area already identified is the difficulties SMEs will face in complying with Solvency II. A report commissioned in late 2010 to identify the elements that need to be included in the Solvency II regime to make it workable for SMEs will be published in early 2011.

Another **publication** planned for early 2011 is a booklet on national associations’ initiatives in financial education and awareness. This was originally planned for late 2010 but postponed due to a lack of activity at EU level in this area.

The CEA will continue to build on the work initiated in 2010 to develop the **Communications and PR Committee** into a more active network for the coordination of media campaigns and the sharing of best practice.

As mentioned above, the CEA’s **new website** will also be launched in early 2011, with improved navigation and a more dynamic homepage.

The CEA's third **International Conference** will be held in Athens, Greece on 16 June and will follow a similar format of keynote speeches and panel debates to that which proved popular in previous years. No other conferences are currently scheduled but opportunities for targeted and relevant events will be closely monitored and CEA representatives will continue to speak at and attend relevant external conferences to put forward the views of the industry.

2012–2013

The CEA's strategy for enhancing the industry's reputation is the cornerstone of its work and as such will remain its key focus in future years.



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 Post-crisis initiatives

2.1.1 Global standard-setting initiatives

Action in 2010



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The CEA monitored and contributed to **G-20-initiated developments** at both G-20 level — submitting views in advance of key G-20 meetings — and at global, regional and national level. To improve its ability to respond to developments, the CEA started to report on and discuss key G-20 issues with members at Executive Committee level and launched a dedicated workstream with the national associations whose countries are members of the G-20. This workstream is entitled “Insurance 20” (I-20 for short) and reports to the Executive Committee.

Areas in which the CEA was particularly active include the discussions on measures to address systemic risk, to further strengthen micro- and macro-prudential supervision and to impose levies or taxes on the financial services industry to fund past and future crises (see p18). The CEA also increased its cooperation with other international industry counterparts on these issues.



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The CEA’s work in this important area was brought into the public arena and to the attention of policymakers around the globe in June through the publication of a **strategic report** explaining why insurance is different to banking and through the debates at the CEA’s **second international conference** in London (see p8).

The CEA also became involved with an increased number of the working bodies of the **International Association of Insurance Supervisors (IAIS)**, commenting on their activities at meetings, in consultations and at observer hearings. In addition to the IAIS work on solvency standards, accounting, insurance groups and reinsurance, the CEA is now also contributing to IAIS activities in the field of market conduct and on financial stability. Furthermore, the CEA provided input to the review by the **Organisation for Economic Co-operation and Development (OECD)** of insurers’ corporate governance guidelines.

Both at European and international level, the CEA has long lobbied for the introduction of effective group supervision that takes account of the economic reality of insurance groups. Therefore, the CEA welcomed the decision of the IAIS to develop a common framework for the assessment of internationally active insurance groups (**ComFrame**).

The CEA closely followed the fierce debate over **regulatory reform of the financial services sector in the US (Dodd-Frank Act)**, in particular over the **Federal Insurance Office (FIO)**, which was established in July. Together with a number of US trade associations, the CEA submitted letters to the US Congress advocating that the FIO be given stronger pre-emption powers over state measures. Although the powers of the FIO are more limited in places than the CEA had argued for, its creation is nevertheless to be welcomed. The FIO enables the US to enter into international agreements at national level and to pre-empt state measures, and the CEA is hopeful that the FIO might help to facilitate reform of the long-running US collateral debate (see p56). The Dodd-Frank Act also creates a Financial Stability Oversight Council (FSOC) with the task of monitoring systemic risk and the ability to recommend non-banking financial institutions, including insurers, for regulation by the Federal Reserve Board. The CEA

responded in early November to the FSOC's pre-consultation on the designation of non-bank financial companies that should be subject to enhanced prudential standards, highlighting the key differences between insurers and banks and the need for global co-ordination.

Conclusions and strategy for 2011

Global standard-setting activities since the economic crisis have not only increased in number and pace but are also now triggering policymaking processes at European and national level.

Activity in this area will continue to be intense. Solutions developed at global level in response to the problems in the banking sector will continue to affect discussions in the insurance sector and although the message is getting through that insurance is different to banking and is far less likely to be a source of systemic risk, there is still much work for the CEA to do in this area. Likewise the interconnectedness between international, European and national developments means issues affect not only large, international insurers but also medium-sized and small companies. Consistency in the implementation of international standards — not just within but across regions — will also remain of vital importance for the European insurance industry.

The CEA's decision to focus more resources in this area has therefore been validated; indeed, the new resource level is already stretched. To influence international debates successfully, active engagement by the CEA will be required and to this end the CEA will continue to develop close relationships with the key international organisations and encourage pro-active and timely information-sharing among members.

2011

The CEA will continue to monitor closely key developments at G-20 level, at the IAIS and in other key international insurance markets such as the US.

The pace and focus of the **G-20** process will shift, with only one summit a year from 2011 onwards and a move from setting commitments to overseeing the implementation of measures agreed so far. New issues may arise, however, as the incoming G-20 chair (France) has signalled plans for an ambitious agenda. Furthermore, as new measures take shape to reduce the likelihood and impact of a systemically important bank failing, discussions on cross-sectoral consistency and the avoidance of regulatory arbitrage will inevitably arise. The CEA will continue to follow these developments closely to ensure an appropriate response when required.

Furthermore, the **Financial Stability Board (FSB)** has indicated that it will consider how to extend its framework for addressing systemic risks from banks to other parts of the financial sector to ensure consistency within the financial sector as a whole, to address the interconnectivity among financial institutions and to avoid regulatory arbitrage. The IAIS has been asked to contribute to the FSB determination of systemically important financial institutions (SIFIs) by mid-2011. In view of this request, the IAIS has decided to develop by February a provisional methodology based on quantitative and

qualitative indicators to assess the systemic importance of insurers. The IAIS will then apply and fine-tune the methodology in order to advise the FSB by no later than June whether any insurance undertakings should be identified as SIFIs. Significant input from the CEA to the IAIS and the FSB is therefore expected. The CEA will seek to ensure that inappropriate regulatory read-across from banking to insurance is avoided.

The **IAIS** is expected to make significant progress on the development of the ComFrame, as it is committed to publishing a comprehensive concept paper by June. The ComFrame will provide an opportunity to go beyond current high-level principles and to establish an internationally accepted approach to the supervision of insurance groups. As the exact scope, content and application of the ComFrame is still very uncertain, there is an opportunity for the European insurance industry to influence its development if it can develop clear positions. The CEA will therefore step up its activities in this area with the support of an *ad hoc* taskforce.

The CEA will continue to contribute to the revision of the IAIS insurance core principles (ICPs), standards and guidance (applicable to all insurers and insurance groups), which are due to be finalised by October, as well as responding to the main activities of the **OECD's** Insurance and Private Pensions Committee (IPPC) and Financial Action Task Force (FATF).

The CEA will monitor closely the development of the rules implementing the **Dodd-Frank Act** in the US. To increase transatlantic understanding and cooperation, the CEA has been invited to participate in an EU-US insurance symposium in Washington in early 2011, organised by the European Commission and the European Parliament in coordination with US counterparts.

The Dodd-Frank Act requires the FIO to study how to modernise and improve insurance regulation — including systemic risk regulation, potential federal regulation of certain lines of business and regulation of insurance companies and affiliates on a consolidated basis — and to report to Congress in early 2012. As this report is likely to significantly influence the scope for any future insurance regulatory reforms in the US, and potentially influence the prospects of US Solvency II equivalence and the process of doing business in the US for an EU insurer, the CEA will participate in consultations at all stages of the debate.

Last but not least, the new EU supervisory structure requires both the European Systemic Risk Board (ESRB) and the European Insurance and Occupational Pensions Authority (EIOPA) to take account of **international approaches to systemic risk** and to coordinate with relevant bodies in third countries. The CEA will work to ensure consistency between the different approaches taken internationally.

2012–2013

International standard-setting bodies will continue their work to address systemic risks in 2012 and possibly even in 2013. With the expected adoption of the revised insurance core principles in October 2011, the FSB will require IAIS jurisdictions to conduct self assessment against relevant ICPs relating to supervisory powers, mandates and consolidated supervision in 2012. The IAIS ComFrame should also be ready for impact assessment by July 2013. Discussions on US insurance regulatory reform will likewise also undoubtedly continue in 2012 and 2013 as the recommendations of the FIO directors' modernisation report are put into effect. All these developments will require active CEA engagement.

2.1.2 Stability issues

Action in 2010

On the basis of its December 2009 position paper, the CEA contributed to the triologue negotiations between the European Commission, Parliament and Council on the proposed **new EU supervisory architecture** in 2010, focusing on the truly key areas of concern for the industry.

Foremost among these was the European Parliament's strong call for the European supervisory authorities (ESAs) to be the direct supervisors for certain cross-border institutions, determined according to their systemic relevance. The CEA repeatedly explained its opposition to this proposal, based on the argument that core insurance business is not systemically relevant. As the EU institutions were ultimately unable to agree on this issue, the outcome — in line with the CEA position — is that the ESAs will not be given the power to supervise systemically relevant institutions or to determine which insurance companies could potentially be systemically relevant. Instead, the new European Insurance and Occupational Pensions Authority (EIOPA) can initiate and coordinate EU-wide stress tests and will develop, jointly with the European Systemic Risk Board (ESRB), a common approach to identifying and measuring systemic risk.

Another concern was over group supervision, where the CEA consistently requested clarification that the powers given by the Solvency II Directive to the group supervisor would not be overridden by EIOPA when there are disagreements. The CEA was pleased that in the agreed final text a recital clarifies that, in cases of settlement of disagreements, decisions taken by the ESAs cannot replace the powers granted to national authorities by EU legislation (ie Solvency II).

The CEA was also vocal at all stages of the debate over proposals to create a **European insurance guarantee scheme (IGS)** (see p35) and an EU stability fund for insurers. Here, too, the CEA's lobbying was successful, with these proposals being diluted during the negotiations. Neither a centrally organised European insurance guarantee scheme nor an EU stability fund for insurers will be set up. Instead, EIOPA will contribute to the "assessment of the need for a European network of national insurance guarantee schemes". In exchange for abandoning the concept of a central EU IGS and a stability fund, EIOPA has been given a coordination function in relation to "resolution" and crisis management systems. EIOPA will therefore contribute to the Commission's work on an EU crisis management regime, coordinate national crisis management arrangements and contribute to the examination of the need for funding mechanisms with appropriate financing instruments.

During the year the CEA continued to argue strongly for appropriate **representation for the insurance sector on the ESRB**. To this end, the CEA suggested that the chairs of both EIOPA and the European Securities and Markets Authority should be ESRB vice-chairs. Realistically, the CEA expected no significant strengthening of insurance representation and, indeed, the final draft Regulation agreed by the European Parliament and Council names the chair of the Joint Committee of European Supervisory Authorities as the second vice-chair. In effect, this means that the chair of EIOPA will be a member of the ESRB General Board with voting rights and will be the vice-chair of the ESRB every three years on a rotating basis. EIOPA will attempt to ensure that there is adequate insurance expertise among the ESRB staff to compensate for this lack of representation.



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Two stakeholder groups — one for insurance and one for occupational pension providers — will be established within the EIOPA remit. They will be consulted ahead of the ESAs presenting any draft technical standards. The CEA lobbied to have insurance representatives in the occupational pensions group, since insurers are (potentially) also pension providers. The final text of the EIOPA Regulation explicitly states that both groups can discuss areas of mutual interest and should inform each other of the issues being discussed, and a recital clarifies that the insurance group may submit advice to EIOPA on issues related to the IORP (Institutions for Occupational Retirement Provision) Directive.

The Commission launched a consultation on its **Green Paper on corporate governance and remuneration in financial institutions** in June. This may be followed up by legislative initiatives. The CEA responded to the Green Paper, highlighting in particular that Solvency II is the appropriate solution to the reform of governance requirements for the insurance sector; that any potential new requirements should not duplicate or cause inconsistencies with Solvency II requirements; and that a regulatory approach based on comply-or-explain principles remains the correct way forward.

With regards to remuneration, the CEA argued that any rules governing compensation systems should be proportionate to the size, internal organisation and complexity of financial institutions and that they should reflect the different risks and business models in the different financial sectors.

Conclusions and strategy for 2011

The CEA was broadly satisfied with the outcome of its efforts to shape the new supervisory architecture, both in terms of the powers given to EIOPA and the decision against a centrally organised IGS, particularly given the political pressure in both areas. However, the CEA's lobbying for insurance representation on the ESRB was undermined by its arguments elsewhere that insurers are not systemically relevant. The final, limited insurance representation on the ESRB is not satisfactory for the industry, and it remains to be seen how the new body will function in practice.

Looking ahead, the CEA will seek to build strong relationships with all the key contacts of both EIOPA and the ESRB. A key focus in 2011 will clearly be the debates on systemic risk, as all new supervisory institutions will to some extent work to identify, determine and measure such risk.

2011

The CEA will closely monitor the practical functioning of the **new EU supervisory architecture** and the competencies of the new authorities, especially in relation to decision-making on individual institutions.

With regard to the group supervisor's responsibilities as defined by the Solvency II Directive, the CEA will continue to call for full clarity and legal certainty over the interaction between the existing group supervisors, college of supervisors and EIOPA in the Omnibus II Directive.

Indeed, the focus of the CEA's lobbying activities in this area will be on the **Omnibus II Directive** proposal (see also p24), which is expected to be published in early 2011 and will amend Solvency II in order to implement the new supervisory powers. The CEA's objective will be to ensure that there is legal clarity with regard to the Solvency II implementing measures and compliance with the Solvency II structures.

The CEA will seek to ensure that the appropriate experts form part of **EIOPA's stakeholder groups**. The CEA will also monitor and comment on any **EC legislative proposal on corporate governance and remuneration**.

2012–2013

The EIOPA regulation includes a clause requiring the Commission to review the operation of the new supervisory structure in three years in areas such as: EIOPA's role in managing systemic risk; the functioning of the colleges of supervisors; and progress achieved towards convergence in the fields of crisis prevention, management and "resolution", including European funding mechanisms. In addition, the European Commission is required to draw up an annual report on the direct supervision of institutions and on the appropriateness or otherwise of granting EIOPA additional powers. The insurance industry will monitor and contribute to these reviews.

2.1.3 Funds/levies/taxes

Action in 2010



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In the light of proposals at both global and European level of ways to make the financial services sector pay for past and future financial crises, the CEA worked in 2010 to monitor, develop positions on and comment on any such initiatives.

The first of these was the report entitled “A Fair and Substantial Contribution by the Financial Sector” that the **International Monetary Fund (IMF)** was asked to prepare for the G-20 and which it published ahead of the June summit. The CEA sent comments to the IMF to feed into its study in February and met IMF representatives in March. The CEA argued that the IMF should take into account the differences in the type and level of risk posed to the economy by different financial institutions; should recognise that cross-subsidisation between financial sectors would reward riskier sectors at the expense of less risky ones; and should keep in mind the cumulative effect of any measures proposed.

The IMF recommended two forms of contribution from the financial sector. The first would make all financial institutions, including insurers, subject to a **Financial Stability Contribution** linked to a mechanism for winding up failing institutions, either accumulated into a fund or paid into general revenue and initially levied at a flat rate but subsequently refined to reflect institutions’ riskiness and systemic relevance. The second, for any further contribution required, would be a **Financial Activities Tax (FAT)** levied on profits and remuneration and paid into general revenue. The CEA argued that it is not appropriate to require the insurance industry to contribute to any cross-sectoral resolution funds or to make insurance subject to any new tax instruments that aim to ensure that the financial sector as a whole contributes to post-crisis fiscal consolidation. Despite the CEA’s strong call for the insurance sector to remain outside, insurance was included in the scope of the IMF recommendations.

Ahead of the **G-20** meeting of finance ministers and central bank governors in late October, the CEA and sixteen other insurance federations and associations sent a joint letter outlining the global insurance industry’s main concerns about issues on the G-20 agenda, including the introduction of levies or taxes. The CEA followed up with an independent letter to G-20 leaders ahead of their November summit.

In spite of the EU’s efforts to pursue the discussion of such measures — in particular an FTT — at the G-20 summit, financial services taxation was not discussed, beyond recognising that “resolution” levies may be part of supplementary requirements introduced at the discretion of national authorities to address the risk posed by systemically important financial institutions.

At EU level, the European Commission published a **Communication on Taxation of the Financial Sector** in early October, proposing the introduction of a FAT at EU level and an FTT at a global level. The FAT would be levied on total profit and remuneration, while the FTT would tax the value of single transactions. Insurers would be included in both proposals.

The CEA immediately issued a press release criticising the Commission’s failure to differentiate between different types of financial institutions in its proposals. Before the Commission presented its proposals to EU heads of state and government at the

late October European Council, the CEA wrote to the Council setting out both general arguments against penalising insurers for risks arising mainly in the banking sector and specific concerns about the FAT and FTT proposals. The CEA also took the opportunity to reiterate why it believes “resolution” funds are not required in the insurance sector. Interestingly, the European Council took the issue of levies off its agenda.

In late October the Commission also published its **Communication on an EU Framework for Crisis Management in the Financial Sector**. Although the Communication specifically targets the banking sector, the EC has announced that insurance will form part of further work on crisis management and resolution arrangements. The EC also envisages the creation of national resolution funds, financed by a bank levy. Such resolution funds, to which financial institutions would contribute *ex ante*, would finance the orderly winding-up of a failing bank. Although the EC does not propose an EU-wide bank resolution fund at this stage, it will reassess this decision in 2014. This may include a regime for insurers, and the CEA will follow closely these discussions.

The **Foreign Account Tax Compliance Act (FATCA)** was passed by the US Congress and signed by President Barack Obama in 2010. The law generally requires foreign financial institutions (insurers included) to comply with specific requirements relating to withholding, documentation, due diligence process and information reporting, and with other obligations with respect to accounts in which US citizens hold beneficial interests. The US Treasury/Inland Revenue Service (IRS) are required to define the scope of the legislation in the implementing guidance. Early indications are that only insurance and reinsurance contracts with “cash value” will be included. The CEA responded to IRS/Treasury consultations on the issue first in March and then again in November, highlighting the low risk of tax evasion posed by the insurance industry and thus the applicability of FATCA only to certain life “cash value” products. The letters also stressed the need for FATCA not to apply to existing contracts due to conflicts with EU data protection legislation and data availability issues.

Conclusions and strategy for 2011

The CEA's lobbying strategy is based on the arguments that core insurance business is not systemically relevant and that the insurance sector was not the originator of the crisis. The CEA will continue to maintain that instead of taxing all financial institutions, regulation and supervision should target those activities that may be systemically relevant by applying appropriate micro-prudential rules.

2011

The EC has begun the impact assessment of both its **FTT and FAT options** in order to be in a position to make proposals on policy actions by mid-2011. The CEA will continue to engage in these EU-level debates, as well as potential further debates at global (G-20) level.

The EC will launch a **consultation on the technical details of crisis management and resolution systems in the banking sector** in 2011, an element of which will be

resolution funds. The CEA plans to respond to this, given the obvious knock-on effects it could have on the insurance sector once in place.

The CEA will also be actively engaged in the preparation for the **draft Directive on crisis management** in the spring of 2011. This is expected to set out legislative proposals on expanded supervisory powers and recovery and resolution plans. Legislative proposals will also be presented for the establishment of national resolution funds, and the Commission plans to present a report assessing which crisis management measures are required for financial institutions, including insurance companies.

FATCA is likely to remain a busy workstream for the CEA in 2011 and even 2012, as the implementing guidance is finalised in advance of FATCA's implementation in January 2013.

2012–2013

Given the Commission's plans for further work on resolution regimes for insurance companies, the CEA will watch carefully for any potential spill-over from the current work in the banking sector. The EC is scheduled to issue the conclusions of its work by the beginning of 2012, on the basis of which it is likely to put forward concrete proposals.

Looking further ahead, the EC plans to assess in 2014 how a more integrated (EU-wide) framework for the resolution of cross-border groups might best be achieved.

2.2 Prudential issues

Action in 2010

The final advice that the Committee of European Insurance and Occupational Pensions Supervisors (Ceios) provided to the EC on the **Solvency II Level 2 implementing measures** in January was disappointing. This was despite the comments the CEA had submitted on more than 2 300 pages of consultation papers, pointing out the overly prudent and prescriptive approach being taken by Ceios, which appeared to be driven by an excessive reaction to the crisis.

In a few areas in which the CEA had raised concerns, Ceios indicated that it was willing to do further work. As a result, a joint taskforce was set up under the mandate of the European Commission to work on the discount rate used for technical provisions and in particular on the illiquidity premium. The final report of the taskforce left the door open for the inclusion of an illiquidity premium in the discount rate used for the technical provisions as advocated by the CEA.

The CEA intensified its lobbying both at technical and political levels as the EC took over the work on the implementing measures. In early February, the CEA coordinated a European-wide initiative to highlight the industry's concerns on the most important issues. Strong political and technical messages were relayed by national associations at national ministry and supervisory levels. In particular, the industry focused its efforts on making stakeholders understand how the classification of expected future profits in Tier 2 or 3 would be contrary to the overall economic risk-based approach of Solvency II.

At a workshop on the implementing measures organised by the European Parliament's Committee on Economic and Monetary Affairs (ECON) in March, the CEA reiterated that it was not too late to ensure that the measures are not excessive and that they should reflect the spirit of the Framework Directive. The CEA report "Why excessive capital requirements harm consumers, insurers and the economy", a one-page summary of the report and a CEA key messages document were all distributed at the workshop. The first signs of willingness to re-open discussions on concerns raised by the industry came at the workshop, at which Ceios took a conciliatory approach, saying that it was difficult to get everything right at once.

The first concrete results of the CEA's intensified lobbying efforts appeared with the draft technical specifications for the **fifth quantitative impact study (QIS 5)**, which were issued for a six-week consultation by the EC in mid-April. The CEA acknowledged the positive changes the EC made to the proposals it received from Ceios, which were a significant achievement for the CEA and the industry. In particular, the CEA highlighted the importance of deleting any limitation to the recognition of in-force cash flows (expected future profits); of allowing for a wide application of the illiquidity premium to insurers' liabilities; and of recognising diversification between lines of business within the risk margin.

The final QIS 5 technical specifications issued by the EC in July contained further improvements such as a new design and calibration for the health non-SLT (not similar to life techniques) risk module, as advocated by the CEA, and a lowered calibration for some risk modules (eg longevity risk and credibility weights for undertaking specific parameters, a specific treatment for covered bonds, etc.).



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As the EC was finalising its last set of draft implementing measures, the CEA continued to send its strong messages on key issues at a QIS 5 stakeholder meeting and a public hearing organised by the EC at the beginning of May. Jointly with the Pan-European Insurance Forum, the CEA also sent a strongly-worded letter to Michel Barnier, Commissioner for Internal Market and Services, warning that Ceiops' approach to the implementing measures risked the entire Solvency II project.

By July, the CEA had commented on more than 400 pages of implementing measures prepared by the EC in consultation with its Solvency Experts Group (SEG). Despite significant improvements compared with the original Ceiops advice, the version of the implementing measures proposed by the EC in July still contained some areas of concern, such as the classification criteria and limits proposed for own funds, which were too restrictive, and the contract boundaries definition, which remained inappropriate and confusing.

On the issue of the risk-free rate, the industry did not manage to agree a common position, so no input was sent to the EC for the implementing measures. The CEA will restart efforts to reach a compromise at a more appropriate time; probably when other Level 2 issues are settled.

QIS 5 will feed into the final proposal on the Level 2 implementing measures that is expected from the EC by June 2011. Since QIS 5 represented a unique opportunity for undertakings to send their messages on Level 2 and to assess their preparedness for Pillar I, the CEA promoted participation and raised awareness by organising a series of workshops in five different countries which were attended by more than 450 people.

In parallel with the work on the Level 2 implementing measures, the CEA engaged in a series of informal preliminary discussions with supervisors on **Level 3 guidance** on internal models and on reporting and disclosure requirements. In the first half of the year the CEA commented informally on the draft Level 3 reporting templates prepared by Ceiops. The granularity of the required information, as well as the frequency with which it will have to be reported to supervisors, raised serious concerns in the industry. Ceiops is expected to consult formally on the templates and on other Level 3 guidance in 2011, once the Level 2 measures are finalised.

In August the Commission published proposed legislative changes to the **Financial Conglomerates Directive**. The proposals were referred to as a "quick fix solution" to eliminate a few technical issues that have been highlighted in the application of the current Directive. Amendments will actually be made not only to the Financial Conglomerates Directive but also to the Insurance Groups Directive, the Capital Requirements Directive and the Solvency II Directive in order to align some definitions. The CEA is liaising with members and representatives in the political institutions to ensure that these amendments will indeed improve the text and not introduce undesired consequences. Adoption is expected in 2011.

Much activity has taken place this year on **third-country equivalence with Solvency II**, as the Commission and Ceiops have worked on three parallel workstreams to ensure that the challenging deadlines for the third-country assessments will be met. The issue also came sharply into political focus, with both European and international regulators and stakeholders questioning what Solvency II equivalence might mean to them.

Against this backdrop, the CEA provided both formal comments to Ceiops and informal comments to the Commission on the draft implementing measures on third-country equivalence. The CEA welcomed the shift to a more outcome-focused approach based

on principles rather than a strict list of criteria. However, it also highlighted the need for transitional measures to be included in the Level 2 text to streamline the implementation of the Directive and to ensure that business flows with important countries not included in the first wave of assessments would not be adversely affected. In particular, the CEA highlighted the importance of certainty well in advance of the implementation of Solvency II, as an equivalence decision — or lack of one — will have a critical impact on how some insurers finance their operations.

At the end of August, the CEA provided comment to Ceiops on the “first wave” countries that will be assessed in advance of Solvency II's implementation. The CEA supported the countries proposed by Ceiops (Japan (for reinsurance only), Bermuda and Switzerland), while noting that clearly defined arrangements need to be made at an early stage for a number of important countries such as the US, Canada, Hong Kong, Singapore, Japan (for insurance) and Australia. The CEA was pleased to see this view reflected in the final list the Commission provided to Ceiops as the end of October.

In September, the CEA commented on the methodology proposed by Ceiops for carrying out the equivalence assessments. The CEA welcomed the approach taken by Ceiops, but stressed the critical importance of firms gaining clarity as soon as possible on the equivalence of any third country, even those in the first wave. The advice was published in mid-November and put into immediate effect as the first wave of assessments got underway. It will be crucial to monitor the actual application of the assessment methodology and the approach used by Ceiops.

A lobbying priority for the CEA at the end of the year was to defend the consistency of the economic risk-based approach in the Solvency II Framework Directive and to avoid any unjustified spillover of solutions designed for **banking regulation**. The CEA therefore drew up an analysis of the main differences between the banking and insurance regulatory frameworks and drew up arguments to question any transposition of banking concepts into Solvency II.

Conclusions and strategy for 2011

Although the final advice from Ceiops on Level 2 implementing measures was very disappointing, the intensified lobbying efforts by the CEA and its members in 2010 bore fruit in the Commission's Level 2 drafts and in the QIS 5 technical specifications on some key issues such as the use of an illiquidity premium for the discount rate in technical provisions and the classification of future profits in future premiums in Tier 1.

In the remaining areas of concern, such as the calibration of non-life underwriting risk, Ceiops has shown willingness to do further work to come up with a revised proposal. The CEA is participating in a joint Ceiops/industry taskforce, which has been mandated to propose a more accurate non-life and health non-SLT (not similar to life techniques) calibration.

Increasing concerns over the workability of Level 2 and of the regime overall for small and medium-sized enterprises (SMEs) were raised in 2010. These were probably to a large extent triggered by the granularity and frequency of reporting requirements informally presented by Ceiops for Level 3. In 2011 the CEA will work with the EC to ensure that the framework is workable for all companies, and for SMEs in particular.

2011

The results of **QIS 5** are expected to be published in April and will therefore provide crucial input into the discussions immediately prior to the EC's proposal on the **Level 2 implementing measures**, which are due in June. Care will thus be needed in assessing and communicating the results of QIS 5, which will influence the final decisions on Level 2 but could also be wrongly interpreted by analysts.

The CEA will also analyse and engage in the rather significant changes that are expected to be made to the Solvency II Directive by the **draft Omnibus II Directive**, which is due to be published in early 2011.

The draft Omnibus II Directive will amend the Solvency II Directive, primarily to empower the new European supervisory authorities. For instance, the new authorities will have the power to develop draft binding technical standards, so it is expected to determine the areas that will require such binding technical standards. Other changes are also expected to the delegation of transitional measures in a number of areas, such as own funds, the discount rate or repackaged loans. Finally, changes related to the new comitology procedures established by the Lisbon Treaty are also expected. In a number of areas, technical standards will be drafted by the new European Insurance and Occupational Pensions Authority (EIOPA, which replaces Ceiops on 1 January 2011) and endorsed by the Commission, but in other areas the scrutiny of the Council and European Parliament will be required.

Until then, the CEA will continue its work with the Commission on the draft of the consolidated implementing measures. Top priorities for the CEA will be:

- to ensure an appropriate treatment of future profits in future premiums in technical provisions;
- to relax the criteria for the classification and eligibility of own funds;
- to ensure more appropriate calibration of non-life underwriting risk and other risk modules such as spread risk, life underwriting risks, counterparty default risks;
- to ensure a clearer and more appropriate definition for contract boundaries in line with the International Accounting Standards Board (IASB) exposure draft;
- to ensure that reporting is not unduly burdensome in terms of the granularity and the frequency of the information required; and,
- to ensure appropriate transitional provisions are in place for a smooth transfer from Solvency I to Solvency II.

The CEA will also help the EC to reduce the complexity of Level 2 and will come up with clear recommendations on how proportionality, the use of undertaking-specific parameters and risk mitigation techniques should be applied in order to make the regime workable for SMEs.

With respect to non-life underwriting risk, the CEA will monitor and provide input into the work of the taskforce set up by Ceiops's to come up with revised calibration factors for non-life and health non-SLT underwriting risks.

Once the EC presents its final draft implementing measures before the summer, they will then be sent to the European Parliament and Council for scrutiny. The CEA will continue to work closely with the Parliament and Council until the proposal is formally adopted by the end of the year.

The CEA will also continue to monitor the developments in **banking regulation** to ensure that there is no inappropriate read-across of regulation from banking into insurance and that differences in business models and prudential regimes are understood and recognised, in particular with respect to the eligibility and limits for own funds covering the solvency capital requirement (SCR) and the purpose of the own risk and solvency assessment (ORSA).

As far as Solvency II's link with the IASB's latest exposure draft on the insurance contract project (see p26) is concerned, the CEA will push for maximum consistency while bearing in mind the different purposes of the two regimes.

Formal discussions on **Level 3 guidelines** cannot take place until the Level 2 measures are adopted. The CEA will, however, continue its informal exchanges as CEIOPS becomes EIOPA on a series of Level 3 issues during the first half of 2011, including reporting templates and the ORSA.

The CEA will continue to follow the legislative process regarding amendments to the **Financial Conglomerates Directive (FCD)**, whose adoption is expected during 2011. The Commission intends to present further amendments to the FCD in 2011 to reflect changes to the EU supervisory architecture.

Following the European Commission's announcement of the inclusion of transitional measures for **Solvency II equivalence** in the Level 2 text, the CEA will work closely with Ceiops and the European Commission on their development. In parallel, the first round of equivalence assessments which began in November 2010 will be underway, with opportunity for stakeholder comment. Ceiops has been asked to provide its advice to the Commission by mid-2011. Focus will then switch to the Commission, with final results on the assessments to be announced in mid-2012.

2012–2013

If everything goes according to plan, by 2012 Level 2 measures will have been adopted by the EC and some Level 3 supervisory guidelines will have been issued by EIOPA. The CEA will continue its work on further Level 3 measures, as EIOPA is expected to continue to carry out consultations on outstanding Level 3 issues in 2012.

The CEA, through its members, will monitor the transposition of Solvency II into national law. In particular, it will assist national associations in following the interpretation of the regime by national regulators and raise any risks of unharmonised approaches in member states.

As it has been doing so far for the pre-application phase for internal models, the CEA will also monitor during 2012 and 2013 how the regime is put into practice by supervisors and will raise any concerns with supervisors and the EC.

2.3 Accounting

Action in 2010



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In 2010 the International Accounting Standards Board (IASB) made significant progress on the two main projects relevant to insurers: the **insurance contract project (IFRS 4 Phase II)** and **International Financial Reporting Standard (IFRS) 9** to replace International Accounting Standard 39 on financial instruments.

Few developments had taken place on the **insurance contract project** in 2009, mainly due to the combination of the US standard-setter, the Financial Accounting Standards Board (FASB), joining the project (necessitating a catch-up exercise for FASB members) and of the IASB being under pressure from the G-20 to improve accounting standards as a result of the financial crisis. After several delays in the first half of 2010, the IASB finally published its proposed model in July, with a comment period of four months. During the boards' deliberations ahead of publication of this exposure draft, the CEA provided them with evidence and arguments supporting the industry's position. In particular, at their May meeting and under pressure from the FASB, the boards considered rejecting the use of the cost of capital (CoC) for calculating the risk margin and the CEA provided them with an explanation of how the CoC works and the rationale that makes it appropriate to use in financial reporting. The CEA also maintained close contact with IASB staff to ensure that they were fully aware of the industry position and to respond to *ad hoc* requests from them, for example on mutuals.

The new model issued in July was significantly different from the one previously proposed in a discussion paper that was severely criticised by the industry. The IASB took on board the majority of the fundamental features supported by European insurers, including the absence of a day-one profit, the compensation of acquisition costs, the inclusion of a liquidity premium into the discount rate and the possibility of using the cost of capital to assess risk adjustment.

Conversely, the IASB also added transition provisions that are unacceptable to insurers, as they would lead to the absence of future profits being reported in subsequent years on the existing business at the date of transition. Furthermore, the IASB did not develop holistic performance reporting for insurers in its new model. In addition to these two issues, important areas in the exposure draft are subject to interpretation, such as unbundling or units of account. Depending on the clarifications that are put forward by the IASB, the industry may ultimately reach a very different assessment of the overall model. Fundamental flaws in the model in the exposure draft, combined with the various unclear areas, have demonstrated the need for insurers to fully assess the impact of this model on financial statements (ie field testing), which could make it difficult to reach the target completion date of the project, currently set for June 2011. In light of this, the CEA informed the IASB that European insurers are fully committed to cooperating closely with it in order to resolve the issues cited above so that a high quality standard can be issued as soon as possible.

The IASB also continued its work on **IFRS 9**. This replacement of IAS 39 has been split into four phases. The first part on the classification and measurement of financial assets was completed at the end of 2009. At the same time, the IASB published its proposal for impairment (phase two). In 2010 the IASB issued an exposure draft on financial

liabilities (phase three) and started the debate on the last phase; hedge accounting. Its objective is to issue the final standard by June 2011.

During the course of the year, the CEA commented on impairment and on financial liabilities. On impairment, it requested the simplification of the impairment model, through the decoupling of the amortised cost and the loss provisioning, and supported the possibility of calculating impairment at portfolio level. On financial liabilities, the CEA highlighted that the model proposed by the IASB would lead to an accounting mismatch for some insurance products (unit-linked, for example), which would fall outside the scope of the insurance standard, and supported an alternative model that would avoid such a mismatch. In the second half of 2010 the IASB started to deliberate again on these two parts, tentatively deciding to introduce fundamental points supported by the CEA in the final standard.

Conclusions and strategy for 2011

The CEA's ongoing, active engagement with the IASB proved relatively successful in 2010, as the IASB incorporated fundamental points raised by the CEA in the revised models of the two most important projects for insurers. The strategy for 2011 will remain the same; submitting detailed and reasoned comment letters in response to IASB consultations, reinforced by continued dialogue with the IASB staff in charge of the projects. The CEA will also contribute to the work of the European Financial Reporting Advisory Group (EFRAG) to ensure that insurers' views are known and considered.

In parallel, the CEA has carefully monitored the interaction between the development of the insurance accounting standards and the Solvency II regulatory regime (see p21). The CEA will continue to compare the two models and assess whether any differences are justified.

2011

The IASB's current objective is to complete all existing major projects in 2011, in order to create a second "stable platform" similar to the one that was established before the EU's adoption of IFRS in 2005. This is because several countries will move towards IFRS over the next few years and because the IASB and the FASB have been required by the G-20 to create a level playing field between the two accounting frameworks and to improve accounting standards as a result of the financial crisis. The IASB therefore aims to finish a number of projects in 2011 that will have a significant impact on insurers, including **IFRS 9 (all phases), IFRS 4 Phase II and Revenue Recognition**. The CEA will remain an active contributor to these projects in the areas specific to insurers.

As the IASB completes these important projects, the European Commission will need to consider their endorsement into European law. In 2009 the Commission decided to postpone the endorsement of the first part of IFRS 9 in light of significant divisions among European stakeholders about the merits of this new standard. The CEA had been very active in the endorsement process, in particular to ensure that the views of insurers were taken into account as well as those of banks. The CEA will continue to speak for the European insurance industry by participating in the work of EFRAG, which issues the endorsement

advice, and in the Commission's consultations (eg stakeholder meetings), building on the close relationship built up in recent years between the CEA and key Commission officials.

The mandate of the current chairman of the IASB will end in 2011 and the FASB chairman resigned in late 2010. In 2011 and 2012 the mandate of several influential IASB members will also end. The CEA will therefore initiate close contact with the new chairmen and members to ensure that the high profile of the CEA is maintained.

Last but not least, the CEA will maintain its cooperation with the CFO Forum to ensure that the voice of the European insurance industry remains strong and coherent.

2012–2013

As no new major projects will be launched for a couple of years, the IASB will undertake different activities in 2012. These will range from the "fixing and maintenance" of existing standards to more comprehensive post-implementation reviews of recently applied standards. The CEA expects to take an active role in these reviews to highlight standards that potentially need to be reconsidered in the light of insurers' experiences when applying them.

On statutory accounts, the Commission is expected to review significant directives such as the Insurance Accounting Directive, the Fourth Directive (annual accounts of companies with limited liability) and the Seventh Directive (consolidated accounts of companies with limited liability). This will have a direct impact on insurers' statutory reporting, which must comply with the national accounting rules to which the Fourth Directive and Seventh Directives apply. The CEA will contribute to the discussions on the revisions.

2.4 Pensions

Action in 2010

The CEA submitted its key messages on pensions to the European Commission in April 2010, ahead of the July publication of the **Green Paper on pensions**. The CEA called on the Commission to develop an ambitious pension policy that would draw on insurers' expertise and that would introduce fiscal incentives to promote retirement saving and initiatives to increase financial literacy.

The wide-ranging Green Paper — "Towards adequate, sustainable and safe European pension systems" — was issued in early July, backed by three EU commissioners: Olli Rehn (Economic and Monetary Affairs), Michel Barnier (Internal Market and Services) and László Andor (Employment, Social Affairs and Inclusion). It addresses 14 questions on topics ranging from the mobility of pensions within the EU to the future solvency regime for pension funds.

The CEA submitted its response to the Green Paper consultation in November, again strongly emphasising the major role that insurers can play in pension provision. The CEA also made suggestions on recognising the differences between pay-as-you-go systems and funded pension systems; on building on the strengths of national pension distribution systems; on developing a relative indicator for risk diversification within national pension systems; and on empowering individuals through financial education related to retirement provision. The CEA also proposed that long-term funded pension savings should be encouraged through fiscal incentives.

The CEA again drew the attention of the Commission to the need to apply Solvency II-type regulatory principles to institutions for occupational retirement provision (IORPs). The CEA argued that Pillars I, II and III of the Solvency II-type requirements should apply to IORP pension funds offering guarantees, and that the Solvency II framework offers enough flexibility to capture the risk profile of IORPs without guarantees so Pillars II and III should apply to them.

The CEA also took the opportunity to express its views in late September at a meeting of the Commission's Pensions Forum, which brings together EU member state governments and industry stakeholders. In particular, the CEA highlighted the need for a level regulatory playing field to ensure that all pensions are adequately protected and noted that it is important to recognise the different structures of national pension systems.

During 2010 the CEA coordinated with the Pan-European Insurance Forum (PEIF) to seek common responses on the pension debate and in particular to coordinate on pension issues in eastern Europe. The CEA also liaised with the Organisation for Economic Co-operation and Development (OECD) working party dealing with private pensions.



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Conclusions and strategy for 2011

As a result of the release of the Green Paper, there was significantly activity on pension issues in 2010 and this focus is expected to continue, particularly with government budgets under pressure and three commissioners following the debate. It will therefore be important to continue to work towards joint industry messages on pension issues. The CEA will remain closely engaged in the debates, including those in the European Parliament, putting forward its messages as set out in the response to the Green Paper and stressing in particular the importance of a level regulatory playing field based on Solvency II-type principles for insurers and pension funds offering comparable products, especially in view of the revision of the IORP Directive that is expected in 2011.

The CEA will aim to reach a common understanding of what constitutes “pensions”. This should help the CEA to make a coherent contribution not only to the debate on pensions but also to related debates (such as those on packaged retail investment products, insurance guarantee schemes and the review of the IORP Directive), enabling it to justify its concerns over level playing field issues and to explain how insurance products differ from savings products. The CEA will endeavour to put its contributions to the ongoing pension debates into the wider macro-economic context wherever this is appropriate.

2011

After the Green Paper consultation, the Commission will publish a summary of the responses received. The Commission is then expected to hold a public hearing before publishing a **White Paper** containing its proposals. In light of its consultation, the Commission may decide to review certain pension-related directives such as the IORP Directive, the Solvency II Directive and the Insolvency Directive, and to relaunch the debate on the proposal for a portability directive.

The CEA will continue to monitor, assess and respond to all Commission initiatives in this area that affect insurers. It will also continue its coordination with PEIF on areas of mutual interest and to contribute to the OECD working party.

2012–2013

As Solvency II is implemented, the CEA will strive to keep the creation of a level playing field for insurers and IORP pension funds high on the EC’s agenda. The CEA will also watch for any further initiatives from the EU that have an impact on pensions.



Strategic objective 3

Championing best practice

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

3.1 Packaged retail investment products and the IMD

Action in 2010



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During the first half of 2010, the CEA faced challenges in building a unanimous position on **packaged retail investment products (PRIPs)**. However, a mandate from the Executive Committee, favouring a minimum harmonisation approach, helped to achieve more progress at taskforce level during the second half of the year.

In its work on PRIPs, the European Commission also faced considerable difficulties in defining their scope. As the European supervisory committees for insurance, banking and securities had differing views, the EC set up a joint taskforce from the three committees to reach a uniform position. A further difficulty was in finding an adequate legal framework for regulating PRIPs disclosure and selling practices. For the latter, the EC originally planned to adopt a separate horizontal directive for all types of PRIPs. However, over time it changed this plan, deciding to introduce new PRIPs rules into the revised Insurance Mediation Directive (IMD) and Markets in Financial Instruments Directive (MiFID). The CEA lobbied against specific regulation on PRIPs selling practices and welcomed this solution, which allows insurance products to be treated separately. The EC has also been looking into the impact of its proposals on the insurance industry and the UK-based consultancy Europe Economics delivered the findings of a study to the EC at the end of November.

Based on the more proactive approach towards distribution issues mandated by the Executive Committee, the CEA provided the EC, the Committee of European Insurance and Occupational Pensions Supervisors (Ceioops), other federations and key stakeholders with its briefing note on insurance distribution in July 2010. In this note, the CEA proposed a minimum harmonisation regime in order to accommodate differences in national insurance markets. It explained the factors driving this diversity, such as different consumer needs and pension systems. The CEA also proposed six high-level principles on selling practices for insurance, arguing that they would both guarantee an appropriate level of consumer protection and accommodate existing market diversity.

The first **statistical report on insurance distribution channels** was issued by the CEA in March 2010. It describes the distribution channels used in both the life and non-life sectors, highlighting how they vary depending on local conditions and consumer preferences and on national legislation. The report also highlights how new technologies (eg the internet) have had an impact on the distribution of certain products.

The CEA was also active on **product disclosure** issues. In July it finalised a revision of its Key Information Checklist (KIC) for unit-linked life products that adapts its content and format to the Key Information Disclosures (KID) document developed by the Commission for undertakings for collective investment in transferable securities (UCITS). The KIC aims to improve information disclosure to consumers by summarising essential information on unit-linked life products and highlighting their main features and objectives compared to other PRIPs. It serves as a basis for the CEA position on PRIPs disclosure, providing an alternative to the KID.

The CEA made considerable progress on developing a position on the revisions of the **Insurance Mediation Directive (IMD)**, which will enable it to contribute to future EC consultations. The main EC objectives in revising the IMD are to enhance consumer

protection, introduce a level playing field between distribution channels and improve conduct of business rules for insurance intermediaries. The Commission therefore plans, for example, new rules on remuneration transparency and conflicts of interest, as well as the inclusion of direct insurance sales forces in the scope of the IMD.

The EC asked Ceiops' advice on these issues in January. In July the CEA provided the EC and Ceiops with its preliminary comments on IMD revision to contribute to this advice. The CEA commented on the legal framework of IMD 2, proposing a classic directive as a viable alternative to a Lamfalussy legal form in order to provide an adequate degree of flexibility and allow full targeted harmonisation. Furthermore, the CEA advocated a minimum harmonisation regime, again to better accommodate the diversity between markets. Regarding the scope of IMD 2, the CEA supported the existing approach towards direct selling by highlighting areas in which applying IMD would bring no added value. In order to guarantee equal consumer protection throughout the EU, the CEA proposed high-level principles on knowledge and ability for insurance intermediaries and supported an outcome-oriented approach towards any IMD 2 rules on professional requirements. Finally, the CEA outlined ways of preventing potential conflicts of interest and proposed a set of high-level principles on selling practices for insurance (see PRIPs above).

The CEA also contributed to the **International Association of Insurance Supervisors' consultation on the draft core principles for insurance intermediaries and conduct of business**, stressing the diversity in distribution markets and the resulting need for a flexible approach.

In November the EC published its consultations on PRIPs and IMD revision, which will run until January 2011 and to which the CEA will respond. The IMD consultation included a public hearing on 10 December at which the CEA presented its position on the IMD 2 regulatory architecture, its scope, insurance intermediaries' professional requirements and conduct of business.

Conclusions and strategy for 2011

In 2010 the CEA's work on distribution was challenging due to members' divergent positions on PRIPs, which also resulted in different national lobbying strategies, rather than a unified one. While considerable progress was made with regards to specific aspects of IMD revision and pre-contractual PRIPs disclosures, the CEA was unable to reach a common position on the scope of PRIPs. The CEA position on selling practices also remains unfinalised with regards to remuneration transparency and the management of conflicts of interest. There is a risk that different national approaches to remuneration disclosure and conflicts of interest will prevent a compromise at CEA level but, based on the mandate of the Executive Committee, the CEA will continue to support minimum harmonisation as the most effective way to accommodate existing market diversity and differences in development.

2011

In early 2011 the CEA will focus on its contributions to the **EC consultations on PRIPs and IMD revision**. Regarding pre-contractual disclosures for PRIPs, the EC is planning to adopt a single horizontal legislative instrument with simultaneous adjustments to the Solvency II Framework Directive to avoid overlaps between different provisions. A legislative proposal is expected in the first half of 2011. On selling practices, the EC no longer intends to propose a separate legal instrument but will address the sales of all insurance products — including insurance PRIPs — in the revised IMD and other PRIPs in the revised MiFID. MiFID rules on conflicts of interest, inducements and suitability tests should remain the benchmark for both initiatives. A proposal on MiFID revision is expected in April and on IMD revision by the end of 2011.

The CEA will elaborate on its preliminary comments on IMD revision and its briefing note on insurance distribution and will propose further outcome-oriented solutions in areas such as professional requirements for insurance intermediaries, management of conflicts of interest, direct selling and remuneration transparency.

The CEA will also contribute to the **International Association of Insurance Supervisors' future consultation on core principles for insurance intermediaries and conduct of business**.

2012–2013

The legislative process for the revision of the IMD will start in 2012 and the CEA will turn its lobbying focus towards the European Parliament and Council to ensure that the industry's interests are taken into account.

3.2 Insurance guarantee schemes

Action in 2010

Guarantee schemes were first addressed in 2010 during the discussions on the EU supervisory package in the European Parliament. Parliament's amendments to the European Commission proposals suggested the establishment of EU financial protection funds and European guarantee schemes in all financial services sectors. These were the direct result of the fact that discussions on the supervisory package took place exclusively on the banking authority. The Parliament strongly argued for consistency between the three authorities, and hence proposed and supported the creation of a **centrally organised European insurance guarantee scheme (IGS)** alongside a network of **national IGS**, without due consideration for the potential impact of such proposals. In addition, MEPs suggested establishing a **stability fund**, for banks as well as for insurance and occupational pensions, financed by contributions from systemically relevant financial institutions, to ensure the orderly winding-up of failing cross-border institutions. In a worst-case scenario, this would have meant that a systemically relevant insurance group would have had to participate in (and fund) all three systems.

The CEA lobbied key MEPs and financial attachés, arguing against such proposals and explaining the dangers of applying regulatory proposals for banking to insurance, as the two sectors differ widely. The CEA was successful in convincing the Parliament and the Council not to include the single EU IGS and stability fund in the final text establishing the European Insurance and Occupational Pensions Authority (EIOPA) (see p15). The text states that the new authority may contribute to the assessment of the need for an EU network of national IGS that is adequately funded and sufficiently harmonised.

In July the EC published its **White Paper on IGS**, outlining and consulting on its preferred option, which is to adopt a Directive to ensure that each EU member state establishes IGS that comply with a set of minimum requirements. The CEA responded to the consultation in November, maintaining its critical position and questioning the need for an EU initiative. The CEA argued that the risk of insurer insolvency in the EU will become even lower once the Solvency II regulatory regime comes into force at the end of 2012.

Given the strong likelihood that the EC will go ahead with a legislative initiative, and in line with its mandate to discuss design options, the CEA has expressed its preference for the EC's proposal of minimum harmonisation of national schemes, as this would accommodate existing national systems that function well and are adapted to local conditions and consumer needs. The White Paper reflected CEA concerns over a mutual bail-out system between national schemes and a single EU-wide IGS, as both solutions were left out of the Commission's preferred options.

However, the CEA disagreed with the Commission's suggestion for IGS pre-funding, advocating that the decision on how to fund schemes should be left to individual member states. The CEA also warned of the need to ensure that IGS, combined with the other initiatives envisaged by the Commission, does not place a disproportionate compliance burden on the insurance sector, arguing that this would be to the ultimate detriment of consumers.



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Conclusions and strategy for 2011

The CEA has successfully kept the concepts of an EU-wide IGS and a stability fund off the EU agenda, focusing the political discussion on the need for IGS at national level and thus avoiding the risk of the insurance industry being required to fund two additional schemes. However, there is clear political will at the Commission to proceed with legislative action on national IGS at EU level in 2011.

The CEA will therefore maintain its critical approach towards any sort of EU initiatives on IGS. In parallel, given the likelihood of such a proposal, the CEA will contribute to the discussion on IGS design options, expressing support for sufficient flexibility to take account of the various realities in the different EU markets. The CEA will also seek to ensure that any negative side effects of IGS, particularly costs and moral hazard, are kept to a minimum, and it will oppose any attempt to copy the future design of the deposit guarantee and investment compensation schemes across to IGS.

2011

The EC will follow up its White Paper consultation with a **public hearing**, at which the CEA will repeat its concerns with regard to an EU initiative on IGS. The CEA will also monitor closely developments in the European Parliament and the European Economic and Social Committee (EESC), which are both likely to launch **own-initiative reports** on the Commission's White Paper.

Given the strong political pressure to increase consumer protection as a result of the crisis, the probability is high that the Commission will put forward a legislative proposal in the form of a **Directive** in 2011, accompanied by an **impact assessment**.

If so, the process in the European Parliament will entail significant risks for the industry, as the Parliament is more likely to adopt a consumer view than take the industry standpoint and to support unrestricted consumer protection IGS design mechanisms, such as no coverage limits, no caps or IGS intervention limits, and strict and harmonised funding rules. The risk is also high that the Parliament insists on adopting a horizontal approach towards guarantee schemes across the various financial services sectors. The Parliament may push to introduce a maximum harmonisation approach for IGS as well as a mutual bail-out system on the model of the mutual borrowing facility suggested by the Commission for the revised deposit and investor schemes. The Parliament is also likely to revive the concept of a single European-wide IGS, which it supported during the discussions on EIOPA.

The CEA will continue to oppose any move by the EU institutions to impose solutions from the banking sector on insurance. It will also continue to explain that minimum harmonisation is the most suitable approach for the insurance sector, highlighting the risks that inappropriate design options would trigger in terms of costs and moral hazard and arguing for the need to preserve the existing protection tools that function well at national level. This will require strong lobbying actions and coordination between the CEA and national associations. Any lobbying by the CEA at EU level will be reinforced if national associations seize opportunities for possible alliances at national level between the insurance sector and public authorities with a view to shielding existing national

protection mechanisms from EU interference. Such alliances will be instrumental when the planned legislation is discussed by the Council.

The CEA will convey its views on IGS to EIOPA (which replaces the Committee of European Insurance and Occupational Pensions Supervisors on 1 January 2011), as the new authority has been asked to help assess the need for an EU network of national IGS that is adequately funded and sufficiently harmonised.

2012–2013

The CEA will continue to monitor developments closely and contribute to all discussions as long as activity on IGS continues. In particular, the CEA will continue to lobby the European Parliament until the legislative process is finalised. Once any legislative process finishes, the CEA will monitor the implementation of EU legislation on IGS by member states, enabling national associations to exchange experiences in this regard.



Strategic objective 4

Safeguarding insurability

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

4.1 Anti-discrimination

Action in 2010



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To ensure recognition that insurers differentiate rather than discriminate, the CEA continued to lobby strongly in the European Parliament and Council throughout 2010 on the European Commission's 2008 draft Anti-discrimination Directive. The CEA also continued to take part in the parallel EC Dialogue on the use of age and disability in financial services and to monitor developments on the 2004 Gender Directive.

The CEA welcomed the wordings on financial services proposed by the Spanish EU Presidency in January in its draft text of the **Anti-discrimination Directive**, since they recognised that risk assessment does not constitute discrimination and removed the requirement on insurers to publish data. Later proposals, however, were opposed by the CEA, since they reintroduced two issues of concern:



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- an option allowing EU member states to decide whether “differences in treatment” are authorised in the provision of financial services, since this would create legal uncertainty and a serious obstacle to cross-border business; and,
- restrictions on the sources of information used in the risk-assessment process, which would hamper correct risk assessment and fair pricing.

In September the Belgian EU Presidency proposed a new wording that introduced in particular a hierarchy in the information sources of risk assessment as well as an obligation to provide information justifying differentiated treatment. In November the CEA met the incoming Hungarian EU Presidency to convey its concerns about the Belgian proposal.

In parallel, in the Parliament, the CEA met the new lead rapporteur and other key MEPs. Although the European Parliament Resolution adopted in April 2009 is final, the Parliament will not only be consulted on the Council's Political Agreement but will also have to give its consent, which means it can still veto the Agreement although not table any amendments.

The CEA also took part in meetings of the **EC Dialogue on financial services** in May and November. The Dialogue was launched in 2009 to improve understanding of how age and disability are relevant for the design and pricing of financial services. During the May meeting, Civic Consulting presented the preliminary findings of the study the EC had commissioned on the use of age, disability, sex, religion or belief, racial or ethnic origin and sexual orientation in financial services. Civic put forward seven recommendations, including gathering further evidence, introducing EC (non-) binding guidance for interpreting key terms, drawing up grey and black lists for specific practices and creating an industry code of good practice.

The final Civic study was released in July and the CEA sent its comments to the EC in September. The CEA highlighted that data gathered by Civic indicated a low number of consumer complaints and court cases on alleged discrimination in insurance. The CEA also pointed out that Civic's conclusions on the way private insurance works were incorrect and objected to Civic's conclusions and recommendations on the grounds that they were based on assumptions and estimations, not on concrete evidence.

At the November meeting stakeholders commented on the Civic study and shared views

on possible next steps based on existing best practices in the insurance and banking sectors. The CEA made a presentation on a — not too onerous — national code of conduct, and a second one on risk assessment. The EC announced that the possible outcome of this Dialogue is an EU code of conduct.

Of particular concern in the gender debate in 2010 was the opinion issued by an Advocate General to the **European Court of Justice (ECJ)** in late September on a case brought by Belgian consumer association Test-Achats. The case was brought before the ECJ by the Belgian Constitutional Court for a preliminary ruling on whether the derogation in the Gender Directive allowing EU member states to permit insurers to differentiate on the basis of gender was compatible with the EU principle of equal treatment of men and women.

According to the Advocate General, the use of actuarial factors based on gender is incompatible with this principle and should be prohibited. The CEA immediately warned of the likely detrimental effect on consumers if the ECJ ruling follows this opinion and started to analyse the likely implications of a generalised ban on the use of gender in risk assessment. However, it was decided that it would be inappropriate and counterproductive for the CEA to engage in any further attempts to influence the ECJ.

The CEA decided to develop a policy paper containing qualitative and quantitative arguments against the obligation to use unisex tariffs and a high-level paper advocating the need to use many key factors in risk assessment.

Conclusions and strategy for 2011

Given the possible impact of the Anti-discrimination Directive and the ECJ ruling on various business lines, anti-discrimination will remain a priority issue for the CEA in 2011. All avenues of action will be explored before the final ECJ ruling, but given the limited opportunities for influencing the judges' decision, preparations will need to be made so that the CEA can react quickly in the event of a negative ruling so as to be in a position to either lobby (or not) the Commission on any required changes to the Gender Directive and the anti-discrimination proposal. Extensive expert input from members will be of paramount importance if the CEA is to develop a sound basis for an effective lobbying and communication strategy on all the strands of the anti-discrimination debate.

2011

The CEA will continue to follow closely the negotiations on the draft **Anti-discrimination Directive** and to comment on any new wording proposals on financial services.

As one of the key stakeholders in the **EC Dialogue** on financial services, the CEA will also continue to convey its key messages on how insurance works and its reluctance to have an EU code of conduct.

The **ECJ judgment** is expected in the first half of the year. Based on its policy paper, in its discussions with the EU institutions the CEA will use counter-arguments to those developed by the Advocate General, as well as setting out the impact a ban on the use of gender and other determining factors would have.

The Commission's report on the implementation of the **Gender Directive** is expected after the ECJ judgment and will focus in particular on the use of sex as a factor in calculating premiums and benefits. The CEA will comment on the report.

2012–2013

The CEA will continue to participate in the different anti-discrimination discussions taking place at EU level, ensuring that the industry's messages are conveyed in all the debates. Once the Anti-discrimination Directive is adopted, the CEA will monitor its implementation in member states.

4.2 Climate change

Action in 2010

The CEA's objectives on climate change in 2010 were twofold: to manage policymakers' expectations of the role that can be played by the insurance sector and to promote conditions in which insurers can best perform risk-sharing and management. To achieve these objectives, the CEA maintained regular contact with all the EU institutions.

In May the European Parliament issued a Resolution that calls on the European Commission to report on progress in the implementation of the **White Paper on Adapting to Climate Change** by 2012. As a result of amendments suggested by the CEA, the Resolution acknowledges the need for public-private partnerships and private sector involvement in tackling climate change, free access to data, land-use planning and construction standards.

The CEA also successfully lobbied for **ad hoc participation in Commission workshops** on natural catastrophes. At a workshop on flash floods in May, the CEA called for further flood research and free access to detailed data for all stakeholders. The CEA also contributed to the EU Floods Directive comitology process by presenting at a floods working group in October. The CEA highlighted the advisory role of insurers and focussed on three issues: the need to share responsibility for adaptation; the need to coordinate action to obtain necessary information; and the promotion of *ex ante* financing (eg insurance) as a more efficient system than *ex post* financing (eg state and EU funds).

Moreover, the Commission invited the CEA to the **Steering Group on Adaptation to Climate Change**, a body of national environmental experts and stakeholder organisations intended to support the Commission's work on adaptation. The Steering Group, which was launched in September, will give guidance on the goals outlined in the Commission's White Paper, such as mainstream climate change adaptation, and will share information on national adaptation strategies.

The CEA contributed to the Council-Commission dialogue on innovative solutions for financing disaster prevention by providing information on natural catastrophe insurance schemes. The Council's conclusions, which still have to be formally adopted, reflect the CEA's position, emphasising the value of risk-based insurance and the conditions under which the EU can offer financial assistance.

The CEA spoke at the **Belgian EU Presidency's conference, "Adaptation to the changing climate: time to intensify efforts"**, in November. By presenting the requirements of insurers, the CEA helped to set the scene for the conference's workshop on the budgetary and fiscal implications of adaptation, which included discussions on balancing the roles of the state and private sectors.



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Conclusions and strategy for 2011

Through its involvement in the discussions on climate change, the CEA has maintained its role as an important stakeholder in the development of adaptation and mitigation policies. It is recognised by the Commission as a source of information on all aspects of the risk management of the increasing effects of climate change in Europe. To ensure that it can carry on in this role, the CEA will continue to require regular and active input from members. More importantly, the CEA uses its involvement with the EC to explain the conditions (eg availability of data) that are indispensable to ensure that the insurance industry can provide (increasing) cover for these risks and operates in a positive/supportive regulatory environment.

The CEA will continue to reiterate the message that insurance, while an effective tool for transferring the risks posed by natural disasters, should not be considered as an instrument for funding adaptation measures. The CEA will also point out the importance of cooperation between all stakeholders — government officials, the private sector and the public — in combating the effects of climate change.

Likewise, the CEA will continue to explain to policymakers that there are only limited circumstances in which public-private partnerships may be necessary as part of its efforts to promote insurance-market driven solutions over excessive state intervention.

2011

The CEA will continue to contribute to the work of EU policymakers in designing a framework for climate change policies that enables the insurance industry to develop insurance solutions and contribute to an innovative, competitive and growing EU economy. It will promote the need not only to mitigate the losses caused by climate change, but will also work towards the necessary (regulatory) pre-conditions to ensure the availability of insurance products that will enhance adaptation.

The Commission is planning an in-depth examination of **catastrophic risk estimation and management methods for natural disasters**. It also intends to organise a **conference on natural disasters in 2011**. The CEA has advised the Commission on its preparations for the conference by providing details about the role of the insurance industry in covering losses in past decades. The CEA will reiterate the messages it has conveyed to the Commission over the years and will clarify the circumstances and conditions in which compulsory insurance and regional insurance pooling — which are increasingly being suggested by policymakers — can be most effective.

The CEA will continue to participate in the **Steering Group on Adaptation to Climate Change**. As its meeting in January 2011 will focus on financial market solutions, the CEA will advise on the optimal use of both private and public financial solutions, highlighting that public-private partnerships should only be used where high exposure to catastrophic risks requires a significant amount of insurance cover. The CEA will explain that, in these cases, government subsidies can improve the insurability of catastrophic risks by making cover more affordable for consumers.

The CEA will further contribute to the discussions on the new financial framework for the **Common Agriculture Policy (CAP)**, the system of EU agricultural subsidies and programmes that currently represents 40% of the EU budget. The CEA will argue in favour of provisions that allow EU member states to contribute to private agricultural insurance premiums, in light of the growing and severe risks posed to agriculture by natural catastrophes. The CEA will illustrate how such premiums might otherwise become too expensive for farmers. The aim is to ensure a level playing field with other financial security solutions, such as mutual funds or saving accounts.

2012–2013

Climate change will remain a focus for the CEA as the Commission continues its preparatory work for the comprehensive adaptation strategy it expects to implement by 2013. The CEA's contributions to this work will include its continued participation in the Steering Group on Adaptation to Climate Change and any workshops and conferences arranged by the Commission and the Council.

The CEA will also contribute to the new financial framework for the CAP. The Commission plans to reform the CAP with policies that will help to mitigate the effects of climate change on agriculture, such as rising food prices. The CEA will continue to be a part of the negotiations on this reform, which are expected to last until 2014.

As climate change is an international topic, the CEA will also continue to monitor international developments and assess the impact they may have on future EU climate change policies. These developments will include the working group reports to be published by the Intergovernmental Panel on Climate Change (IPCC) in 2013 and 2014.

4.3 Liability issues

Action in 2010



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The CEA's liability priority in 2010 was to fight against unfeasible compulsory insurance schemes and advocate liability rules that optimise the benefits of liability insurance.

During the year, the CEA engaged in the discussions on the proposed **Directive on Alternative Investment Fund Managers (AIFM)**, opposing the European Parliament's proposal of a compulsory insurance scheme for fund managers on the basis of the complex risk portfolios involved, the limited availability of insurers and the lack of insurability for fund risks. The CEA also shared its views with the Belgian EU Presidency, which was broadly in agreement.

The CEA succeeded in convincing EU officials to relax certain strict liability schemes and the final text of the AIFM Directive, as agreed by the European Commission, Parliament and Council, is in line with the CEA position on depositary liability, as it demonstrates a shift from strict liability toward a fault-based system for own actions and contractual liability in cases where duties are delegated to a third party. Despite the CEA's efforts, however, the final text retains the option for fund managers to have either mandatory professional indemnity insurance for AIFMs, or else hold additional funds to cover professional negligence risks. The CEA had argued strongly against this provision.

With respect to the **Consumer Rights Directive**, the Council's last proposed text follows the CEA suggestion that it should defer to national law for any remedies awarded outside the Directive, thereby giving legal clarity to claims under the Directive.

As part of its fight against strict liability schemes, the CEA completed a first draft of its **precautionary principle paper**, which promotes compensatory schemes based on statistical loss data and fault-based regimes, rather than precautionary measures (eg, strict liability schemes) that ignore fault and do not rely on data to prove the potential harm caused by a product or activity.

The CEA enjoyed a lobbying success in October when the Commission announced in its **report on the efficiency of the implementation of the Environmental Liability Directive (ELD)** that it would not propose an EU-wide compulsory liability scheme for environmental liability at the present time. The CEA issued a press release welcoming the EC's decision. During the preparation of the report the CEA had maintained close contact with the Commission, advising on the challenges that compulsory ELD insurance would face: lack of ELD awareness among both operators and authorities; lack of data on ELD losses; differences in the transposition of the ELD in EU member states; and differing liability cultures.

In a related area, the CEA lobbied against the European Parliament's September **Motion for a resolution on EU action on oil exploration and extraction**, which was adopted by the Parliament in October, and requested that the Commission revise the ELD to cover oil company liability and consider compulsory insurance for offshore oil activities. The CEA met the MEPs that signed the motion to explain that a compulsory scheme is not feasible, as the extreme risks posed by oil companies exceed the insurance industry's financial capacity on an EU-wide basis and thus cannot be resolved by insurance alone. Unfortunately recent events such as the BP oil spill and the Hungarian toxic spill have led

the Commission to announce it will reconsider the option of introducing a requirement for mandatory financial security in the field of offshore oil and gas activities.

The CEA also became involved with international liability issues as a result of the **US Medicare Act**, which requires insurers to report claims paid to beneficiaries of Medicare, a US social health programme. The CEA lobbied against the law's application to non-US insurers with no business in the US and warned that a conflict exists between the Act's reporting requirements and EU data protection law. The CEA raised the issue with the Commission and with the Article 29 Working Party, a body which is composed of the data protection authorities of the EU member states and was created under the EU Data Protection Directive to handle data protection issues involving third countries. Both the EC and the Working Party are keen to discuss the issue further once the US government submits more information.

Conclusions and strategy for 2011

Through the CEA's constant communication and activity on the ELD, it established a close relationship with Commission representatives, maintaining contact with them throughout the ELD study. Comments made in the final report reflect the EC's attentiveness to the CEA's messages and a willingness to accept the CEA as a source of expertise in this area. The CEA will continue to foster this relationship, particularly now that the Commission will revisit its decision on compulsory insurance prior to its next ELD review in 2013/14.

By becoming involved in international issues such as the "oil spill" insurance debate, the CEA was able to show that it could react quickly in meetings with MEPs that promoted mandatory oil insurance. The CEA's dialogue with the US government on the US Medicare Act also demonstrated its ability to react not only on issues that affect liability or insurance schemes, but also on laws that impose unreasonable requirements on liability insurers.

The CEA will continue to follow such global liability issues and maintain its position as a resource on compensatory liability schemes that are both effective and sustainable.

2011

In 2011 the CEA will aim to show EU policymakers that not all types of losses can be covered and compensated by insurance alone by arguing that the capacity of liability insurers to cover a particular loss depends on the nature of that loss and the ability to price it competitively.

The Commission's decision to reexamine the issue of **compulsory insurance** before the second ELD review in 2013/14 will be a key lobby focus for the CEA. Whether incorporated into the ELD or not, the CEA will combat suggestions that insurance should be relied on to compensate for the risks posed by oil exploration and extraction. The CEA will develop a relationship with the Commission's energy directorate so that

it can communicate its messages and it will continue to lobby any MEPs that continue to support the Parliament's Motion concerning compulsory insurance for oil activities.

As the CEA has had some lobbying success with respect to **strict liability** in both the AIFM directive and the Consumer Rights Directive, little action may be necessary in this area in 2011. However, as neither directive has been adopted, the CEA will continue to promote fault-based liability schemes.

Lastly, the CEA will maintain its position in its lobbying on the **US Medicare Act**. The CEA will push for more action from the Article 29 Working Party and will pursue a more direct dialogue with the Working Party.

2012–2013

The CEA will be proactive in informing EU policymakers about the realities of liability insurance and how legislative policies can best be designed to facilitate a healthy insurance market. This will include explaining the functions of insurance and the manner in which risk sharing and risk transfer methods work best.

The CEA will continue to lobby against compulsory insurance in cases of financial investment and environmental disasters, as compulsory insurance proposals tend to reappear each time such an event receives news coverage. As the Commission is reviewing its ELD decision in 2013/14, the CEA will continue to emphasise the importance of a voluntary financial security system that permits insurers to freely design cover that best accommodates the liability needs of customers and best suits the liability exposures within their jurisdictions. The CEA will further highlight the limitations of insurance when it comes to oil spill disasters, convincing policymakers that other solutions must be contemplated.

Lastly, the CEA will fight against measures that extend liability, including strict liability proposals that base themselves on precaution rather than actual evidence of need. The CEA will continue to advocate the importance of risk management measures before imposing excessive liability proposals.



Strategic objective 5

Meeting members' needs

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

Action in 2010



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In the spring the CEA carried out member, stakeholder and staff satisfaction surveys, all of which saw a gratifyingly high response rate. Overall, the responses were extremely positive, recognising the value of the work done by the CEA, welcoming the progress the secretariat has made in recent years, and supporting the CEA's focus on lobbying and industry representation.

Two key points emerged from the surveys. The first was the need for **greater prioritisation of lobbying issues**, with more resources targeted on a smaller number of truly key industry issues. To enable it to do this, the CEA initiated a **restructuring of the secretariat**. This reallocation of resources and more flexible structure aims to ensure the most efficient use of necessarily limited resources.

The second point that emerged from the surveys was the need to make the current **CEA governance** more efficient. In response, it is proposed to maintain the General Assembly and the Executive Committee with the same rights but including all members. These two bodies will collectively be known as the CEA Board. Additionally a new Administrative Council will be created comprising the director general and deputy director general. The Administrative Council will be responsible for the day-to-day management of the CEA and the implementation of the executive decisions made by the CEA Board.

Following a request from the Executive Committee, the CEA has drawn up **new membership criteria** and a standardised approach to enable requests for CEA membership to be processed more efficiently. The new membership structure will consist of three membership classes: full members, associate members and partners, with only full members entitled to vote. Full members must be either founding CEA members or members of the EU; associate members must demonstrate clear plans for EU accession; and partners can be any organisation with an insurance involvement.

Plans to create an **Extranet-based information portal** of insurance-related materials for members and staff, which had been included in the 2010 Action Plan, were shelved due to budget constraints.

Conclusions and strategy for 2011

The CEA believes that its new structure will enable it to respond more quickly and flexibly to the issues it faces both at European and international level. It should also enable the CEA to put its positions in a broader, macro-economic context. Nevertheless, challenges will remain in dealing with the significant number of major workstreams with current resources.

The secretariat recognises that improvements can still be made in the focus and decision-making processes in the CEA's working bodies, both of which should be driven by the secretariat. That said, members must also play their part in ensuring that the right experts are present in the relevant working bodies and that the secretariat receives the input it requires to pursue successful lobbying.

The CEA recognises that — while steady improvements have been made — the information the secretariat provides to members can still be improved in terms of clarity, concision and timeliness.

2011

In early 2011 the CEA will consolidate the changes to its **structure** and its improved **prioritisation**, ensuring the targeted but comprehensive fulfilment of members' objectives. The CEA will also ensure that issues of lower lobbying importance are in no way neglected.

The new **governance structure** came into effect following the Extraordinary General Assembly on 15 December 2010.

The **CEA statutes** were likewise amended to reflect the new membership criteria following the approval of the Extraordinary General Assembly on 15 December 2010.

The CEA's new **members' handbook** has been adjusted to reflect the CEA's new structure and will be published in early 2011. The handbook will help new representatives of national associations to get the most out of the federation and will serve as a reference for existing members. It will include guides to the CEA structure, communications and Extranet.

2012–2013

The CEA will continuously seek feedback from members on their satisfaction with the secretariat's performance and will respond to any issues as they are raised.



Annex

2010 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.

Block Exemption Regulation

In March 2010 the European Commission decided to renew two areas of the insurance Block Exemption Regulation (BER): for pools and for joint compilations, tables and studies. However, the EC has not renewed the two other areas of cooperation: standard policy conditions (SPCs) and security devices.

While the CEA is disappointed that the full renewal for which it argued was not achieved, it is nevertheless pleased with the outcome, given that two years ago the Commission appeared set on complete removal of the BER. The final text was also a significant improvement on the draft issued by the Commission in October 2009.

The CEA does not support the EC's decision to replace the non-renewed cooperation agreements with guidelines. The CEA commented on the draft revised horizontal guidelines that the EC published in May, warning of the legal uncertainty that could ensue from only partial renewal of the BER and the fact that this could lead to a significant drop in cooperation.

Should the EC decide to address SPCs and security devices through the proposed horizontal guidelines, the CEA would welcome clearer and more precise drafting. Only a high degree of clarity will avoid reduced or non-cooperation for reasons of prudence. The EC was expected to publish its new guidelines by the end of 2010.

Collective redress

Although 2010 was a relatively quiet year in terms of developments in the field of collective redress, the CEA continued to monitor and engage in lobbying activities ahead of possible future EC developments. The CEA held numerous meetings to exchange views with different stakeholders, such as the European Justice Forum.

The EC was due to launch a public consultation on the principles underpinning a European collective redress system at the end of 2010 that will run until early 2011. The CEA intends to respond to the consultation and, in order to prepare its response, will organise meetings of its taskforce on joint collective redress. A public hearing is also planned by the EC for early 2011 in which the CEA intends to participate.

It is expected that a proposal on collective redress will follow during the second half of 2011, so the CEA will continue its lobbying activities to ensure that the interests of the insurance industry are taken into account in any possible future steps by the EC.

After working on a proposal for a Directive on damages actions for breach of the EC antitrust rules throughout 2009, the initiative was put on hold in 2010, following strong criticism from the industry, including the CEA. This allowed the new Commission time to reflect on the best way to develop a coherent European approach to collective redress. Competition Commissioner Joaquín Almunia has now confirmed his intention to present a specific proposal for a Directive on antitrust damages actions in the second half of 2011, following the public consultation on a European approach to collective redress to be completed in spring 2011. The CEA will continue to voice its concerns in order to influence the outcome of any proposal in this area.

Despite publishing its study on the use and functioning of alternative dispute resolution (ADR) and its evaluation of FIN-NET (the financial dispute resolution network) at the end

of 2009, the Commission did not take any further action in this area in 2010. However, the Commission has committed to address both issues in 2011, in the form of a possible Green Paper on the use of ADR in the EU and a Recommendation on the network of ADR systems for financial services. The CEA will follow up on these issues and respond to any further steps taken by the Commission.

Much of the discussion regarding the review of the Brussels I Regulation on the jurisdiction, recognition and enforcement of judgments in civil and commercial matters during 2010 focused on issues unrelated to collective redress. However, as the Commission has yet to come forward with its proposal to amend the Regulation, the CEA will continue to monitor this issue.

Health

Unexpectedly, the EU Employment, Social Policy, Health and Consumer Affairs Council reached a first reading political agreement on the draft Directive on patients' rights in cross-border healthcare in June 2010, followed by a Common Position in September. The Directive then went to second reading in the European Parliament.

In early October the CEA expressed its views on the second reading draft report on the Directive in a meeting with the lead rapporteur. The CEA also sent its key messages on the report and related amendments to the rapporteur and to the shadow rapporteurs of the Parliament's Committee on the Environment, Public Health and Food Safety (ENVI) ahead of its vote at the end of October. The messages focused on the scope of the Directive, reimbursement and prior authorisation provisions.

Some key amendments supported by the CEA were adopted by the ENVI Committee. The CEA welcomed the introduction of a reference to the Regulations on the coordination of social security systems in the scope of the Directive, which clarifies the exclusion of voluntary private health insurance from its scope. The CEA was also pleased that the report clearly excludes organ transplantation and long-term care from the scope. By requiring prior authorisation for treatment abroad with regard to rare diseases, MEPs even went beyond the CEA's suggestions.

The CEA was, however, disappointed that the ENVI Committee also adopted some amendments that limit the ability of member states to retain control over cross-border healthcare costs and reduce the scope of prior authorisation.

The plenary vote in the Parliament is expected in January 2011. Ahead of this, trialogue meetings were being held to find an agreement on the second reading compromise text between the European Parliament and the Council. The trialogue discussions were mainly focused on three outstanding issues: prior authorisation, the quality and safety of healthcare and e-health. The CEA supported the Council's position on these issues.

The CEA finalised a paper on fraud in health insurance that describes the categories of fraud and the measures taken by the insurance sector to counter them. It also focuses on the consequences of fraud and contains suggested solutions. The paper was annexed to a general CEA paper on fraud in insurance. As there is no EU initiative on this topic at present, the aim was to encourage the exchange of information and experiences between members.

The proposed CEA booklet on private medical insurance (PMI) will be published in early 2011. It will describe the various PMI systems and their common characteristics, and include CEA recommendations, and will be used as a lobbying tool at both EU and national level.

International issues

2010 was another year of increased activity in the US on reinsurance collateral reform, with acknowledgement of the need to change displayed at every level (in individual states, at the National Association of Insurance Commissioners (NAIC) and at federal level). Nevertheless, the 100% collateral requirement still remains for foreign reinsurers in order for US cedants to take credit for their reinsurance placement.

The CEA tracked this issue throughout the year and regularly raised the topic in discussions with the EC. In addition, the CEA submitted comments to the NAIC on its revised credit for reinsurance model law in August.

The CEA will continue to monitor developments in 2011, paying close attention in particular to the implications of the Dodd-Frank Act. This Act establishes a Federal Insurance Office (FIO) in the Treasury with the ability to pre-empt state law that "results in less favourable treatment of a non-United States insurer". The creation of the FIO both creates a new avenue for collateral reform and puts increased pressure on the NAIC to act.

Proposals to limit the deductibility of tax on affiliated reinsurance transactions also came to the forefront again in 2010. The CEA kept in close contact with the EC both in Brussels and Washington on this issue.

In April 2010 the CEA sent a letter to the US Congress outlining the downsides of the proposal on disallowing tax deduction of certain reinsurance premiums paid to affiliated foreign reinsurers that was included in the US Administration's 2011 budget.

The CEA highlighted that the proposal conflicts with the principle of a level playing field for all (re)insurers operating in the US irrespective of their country of origin, would have a detrimental effect on US policyholders and the economy and would contravene the commitments of the US under the World Trade Organisation's General Agreement on Trade in Services (GATS).

In July the CEA submitted a statement to the US House of Representatives Select Revenue Measures Committee Hearing on the US affiliated reinsurance proposals. The CEA's statement, accompanied by a press release, highlighted the negative effects of the proposal to disallow tax deductions of certain reinsurance premiums paid to foreign reinsurers, as outlined in both the Neal Bill (HR 3424) and the US Administration's 2011 budget proposal. Therefore, the CEA was pleased to hear that Representative Kendrick Meek strongly opposed the affiliate proposal at the Hearing on the grounds of its impact on price and the availability of coverage.

The proposals did not progress any further in the second half of 2010. Nevertheless, it remains possible that because of its revenue-raising potential (the Neal Bill was scored as raising \$17bn over 10 years) it could still be attached to other legislation to offset federal spending in other areas.

Motor insurance

In 2010 the CEA continued to be involved in the debate on the EC's proposed regulation on bus passengers' rights. It advocated the exclusion of a strict liability system and advance payments by bus operators to victims irrespective of responsibility for an accident. The CEA questioned the need for the strict liability system proposed by the EC, arguing that there is no evidence that passengers are not currently sufficiently protected. Furthermore, the CEA highlighted that the system would result in privileged treatment for bus passengers compared with car passengers.

The political agreement that was reached after lengthy discussions by the EU Transport Council reflected the CEA's concerns, but the Council and the European Parliament failed to find a compromise at the start of the second reading. Facing reconciliation, however, they found a compromise on the scope and based their agreement on the Council's text, which — in accordance with the CEA position — refers to national liability rules and restricts further intervention to first assistance measures.

Following the success of its first motor insurance conference in 2009, the CEA organised a second motor insurance conference in March 2010 (see p8) focusing on consumer issues. At the conference the CEA launched its latest statistical report on the motor insurance market, analysing market trends and developments in the European motor market, including a detailed study of personal injury claims in motor third party liability (MTPL) insurance.

The EC published its retail market study on motor and home insurance in March 2010. It contains the market information provided by the CEA and reflects a high level of understanding of the motor insurance market. The CEA will monitor the next steps of the EC in this area.

The CEA taskforce on cross border accidents and legal issues worked on an information sheet for consumers involved in cross-border accidents in 2010. The CEA will submit this information sheet to the EC as a follow-up to its response to the EC's public consultation on the compensation of victims of cross-border accidents. The information sheet will also appear on a micro-site that will be accessible via the homepage of the CEA's new website (see p8).

Following its 2009 involvement in the EC's preparatory work for its new Road Safety Action Programme 2011–2020, the CEA co-signed a letter with other stakeholders to the new EU Commissioner for Transport, Siim Kallas, in February. The letter urged him to set clear targets in the Action Programme for reducing deaths and serious injuries. Thanks to successful lobbying from all stakeholders involved in road safety, the EC decided to again set the target in its Action Programme of halving the overall number of road deaths in the European Union by 2020.

Taxation

The CEA continued to lobby on the following taxation issues in 2010: the EC's VAT – Insurance and Financial Services Review and the review of the Savings Tax Directive, as well as on the ongoing discussions in the US on affiliated reinsurance (see p56) and the Foreign Account Tax Compliance Act (FATCA) (see p19).

The discussions in the Council on the EC's VAT – Insurance and Financial Services Review continued in 2010 with a view to its final adoption, for which unanimity is required. The CEA continued to support the Council by commenting on insurance-related aspects in the Spanish and Belgian EU Presidency's compromise texts. The comments focused on the definitions of insurance, investment funds and intermediation and on externalised insurance and financial services for VAT exemption purposes.

The September Belgian EU Presidency compromise text is broadly in line with the CEA recommendations. The CEA particularly supports the new approach of the Presidency on the VAT exemption of insurance outsourcing and the explicit exemption of transfers of (re)insurance portfolios. The Belgian EU Presidency issued a note on the state of play on the VAT review in November 2010 to provide a direction for the 2011 Hungarian EU Presidency. The CEA will continue to be engaged in negotiations at Council level in 2011 to ensure that insurance specificities are taken into account.

The technical compromise that was reached by the Council in 2009 on the text of the Savings Directive still awaits political agreement from all member states in accordance with the unanimity rule that governs EU taxation issues. The compromise is blocked in the Council and the Spanish EU Presidency failed to reach an agreement. The dossier did not feature in the Council agenda under the Belgian Presidency.

The EC will conduct an impact assessment study of the substitutability of products included and excluded from the scope of the Savings Directive as part of the Savings Directive second review that will begin in spring 2011. According to the Commission there will be no direct link between this impact assessment and the first Savings Directive review that is currently blocked in the Council. The idea would be to open a new discussion. The CEA will continue to monitor and respond to any developments in this field in 2011.



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