Risk Management and Insurance

FUNDACIÓNMAPFRE 118

YEAR XXXI

JANUARY/APRIL 2014

Cristina San Sebastián

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Risk Manager of Grupo Iberdrola

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GERENCIA DE RIESGOS Y SEGUROS

editorial

A good sign

2014 is moving on apace, a year of European elections with signs of a budding upturn and – according to the rating agencies and watchdog bodies – better marks for the economy. We don't quite know if we've bottomed out yet but the very fact we no longer spend all day moaning about how bad things are is itself a good sign.

Not so long ago every conversation – every single one – seemed to revolve around unemployment, the risk premium, street protests, spending cuts, demonstrations … There's no doubt things have changed.

Even in the worst moments we at this publication have tried to keep our chin up. It's still too soon to call a victory but if we go on as we are, well just maybe this year we'll be able to enjoy the little or much we have in peace and harmony.

This issue opens with an interview with Cristina San Sebastián, Corporate Risk Manager of Iberdrola, one of Spain's top firms in terms of its Ibex 35 market cap, a world leader in wind power and one of the world's biggest electricity companies. Cristina tells us how the company has been able to achieve the much-vaunted «reverse engineering» on the strength of the commitment, effort and imagination of its staff.

The first of the two studies in this issue looks at the compulsory and optative civil liability insurance that can be taken out both by arbitrators and arbitration institutions, making the debate about the compulsoriness of this insurance such a burning issue lately.

The second study presents a set of critical reflections on the financing of Spain's social security system. The recently approved Law 23/2013 introduces the sustainability factor into the public pensions system to iron out variations in the economic cycle or blips in the job market and ensure satisfaction of the social security system's welfare remit.

However much we may push it to the back of our minds, natural disasters and adverse weather episodes come round in cycles. Nonetheless the sheer magnitude

editorial

of super typhoon Haiyan was particularly harrowing in terms of the energy unleashed and, above all, the human tragedy left in its wake, shocking the whole world. Our third study of this issue thus looks at the aftermath of this typhoon, which was officially removed from the rotating list of tropical cyclones due to its particularly devastating consequences.

We close this issue with the usual sections on new risk management books and publications and the breaking news on AGERS and IGREA plus a new section on FERMA (Federation of European Risk Management Associations) brought into the review from here on. As always we trust that this issue will be to your liking.

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FUNDACIÓN MAPFRE
Paseo de Recoletos, 23. 28004 Madrid (España)
Tel.: +34 91 581 12 40. Fax: +34 91 581 84 09
www.gerenciaderiesgosyseguros.com

PRINT: CGA

ANNUAL SUBSCRIPTION: SPAIN AND PORTUGAL: 40 EUROS. REST OF THE WORLD: 70 EUROS (INCLUDING POSTAGE).

LEGAL DEPOSIT: M. 9.903-1983 **ISSN:** 0213-4314

summary

JAMUARY/APRIL 2014

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Decision-making unit is the basis of Risk Management at Iberdrola, in order to «gain absolute control over what happens within the group», Cristina San Sebastián points out. «The risk owners are the businesses themselves, which need to ensure that the guidelines are observed and protected».

Cristina San Sebastián

IBERDROLA RISK MANAGER

«It's a mistake to forecast future risks on the basis of existing experiences; we have to make an effort and be imaginative»

Text: **ALICIA OLIVAS** Photos: **MANUEL DÍAZ DE RADA**

What are your duties as Iberdrola Risk Manager?

If we apply general risk management theory, our ultimate duty is to protect the company's balance sheet from the materialization of operational risks, from pure risks. In the Risk Management Department we manage this type of risk for the entire Iberdrola Group through continued teamwork in very close contact with the different businesses.

Our job begins with the identification and analysis of the risks. In addition to the usual tasks (risk performance monitoring, facility inspection visits, monitoring of regulatory and technological developments, etc.), I should emphasize our participation in Due Diligence tasks which are carried out on the purchase (or sale) of new assets, companies or projects. We're also a part of the integration team for successive acquisitions of companies (the most

significant being Scottish Power in 2007, Energy East, now Iberdrola USA, in 2008, or Elektro in Brazil in 2011). With respect to this point, we analyzed the risks of the acquired companies, the «baggage» they brought with them. We also work on construction projects, from the very first moment, identifying and analyzing the risks, informing and advising the Business so that it takes suitable decisions. Both in projects and in ordinary operations, one of our main duties is the identification and analysis of those risks which arrive in the company via contracts (construction, maintenance, equipment supply, etc.). Here, comprehensive work on the contract as a whole is carried out: liability clauses, guarantees, force majeure, property transfer, risk transfer. And, finally, insurance.

And once we've identified and analyzed the risk, the next step is to see how it fits into the company's retention and transfer policy. Iberdrola is a company with a significant risk retention potential. In any case, we make our own calculations on retention and transfer. With regard to transfer, we use two tools: contracts and, the most obvious, transfer to the insurance market. Finally, we're responsible for buying insurance for the entire Iberdrola Group, and for managing it.

Centralized service

Where is the department located?

Iberdrola's structure is based on a very strong corporate office. The common support duties for all the companies, such as Treasury, Finance, Legal Affairs, Purchasing, Control, IT, and also Risk Management, are part of a single structure, offering a centralized service, within the corporation, to the entire Iberdrola Group. The Iberdrola Risk Management Department is situated within the Finance Area, again serving the whole group.

«THE BOARD OF DIRECTORS IS AWARE OF THE IMPORTANCE OF RISKS FOR THE COMPANY'S FUTURE»

How is the department that you manage organized?

The department is made up of a team of 20 people, with a mix of nationalities. The structure is based on four pillars, two of which correspond to risks and the insurance lines. Specifically, one is responsible for Property risks and insurance, operating assets and construction, and the other for Casualty risks and insurance, third-party liability, D&O and the environment. Furthermore, the head of Property manages the technical aspects of our captive reinsurer located in Luxembourg, and the head of third-party liability is responsible for the legal side of risk management, which means both keeping up to date with new regulations that might affect our sphere of duties, as well as work in the matter of contracts to which I previously referred.

Then we have a third pillar, Technical Support, which manages incidents in any line of business and is responsible for prevention, always –and this is very important– in cooperation with the person responsible for the Property or Casualty line. The fourth pillar is Administration, which in addition to the management of policies, documents and bills, draws up and controls the insurance budget for the entire group, and takes charge of information systems and internal reporting or the administrative management of our captive entity.

So much for the corporate team is located in Bilbao. We also have local teams –one in the United Kingdom, in Glasgow; two in the United States, one on each coast; and others in Mexico, Brazil and Greece, respectively– which work on local tasks, but always governed and managed by the corporate team, so we have absolute control over everything that happens in the companies. We also have a person in Madrid who takes care of the Engineering Unit.

Most important, and that which makes the duty effective, is centralized management and the suitable distribution of corporate duties within the team in Spain, and local duties within the international teams. We also wanted to reflect this structure with the broker, both in his duties regarding insurance placement and those of advisor in the matter of risk management. A corporate team manages the account in Spain and different local teams provide services at this level, reporting to the broker in Spain. The model would also be applied to the insurance companies in our international programs: negotiation with the insurance company in Spain, who will be the one to make the decisions and local companies report to our country.

«THE DUTIES OF RISK MANAGEMENT SHOULD BE PERFECTLY IN LINE WITH THE COMPANY'S STRATEGIC PLAN AND INCLUDE BEING PREPARED FOR ANY CHANGES»

What are the main strengths of your team?

We're a highly specialized team with a lot of experience and a complete, hands on knowledge of how the company operates. Apart from our experience, our main strength lies in the strength provided by our centralized structure: A strong corporate team and subordinate local teams mean that control and management are efficient, there's control, there's a single set of instructions and there's only one corporate voice.

Moreover, the team is committed to the company's objectives.

Risk Management at Iberdrola

What is the aim and the scope of general risk control and management policy at Iberdrola?

The aim of the policy is to define the basic principles and framework for controlling and managing the diverse risks to which the Iberdrola Group may be exposed in the course of its business. This general policy is developed and complemented by a set of specific policies for each line of business.

The scope of the policy is the entire group and its subsidiary companies, as well as the investee companies in which we have a controlling interest. It does not cover listed subsidiary companies or those where we do not have a controlling interest, but in these cases Iberdrola is committed to promoting the implementation of risk control policies that are consistent with its own.

Who is responsible for defining this policy?

The company's Board of Directors. The Board is directly responsible for identifying the risks to which the group is exposed in the course of its business and for organizing the appropriate internal control, protection and monitoring systems.

What commitment has the company's Board of Directors undertaken with regard to risk?

The Board is aware of the importance that risks have for the future of the company and is specifically committed to deploying all necessary time and resources to ensure that the most important risks are properly identified, measured, managed and controlled. It's also committed to establishing monitoring and control mechanisms to ensure that strategic objectives are met, via a volatility control process; to providing maximum value for shareholders with the greatest possible guarantees; to protecting the group's earnings and reputation; and to guaranteeing that the company's financial stability is sustained over time. In this the Board is assisted by the Audit and Risk Supervision Committee, an advisory body set up to supervise and report on effective compliance with policies in all the group's companies.

«WE'VE WORKED AS PART OF THE INTEGRATION TEAM AND WE'VE BEEN INVOLVED IN THE LATEST INVESTMENT ACTIVITIES FROM THE VERY FIRST MOMENT»

The general risk control and management policy and its basic principles are embodied in an integrated risk control and management system. What are the main functions of this system?

They can be summarized as follows: First and foremost, it identifies important threats and their possible impact on the company. Second, it provides ongoing analysis of these risks. Third, it establishes a structure of policies, guidelines and even risk limits for each business. And it also establishes a monitoring and control system. It also has the specific function of assessing the risks of new investments. Other functions are the periodical monitoring of policies and the risks that affect the balance sheet and creating internal information and control systems. Finally, through the Internal Audit Division, it supervises all of these mechanisms.

The risk owners

How do you apply risk management to each of the group's businesses and/or companies?

In addition to the general policy that we all use as our *bible*, every company has its own specific risk policies. A very important aspect in this respect is that the risk owners are the businesses themselves, and they are the ones that need to ensure that the guidelines are observed and their risks protected. We're a corporate unit that encompasses the entire group, we help them manage their risks, we work as a team and in close proximity, we provide them with

training and information, we help them make decisions (they are our internal client) and we've established a work dynamic, but the ones ultimately responsible for risks are the businesses themselves.

What role does risk management play in Iberdrola's strategic plan?

Our job is to provide guidance. We need to be very clear about the company's objectives, the duties of risk management should be perfectly in line with the company's strategic plan and we need to be prepared for any changes. Our basic mission as regards risks is to manage and control threats efficiently and, above all, to make sure that the businesses are fully aware of the risks they are exposed to, what part of the risk is retained and why, and what part of the risk is transferred and what the transfer limits are, so that all of this information is digested and used in the decision-making process.

«TO ADD MAXIMUM VALUE TO THE COMPANY, IT'S VITAL THAT WE PERFORM THE TASKS OF RISK ANALYSIS AND IDENTIFICATION TO THE BEST OF OUR ABILITY»

How has your department responded to the internationalization strategy that Iberdrola has pursued over the last decade?

We've played an active part in the internationalization process. We've worked as part of the integration team and we've been involved in the latest investment activities from the very first moment. We've identified and analyzed the new risks and then measured them again, taking into account the Group retention and transfer policy. On the insurance side, we've started from scratch, structuring insurance with simple international programs managed from Spain but with coverage for the entire group and we've unified this retention and transfer policy with the use of deductibles and captive entities. In short, our aim has been to establish a system based on simplification, clarity and efficiency.

Insurance and risk transfer

What are the key points of your insurance policy?

We have a corporate insurance policy that lays down the fundamental principles governing the financial protection of the company through insurance. One of the policy points is the establishment of insurance policies which should be enforced by corporate decision. For example, for large scale projects the need is established for the proprietors to contract a construction insurance policy so that we maintain control. The construction insurance will work as one of the main tools, complementing a suitable distribution of responsibilities, in accordance with the business circumstances and priorities for the particular project.

«WE WANT THE CAPTIVE ENTITY TO BE INCREASINGLY INVOLVED; THIS DEMONSTRATES HOW WELL WE KNOW THE RISKS»

Moreover, within this insurance policy three levels of risk handling have been set up, an issue which has been documented, communicated to and understood by every area in the company. On the first level there are the frequency risks, which would be considered as maintenance, which the business has no problem retaining. On the second level are the risks that the business cannot retain because they may have an adverse effect on the balance sheet but which the group can and does accept at the corporate level, via a captive entity; and finally, on the third level there are the risks which neither the business nor the group can retain and which are transferred to third parties via the previously mentioned mechanisms: contracts or insurance purchase.

A key point in our insurance policy is that we should always work with the risk cost parameter in mind, understood to be the sum of the retention cost and the transfer cost. It's all about finding a suitable balance, and it will always be this that determines our decisions.

Our captive entity will always have an important part to play in this scenario. It's a key instrument for modulating and monitoring the level of risk retention.

Also, even though it may appear to be obvious, I would like to emphasize our policy of working with insurance companies of proven solvency. This is an area which Iberdrola keeps a special eye on and not only as far as the monitoring of the ratings is concerned but also the monitoring of financial statements, investments, etc.

Lastly, I'd like to highlight, within our insurance policy, the development of a proactive approach to the resolution of incidents. We need to give our internal client an effective response.

What role does your captive entity play and what limits are established?

In fact, we have three captive entities: two from Scottish Power, one of which is in Dublin, and another in the Isle of Man, which we're liquidating for operational reasons. We're currently operating with our captive reinsurer located in Luxembourg. We created this company in 2005 and we've always looked after it very carefully. It specializes in Damage Risk, we've capitalized it in recent years and now it has considerable financial muscle and plays a strategic role. We want the captive entity to be increasingly involved as its own funds grow, to give back to the businesses the savings that have been built up since its creation, and this goes to show that we understand the risks, we control and manage them very closely.

What aspects to do you take into account when choosing your insurance companies?

Apart from such minimum essentials, like having suitable technical resources, both in terms of teams and specialization; solvency, control of the international network so that our structure works properly, being able to operate with captive entities, which can be quite complicated at times, I emphasize the need to work with insurance companies that offer resourcefulness, flexibility and a speedy response. We need the insurance companies to help us solve our problems, we need solutions, not more headaches. Another basic need is correct incident management, it's important to speak the same language, to interact with specialists, to know how to complete a complicated transaction reasonably and professionally, to work with someone who understands our business, our machinery, this is vital.

«IT'S IMPORTANT TO WORK WITH INSURANCE COMPANIES THAT OFFER RESOURCEFULNESS, FLEXIBILITY AND A SPEEDY RESPONSE»

How do you see the future of the insurance market? Is there sufficient capacity in the market, in spite of the crisis?

First of all, I'd like to say that the insurance industry has performed impeccably during the crisis, that is very clear. In general, both insurance and reinsurance companies are in good financial health. As regards capacity, there appears to be a good deal of capacity as well as flexibility and versatility in the market, although another matter altogether is what that capacity costs, and if in some cases, for certain critical or novel risks, there are limitations as regards coverage and limits, but that has nothing to do with the crisis. We've also noticed that recently, companies that traditionally specialized in one line are now

very interested in becoming involved in others in which they were not so strong. In the same way, we see that companies that were traditionally involved in reinsurance are now very interested in the direct market.

Risk management and managers

What should risk management focus on to add maximum value to the company?

Our mission must always be to follow the objectives set by the Division, adapting our work to the changing needs without losing sight of the fact that our final duty is to protect the balance sheet from the materialization of operational risks. All this with the objective of achieving an optimum level of risk cost (retention vs transfer) for the group, whilst at the same time protecting the specific interests of the Businesses and maintaining the synergies achieved by global management.

We contribute the maximum value by enlightening the company about existing risks, about the part of these which should be transferred (insurance, contracts) and about the part which should be retained within the company. It's important to perfectly identify and take into account this area of risks.

What is the current context in Spain for risk management?

There's a lot of talk about integrated risk management. Risk management is becoming more important, and even more so during times of crisis. Another point to emphasize is that risk management is increasingly driven by the Division, which is increasingly aware both of the duties which should be developed in this field as well as the importance of its role.

«EVERYTHING HAS TO BE PUT IN ITS PLACE SO THAT IT ALL FITS, EVEN WORKING WITH APPARENTLY CONTRADICTORY OBJECTIVES AT TIMES, SQUARING THE CIRCLE, OR REVERSE ENGINEERING AS WE CALL IT HERE»

And from the point of view of the associations?

From the associations, and on this point I refer to IGREA, we wish to provide and, I believe we do in fact provide, an added value to our companies.

It's a wonderful forum for sharing experiences, concerns and solutions whilst at the same time we try to exert our influence on the various agents of risk management process

In your opinion, what training will the risk managers of the future need?

Future managers will probably need to use more sophisticated management and control tools, but as a close friend of mine likes to say, they will certainly need to be graduates of the school of imagination, to take a master's degree in imagination. I get the feeling that we're moving in a tremendously reactive world, we have to innovate and not be content with what works at this moment, we need to have imagination, it's a mistake to forecast future risks on the basis of existing experiences, we have to make an effort and be imaginative, we have to reconsider things, question them and not resign ourselves to them and think that everything is alright as it is.

And while we're at it, it's also important to have a team consisting of people who are better than you, specialists certainly, but above all with common sense, resourcefulness, and who are motivated by a job well done, and who think holistically, globally. In our case, this wish list is essential for us to fulfill our objectives, it all has to be squared, even contradictory objectives at times, squaring the circle. What we call reverse engineering here.

THE CHALLENGE: BALANCING THE COST OF RISK

Cristina San Sebastián joined Iberdrola in 1993 and has spent her entire career there. After graduating in Law from the University of Deusto, she initially formed part of the Legal Affairs team before moving on one year later to the Risk Management Department. Head of this department since 2005, Cristina leads an international team responsible for managing and insuring the operational risks of the Iberdrola Group, the complexity of which has been demonstrated by the internationalization strategy pursued by the group over the last decade.

She is delighted to be involved in a project whose growth she has overseen. «And we're fortunate to be in a position where we have a global view of the company. We have a wonderful view of what there is in each country, in each business. On the other hand, speaking as we are of a multinational, we interact with people from different countries, which is very enriching personally and professionally. It's also given us the opportunity to improve and to adopt the best practices from each company», Cristina San Sebastián explains.

She is very clear about the challenges and objectives of her profession: «The first thing is getting by every day. Then there are the macro objectives that have to be met, but first the day-to-day business must be put in order with the millions of issues that may arise in a company like this». Then she adds: «Maintaining that control, ensuring that the structure works suitably, and once it's up and running, oiling the works on a daily basis, otherwise we would not be able to give our internal clients the best service».

Finally, another challenge is achieving balance in the matter of risk cost. «We always work with that parameter in mind». And if we were to talk of more specific objectives, «natural risks are complex to manipulate, to manage and it's difficult to find the right tool; the risks associated with the offshore projects which we currently handling, environmental issues; and, lastly, the challenge of the suitable treatment of risks to the company associated with insurance contracts».

Arbitration Insurance: *an Emerging Market in Spain*

The mandatory requirement for mediators will undoubtedly encourage growth in the field of arbiration insurance. But this emerging market needs better design of this kind of insurance.

PILAR PERALES VISCASILLAS
UNIVERSITY CARLOS III (MADRID)

LEGAL FRAMEWORK OF MANDATORY INSURANCE IN ARBITRATION

The amendment introduced to the [Spanish] Arbitration Act 60/2003 dated December 23, 2003 by the [Spanish] Arbitration and Regulation of Institutional Arbitration in the General Administration Act 11/2011 dated May 20, 2011 (published in the Official Gazette -*BOE*- No. 121 dated May 21, 2011) (hereinafter «AA») imposes, for the first time in Spain, a mandatory obligation for arbitrators, or arbitral institutions on their behalf, to take out civil liability insurance (hereinafter «CLI») or an equivalent guarantee, for the statutory coverage amount to be established by the relevant regulations (Article 21.1, subsection 2 of AA). The referred Article exempts Public Entities and arbitral systems forming part by, or dependent upon, public administrations from this insurance requirement.

Subsequently, the obligation to take out liability insurance was extended to mediators. Article 11.3 of the [Spanish] Civil and Commercial Mediation Act 5/2012 dated July 6, 2012 (published in the Official Gazette -*BOE*- No. 162 dated July 7, 2012) provides that: «Mediators must take out civil liability insurance or an equivalent guarantee covering their activities in any disputes they mediate». Mediation institutions are not required to take out mandatory CLI, however Act 5/2012 also establishes their liability (Article 14). No provision has been included requiring mediation institutions to take out such insurance on behalf of the mediators.

The new statutory requirement of mandatory insurance coverage –which is practically unique worldwide since we are not aware of any other laws imposing mandatory CLI for arbitration– is embodied in Article 21.1 of AA, that regulates the liability of arbitrators and arbitral institutions and is thus closely related to the liability that such arbitration operators may incur.

Article 21.1 of AA provides that:

«Acceptance [of the designation] requires arbitrators, and where applicable, the arbitration institution, to faithfully perform their duties, and

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failure to do so shall imply liability for damages caused as a result of their bad faith, recklessness or willful misconduct. In the case of arbitrations entrusted to an arbitration institution, the injured party shall have the right to direct action against such institution, regardless of any recovery actions that such institution may subsequently bring against the arbitrators.

Arbitrators or arbitration institutions on their behalf shall be required to take out mandatory civil liability insurance or an equivalent guarantee, in the amount to be established by the applicable implementing regulations. Public entities and arbitral systems forming part of, or dependent upon, public administrations shall be exempted from such mandatory insurance».

The aforementioned Article sets out –according to the interpretation which we deem to be the most correct– that the party required to take out CLI is the arbitrator in an *ad hoc* arbitration proceedings, and the arbitration institution on behalf of the arbitrator in an institutional arbitration. Arbitral institutions are not required to take out CLI insurance to cover their own liability. Moreover, as noted above, as from 2003, Spanish law leans towards restricting the liability of arbitrators and arbitral

institutions since they are only held liable in the most serious cases involving willful misconduct, bad faith and recklessness. This is in contrast to the former legal system, which followed the general rules: liability arising from willful misconduct or fault under the Arbitration Act of 1988 (Article 16).

RATIONALE OF THE STATUTORY REQUIREMENT

The mandatory insurance coverage requirement for arbitrators, as a type of civil liability insurance that originates in the XXI century, does not arise from the same historical reason underlying the creation of this type of insurance, i.e. the need to protect victims against the risks of industrialization and mechanization, which gave way to a voluntary civil liability insurance, under the principle of freedom of contract, and subsequently followed by a range of mandatory insurance in areas such as employment law, motor insurance, medical malpractice insurance, hunting insurance, etc. (Sánchez Calero). The idea behind [arbitration mandatory insurance] is neither to protect the victim from the referred risks arising from industrial society and machinery nor to create an instrument in pursuit of solidarity or social justice; instead, the rationale is, on the one hand, to promote Spain as a seat for international arbitrations by providing guarantees to potential users, and on the other, to strengthen the use of arbitration, calling the attention of potential users to the guarantees being offered.

The rationale of mandatory CLI Arbitration insurance is more similar to that of other types of professional liability or service provider insurance, such as the one recently established for bankruptcy trustees ([Spanish] Act 38/2011 dated October 10, 2011 amending the [Spanish] Bankruptcy Act 22/2003 dated July 9, 2003), sharing some of the legal problems that arise in the field of CLI.

However, mandatory CLI for arbitrators differs from the traditional categories of mandatory CLI (Pavelek). Mandatory CLI for arbitrators fails to fit into any of such categories given that this type of mandatory CLI is neither based on a special strict civil liability regime (as is the case of motor, hunting, etc) nor does it involve an insurance of a «mandatory» nature for classified «activities», the practicing of which requires obtaining a special license (*carnet*) or permit, registering with a special registry, being admitted to an association, etc.

In clear contrast with other professional areas where the rise of CLI is a result of a tightening of the regulations on the legal regime of liability, as in the case of company directors or bankruptcy trustees, the requirement for arbitrators to carry mandatory insurance coverage is not accompanied by an increase in their liability. In spite of the foregoing, it should be noted that the requirement of mandatory insurance is not automatically followed by a strict liability regime, which may go even as far as imposing a strict liability, but the expansion of mandatory CLI does have a direct impact on the increase of the alleged liability cases as well as on their structure.

On the contrary, the standard of liability of arbitrators has not changed in any way following the approval of the [Spanish] Arbitration Act in 2003. However, the amendment introduced by the May 2011 [Spanish] Arbitration Act now requires that arbitrators carry CLI and this leads us to question

THE RATIONALE FOR MANDATORY CLI ARBITRATION INSURANCE IS MORE SIMILAR TO THAT OF OTHER TYPES OF PROFESSIONAL LIABILITY OR SERVICE PROVIDER INSURANCE, SUCH AS THE ONE RECENTLY ESTABLISHED FOR BANKRUPTCY TRUSTEES

the rationale of this mandatory insurance requirement, particularly since it is not imposed upon arbitral institutions.

The concern underlying this question arises immediately upon analyzing the Preamble of the 2001 amendment, which justifies such mandatory insurance on very broad terms, thus hardly aiding to shed any light onto the actual sense of the statutory amendment. According to the Preamble (II) of the [Spanish] Act 11/2011, the purpose of such amendment is to increase both legal certainty and the effectiveness of arbitration proceedings. On the other hand, this development cannot be traced back, as most of the legal provisions of AA, to the UNCITRAL Model on International Commercial Arbitration (1985) or its amendment (2006). Therefore, its rationale cannot be found in International Commercial Uniform Law.

The search for the rationale underlying the reform is further complicated by another problem related to the civil liability standard adopted as from the enactment of the Arbitration Act, Article 21. The accountability of arbitrators is not determined in accordance with the Spanish general legal liability system, whereby liability is subjective or by fault, but they are held liable, on a first interpretation based on the wording of the law, solely in the most serious cases of bad faith, recklessness or willful misconduct. Thus, the legislator departs from the immediate antecedent provided under the AA (1988), whereby someone was held liable on the basis of his or her willful misconduct or fault (Art. 16), as well as the general standard of liability applied also to other professionals, thus complicating the analysis of the insurance contract in this field.

The rationale for mandatory CLI may be found in the general theory of the insurance contract and, therefore, always lies in the protection of damaged third parties, guaranteeing them responsible assets, in spite of the fact that the means used for such purpose, the CLI, seeks the protection of the liable party (Calzada Conde).

The mandatory imposition of insurance can also be considered in relation to the legislator's policy, both in Spain and in the EU, aimed at encouraging the so-called alternative resolution methods (ADRs, Alternative Dispute Resolutions, as they are usually referred to in English) and particularly mediation and arbitration. Thus, it does not come as a surprise that mediators are required to take out mandatory CLI under the new mediation law. To that can be added the opening to professionals who may carry out arbitration duties, as set out by the amendment of the Arbitration Act of May 2011, on the one hand, together with the decision that mediators need not necessarily have a legal education, although they must have mediation education.

In an attempt to put together the complex puzzle of the potential motives that led to the establishment of the mandatory insurance coverage requirement for arbitrators, we must mention Directive 2006/123/EC of the European Parliament and the Council of December 2006 on services in the internal market (DO L 376/36, 27.12.2006), that establishes in a general manner the obligation to take out insurance or an equivalent guarantee in relation to the provision of certain services. However, it does not require that this obligation of appropriate insurance be laid down by law, it suffices that it is established in the ethical rules laid down by professional bodies and, of course, without imposing an obligation for the insurance companies to provide insurance cover (Whereas Clause 99 Directive 2006/123). Article 23 (Professional liability insurance and guarantees) of Directive 2006/123 establishes in paragraph 1 that:

> «Member States may ensure that providers whose services pose a direct and particular risk to the health or safety of the recipient or a third party, or to the financial security of the recipient, take out professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose».

It is probably the risk to financial security that best fits arbitration.

The transposition of the Directive in Spain has resulted in the legislator establishing that the obligation of taking out CLI coverage should be laid down by statute. Thus, Article 21.1 of [Spanish] Act 17/2009 dated November 23, 2009, on free access to the activities involving services and their practice, prescribes that:

Article 21. Insurance and professional liability guarantees.

«1. Service providers may be required, by a rule passed as an Act, to take out professional civil liability insurance or any equivalent guarantee covering any damages caused in the rendering of their services in those cases where the services they render pose direct and specific risks to the health or safety of the recipient or any third party, or to the financial security of the recipient.

The mandatory guarantee must be proportionate to the nature and the scope of the risk covered».

In light of the above, the following conclusions may be drawn:

First, the mandatory insurance requirement for arbitrators is based, at least partially, since its rationale also arises from the need to increase legal certainty and the effectiveness of arbitration proceedings, on EU legislation applicable to the rendering of services and its subsequent transposition into the Spanish legal regulations. Spanish legislators, unlike other European legislators, have considered that arbitrators are directly affected by such legislation and thus requires CLI or an equivalent guarantee.

Second, the above implies that Spanish legislators classify the services rendered by arbitrators as liberal professional activities, without equating such activities to those of public authority officials, specifically judges and magistrates, who are excluded from the Services Directive and from the Spanish Act. In other words, it seems that Spanish legislators decided in favor of the contractual nature and not the judicial aspect of the service rendered by arbitrators, an issue that has a significant impact on the liability of arbitrators.

Third, Spanish legislators incurred a patent contradiction by deciding that the arbitrator is the party required to take out the insurance, but not an arbitral institution, since the services rendered by arbitral institutions also affect the financial security of the recipients –this being probably the decisive reason for imposing mandatory insurance for arbitrators under the Directive and the Services Act, and when, additionally, such arbitral institutions are required to take out CLI on behalf of the arbitrators.

THE INSURANCE MARKET IN OTHER COUNTRIES

The debate as to the usefulness or necessity of carrying CLI, as well as the specific wording of the policies, depends to a large extent on the liability regime established in each legal system.

Different legislations and arbitral rules have adopted three different approaches, namely: the general liability approach based on fault or negligence (minority model in arbitral laws, although it has been adopted in some Latin American countries), the full exoneration approach (the arbitrators and arbitral institutions are fully exempt from liability; this is the Irish and the U.S. model) and the qualified exoneration approach (under this approach civil liability is attached only in serious cases, generally cases involving willful misconduct or gross fault). The qualified exoneration approach is the most successful and the one most extensively used, and it is the one adopted by Spanish law, which opted for liability based on willful misconduct, bad faith or recklessness.

The referred approaches are quite clear as to their relationship with the CLI or, more specifically, as to the absolute lack of relationship, since such regulatory framework explains that the statutory requirement of mandatory insurance is, in general, non-existent in comparative arbitration law, and the same may be said of the relationship with the voluntary taking out of civil liability insurance (Jolivet).

A common feature of the most extensively applied approaches is that by exempting the arbitrator or the institutions from liability or by addressing only serious liability cases which involve willful misconduct or fault, the institutions and

THE DEBATE AS TO THE USEFULNESS OR NECESSITY OF CARRYING CLS, AS WELL AS THE SPECIFIC WORDING OF THE POLICIES, DEPENDS TO A LARGE EXTENT ON THE LIABILITY REGIME ESTABLISHED IN EACH LEGAL SYSTEM

arbitrators in such countries found it unnecessary to take out optional or voluntary ILC coverage, less still for legislators to impose –as is the case of Spain– mandatory insurance coverage. This is the case of Mexico, Peru or Venezuela.

This situation is not at all infrequent, as pointed out in a recent survey (Hofbauer) conducted on the basis of 22 answers provided by arbitral centers worldwide that were asked whether they carried ILC insurance and if such insurance covered arbitrators. The survey showed that over half of the institutions had ILC, but that they do not provide liability insurance to their arbitrators, and when they did so it was only following specific requests.

Although the survey does not state the reasons why the arbitral institutions' CLI coverage is not extended to arbitrators, it is possible that the reason thereof lies partly in that arbitral institutions deem that the relationship that binds them with arbitrators is non-contractual, and that it is therefore up to the arbitrators to take out their own indemnity insurance. The data shows that arbitrators do not care to take out insurance coverage because they trust that the arbitral institution may have obtained insurance covering their liability, they trust that the CLI of lawyers cover their activities as arbitrators or they even believe that, being protected by the legal privilege, they are deemed to be immune from any civil liability they may incur. Thus, hypothetically it can be said that they do not need or deem it necessary to take out CLI coverage.

The issues relating to the liability of arbitrators and arbitral institutions and the need to guarantee such liability is an issue of growing concern for parties to international commercial arbitration. Thus, some prestigious arbitral institutions have on their agendas the possibility of an international insurance company developing a specific policy for arbitration centers for the purpose of providing them –particularly small and medium-sized ones– with a uniform policy that takes into account the specific features of arbitration. The issue regarding the coverage or non-coverage of arbitrators has yet to be decided.

We should also highlight the problems that arise at the time of taking out a potential CLI policy by arbitral institutions, as listed by specialized legal scholars (Jolivet):

- They have found it practically impossible to find an insurance company capable of offering adequate arbitration insurance.
- Lack of understanding and comprehension of the role played by an arbitrator and an arbitral institution.
- Lack of a standard policy covering the risks faced by an arbitral institution.
- Low profitability of a specific policy and, if such a policy is issued, the limited scope of the amount and territorial coverage makes it useless.
- The problems arising from the obligations undertaken by arbitral institutions in relation to confidentiality issues make it difficult to delimit the risk, particularly in relation to the questionnaire.
- The high cost of the premiums offered by insurance companies due to the technical difficulties they encounter in risk assessment, which even result in insurance companies resorting to reinsurance and co-insurance in order to distribute risk.

THE ISSUES RELATING TO THE LIABILITY OF ARBITRATORS AND ARBITRAL INSTITUTIONS AND THE NEED TO GUARANTEE SUCH LIABILITY IS AN ISSUE OF GROWING CONCERN FOR THE PARTIES TO INTERNATIONAL COMMERCIAL ARBITRATION

THE INSURANCE MARKET IN SPAIN PRIOR TO THE MANDATORY INSURANCE REQUIREMENT

As to the Spanish insurance market, it should be noted that prior to the imposition of mandatory insurance some arbitral institutions already carried general liability insurance coverage.

In the case of arbitrators who were also practicing lawyers, the CL policies of lawyers did not cover liability arising from arbitration activities, neither directly nor indirectly by resorting to interpretation by analogy or broad interpretation which would, otherwise, be highly debatable, although there were opinions to the contrary that placed arbitrators' liability in the general framework of out-of-court non-litigation activities that a lawyer could conduct at the client's request. The fact is that the duties, irrespective of the approach adopted as to the legal nature of the arbitrator's role, performed by lawyers and arbitrators are very different. There are even fewer similarities in the case of non-lawyer arbitrators.

THE INSURANCE MARKET IN SPAIN AFTER THE IMPOSITION OF MANDATORY INSURANCE

After the imposition of mandatory insurance by [Spanish] Act 11/2011, initially, a prestigious insurance company attempted to design a special policy to cover damages arising from the actions or omissions of arbitrators, and which was also offered in the context of an arbitral tribunal, thus implying that the statutory requirement was construed in the sense that in all cases the obligation fell upon arbitrators. We support an interpretation that involves making a distinction between *ad hoc* arbitration and institutional arbitration in order to determine the party that is under the statutory obligation of taking out the insurance.

This first approach towards mandatory insurance actually involved *ad hoc* individual or collective civil liability insurance that provided coverage only to the insured party for damages arising from the performance of his/her arbitration activities. However, this specific insurance was only marketed for a few months until the market shifted towards a different approach which finally did not involve adopting a specific policy in this field.

The market has currently adopted the practice of amending lawyers' CL policies so as to include arbitration activities. Lawyers' Associations are beginning to extend their policies so as to also cover their members' arbitration activities as arbitrators (as well as mediation activities). Thus, the Madrid Lawyers' Association (*Ilustre Colegio de Abogados de Madrid*) has extended its policy (ICAM Policy) to cover mediation and arbitration, both in relation to practicing lawyers who may be acting as arbitrators or mediators as well as in relation to the coverage of its own Arbitration Court (*Corte de Arbitraje del ICAM*) and Mediation Centre (*Centro de Mediación del ICAM*).

MAPFRE has considered extending the Professional CLI for Lawyers in order to cover their civil liability as arbitrators and mediators.

It should be noted that since the Professional CLI for lawyers has been «automatically» extended to arbitration activities (as well as mediation activities), no new questionnaire has been submitted to the insured party, who has simply been informed of the policy extension, with no premium increase resulting therefrom.

This extension of CLI policies for lawyers has not occurred in relation to other professions –such as architects or engineers, not even to notaries, who are also required to take out mandatory insurance pursuant to the Order issued by the Ministry of Justice on November 16, 1982, that requires notaries to take out mandatory insurance through the *Junta de Decanos* body, and who may, precisely after the amendment of the Arbitration Act by means of the referred Act 11/2011, conduct arbitration activities (Article 15.1 AA, even in cases of arbitration in law). Therefore, these professionals do not have a defined coverage if they render services as arbitrators.

The above, however, does not mean that policies for lawyers are specifically adapted to the field of arbitration. On the contrary, interpretation problems and gaps can be detected in such policies, which leads us to consider that insurance companies will have to gradually adapt such policies so as to improve them in light of practical experience or even to reconsider the idea of a specific policy.

As to arbitration centers, and after analyzing some policies of leading arbitral centers in Spain, we observe that under one single policy –although independent and normally with a different limit– coverage is provided for different civil liability modules: professional and general civil liability, the latter including separate sections for general liability, employers liability and products, also including damage to leased premises. Additionally, one of the referred institutions has taken out a professional liability policy (second layer) that covers a specific amount in excess of the first layer. The ICAM Policy also insures against General, Employers and Professional CL of the Arbitration Court, as well as against breaches to the Data Protection Act (*Ley Orgánica de Protección de Datos*).

It should be noted that the administration institutions have not been subject to a questionnaire, except for one of the examined policies. In this case the short and simple renewal questionnaire consisted of three questions aimed at assessing the arbitral activities of the institutions in relation to the number and type of arbitration proceedings: in law or equity; knowledge of the existence of any claim and, if this is the case, the circumstances and results thereof; and lastly, the existence of any amendments to the by-laws or rules of the arbitral institutions.

The simplicity of the questionnaire in the context of arbitration is probably due to the limited practical experience in the field, together with the fact that this is not a widely used type of insurance in the market. In addition, some of the policies we examined were not preceded by a questionnaire and this is probably due to the fact that it is the policyholder who initiated the mechanism of contracting the policy.

One further question at this stage would be whether the professional CLI that professional companies must mandatorily carry (Art.11.3 of [Spanish] Act 2/2007, dated March 15, on Professional Companies –*Sociedades Profesionales*–), where the insured party is not only the company, but also the partners, whether professional or not, and the employees, could also be extended to cover arbitration. The question is, undoubtedly, important as regards lawyers, given that today the large majority of arbitrators are lawyers, but it is also important as regards other professions that are organized as a firm, and whose partners or employees are members of a professional body entitled to conduct arbitration activities, such as doctors, economists, architects or engineers.

The issue is not in the least trivial, because although the activities of an arbitrator are, undoubtedly, different from those conducted by a lawyer, the remuneration paid to the arbitrator (lawyers, partners or employees, who are members of a professional company, the legal structure currently adopted by most firms, particularly larger ones) has an impact, totally or partially, on such professional company, even though such activities are conducted independently from the company. In addition, the issue of the independence and impartiality of the arbitrator is closely related to the client portfolio of the law firm, so that an essential element in the arbitrator's acceptance of his/her role as arbitrator is the non-existence of a conflict of interests between the parties to the arbitration and the firm, or rather its clients, where the arbitrator practices law.

The issue is similar and the answer is the same to the one provided in relation to the CLI for lawyers before the mandatory insurance requirement. The fact that in the case of lawyer policies liability has been extended to cover their activities as arbitrators results in a very generic extension that fails to provide for specific issues involving arbitration, as we have earlier pointed out. The activities conducted by an arbitrator are different from those conducted by a lawyer, particularly bearing in mind that an arbitrator's role ends with a specific result: the issue of an award with a legal scope similar to that of a final judgment. This precisely calls for the development of a specific policy covering the CL of arbitrators, or at least the design of CL policies for lawyers –whether professional companies or not– that will take into account the particular features of arbitration activities. It should be noted that in the regulatory provisions of other mandatory CLI –such as the ones imposed on bankruptcy administrators– the legislators have provided that minimum mandatory coverage may be introduced «as an extension to the civil liability policies of lawyers, economists, business administrators or auditors», as provided in the Preamble of the [Spanish] Royal Decree 1333/2012, dated September 21, regulating liability insurance and the equivalent guarantee imposed on bankruptcy administrators.

THE DEVELOPMENT OF A SPECIFIC POLICY COVERING THE CIVIL LIABILITY OF ARBITRATORS, OR AT LEAST THE DESIGN OF CIVIL LIABILITY POLICIES FOR LAWYERS THAT WILL TAKE INTO ACCOUNT THE PARTICULAR FEATURES OF ARBITRATION ACTIVITIES, IS A NECESSARY NEXT STEP

CONCLUSIONS: AN EMERGING MARKET THAT REQUIRES IMPROVED INSURANCE DESIGN

The mandatory insurance requirement will undoubtedly encourage growth in the field of arbitration insurance, and this will have evident advantages vis-à-vis the possibility of obtaining an equivalent guarantee.

However, the limited practice of insurance companies in relation to this specific field of liability, the insufficient case law and jurisprudence, the difficulty in fitting the insurance into the liability legal standard provided in Article 21.1 of AA, particularly if it is construed in the sense that liability arises only in case of willful misconduct, and the lack of support of policies used in other countries –given that no specific insurance practice exists worldwide– will create interpretation and adaptation problems between insurance and arbitration.

Clear evidence of the above is the fact that on the one hand the policies taken out by arbitral centers give rise to problems in terms of their coverage for arbitrators, both because of the wording of such policies and due to the delimitation of the risks insured, and also because of the exclusions in the policies. Additionally, the few policies issued today in the Spanish market that provide insurance to arbitrators are professional CLI policies for lawyers which have been extended to include arbitration and mediation services, and they are not suitable for the needs of arbitration, while all other professionals lack coverage. On the other hand, the rest of the different policies we examined are different in their contents, scope and wording, which will make it difficult to apply them to specific cases, particularly in light of the uncertainties arising from the temporal scope of coverage in the case of administered arbitrations and the low coverage limits.

Precisely, one of the problems reported by the arbitral institutions in finding a CLI that will adequately cover the risks arising from arbitration activities lies in the limitations imposed by insurance companies on the amount of coverage. Even now that CLI for lawyers has been extended to cover arbitration activities, the limit per event for the coverage is really low (for example, 18,000 euros in the case of the ICAM Policy) compared to the figures involved in commercial arbitration proceedings, and particularly international arbitration proceedings, which makes this insurance useless in the field of commercial arbitration.

It is clear that the insurance market in Spain should adopt a leading position given that there is no practice in the field of arbitration liability insurance coverage in other countries where, in spite of the liability standards, there is growing demand from arbitration operators in light of the increase and globalization of arbitration and the larger litigation as regards liability. However, and using tennis as an example, this service advantage of 15 or 30-love does not mean that the match will be won unless there is an effort to design an insurance policy that will actually cover the needs arising from the provision of arbitration services.

Accordingly, in our opinion, the most appropriate mechanism of coverage would be to create a specific insurance for this field –or a specific supplement to professional liability policies, instead of a mere inclusion of arbitration, as is

THE INSURANCE MARKET IN SPAIN SHOULD ADAPT A LEADING POSITION GIVEN THAT THERE IS NO PRACTICE IN THE FIELD OF ARBITRATION LIABILITY INSURANCE COVERAGE IN OTHER COUNTRIES

currently the case in most policies– given that the specific features of arbitration activities, as well as the statutory liability arising from the Arbitration Act, call for a policy specially designed and devised to cover the different contingencies arising in this field, particularly bearing in mind that the list of professionals who may act as arbitrators has been extended by the latest amendment to the Arbitration Act.

In addition, in the above case, the policy could be amended or extended from time to time in light of the practical experience that will arise in this field, which is currently quite limited. However, current practice has not developed a uniform set of particular terms and conditions for the policies that are being offered by the professional bodies, with the disadvantage of the top limits as to the amounts covered, which leaves room for a specific insurance market in this field that may offer conditions better tailored to the parties involved in arbitration and to the limits covered, and in relation to other specific and particular terms and conditions that could be agreed upon, especially once the future regulatory provisions have been passed.

BIBLIOGRAPHY

—CALZADA CONDE, María Ángeles. *El Seguro de Responsabilidad Civil*. In: Madrid: Thomson-Aranzadi, 2005.

—HOFBAUER, Simone/BURKART, Michael/BANDER, Lara/TARI, Methap. «Survey on Scrutiny on Arbitral Institutions». In: *Arbitral Institutions Under Scrutiny: ASA Special Series* No. 40, JurisNet, LLC, 2013, pp.1-36.

—JOLIVET, Emmanuel. «La responsabilité des centres d'arbitrage et leur assurance». *Revue générale du droit des assurances*, n° 1 (2012), p.1-13. (openly available at http://www.lextenso.fr/). [Consulted: September 15th 2013].

—PAVELEK, Eduardo. Los seguros de responsabilidad civil y su obligatoriedad de aseguramiento». In: Madrid: FUNDACIÓN MAPFRE Estudios, 1992. (*Colección Cuadernos de la Fundación*, n° 7).

—PERALES VISCASILLAS, Mª del Pilar. «El seguro de responsabilidad civil en el arbitraje». In: Madrid: FUNDACIÓN MAPFRE, 2013. (*Colección Cuadernos de la Fundación*, n° 197).

- «Civil Liability of Arbitrators and Arbitral Institutions in international commercial arbitration: The development of the arbitration laws and rules in the last 30 years». *The World Arbitration & Mediation Review* (WAMR), n° 2 (2013).

—SÁNCHEZ CALERO, Fernando. *Ley de Contrato de Seguro. Comentarios a la Ley 50/1980, de 8 de octubre, y a sus modificaciones*. In: Madrid: Thomson/Aranzadi, 2005.

The sustainability factor of the social-security system from an actuarial point of view*

The recently-passed Law 23/2013 of 23 December on the Sustainability Factor and the Revaluation Index in the Social Security Pensions System (Ley 23/2013, de 23 de diciembre, reguladora del Factor de Sostenibilidad y del Índice de Revalorización del Sistema de Pensiones de la Seguridad Social) introduces the sustainability factor into Spain's public pension system.

An analysis of this factor calls for a critical and thorough approach based on actuarial techniques but without losing sight of other essential goals like fairness, insofar as this is compatible with ruling social-security principles and the ongoing drive of seeking long-term, commitment-meeting solvency. We believe the time has come for our social welfare model to accept the actuarial approach as an inestimable aid in the decision-making process and a priority outlook in its analysis and development.

This article presents a set of reflections on the Sustainability factor and the Revaluation index for Pensions in Spain, taking in other alternatives that correct some of its sources of uncertainty, and finishes up with some comments on the new social environment and complementary welfare schemes.

MARÍA BEGOÑA GOSÁLBEZ RAULL,
ALICIA DE LAS HERAS CAMINO
and DANIEL HERNÁNDEZ GONZÁLEZ
ACTUARIES

* The authors wish to thank FUNDACIÓN MAPFRE for its support under 2012 research grants for the «Actuarial approach to implementation of the sustainability factor in Spain: new challenges for complementary systems» project.

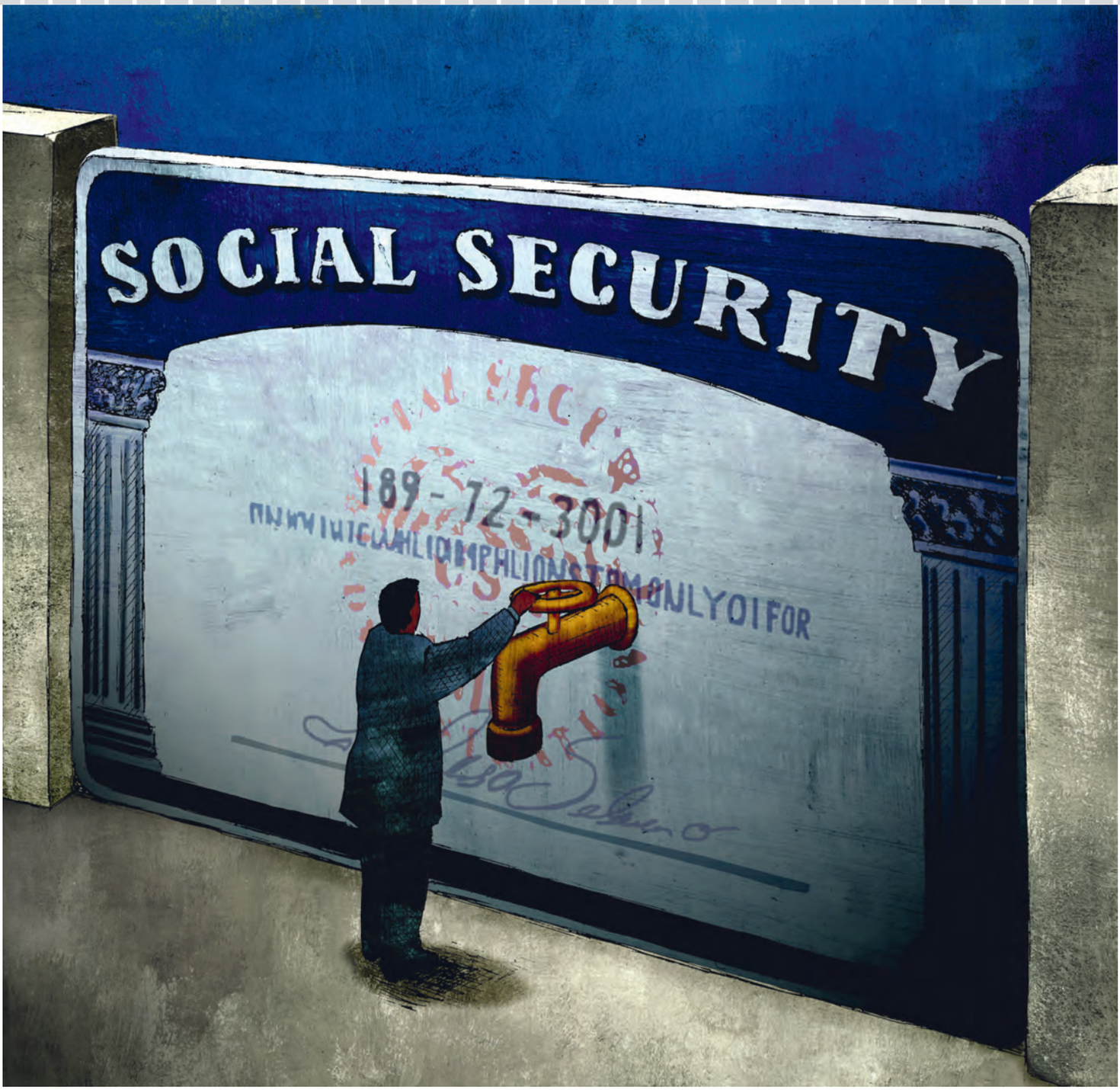


ILLUSTRATION STOCK

WHY A SUSTAINABILITY FACTOR?

Economic-financial pressures and population forecasts have fuelled a search for and adoption of corrective measures in welfare systems to ensure their mid- and long-term solvency and stability; a key feature in this endeavour is what has come to be known as the sustainability factor.

Spain's social-security pension expenditure increased by 87.43% from 2001 to 2012 while revenue grew by only 22.63%. Deficits were the inevitable result, and the reserve fund had to be dipped into to keep things ticking over. Uncertainties about the public welfare model stem not only from demographic and economic factors but also structural flaws such as the proven unfairness between sums paid in and benefits received and the lack of any long-term outlook. This has spawned a series of reforms, such as the *Ley 27/2011 de 1 de Agosto* (Law 27/2011 of

THE MAIN AIM OF THE SUSTAINABIILITY FACTOR IS TO CONTRIBUTE TOWARDS THE SOLVENCY OF THE FIRST WELFARE PILLAR, BUT IT COULD ALSO FAVOUR OTHER PURPOSES

1 August), which, under the aegis and pressure of European recommendations, included in its article eight the need of bringing in a sustainability factor, setting up for this purpose a committee of experts or think tank which issued its report on 7 June 2013. This whole process culminated with the Law 23/2013 of 23 December on the Sustainability Factor and the Revaluation Index in the Social-Security Pensions System (*Ley 23/2013, de 23 de diciembre, Reguladora del Factor de Sostenibilidad y del Índice de Revalorización del Sistema de Pensiones de la Seguridad Social*).

WHAT IS A SUSTAINABILITY FACTOR?

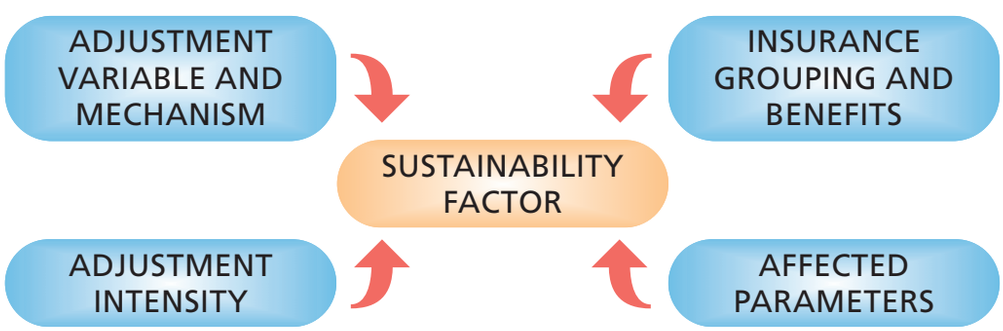
A sustainability factor is an adjustment mechanism for bringing system-defining pension parameters into line with the ongoing trend of different socioeconomic or demographic variables. In our opinion it should be applied mainly to lifelong benefits. Herein lies one of the main conceptual differences of our proposal from other authors; we consider that the sustainability factor should be applied not only to retirement pensions but also to all benefits with a mid- and long-term outlook, otherwise the resulting system would be inefficient and would also generate inequalities among the beneficiaries of the public pension system. The main aim of the factor is to contribute towards the solvency of the first welfare pillar, the compulsory pay-as-you-go state pension, but it could also favour other purposes such as the search for intergenerational equity or limitation of political risk.

THE COMMITTEE OF EXPERTS' PROPOSAL

The Committee of Experts proposed a dual system based on an intergenerational equity factor (*factor de equidad intergeneracional*: FEI) and an Annual Growth Factor (*factor de revalorización anual*: FRA). The FEI is applied solely to pay-as-you go retirement pensions; it acts on the initial pension as an endogenous life-expectancy parameter (e_x) working as an adjustment variable, setting a reference age (x=65 años) and a reference year ($t \in [2014,2019]$). For each of the calculation years ($t+s$) this then produces the following equation:

$$FEI_{x,t+s} = \frac{e_{x,t}}{e_{x,t+s}}$$

Figure 1. General scheme of the sustainability factor



The aim of the FEI is to search for intergenerational equity, obviating a situation in which individuals with the same characteristics and the same pay-in structure receive different overall benefits due to the life-expectancy trend, i.e., it cancels out variations of this factor in the benefit flow.

The FRA, for its part, seeks a revenue-expenditure balance throughout the whole economic cycle, applying to all pension-appreciation operations a formula based on moving averages means and the use of past values (certain) and future values (estimates).

$$FRA = \overline{g}_{I,t+1} - \overline{g}_{P,t+1} - \overline{g}_{s,t+1} + \alpha \cdot \left(\frac{I_t^G - G_t^G}{G_t^G} \right)$$

- $\overline{g}_{I,t+1}$ Revenue growth rate. Moving arithmetic mean
- $\overline{g}_{P,t+1}$ Growth rate in the number of pensions. Moving arithmetic mean
- $\overline{g}_{s,t+1}$ Increase in the average pension due to the replacement effect. Moving arithmetic mean
- α Speed at which budget imbalances in the system are corrected
- I_t^G System revenue. Moving geometric mean
- G_t^G System expenditure. Moving geometric mean

THE GOVERNMENT OF SPAIN'S PROPOSAL

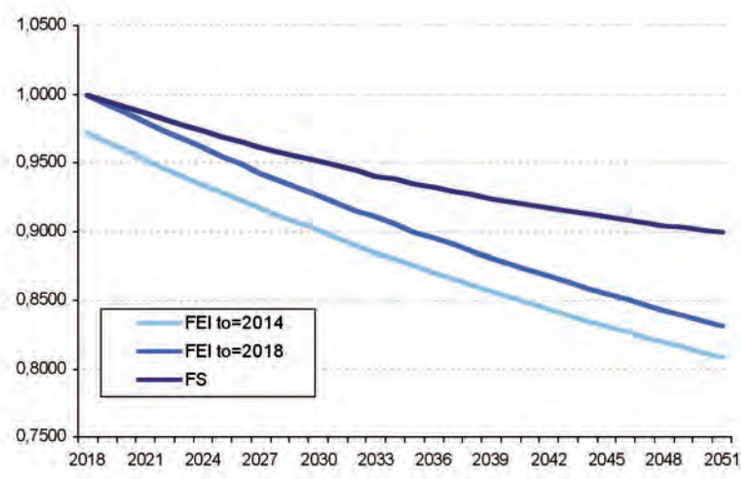
Spain's government has mooted a sustainability factor (*factor de sostenibilidad*: FS) that retains the intergenerational-equity actuarial approach and some basic characteristics of the FEI, to be applied to the initial pay-as-you go pension as from 2019 and with a reference age of 67.

$$FS_t = FS_{t-1} \cdot e_{67}^* \quad , \quad FS_{2018} = 1$$

$$e_{67}^* = \underbrace{\left(\frac{e_{67,2012}}{e_{67,2017}} \right)^{\frac{1}{5}}}_{2019-2023} \quad \cdots \quad \underbrace{\left(\frac{e_{67,2017}}{e_{67,2022}} \right)^{\frac{1}{5}}}_{2024-2028} \quad \cdots \quad \underbrace{\left(\frac{e_{67,2022}}{e_{67,2027}} \right)^{\frac{1}{5}}}_{2029-2033} \quad \cdots$$

As well as the failure to deal with lifelong benefits, one of the main criticisms we would level at the FEI and the FS is that they propose a fixed reference age, 65 and 67 respectively. This does not chime in with the actual situation of the benefits system and generates inefficiencies in practice. Firstly, the social security system allows pay-as-you go pension take up at different ages; secondly, the public welfare system includes other benefits looking to the mid- and long-term, whose opt-in age is not linked to the beneficiary's biometric age. An adjustment is therefore needed to allow for this age of entry. Graph 1 shows a comparison of FEI and FS amounts; if the current life-expectancy trend holds,

Graph 1. Comparison between sustainability factors



Source: Drawn up by the authors from forecast tables of the National Statistics Institute (INE 2012-2051) and Social Security

IN OUR OPINION, THE IRP IS LIKELY TO DIP BELOW THE LEGAL LOWER LIMIT IN COMING YEARS, SO THE ANNUAL APPRECIATION OF PENSIONS IN THE SHORT- TERM WILL BE 0.25%

there would be falls in the initial pay-as-you go retirement pension in comparison to situations in which this factor is not applied.

A second pension appreciation arrangement takes the Revaluation Index for Pensions (*Índice de Revalorización de las Pensiones*: IRP) as its benchmark rather than the Consumer Price Index (*Índice de Precios al Consumo*: IPC). The IRP has the same mathematical expression as the FRA and is to be applied as from 2014. An improvement in the case of the IRP is a better fit and more precision in terms of the revenue and expenditure to taken into account in the calculation, although the latter still includes estimates (5 years before and 5 years after year t); this decision we do not agree with. Maximum and minimum limits are expressly established so that $IRP \in [0{,}25\%, \Delta\nabla IPC + 0{,}50\%]$, these limits are not symmetrical with the variation in the Consumer Price Index; from the technical point of view the value of these limits has not been properly justified; a fairer alternative would be to use symmetrical limits so that $IRP \in [X-\alpha, X+\alpha]$ and $X = \Delta\nabla IPC$.

The government's proposal also quantifies the value of *alpha*, reflecting the speed at which budget imbalances in the system are corrected, indicating that it will fall into the interval [0.25, 0.33]. Its initial value is 0.25, revisable every five years, though the grounds for this choice are not properly accounted for either.

In our opinion, and in light of its component variables, the IRP is likely to dip below the legal lower limit in coming years, so the annual appreciation of pensions in the short term will be 0.25%.

VALUATION OF SUSTAINABILITY FACTORS AND ALTERNATIVES

Application of a sustainability factor in the broadest sense (FS + IRP), which we understand to be constitutional, would not

necessarily guarantee the solvency of the model since it would act mainly on a part of the costs only, though it would undoubtedly be conducive to said solvency. The sustainability factor is certainly not a sufficient condition for achieving this end; neither is it a necessary condition, however (the true necessary conditions would be its effects), since other mechanisms could stand in for the same purpose.

The sustainability factor does not break with the current conceptual social-security model, and its enforcement, however it may be designed, would call for absolute transparency in sources, calculations, estimates and developments; moreover, the methodology employed and results obtained must be kept rigorously available to the general public at all times. This requirement has already been breached; no public statement has been made of the auxiliary sums or the final IRP data giving rise to the 0.25% appreciation in 2014.

We uphold a sustainability factor (FS) applied to all lifelong benefits, duly adjusted to the age of entry and the group of reference, with as many life-expectancy variables as there are guaranteed benefits, taking different values according to the possible ages of benefit takeup. The technical argument of this proposal is based on an actuarial approach that seeks a greater actuarial fairness between generations and between benefits. For each benefit (*prestación*) p we would have:

$$FS^p = \frac{e^p_{j,t}}{e^p_{j,t+s}} \text{ or } FS^p = \frac{1+e^p_{j,t}}{1+e^p_{j,t+s}} \text{ or } FS^p_t = FS^p_{t-1} \cdot e^{*p}_t$$

Hence the defence of a benefit-adapted life table. This alternative allows adaptation of life expectancy to the age corresponding to the coming into force of the benefit at each moment. In cases of early and late retirement, however, recourse might be made to the sustainability factor corresponding to the general retirement age; prima facie, this would benefit late retirements and harden the conditions of early retirements.

Assessment of the numerical results has shown that, following the hypotheses laid down for each option, the FS adjustment is smoother than the FEI adjustment, i.e., impinging less on the initial pension but also on solvency, albeit with different results when supported in both cases by the INE's population forecasts. Both alternatives show lower values at higher entry ages, i.e., a lower value of the initial pension; this affects each benefit in a different way. Witness the fact that, according to the Continuous Work History Sample (*Muestra Continua de Vidas Laborales*) of 2011, the average retirement takeup age was lower than 65 but higher than 67 for widowhood pensions, while the average age for permanent disability was close to 53.

Another alternative we put forward draws on the previous work by Hernández (2011 and 2013); it depends on system generosity, using the individual generosity index as the adjustment variable. Its application as a sustainability factor meets the objectives of improving the relation between each individual's inputs and receipts as well as favouring system solvency and incorporating life expectancy into the denominator-determining benefit flow. This is an alternative of an individual, non-generational type. Thus, for a pay-as-you go retirement pensioner aged 67 with a generosity index of 0.6194, the applicable factor on the initial pension could be

THE SUSTAINABILITY FACTOR DOES NOT BREAK WITH THE CURRENT CONCEPTUAL SOCIAL-SECURITY MODEL, BUT IT MUST BE DESIGNED WITH ABSOLUTE TRANSPARENCY

IT WOULD BE RASH TO HAZARD A GUESS NOW ABOUT WHETHER OR NOT THE NEW PUBLIC PROTECTION SCENARIO WILL ALLOW A GREATER DEVELOPMENT OF COMPLEMENTARY SOCIAL WELFARE IN SPAIN

0.9429, while for another with the same calculation hypothesis and an index of 0.8956 (lower generosity), the factor could be 0.9843.

As for the IRP, we have many qualms about its conception and we do not agree with the decision to use estimated future values in its calculations. Simpler tools, based only on social-security expenditure and revenue, could be used as an alternative. Finally, calculation of the actuarial balance is understood as *sine qua non* of the public protection pillar.

COMPLEMENTARY WELFARE SYSTEMS

It would be rash to hazard a guess now about whether or not the new public protection scenario will allow a greater development of complementary social welfare in Spain (whether in the number of participants or insureds, in the size of funds or mathematical provisions constituted or improved efficiency and coverage). Bearing in mind the greater constraints in public benefits for the same level of contribution, there may be some leeway for development in some population segments and coverages, although available individual income and competition from other saving or investment instruments throw this development into some doubt.

We uphold insurance as a welfare instrument; we advocate a greater ring-fencing effort to identify the true target client and adapt the system to his/her needs and to an ever-changing environment, and we support involvement to give efficient coverage where public action leaves loopholes, weighing up the socioeconomic situation of the target groupings and paying special attention to the possible transition of public death- and survivor's-pensions and also the real level of coverage needs for long-term care.

In our opinion the complementary protection system must be absolutely voluntary for each individual, regardless of which particular pension-funding pillar it is grafted onto. This does not rule out making it obligatory for employers to set up a complementary coverage system for their workers, with these workers then being free to opt in or not.

Quite apart from fickle tax legislation, innovation is important; it is equally important for actuaries to be systematically involved in the development, control and consultancy as regards welfare tools. But the overriding need is for true transparency in all the different arrangements, especially in terms of expenditure. This transparency should go well beyond the small-print safeguard or simple communication of the estimated sum of contingencies covered. We are firmly in favour of the maximum enforcement of rights and we encourage freedom of action and choice by the individual. These are all essential mainstays for generating an all-round sense of trustworthiness and the development of complementary welfare systems in Spain.

CONCLUSIONS

The sustainability factor in the broadest sense has many positive features but also some glaring drawbacks. We share its guiding spirit and inclination towards a general actuarial approach but we do not agree with the system as actually

implemented, since it maintains a discriminatory treatment to the detriment of those who have paid in most to the social-security system throughout their working life. Worse still, it also falls down in terms of transparency right from the very start, failing to publicise properly the procedure used for arriving at the forecasting variables or even the final value.

This transparency should also be a lodestar of complementary welfare schemes, well beyond the reform trends followed up to now and necessarily developed into the future. This transparency will have to generate confidence in the system, assess how to ensure greater mobility of resources, avoiding bottlenecks, and defend the individual's freedom of action without eschewing the possible advantages of an obligatory complementary system for employers – but not for employees – always providing the management is completely transparent and efficient from the actuarial point of view, guarantor of a future welfare system more beneficial to its participants.

THE SUSTAINABILITY FACTOR IN THE BROADEST SENSE HAS MANY POSITIVE FEATURES BUT ALSO SOME GLARING DRAWBACKS

BIBLIOGRAPHY

—HERAS, A. de las, M.B. GOSÁLBEZ y D. HERNÁNDEZ. «Enfoque actuarial para la implantación del factor de sostenibilidad en el sistema público de pensiones en España: nuevos retos para los sistemas complementarios». Madrid: FUNDACIÓN MAPFRE, 2014.

—HERAS, A de las. «El factor de sostenibilidad en la Seguridad Social española. Un análisis de la propuesta del comité de expertos y la decisión adoptada por el Gobierno». *Revista CEF (Trabajo y Seguridad Social)* openly available. www.laboral-social.com/ factor-sostenibilidad-seguridad-social-espanola-analisis-critico.html [Consulted: January 6th 2014].

—DE LAS HERAS, A. «El factor de sostenibilidad y el diseño de los actuales sistemas públicos de pensiones». *Revista de la Red de Expertos Iberoamericanos en Seguridad Social*, 9 (2011). p. 10-13.

—HERNÁNDEZ, D. «La generosidad como herramienta de información individual de los sistemas de seguridad social». *Anales del Instituto de Actuarios Españoles*. (November 2013). p. 177-198.

● «La prestación contributiva de jubilación en la Seguridad Social. La generosidad del sistema y su reforma en base a la transformación de las fuentes de financiación». In: Madrid: (june 2011). *Ubicumque sint. In Memoriam. Gregorio González Gómez y Juan Andrés González González*. III Congreso Ibérico de Actuarios. Congreso Internacional.

—HOYO, A. «El factor de sostenibilidad del sistema público de pensiones y su entrada en vigor: el factor de equidad intergeneracional ajustado a la edad de acceso a la jubilación». *Economía Española y Protección Social*, nº 6. (2014).

—MENEU, R; J.E. DEVESA; M. DEVESA; I. DOMÍNGUEZ; A. NAGORE y B. ENCINAS. «El factor de sostenibilidad: diseños alternativos y valoración financiero-actuarial de sus efectos sobre los parámetros del sistema». *Economía Española y Protección Social*, nº 5, (2013). p. 63-96.

—VARIOUS AUTHORS. «Informe del comité de expertos sobre el factor de sostenibilidad del sistema público de pensiones y votos particulares emitidos al respecto». (June 7th 2013).

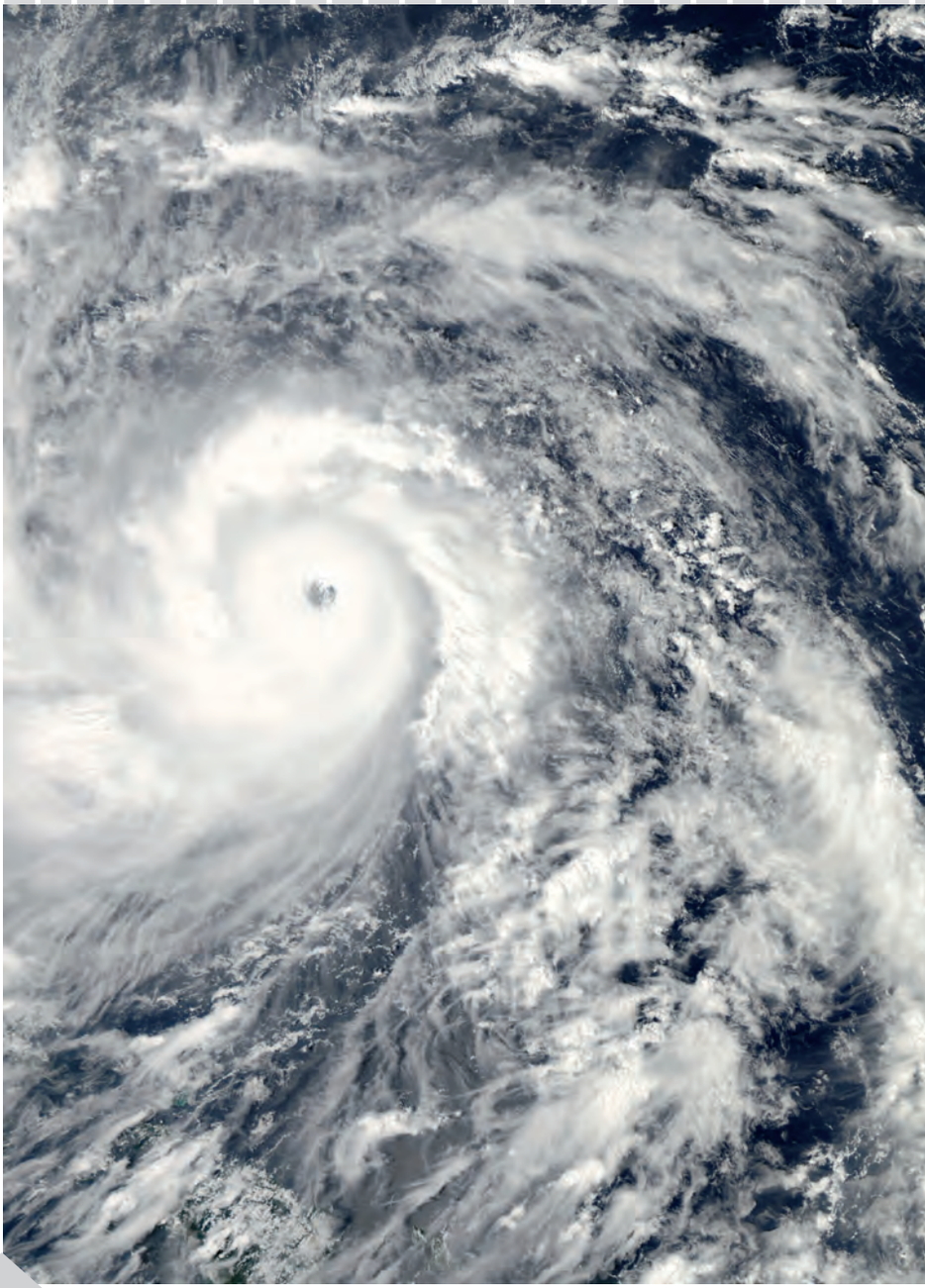
In the early hours of November 8, 2013, a new page was written in the Philippines' long history of disasters. The super typhoon Haiyan (which the Filipinos dubbed Yolanda) swept through the center of the archipelago with wind speeds of up to 315 kmph, leaving chaos and destruction in its wake. Three months later, there is still a lot to do.

HAIYAN: The Philippines tackles recovery after being struck by the super typhoon

GERENCIA DE RIESGOS Y SEGUROS

The genesis of the powerful typhoon was confirmed three days before it struck. At that point, it was still a Category 1 storm, but in just 24 hours Haiyan gained so much strength that it was upgraded to the highest level (Category 5) and was officially classed a super typhoon. The Philippine Atmospheric, Geophysical and Astronomic Services Administration (PAGASA) named it Yolanda.

With sustained wind speeds of 235 kilometers per hour and gusts of up to 315 kilometers per hour, Haiyan made its first landfall in the early hours of November 8 and plowed through the center of the Philippines from east to west, leaving chaos



and destruction in its wake. It then continued across the South China Sea on a straight course for Vietnam, which it hit, now weakened, with wind speeds of 100 kilometers per hour.

The figures released by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the Philippine government paint a bleak picture of the devastation caused by the worst storm that has struck the archipelago in recent decades: 16 million people affected.

SUPER TYPHOON HAIYAN AFFECTED 16 MILLION FILIPINOS, LEAVING MORE THAN 4 MILLION HOMELESS

STATE OF EMERGENCY

The National Disaster Risk Reduction and Management Council (NDRRMC) constitutes the backbone of catastrophe management in the Philippines. Its members include representatives from every government department as well as the armed forces, the emergency services and civil society. There are four units with responsibility for different aspects of the disaster management cycle: Preparedness, Response, Prevention and Mitigation, and Rehabilitation and Recovery.

As the super typhoon approached, the Philippine authorities set about evacuating 800,000 people: the Asian country was clearly on the verge of one of the most devastating catastrophes in its history. This

time, the islands most affected by the tragedy were Samar and Leyte: towns and villages without water or electricity, roads blocked, trees uprooted, homes destroyed...

After the impact, a state of emergency was declared and several government ministers were sent to the area to oversee the response operations on the ground. These drew a number of criticisms: lack of resources, too little assistance provided too late, etc. A working group was also created to draw up a recovery plan.

DAMAGE APPRAISAL

Reinsurers and brokers have classed the super typhoon as the most deadly natural disaster of 2013, although there is no consensus on the number of fatalities. In late January, the NDRRMC announced a death toll of over 6,200, with few variations expected in the future.

The impact of the typhoon not only left a trail of fatalities but huge economic costs. A few days after the disaster, Bloomberg estimated damages of 14 billion dollars, nonetheless reporting that the equivalent of only 2 billion dollars would result in claims to insurers due to the scant penetration of insurance in the archipelago.

According to Philippine government figures, Yolanda has affected 16,078,181 people altogether (3,424,593 families), 28,626 people sustained injuries, and another 1,785 are reported missing. Haiyan also destroyed the homes of 4,095,280 Filipinos (890,895 families), and at the end of January 101,527 of these were still temporarily housed at one of the 381 evacuation centers.

REINSURERS AND BROKERS HAVE CLASSED THE SUPER TYPHOON AS THE MOST DEADLY NATURAL DISASTER OF 2013

In terms of the effect on homes, the typhoon hit a total of 1,140,332 houses, of which 550,928 were completely destroyed and 589,404 severely damaged. The losses in infrastructure and in the agricultural sector amount to more than 24.5 billion pesos, the equivalent of 412 million euros.

MOST AFFECTED SECTORS

Agriculture and fishing are undoubtedly the most affected sectors. The Philippine government estimates that the archipelago's battered economy will reduce gross domestic product (GDP) by between 8% and 10%. Between 50,000 and 120,000 tons of sugar and more than 131,000 tons of rice have been lost.

Meanwhile, more than one million families in the areas affected by the typhoon made a living from the prosperous coconut industry, but wind speeds of more than 300 kilometers per hour destroyed over 33 million coconut palms, some of which will take between six and eight years to grow again. Coconut oil is the country's principal raw material export and generates an average of 935 million dollars annually in export revenue.

In terms of fishing, the storm provoked by the super typhoon, with giant waves of up to 15 meters in height, destroyed over 30,000 boats. Filipino fishermen and farmers are facing enormous losses in the regions affected by Haiyan, warns the FAO. Yolanda flattened

crucial infrastructure: jetties and launching ramps, onshore cold storage, boat repair and maintenance workshops, etc. Key aquaculture infrastructure was also destroyed, including oyster rafts, mussel, crab and shrimp farms, as well as fish cages, hatcheries and fish ponds.

The economic losses for the sector are still being quantified but will be enormous. In 2011, deep-sea and offshore fishing in the areas affected accounted for 21% (514,492 tons) of the total Philippine municipal (carried out less than 15 kilometers from the coast and with boats of less than 3 tons) and commercial fishing sector, while the aquaculture in these regions, including algae, represents 33% of the national aquaculture production.

RECONSTRUCTION PLAN

The Philippines is facing an arduous and costly process of infrastructure reconstruction and economic regeneration.

One month after the disaster, the Philippine government put the reconstruction cost at around 250 billion pesos (approximately 4.25 billion euros). It also said that according to estimations from the National Disaster Risk and Reduction Management Council (NDRRMC), it would take between two and five years to completely rebuild the devastated areas.

Following the disaster, the government also plans to make key changes in the infrastructure network and has ordered the Environment Department to draw up a national plan aimed at minimizing the impact of natural disasters like typhoons, earthquakes, tsunamis and rising sea levels.

Typhoons, earthquakes and eruptions in the Philippines

According to the Spanish news agency EFE, these are some of the extreme weather events that have occurred in the Philippines:

- **August 1976.** A tsunami caused by a 7.9 magnitude earthquake devastated the Moro Gulf coast, leaving between 5,000 and 8,000 people dead, 90% of them because of a giant wave.
- **February 1984.** The ash, rocks and lava blasted from the Mayon volcano in the east of the country buried the town of Cagsawa, killing 1,200 Filipinos.
- **August 1984.** Approximately 1,350 people lost their lives when Typhoon Ike swept through the central provinces of the country.
- **July 1990.** A 7.8 magnitude earthquake ripped through a mountain near the city of Baguio in the north of the archipelago, causing 1,600 fatalities.
- **November 1991.** Tropical Storm Thelma caused flooding, killing 5,100 people in the city of Ormoc on Leyte Island.
- **February 2006.** An entire mountain collapsed in the center of Leyte Island, burying the town of Guinsaugon and claiming 1,126 lives.
- **December 2011.** Typhoon Washi shook the north of Mindanao Island, causing at least 1,080 fatalities.
- **December 2012.** Typhoon Bopha swept across the south of Mindanao Island, leaving nearly 2,000 people dead or missing.
- **November 2013.** Haiyan devastated the central provinces of the archipelago, with sustained wind speeds of 225 kilometers per hour and gusts that exceeded 300 kilometers per hour.

Meanwhile, the Department of Public Works and Highways will present a «structural resistance program» to improve the quality of the design and construction of buildings like schools, hospitals, police departments and fire prevention facilities to make them more resistant to natural disasters. In Tacloban, the capital of Leyte, a 40-meters-from-shore building ban has been enacted.

THE PHILLIPPINES ENVIRONMENT DEPARTMENT WILL DRAW UP A NATIONAL PLAN AIMED AT MINIMIZING THE IMPACT OF NATURAL DISASTERS

NATURAL DISASTERS IN THE PHILIPPINES

With around 20 typhoons a year, the Philippine archipelago, made up of more than 7,000 islands, is «accustomed» to the scourge of these natural disasters, not to mention other catastrophes like volcanic eruptions and earthquakes (see chart).

Its natural borders offer scant protection from the Pacific Ocean, which encounters no obstacles to reach the coast when a storm whips up. Typhoon Haiyan caused wind speeds of up to 315 kilometers per hour and giant waves of up to 15 meters in height.

But the main reason for so many natural disasters is the archipelago's location in the so-called Pacific Ring of Fire, one of the areas of the planet most prone to seismic and volcanic activity. That is why the country is frequently struck by tsunamis and earthquakes.

REDUCING THE RISK

Risk management is the only way to cope with natural disasters, and the Philippine authorities have invested significantly in disaster risk reduction (DRR) and climate change adaptation (CCA). In 2011, they dedicated 624 million dollars of public funds –2% of the national budget and 0.28% of the GDP– to DRR, and at least 5% of a local

authority's revenue is set aside for its Local Disaster Risk Reduction Management Fund.

The government also passed the Climate Change Act (CCA) in 2009, and, one year later, the Disaster Risk Reduction and Management Act (DRR). Furthermore, both DRR and CCA are cross-cutting concerns in economic policies, social development and the environment in the Philippine Development Plan 2011-2016.

A study by the Overseas Development Institute (ODI) in the United Kingdom, conducted before Typhoon Haiyan and included in the latest Oxfam Intermon report, rated the Philippines highly for its capacity to adapt to climate change and concluded that the country had a «better than average disaster risk management and adaptive capacity with a good chance of minimizing long-term disaster impacts now and in the future».

2013 natural disasters figures

International reinsurers and brokers have described Typhoon Haiyan as one of the most deadly events of 2013.

- **MUNICH RE.** According to the German reinsurer, the typhoon that swept through the southeastern Philippines at the beginning of November, leaving 6,000 people dead and millions homeless, caused damages to the tune of 10 billion dollars. However, the insured amount is less than 1 billion due to the scant penetration of insurance in the region. Munich Re puts the cost of natural disasters in 2013 at 125 billion dollars, whereas insurance companies covered 31 billion dollars. In total, the 880 natural disasters recorded in 2013 caused 20,000 fatalities, more than in 2012 but less than the 10-year average, which Munich Re puts at 106,000 fatalities.

- **SWISS RE.** The Swiss reinsurer also believes that Haiyan was the most deadly disaster of the year and estimates the death toll at over 7,000, with «substantial» material damages covered in a very limited way by the insurance companies. According to its estimations, the economic cost of the natural and human disasters that occurred in 2013 will amount to 130 billion dollars, compared with 196 billion in 2012. Altogether, the insurance industry will have to pay out 44 billion dollars for these disasters, a figure far lower than the 81 billion dollars paid out in 2012. These catastrophes claimed the lives of 25,000 people worldwide in 2013, which is a lot higher than the 14,000 recorded the previous year.

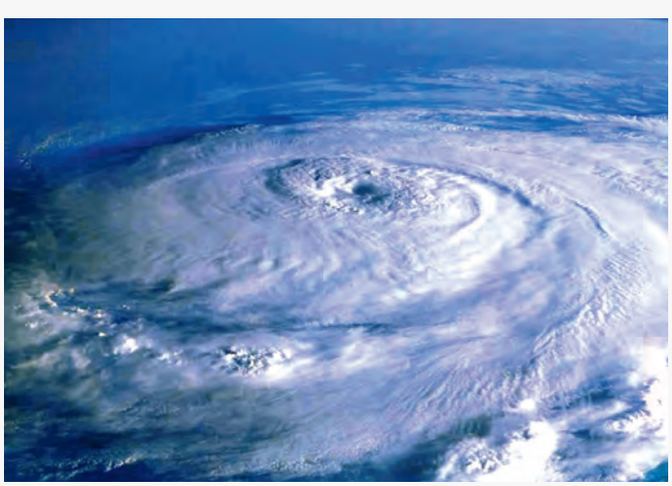
- **AON BENFIELD.** In its annual global climate and catastrophe report, Aon Benfield cites Typhoon Haiyan as the most deadly event of 2013, leaving nearly 8,000 people dead or missing. According to the broker, the losses insured for catastrophes in 2013 amounted to 45 billion dollars. Altogether, 296 climate events were recorded with combined economic losses of 192 billion dollars. Natural disasters caused total insured losses of 45 billion dollars, the lowest figure since 2009 and 22% below the 10-year average of 58 billion.

Hurricane, typhoon and cyclone: What's the difference?

In fact, all three terms refer to the same weather phenomenon. Scientists just call them different things depending on where they occur. Thus, in the North Atlantic and the Pacific they are called «hurricanes», in the northwestern Pacific, «typhoons», and in the northern Indian Ocean they are known as «severe cyclonic storms». In the southwestern Indian Ocean, they are «tropical cyclones», and so on.

What do vary are the seasons when they occur. While the Atlantic hurricane season runs from June 1 through November 30, the typhoon and cyclone seasons follow slightly different patterns. For example, in the northwestern Pacific, typhoons are most common from late June through December; in the northern Indian Ocean, they most frequently occur from April through December.

In any case, for these phenomena to be classed as a hurricane, typhoon or cyclone, they must reach wind speeds of at least 119 kilometers per hour. If a hurricane's wind speeds hit 179 kilometers per hour, it is upgraded to an «intense hurricane», and if a typhoon hits 241 kilometers per hour, it becomes a «super typhoon».



But Super Typhoon Yolanda has clearly shown that the measures implemented and the efforts invested in these matters always fall short, and there is still much work to be done in improving the response to impacts from future disasters, whatever their nature.

GLOBAL WARMING?

The monstrous typhoon that shook the world last November coincided with the Climate Change Conference in Warsaw (Poland). In recent years, scientists have debated whether global warming is making hurricanes stronger and more frequent, but there is no scientific consensus on the possible connection between climate change and these phenomena.

In general, Haiyan reflects an upward trend in risks from extreme weather events. Between the early 1970s and the year 2000, the number of Category 4 and 5 hurricanes doubled worldwide, and their virulence grew increasingly stronger.

The Warsaw Conference noted that the efforts a country makes to adapt to climate change or reduce the risk of disasters might be insufficient to mitigate the destruction caused by extreme weather events, and it therefore announced the creation of a mechanism to address the losses and damage that occur in spite of adaptation measures and policies. All that remains now is for governments to implement it.

Activities in the first four months of 2014

Courses, workshops, presentation of technical reports, participation in forums and the trailblazing AGERS breakfasts are the main activities carried out by the Association in the first four months of the year

During the first months of the year the Spanish Association of Risk Managers and Insurers (*Asociación Española de Gerencia de Riesgos y Seguros*: AGERS) carried out the following activities:

In January it gave the Insurance and Risk-Management Course (*Curso de Gestión de Riesgos y Seguros*) to ascertain the main insurance policies taken out by companies and public authorities.

In February the Foro ISO 31004 presented the technical report for implementation of ISO 31000.

Also in February, as in previous years, AGERS took part in the Insurance Week (*Semana del Seguro*).

AGERS and the Alcobendas Entrepreneur Association (*Asociación de Empresarios de Alcobendas*: AICA), under sponsorship from the company System Evolution, presented in February a forum on the «Impact of Data Quality on Company Risks».

On 6 March AGERS took part in the breakfast organised by INADE (Atlantic Insurance Institute) in A Coruña, giving the paper «Risk Management: Challenge and Opportunity». Aspects looked at included the best way of tackling risk management in organisations; the process phases; the keys of risk analysis; risk minimisation and control systems and forms of financing; the factors impinging on the need for risk management, such as risk auditing, the legislation framework, process quality, corporate social responsibility and corporate compliance.

The first Advanced Risk Management Workshop (*Taller Avanzado en Gerencia de Riesgos*) was held during two alternate weekends with the aim of giving participants a new and original view of company risk management.

In April AGERS organised a Civil Liability course, dealing with such issues as civil liability problems, D&O civil liability of corporations, new interpretations by the Supreme Court (*Tribunal Supremo*) of conflictive clauses in civil liability insurance contracts.

Risk management has prompted AGERS to initiate with the analysis of the Prestige oilspill a new event: «The AGERS breakfasts» (*Los desayunos de AGERS*), which will deal with current cases and situations in which proper risk management is the key to success.

In the first days of April AGERS organised a course on cyber risks, tackling such issues as information leaks, critical systems, malware, cybercrime, electronic fraud, etc…

2014 Events Calendar

The agenda includes two encounters and a debate with insurance experts and brokers

IGREA's Board Meeting, held on 20 March in Madrid, approved, among other matters, the 2014 Events Calendar. This is an open agenda; other sessions may be phased in at the request of our associates or to deal with any matter of interest arising during the year.

- **Market encounters: Insurance-based financial guarantees.** With the help of experts from the international surety market, this event will address the growing problem posed by the demand for insurance-furnished surety bonds, sometimes enormous, from Spanish firms trading abroad, especially in the USA. The session and debate with international insurance and broker experts, led by the Risk Management Departments of Telefónica and Abengoa, will be geared towards the solution of problems in a market calling for a very different capability and set of rules than the rest of the insurance lines we normally tackle. This thought-provoking encounter will be held in the first week of June in Madrid.

- **The insurance problem in Latin America.** The growth and rapid internationalisation of Spanish firms in Latin America has unveiled a huge risk-transfer and insurance-placement problem in markets with different regulations and very different customs and uses from European markets. OHL's Risk Management will be leading this session, where the debate will centre on the main problems likely to crop up in each country where our companies operate and the most practical solutions. This exclusive session for IGREA associates will be held in the third week of September.

- **Market Trends Conference.** For yet another year IGREA will be holding its Market Trends (*Tendencias del Mercado*) session in November, looking ahead to 2015 and dealing with subjects of interest in the company of representatives from all large-risk market stakeholders. This encounter, which has been a resounding success for the last three years and is eagerly awaited by risk managers, brokers, insurers, lawyers and claims adjusters. The stress will rather be placed on practical debate between the various stakeholders involved in the problems and issues that concern IGREA associates.

FERMA calls for caution on EU insurance contract law changes

The Federation of European Risk Management Associations (FERMA) has called for a cautious approach to any changes to the regulatory treatment of differences between EU national insurance contract laws to avoid jeopardising the market for large risks, which is working well.

FERMA has made these comments to the European Commission in its response to the final report by the Expert Group, which has been considering whether differences in contract law between EU countries are an obstacle to the cross-border provision of insurance.

Representing buyers of insurance for large risks in the majority of EU member states, FERMA said that this comprehensive report sheds light on the potential impact of national contract law differences over the use of insurance of products in the European Union. It welcomed the conclusion of the Expert Group that insurance products for large risks are already widely distributed on a cross-border basis.

Solvency 2: public consultations start as soon as April 2014

On 31 January, EIOPA, the European insurance authority, released its timeline for the delivery of Solvency II Implementing Technical Standards (ITS) and Guidelines.

These measures will come precise how Solvency 2 will be applied across the 28 Member States of the EU as from 1 January 2016. They're legally binding acts that will ensure a greater harmonization in the application of Solvency 2.

Online public consultations will be organized for both Implementing Technical Standards and Guidelines. It is therefore FERMA intention to play an active role in the consultation process that will be start in the following phased manner.

There will be two sets of ITS and Guidelines. The 1st set of ITS regarding the Approval processes will be released for consultation from April to June 2014.

The public consultation for the 2nd set of ITS will take place from December 2014 to March 2015 and will deal with Pillar 1 (quantitative basis), Pillar 2 (qualitative requirements), Pillar 3 (enhanced reporting and disclosure) and supervisory transparency.

Once finalised and approved by the EIOPA board, the ITS will be sent to the European Commission for their adoption as EU Regulations that will be directly applicable throughout the EU respectively in October 2014 for set 1 and in June 2015 for set 2.

This will only leave a short 2/3 months period between the end of the consultation time and the alleged entry into force of the ITS once they've been endorsed by the European Commission.

Insurance Europe published its figures for the European insurance industry: € 948bn of claims and benefits paid in 2012

Insurance Europe, the trade association for the Insurance sector in Europe, has released on 14 February 2014 a report containing detailed statistics figures for 2012.

It shows that the European insurance industry has paid an overall amount of €948 bn of claims and benefits, with €302 bn of Non-life claims paid by the insurance sector.

Non-life insurance represented 41% of total written premiums in Europe in 2012 with €451 bn Non-life premiums over a total of €1,093 bn received in premiums.

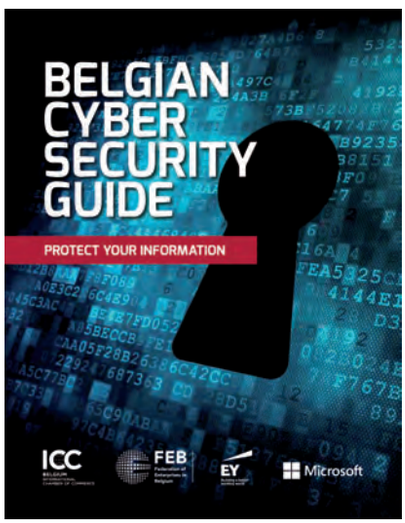
It would have been relevant to know the weight of the corporate clients in the European insurance industry terms of premiums and claims, but the report does not distinguish between the retail and the wholesale market.

With a share of 33% of the global market, the European insurance industry is the largest in the world, followed by North America (30%) and Asia (29%).

Clarity on cyber risks

A new guide to cyber risks designed for entrepreneurs will help risk managers communicate the enterprise wide issues involved to senior managers. The guide is the work of a small team of experts but with guidance from the Secretary General of the International Chamber of Commerce, Rudi Thomaes.

FERMA President Julia Graham, who is FERMA's spokesman on cyber risks, said: «We are drawing members' attention to *The Belgian Cyber Security Guide* because it addresses cyber risks as an enterprise issue and is written in clear language. It does not set out to make us all experts but provides the risk manager with some comfort about the subject.»



2014 AGENDA

CONFERENCES AND SEMINARS

CONFERENCE	DATE	VENUE	ORGANISERS
World Space Risk Forum	12 May	Dubai (UAE)	World Space Risk Forum
2014 Congress	15 May	Maarssen (Netherlands)	NARIM
XXV Spanish Congress of Insurance and Risk Management	29 May	Madrid (Spain)	AGERS
Bermuda Captive Conference	2-4 June	Bermuda	ALARYS
XII International Professional Forum Risk Management in Russia and CIS	4-5 June	Moscow (Russia)	RUSRISK
Cyber Risk 2014	11 June	London (UK)	IRM
Annual Conference	8-11 June	Long Beach, CA (USA)	PRIMA
Malta International Risk and Insurance Congress	12-13 June	St. Julian (Malta)	CRE and MFSA
2014 Conference	16-18 June	Birmingham (UK)	AIRMIC
L Annual Seminar 2014	22-25 June	London (UK)	IIS
2014 Conference	3-6 August	Seattle, WA (USA)	ARIA
2014 Symposium	10-12 September	Munich (Germany)	DVS
2014 Symposium	11-12 September	Nyborg (Denmark)	DARIM
2014 Conference	14-17 September	Winnipeg (Canada)	RIMS Canada
National Conference	1-3 October	Mascot (Australia)	RMIA
Seminar 2014	20-21 October	Brussels (Belgium)	FERMA
Forum 2014	4-5 November	Pfäffikon (Switzerland)	SIRM