



Country Reports from General Council Meeting on 17 June 2021

Austria:

Austrian legal insurers and consumer protection association are debating about a clause in the legal protection insurance standard contract terms that excludes claims arising from mandatory orders of the public authorities in an extraordinary situation. On the basis of this clause all 25 legal insurers operating in Austria declined cover in the context of the pandemic. Subsequently, the consumer association decided to challenge this practice in court and brought a claim against one of DAS's competitors. The court ruled that the clause was not transparent, detrimental for policyholders and that insurers may no longer apply the clause in contracts with private policyholders. As it turns out, this judgement does not affect insurers as much as anticipated because there have not been as many cases as predicted. The court's decision has, however, a negative impact for insurers because it creates a high level of uncertainty for evaluating the legitimacy of standard contract terms in the future, considering that the clauses in question were drafted, from the insurers' perspective, in a neutral way. It is important to note that the same clauses in commercial contracts remain legitimate and insurers continue to apply them. It has to be seen whether the ruling entails yet another negative effect since insurers might have to raise premiums for consumer legal protection cover which will render such cover more expensive.

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Belgium:

In the past couple of months, legal protection insurance has been the fastest growing non-life insurance. Normally growth is hardly above the inflation rate (around 2-2.5%) while, presently, it is at 4% for legal protection. This is not spectacular but still about twice the growth rates of any other non-life line. This development is also due to the initiative of the previous Minister of Justice who introduced the possibility of a tax reduction on legal protection premiums which has enabled insurers to sell additionally 75,000 new contracts under the tax incentive scheme.

In Belgium, like in France, there is a discussion about the reimbursement of insurance premiums, in particular in motor liability insurance, because there has been a considerably lower number of car accidents and, consequently, less costs for insurers. This debate, however, focusses mainly on liability insurers while legal protection insurers have been more or less excluded from these discussions.



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The most topical issue is actually solar panels: consumers invested in solar panels and expected a tax compensation which they are now denied. Policyholders of legal insurers have brought a large number of claims against public authorities which have now put a proposal for settlement on the table. It is not clear yet whether this offer will be accepted and, consequently, the cases can be closed.

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Canada:

Presently, about 3% of Canadians have legal protection cover. Besides the sell-out of DAS Canada to ARAG in March 2021, there has not been much change in the market. However, with After The Event insurance having less significance a new generation of products is coming to the market and it is not clear yet what kind of traction they will get.

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Czech Republic:

The business of insurance distribution has experienced a major shake-down, as all 180,000 insurance intermediaries/ agents who work for the 45 active insurance companies in the Czech Republic were obliged to pass exams by the end of May if they want to continue selling any line of insurance. It is still to be seen how many intermediaries actually passed and will be able to continue with their job of insurance distribution. Overall, however, 2020 has been a very good year for legal protection insurance.

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Estonia:

The situation in the Estonian market is still comfortable for ERGO as it remains the only insurer selling legal protection insurance. Moreover, ownership of law firms is possible for insurers in Estonia and, consequently, ERGO owns a law firm which handles most cases of policyholders and thus allows the company to manage costs very efficiently. ERGO's portfolio is mostly private business, only very few commercial contracts. Presently, ERGO is preparing for next year to offer legal insurance in Latvia and Lithuania via freedom of services, i.e. ERGO will not establish independent legal entities.

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France:

2020 was a calm year for legal protection insurance; growth was moderate with 3-4% which is slightly below growth rates in the preceding years. In 2020 bank-assurance has become more important while French people have an altered, more positive perception of legal protection insurance as being indispensable to defend their rights. Subsequently, in 2021 market growth has increased and there have been less cancellations.

In the last few months, insurers put more emphasis on prevention, providing information or advice and improving services by implementing legal technology etc. Legal insurers have been supporting their clients, in particular SMEs, during the crisis,

helping them to find out where and how to get public funding and, if necessary, pursuing their claims. However, insurers are now looking at the follow-up of the crisis, i.e. a high level of damages and claims that mainly arise from business closures, here most importantly hotels and restaurants. Some insurers cover these cases but decline to pay compensation for business interruption. CFDP has already more than 1,000 claims, most against AXA, and the first court cases are presently going through the different instances of the courts. A platform, in cooperation with the lawyers, was put in place to manage these claims. AXA presently offers to pay a total of 300 million Euro which has been declined because the claims in total amount to more than 1 billion Euro. Although this is tough and not easy to navigate it shows, however, the importance and utility of legal protection insurance and how important it is that legal insurers maintain their independence.

Insurers are expecting another wave of claims as consumers, after targeting VW, now also go after Renault, the French car manufacturer. This development is rather worrisome for legal insurers because it is completely uncertain how these claims and procedures will evolve.

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Germany:

Sustainability has become an important issue in the market, even for legal protection. The LPI division of the German Insurance Association (GDV) is working on a position paper to demonstrate how legal insurers contribute to conflict resolution and facilitate access to justice.

Another highly topical subject in Germany is gender equality and “gendering”, i.e. eliminating the use of the masculine gender (e.g. Professor*innen instead of Professoren) to designate both men and women. As it has become such a top priority it puts a lot of strain on businesses and is rather costly because it also requires a complete overhaul of business communication and policy wording. Board members commented about the importance of this topic in their respective countries. In the Czech Republic the trend has been very similar to the developments in Germany while gendering has not been a real topic in France where the issue is rather violence against women. As a matter of fact, so-called “inclusive” writing has been banned from French schools because it is regarded as not only being counterproductive but harmful to the practice and intelligibility of the French language. In Belgium the issue is not gendering but the requirement that contracts must be clear and client-friendly. This implies that policies must be comprehensible for a 12-year old. As a consequence, lengthy and extensive explanations have been introduced into standard contract terms which makes them extremely long and complicated.

In Germany claims for damages due to business interruption are highly disputed and many cases have been taken to the courts. However, it is worth comparing claims volumes: in the context of the pandemic claims amount to approx. 300 million Euros while the claims volume for Dieselgate (only those claims which involve legal insurers) is at around 1 billion Euros. This severely impacts the results of legal insurers and therefore GDV projects for legal insurers in 2021 a combined ratio of 102% (projections for growth are 4%), meaning, while the market is still growing, it is not profitable.

Losses are mainly due to Dieseltgate but also to a major increase by 10% in lawyers' fees at the beginning of 2021 which also has a direct impact on the loss ratio.

However, Dieseltgate is not over but still evolving and spreading to other car manufacturers. Also, different kinds of engines are taken into scrutiny such as lorries, e-cars, batteries, camper vans etc. Consequently, insurers expect more mass claims to follow. Another side effect of Dieseltgate is that capacities for D&O insurance have become tight.

One of the few good outcomes of the Covid-19 Pandemic is that it has produced an active demand for legal protection insurance. In particular direct sales have gone up which is obvious when looking at the Google search engine for insurance products: here legal protection insurance is ranking third after car and life insurance. This clearly shows how the product has made a leap in importance and has pushed other non-life insurance products aside.

In Germany the discussion about the roles of legal insurers, lawyers and legal technology will be ongoing and its outcome is not clear. Lawyers are still very opposed and lobby very efficiently against the growing importance of legal tech and legal insurers. Watch the LPI Webinar about this topic:

<https://legalprotectioninternational.com/regulation-of-legal-tech-in-germany-and-its-impact-on-legal-protection-insurers/>

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The Netherlands:

The most topical issue at this point is the recent decision on the free choice of lawyer which will have a major impact on legal insurers' business models if it stands. This decision has caused unrest amongst Dutch legal insurers. Read here for more details: <https://legalprotectioninternational.com/free-choice-of-lawyer-comes-with-a-price-tag/>

Until now legal insurers have been handling numerous motor liability claims with personal injuries claims. Dutch liability insurers picked up the idea to handle these cases themselves and as of 1 July 2021 those claims will be directly settled by the liability insurer of the victim who will be reimbursed by the liability insurer of the person who caused the accident. As a consequence, policyholders will no longer involve their legal insurers but liability insurers will settle those claims directly among themselves. As legal insurers see it, this is not necessarily in the interests of the insured.

As a result of the pandemic, the sector had foreseen a huge number of labour law cases but, surprisingly, this has not happened. Insurers rather see consumer disputes related to travel cases and neighbour disputes. Overall, the claims situation is not as bad as it had been expected.

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Norway:

The implementation of legal technology is picking up and its quality is getting better.

A new Lawyer's Act has recently been finalised in Norway. During the legislative procedure the question of external ownership of law firms, similar to Alternative Business Structures in the UK, was discussed but finally has not been implemented.

ARAG has lobbied heavily in favour of external ownership but the final decision to prohibit external ownership is due to extensive and aggressive lobbying of the Bar Association. The main argument of lawyers was that external ownership would impede and threaten the independence of the legal profession. However, this independence will most likely come at a cost because, without investment of external capital in law firms, innovation on a larger scale will not be possible and therefore the Norwegian legal services market will not be able to keep pace with modern technology. The same is true for Sweden and Denmark.

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South Africa:

In South Africa the Protection of Personal Information Act (POPI), entered into force on 1 July 2021. As it sets some conditions for responsible parties (called controllers in other jurisdictions) to lawfully process the personal information of data subjects (both natural and legal persons) it is an equivalent to the European GDPR. Following the introduction of this regulation, many insurers are now struggling to ensure that they actually comply with these rules. Read here if you want to learn more:

<https://www.michalsons.com/blog/popii-act-summary-in-plain-language/18618>

On 19 May 2021, LegalWise hosted the South African Minister of Justice in LegalWise's virtual Network Attorney Conference. The Minister challenged Siva Gengan, CEO of LegalWise, to lead the transformation of the profession in South Africa: since legal insurers work with panel lawyers who represent policyholders, the minister wants to see the change of the demographic to ensure that briefing patterns etc. are changed and become more consumer friendly (read more and what the Minister's address:

<https://www.legalwise.co.za/help-yourself/media-centre/minister-justice-and-correctional-services-addresses-legalwise-south>)

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Switzerland:

The market has been calm but has been growing by 4-5%, claims frequency, mainly for advice, has grown by 12-20%.

Legal insurers and the Bar Association established a Conflict Resolution Centre which assists lawyers and insurers to settle disputes regarding, for instance, rejections of lawyers, internal takeovers of cases by the insurer, practical problems of handling cases, disagreements about: prospects of success, scope of lawyers' mandates, case interpretation, scope of cover, cost approval, interim settlement, cost ceilings etc. Read here if you want to learn more: <https://legalprotectioninternational.com/legal-protection-insurers-and-lawyers-in-switzerland-succeed-to-agree-on-dispute-resolution/>

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United Kingdom:

There has been a slight increase in employment related claims and this trend is likely to continue further as the government's furlough schemes will stop.

The new Civil Liability Act, which will reduce the compensation on whip-lash and other personal injuries, came – finally – into force on 31 May 2021. It basically introduces a

tariff system based on length and severity of the injury. As a consequence, a large portion of the After The Event Market for motor will disappear and the premiums for Before The Event insurance will most likely increase.

The regulator presently scrutinises the value of add-on insurance (not only legal protection insurance) for policyholders. In this context the regulator undertakes value measures and companies are required to report on the instances of claims, cost ratios etc. of their add-on products.

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