

CCS Update

1. Regulatory news

A number of legal provisions at different stages in the parliamentary process are going to have a significant impact on the insurance sector and, in particular, on the activity of the Consorcio de Compensación de Seguros (CCS). The most important from among these provisions are described below:

a) Draft Law on the Regulation, Supervision and Solvency of Insurance and Reinsurance Companies

The Draft Law on the Regulation, Supervision and Solvency of Insurance and Reinsurance Companies was published in the Official Gazette of Parliament on 6 March marking the commencement of the parliamentary process. We have recently learned that this legislation will not be treated as an urgent provision, contrary to what would have been desirable.

Functions for the CCS are established in the draft law. In some cases the current functions are reinforced, as occurs with the winding-up of insurance companies, where certain changes are introduced with respect to the purchase of credits charged against the Entity's resources, particularly in relation to the employment-related credits it may anticipate, also regulating its participation in bankruptcy proceedings.

New functions for the Entity are also introduced. Accordingly, the CCS is entrusted with two new activities of an informative nature: on the one hand, the management of the new register of compulsory insurance policies; and, on the other, the gathering and supply of the information relating to fire-insurance coverage, with a view to improving the settlement and collection of the fees for the provision of the fire-fighting service and the special charges for the establishment or expansion of the fire-fighting service.

Another significant change is the extension of the surcharge on the extraordinary risk insurance to the compulsory third-party motor car insurance, which will give rise to the relevant coverage. For this purpose, the Fifth Final Provision amends the revised text of Legal Status of the Consorcio de Compensación de Seguros, approved by Royal Legislative Decree 7/2004, of 29 October.

b) Organic Law 1/2015, of 30 March, on the reform of the Penal Code, amending Organic Law 10/1995, of 23 November, on the Penal Code

The Official State Gazette of 31 March published Organic Law 1/2015, of 30 March, on the reform of the Penal Code.



From among the amendments introduced into the Penal Code, the one affecting the insurance sector most, particularly those companies operating in the automobile insurance branch, is the decriminalisation of infractions. According to the Explanatory Statement of that Law, *“the infractions which were historically regulated in Book III of the Penal Code are eliminated, although some of them are included in Book II of the Code and are regulated as minor offences. The reduction of the number of infractions — minor offences in the new regulation introduced— is guided by the principle of minimum intervention and is intended to facilitate a significant reduction in the number of minor matters which, to a large extent, can be addressed through the system of administrative and civil penalties”*.

Briefly, the Law decriminalises all of the situations of slight negligence, regardless of the outcome (slight or serious), and the situations of serious negligence with minor damage or injuries. Consequently, the only infractions maintained in the Code are those derived from serious negligence with the result of serious injury or death, which will be considered as minor offences, as well as the cases of less serious negligence resulting in death and serious injury, which were introduced at the last minute.

Consequently, as from the entry into force of this substantial change in the Penal Code, the majority of the traffic accidents derived from slight negligence will be decriminalised, which will mean that more than two hundred thousand accidents, which up to now were heard as trials for a minor offence, will not be subject to this proceeding.

The fact is that, perhaps, the criminal jurisdiction has been used inappropriately for obtaining compensation for damages derived from traffic accidents; however, it is also true that an endless number of accidents are being resolved through this channel without concluding in a judgement. The information contained in the judicial proceedings and, above all, the forensic report, is extremely useful for solving losses of this kind. For this reason, it would be advisable to put into place an extrajudicial procedure that would at least deliver the benefits provided by the hearings on infractions up to now, to enable accidents of this kind to be resolved and avoid situations where the victims would have to file civil suits to seek redress, in view of the drawbacks involved in this jurisdiction.

In any case, the decriminalisation of the majority of the infractions leaves many doubts to be cleared up. We do not know how judges will act in the face of these changes: for example, if they will continue to issue enforceable decisions or not in the face of reports of facts which *a priori* are decriminalised.

c) System for the assessment of personal injuries sustained in traffic accidents

The third change of significant interest to the insurance sector and, consequently the CCS, is the new system for assessing the personal injuries sustained in traffic accidents.

Following the proposal put forward by the Expert Committee appointed for the reform of the standard scale and submitted to the DGSFP (Directorate General of Insurance and Pension Funds) in May 2014, on April 10th, 2015, the Government approved the draft law amending the system used for assessing damages for the injuries sustained by the victims of traffic accidents. All the information available points to the fact that this Law will be approved during this legislature and that the new standard scale will enter into force for traffic accidents occurring as from 1 January 2016.

Without a doubt, this change will have an enormous impact on the insurance sector, and not only for those companies operating in the automobile insurance branch, for whom this system will be mandatory, but also for those operating in other branches, since case law, along general lines, also applies this scale as a guide.

2. Upcoming events

The Consorcio de Compensación de Seguros will host the Third World Conference of the International Forum of Insurance Guarantee Schemes (IFIGS), which will be held in Madrid on the 26th and 27th of May 2015. The IFIGS, which officially commenced operations on 15 May 2013, brings together representatives of a range of guarantee schemes established in different countries throughout the world in order to protect the insured in the event of the insolvency of their insurance companies. At the present time, the IFIGS is comprised by 21 members from 17 countries distributed on all five continents. The purpose of this forum is to constitute a framework of dialogue, cooperation and exchange of experiences among its members in relation to these guarantee solutions.