# INSURANCE FLASH October 2023

**In this Insurance Flash, we highlight the following developments in the insurance and pension plans and funds sectors:**

## Spanish law

### 1. The right to be forgotten for cancer patients in insurance contracts: Royal Decree Law 5/2023

Royal Decree-Law 5/2023, of 28 June, includes, among many other regulations (including, for example, the new regulations on structural modifications of commercial companies, which repealed Law 3/2009, of 3 April), in Chapter II of Title V of Book V, various measures to give effect to the right to be forgotten of cancer patients when contracting insurance and banking products, once a certain period of time (five years) has elapsed since the end of treatment without relapse.

According to the Explanatory Memorandum of the Royal Decree-Law, this is intended to comply with the measures proposed by the European Parliament Resolution of 16 February 2022 on strengthening Europe's fight against cancer.

This Resolution urged Member States to guarantee the right to be forgotten (following the regulatory developments in some Member States such as France, Belgium, Luxembourg and the Netherlands) to all European cancer patients no later than ten years after the end of their treatment - five years for patients diagnosed before the age of 18.

The Explanatory Memorandum to Royal Decree-Law 5/2023 attempts to justify the urgency (which would motivate the approval of these rules by Royal Decree-Law and not through an ordinary law discussed within the Parliament) in the *Proposition No de Ley* of the Health and Consumer Affairs Commission of the Spanish Parliament of 29 March 2023.

This proposal urged the Government to comply, through immediate regulatory action, with the aforementioned Resolution of the European Parliament (although this latter established 2025 as the deadline for the implementation of such regulatory changes).

Specifically, Royal Decree-Law 5/2023 amends:

(A) Article 10 of Law 50/1980 of 8 October 1980 on Insurance Contracts (LCS) on the duty of the insured to declare the risk;

(B) the Fifth Additional Provision of the same LCS, on non-discrimination on the grounds of HIV/AIDS or other health conditions, and

(C) the Sole Additional Provision of the revised text of the General Law for the Defence of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, of 16 November (TRLGDCU), on the nullity of certain contractual conditions.

These amendments came into force on the day following the publication of Royal Decree-Law 5/2023 in the Official State Gazette (i.e. **30 June 2023**), in accordance with the provisions of the ninth final provision of the aforementioned Royal Decree-Law.

Each of these amendments is discussed below.

***Declaration of risk***

With regard to article 10 of the LCS, a paragraph is added to the same, establishing that "*the policy holder of a life insurance policy is not obliged to declare whether she or the insured person has suffered from cancer **once five years have elapsed since the end of the radical treatment without subsequent relapse**. Once the aforementioned period has elapsed, the insurer cannot consider the existence of oncological antecedents for the purposes of contracting the insurance, and any discrimination or restriction to contracting for this reason is prohibited*".

***Access to recruitment and prohibition of discrimination***

In the fifth additional provision of the LCS, specific rules are introduced in relation to patients with oncological pathologies, so that it is prohibited:

(A) refusal of access to coverage,

(B) the establishment of contracting procedures different from those normally used by the insurer,

(C) the imposition of more onerous conditions or

(D) any other form of discrimination,

to a person for having suffered an oncological pathology, **once five years have elapsed since the end of radical treatment without subsequent relapse**.

***Nullity of conditions***

As we said, the Single Additional Provision of the TRLGDCU has also been modified.

The new paragraph 2 of this additional provision states that "*Any clauses, stipulations, conditions or agreements that exclude one of the parties on the grounds of having suffered from cancer before the date of signing the contract or legal transaction shall be null and void, **once five years have elapsed since the end of the radical treatment without subsequent relapse** .*

*For this purpose, prior to the conclusion of a consumer contract, regardless of the sector, the consumer may not be asked for oncological information **once five years have elapsed since the end of the radical treatment without subsequent relapse**.*

*Likewise, a waiver of the provisions of this provision by a party who has suffered from cancer in the above cases shall be null and void*".

The fifth additional provision of the LCS and the single additional provision of the LGDCU enable the Government, by means of a royal decree, to modify the five-year period established in article 10, in the fifth additional provision of the LCS and in the single additional provision of the

TRLGDCU, generally or for specific oncological pathologies, "depending on the evolution of scientific evidence".

A number of preliminary questions can be raised in the light of the changes described above:

(A) While the amendment of Art. 10 of the LCS refers only to life insurance (and therefore does not apply to other types of insurance such as, for example, health insurance in its different modalities or long term care insurance), both the Fifth Additional Provision of the LCS and the Single Additional Provision of the LGDCU are applicable to the contracting of all types of insurance.

(B) As regards the amendment of the Fifth Additional Provision of the LCS and the Sole Additional Provision of the LGDCU, these rules, prior to the amendment by Royal Decree-Law 5/2023, have been in force since June 2018, and:

   (1) already prohibited discrimination, denial of access to contracting, the establishment of different contracting procedures or the imposition of more onerous conditions on the grounds of HIV/AIDS ***or other health conditions***, unless such measures were based on justified, proportionate and reasonable grounds, previously and objectively documented (Fifth Additional Provision LCS) and

   (2) already declared null and void those conditions or agreements that excluded one of the parties for having HIV/AIDS ***or other health conditions*** (Sole Additional Provision TRLGDCU).

   In view of the amendment, some questions arise as to the position of those cancer patients who are not in the situation provided for in Royal Decree-Law 5/2023, as five years have not yet elapsed since the "*end of radical treatment without* relapse":

   (1) Is discrimination in contracting and are exclusions from coverage valid, in respect of patients for whom five years have not elapsed since the end of treatment?

   (2) Is the situation of these cancer patients, who are not in the situation "protected" by the Royal Decree-Law 5/2023, better or worse than before the modification of the aforementioned law?

(C) On the other hand, the concept of "***radical treatment without subsequent relapse***" on which the protection granted is based is an indeterminate concept, which raises technical doubts as to its interpretation.

In short, without prejudice to the laudable attempt to protect oncology patients, in compliance with the aforementioned Resolution of the European Parliament of 2022, we venture to guess that the approved amendments will raise doubts in the interpretation of the regulation, both for insurance companies and insured parties, and it will be necessary for case law to clarify the scope of the protection granted and, above all, the situation of those cancer patients for whom the period of five years has not elapsed "*since the end of the radical treatment without subsequent relapse*".

## 2. **Amendment of the Pension Plans and Funds Regulations by Royal Decree 668/2023, of 18 July**

Royal Decree 668/2023 of 18 July, amending the Regulation on pension plans and funds, approved by Royal Decree 304/2004 of 20 February 2004, for the promotion of occupational pension plans (published in the Official State Gazette on 20 July 2023, and which, in accordance with its sole final provision, entered into force on 21 July 2023) introduces fundamental changes to the rules regulations governing pension plans and funds (to which we referred in our April Insurance Flash).

The amendments introduced by Royal Decree 668/2023 serve a dual purpose:

(A) On the one hand, they complete the regulatory development necessary for the operation of the new social welfare institutions introduced by Law 12/2022, of 30 June, regulating the promotion of occupational pension plans: open public promotion occupational pension funds -*fondos de pensiones de empleo de promoción pública abiertos – "FPEPPs"*[1]- and simplified occupational pension plans -*planes de pensiones de empleo simplificados*-.

This regulatory development began with Royal Decree 885/2022 of 18 October, which already amended the Pension Plans and Funds Regulation. This was, however, a partial regulatory development which has now been completed.

(B) On the other hand, fundamental changes are introduced to the entire pension schemes and funds regime contained in the Regulation.

Royal Decree 668/2023 (a) amends numerous articles of the Pension Plans and Funds Regulation (b) introduces new articles (articles 18 bis, 19 bis, 84 bis and 108 to 116). In turn, (d) articles 111 to 116 are included in a new Title VII, called "Simplified Employment Pension Plans", which completes the development of this institution of those aspects not developed in the regulatory amendment made by Royal Decree 885/2022, of 18 October and (e) three new additional provisions (from the eleventh to the thirteenth) and two new transitory provisions (eighth, which regulates the transformation of pension plans and pension funds) are introduced in the Pension Plans and Funds Regulation, which regulates the transformation of associated pension plans into employment plans, and the ninth, on the provision of telematic means for the use of the so-called common digital platform -*plataforma digital común*-, which is necessary for the management of FPEPPs and is still pending its full development).

In particular, with regard to the pension fund investment regime, amendments are made to almost all the provisions of the Pension Plans and Funds Regulations governing this matter (Articles 69, 69a, 70, 71, 72, 74, 74, 75, 76, 48, 85b, 98 and 101).

[1] It should be noted that the revised text of the Law governing the Pension Plans and Pension Funds (*texto refundido de la Ley de Regulación de los Planes y los Fondos de Pensiones*), as amended by Law 12/2022, provides for a selection process for the management and depositary entities of the FPEPPs, subject to Law 9/2017 on Public Sector Contracts. This selection process has been completed, with respect to the first five lots of FPEPPSs that have been

Thus, among other novelties in this regime for pension fund investments, the following can be highlighted:

(1) the establishment of rules for the accessibility to the content of the funds' investment policy statement and the extension of the application of the rules on engagement policy to all pension funds - and not only to occupational pension funds;

(2) the specific provision on the eligibility of investments by Spanish pension funds in European long-term investment funds (ELTIFs) regulated in Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015;

(3) introducing changes to the risk concentration limits in certain eligible financial assets, in general by relaxing and clarifying the pre-existing rules, as well as by

(4) the provision allowing the incorporation of open-ended pension funds, as pure investment vehicles (without having any attached pension plan), to which the risk concentration limits relating to investments in shares and units in venture capital entities and closed-end collective investment institutions provided for in articles 70.8 and 70.9 (b) of the Pension Plans and Funds Regulations would not apply, those limits being only applicable to the pension funds investing in this new type of open pension fund and to the pension plan account that has channelled resources from its position account in other pension fund. The aim is to establish a type of fund, which other pension funds (and pension schemes attached to other funds) can use, in order to make their investments in private equity and closed-ended collective investment schemes (perhaps facilitating access to these investments by smaller pension funds than those that usually have access to such assets).

## 3. Notice of the DGSFP of the initiation of supervisory actions in the field of payment protection insurance

Spanish Directorate General of Insurance and Pension Funds (DGSFP) has announced the start of supervisory actions aimed at insurance companies that market payment protection insurance related to mortgage loans, consumer finance transactions and credit cards, as well as bancassurance intermediaries that mediate in the contracting of these insurance products.

The full text of this communication can be found here.

In the communication, the DGSFP indicates that such supervisory actions are included in the supervisory priorities for the period 2023-2025 published by the DGSFP.

Contracts. This selection process has been completed, with respect to the first five lots of FPEPPs that have been subject to tender, through the award of the management to five management entities (formalised on 2 August 2023). The five awarded management entities are VidaCaixa, S.A.U. de Seguros y Reaseguros, Gestión de Previsión y Pensiones, E.G.F.P., S.A., Caser Pensiones, E.G.F.P., S.A., Santander Pensiones, E.G.F.P., S.A. and Ibercaja Pensión E.G.F.P., S.A.U.

It also states that supervisory actions will be carried out in coordination with other European supervisory authorities in this area and that special attention will be paid to (a) the provision of value – the X well-known "value for money" principle -, (b) meeting the needs of customers, (c) the remuneration policy for these products, and (d) identifying and overcoming conflicts of interest.
interest.

The announced supervisory actions are closely linked to the warning of the European Insurance and Occupational Pensions Authority (EIOPA) to insurers and banks distributing credit-linked payment protection insurance, published in September 2022 (on the basis of EIOPA's previous *thematic* review on the same subject).

As indicated in the abovementioned communication from the DGSFP, the Directorate General adhered at the time to the EIOPA warning.

A detailed analysis of EIOPA's thematic review and warning can be found in our November 2022 Insurance Flash.

It should be recalled that on 24 May 2023 the European Commission adopted a package of regulations on retail investment, as part of the so-called Retail Investment Strategy (RIS), contained in the so-called Capital Markets Union Action Plan.

This package includes a proposal for an "Omnibus Directive" which will amend the Insurance Distribution Directive and the Solvency II Directive (together with the MiFID II, AIFMD and UCITs Directives) primarily (but not exclusively) as regards insurance-based investment products (IBIPs).

This will entail significant changes to the reporting obligations and to the product oversight and governance arrangements (POG) for the development approval and launching of these insurance products, introducing, alongside the existing rules, a *pricing process*, allowing the identification and quantification of all costs and charges of the product and the assessment of whether these costs and charges do not undermine the value that the product is expected to deliver - the now famous "*value for money*".

In addition, the general rules on prior information to be provided to policyholders contained in the Solvency II and Insurance Distribution Directives will also be streamlined and harmonised.

The regulatory package also includes a proposal for a Regulation that will amend Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information document - "KIDs" - relating to PRIIPs.

The proposed "Omnibus Directive" is now in the EU legislative process (EU trilogue) and is expected to be adopted and enter into force in 2025, to be transposed by Member States within 12 months of its entry into force and to become applicable within 18 months of its entry into force. (An overview of the Retail Investment Strategy and the envisaged amendments can be found on the Simmons & Simmons website).

Although the amendments to the product oversight and governance procedure contained in the Retail Investment Strategy package affect only insurance-based investment, it cannot be precluded that future amendments to the Insurance Distribution Directive will introduce changes, along similar lines, to the aforementioned payment protection insurance products linked to lending and credit transactions.

## EU law

### 4. Finalisation of EIOPA's consultation on the future of reinsurance supervision

On 10 July 2023, the European Insurance and Occupational Pensions Authority (EIOPA) launched a public consultation on its supervisory statement on the supervision of reinsurance concluded with third country reinsurers. Consultation on Supervisory Statement on supervision of reinsurance concluded with third country insurance and reinsurance undertakings (europa.eu).

The consultation period ended on 10 October.

The consultation is part of the ongoing review of the Solvency II rules.

The aim of the consultation is to ensure adequate supervision of insurance entities using reinsurance arrangements with third country reinsurers, both from countries that have been recognised as equivalent by the European Commission and entities domiciled in jurisdictions that have not been recognised as equivalent.

It should be recalled that the Solvency II regulations establish various equivalence regimes with respect to insurance entities from third countries outside the European Economic Area:

A. Article 172 of the Solvency II Directive provides for an equivalence regime for reinsurance undertakings in order to assess whether the solvency regime that a third country applies to the reinsurance activities of undertakings whose head office is situated in that third country is equivalent to that laid down in Title I of the Solvency II Directive.

B. Article 227 of the Solvency II Directive provides for an equivalence regime for third country insurance and reinsurance undertakings, whereby the Solvency Capital Requirement and eligible own funds of those third country insurance and reinsurance undertakings with a solvency regime equivalent to that laid down in the Community rules may take into account, for the purposes of calculating group solvency, as laid down by the third country whose equivalence is recognised.

C. Finally, Article 260 provides for an equivalence regime applicable to insurance and reinsurance undertakings subject to group supervision, where their parent undertakings, having their head office outside the European Economic Area, are subject to supervision that is equivalent to the group supervision under Solvency II rules.

It is possible for a country to be granted equivalence in one or two areas without being granted equivalence in all three.

All equivalences currently recognised by the European Commission are published on the EIOPA website.

As regards the solvency regime recognised for third-country reinsurers (art. 172 of the Solvency II Directive, transposed by art. 108 Law 20/2015, of 14 July 2015, on ordination, supervision and solvency of insurance and reinsurance undertakings, "LOSSEAR"), the fact that equivalence is recognised determines that reinsurance contracts entered into with reinsurance entities whose registered office is located in that third country will have the same consideration as reinsurance contracts entered into with a reinsurance entity authorised within the European Economic Area.

In the case of claims arising from reinsurance contracts underwritten with reinsurance undertakings located in third countries whose solvency regime has been recognised as equivalent under Art. 172, Art. 137 of the Solvency II Directive specifies that the assets representing such claims may not be required to be located in the European Union.

And according to Art. 173 of the Directive, Member States are prohibited from a gross reserving system which requires the pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsurer is an insurance or reinsurance undertaking situated in a third country whose solvency regime has been recognised as equivalent.

In turn, account should also be taken of the bilateral agreement between the European Union and the United States of America on insurance and reinsurance prudential measures of 23 May 2017. Under that agreement, if certain conditions are met and evidenced by insurance and reinsurance entities subject to supervision in those jurisdictions, any requirement of localisation of assets in the respective territories and the imposition of collateral for the recognition of credit claims arising from reinsurance contracts written between entities in the EU and US jurisdictions is abolished (the entry into force of that bilateral agreement prompted the amendment of Art. 64 of the LOSSEAR by art. 213 of Royal Decree-Law 3/2020 of 4 February, making it possible for reinsurers from third countries outside the European Union to carry out reinsurance operations in Spain from branches located outside Spain, and not only from their registered office).

The outcome of EIOPA's consultation is uncertain, but any changes to the Solvency II rules on this matter that may result in the future will need to be carefully monitored, in particular with regard to the requirements for reinsurance contracts to be recognised as fully effective in transferring risks (in particular under Articles 209 to 214 of the EU 2015/35 Delegated Regulation).

More information on the consultation process now closed can be found here.

## 5. Case law - doctrine on the statute of limitations in civil liability insurance: Judgment of the Civil Chamber of the Supreme Court 3605/2023, 11 September

The Judgment of the Civil Chamber of the Supreme Court 3605/2023, of 11 September, raises the question of how the statute of limitations operates in the relationship between the insured and its civil liability insurer, serving as a good summary of the most recent judgments of the Supreme Court on the matter.

***Summary of the facts***

The entities Mapfre Global Risks and Red Eléctrica de España, S.A. filed, on **1 February 2017** (the dates are relevant to the case), a lawsuit against Ferrovial Agromán, S.A., Azvi, S.A. and Azvi's civil liability insurance company, Caser Seguros, S.A., in order to order them to pay the amount for the repair of the damage caused (plus interest and costs), on **3 September 2010**, in one of the phases of the underground electricity distribution line, owned by Red Eléctrica, perforated by an excavator shovel, in a section of work being carried out by the Temporary Joint Venture (UTE) UTE Chamartín T4 (formed by Ferrovial Agromán and Azvi).

The defendants, Caser and Ferrovial, raised, *inter alia*, the defence of prescription of the action brought, while Azvi, S.A. was declared in default (*rebeldía*) at first instance.

Prior to the legal claim, the plaintiffs had sent several communications, on the one hand to the UTE and, on the other hand, to Caser. Thus:

(A) *Burofaxes* (communications certified and registered by Spanish public post services) had been sent to UTE Chamartín T4 on 29 November 2010, 8 November 2011 and 5 November 2012.

(B) With regard to the insurer Caser, the out-of-court complaints were allegedly made through e-mails exchanged between Mapfre and Caser from 23 October 2013 to 3 February 2016.

the Madrid Court of First Instance No. 96 dismissed the claim, having upheld the plea of prescription raised by Ferrovial Agromán and Caser.

The reasoning of the dismissal ruling was basically that, as a civil action for non-contractual liability brought under art. 1902 of the Civil Code, the claim was subject to the one-year limitation period established in art. 1968.2 of the Civil Code.

According to the judgment, the initial day of this period would coincide with the date of the loss (**3 September 2010**), and the claim was filed on **1 February 2017**, so that the action was time-barred. The Judge of First Instance did not give evidential value to the acknowledgements of receipt of some of the bureaufaxes sent by the plaintiff to the UTE, understanding that there was no proof of their content.

The applicants appealed against the judgment of the Court of First Instance.

The Madrid Provincial Court (ninth section) upheld the judgment handed down by the Court of First Instance.

The main basis for this was the consideration that this was a case of **improper solidarity**, in which (a) **the interruption of the statute of limitations against the companies forming part of the UTE does not interrupt the statute of limitations against the civil liability insurer**, and **(b) the claims addressed to Caser did not interrupt the statute of limitations of the action against the companies forming part of the UTE either**.

Thus, according to the judgment of the Madrid Provincial Court:

(A) In relation to the *burofaxes* sent to UTE Chamartín T4 between November 2010 and November 2012, even if it were accepted that they interrupted the statute of limitations, more than four years had elapsed since the last of them (dated **5 November 2012**) until the filing of the lawsuit (on **1 February 2017**), so the tort liability action would be time-barred (article 1968.2º Civil Code).

(B) And with respect to Caser, the correspondence between Mapfre and Caser covered the period from **October 2013 to February 2016**. Since between the date on which the incident occurred (**3 September 2010**) and the first claim to Caser (**23 October 2013**) a "*period well in excess of one year*" had elapsed, this action would also be time-barred, in accordance with article 1968.2 of the Civil Code (which sets forth a one year term for actions based on tort).

The plaintiffs, Mapfre Global Risk and Red Eléctrica de España, filed an appeal in cassation against the judgment of the Provincial Court, for infringement of art. 1974 of the Civil Code and of the case law contained in various judgments of the First Chamber of the Supreme Court 865/2008, of 1 October and 161/2019, of 14 March, rejecting the prescription of the action assessed by the Provincial Court.

The Supreme Court partially upheld the judgement of the Madrid Provincial Court, considering that it made an interpretation of the solidarity and the existing links between the defendant insurance company and the insured who caused the damage that does not coincide with the case law of the Supreme Court, in that it incorrectly considered that the interruption of the limitation period effected in respect of Azvi S.A., as a member of the UTE Chamartín T4, did not produce effects with respect to Azvi's civil liability insurer, Caser.

The judgement serves the Supreme Court to describe the relatively recent case law on the matter. Thus, it highlights that it is necessary to distinguish between two levels in the matter under discussion:

(A) The first level derives from the existence of an insurance contract, according to which the interruption of the prescription by means of an out of court claim against the insured party directly affects the insurer, since the latter must honour the commitment acquired with its client to guarantee indemnity for the damages caused to third parties within the limits of the subscribed contract (arts. 73 and 76 LCS).

(B) The second level arises from out-of-court claims made exclusively against the insurance company, and their effect of interrupting the limitation period of the victim's action against the causers of the loss.

With regard to this second level, the Supreme Court had previously stated (judgments 332/2022 of 27 April and 503/2017 of 15 September) that **the out-of-court claims of the third party injured party directed <u>solely</u> against the insurance company did not have the effect of interrupting the limitation period of the action against the insured party.**

In turn, the judgement also recalls the features of the direct action against the civil liability insurer set out in art. 73 of the Insurance Contract Law, according to the summary of the jurisprudential doctrine set out in the judgement, also of the plenary session, 321/2019, of 5 June:

(1) an action autonomous and independent of that which the injured party may have against the insured;

(2) which implies a substantive and procedural right of the third party injured party against the insurer;

(3) and that this right of the third party to demand from the insurer the obligation to compensate is not the same as the right of the third party to demand compensation from the insured who caused the damage, which means that the injured party has two rights to which correspond on the passive side two different obligations: that of the insured, who caused the damage and that of the civil liability insurer.

Consequently, on this second level, the Supreme Court considers the judgment of the Madrid Provincial Court to be correct: the action against Ferrovial Agroman is time-barred, especially when there are no contractual ties of any kind between Ferrovial Agroman and the insurance company Caser (Caser insured Azvi's civil liability, and not Ferrovial's).

On the other hand, with regard to the "first level", mentioned above, the Supreme Court upheld the appeal, understanding that **the *burofaxes* addressed to the UTE, in which Azvi, insured for civil liability by Caser, was integrated, did interrupt the statute of limitations with regard to Caser, S.A., in accordance with previous case law** (judgments 865/2008, of 1 October and 161/2019, of 14 March, cited in the appeal, as well as, subsequently, in judgments 171/2021, of 26 March, 129/2022, of 11 February and 294/2022, of 6 April).

The ground for this is that, according to the Supreme Court, in the case of a civil liability insurer, it is not possible to speak of improper solidarity, arising from non-contractual liability, in which the interruptive acts operate individually with respect to the persons against whom they have been exercised and not with respect to the others.

On the contrary, in the relations between insured and its civil liability insurer (as has been declared in judgements 161/2019, of 14th March, and 171/2021, of 26th March), the insurer does not contribute with its conduct to the production of the damage, but ensures its coverage thanks to the insurance contract, to the point that the injured party, making use of the direct action established by Article 76 of the Law of Insurance Contracts, can, if he so wishes, sue only the insurer and not the insured (who was the cause and origin of the damage).

And so, the grounds of the previous Supreme Court judgement 129/2022, of 21 February, are mentioned by the Court, according to which:

*"In this type of [civil liability] insurance, if there is no civil liability on the part of the insured,* [...] *there can be no liability on the part of the insurance company; for to declare it so would imply that the damage would take a different course to that contemplated by the parties when taking out the insurance. There cannot be liability for mere insurability,* [...]".

And, accordingly:

"[...] ***if the liability of the insurer, which is demanded by means of the direct action, has, as a presupposition, the liability of the insured, the out of court claim to the latter also interrupts the prescription with respect to the insurer*"**.

## 6. Relocation of Aegon N.V.'s domicile outside the European Union

On 30 September, the Aegon Group announced that the transfer of registered office of the group's parent company, the Dutch company Aegon N.V., to Bermuda had been completed and approved by the Extraordinary Shareholders General Meeting held on that date.

As a result of this move, Aegon N.V. become a Bermudian company, Aegon Ltd.

As of 1 October 2013, the Bermuda Monetary Authority has thus become the supervisory authority for the Aegon group.

However, Aegon will retain its headquarters in the Netherlands, remain Dutch tax resident and will continue to be listed on Euronext Amsterdam and the New York Stock Exchange (NYSE).

Following the transaction to transfer the insurance business of the Aegon group in the Netherlands to ASR (transaction agreed in November 2022 and executed in June 2023), ANV will no longer have any regulated insurance subsidiaries in the Netherlands. In view of the above, on 30 June 2023, ANV announced its intention to relocate its legal seat to Bermuda.

As recognised by both the European Insurance and Occupational Pensions Authority (EIOPA) and the Spanish Directorate General for Insurance and Pension Funds (D6SFP), there are compelling reasons to transfer supervision, at group level, to the Bermuda supervisory authority (BMA), taking into account that Aegon's insurance subsidiaries in the European Union after the transaction with ASR in the Netherlands represent less than 0.5% of the total assets of the Group's insurance companies.

On the other hand, the supervision of the Spanish subsidiaries by the DGSFP presents certain particularities, as it focuses mainly on the joint business of bancassurance alliances, which is of a completely different nature than the business in the *core* markets of the Aegon group.

By contrast, the Bermuda business is closely related to the Group's core business in the US (conducted primarily through Transamerica).

During the period between the agreement to sell Aegon's Dutch insurance business to ASR and the relocation of Aegon NV's domicile to Bermuda, a bilateral delegation agreement has been in place between the Dutch Central Bank (DNB) and the Spanish DGSFP. EIOPA's report on this agreement can be found here.

Finally, it is worth mentioning that Bermuda has been recognised by the European Commission as fully equivalent for all purposes under Solvency II (reinsurance -art. 172 Solvency II Directive-, third country insurers for the purposes of calculating capital and own funds requirements -art. 227 of the Directive- and calculation of solvency and eligible own funds at group level -art. 260 Solvency II Directive) by European Commission Delegated Decision (EU) 2016/309 of 26 November 2015 on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda with the regime set out in Directive 2009/138/EC of the

European Parliament and of the Council and amending Commission Delegated Decision (EU) 2015/2290.

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