Pérez-Llorca

Novedades Jurídicas de Seguros
Insurance Legal Update

Actualidad Iberoamericana de Seguros
Ibero-American Insurance Update

CUARTO TRIMESTRE 2025 | FOURTH QUARTER 2025

Q4

Queridos clientes, compañeros y amigos:

Cerramos 2025 en nuestro Actualidad Iberoamericana de Seguros, llamando la atención de nuestros lectores sobre las oportunidades y retos del que se conoce, dependiendo del país en el que nos movamos, como seguro de enfermedad, de salud, de asistencia sanitaria, de gastos médicos o *seguro de saúde*, un producto que, si bien tiene una penetración que alcanza a un 25% de la población total de España o Portugal, con una tendencia clara al aumento, está en porcentajes más discretos en Colombia y México, con sólo un 8-10% de la población asegurada.

Elegimos como ejemplo este tipo de productos porque en cada país se enfrentan a retos dispares, tanto jurídicos como de mercado, y así:

- En Colombia, por la competencia con las fórmulas de medicina prepagada, que es una solución no aseguradora por la que el interesado paga por adelantado los servicios de salud a los cuales desea acceder, contratando por tanto no con un asegurador, sino con un prestador de servicios sanitarios, a un costo mucho más asequibles. Sin embargo, a pesar del crecimiento y notable desarrollo de la medicina prepagada, en contraste, durante el 2025, el seguro de salud ha sido el ramo con mayor crecimiento en el mercado de seguros colombiano, aunque se presenta como una opción de mayor costo, pero también de prestaciones más amplias.

- En España, sin dejar de prestar atención a la progresiva irrupción de fórmulas de medicina prepagada (bajo distintas denominaciones, planes médicos, por ejemplo), con el consiguiente debate sobre su naturaleza y admisibilidad (suponen revertir un modelo de apuesta completa por el seguro privado que data de mediados del siglo veinte), por la inexistencia de un baremo de daños sanitarios y las indemnizaciones galopantes a las que se enfrentan los aseguradores de asistencia sanitaria por una combinación de valoraciones impredecibles e intereses moratorios que les son -en nuestra opinión, injustamente- impuestos.

- En México, por la deficiente penetración territorial de los productos de gastos médicos, que se concentran fundamentalmente en la zona central de la República (como Ciudad de México, Nuevo León, Jalisco, entre otros), un conflicto permanente con los hospitales privados, que se arrastra desde la pandemia, con la amenaza del legislador de intervenir en la formación de precios, todo ello poniendo en riesgo la modalidad de seguro de gastos médicos mayores, lo que podría dejar a los consumidores mexicanos con el solo recurso del (frecuentemente insatisfactorio) seguro de gastos médicos menores. Y todo lo anterior, además, en el contexto de la problemática de la acreditación del IVA -sobre la que versa una de las tribunas de este ejemplar-.

Dear clients, colleagues, and friends,

We bring 2025 to a close in our Ibero-American Insurance Update by drawing our readers' attention to the opportunities and challenges posed by what is known, depending on the country in which we operate, as insurance against illness, health insurance, medical assistance insurance, or medical expenses insurance, a product that, although it has a penetration rate of 25% in Spain and Portugal, with a clear upward trend, has more modest levels of penetration in Colombia and Mexico, with only 8-10% of the population insured.

We chose this type of product as an example because each country faces different challenges, both legal and market-related, as follows:

- In Colombia, due to competition from prepaid medical plans, which is a non-insurance solution whereby the individual in question pays in advance for the health services they wish to access, thus contracting not with an insurer but with a healthcare provider, at a much more affordable cost. However, despite the growth and remarkable development of prepaid medicine, in contrast, in 2025, health insurance was the fastest-growing sector in the Colombian insurance market. Although it is a more expensive option, it also offers more comprehensive benefits.

- In Spain, while noting the progressive emergence of prepaid medical care options (under different names, such as medical plans), with the consequent debate about their nature and legitimacy (they involve reversing a model of complete commitment to private insurance that dates back to the mid-twentieth century), due to the absence of a scale for assessing healthcare damages and the rampant compensation claims faced by healthcare insurers due to a combination of unpredictable assessments and default interest that are, in our opinion, unfairly imposed on them.

- In Mexico, due to the poor territorial penetration of medical expense products, which are mainly concentrated in the central part of the country (Mexico City, Nuevo León, and Jalisco, among others), there is an ongoing conflict with private hospitals, which has been dragging on since the pandemic, with the threat of the legislature intervening in price setting, all of which puts major medical insurance at risk, leaving Mexican consumers with only minor medical insurance (which is often unsatisfactory) as a recourse. All of the above, moreover, takes place in the context of the problem of VAT crediting, which is the subject of one of the articles in this issue.

- En Portugal, con mucho campo aún para un desarrollo eficiente de los *seguros de saúde*, como una fórmula que disminuya los costes directos de las familias en cuidados de salud. Los seguros privados conviven con las fórmulas de subsistemas privados, o sistemas sustitutivos del *Serviço Nacional de Saúde* ("**SNS**"), y el desarrollo que se ha venido observando de los seguros ha sido más por sustitución de subsistemas privados que por extenderse más entre la población que únicamente tiene acceso al SNS. Además, Portugal, como España, empieza a compartir un serio problema de falta de desarrollo de más y más infraestructuras y medios sanitarios al servicio de la población.

En este número de la publicación encontraréis, por lo demás, junto a novedades legislativas y jurisprudenciales en las distintas jurisdicciones, una serie de tribunas sobre diferentes materias: en Colombia, acerca de seguros de cumplimiento de disposiciones legales aduaneras; en España, una sobre coberturas no aseguradoras de riesgos y el régimen jurídico que les resulta de aplicación, y otra acerca de criterios reseñables de EIOPA y ciertas sentencias del TJUE en 2025; en México, como hemos adelantado, una acerca de la aceptación de las condiciones generales del contrato de seguro y su particular problemática, y otra sobre la situación actual en materia de problemática de la acreditación del IVA; y finalmente, en Portugal, respecto del impacto del Reglamento DORA en la actividad aseguradora en esa jurisdicción.

Como siempre, esperamos que la presente publicación os resulte de la mayor utilidad e interés, y aprovechamos para enviaros un afectuoso saludo en nombre de todo el equipo de Seguros y Reaseguros de Pérez-Llorca, y una feliz entrada en 2026.

Un abrazo,
Equipo Pérez-Llorca

- In Portugal, there is still considerable scope for the efficient development of health insurance as a way of reducing the direct costs of healthcare for families. Private insurance coexists with private subsystems, or substitute systems for the National Health Service (*Serviço Nacional de Saúde*) ("**SNS**"), and the development of insurance has been more about substituting private subsystems than expanding it among the population that only has access to the SNS. Furthermore, Portugal, like Spain, is beginning to share a serious problem arising from the insufficient development of infrastructure and healthcare resources to serve the population.

In this issue of the publication, you will find, in addition to legislative and jurisprudential developments in the various jurisdictions, a series of articles on different topics: in Colombia, on customs compliance insurance; in Spain, on non-insurance risk coverage and the legal regime applicable to it, and another on notable EIOPA criteria and certain CJEU judgments in 2025; in Mexico, as we have already mentioned, the acceptance of the general conditions of insurance contracts and the particular problems they pose, and the current situation regarding VAT crediting issues; and finally, in Portugal, the impact of the DORA Regulation on insurance activity in that jurisdiction.

As always, we hope you find this publication useful and of interest, and we would like to take this opportunity to send you our warmest regards on behalf of Pérez-Llorca's entire Insurance and Reinsurance team, and wish you a happy start to 2026.

With kind regards,
The Pérez-Llorca team

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Actualidad Iberoamericana de Seguros
Ibero-American Insurance Update

Colombia

Principales novedades normativas y de supervisión
Key Regulatory and Supervisory Developments

Proyecto de Documento Técnico 01-2025 de la Superintendencia Financiera de Colombia

El proyecto de documento técnico número 01-2025 expedido por la SFC define la metodología oficial para construir la Curva de Rendimiento Libre de Riesgo ("**CRLR**") y el vector de inflaciones implícitas, insumos esenciales para la determinación de las reservas técnicas de las aseguradoras bajo NIIF 17. Su objeto es establecer parámetros, fuentes de datos y modelos de interpolación/extrapolación que garanticen valoraciones prudenciales y comparables de los pasivos de seguros. Este se expide en el marco de las facultades otorgadas por el Decreto 1272 de 2024 (que modifica el Decreto 2555 de 2010), la transición regulatoria fijada en la Circular Externa 013 de 2025 y la necesidad de publicación mensual de los vectores por parte de la SFC.

La SFC publicará mensualmente los vectores de la CRLR y de inflación implícita, calculados con datos diarios de proveedores de precios, conforme a la metodología descrita. En síntesis, la propuesta estandariza parámetros clave (UPL por volumen residual, interpolación con Nelson & Siegel, extrapolación con Smith–Wilson, UFR localmente calibrada, periodos de convergencia y plazo máximo), lo que fortalece la valoración de reservas técnicas bajo NIIF 17, mejora la comparabilidad regulatoria y contribuye a la estabilidad de las obligaciones de las compañías de seguros en Colombia.

Draft Technical Document No. 01-2025 of the Colombian Financial Superintendency (SFC)

Draft Technical Document No. 01-2025, issued by the SFC, defines the official methodology for constructing the risk-free yield curve ("**CRLR**") and the vector of implied inflation rates, which are essential inputs for determining insurers' technical reserves under IFRS 17. Its purpose is to establish parameters, data sources, and interpolation/extrapolation models that ensure prudent and comparable valuations of insurance liabilities. This has been issued within the framework of the powers granted by Decree No. 1272 of 2024 (amending Decree No. 2555 of 2010), the regulatory transition set out in External Circular No. 013 of 2025, and the requirement for the SFC to publish the vectors on a monthly basis.

The SFC will publish the CRLR and implied inflation vectors on a monthly basis, which will be calculated using daily data from price providers, in accordance with the methodology described. In summary, the proposal standardizes key parameters (the UPL by residual volume, interpolation using the Nelson & Siegel Model, extrapolation using the Smith–Wilson Method, the locally calibrated UFR, convergence periods, and the maximum term), which strengthens the valuation of technical reserves under IFRS 17, improves regulatory comparability, and contributes to the stability of insurance companies' obligations in Colombia.

Resolución 1962 de 2025 del Ministerio de Salud y Protección Social

La Resolución 1962 de 2025 del Ministerio de Salud y Protección Social, que desarrolla la estructura del Sistema Integral de Información Financiera y Asistencial ("**SIIFA**"). Este sistema es especialmente relevante para las aseguradoras, en particular para aquellas vinculadas a coberturas de salud y al SOAT, pues

Resolution No. 1962 of 2025 of the Ministry of Health and Social Protection

Resolution No. 1962 of 2025 of the Ministry of Health and Social Protection sets out the structure of the Comprehensive Financial and Healthcare Information System ("**SIIFA**"). This system is especially relevant for insurers, particularly those linked to health coverage and Compulsory Traffic Accident Insurance ("**SOAT**"),

servirá para el registro oficial de contratos, facturas electrónicas, devoluciones, glosas, anticipos y pagos efectuados en el sistema de salud. Su implementación gradual busca fortalecer la trazabilidad, la transparencia y la eficiencia de las transacciones financieras, lo que tendrá un impacto directo en los procesos de reclamación y pago asociados a productos asegurados.

as it will serve as the official registry for contracts, electronic invoices, refunds, disclaimers, advances, and payments made in the healthcare system. Its gradual implementation seeks to strengthen the traceability, transparency, and efficiency of financial transactions, which will have a direct impact on the claims and payment processes associated with insured products.

Documento técnico de la Unidad de Proyección Normativa y Estudios de Regulación Financiera

La Unidad de Proyección Normativa y Estudios de Regulación Financiera ("**URF**") ha publicado comentarios sobre dos proyectos de decreto que proponen aplazar la entrada en vigor de la NIIF 17 y los ajustes al régimen de reservas técnicas hasta el 1 de enero de 2028. El primer proyecto (Documento Técnico Reservas) plantea posponer la aplicación de los ajustes establecidos en el Decreto 1272 de 2024, mientras que el segundo (Documento técnico Modificación de la entrada en vigor de la NIIF 17) propone aplazar de manera general la NIIF 17 para entidades del Grupo 1 (Decreto 1271 de 2024), con Estados de Situación Financiera de Apertura al 1 de enero de 2027. Esta extensión se fundamenta en el artículo 14 de la Ley 1314 de 2009, que permite establecer plazos diferenciados para regulaciones de alta complejidad técnica, siguiendo la experiencia internacional del IASB, que también ha debido introducir enmiendas y aplazamientos sucesivos a esta norma.

La necesidad del aplazamiento se sustenta en el limitado nivel de madurez del sector asegurador colombiano, evidenciado en una encuesta de septiembre de 2025 que revela importantes brechas tecnológicas, insuficiencia de datos históricos, falta de talento especializado y necesidad de nuevas herramientas y ciclos robustos de pruebas. Sin esta ampliación de plazos, aproximadamente el 77% de las entidades podría presentar información incompleta o inconsistente, afectando gravemente la comparabilidad y calidad de las estimaciones técnicas. La medida está alineada con la coordinación regulatoria existente, materializada en la Circular Externa 013 de 2025 de la Superintendencia Financiera, y cuenta con el respaldo del CTCP y la SFC, que consideran viable esta extensión para garantizar una transición gradual, ordenada, transparente y técnicamente sólida hacia la adopción de la NIIF 17.

Technical document from the Regulatory Planning and Financial Regulation Studies Unit

The Regulatory Planning and Financial Regulation Studies Unit ("**URF**") has published comments on two draft decrees that propose postponing the entry into force of IFRS 17 and adjustments to the technical reserve regime until January 1, 2028. The first draft (Technical Document on Reserves) proposes postponing the application of the adjustments established in Decree No. 1272 of 2024, while the second (Technical Document Modification of the entry into force of IFRS 17) proposes a general postponement of IFRS 17 for Group 1 entities (Decree No. 1271 of 2024), with Opening Financial Statements as of January 1, 2027. This extension is based on Article 14 of Law No. 1314 of 2009, which allows for the establishment of differentiated deadlines for highly complex technical regulations, following the international experience of the International Accounting Standards Board ("**IASB**"), which has also had to introduce successive amendments and postponements to this standard.

The need for the postponement is based on the immaturity of the Colombian insurance sector, as evidenced by a September 2025 survey that reveals significant technological gaps, insufficient historical data, a lack of specialist talent, and a need for new tools and robust testing cycles. Without this postponement, approximately 77% of entities might submit incomplete or inconsistent information, which would seriously affect the comparability and quality of technical estimates. The measure is in line with existing regulatory coordination, as set out in External Circular No. 013 of 2025 of the SFC, and has the support of the Technical Council of Public Accounting ("**CTCP**") and the SFC, which consider this postponement necessary to ensure a gradual, orderly, transparent, and technically sound transition to the adoption of IFRS 17.

Circular Externa 0015 de 2025 SFC

La SFC expidió el 3 de octubre una Circular Externa que establece lineamientos para la gestión de riesgos ambientales y sociales aplicables a todas las entidades vigiladas. La instrucción se enmarca en la "Estrategia de Finanzas Verdes y Cambio Climático", orientada a fortalecer la resiliencia del sistema

External Circular No. 0015 of 2025 of the SFC

On October 3, the SFC issued an External Circular that establishes guidelines for the management of environmental and social risks applicable to all supervised entities. The guidelines are part of the "Green Finance and Climate Change Strategy", which seeks to strengthen the resilience of the financial

financiero mediante la identificación, medición y gestión de riesgos físicos y de transición derivados del cambio climático. Esta regulación complementa los documentos técnicos publicados entre 2022 y 2023 sobre la administración de riesgos y oportunidades climáticas para establecimientos de crédito y aseguradoras. De esta forma, busca que las entidades integren criterios ambientales y sociales, tanto en su gestión de riesgos, como en el desarrollo de sus operaciones.

Por otro lado, la circular adiciona el Capítulo XXXIII "Gestión de riesgos ambientales y sociales, incluidos los climáticos" a la CBCF (Circular Básica Contable y Financiera) y modifica disposiciones del Sistema de Control Interno en la Circular Básica Jurídica. Las entidades vigiladas deberán remitir un plan de implementación dentro de los seis meses siguientes a su expedición y adoptar plenamente las nuevas disposiciones en un plazo máximo de dieciocho meses, sin perjuicio de la posibilidad de implementación anticipada. La regulación no se limita a sectores económicos o territorios específicos, sino que ofrece lineamientos destinados a que las entidades reconozcan y gestionen estos riesgos de manera adecuada, fortaleciendo la sostenibilidad y resiliencia del sistema financiero.

system by identifying, measuring, and managing physical and transition risks arising from climate change. The Circular complements the technical documents published between 2022 and 2023 on the management of climate risks and opportunities for credit institutions and insurance companies. Thus, it seeks to ensure that entities integrate environmental and social criteria into both their risk management and the development of their operations.

Furthermore, the Circular adds Chapter XXXIII, "Management of environmental and social risks, including climate risks", to the Basic Accounting and Financial Circular ("**CBCF**") and amends provisions of the Internal Control System in the Basic Legal Circular. Supervised entities must submit an implementation plan within six months of its issuance and fully adopt the new provisions within a maximum period of eighteen months, without prejudice to the possibility of early implementation. The Circular is not limited to specific economic sectors or territories, but rather offers guidelines for entities to recognize and manage these risks appropriately, thereby strengthening the sustainability and resilience of the financial system.

Circular Externa 0016 de 2025 SFC

La Superintendencia Financiera de Colombia expidió una Circular Externa el 14 de octubre de 2025 mediante la cual creó el Módulo Único de Reporte de Información de Cartera ("**MURIC**"), con el fin de modernizar y unificar la forma en que las entidades vigiladas reportan información crediticia. El sistema recopila datos más granulares y frecuentes para mejorar la supervisión prudencial y reducir reprocesos. Lo anterior se logra al centralizar la transmisión en el formulario MURIC-001, integrando información general de créditos, atributos de créditos y deudores, y movimientos de cartera. Con la adopción del MURIC se derogarán múltiples disposiciones históricas de cartera al finalizar el mes veinte posterior a la expedición de la circular, una vez concluido el periodo de transición.

External Circular No. 0016 of 2025 of the SFC

On October 14, 2025, the SFC issued an External Circular creating the Single Portfolio Information Reporting Module ("**MURIC**") to modernize and unify the reporting of credit information by supervised entities. The MURIC collects more granular and frequent data to improve prudential supervision and reduce reprocessing. This is achieved by centralizing the submission of data in the MURIC-001 form, integrating general credit information, credit and debtor attributes, and portfolio movements. With the adoption of the MURIC, multiple historic portfolio provisions will be repealed at the end of the twentieth month following the issuance of the Circular, once the transition period has ended.

La implementación del MURIC se hará por fases: desarrollo tecnológico, pruebas de transmisión y un periodo de reporte simultáneo para asegurar la calidad e integridad de los datos. En ese entendido, la adopción se realizará de forma escalonada: (i) bancos e instituciones oficiales especiales con licencia de banco, desde el corte del 30 de abril de 2026; (ii) otros establecimientos de crédito e IOE, desde el 31 de octubre de 2026; y (iii) aseguradoras con cartera, comisionistas que financien valores, fiduciarias, titularizadoras vinculadas a cartera y FCP originadores, desde el 30 de abril de 2027. Finalmente, las entidades nuevas adoptarán el MURIC directamente y a Superintendencia prevé un periodo temporal de doble reporte hasta superar inconsistencias, con el fin de garantizar una transición ordenada y fortalecer la calidad de la información para la supervisión.

The implementation of the MURIC will be carried out in the following phases: technological development, submission testing, and a simultaneous reporting period to ensure data quality and integrity. With this in mind, its adoption will be implemented by the following entities in the following order: (i) from April 30, 2026, banks and special official institutions ("**IOEs**") with a banking license; (ii) from October 31, 2026, other credit institutions and IOEs; and (iii) from April 30, 2027, insurers with portfolios, securities financing brokers, trust companies, securitization companies linked to portfolios, and private equity fund ("**FCP**") originators. Finally, new entities will adopt the MURIC directly, and the SFC envisages a temporary period of dual reporting until inconsistencies are resolved, in order to ensure an orderly transition and strengthen the quality of information for supervision.

Carta Circular 067 de 2025 SFC

La Carta Circular 067 de 2025 tiene como objetivo precisar los elementos mínimos que deben contener los planes de implementación que las entidades vigiladas por la Superintendencia Financiera de Colombia deben presentar en cumplimiento de la Circular Externa 015 de 2025, la cual establece disposiciones sobre la gestión de riesgos ambientales y sociales, incluidos los climáticos. Las entidades vigiladas, incluyendo las compañías de seguros, deben remitir a la SFC dentro de los seis meses contados a partir de la expedición de la Circular 015 (con fecha límite del 3 de abril de 2026) un plan de implementación que evidencie cómo adoptarán las disposiciones del Capítulo XXXIII de la Circular Básica Contable y Financiera, contando con un plazo máximo de 18 meses para la implementación completa.

Como entidades vigiladas, las compañías de seguros deben implementar las disposiciones previstas en la Sección I del Capítulo XXXIII, salvo aquellas expresamente exceptuadas, mientras que la Sección II, que establece reglas particulares para la gestión de riesgos ambientales y sociales en operaciones de crédito, aplica exclusivamente a las entidades definidas en el numeral 2.2 del Capítulo XXXIII. El plan de implementación debe incluir como mínimo: ruta de implementación con objetivos alineados al modelo de negocio, cronograma de avance, responsables y estructura organizacional, presupuesto y recursos asignados, capacitación del personal, mecanismos de seguimiento con indicadores de avance, descripción de las etapas para incorporar la identificación, medición, control y monitoreo de los riesgos ambientales y sociales incluidos los climáticos, y documentación que garantice la trazabilidad de las decisiones y acciones.

Circular Letter No. 067 of 2025 of the SFC

Circular Letter No. 067 of 2025 seeks to specify the minimum elements that must be included in the implementation plans that entities supervised by the SFC must submit in compliance with External Circular No. 015 of 2025, which establishes provisions on the management of environmental and social risks, including climate risks. Supervised entities, including insurance companies, must submit an implementation plan to the SFC within six months of the issuance of Circular No. 015 (with a deadline of April 3, 2026) that shows how they will adopt the provisions of Chapter XXXIII of the CBCF, with a maximum period of 18 months for full implementation.

As supervised entities, insurance companies must implement the provisions established in Section I of Chapter XXXIII, except those expressly exempted, while Section II, which establishes specific rules for environmental and social risk management in credit transactions, applies exclusively to the entities defined in paragraph 2.2 of Chapter XXXIII. The implementation plan must include, at a minimum, an implementation roadmap with objectives aligned with the business model, a progress schedule, the responsible parties and an organizational structure, a budget and allocated resources, staff training, monitoring mechanisms with progress indicators, a description of the stages for incorporating the identification, measurement, control, and monitoring of environmental and social risks, including climate risks, and documentation ensuring the traceability of decisions and actions.

Proyecto de Ley 294 de 2025

En materia legislativa, el Proyecto de Ley 294 de 2025, orientado al fortalecimiento del Sistema General de Riesgos Laborales, introduce modificaciones relevantes para las ARLs. El proyecto fija un tope del 20% para los gastos administrativos y establece incentivos adicionales para las aseguradoras que operen en zonas rurales, de alto riesgo o en actividades destinadas a disminuir la siniestralidad. A su vez, permite que las aseguradoras demanden directamente a terceros responsables de accidentes laborales y exige la presentación de informes anuales al Congreso, con el apoyo de veedurías ciudadanas encargadas de supervisar el uso de los recursos del sistema.

Como elemento novedoso, el proyecto crea el Beneficio Solidario por Riesgo Ocupacional, dirigido a trabajadores informales que sufran accidentes o enfermedades laborales, financiado parcialmente con recursos del Fondo de Riesgos Laborales. Además, incorpora medidas como la promoción de seguros de vida grupal para servidores públicos, la prohibición de que una sola aseguradora cubra todos los riesgos de una licitación y la suspensión de la cobertura para trabajadores independientes que no paguen dos periodos consecutivos.

Draft Law No. 294 of 2025

In terms of legislation, Draft Law No. 294 of 2025, which seeks to strengthen the General Occupational Risk System, introduces significant changes for occupational risk management companies ("**ARLs**"). The Draft Law sets a cap of 20% on administrative expenses and establishes additional incentives for insurers that operate in rural, high-risk areas or in activities aimed at reducing accidents. It also allows insurers to sue third parties responsible for workplace accidents directly and requires the submission of annual reports to Congress, with the support of citizen oversight committees, which are responsible for supervising the use of the system's resources.

As a new feature, the Draft Law creates the Solidarity Benefit for Occupational Risk, which seeks to assist informal workers who suffer accidents or occupational illnesses, and is partially financed with resources from the Occupational Risk Fund. In addition, it incorporates measures such as the promotion of group life insurance for public servants, a prohibition against single insurers covering all risks in a bidding process, and the suspension of coverage for self-employed workers who fail to pay for two consecutive periods.

Principales novedades jurisprudenciales
Main Developments in Case Law

Seguros obligatorios por daños corporales en accidentes de tránsito (SOAT)

▸ El silencio no es oro: cuando no avisar a la aseguradora sale caro

La Corte Suprema de Justicia precisa el término de prescripción aplicable a acciones derivadas del SOAT y ratifica que la interrupción natural reinicia el cómputo del plazo extintivo

Sentencia de la Corte Suprema de Justicia, Sala de Casación Civil, Agraria y Rural. Rad. 08001-31-03-014-2017-00346-01. 30 de septiembre de 2025. Magistrado Ponente: Francisco Ternera Barrios.

Una institución prestadora de servicios de salud demandó a una compañía aseguradora por incumplimiento en el pago de servicios médicos, quirúrgicos, farmacéuticos y hospitalarios prestados a víctimas de accidentes de tránsito amparados por pólizas SOAT expedidas por la demandada, reclamando la suma de $4.926'403.078 más intereses moratorios. El Juzgado de primera instancia accedió parcialmente a las pretensiones, condenando a la aseguradora al pago de $2.691'752.907 más intereses moratorios, declarando probadas las excepciones de pago de obligaciones, pólizas no expedidas por la aseguradora y agotamiento del valor asegurado, pero declarando no probada la excepción de prescripción. El Tribunal de segunda instancia confirmó el fallo impugnado, aplicando el término de prescripción de diez años del Código Civil en lugar del término especial de dos años establecido para acciones derivadas del contrato de seguro.

La Corte precisó que el SOAT es un contrato de seguro con regulación especial en el Estatuto Orgánico del Sistema Financiero que, en lo no previsto, se rige por las normas del Código de Comercio sobre seguro terrestre, incluyendo las reglas de prescripción del artículo 1081. El artículo 1081 del Código de Comercio establece que la prescripción de las acciones derivadas del contrato de seguro puede ser ordinaria (dos años) o extraordinaria (cinco años), siendo norma sustancial de carácter imperativo que no puede ser modificada por las partes. Para las instituciones prestadoras de salud que reclaman indemnizaciones del SOAT, el término de prescripción ordinaria de dos años inicia cuando la IPS tuvo conocimiento del siniestro, es decir, al momento de atender a la víctima del accidente de tránsito o cuando esta egresa de la institución. La Corte ratificó que cuando la aseguradora realiza pagos

Compulsory Traffic Accident Insurance (SOAT)

▸ Silence is not golden: When not notifying the insurer is costly

The Supreme Court of Justice clarifies the limitation period applicable to actions arising from the SOAT and confirms that a natural interruption restarts the calculation of the limitation period

Judgment of the Supreme Court of Justice, Civil, Agrarian, and Rural Cassation Chamber. Ref. 08001-31-03-014-2017-00346-01. September 30, 2025. Presiding Judge: Francisco Ternera Barrios.

A healthcare provider sued an insurance company for failure to pay for medical, surgical, pharmaceutical, and hospital services provided to victims of traffic accidents covered by SOAT policies issued by the defendant, and claimed the sum of COP$4,926,403,078 plus default interest. The court of first instance partially upheld the claims, ordering the insurer to pay COP$2,691,752,907 plus default interest, and declared that the exemptions from the payment of obligations, the policies not issued by the insurer, and the exhaustion of the insured value were all proven, but declared that the exemption from the limitation period was not proven. The court of second instance upheld the contested ruling and applied the 10-year limitation period under the Civil Code instead of the special two-year term established for actions arising from insurance contracts.

The Court held that the SOAT is an insurance contract governed by special regulations in the Organic Statute of the Financial System, which, in matters not provided for therein, is governed by the rules of the Commercial Code ("**CC**") on inland insurance, including the rules on limitation periods under Article 1081. Article 1081 of the CC establishes that the limitation period for actions arising from insurance contracts may be ordinary (two years) or extraordinary (five years), which is a substantive rule of a mandatory nature that cannot be modified by the parties. For healthcare providers claiming compensation from the SOAT, the ordinary limitation period of two years begins when the healthcare provider ("**IPS**") becomes aware of the accident, i.e. when it treats the victim of the traffic accident or when the victim is discharged from the institution. The Court confirmed that when an insurer makes

parciales de las reclamaciones, opera la interrupción natural de la prescripción, reiniciándose el cómputo del término fatal de dos años desde la fecha del pago parcial.

La Corte casó la sentencia del Tribunal por haber aplicado indebidamente el artículo 2536 del Código Civil (prescripción de diez años) a una acción derivada del contrato de seguro, cuando debió aplicar el artículo 1081 del Código de Comercio que establece la prescripción ordinaria de dos años. Determinó que operó la prescripción ordinaria de todas las acciones relativas a siniestros cuya atención médica se prestó antes del 25 de abril de 2014 (dos años antes de la demanda), salvo aquellas en las que se hubieren hecho pagos parciales en fecha posterior que interrumpieron el término o configuraron renuncia tácita a la prescripción. Antes de proferir fallo de reemplazo, ordenó practicar un nuevo dictamen pericial contable para determinar qué reclamaciones tuvieron pagos parciales posteriores al 25 de abril de 2014, los montos adeudados por cada factura expedida después de esa fecha y la liquidación de intereses moratorios sobre cada obligación. No hubo condena en costas por haber prosperado el recurso.

partial payments of a claim, the limitation period is naturally interrupted, and the two-year period begins again from the date of the partial payment.

The Court overturned the lower court's ruling for having improperly applied Article 2536 of the Civil Code (a 10-year limitation period) to a claim that arose from an insurance contract, when it should have applied Article 1081 of the CC, which establishes the ordinary two-year limitation period. It held that the ordinary limitation period applied to all actions relating to claims for which medical care was provided before April 25, 2014 (two years before the lawsuit), except for those in which partial payments were made at a later date that interrupted the limitation period or constituted a tacit waiver of the limitation period. Before issuing a new ruling, the Court ordered the preparation of a new expert accounting opinion to determine which claims were partially paid after April 25, 2014, the amounts owed for each invoice issued after that date, and the payment of default interest on each debt. There was no costs award because the appeal was successful.

Seguros de cumplimiento

▸ ¿Prescrito o no prescrito?

La Corte Suprema de Justicia ratifica el momento de inicio del término de prescripción en pólizas de cumplimiento laboral y precisa el régimen de coexistencia de seguros en caso de múltiples aseguradoras

Sentencia de la Corte Suprema de Justicia, Sala de Casación laboral. Rad. 11001-02-05-000-2025-02058-00. 1 de octubre de 2025. Magistrado Ponente: Juan Carlos Espeleta Sánchez

Una trabajadora promovió demanda ordinaria laboral contra una sociedad prestadora de servicios de telecomunicaciones, solicitando que se declarara la existencia de un contrato de trabajo y que la empresa de telecomunicaciones tercerizó ilegalmente la vinculación de su personal a través de la sociedad prestadora, pidiendo la condena solidaria al pago de acreencias laborales. La empresa de telecomunicaciones formuló llamamiento en garantía a dos compañías aseguradoras que habían expedido pólizas de cumplimiento. El Juzgado de primera instancia condenó a ambas aseguradoras a responder conforme a las pólizas hasta el monto asegurado, y el Tribunal de segunda instancia modificó la sentencia estableciendo que las aseguradoras debían responder sobre lo garantizado en proporción del 19.64% y del 80.36% respectivamente sobre salarios y prestaciones sociales, debiendo una de ellas asumir el 100% de las indemnizaciones. La ase-

Compliance Insurance

▸ Prescribed or not prescribed?

The Supreme Court of Justice confirms the start date of the limitation period in labor compliance policies and defines the regime of coexistence of insurance in the case of multiple insurers

Judgment of the Supreme Court of Justice, Labor Cassation Chamber. Ref. 11001-02-05-000-2025-02058-00. October 1, 2025. Presiding Judge: Juan Carlos Espeleta Sánchez

A worker filed an ordinary labor lawsuit against a telecommunications service provider, in which they sought declarations of the existence of an employment contract and that the telecommunications company illegally outsourced the hiring of its personnel through the service provider, and sought joint and several liability for the payment of labor claims. The telecommunications company issued a third-party claim against two insurance companies that had issued compliance policies. The court of first instance ordered both insurers to pay up to the insured amount under the policies, and the court of second instance amended the ruling, establishing that the insurers should cover 19.64% and 80.36%, respectively, of the guaranteed amount for wages and employment benefits, with one of them assuming 100% of the compensation. The insurer with the largest share filed a constitutional action for the protection of fundamental rights (*tutela*), arguing that the

guradora con mayor participación interpuso acción de tutela alegando que el Tribunal incurrió en defecto sustantivo al contabilizar indebidamente el término de prescripción de la acción derivada del contrato de seguro, ignorando lo previsto en los artículos 1081, 1073 y 1057 del Código de Comercio y extendiendo injustificadamente la vigencia de la acción.

La Corte analizó que conforme al artículo 1081 del Código de Comercio, las acciones prescriben en dos años para seguros de daños, y frente al argumento de que el término había transcurrido desde la reclamación presentada por la demandante el 4 de noviembre de 2014, el Tribunal estableció que el punto de partida para contabilizar la prescripción no era esa fecha, sino el 31 de agosto de 2017, cuando se notificó la demanda a la aseguradora, toda vez que antes de esa notificación se trató de un simple reclamo que no implicaba reconocimiento ni responsabilidad alguna, mientras que fue con la notificación del proceso judicial cuando se concretó la obligación de la aseguradora de acudir a las garantías contratadas para cubrir una eventual condena. Adicionalmente, el Tribunal abordó la coexistencia de seguros, definida como la situación en que una entidad cuenta con dos o más pólizas que amparan el mismo interés asegurable frente a distintos aseguradores, explicando que conforme al artículo 1093 del Código de Comercio, el asegurado tiene la obligación de informar a cada aseguradora sobre los demás seguros contratados, y que según el artículo 1092, si la comunicación no se realiza oportunamente, cada aseguradora debe concurrir a la indemnización en proporción a la cuantía de sus respectivos contratos, siempre el asegurado hubiese obrado de buena fe. En el caso concreto, la Sala precisó que no correspondía al juez laboral ordenar la terminación de un contrato de seguro, y dado que las pólizas coincidieron en el tiempo de enero de 2011 a enero de 2014, determinó que cada aseguradora debía responder en proporción a la cuantía de sus respectivos contratos, una por el 19.64% y la otra por el 80.36% sobre ciertos conceptos, debiendo esta última cubrir la totalidad de lo condenado excepto subsidio de transporte y vacaciones.

Court had committed a substantive error by improperly calculating the limitation period for the action arising from the insurance contract, ignoring the provisions of Articles 1081, 1073, and 1057 of the CC and unjustifiably extending the validity of the action.

The Court held that, under Article 1081 of the CC, actions for damage insurance are time-barred after two years, and, in response to the argument that the limitation period had expired since the claim was filed by the plaintiff on November 4, 2014, the Court held that the start date of the limitation period was not that date, but rather, August 31, 2017, when the lawsuit was notified to the insurer, since before that notification it was a simple claim that did not involve any recognition or liability, while following the notification of the legal proceedings, the insurer's obligation to invoke the contracted guarantees to cover a possible finding of liability materialised. In addition, the Court addressed the coexistence of insurance policies, defined as a situation in which an entity has two or more policies covering the same insurable interest with different insurers. The Court explained that, under Article 1093 of the CC, an insured party must inform each insurer of the other insurance policies taken out, and that, under Article 1092, if the communication is not carried out in a timely manner, each insurer must contribute to the compensation in proportion to the amount of their respective contracts, provided that the insured has acted in good faith. In this case, the Court held that it was not for the labor judge to order the termination of an insurance contract, and given that the policies covered the same period (January 2011 to January 2014), the Court held that each insurer should be liable in proportion to the amount of their respective contracts, one for 19.64% and the other for 80.36% for certain items, with the latter covering the entire amount awarded except for transportation and vacation allowances.

La Corte Suprema de Justicia negó el amparo de tutela solicitado por la aseguradora, concluyendo que el Tribunal accionado no infringió el ordenamiento jurídico ni cometió desatinos evidentes, pues dentro del marco de su autonomía, en apego a la realidad probatoria y en aplicación de la normatividad sustancial, el juez plural explicó con suficiencia los motivos por los cuales concluyó que en el caso no operó la prescripción y procedía la condena impuesta a la aseguradora como llamada en garantía, estando la decisión arraigada en argumentos que consultaron las reglas mínimas de razonabilidad jurídica y obedecieron a la labor equilibrada de hermenéutica propia de la actividad judicial. La Corte reiteró que la naturaleza de la tutela no radica en generar un escenario adicional en el que la parte interesada pretenda imponer su posición frente a la de los jueces naturales, pues si la decisión del conflicto no resulta descabellada debe descartarse la violación de garantías constitucionales. En consecuencia, se negó el amparo y se ratificó la condena contra las aseguradoras en los términos establecidos por el Tribunal.

The Supreme Court of Justice dismissed the insurer's constitutional action for the protection of fundamental rights (*tutela*), concluding that the lower court did not violate the legal system or commit obvious errors, since within the framework of its autonomy, in accordance with the evidence and in application of substantive law, the lower court sufficiently explained the reasons why it concluded that the limitation period did not apply in the case and that the judgment against the insurer as a third party was appropriate, in view of the fact that the decision was based on arguments that complied with both the minimum rules of legal reasonableness and the textual interpretation which is characteristic of judicial activity. The Court stressed that the purpose of the constitutional action for the protection of fundamental rights (*tutela*) is not to create an additional scenario in which the interested party seeks to impose its position on the court of first instance, since if the decision on the dispute is not unreasonable, the violation of constitutional guarantees must be dismissed. Consequently, the application for constitutional protection was rejected, and the judgment against the insurers was upheld in the terms established by the Court.

▸ Sin pruebas, sin pago: el seguro no es magia

La Corte Suprema de Justicia explica la naturaleza del seguro de cumplimiento, la carga de la prueba del asegurado para demostrar la ocurrencia del siniestro, el daño cierto y su cuantía

Sentencia de la Corte Suprema de Justicia, Sala de Casación Civil, Agraria y Rural. Rad. 05001-31-03-008-2015-01262-01. 22 de octubre de 2025. Magistrado Ponente: Francisco Ternera Barrios

La Corte Suprema de Justicia conoció de una controversia iniciada por una empresa minera que pretendía hacer efectiva una póliza de cumplimiento derivada de un contrato de obra, debido al presunto incumplimiento del contratista. La aseguradora se opuso argumentando prescripción, falta de prueba del siniestro y los perjuicios, exclusión de lucro cesante y sanciones pecuniarias, así como la no exigibilidad de intereses moratorios. La Corte explicó que el seguro de cumplimiento, como seguro patrimonial, está regido por el principio indemnizatorio. Esto significa que no se trata de un pago automático de la suma asegurada, sino de la indemnización por el daño directo, cierto y legítimo, hasta el límite de la suma asegurada. Para hacerlo efectivo, el asegurado o beneficiario debe demostrar tres requisitos esenciales: el incumplimiento de las obligaciones garantizadas; la existencia de un daño patrimonial cierto y el nexo causal entre el incumplimiento y el daño sufrido.

En el caso particular, la póliza excluía expresamente el lucro cesante y las sanciones pecuniarias, por lo que estos con-

▸ No evidence, no payment: insurance is not magic

The Supreme Court of Justice explains the nature of compliance insurance, the insured's burden of proof to demonstrate the occurrence of the incident giving rise to the claim, the actual damage, and its quantum

Judgment of the Supreme Court of Justice, Civil, Agrarian, and Rural Cassation Chamber. Ref. 05001-31-03-008-2015-01262-01. October 22, 2025. Presiding Judge: Francisco Ternera Barrios

The Supreme Court of Justice heard a claim brought by a mining company that sought to enforce a compliance policy that arose from a construction contract due to the contractor's alleged breach. The insurer opposed the claim, arguing that it was time-barred, that there was no proof of the loss and damage, that loss of profits and financial penalties were not applicable, and that default interest was not enforceable. The Court held that compliance insurance, as property insurance, is governed by the principle of compensation. This means that it is not an automatic payment of the insured amount, but rather compensation for direct, certain, and legitimate damage, up to the limit of the insured amount. To obtain this compensation, the insured or beneficiary must demonstrate three essential requirements: a breach of the guaranteed obligations; the existence of certain property damage; and the causal link between the breach and the damage suffered.

In this particular case, the policy expressly excluded loss of profits and financial penalties, meaning that these items were

ceptos no fueron considerados en el debate indemnizatorio. Además, en cuanto a los intereses moratorios, la Corte recordó el artículo 1080 del Código de Comercio, que establece que estos intereses son aplicables únicamente cuando se ha probado tanto el siniestro como la indemnización correspondiente. La Corte también resaltó que el daño emergente, tanto pasado como futuro, debe ser cierto y directo. En este caso, la empresa minera estructuró su reclamación como daño emergente pasado, lo que requería probar de manera precisa los pagos realizados, los periodos, los montos y su relación causal con el incumplimiento.

La Corte concluyó que los documentos aportados por la empresa minera no acreditaron de manera suficiente los desembolsos del proyecto, los sobrecostos ni los intereses adicionales reclamados. Tampoco se probó el nexo causal entre los perjuicios alegados y el incumplimiento del contratista. Por lo tanto, la Corte no accedió a casar la sentencia del Tribunal Superior de Medellín, que había negado las pretensiones de la empresa minera. Finalmente, se condenó a la recurrente en casación al pago de costas.

La Corte Suprema de Justicia reiteró que en los seguros de cumplimiento el asegurado tiene la carga de demostrar el siniestro, el daño cierto y el nexo causal, en línea con el principio indemnizatorio que rige esta figura. Además, enfatizó la importancia de la prueba documental y técnica para sustentar las reclamaciones en este tipo de seguros.

not considered in the dispute over compensation. Furthermore, regarding default interest, the Court cited Article 1080 of the CC, which establishes that such interest is applicable only when both the existence of the loss and the corresponding compensation have been established. The Court also emphasized that actual damage, both past and future, must be certain and direct. In this case, the mining company structured its claim as past actual damage, which required precise proof of the payments made, the periods, the amounts, and their causal relationship with the breach.

The Court concluded that the documents provided by the mining company did not sufficiently establish the project's expenditures, cost overruns, or the additional interest claimed. Furthermore, the causal link between the alleged damage and the contractor's breach was not established. Therefore, the Court upheld the ruling of the Superior Court of Medellín, which had dismissed the mining company's claims. Finally, the appellant was ordered to pay the costs.

The Supreme Court of Justice reiterated that in compliance insurance, the insured must prove the loss, the actual damage, and the causal link, under the principle of compensation that governs this type of insurance. In addition, the Court emphasized the importance of documentary and technical evidence to support these types of insurance claims.

▸ Cuando el anticipo se fue de paseo

La Corte Suprema de Justicia precisa el deber de notificación de alteración del riesgo en pólizas de cumplimiento y su efecto de terminación automática del contrato de seguro

Sentencia de la Corte Suprema de Justicia, Sala de Casación Civil, Agraria y Rural. Rad. 08001-31-53-012-2022-00046-01. 7 de noviembre de 2025. Magistrado ponente: Octavio Augusto Tejeiro Duque

Una empresa de servicios públicos de energía demandó a una sociedad generadora de energía por incumplimiento de un contrato de compraventa de energía celebrado en octubre de 2018, alegando que le entregó un anticipo de $4.268'102.090 en febrero de 2020, pero la sociedad generadora no le suministró la energía ni le devolvió el dinero, ya que el 30 de enero de 2020 fue retirada del Mercado de Energía Mayorista. La sociedad generadora llamó en garantía a una compañía aseguradora, quien había expedido pólizas de cumplimiento para respaldar el contrato. El Tribunal de segunda instancia condenó a la sociedad generadora a restituir el anticipo in-

▸ When the advance payment went missing

The Supreme Court of Justice clarifies the duty to notify changes in risk in compliance policies and the effect of these changes, namely, the automatic termination of an insurance contract

Judgment of the Supreme Court of Justice, Civil, Agrarian, and Rural Cassation Chamber. Ref. 08001-31-53-012-2022-00046-01. November 7, 2025. Presiding Judge: Octavio Augusto Tejeiro Duque

A public energy services company sued an energy generation company for breach of an energy sale and purchase agreement entered into in October 2018. The public energy services company argued that it had paid an advance of COP$4,268,102,090 in February 2020, but the energy generation company did not supply the energy or return the money, as it was removed from the Wholesale Energy Market on January 30, 2020. The energy generation company asked an insurance company, which had issued compliance policies to back the contract, to act as guarantor. The court of second instance ordered the energy generation company to return the

dexado y declaró fundado el llamamiento en garantía contra la aseguradora, ordenándole reembolsar hasta el valor asegurado de $4.142'936.976 según la póliza n.º 2544720-7.

La Corte Suprema encontró que el Tribunal tergiversó el contenido de las excepciones alegadas por la aseguradora, pues las entendió como dirigidas exclusivamente a cuestionar los perjuicios del contrato de energía, cuando en realidad apuntaban a desvirtuar la validez, vigencia y alcance del contrato de seguro mismo. La Corte analizó el artículo 1060 del Código de Comercio, que obliga al asegurado a mantener el estado del riesgo y notificar cualquier agravación o variación de su identidad local, estableciendo que la falta de notificación oportuna produce la terminación automática del contrato de seguro. En el caso concreto, mediante correo del 10 de enero de 2020, la sociedad generadora instruyó a la empresa de servicios públicos para que consignara el anticipo en una cuenta custodia a nombre de un tercero operador del mercado en lugar de las cuentas de la sociedad generadora. Lo anterior, constituyó una alteración relevante del riesgo asegurado al modificar el destinatario del pago, sin enterar a la aseguradora en la oportunidad legal.

La Corte concluyó que no había prueba de que la modificación del destinatario del anticipo hubiese sido comunicada a la aseguradora con la antelación de diez días que exige la ley, por lo que la omisión de ese deber legal produjo la terminación automática del contrato de seguro desde el 10 de enero de 2020, de manera que para la fecha del pago del anticipo la póliza no estaba vigente, y por tanto la aseguradora no estaba llamada a responder. La Corte casó parcialmente la sentencia del Tribunal, declaró probada la excepción de "terminación de los contratos de seguros por ausencia de notificación de la modificación del estado del riesgo", e infundado el llamamiento en garantía contra la aseguradora, ordenando únicamente la devolución de la prima pagada y no devengada desde el 10 de enero de 2020. Se condenó en costas de ambas instancias a la demandada a favor de la accionante y de la llamada en garantía.

indexed advance payment and upheld the claim against the insurer, ordering it to reimburse up to the insured amount of COP$4,142,936,976 under Policy No. 2544720-7.

The Supreme Court found that the court of second instance misrepresented the content of the exemptions asserted by the insurer, as it understood them to be directed exclusively at calling into question the loss and damage arising from the energy contract, when in fact they sought to undermine the validity, term, and scope of the insurance contract itself. The Court analyzed Article 1060 of the CC, which obliges an insured to maintain the state of risk and notify any aggravation or variation of its local identity, and held that the failure to promptly notify results in the automatic termination of an insurance contract. In this specific case, by letter dated January 10, 2020, the energy generation company instructed the public energy services company to deposit the advance payment into an escrow account in the name of a third-party market operator instead of the energy generation company's account. This constituted a significant alteration of the insured risk by changing the recipient of the payment without notifying the insurer within the legal time frame.

The Court concluded that there was no evidence that the change of the recipient of the advance payment had been communicated to the insurer ten days in advance, as required by law, and that the failure to comply with this legal obligation resulted in the automatic termination of the insurance contract as of January 10, 2020, meaning that on the date of the payment of the advance, the policy was not in force, and, therefore, the insurer was not liable. The Court partially overturned the lower court's ruling, declared the "termination of insurance contracts due to failure to notify the change in risk status" exemption to be established, and declared the warranty claim against the insurer to be unfounded, ordering only the refund of the premium paid and not accrued since January 10, 2020. The defendant was ordered to pay the legal costs of the plaintiff and the guarantor in respect of both instances.

▸ El incumplimiento si se asegura

El Consejo de Estado declara caducada la acción contra el contrato de seguro y se confirma que el dolo y la culpa grave del contratista sí integran el riesgo asegurado en el seguro de cumplimiento

Sentencia del Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Tercera – subsección B. Rad. 25000-23-26-000-2012-00936-01. 19 de septiembre de 2025. Consejero Ponente: Fredy Ibarra Martínez

El Consejo de Estado conoció de un proceso de controversias contractuales entre una entidad estatal contratante de

▸ Non-compliance if insured

The Council of State declares an action against an insurance contract to be time-barred and confirms that a contractor's fraud and gross negligence constitute the risk insured under the compliance insurance

Judgment of the Council of State, Contentious-Administrative Chamber, Third Section – Subsection B. Ref. 25000-23-26-000-2012-00936-01. September 19, 2025. Reporting Justice: Fredy Ibarra Martínez

The Council of State heard a case involving contractual disputes between a state entity that entered a contract to com-

una obra y una aseguradora. La entidad estatal celebró un contrato de obra con una unión temporal para intervenir una zona vial en Bogotá. Para este contrato, una aseguradora expidió una póliza de cumplimiento que amparó entre otros, el cumplimiento del contratista, el manejo e inversión del anticipo, prestaciones sociales, estabilidad de la obra y calidad.

El Consejo de Estado empieza por distinguir entre caducidad del medio de control y prescripción de derechos sustanciales en materia de seguros. Para cuestionar la validez del contrato de seguro, la corporación aplica el término de caducidad del que trata el artículo 136 del Código Contencioso Administrativo. Lo anterior, dado que la póliza se perfeccionó el 30 de diciembre de 2008, la acción para demandar su nulidad caducó el 31 de diciembre de 2010. Por tanto, las pretensiones de nulidad del contrato de seguro estaban prescritas. En este punto, el Consejo enfatiza en que, si bien la caducidad desde el régimen público administrativo y la prescripción en el régimen comercial pueden correr de forma simultánea, en el contexto de la contratación estatal no es procedente adaptar el derecho a lo establecido en la norma mercantil al haber obrado la caducidad como facultad administrativa.

Por otro lado, el Consejo de Estado resalta la naturaleza del seguro de cumplimiento, en la cual lo que se asegura es el hecho objetivo del cumplimiento del contratista. En esta modalidad, el riesgo asegurable es el incumplimiento del afianzado. La regla general del artículo 1055 del Código de Comercio sobre la "inasegurabilidad" del dolo, culpa grave o actos meramente potestativos no opera para vaciar de contenido un seguro de cumplimiento. Entonces, permitir excluir del amparo los incumplimientos dolosos o gravemente culposos del contratista dejaría sin cobertura real al asegurado.

El Consejo apoya la tesis anterior en jurisprudencia civil y penal donde se expone que en el seguro de cumplimiento el riesgo no excluye la culpa grave, el dolo y los actos potestativos del afianzado en caso de ser causantes del riesgo asegurable (incumplimiento).

plete a construction project and an insurance company. The state entity entered into a construction contract with a temporary joint venture to work on a road in Bogotá. For this contract, an insurance company issued a compliance policy that covered, among other things, the contractor's compliance, the management and investment of the advance payment, employment benefits, the stability of the work, and quality.

The Council of State distinguished between the expiration of the means of control and the limitation period for substantive rights in insurance matters. To challenge the validity of the insurance contract, the state entity applied the deadline referred to in Article 136 of the Contentious-Administrative Code. Given that the policy was finalized on December 30, 2008, the action to claim its nullity expired on December 31, 2010. Therefore, the claims for nullity of the insurance contract were time-barred. On this point, the Council emphasized that, although the deadline under the public administrative regime and the limitation period under the commercial regime may run simultaneously, in the context of public procurement, it is not appropriate to adapt the law to the provisions of commercial law, since the deadline functioned as an administrative power.

Furthermore, the Council of State highlighted the nature of compliance insurance, which insures a contractor's objective compliance. With this type of insurance, the insurable risk is a default by the insured party. The general rule of Article 1055 of the CC on the "uninsurability" of fraud, gross negligence, or purely discretionary acts does not operate to render compliance insurance meaningless. Therefore, allowing the exclusion of fraudulent or grossly negligent breaches by the contractor from coverage would leave the insured without real coverage.

The Council supported the above thesis in civil and criminal case law, which states that in compliance insurance, the risk does not exclude gross negligence, fraud, and discretionary acts of the principal if they cause the insurable risk (breach).

Respecto del coaseguro, la Corte emite una importante aclaración: "un contrato y una modalidad de coexistencia de seguros, en el que existe identidad de interés asegurado, de riesgos, y en el que concurre una pluralidad de aseguradores, entre quienes se distribuyen el riesgo hasta completar la totalidad del mismo". Asimismo, distingue esta institución de la simple concurrencia de seguros, donde la diferencia recae en que la distribución del riesgo, requiriendo una obligación conjunta para el perfeccionamiento de un coaseguro.

The Court defined co-insurance as "a contract and a form of coexistence of insurance, in which the insured interest and risks can be identified, and in which there is a plurality of insurers, among whom the risk is distributed until it is completely covered". It also distinguished this concept from the simple concurrence of insurance, where the distinction lies in the distribution of risk, requiring a joint obligation for the creation of a co-insurance policy.

▸ La póliza que no se libró del amparo

El Consejo de Estado redefine el alcance de las pólizas de cumplimiento, su vigencia, el siniestro y la prescripción en el control de legalidad aduanero

Sentencia del Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Cuarta. Rad. 76001-23-33-000-2021-01053-01. 16 de octubre de 2025. Consejero Ponente: Luis Antonio Rodríguez Montaño

El Consejo de Estado conoció en segunda instancia de la controversia originada por la Resolución 119 del 30 de enero de 2020, mediante la cual la DIAN corrigió 18 declaraciones de importación de alcohol etílico presentadas por una sociedad de laboratorio, estableciendo una inexactitud en la tarifa del IVA aplicada que generó un mayor valor a cargo de $2.675.670.000, impuso sanciones a la importadora y a la agencia de aduanas por $267.569.000 y $588.648.000 respectivamente, y ordenó hacer efectiva la póliza de cumplimiento No. 85-43-1001002801 expedida por la aseguradora. Inconformes con esta decisión, confirmada mediante Resolución 3192 del 10 de junio de 2020, las tres partes interpusieron recursos de reconsideración que fueron decididos negativamente, lo que llevó a la aseguradora, en su calidad de garante, a demandar la nulidad de ambos actos administrativos.

El Consejo de Estado reiteró que la clasificación arancelaria corresponde de manera exclusiva y excluyente a la DIAN, siendo el criterio determinante y obligatorio para establecer el tratamiento tributario de los bienes, y que los conceptos técnicos del INVIMA o de la OMS pueden ilustrar la naturaleza del producto sin desplazar el método de clasificación del Sistema Armonizado. La Corte determinó que la clasificación arancelaria efectuada por la DIAN se basó en la toma de muestras, el análisis de componentes químicos y el análisis inferencial conforme a las reglas del Arancel de Aduanas, concluyendo que el alcohol antiséptico elaborado a partir del alcohol etílico importado no puede clasificarse en la partida arancelaria 30.04 relativa a medicamentos, sino en la partida 22.07 correspondiente a alcohol etílico desnaturalizado. Respecto a la póliza de cumplimiento, la Sala aplicó la sentencia

▸ The policy that did not escape protection

The Council of State redefines the scope of compliance policies, their validity, claims, and the limitation period in customs legality control

Judgment of the Council of State, Administrative Litigation Chamber, Fourth Section. Ref. 76001-23-33-000-2021-01053-01. October 16, 2025. Reporting Justice: Luis Antonio Rodríguez Montaño

In this case, the Council of State heard an appeal which resulted from a dispute arising from Resolution No. 119 of January 30, 2020, whereby the DIAN corrected 18 import declarations for ethyl alcohol submitted by a laboratory company, having found an inaccuracy in the IVA rate applied that generated an additional charge of COP$2,675,670.670,000. The DIAN imposed fines of COP$267,569,000 and COP$588,648,000 on the importer and the customs agency, respectively, and ordered the enforcement of Compliance Policy No. 85-43-1001002801 issued by the insurer. Dissatisfied with this decision, confirmed by Resolution No. 3192 of June 10, 2020, the three parties filed appeals for reconsideration, which were dismissed, leading the insurer, in its capacity as guarantor, to seek the annulment of both administrative acts.

The Council of State reiterated that tariff classification is the exclusive and sole responsibility of the DIAN, as it is the determining and mandatory criterion for establishing the tax treatment of goods, and that the technical definitions of the INVIMA or the WHO can illustrate the nature of the product without supplanting the Harmonized System classification method. The Court held that the DIAN's tariff classification was based on sampling, the analysis of chemical components, and inferential analysis in accordance with the rules of the Customs Tariff, which concluded that antiseptic alcohol made from imported ethyl alcohol cannot be classified under tariff heading 30.04 relating to medicines, but rather, must be classified under heading 22.07, which corresponds to denatured ethyl alcohol. Regarding the compliance policy, the Court applied the unification ruling of June 29, 2023, on the

de unificación del 29 de junio de 2023 sobre el momento de ocurrencia del siniestro en pólizas de cumplimiento por sanciones administrativas, reiterando que este puede configurarse con: (i) el incumplimiento de las obligaciones aduaneras, o (ii) la firmeza del acto sancionatorio. Al analizar el caso, el Consejo de Estado determinó que el siniestro se configuró con la firmeza del acto administrativo sancionatorio del 30 de enero de 2020, eventualidad amparada por la póliza vigente entre el 25 de mayo de 2019 y el 25 de mayo de 2021, por lo que no operó la prescripción ordinaria del artículo 1081 del Código de Comercio y no es procedente alegar que la afectación se produjo por fuera del periodo asegurado.

La Sección Cuarta revocó la sentencia de primera instancia del Tribunal del Valle que había favorecido a la aseguradora, negó las pretensiones de la demanda y confirmó la legalidad de los actos administrativos demandados, incluida la orden destinada a hacer efectiva la póliza frente a la sanción impuesta a la agencia de aduanas. La Corte concluyó que la exclusión del IVA alegada era improcedente dado que los productos importados debían clasificarse en la partida arancelaria 22.07 y no en la 30.04. Adicionalmente, confirmó la sanción impuesta a la agencia de aduanas por incurrir en la infracción del numeral 2.6 del artículo 485 del Decreto 2685 de 1999, al evidenciarse inexactitudes en las declaraciones de importación derivadas de la clasificación errónea de los productos. Finalmente, condenó en costas a la aseguradora en ambas instancias y descartó cualquier restablecimiento adicional, precisando únicamente que, si existiera prueba de algún pago previo, la DIAN debería reintegrarlo.

moment of occurrence of the incident in compliance policies for administrative sanctions, reiterating that this can be configured with: (i) non-compliance with customs obligations, or (ii) the finality of the sanctioning act. In analyzing the case, the Council of State determined that the incident occurred with the finality of the administrative sanctioning act of January 30, 2020, an event covered by the policy in force between May 25, 2019, and May 25, 2021, and, therefore, the ordinary limitation period under Article 1081 of the CC did not apply, and it was not appropriate to argue that the damage occurred outside the insured period.

The Fourth Section overturned the first instance ruling of the Valle Court, which had found in favor of the insurer, dismissed the claims in the lawsuit, and confirmed the legality of the administrative acts challenged, including the order to enforce the policy against the fine imposed on the customs agency. The Court concluded that the IVA exclusion sought was impermissible since the imported products should have been classified under tariff heading 22.07 and not 30.04. In addition, the Court upheld the fine imposed on the customs agency for violating paragraph 2.6 of Article 485 of Decree No. 2685 of 1999, as inaccuracies were found in the import declarations resulting from the incorrect classification of the products. Finally, the Court ordered the insurer to pay the costs of both instances and ruled out any additional compensation, stating only that, if there was proof of any previous payment, the DIAN should reimburse it.

Seguros de vida

▸ El mes de gracia que no fue tan gracioso: cuando la mora en la prima termina el seguro de vida

La Corte Suprema de Justicia ratifica que, en los seguros de vida, cuando las partes pactan expresamente la terminación automática del contrato por mora en el pago de primas después del mes de gracia, dicha cláusula es válida

Sentencia de la Corte Suprema de Justicia, Sala de Casación Civil, Agraria y Rural. Rad. 11001-22-03-000-2025-02053-01. 6 de octubre de 2025. Magistrado Ponente: Fernando Augusto Jiménez Valderrama

Los beneficiarios de una póliza de seguro de vida contratada en 2003 demandaron a la aseguradora tras el fallecimiento del tomador y asegurado en 2021, debido a que la compañía desconoció la vigencia del contrato y el proceso de cumplimiento de pago de la prima semestral. El juzgado municipal resolvió de manera adversa a las pretensiones de los beneficiarios al

Life Insurance

▸ The grace period that was not so graceful: when the late payment of premiums terminates life insurance

The Supreme Court of Justice confirms that, in life insurance, when the parties expressly agree to the automatic termination of a contract due to a default on premium payments after the grace period, such a clause is valid

Judgment of the Supreme Court of Justice, Civil, Agrarian, and Rural Cassation Chamber. Ref. 11001-22-03-000-2025-02053-01. October 6, 2025. Presiding Judge: Fernando Augusto Jiménez Valderrama

In this case, the plaintiffs, who were the beneficiaries of a life insurance policy taken out in 2003, sued the insurer after the death of the policyholder and insured in 2021 because the insurer disregarded the validity of the contract and the process of compliance with the payment of the semi-annual premium. The Municipal Court dismissed the plaintiffs' claims, finding

estimar la ausencia de prueba que acreditara el incumplimiento de las obligaciones contractuales por parte de la aseguradora, decisión que fue confirmada en segunda instancia por el juzgado del circuito. Los demandantes consideraron que se lesionaron sus derechos fundamentales porque el operador judicial apreció indebidamente las normas que regían la terminación del contrato de seguro de vida luego de transcurridos dos años y la carga de la prueba en este tipo de procesos, por lo que interpusieron acción de tutela contra las providencias judiciales.

La Corte analizó que en el anexo de la póliza se estableció que "el no pago de las primas dentro del mes siguiente a la fecha de cada vencimiento, producirá la terminación del contrato sin que el asegurador tenga derecho para exigirlas", situación que guardaba coherencia con las cláusulas séptima, vigésima primera y vigésima tercera de la póliza, en donde las partes acordaron, excepto para la primera prima, un plazo de gracia de un mes para el pago, por lo que la falta de tal erogación transcurrido dicho período produciría la terminación automática del contrato.

Respecto a la excepción del artículo 1153 del Código de Comercio, que establece que el seguro no se entendería terminado una vez cubiertas las primas de los dos primeros años sino cuando el valor de primas atrasadas y préstamos excedieran el valor de cesión o rescate, la Corte determinó que no tenía aplicación en el caso porque no se puso de presente la existencia de cesión o rescate, ya que según la certificación de renovación de póliza se dispuso como monto de ahorro "o". En consecuencia, no se acreditó en el proceso la existencia de dicha cesión ni del rescate, carga que debía ser cumplida por la parte demandante.

La Corte descartó la existencia de pacto en torno a una erogación por exceso o anticipo y por ende no se generó una reserva matemática que permitiera continuar con la cobertura del riesgo asegurado cuando se presentó el atraso en el pago de la prima, quedando la terminación del contrato atada únicamente al contenido del artículo 1152 del Código de Comercio, esto es, la terminación automática después de finalizado el mes de gracia siguiente a la incursión en mora.

La Corte concluyó que, como fue aceptado por la parte demandante, hubo mora en el pago de la segunda cuota semestral. Por lo tanto, al no verse satisfecho el pago adeudado en el periodo de gracia, era del caso aplicar las condiciones séptima y vigésima tercera de la póliza que contemplan la terminación del contrato de seguro por mora, disposición que fue aceptada sin objeciones por el causante tomador y asegurado. Dicha terminación se había hecho efectiva desde antes del fallecimiento del asegurado. La resolución adoptada no fue considerada infundada o arbitraria, por lo que no se configuró una "vía de hecho", siendo claro que el reclamo no encontraba recibo en sede de tute-

that there was no evidence that the insurer had breached its contractual obligations, a decision that was upheld on appeal by the Circuit Court. The plaintiffs argued that their fundamental rights had been violated because the court had improperly assessed the rules governing the termination of the life insurance contract after two years and the burden of proof in this type of proceedings, and consequently, filed a constitutional action for the protection of fundamental rights (*tutela*) against the court rulings.

The Court held that the policy annex established that "failure to pay premiums within one month of each due date will result in the termination of the contract without the insurer having the right to demand payment", a scenario that was consistent with Clauses 7, 21, and 23 of the policy, in which the parties agreed, except for the first premium, on a one-month grace period for payment, meaning that the failure to make such payment after that period would result in the automatic termination of the contract.

Regarding the exception in Article 1153 of the CC, which establishes that an insurance policy will not be considered terminated once the premiums for the first two years have been paid, but rather, only when the value of the overdue premiums and loans exceed the value of the assignment or surrender, the Court held that it did not apply in this case because the existence of a transfer or surrender was not present, since according to the policy renewal certification, the savings amount was set at zero. Consequently, the existence of such a transfer or surrender was not proven in the proceedings, a burden that had to be met by the plaintiffs.

The Court rejected the existence of an agreement regarding excess or advance payments and, therefore, no mathematical reserve was generated that would allow the insured risk to continue to be covered when the premium payment was overdue, leaving the termination of the contract tied solely to the contents of Article 1152 of the CC, namely, automatic termination after the end of the grace period following the default.

The Court concluded that, as accepted by the plaintiffs, there was a delay in the payment of the second semi-annual instalment. Therefore, since the payment due during the grace period was not paid, it was appropriate to apply Clauses 7 and 23 of the policy, which provide for the termination of the insurance contract due to default, a provision that was accepted without objection by the policyholder and insured. Such termination had taken effect before the death of the insured. The decision adopted was not considered unfounded or arbitrary, and therefore did not constitute a "de facto ruling", as it was clear that the claim was not admissible in the *tutela* proceedings. Although there was disagreement

la. Aunque se discrepara de lo resuelto, no por ello podría abrirse camino la prosperidad de la protección constitucional, ya que es necesario que la determinación se encuentre afectada por errores superlativos y desprovistos de todo fundamento objetivo, situación que no ocurrió en el caso. En consecuencia, la Corte confirmó la sentencia impugnada que negó el amparo de tutela solicitado.

with the decision, this did not open the way for constitutional protection to prevail, since it is necessary for the decision to be affected by egregious errors and devoid of any objective basis, circumstances that were not present in this case. Consequently, the Court upheld the contested judgment that refused the requested constitutional protection.

Seguros de responsabilidad civil

▸ La fiesta de la nulidad: cuando la aseguradora olvidó invitar al beneficiario

La Corte Suprema de Justicia establece que, al intentar anular una póliza tras un siniestro, la aseguradora debe incluir en el proceso a los beneficiarios que hayan realizado reclamaciones, además del tomador del seguro

Sentencia de la Corte Suprema de Justicia, Sala de Casación Civil, Agraria y Rural. Rad. 11001-02-03-000-2022-02302-00. 14 de noviembre de 2025. Magistrado Ponente: Octavio Augusto Tejeiro Duque

Una aseguradora convocó a tribunal de arbitramento a empresas del grupo asegurado para que se declarara nula la póliza de seguro de responsabilidad civil de directivos y administradores, expedida en octubre de 2012, alegando que las tomadoras incurrieron en reticencia al no declarar sinceramente los hechos o circunstancias que determinaron el estado del riesgo, encubriendo problemas de liquidez que enfrentaban. Con anterioridad al proceso arbitral, una entidad bancaria beneficiaria de la póliza había reclamado a la aseguradora el pago de un siniestro en febrero de 2013, reclamación que fue objetada por la aseguradora, lo cual dio lugar a que el banco instaurara juicio declarativo ante la jurisdicción ordinaria. En mayo de 2019, la aseguradora convocó ante tribunal de arbitramento únicamente a una de las empresas del grupo asegurado solicitando la nulidad relativa del pacto asegurador, sin vincular al banco beneficiario que había formulado la reclamación del siniestro. El laudo arbitral de marzo de 2021 declaró la nulidad del contrato y que la aseguradora no estaba obligada a pagar ningún siniestro a los asegurados ni a terceros.

La Corte desarrolló la distinción entre las partes esenciales del contrato de seguro (aseguradora y tomador) y otros participantes que pueden ostentar un interés jurídico tutelable en la etapa de ejecución del contrato, derivado de circunstancias especiales que les vinculen sustancialmente con la relación aseguraticia. El beneficiario, como destinatario de la indemnización una vez ocurre el siniestro amparado, no está comprendido en la relación negocial al momento del perfeccionamiento del contrato, pero en una fase posterior el acto jurídico trasciende y afecta su esfera patrimonial, adquiriendo una relación jurídica dependiente del vínculo contractual.

Civil Liability Insurance

▸ The nullity party: when the insurer forgot to invite the beneficiary

The Supreme Court of Justice establishes that, when attempting to annul a policy after a claim, the insurer must include in the process the beneficiaries who have made claims, in addition to the policyholder

Judgment of the Supreme Court of Justice, Civil, Agrarian, and Rural Cassation Chamber. Ref. 11001-02-03-000-2022-02302-00. November 14, 2025. Presiding Judge: Octavio Augusto Tejeiro Duque

An insurance company issued arbitration proceedings against the companies in an insured group in order to have the civil liability insurance policy for directors and officers, issued in October 2012, declared null and void. The insurance company argued that the policyholders were guilty of concealment by not truthfully declaring the facts or circumstances that gave rise to the state of risk, and had covered up liquidity problems they were facing. Before the arbitration proceedings, a bank that was a beneficiary of the policy had claimed payment from the insurer for a loss in February 2013, a claim that was contested by the insurer, which led the bank to file a declaratory action before the ordinary courts. In May 2019, the insurer issued arbitration proceedings against only one of the companies in the insured group and sought the nullity of the insurance agreement, without involving the beneficiary bank that had made the claim. The arbitration award of March 2021 declared the contract null and void and declared that the insurer was not obliged to pay any claims to the insured parties or third parties.

The Court distinguished between the essential parties to an insurance contract (the insurer and policyholder) and other participants who may have a legally protectable interest in the performance of the contract, which arises from special circumstances that substantially link them to the insurance relationship. The beneficiary, as the recipient of the compensation once the covered loss occurs, is not included in the business relationship at the time the contract is finalized, but rather, at a later stage, the legal act transcends and affects their financial interests, thus acquiring a legal relationship that relies on the contractual link.

La Corte estableció que si la aseguradora promueve la nulidad del contrato de seguro después de haber sido informada de la ocurrencia del siniestro y de la existencia de una reclamación concreta, está obligada a vincular al proceso no solo a las partes contratantes, sino también de manera necesaria a los eventuales beneficiarios que hayan formulado aquella reclamación, pues sostener lo contrario implicaría desconocer las legítimas expectativas del reclamante, restringir su derecho de defensa y contradicción, y validar una conducta procesal incompatible con los principios de buena fe y lealtad. Se configuró así un litisconsorcio necesario entre las partes del contrato de seguro y los reclamantes, ya que la promoción de una acción de nulidad sin la vinculación de quienes ya han ejercido una reclamación concreta vulnera su derecho fundamental de acceso a la administración de justicia y compromete su derecho de defensa y contradicción.

La Corte concluyó que el banco beneficiario no fue citado en el trámite arbitral pese a su condición de litisconsorte necesario, ya que con antelación había elevado reclamación vinculada a la misma póliza, irregularidad que no fue saneada y que constituye una evidente vulneración al derecho fundamental de acceso a la administración de justicia, pues aunque la entidad acudió al órgano jurisdiccional en busca del reconocimiento de los perjuicios que afirma haber sufrido, su actuación resultó meramente formal debido al obstáculo jurídico que enfrenta: la inexistencia actual de la póliza de seguro como consecuencia de una sentencia posterior que le produce efectos a pesar de no haber sido parte en el proceso.

En consecuencia, la Corte declaró fundado el recurso extraordinario de revisión y declaró la nulidad de todo lo actuado en el proceso arbitral desde la radicación de la demanda arbitral, ordenando devolver el proceso al Centro de Arbitraje para que se rehaga la actuación anulada, se conforme debidamente el Tribunal de Arbitramento y se propenda por la integración del contradictorio en forma, concediendo a la convocante un plazo de tres meses para presentar la solicitud y vincular a los beneficiarios conocidos de la póliza.

The Court held that if an insurer seeks to invalidate an insurance contract after having been informed of the occurrence of the loss and the existence of a specific claim, it must involve in the proceedings not only the contracting parties, but also, necessarily, any beneficiaries who have made that claim, since to hold otherwise would mean disregarding the legitimate expectations of the claimant, thus restricting their right of defense and rebuttal, and validating procedural conduct that is incompatible with the principles of good faith and loyalty. This created a necessary joinder between the parties to the insurance contract and the claimants, since bringing an action for annulment without involving those who have already filed a specific claim violates their fundamental right of access to the administration of justice and compromises their right to defense and rebuttal.

The Court concluded that the beneficiary bank was not summoned to the arbitration proceedings despite its status as a necessary co-defendant, since it had previously filed a claim related to the same policy, an irregularity that was not remedied and which constitutes a clear violation of the fundamental right of access to the administration of justice, because although the entity went to court seeking recognition of the loss and damage it claims to have suffered, its action was merely a formality due to the legal obstacle it faced: the current non-existence of the insurance policy as a result of a subsequent judgment that affected it despite not having been a party to the proceedings.

Consequently, the Court upheld the extraordinary appeal for review and declared null and void all proceedings in the arbitration since the filing of the arbitration claim. The Court ordered the case to be returned to the Arbitration Center so that the annulled proceedings could be reheard before a reconstituted arbitral tribunal, and to allow the adversarial process to be properly conducted. The Court granted the convening party a period of three months to file the application and join the known beneficiaries of the policy.

Tribuna Pérez-Llorca
Pérez-Llorca Tribune

Pólizas de cumplimiento disposiciones aduaneras: Claves para interpretar el momento del siniestro y sus efectos jurídicos

Customs compliance insurance policies: Keys to interpreting the occurrence of an insured event and its legal effects

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El seguro de cumplimiento de disposiciones legales aduaneras constituye una modalidad de seguro de cumplimiento cuyo objetivo principal es garantizar el pago de tributos aduaneros, sanciones e intereses que puedan derivarse del incumplimiento de alguna obligación aduanera. Esta garantía resulta esencial para el correcto funcionamiento de los procedimientos aduaneros, ya que protege a la administración frente a posibles incumplimientos y facilita la gestión de los riesgos inherentes al comercio internacional.

En este contexto, el tomador es quien debe cumplir con la obligación, mientras que el asegurado es la entidad pública a favor de la cual se ejecuta dicha obligación, es decir, aquella que resulta afectada en caso de incumplimiento.

En este tipo de pólizas, las garantías pueden clasificarse en globales o específicas. Las primeras extienden su cobertura a todas las obligaciones que asume un importador, exportador o usuario aduanero en relación con múltiples operaciones o trámites, permitiendo una protección integral ante posibles incumplimientos. A diferencia de ellas, las garantías específicas se enfocan únicamente en una operación o trámite determinado, asegurando el cumplimiento puntual de obligaciones concretas y ofreciendo una solución adaptada a cada necesidad en particular.

La determinación del momento en que ocurre el siniestro en los seguros de cumplimiento de disposiciones legales, y en particular en el ámbito aduanero, ha sido fuente de constantes debates tanto en la doctrina como en la jurisprudencia. Esta controversia resulta especialmente relevante, pues incide de manera directa en la forma en que se computa el término de prescripción de las acciones derivadas del contrato de seguro, afectando la seguridad jurídica de las partes involucradas y la eficacia de la garantía.

Customs compliance insurance is a type of compliance insurance whose principal aim is to guarantee the payment of customs duties, penalties, and interest that may arise from the breach of any customs obligation. This guarantee is essential to the proper functioning of customs procedures, as it protects the administration against possible non-compliance and facilitates the management of risks inherent in international trade.

In this context, the policyholder is the party required to perform the obligation, whereas the insured is the public entity in whose favor such obligation is performed, meaning the entity affected in the event of non-compliance.

Within this type of policy, guarantees may be classified as global or specific. The former extends coverage to all obligations assumed by an importer, exporter, or customs user in connection with multiple transactions or procedures, thereby affording comprehensive protection against possible breaches. In contrast, specific guarantees focus exclusively on a particular transaction or procedure, ensuring specific compliance with concrete obligations and offering a solution tailored to each particular need.

Determining the moment at which the insured event occurs in legal compliance insurance (particularly in the context of customs) has been a source of constant debate in both academic circles and case law. This debate is significant, as it directly affects how the limitation periods for actions arising out of insurance contracts are calculated, which affects the legal certainty of the parties involved and the effectiveness of the guarantee.

Sobre este punto, es importante señalar que la ausencia de unanimidad en su definición ha generado una mayor incertidumbre respecto al momento exacto en que debía entenderse configurado el siniestro en las pólizas de cumplimiento de disposiciones legales aduaneras. La falta de uniformidad interpretativa ha propiciado que cada una de las partes afectadas, tanto la administración como las aseguradoras, defendieran sus posiciones con argumentos dispares.

Esta divergencia entre la Dirección de Impuestos y Aduanas Nacionales (“**DIAN**”) y las aseguradoras refleja no solo una diferencia técnica, sino también una visión opuesta sobre el alcance y función de la póliza de cumplimiento en el ámbito aduanero. Desde la perspectiva de la DIAN, la expedición de la liquidación oficial o del acto administrativo que impone la sanción se erige como el hito determinante, pues es en ese momento cuando la administración concluye formalmente el proceso de verificación e identifica el incumplimiento y, por tanto, se produce la exigibilidad de la garantía.

Por su parte, las compañías de seguros sostienen que el riesgo asegurado se materializa desde el instante en que se produce el incumplimiento de la obligación aduanera, independientemente de cuándo se formalice el acto administrativo. Bajo esta interpretación, resulta más relevante el hecho generador del siniestro, es decir, la conducta u omisión que vulnera la normativa aduanera y que fue objeto de cobertura en la póliza. Al defender este criterio, las aseguradoras buscan delimitar con mayor precisión la temporalidad del siniestro, conforme a lo dispuesto en el Código de Comercio colombiano.

Ante este panorama, el Consejo de Estado, al enfrentarse a esta discusión y analizar la naturaleza de las pólizas de disposiciones legales aduaneras, ha precisado mediante la Sentencia de Unificación del 29 de junio de 2023 y sus fallos más recientes, que el siniestro puede originarse bajo dos supuestos: i) por el simple incumplimiento de las obligaciones aduaneras, y ii) por la firmeza de un acto administrativo que impone sanciones.

En consecuencia, el seguro responde tanto frente a la verificación de un incumplimiento como ante la existencia de un acto administrativo en firme, dependiendo de las circunstancias de cada caso. Así, la identificación del momento en que se configura el siniestro resulta determinante para precisar el alcance de la garantía y las obligaciones que nacen para las partes.

Por su parte, cabe destacar que tras la notificación de la Sentencia de Unificación de 29 de junio de 2023, la DIAN derogó el *concepto unificado garantías doctrina y línea sobre el procedimiento en sede administrativa*, emitido en 2020, y ha adoptado los lineamientos establecidos por la mencionada sentencia de unificación. Este cambio refuerza la necesidad de que todos los actores involucrados estén atentos a la evolución jurispru-

On this point, it is important to note that the absence of unanimity in the definition has generated greater uncertainty as to the exact moment at which the insured event should be understood to have occurred under policies covering compliance with customs regulations. The lack of interpretive uniformity has prompted each affected party (both the administration and insurers) to defend their positions with divergent arguments.

This divergence between the National Tax and Customs Directorate (*Dirección de Impuestos y Aduanas Nacionales*) (“**DIAN**”) and insurers reflects not only a technical difference but also opposing views on the scope and function of compliance policies in the area of customs. From DIAN’s perspective, the issuance of an official assessment or an administrative act that imposes a sanction is the deciding factor, since it is at that moment that the administration formally concludes the verification process, identifies the breach, and, therefore, the guarantee becomes enforceable.

Insurers, for their part, contend that an insured risk materializes from the moment that a customs obligation is breached, irrespective of when the administrative act is formalized. Under this interpretation, the event giving rise to the loss (namely, the conduct or omission that violates customs regulations and is covered by the policy) is of greater significance. In defending this criterion, insurers seek to delineate more precisely the moment of the occurrence of the insured event under the Colombian Commercial Code.

Against this backdrop, the Council of State, addressing this debate and analyzing the nature of policies covering customs regulations, clarified (through the Unification Judgment of June 29, 2023, and its more recent rulings) that the insured event may arise under two scenarios: (i) from the mere breach of customs obligations; and (ii) from the finality of an administrative act imposing sanctions.

Consequently, the insurance applies both to the verification of a breach and to the existence of a final administrative act, depending on the circumstances of each case. Thus, identifying the moment at which the insured event occurs is key to delineating the scope of the guarantee and the obligations that arise for the parties.

It is also worth noting that, following notification of the Unification Judgment of June 29, 2023, DIAN repealed the unified opinion on guarantees, doctrine, and jurisprudential criteria in administrative proceedings issued in 2020, and has adopted the guidelines set forth in the aforementioned unification judgment. This change underscores the need for all stakeholders to remain attentive to jurisprudential and administra-

dencial y administrativa, asegurando así la correcta aplicación del seguro de cumplimiento en materia aduanera.

Aunque el Consejo de Estado ha aportado cierta claridad respecto de los escenarios en los que se activa la cobertura del seguro, y la DIAN ha implementado dichas reglas, subsiste la necesidad de analizar cada situación a la luz del contenido específico del contrato de seguro y de la norma que exige la constitución de la garantía. Esto implica que, en la práctica, permanece abierta la discusión sobre la aplicabilidad de cada uno de los dos escenarios en los casos concretos, lo que exige una interpretación cuidadosa y contextualizada, ya que resultan válidos los argumentos esgrimidos tanto por la administración como el sector asegurador.

De esta forma, la coexistencia de estos dos posibles momentos de configuración exige a las partes contratantes y a los operadores jurídicos una interpretación precisa y contextualizada del clausulado contractual y de la normativa vigente. Solo así se puede garantizar que la cobertura del seguro de cumplimiento aduanero responda de manera adecuada a las particularidades de cada caso y contribuya a la seguridad jurídica en el ámbito de los procedimientos aduaneros.

Por consiguiente, la distinción entre ambos escenarios no es meramente teórica, sino que tiene importantes consecuencias prácticas para el cómputo de la prescripción. Si el siniestro se configura con el incumplimiento de las obligaciones legales aduaneras, el término de prescripción de las acciones derivadas del contrato de seguro comienza a contarse desde el momento en que el interesado o la entidad estatal tiene, o debió tener, conocimiento del hecho generador de la cobertura, conforme lo establece el artículo 1081 del Código de Comercio colombiano.

Así las cosas, el incumplimiento debe producirse durante la vigencia de la póliza. Por lo demás, el acto administrativo que profiera el asegurado – entidad estatal - cumple una función meramente declarativa, ya que se limita a consignar y acreditar los hechos que fundamentan la existencia del siniestro, pudiendo ser emitido durante la vigencia de la póliza o dentro de los dos años siguientes a la fecha en que la administración tuvo, o debió tener, conocimiento del incumplimiento, en atención al término de prescripción.

Por el contrario, cuando el siniestro se configura con la firmeza de un acto administrativo, la prescripción no correrá, pues se entiende que mediante dicho acto se ordena hacer efectiva la garantía. En este escenario, el acto administrativo en firme reviste carácter constitutivo del siniestro, pues determina su ocurrencia, impone la sanción y ordena pagar a la aseguradora. En consecuencia, dicho acto administrativo debe ser emitido durante la vigencia del contrato de seguro para que la cobertura resulte exigible.

tive developments, thereby ensuring the proper application of compliance insurance in customs matters.

Although the Council of State has provided some clarity regarding the scenarios in which insurance coverage is triggered, and DIAN has implemented those rules, there remains a need to analyze each situation in light of the specific content of the insurance contract and the rule requiring the establishment of the guarantee. In practice, this means that the debate about the applicability of each of the two scenarios in specific cases remains open, which calls for careful, contextualized interpretation, given that the arguments advanced by both the administration and the insurance sector are valid.

Accordingly, the coexistence of these two possible moments of occurrence requires the contracting parties and legal operators to interpret, with precision and in context, both the contractual clauses and the applicable regulations. Only then can it be ensured that customs compliance insurance coverage adequately addresses the specific features of each case and contributes to legal certainty in the realm of customs procedures.

Therefore, the distinction between the two scenarios is not merely theoretical; it has important practical consequences for the calculation of the limitation period. If the insured event arises from a breach of customs regulations, the limitation period for actions arising from an insurance contract begins to run from the moment the interested party or the state entity has, or ought to have, knowledge of the event giving rise to coverage, as established in Article 1081 of the Colombian Commercial Code.

In such circumstances, a breach must occur during the policy period. Moreover, the administrative act issued by an insured (i.e. the state entity) is merely declaratory, as it is limited to recording and substantiating the facts underpinning the existence of the insured event; it may be issued during the policy period or within two years following the date on which the administration had, or ought to have had, knowledge of the breach, in accordance with the limitation period.

In contrast, when an insured event is established by the finality of an administrative act, the limitation period does not run, since it is understood that such an act requires the guarantee to be enforced. In this scenario, the final administrative act constitutes the insured event, as it determines its occurrence, imposes the sanction, and orders payment by the insurer. Consequently, such an administrative act must be issued during the term of the insurance contract for coverage to be enforceable.

La diferenciación entre los momentos de configuración del siniestro en el seguro de cumplimiento aduanero exige al sector asegurador una rigurosa precisión en la definición de los términos y el alcance de las pólizas. Esta claridad resulta fundamental para que el seguro actúe como una herramienta efectiva de gestión de riesgos, ya que su buen funcionamiento depende de la solidez técnica y la transparencia en su interpretación y aplicación. Solo mediante reglas claras y previsibles se puede garantizar que las partes operen en un entorno de mayor seguridad y confianza, reduciendo la posibilidad de decisiones administrativas y judiciales que contradigan la esencia y propósito del seguro.

En este sentido, resulta imperativo subrayar que la elección entre la teoría del incumplimiento y la del acto administrativo firme no puede ser utilizada de manera arbitraria o a conveniencia por las partes interesadas. Pretender hacer exigible una póliza de seguro de cumplimiento aduanero fuera de los límites que realmente cubre, solo por seleccionar el escenario más favorable, desvirtúa la naturaleza del contrato y atenta contra los principios de buena fe y equidad que rigen la actividad aseguradora.

Por tanto, es esencial que tanto los operadores jurídicos como las partes contratantes realicen un análisis minucioso de la normativa aplicable y de las cláusulas específicas de cada póliza. Una interpretación adecuada y detallada de todos estos elementos resulta fundamental para delimitar con exactitud los escenarios en los que es procedente la reclamación, pues solo así se puede evitar interpretaciones oportunistas, litigios innecesarios ocasionados por ambigüedades contractuales o por vacíos en la normativa vigente. Adicionalmente, permite a los operadores jurídicos y a las partes involucradas identificar, desde el momento de suscribir la póliza, los límites temporales de la cobertura y las circunstancias concretas que habilitan el ejercicio de acciones derivadas del contrato de seguro. De este modo, se refuerza la seguridad jurídica y se facilita la prevención de conflictos, ya que se minimizan las discrepancias sobre la aplicación de la garantía en casos futuros, ofreciendo así un marco de actuación más previsible y eficiente.

The differentiation between the moments at which an insured event is established in customs compliance insurance requires the insurance sector to define, with rigorous precision, the terms and scope of the policies. Such clarity is essential for insurance to function as an effective risk management tool, since its proper operation depends on technical soundness and transparency in its interpretation and application. Only through clear and predictable rules can the parties operate with greater certainty and confidence, reducing the likelihood of administrative decisions and judgments that run counter to the essence and purpose of the insurance.

In this regard, it is imperative to stress that the choice between the breach theory and the final administrative act theory cannot be used arbitrarily or for convenience by interested parties. Seeking to enforce a customs compliance policy beyond the limits it truly covers (merely by selecting the more favorable scenario) distorts the nature of the contract and undermines the principles of good faith and equity that govern insurance activity.

Accordingly, it is essential that both legal practitioners and the contracting parties conduct a thorough analysis of the applicable regulations and the specific clauses of each policy. An adequate and detailed interpretation of all these elements is fundamental to delineate with precision the scenarios in which a claim is warranted; only this way can opportunistic interpretations be avoided, as well as unnecessary litigation caused by contractual ambiguities or gaps in the current regulatory framework. In addition, this enables legal practitioners and the parties involved to identify, from the inception of the policy, the time limits of coverage and the specific circumstances that enable the pursuit of actions arising from an insurance contract. This reinforces legal certainty and facilitates conflict prevention, as discrepancies over the application of the guarantee in future cases are minimized, thereby providing a more predictable and efficient framework for action.

ESPAÑA / SPAIN

Actualidad Iberoamericana de Seguros
Ibero-American Insurance Update

España
Spain

Principales novedades normativas y de supervisión
Key Regulatory and Supervisory Developments

Regulación

Anteproyecto de Ley por la que se modifican la LOSSEAR y el RDL 3/2020

El Consejo de Ministros aprobó el 4 de noviembre de 2025 el anteproyecto de ley por el que se modifica la LOSSEAR y el RDL 3/2020, con el objetivo de reforzar la estabilidad financiera y la protección de los asegurados.

Entre las principales novedades destaca la elevación de los umbrales de aplicación de Solvencia II, que, entre otros, concede medidas de proporcionalidad específicas para entidades pequeñas y no complejas, reduciendo sus obligaciones en materia de gobierno e información. Se establece un procedimiento formal de clasificación como "entidades pequeñas y no complejas", que permitirá a las aseguradoras que cumplan determinados criterios aplicar medidas simplificadas adaptadas a su tamaño y complejidad.

La sostenibilidad adquiere, a su vez, una posición central en la reforma, integrándose en los tres pilares de Solvencia II: valoración de riesgos catastróficos de la naturaleza y cuestiones ambientales, sociales y de gobierno ("**ASG**") en el capital regulatorio (Pilar I); incorporación de las cuestiones ASG en todo el sistema de gobierno corporativo (Pilar II); y obligaciones de información sobre sostenibilidad (Pilar III).

Con respecto a la actividad transfronteriza, se introduce la categoría de "actividades transfronterizas significativas" que darán lugar a una cooperación reforzada entre supervisores de origen y acogida, y se introducen cambios relevantes en la supervisión de grupos.

El anteproyecto también amplía el régimen sancionador, introduciendo infracciones y sanciones específicas para los expertos independientes, auditores y actuarios encargados de la revisión de la situación financiera y de solvencia de las entidades, así como nuevas infracciones por sobrevaloración de activos o infravaloración de pasivos contables, especialmente de provisiones técnicas. Se establece de forma general la figura de las multas coercitivas, que no tienen carácter sancionador sino que son una medida para compeler al cumplimiento de obligaciones en el ámbito de la supervisión. Esta modificación del régimen sancionador también incide en los distribuidores de seguros, modificándose el régimen sancionador del RDL 3/2020.

Regulation

Preliminary Draft Law amending LOSSEAR and RDL 3/2020

On 4 November 2025, the Council of Ministers approved the Preliminary Draft Law amending LOSSEAR and RDL 3/2020, with the aim of strengthening financial stability and the protection of policyholders.

Among the main new features is the raising of the thresholds for the application of Solvency II, which, among other things, grants specific proportionality measures to small and non-complex entities, reducing their governance and reporting obligations. A formal procedure for classification as "small and non-complex entities" has been established, which will allow insurers that meet certain criteria to apply simplified measures that are adapted to their size and complexity.

Sustainability, in turn, takes centre stage in the reform, as it has been integrated into the three pillars of Solvency II: the assessment of natural catastrophe risks and environmental, social and governance ("**ESG**") issues in regulatory capital (Pillar I); the incorporation of ESG issues throughout the corporate governance system (Pillar II); and sustainability reporting obligations (Pillar III).

Regarding cross-border activity, the category of "significant cross-border activities" has been introduced, which will lead to enhanced cooperation between home and host supervisors, and significant changes have been made to group supervision.

The Preliminary Draft also expands the sanctions regime, introducing specific offences and sanctions for the independent experts, auditors, and actuaries responsible for reviewing the financial and solvency status of entities, as well as new offences relating to the overvaluation of assets or the undervaluation of accounting liabilities, particularly technical provisions. The concept of penalty payments has been established in general terms; they are not sanctions but rather measures to compel compliance with supervisory obligations. This amendment to the sanctions regime also affects insurance distributors, as it amends the sanctions regime of RDL 3/2020.

Finalmente, se refuerza la transparencia mediante la obligación de publicar anualmente un informe sobre la situación financiera y de solvencia en dos partes diferenciadas —una destinada específicamente a tomadores y beneficiarios de seguros y otra a profesionales del mercado—, que deberá ir acompañado de un informe especial de revisión elaborado por auditores y actuarios de seguros, cuyo balance será objeto de auditoría específica.

Finally, transparency has been strengthened by the obligation to publish an annual report on the financial and solvency status of entities with two separate sections — one specifically for policyholders and beneficiaries, and the other for market professionals — which must be accompanied by a special review report prepared by auditors and insurance actuaries, whose balance sheet will be subject to a specific audit.

Consulta pública sobre el proyecto de Orden Ministerial por la que se aprueba la clasificación de los Fondos de Pensiones en función de su política de inversión

El Ministerio de Economía, Comercio y Empresa puso en consulta pública previa el Proyecto de Orden por la que se aprueba la clasificación de los fondos de pensiones en función de su política de inversión ("**Proyecto de Orden**").

El Proyecto de Orden tiene por objeto desarrollar la habilitación contenida en el artículo 69.10 del Real Decreto 304/2004, de 20 de febrero, por el que se aprueba el Reglamento de planes y fondos de pensiones, determinando por tanto la clasificación de los fondos de pensiones por su política de inversión. De esta manera se pretende clarificar las diferentes vocaciones inversoras, fijando una definición para cada una de ellas. Esto permitirá agrupar aquellos fondos con características similares en cuanto a política de inversión, lo que redundará en una mejor comparabilidad de los fondos por parte de los partícipes.

El Proyecto de Orden afecta a todos los fondos de pensiones inscritos en el Registro Administrativo Especial de Fondos de Pensiones. El plazo para presentar alegaciones al Proyecto de Orden finalizó el 5 de noviembre de 2025.

Public consultation on the draft Ministerial Order approving the classification of Pension Funds on the basis of their investment policy

The Ministry of Economy, Trade and Business has launched a public consultation on the Draft Order approving the classification of pension funds on the basis of their investment policy (the "**Draft Order**").

The purpose of the Draft Order is to implement the powers contained in Article 69.10 of Royal Decree 304/2004 of 20 February, which approves the Regulations on pension plans and funds, thereby classifying pension funds according to their investment policy. Accordingly, the aim is to clarify the different investment objectives by establishing a definition for each of them. This will allow funds with similar investment policy characteristics to be grouped together, which will result in better comparability of funds for investors.

The Draft Order affects all pension funds registered in the Special Administrative Register of Pension Funds. The deadline for making submissions on the Draft Order expired on 5 November 2025.

EIOPA publica su Informe Final sobre Normas Técnicas Regulatorias ("RTS") para criterios de aplicabilidad de análisis macroprudenciales en el ORSA y como parte del principio de persona prudente (PPP), tras la revisión de Solvencia II

El proyecto de RTS define criterios cuantitativos y cualitativos para identificar empresas y grupos que deben realizar análisis macroprudenciales en el ORSA, combinando:

EIOPA publishes its Final Report on Regulatory Technical Standards (RTS) on applicability criteria for macroprudential analyses in the ORSA and as part of the prudent person principle (PPP), following the Solvency II review

The draft RTS define quantitative and qualitative criteria for identifying undertakings and groups that must conduct macroprudential analyses in the own risk and solvency assessment (ORSA), combining:

- un umbral absoluto, con activos totales superiores a 20.000 millones de euros; y
- criterios basados en riesgos (interconexión, actividades sistémicas, sustituibilidad y riesgos de liquidez).

Estos criterios permiten a los supervisores añadir o excluir entidades bajo el principio de proporcionalidad, asegurando que su aplicación sea adecuada.

EIOPA llevó a cabo una consulta pública (octubre 2024 – enero 2025), incluyendo un evento con partes interesadas, recibiendo comentarios que llevaron a ajustes en la redacción y al aumento del umbral cuantitativo, manteniendo el enfoque general. La política preferida es un enfoque híbrido combinando criterios cuantitativos y cualitativos, que equilibra proporcionalidad, eficiencia y convergencia supervisora sin generar cargas adicionales a las empresas, usando datos ya disponibles y diálogos supervisores.

El proyecto de RTS ha sido presentado a la Comisión Europea para su adopción, estableciendo un marco integral para identificar empresas y grupos que deben realizar análisis macroprudenciales en ORSA y PPP, fortaleciendo la estabilidad financiera mediante un enfoque equilibrado y flexible que respeta el principio de proporcionalidad.

- an absolute threshold, with total assets exceeding EUR 20 billion; and
- risk-based criteria (interconnectedness, systemic activities, substitutability, and liquidity risks).

These criteria allow supervisors to add or exclude entities under the principle of proportionality, ensuring that their application is appropriate.

EIOPA conducted a public consultation (October 2024 - January 2025), including a stakeholder event, and received comments that led to adjustments in the wording and an increase in the quantitative threshold, while maintaining the general approach. The preferred policy is a hybrid approach combining quantitative and qualitative criteria, which balances proportionality, efficiency, and supervisory convergence without placing additional burdens on undertakings, using already available data and supervisory dialogues.

The draft RTS have been submitted to the European Commission for adoption, establishing a comprehensive framework for identifying undertakings and groups that must conduct macroprudential analyses in the ORSA and as part of the PPP, strengthening financial stability through a balanced and flexible approach that respects the principle of proportionality.

Consulta pública sobre el proyecto de Real Decreto por el que se aprueba el Reglamento del seguro obligatorio de responsabilidad civil de los vehículos personales ligeros

En el contexto de la facultad otorgada por la Directiva (UE) 2021/2118 a los Estados miembros para extender voluntariamente la obligación de aseguramiento a vehículos que, sin tener la consideración legal de vehículo a motor, participan crecientemente en la circulación, el legislador español ha decidido adoptar el seguro obligatorio para los vehículos personales ligeros (“**VPL**”) a través de la disposición adicional primera de la Ley 5/2025, de 24 de julio, por la que se modifican, entre otros, la LRCSCVM. La DGSFP ha publicado una consulta pública previa sobre el proyecto de Real Decreto que desarrollará reglamentariamente este nuevo seguro obligatorio, que finalizó el 24 de noviembre de 2025.

Este proyecto tiene por objeto abordar la responsabilidad civil derivada del uso de los VPL, cuya irrupción masiva en la circulación urbana ha generado la necesidad de un marco jurídico que subsane la insuficiencia manifiesta de la protección de las víctimas bajo el esquema de aseguramiento actualmente ofrecido por el mercado asegurador. La norma determinará que el conductor de un VPL es responsable de los daños causados a personas y bienes conforme al régimen de responsa-

Public consultation on the draft Royal Decree approving the Regulation on compulsory civil liability insurance for light personal vehicles

In the context of the power granted by Directive (EU) 2021/2118 to Member States to voluntarily extend the obligation to insure to vehicles which, without being legally considered motor vehicles, are increasingly being used on the roads, the Spanish legislature has decided to adopt compulsory insurance for light personal vehicles (“**LPVs**”) through the first additional provision of Law 5/2025 of 24 July, which amends, among others, the LRCSCVM. The DGSFP has published a prior public consultation on the draft Royal Decree that will regulate this new compulsory insurance. The consultation ended on 24 November 2025.

The purpose of this draft is to address civil liability arising from the use of LPVs, which have become widespread in urban traffic, and have created the need for a legal framework to remedy the clearly inadequate protection for victims under the insurance scheme currently offered by the insurance market. The regulation will establish that the driver of an LPV is liable for damage caused to persons and property under the civil liability and insurance regime of the

bilidad civil y seguro de la LRCSCVM, incluyendo la aplicación del sistema legal de valoración de daños corporales.

El reglamento debe resolver cuestiones no contempladas hasta el momento, como la insuficiencia del sistema de garantía, la delimitación del hecho de la circulación, la delimitación precisa de los daños materiales cubiertos, y el problema de los vehículos manipulados en sus características técnicas. Entre las posibles funciones del CCS se incluyen la de asegurar los VPL no aceptados por las entidades aseguradoras, la función de fondo de garantía y el fomento del aseguramiento. Con ello, se busca aplicar un sistema jurídico protector lo más parecido posible al que rige para los vehículos a motor, garantizando una protección más sólida y uniforme para los perjudicados por accidentes causados por vehículos personales ligeros.

Modificación del Reglamento Solvencia II

El nuevo reglamento, que modificará al Reglamento Solvencia II, será de aplicación directa en todos los Estados miembros y tiene como objetivo fortalecer el papel de las aseguradoras como inversores institucionales para financiar la economía europea, con especial énfasis en impulsar las transiciones ecológica, digital y de seguridad. Esta reforma forma parte de la estrategia de la Unión de Ahorros e Inversiones, diseñada para canalizar capital privado hacia inversiones productivas y sostenibles, profundizar en la integración del mercado de capitales y fomentar el crecimiento económico que beneficie tanto a empresas como a particulares.

Los cambios introducidos amplían la capacidad de inversión del sector asegurador, facilitando una mayor asignación de capital a proyectos empresariales, infraestructuras y otras iniciativas de interés público, garantizando en todo caso la estabilidad del sistema financiero y la protección de los asegurados.

La revisión responde a las evaluaciones entre 2021 y 2025 que identificaron problemas como, entre otros, una excesiva volatilidad en la solvencia, costes de reporte injustificados, aplicación insuficiente de proporcionalidad y desincentivos para la titulización de activos. El texto incorpora un trato preferencial para las inversiones a largo plazo y las inversiones realizadas en el marco de programas legislativos con apoyo público, como el Banco Europeo de Inversiones o los bancos nacionales de fomento, favoreciendo la financiación de proyectos de seguridad, defensa y las transiciones medioambientales y digitales.

El texto legislativo está actualmente sujeto al control del Parlamento Europeo y del Consejo Europeo y las nuevas normas se aplicarán previsiblemente a partir del 30 de enero de 2027,

LRCSCVM, including the application of the legal system for assessing bodily injury.

The regulation must resolve issues which have not yet been contemplated, such as the inadequacy of the guarantee system, the definition of the act of driving, the precise definition of the material damage covered, and the problem of vehicles whose technical characteristics have been manipulated. The possible functions of the CCS include insuring LPVs that are not accepted by insurance companies, acting as a guarantee fund, and promoting insurance. The aim is to implement a protective legal system as similar as possible to that which governs motor vehicles, ensuring more robust and uniform protection for those injured in accidents caused by light personal vehicles.

Amendment of the Solvency II Regulation

The new regulation, which will amend the Solvency II Regulation, will be directly applicable in all Member States and aims to strengthen the role of insurers as institutional investors in financing the European economy, with a particular focus on driving the green, digital, and security transitions. This reform is part of the EU's Union of Savings and Investment strategy, which is designed to channel private capital towards productive and sustainable investments, deepen capital market integration, and promote economic growth that benefits both businesses and individuals.

The changes that have been introduced expand the investment capacity of the insurance sector, facilitating greater capital allocation to business projects, infrastructure, and other initiatives of public interest, while ensuring the stability of the financial system and the protection of policyholders.

The review is in response to the 2021-2025 assessments, which identified problems such as excessive solvency volatility, unjustified reporting costs, the insufficient application of proportionality, and disincentives for asset securitisation, among others. The text incorporates preferential treatment for long-term investments and investments made under publicly supported legislative programmes, such as the European Investment Bank or national development banks, thereby favouring the financing of security, defence, and environmental and digital transition projects.

The legislative text is currently being reviewed by the European Parliament and the European Council, and the new rules are expected to apply from 30 January 2027, coinciding with

coincidiendo con la entrada en vigor de la reforma de Solvencia II. Con esta reforma, la Comisión Europea refuerza el marco prudencial de Solvencia II para hacerlo más favorable a la inversión productiva, manteniendo al mismo tiempo la solidez financiera del sector asegurador y la protección de los consumidores.

the entry into force of the Solvency II reform. With this reform, the European Commission is strengthening the Solvency II prudential framework to make it more favourable to productive investment, while maintaining the financial soundness of the insurance sector and consumer protection.

Reglamento de Ejecución 2025/2312 de la Comisión de 17 de noviembre de 2025 por el que se establece información técnica para el cálculo de las provisiones técnicas y los fondos propios básicos a efectos de la presentación de información con fecha de referencia comprendida entre el 30 de septiembre de 2025 y el 30 de diciembre de 2025 de conformidad con Solvencia II ("Reglamento Ejecución 2025/2312")

Commission Implementing Regulation (EU) 2025/2312 of 17 November 2025 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2025 until 30 December 2025 under Solvency II (Implementing Regulation 2025/2312)

Con el fin de garantizar condiciones uniformes para el cálculo de las provisiones técnicas y los fondos propios básicos por parte de las aseguradoras y reaseguradoras a efectos de Solvencia II, la Comisión Europea ha establecido la información técnica correspondiente a cada fecha de referencia y relativa a las estructuras temporales pertinentes de tipos de interés sin riesgo, los diferenciales fundamentales para el cálculo del ajuste por casamiento y los ajustes por volatilidad.

To ensure uniform conditions for the calculation of technical provisions and basic own funds by insurers and reinsurers under Solvency II, the European Commission has established technical information for each reporting date relating to the relevant risk-free interest rate term structures, the fundamental spreads for the calculation of the matching adjustment, and the volatility adjustments.

Las aseguradoras y reaseguradoras deben utilizar la información técnica basada en datos de mercado relativos al término del último mes anterior a la primera fecha de referencia de la información a la que se aplica el Reglamento Ejecución 2025/2312. El 6 de octubre de 2025, EIOPA facilitó a la Comisión Europea la información técnica relacionada con los datos de mercado de finales de septiembre de 2025, que se publicó el mismo día.

Insurers and reinsurers must use technical information based on market data relating to the end of the last month prior to the first reference date of the information to which Implementing Regulation 2025/2312 applies. On 6 October 2025, EIOPA provided the European Commission with technical information relating to the market data at the end of September 2025, which was published on the same day.

Las aseguradoras y reaseguradoras utilizarán la información técnica establecida en el Reglamento Ejecución 2025/2312 para calcular las provisiones técnicas y los fondos propios básicos a efectos de la presentación de información con fecha de referencia comprendida entre el 30 de septiembre de 2025 y el 30 de diciembre de 2025. En relación con cada moneda pertinente, la información técnica utilizada para calcular la mejor estimación, el ajuste por casamiento y el ajuste

Insurance and reinsurance undertakings must use the technical information set out in Implementing Regulation 2025/2312 to calculate technical provisions and basic own funds for the purposes of reporting with a reference date between 30 September 2025 and 30 December 2025. For each relevant currency, the technical information used to calculate the best estimate, the matching adjustment, and the volatility adjustment will include: (a) the relevant risk-free interest rate term

por volatilidad incluye: (a) las estructuras temporales pertinentes de tipos de interés sin riesgo establecidas en el anexo I; (b) los diferenciales fundamentales para el cálculo del ajuste por casamiento establecidos en el anexo II; y (c) para cada mercado nacional de seguros pertinente, los ajustes por volatilidad establecidos en el anexo III.

El anexo I contiene las estructuras temporales de tipos de interés sin riesgo para calcular la mejor estimación, sin ningún ajuste por casamiento o por volatilidad, para diferentes monedas (p.ej., euro, corona checa, corona danesa, forinto, corona sueca y leva) y para plazos hasta el vencimiento que van desde 1 año hasta 150 años.

Por motivos prudenciales, resulta necesario que las aseguradoras y reaseguradoras utilicen la misma información técnica para el cálculo de las provisiones técnicas y los fondos propios básicos, independientemente de la fecha en que presenten la información a sus autoridades competentes.

El Reglamento ya se encuentra en vigor y es aplicable a partir del 30 de septiembre de 2025, siendo obligatorio en todos sus elementos y directamente aplicable en cada Estado miembro.

structures set out in Annex I; (b) the fundamental spreads for the calculation of the matching adjustment set out in Annex II; and (c) for each relevant national insurance market, the volatility adjustments set out in Annex III.

Annex I contains the risk-free interest rate term structures for calculating the best estimate, without any matching or volatility adjustment, for different currencies (e.g. Euro, Czech koruna, Danish krone, Hungarian forint, Swedish krona, and Bulgarian lev) and for maturities ranging from 1 year to 150 years.

From a prudential perspective, it is necessary for insurance and reinsurance undertakings to use the same technical information for the calculation of technical provisions and basic own funds, regardless of the date on which they submit the information to their competent authorities.

The Regulation is already in force and applicable from 30 September 2025, and all its elements are mandatory and directly applicable in each Member State.

Informe final sobre el borrador de normas técnicas de regulación (“RTS”) para planes de gestión del riesgo de liquidez en el marco de Solvencia II

EIOPA ha publicado su informe final sobre el borrador de RTS que desarrollan los requisitos para que las entidades aseguradoras y reaseguradoras elaboren y mantengan actualizados planes de gestión del riesgo de liquidez, con el objetivo de garantizar que mantengan liquidez adecuada para liquidar sus obligaciones financieras con los tomadores de pólizas y otras contrapartes cuando venzan, incluso en condiciones de estrés financiero.

Para garantizar una aplicación coherente de los planes de gestión del riesgo de liquidez, el borrador de RTS especifica:

- los criterios para definir qué empresas y grupos deben incluir también un análisis de liquidez a medio y largo plazo;
- el contenido y la frecuencia de actualización de los planes de gestión del riesgo de liquidez;
- el contenido y la frecuencia de actualización de los planes a nivel de grupo.

El borrador de RTS espera que las empresas informen sobre su propia evaluación del riesgo de liquidez en los planes de gestión del riesgo de liquidez, teniendo en cuenta sus pro-

Final Report on draft regulatory technical standards (RTS) on liquidity risk management plans under Solvency II

EIOPA has published its final report on the draft RTS that set out the requirements for insurance and reinsurance undertakings to develop and maintain liquidity risk management plans, with the aim of ensuring that they maintain adequate liquidity to settle their financial obligations to policyholders and other counterparties when they fall due, even during periods of financial stress.

To ensure the consistent application of liquidity risk management plans, the draft RTS specify:

- the criteria for defining which companies and groups must also include medium and long-term liquidity analyses;
- the contents and frequency of updates to liquidity risk management plans;
- the contents and frequency of updates to plans at group level.

The draft RTS are expected to require undertakings to report their own assessments of liquidity risk in liquidity risk management plans, taking into account their own risk

pios límites de tolerancia al riesgo, a fin de garantizar una aplicación proporcional y sensible al riesgo. El borrador de RTS ha sido remitido a la Comisión Europea, que deberá decidir sobre su adopción.

tolerance limits, in order to ensure a proportionate and risk-sensitive implementation. The draft RTS have been submitted to the European Commission, which will decide on their adoption.

Anteproyecto de Ley por el que se modifica el Texto Refundido de la Ley de Regulación de los Planes y Fondos de Pensiones aprobado por el Real Decreto Legislativo 1/2002, de 29 de noviembre ("LPFP")

El anteproyecto de Ley tiene como finalidad modificar la LPFP, con el objetivo de adaptar determinadas previsiones de la normativa para garantizar y fomentar la libre circulación de trabajadores y capitales en el seno de la Unión Europea.

En concreto, el anteproyecto propone dos modificaciones significativas que afectarían principalmente, a los artículos 5 y 8 de la LPFP:

- la eliminación de los límites financieros a las aportaciones a los planes de pensiones, manteniendo exclusivamente los límites fiscales, con el fin de evitar que el actual importe máximo anual permitido desincentive a nacionales de otros Estados miembros a ejercer su derecho a la libre circulación para desempeñar un puesto de trabajo en España; y

- la habilitación de transferencias transfronterizas de derechos consolidados, tanto de entrada como de salida, entre planes de pensiones españoles y aquellos regulados por la legislación de otros Estados miembros, en condiciones equivalentes a las de las transferencias nacionales.

Estas propuestas buscan reforzar los derechos y libertades fundamentales de los ciudadanos de la Unión Europea, permitiendo a los partícipes realizar aportaciones superiores al importe máximo fiscalmente deducible en planes regulados por la legislación española. Asimismo, facilitarían la movilización transfronteriza de derechos consolidados, favoreciendo así el incremento de las aportaciones tanto a los planes de pensiones de empleo como a los individuales.

Estas cuestiones fueron sometidas a consulta pública, cuyo plazo finalizó el 14 de octubre de 2025.

Preliminary Draft Law amending the Revised Text of the Law Regulating Pension Plans and Funds approved by Royal Legislative Decree 1/2002 of 29 November ("LPFP")

The purpose of the preliminary draft Law is to amend the LPFP in order to adapt certain provisions of the regulations to guarantee and promote the free movement of workers and capital within the European Union.

Specifically, the preliminary draft proposes two significant amendments that would primarily affect Articles 5 and 8 of the LPFP:

- the elimination of financial limits on contributions to pension plans, with only tax limits remaining, in order to prevent the current maximum annual amount allowed from discouraging nationals from other Member States from exercising their right to free movement to take up employment in Spain; and

- the enabling of cross-border transfers of vested rights, both inbound and outbound, between Spanish pension plans and those regulated by the legislation of other Member States, under conditions equivalent to those applicable to domestic transfers.

These proposals seek to strengthen the fundamental rights and freedoms of European Union citizens, allowing participants to make contributions in excess of the maximum tax-deductible amount in plans regulated by Spanish legislation. They would also facilitate the cross-border transfer of vested rights, thereby encouraging an increase in contributions to both occupational and individual pension schemes.

These proposals were submitted for public consultation, which ended on 14 October 2025.

Ley 10/2025, de 26 de diciembre, por la que se regulan los servicios de atención a la clientela

En cumplimiento del artículo 51 de la Constitución Española, que establece la obligación de los poderes públicos de garantizar la defensa de los consumidores y usuarios, la presen-

Law 10/2025, of 26 December, regulating customer services

In compliance with Article 51 of the Spanish Constitution, which establishes the obligation of the public authorities to guarantee the protection of consumers and users, this law

te ley desarrolla el régimen general de protección establecido en el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios. La práctica muestra que muchas de las quejas y reclamaciones formuladas ante los servicios de protección de los consumidores y usuarios no se presentarían si las empresas dispusieran de servicios de atención a la clientela más eficaces.

develops the general system of protection established in the revised text of the General Law for the Defence of Consumers and Users. Experience indicates that many of the complaints made to consumer and user protection services would not be filed if companies had more effective customer service.

Esta ley tiene por objeto la regulación de los niveles mínimos de calidad y de la evaluación de los servicios de atención a la clientela de las empresas que presten determinados servicios de carácter básico de interés general y de las grandes empresas, estableciendo unos mínimos de calidad que estos servicios deberán cumplir obligatoriamente. Las entidades aseguradoras están incluidas en el ámbito de aplicación de esta ley como prestadoras de servicios financieros. No obstante, en relación con los servicios financieros, lo establecido en esta ley se aplicará con carácter supletorio respecto de lo dispuesto en la normativa sectorial.

The purpose of this law is to regulate the minimum levels of quality and the evaluation of customer services provided by companies offering certain basic services of general interest and by large companies. It establishes minimum quality standards with which these services must comply. Insurance companies are included in the scope of application of this law as financial service providers. However, in relation to financial services, the provisions of this law apply in addition to those of sectoral regulations.

Como ya se analizó en la Revista de Actualidad Jurídica de Seguros de Pérez Llorca, del Q1 de 2024, esta ley introduce cambios respecto de la Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero (“**Ley 44/2002**”) y tiene un efecto derogador sobre determinados preceptos de la Orden ECO/734/2004, de 11 de marzo, sobre los departamentos y servicios de atención al cliente y el defensor del cliente de las entidades financieras.

As already analysed in Pérez-Llorca’s Insurance Legal Update for Q1 2024, this law introduces changes with respect to Law 44/2002, of 22 November, on Financial System Reform Measures (“**Law 44/2002**”) and repeals certain provisions of Order ECO/734/2004, of 11 March, on customer service departments and services and the customer ombudsman of financial institutions.

Las empresas incluidas en el ámbito de aplicación de esta ley deberán disponer de un servicio de atención a la clientela gratuito, eficaz, universalmente accesible, inclusivo, no discriminatorio y evaluable. Entre otras cosas, se prohíbe el empleo de contestadores automáticos u otros medios análogos como medio exclusivo de atención a la clientela, debiendo garantizarse una atención personalizada a través de un operador o agente de este, que asegure una interacción fluida. Las consultas, quejas, reclamaciones o incidencias serán resueltas en el plazo más breve posible y, en todo caso, atendiendo a los plazos máximos establecidos por la normativa sectorial (un mes en el caso de las aseguradoras). Se es-

Businesses within the scope of this law must have a free, effective, universally accessible, inclusive, non-discriminatory and assessable customer service. Among other things, the use of answering machines or other similar means as the exclusive method of customer service is prohibited. Personalised service through an operator or agent must be guaranteed to ensure effective interaction. Queries, complaints, claims or incidents must be resolved as soon as possible and, in any case, within the maximum time limits established by sectoral regulations (one month for insurance undertakings). It is established as a general principle that customer service is to be provided during business hours. However, continu-

tablece como principio general que el servicio de atención a la clientela se prestará en horario de atención comercial; no obstante, se deberá garantizar atención de forma continuada las 24 horas del día y todos los días del año para las reclamaciones derivadas de la desatención de incidencias relativas a los servicios que exijan una prestación continuada.

Las resoluciones de las consultas, quejas, reclamaciones o incidencias deberán estar debidamente motivadas; y en ningún caso se podrá cerrar la tramitación por el transcurso del plazo fijado para su resolución que no sea imputable a la clientela. En el caso de las entidades financieras, no serán de aplicación el apartado 8 del artículo 13, ni los artículos 18, 19, 21, 22 y 23 de la presente norma.

ous service must be guaranteed 24 hours a day, 365 days per year, for complaints arising from the failure to attend to incidents relating to services that operate continuously.

The resolution of queries, complaints, claims or incidents must be duly justified. Under no circumstances may the processing be shut down due to the expiry of the period established for their resolution where such expiry is not attributable to the customer. Articles 13.8, 18, 19, 21, 22 and 23 of this law do not apply to financial institutions.

Resoluciones de 30 de diciembre de 2025, de la DGSFP y la Presidencia del CCS, relativas a los recargos en favor del CCS y a la cobertura de riesgos extraordinarios en el marco de los vehículos personales ligeros

Las resoluciones objeto de análisis tienen como finalidad adaptar el sistema de recargos y cobertura de riesgos extraordinarios gestionado por el CCS, con el objetivo de incorporar las modificaciones derivadas de la Ley 5/2025, de 24 de julio, que amplía el concepto de "vehículo" y establece la obligatoriedad de un seguro de responsabilidad civil para los "vehículos personales ligeros", atribuyendo al CCS las funciones de fondo de garantía respecto a dicho seguro obligatorio, cuando el vehículo causante no disponga de seguro válido, sea desconocido, haya sido robado, esté asegurado en entidades en liquidación o declaradas en concurso, o cuando el vehículo haya sido empleado como medio para causar deliberadamente el daño.

En concreto, se aprueban tres resoluciones de fecha 30 de diciembre de 2025: (i) la Resolución de la DGSFP por la que se aprueba el recargo en favor del CCS para financiar sus funciones como fondo de garantía en la circulación de vehículos personales ligeros, que establece dicho recargo en el 1,5% de las primas comerciales del citado seguro obligatorio; (ii) la Resolución de la DGSFP por la que se modifica la resolución de 28 de marzo de 2018, en virtud de la cual se actualizan las tarifas de recargos del seguro, incorporando a los vehículos personales ligeros como categoría diferenciada con un recargo específico de 0,30 euros, y se suprime el anexo relativo a los modelos de información estadística; y (iii) la Resolución de la Presidencia del CCS por la que se modifican las resoluciones de 27 de marzo de 2018 y de 31 de octubre de 2018, que actualiza los modelos de declaración e ingreso de recargos, incorporando los códigos 00038 y 00039 para los vehículos personales ligeros.

Resolutions of 30 December 2025 of the DGSFP and the Presidency of the CCS on surcharges in favour of the CCS and on the coverage of extraordinary risks in the context of light personal vehicles

The resolutions under analysis aim to adapt the system of surcharges and coverage of extraordinary risks managed by the CCS in light of the amendments introduced by Law 5/2025 of 24 July. This law extends the concept of "vehicle" to include "light personal vehicles" and mandates civil liability insurance for such vehicles. Furthermore, it confers upon the CCS guarantee fund functions in respect of this compulsory insurance where the vehicle causing the damage lacks valid insurance, is unknown, has been stolen, is insured with entities in liquidation or declared insolvent, or has been employed as a means of deliberately causing the damage.

Specifically, three resolutions dated 30 December 2025 have been approved: (i) the Resolution of the DGSFP approving the surcharge in favour of the CCS to finance its functions as a guarantee fund for the circulation of light personal vehicles, which establishes this surcharge at 1.5% of the commercial premiums of the aforementioned compulsory insurance; (ii) the Resolution of the DGSFP amending the Resolution of 28 March 2018, by virtue of which the insurance surcharge rates are updated, incorporating light personal vehicles as a separate category with a specific surcharge of €0.30, and removing the annex relating to the statistical information models; and (iii) the Resolution of the Presidency of the CCS amending the resolutions of 27 March 2018 and 31 October 2018, which updates the surcharge declaration and payment models, incorporating codes 00038 and 00039 for light personal vehicles.

Estas resoluciones incorporan avances operativos significativos, entre los que cabe señalar (i) la ampliación hasta 180 días del plazo para compensar los extornos de recargos derivados de la cancelación de las pólizas, evitando la tramitación de devoluciones de ingresos indebidos; o (ii) el establecimiento de un plazo máximo de 15 días para la devolución de recargos, contado desde la presentación completa de la documentación justificativa por parte de la entidad aseguradora; y (iii) la adopción de criterios específicos para la tarificación de coberturas por pérdidas pecuniarias sin límite temporal, tomando como período de indemnización cinco años.

These resolutions incorporate significant operational advances, including (i) the extension to 180 days of the deadline for offsetting surcharge refunds arising from the cancellation of policies, thereby avoiding the processing of undue income refunds; (ii) the establishment of a maximum period of 15 days for the refund of surcharges, calculated from the complete submission of the supporting documentation by the insurance undertaking; and (iii) the adoption of specific criteria for the pricing of cover for pecuniary losses without a time limit, taking five years as the indemnity period.

Supervisión

Directrices relativas al concepto de diversidad para la selección de los miembros del órgano de administración, dirección o supervisión

EIOPA ha emitido directrices sobre la noción de diversidad para la selección de los miembros del órgano de administración, dirección o supervisión de las empresas de seguros y reaseguros, desarrolladas en el contexto de la revisión de la Directiva Solvencia II. Estas Directrices serán aplicables a partir del 30 de enero de 2027.

A partir de la fecha indicada las empresas de seguros y reaseguros deberán desarrollar e implementar una política que promueva la diversidad para proporcionar un amplio conjunto de cualidades y competencias en el órgano de administración, dirección o supervisión tanto al reclutar miembros como de forma continua. La política de diversidad, de obligada elaboración, deberá referirse al menos a la formación académica y profesional, género, edad y, particularmente para empresas que operan internacionalmente, procedencia geográfica.

En este contexto, las empresas deberán documentar anualmente su cumplimiento con los objetivos establecidos en su política de diversidad y, en caso de que no se hayan cumplido los mismos - incluidos objetivos cuantitativos relacionados con el equilibrio de género -, deben documentar las razones, las medidas a adoptar y el plazo respectivo para garantizar su cumplimiento.

Además, la política de diversidad para el personal deberá incluir aspectos de planificación de carrera y medidas para garantizar la igualdad de trato y oportunidades para el personal de diferente género, asegurando que el equilibrio de género se tenga en cuenta al seleccionar personal para puestos de dirección o al proporcionar formación en gestión.

Supervision

Guidelines on the concept of diversity for the selection of members of administrative, management, or supervisory bodies

EIOPA has issued guidelines on the concept of diversity for the selection of members of the administrative, management, or supervisory bodies of insurance and reinsurance undertakings, which have been developed in the context of the revision of the Solvency II Directive. These guidelines will apply from 30 January 2027.

From the above date, insurance and reinsurance undertakings must develop and implement a policy that promotes diversity to provide a broad set of qualities and competences in their administrative, management, or supervisory bodies, both when recruiting members and on an ongoing basis. The mandatory diversity policy should cover, at a minimum, academic and professional background, gender, age, and, particularly for companies operating internationally, geographic origin.

In this context, companies must annually document their compliance with the objectives set out in their diversity policy and, in the event of non-compliance - including quantitative targets related to gender balance - must document the reasons, the measures to be taken, and the respective time frame to ensure compliance.

In addition, the diversity policy for staff must include aspects of career planning and measures to ensure equal treatment and opportunities for staff of different genders, ensuring that gender balance is taken into account when selecting staff for management positions or providing management training.

El Comité Conjunto de las Autoridades Europeas de Supervisión (EBA, EIOPA y ESMA) ha presentado su programa de trabajo para 2026

El Comité Conjunto ("**JC**") de las Autoridades Europeas de Supervisión (EBA, EIOPA y ESMA) ha publicado su programa de trabajo para 2026, en el que se compromete a seguir monitorizando de cerca los riesgos y vulnerabilidades que afectan a todos los sectores del sistema financiero en un contexto de tensiones geopolíticas elevadas. El programa se ejecutará en el marco de la agenda de simplificación normativa sobre la que se ha venido haciendo hincapié en los últimos tiempos.

Con el Reglamento DORA ya implementado, 2026 marcará el primer ciclo completo de supervisión de proveedores externos críticos designados a finales de 2025, mediante equipos conjuntos que realizarán evaluaciones de riesgos y establecerán planes anuales de supervisión. También se fortalecerá el marco de coordinación de incidentes cibernéticos sistémicos paneuropeo.

Dejando de lado el Reglamento DORA, existen otras áreas prioritarias para el JC. La protección del consumidor seguirá siendo prioritaria, con trabajos en estándares técnicos para simplificar el documento KID del Reglamento PRIIPs. En finanzas sostenibles, las Autoridades Europeas de Supervisión monitorizarán la revisión de SFDR y desarrollarán directrices sobre pruebas de estrés para garantizar coherencia en los enfoques de estrés climático. El JC continuará como foro de discusión de riesgos intersectoriales, produciendo análisis específicos para el Consejo de la UE. Además, se trabajará en titulización, conglomerados financieros y coordinación de *sandboxes* regulatorios de inteligencia artificial.

The Joint Committee of the European Supervisory Authorities (EBA, EIOPA, and ESMA) has presented its 2026 Work Programme

The Joint Committee (JC) of the European Supervisory Authorities (EBA, EIOPA, and ESMA) has published its 2026 work programme, in which it commits to continuing to closely monitor the risks and vulnerabilities that affect all sectors of the financial system against a backdrop of heightened geopolitical tensions. The programme will be implemented within the framework of the regulatory simplification agenda that has been emphasised in recent times.

With the DORA Regulation now in place, 2026 will mark the first full cycle of supervision of critical third-party providers designated at the end of 2025, with joint teams conducting risk assessments and establishing annual supervision plans. The pan-European Systemic Cyber Incident Coordination Framework will also be strengthened.

In addition to the DORA Regulation, there are other priorities for the JC. Consumer protection will remain a priority, including work on technical standards to simplify the PRIIPs Key Information Document (KID). In the area of sustainable finance, the European Supervisory Authorities will monitor the SFDR review and develop guidelines on stress testing to ensure consistency in climate stress testing approaches. The JC will continue as a forum for the discussion of cross-sectoral risks and will produce specific analyses for the Council of the European Union. In addition, the JC will continue to work on securitisation, financial conglomerates, and the coordination of regulatory sandboxes for artificial intelligence.

Las Autoridades Europeas de Supervisión alertan sobre los riesgos de invertir en criptoactivos

La DGSFP ha publicado una advertencia conjunta de las Autoridades Europeas de Supervisión (EBA, EIOPA y ESMA), dirigida a los consumidores, sobre los riesgos significativos asociados a la inversión en criptoactivos. A pesar de la entrada en vigor del Reglamento MiCA en la UE, la protección ofrecida por estos productos sigue siendo limitada y no alcanza los niveles de los productos financieros tradicionales.

Las autoridades destacan cuatro puntos críticos: primero, el riesgo de pérdida total debido a la extrema volatilidad de estos activos, cuyo valor puede fluctuar drásticamente hasta perder la inversión completa. Segundo, la protección limitada bajo MiCA, que no incluye fondos de garantía de inversiones como otros productos regulados. Tercero, la importancia de verificar la autorización del proveedor consultando el registro

The European Supervisory Authorities warn of the risks of investing in crypto-assets

The DGSFP has published a joint warning from the European Supervisory Authorities (EBA, EIOPA, and ESMA), addressed to consumers, on the significant risks associated with investing in crypto-assets. Despite the entry into force of the MiCA Regulation in the EU, the protection offered by these products remains limited and does not reach the levels of traditional financial products.

The ESAs highlight four critical points: first, the risk of total loss due to the extreme volatility of these assets, whose value can fluctuate dramatically to the point of losing the entire investment. Second, the limited protection under MiCA, which does not include investment guarantee funds like other regulated products. Third, the importance of verifying the provider's authorisation by consulting the ESMA register or, where

de ESMA o, en su caso, las listas de advertencia nacionales. Cuarto, mantenerse alerta ante el riesgo de fraude y promoción engañosa, especialmente a través de *influencers* en redes sociales, estafas, ciberataques e información confusa o deliberadamente engañosa.

Las autoridades instan a los consumidores a informarse exhaustivamente antes de tomar cualquier decisión de inversión en criptoactivos. Para facilitar esta tarea, han publicado documentación detallada sobre los riesgos específicos y una serie de recomendaciones prácticas disponibles en sus portales oficiales.

applicable, national warning lists. Fourth, the necessity to remain alert to the risk of fraud and misleading promotions, especially through social media influencers, scams, cyberattacks, and confusing or deliberately misleading information.

The ESAs urge consumers to conduct thorough research before making any decisions to invest in crypto-assets. To facilitate this task, they have published detailed documentation on specific risks and a series of practical recommendations available on their official websites.

Carta de servicios 2025-2028 de la DGSFP

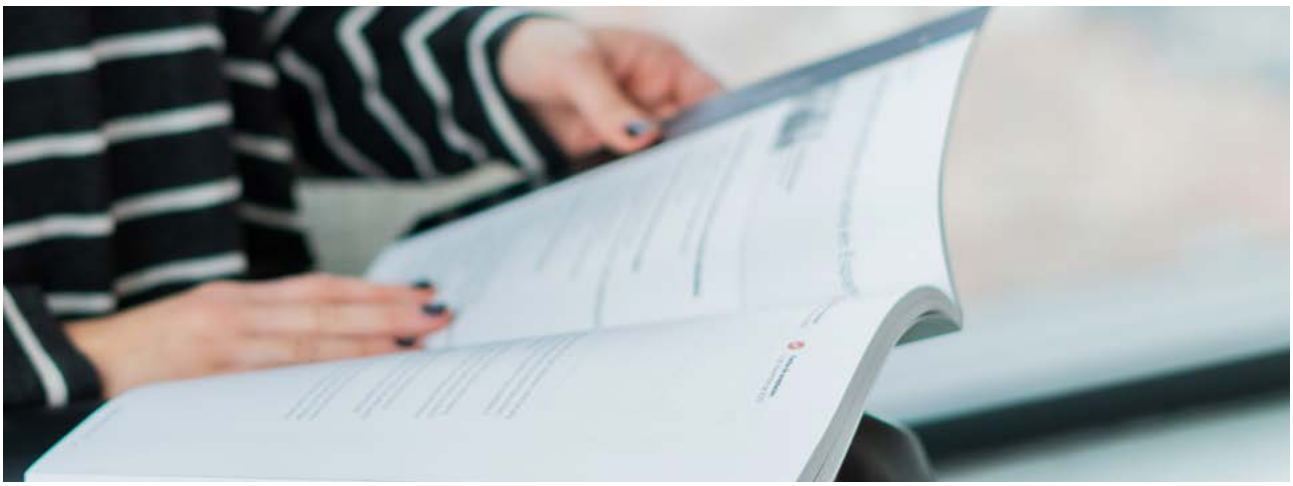
La DGSFP ha publicado su carta de servicios 2025-2028, un documento que establece sus compromisos de calidad en la prestación de servicios orientados a mejorar la atención al ciudadano. Entre sus servicios principales destaca la atención de consultas y reclamaciones de usuarios, disponible telefónicamente de lunes a viernes de 9:30 a 14:30 horas y a través de su sede electrónica. La DGSFP también publica la guía del asegurado y del partícipe ("**GASPAR**") con información accesible sobre seguros y planes de pensiones. Además, publica en su página web datos sobre comisiones y rentabilidad de planes de pensiones.

La DGSFP se compromete a mantener estándares de calidad específicos, incluyendo tiempos de espera telefónica no superiores a 10 minutos, disponibilidad 24x7 de su sede electrónica, actualización diaria de datos registrales y respuesta a quejas y sugerencias en un máximo de 15 días hábiles. Esta carta representa un avance en la divulgación de información sobre mercados y productos financieros, adaptándose a las nuevas necesidades de los ciudadanos mediante el uso de tecnologías digitales.

DGSFP Services Charter 2025-2028

The DGSFP has published its Services Charter 2025-2028, a document that sets out its commitment to quality in the provision of services, which is focused on improving customer care. Among its main services, it handles user queries and complaints, which can be submitted by telephone from Monday to Friday between 9:30 a.m. and 2:30 p.m., and via its website. The DGSFP also publishes the guide for policyholders and participants ("**GASPAR**"), which provides accessible information on insurance and pension plans. In addition, it publishes data on pension plan fees and returns on its website.

The DGSFP is committed to maintaining specific quality standards, including telephone waiting times of no more than 10 minutes, 24/7 availability of its website, daily updating of registration data, and responses to complaints and suggestions within a maximum of 15 working days. This charter represents a step forward in the dissemination of information on financial markets and products, adapting to the new needs of citizens through the use of digital technologies.



Informe del Comité Conjunto de Autoridades Europeas de Supervisión sobre los riesgos y vulnerabilidades del sistema financiero de la Unión Europea

En el contexto de tensiones en el comercio global y en la arquitectura de seguridad mundial, las Autoridades Europeas de Supervisión (EBA, ESMA y EIOPA) han publicado su informe de otoño 2025 sobre riesgos y vulnerabilidades en el sistema financiero de la Unión Europea, con la finalidad de evaluar el impacto de estos desarrollos en la estabilidad financiera europea.

El informe destaca que el sector asegurador europeo demostró resiliencia general a finales de 2024, con primas de vida creciendo nuevamente después de un período de estancamiento, mientras que la rentabilidad ha mejorado, impulsada por fuertes rendimientos de inversión. La industria aseguradora, debido a su capitalización adecuada, está bien equipada para resistir la turbulencia de mercado que se materializó en el segundo trimestre de 2025. El ejercicio de prueba de estrés de 2024, que se enfocó en las consecuencias económicas de una re-intensificación o prolongación de tensiones geopolíticas, ha confirmado la resiliencia de la industria aseguradora debido al nivel adecuado de capitalización sobre la base del marco actual de Solvencia II. Adicionalmente, se espera que los productos de no vida se vean más afectados que los de vida, debido a un aumento en siniestros relacionados con bienes importados y a las presiones inflacionarias en los siniestros de responsabilidad civil de vehículos a motor, otros seguros a motor, y seguros de daños a bienes inmuebles.

Con ello, el Comité Conjunto aconseja a las autoridades competentes nacionales, instituciones financieras y participantes del mercado que las instituciones financieras continúen incorporando consideraciones de riesgo derivadas de desarrollos geopolíticos en sus procesos comerciales diarios y evaluaciones de riesgo, con especial foco en la monitorización del riesgo de liquidez. Asimismo, en el contexto geopolítico actual, las amenazas cibernéticas son una preocupación significativa, ya que las aseguradoras no solo están expuestas a riesgos operacionales, sino que también enfrentan el desafío creciente de suscribir riesgos cibernéticos, debiendo implementar rápida y completamente el marco que proporciona el Reglamento DORA, aplicable desde enero de 2025, que tiene como objetivo mitigar, entre otros, riesgos de amenazas cibernéticas o vulnerabilidades tecnológicas.

European Supervisory Authorities Joint Committee Report on Risks and Vulnerabilities in the EU Financial System

Against a backdrop of tensions in global trade and global security architecture, the European Supervisory Authorities (EBA, ESMA, and EIOPA) have published their autumn 2025 report on risks and vulnerabilities in the European Union's financial system, with the aim of assessing the impact of these developments on European financial stability.

The report notes that the European insurance sector showed overall resilience at the end of 2024, with life premiums growing again after a period of stagnation, while profitability has improved, driven by strong investment returns. The insurance industry, due to its adequate capitalisation, is well equipped to withstand the market turbulence that materialised in the second quarter of 2025. The 2024 stress test, which focused on the economic consequences of a re-intensification or prolongation of geopolitical tensions, has confirmed the resilience of the insurance industry due to the adequate level of capitalisation under the current Solvency II framework. In addition, non-life products are expected to be more affected than life products, due to an increase in claims involving imported goods and inflationary pressures on motor vehicle liability claims, other motor insurance, and property damage insurance.

Therefore, the Joint Committee advises national competent authorities, financial institutions, and market participants that financial institutions should continue to incorporate risk considerations arising from geopolitical developments into their daily business processes and risk assessments, with a particular focus on monitoring liquidity risks. Furthermore, in the current geopolitical context, cyber threats are a significant concern, as insurers are not only exposed to operational risks but also face the growing challenge of underwriting cyber risks, requiring them to quickly and fully implement the framework provided by the DORA Regulation, applicable from January 2025, which aims to mitigate, among other things, cyber threat risks or technological vulnerabilities.

Memoria del Servicio de Reclamaciones de la DGSFP del año 2024

El Servicio de Reclamaciones de la DGSFP ha publicado su memoria anual, en la que plasma las actuaciones llevadas a cabo, con la finalidad de reforzar la transparencia y las buenas prácticas aplicables al sector asegurador.

El número total de expedientes iniciados durante el año 2024 ha aumentado un 11,50% respecto al año anterior, siendo la cifra total de expedientes iniciados 14.934, con un incremento del 11,38% en lo que se refiere a reclamaciones presentadas frente a entidades aseguradoras, mientras que en reclamaciones de planes de pensiones se ha producido una disminución del 18,02%. La cifra de expedientes resueltos este año se elevó a 10.935. En cuanto al sentido de los informes con los que finalizan los expedientes de reclamación, un 44,67% terminó con un informe favorable al reclamante, un 30,09% finalizó con un informe favorable a la entidad y en el restante 25,24% el Servicio de Reclamaciones no pudo emitir, a la vista de las circunstancias planteadas, un pronunciamiento expreso que estimara o desestimara la pretensión del interesado. Si se tienen en cuenta únicamente los expedientes en los que ha existido un pronunciamiento del Servicio de Reclamaciones, aproximadamente el 59,75% se ha resuelto a favor del reclamante y el restante 40,25% a favor de la entidad.

Como todos los años, se recoge un capítulo dedicado a expedientes de especial interés, donde se hace referencia a una selección de expedientes resueltos por el Servicio de Reclamaciones durante el año 2024 que, por las particularidades que plantean, se ha considerado conveniente destacar. Se dedica un capítulo a los criterios del Servicio de Reclamaciones donde se incluye, entre otras cuestiones, una relación de actuaciones detectadas por el Servicio de Reclamaciones que no se ajustan a la normativa o a las buenas prácticas del sector asegurador.

Entre las actuaciones llevadas a cabo durante el año 2024 hay que destacar la colaboración continuada con el Banco de España y la CNMV en el desarrollo del Plan de Educación Financiera. En el vigente plan cuatrienal para el periodo 2022-2025, se ha incorporado el Ministerio de Economía, Comercio y Empresa como promotor del proyecto, incluyendo entre las acciones la decimotercera edición del Programa de Educación Financiera, destinado principalmente a alumnos de 3º y 4º de la E.S.O., Bachillerato y Formación Profesional de grado medio.

The DGSFP Complaints Service Annual Report 2024

The DGSFP Complaints Service has published its annual report, which details the actions it has taken to strengthen transparency and best practices in the insurance sector.

The total number of cases opened in 2024 increased by 11.50% compared to the previous year, with a total of 14,934 cases opened, representing an increase of 11.38% in complaints filed against insurance companies, while complaints against pension plans decreased by 18.02%. 10,935 cases were resolved in 2024. Regarding the reports used to resolve complaints, 44.67% concluded with a finding favourable to the claimant, 30.09% concluded with a finding favourable to the entity, and in the remaining 25.24% of cases, the Complaints Service was unable to issue an express ruling upholding or rejecting the claimant's claim, in view of the circumstances presented. Taking into account only those cases in which the Complaints Service issued a decision, approximately 59.75% were resolved in favour of the claimant, and the remaining 40.25% were resolved in favour of the entity.

As in previous years, there is a section dedicated to cases of special interest, which contains a selection of cases resolved by the Complaints Service in 2024 that, due to their particular nature, are considered noteworthy. A chapter is devoted to the criteria used by the Complaints Service, including, among other factors, a list of actions identified by the Complaints Service that do not comply with regulations or best practices in the insurance sector.

Among the actions carried out in 2024, it is worth highlighting the ongoing collaboration with the Bank of Spain and the CNMV in the development of the Financial Education Plan. In the current four-year plan for 2022-2025, the Ministry of Economy, Trade and Business has been included as a promoter of the project, including among the actions the thirteenth edition of the Financial Education Programme, aimed mainly at students in the 3rd and 4th years of secondary education, 6th year, and intermediate vocational training.

La DGSFP pide a la bancaseguros que sea proactiva al devolver la primas de seguros vinculados a préstamos que se amortizan

La DGSFP, en la celebración del 20 aniversario de AMAEF, instó a devolver de forma proactiva la prima no consumida de seguros vinculados a préstamos que se amortizan, considerándolo una buena práctica que refuerza la confianza del cliente. El supervisor estableció cuatro pilares para una distribución centrada en el cliente: transparencia informativa sobre modalidades de prima, personalización del capital asegurado, gestión proactiva de amortizaciones anticipadas y alineación de intereses en las políticas de remuneración.

El regulador enfatizó la necesidad de mejorar la formación de los 110.000 profesionales del sector, no solo en aspectos comerciales sino en cuestiones técnicas y evaluación de necesidades del cliente. Se revisará la regulación formativa para priorizar conocimientos prácticos sobre la mera obtención de certificados.

En cifras, el canal bancoasegurador intermedió casi 25.000 millones de euros en primas durante 2024 (73% en vida y 27% en seguros generales), gestionando el 38% de las primas totales intermediadas y liderando la nueva producción con un 60%.

A nivel europeo, se destacó el papel del sector en la unión de ahorro e inversión y la respuesta al reto demográfico, resaltando que EIOPA ha identificado que el 20,2% de las personas mayores en Europa están en riesgo de pobreza en la jubilación.

The DGSFP calls on bancassurance companies to be proactive in returning insurance premiums linked to loans that are repaid

On the occasion of AMAEF's 20th anniversary, the DGSFP urged companies to proactively refund unused premiums for insurance linked to loans that are being repaid, as it considers this to be a best practice that strengthens customer confidence. The supervisor established four pillars for customer-focused distribution: transparency of information on premium types, personalisation of insured capital, proactive management of early repayments, and the alignment of interests in remuneration policies.

The regulator emphasised the need to improve the training of the 110,000 professionals in the sector, not only from a commercial point of view but also in technical matters and the assessment of customer needs. Training regulations will be reviewed to prioritise practical knowledge over the mere obtaining of certificates.

In terms of figures, the bancassurance channel brokered almost €25 billion in premiums in 2024 (73% in life and 27% in general insurance), managing 38% of total brokered premiums and leading new production with 60%.

At the European level, the sector's role in the savings and investment union and its response to the demographic challenge were highlighted, noting that EIOPA has identified that 20.2% of older people in Europe are at risk of poverty in retirement.

La DGSFP publica su Informe de Seguros y Fondos de Pensiones de 2024

El Informe de Seguros y Fondos de Pensiones de la DGSFP relativo al año 2024 recoge el análisis de los principales datos del sector asegurador y de pensiones privadas, realizado a partir de la información suministrada principalmente por las entidades supervisadas.

En 2024 el volumen de primas ha experimentado un ligero retroceso frente al año anterior, marcado casi en exclusiva por la caída de las primas de vida. En contraste, los ramos de no vida han

The DGSFP publishes its Insurance and Pension Funds Annual Report 2024

The DGSFP's Insurance and Pension Funds Annual Report 2024 contains an analysis of the key data for the insurance and private pension sector, based on information provided mainly by the entities under its supervision.

In 2024, the volume of premiums declined slightly compared to the previous year, almost exclusively due to the fall in life insurance premiums. In contrast, non-life insurance grew by

crecido cerca de un 7% y aumentan su peso relativo hasta representar ya más del 60% del negocio total del sector asegurador.

Pese a esta moderación en el crecimiento, la rentabilidad mejora. Los márgenes técnicos y financieros aumentan tanto en vida como en no vida, la ratio combinada de los seguros generales se sitúa en un 90,93% y la rentabilidad sobre patrimonio neto (ROE) alcanza el 13,9%, un punto por encima de 2023. La solvencia continúa siendo uno de los principales puntos fuertes del sector, con ratios de solvencia por encima de los requerimientos regulatorios, y una cartera de inversiones fuertemente anclada en renta fija de alta calidad crediticia.

La previsión social complementaria consolida su papel como pilar relevante del ahorro privado: el patrimonio en fondos de pensiones crece un 7,4%, aumentan las aportaciones y se reduce el volumen de prestaciones, lo que se traduce en un saldo neto positivo y en un incremento del ahorro gestionado.

El informe también pone el foco en los retos supervisores y regulatorios. La DANA de octubre de 2024 ha supuesto una prueba de estrés real para el sistema de cobertura de riesgos extraordinarios, con un volumen de daños estimado, a julio de 2025, en torno a 4.800 millones de euros en la Comunidad Valenciana y más de 240.000 expedientes gestionados por el CCS, lo que ha impulsado mecanismos extraordinarios de colaboración entre el CCS y las entidades aseguradoras para agilizar peritaciones e indemnizaciones.

En paralelo, la DGSFP intensifica la supervisión de los órganos de gobierno de las entidades, con especial atención a la idoneidad y diversidad de los consejos de administración, y prepara al sector para dos grandes cambios regulatorios europeos: el Reglamento DORA, que refuerza la resiliencia operativa digital, y el Reglamento de Inteligencia Artificial, que considera de alto riesgo determinados usos de la inteligencia artificial en seguros de vida y salud, imponiendo requisitos de gobernanza, transparencia y control.

Otro foco de atención es el negocio de bancaseguros, en el que la DGSFP pone de relieve su enorme capacidad de generación de beneficios acompañada de una supervisión creciente en materia de conducta de mercado, especialmente en seguros de protección de pagos.

EIOPA publica su programa anual de trabajo 2026

EIOPA ha publicado su programa de trabajo anual para el año 2026, estructurado en seis áreas estratégicas: finanzas sostenibles, digitalización, supervisión y convergencia supervisora, política regulatoria, estabilidad financiera y gobernanza.

nearly 7% and increased its relative weight to now account for more than 60% of the insurance sector's total business.

Despite this slowdown in growth, profitability improved. Technical and financial margins increased in both life and non-life insurance; the combined ratio for general insurance stood at 90.93%, and the return on equity (ROE) reached 13.9%, one point above 2023. Solvency continues to be one of the sector's main strengths, with solvency ratios above regulatory requirements and an investment portfolio that is firmly anchored by high-quality fixed income.

Supplementary social welfare consolidates its role as an important pillar of private savings: pension fund assets have grown by 7.4%, contributions have increased, and the volume of benefits has decreased, resulting in a positive net balance and an increase in managed savings.

The report also focuses on supervisory and regulatory challenges. Storm DANA, which struck in October 2024, was a real stress test for the extraordinary risks insurance system, causing an estimated €4.8 billion in damage in the Valencian Community as of July 2025, with the CCS managing more than 240,000 claims. This has prompted extraordinary collaboration mechanisms between the CCS and insurance companies to speed up appraisals and compensation.

At the same time, the DGSFP is stepping up its supervision of the governing bodies of entities, with a particular focus on the suitability and diversity of boards of directors, and is preparing the sector for two major European regulatory changes: the DORA Regulation, which strengthens digital operational resilience, and the Artificial Intelligence Act, which considers certain uses of artificial intelligence in life and health insurance to be high risk, imposing governance, transparency and control requirements.

Another focus of attention is the bancassurance business, where the DGSFP highlights its enormous profit-generating capacity, accompanied by increasing supervision of market conduct, especially in payment protection insurance.

EIOPA publishes its annual work programme 2026

EIOPA has published its annual work programme for 2026, which is divided into six strategic areas: sustainable finance, digitalisation, supervision and supervisory convergence, regulatory policy, financial stability, and governance.

En finanzas sostenibles, prioriza la reducción de brechas de protección frente a catástrofes naturales, la supervisión coherente de riesgos y alegaciones de sostenibilidad (incluido el *greenwashing*), y el refuerzo de su papel en modelización de catástrofes y gestión de datos.

En digitalización, apoyará a los supervisores en el control del uso de la inteligencia artificial y otros retos tecnológicos, completará el trabajo regulatorio sobre acceso a datos financieros, reforzará la ciberresiliencia y potenciará la adopción de herramientas *SupTech*.

En supervisión y convergencia, se busca garantizar supervisión efectiva mediante herramientas adecuadas y oportunas, monitorizar modelos de negocio centrados en el cliente, mejorar el trabajo sobre modelos internos y avanzar en la convergencia y eficiencia del reporte de datos.

En política regulatoria, actualizará normas y directrices derivadas de la revisión de Solvencia II con foco en proporcionalidad, aplicará la fase inicial de la estrategia de inversión minorista y participará en la revisión de varias normativas que regulan los sistemas de pensiones complementarios.

En estabilidad financiera, reforzará su marco de análisis de riesgos sistémicos, avanzará en la implementación de la Directiva IRRD y contribuirá al desarrollo de una red europea de sistemas de garantía de seguros.

En gobernanza, mantendrá un modelo operativo eficiente, fortalecerá la ciberseguridad y mejorará la sostenibilidad interna y la reducción de emisiones.

El programa incluye objetivos operativos agrupados en cuatro ejes: integración de la sostenibilidad en todo el trabajo de EIOPA; apoyo a consumidores, mercado y supervisores en la transición digital; mejora de la calidad y efectividad de la su-

Within the area of sustainable finance, EIOPA prioritises reducing protection gaps against natural catastrophes, consistent supervision of sustainability risks and claims (including greenwashing), and strengthening its role in catastrophe modelling and data management.

In digitalisation, it will support supervisors in monitoring the use of artificial intelligence and other technological challenges; finalise policy work on access to financial data; strengthen cyber resilience, and boost the adoption of SupTech tools.

In supervision and convergence, the aim is to ensure effective supervision through adequate and timely supervisory tools; monitor the implementation of customer-centric business models; improve work on internal models, and advance the convergence and efficiency of data reporting.

In regulatory policy, EIOPA will update rules and guidelines arising from the Solvency II review with a focus on proportionality, implement the initial phase of the Retail Investment Strategy, and participate in the review of various regulations governing supplementary pension schemes.

In financial stability, EIOPA will strengthen its systemic risk assessment framework, advance the implementation of the IRRD, and contribute to the development of a European network of national insurance guarantee schemes.

In governance, EIOPA will maintain an efficient operating model, strengthen cyber security, improve the sustainability of operations, and reduce emissions.

The programme includes operational objectives which are grouped into four areas: integrating sustainability into all of EIOPA's work; supporting consumers, the market, and supervisors in the digital transition; enhancing the quality and

pervisión prudencial y de conducta; y desarrollo de políticas sólidas y coherentes a nivel de la Unión Europea. Cada objetivo cuenta con plazos, recursos asignados y su base legal, ofreciendo un marco claro y estructurado para las actividades de EIOPA en 2026, orientado a fortalecer el mercado interior y la protección del consumidor.

effectiveness of prudential and conduct of business supervision, and developing sound and consistent policies at European Union level. Each objective has deadlines, allocated resources, and a legal basis, providing a clear and structured framework for EIOPA's activities in 2026, which are aimed at strengthening the internal market and consumer protection.

Designación de proveedores críticos de servicios TIC por parte de las Autoridades Europeas de Supervisión en el marco del Reglamento DORA

En el contexto de la implementación del marco de supervisión establecido por el Reglamento DORA, las Autoridades Europeas de Supervisión han publicado la lista de proveedores críticos de servicios TIC de terceros ("**CTPPs**") designados bajo dicho marco normativo.

La designación se ha llevado a cabo siguiendo la metodología establecida por DORA mediante un proceso en tres fases: en primer lugar, las autoridades recopilaron datos de los registros de información mantenidos por las entidades financieras sobre sus acuerdos contractuales de servicios TIC; en segundo lugar, realizaron una evaluación detallada de criticidad en cooperación con las autoridades competentes de toda la Unión Europea de los sectores bancario, seguros y pensiones, y mercados de valores; y en tercer lugar, los proveedores evaluados como críticos fueron formalmente notificados y ejercieron su derecho de audiencia mediante la presentación de declaraciones motivadas, tras lo cual se adoptaron las decisiones finales de designación.

Los CTPPs designados prestan una amplia gama de servicios TIC a entidades financieras de todos los tipos y tamaños en toda la Unión Europea, lo que refleja su papel fundamental en el ecosistema financiero. Con ello, se busca promover una gestión sólida del riesgo TIC mediante la supervisión directa de las Autoridades Europeas de Supervisión, que evaluarán si los CTPPs cuentan con marcos adecuados de gestión de riesgos y gobernanza para garantizar la resiliencia de los servicios que prestan a las entidades financieras, mitigando así los riesgos que podrían afectar a la resiliencia operativa del sector financiero de la UE.

The European Supervisory Authorities designate critical ICT third-party providers under the DORA Regulation

In the context of the implementation of the supervisory framework established by the DORA Regulation, the European Supervisory Authorities have published the list of critical ICT third-party providers ("**CTPPs**") designated under the DORA Regulation.

The designation was carried out following the methodology established by DORA through a three-step process: first, the ESAs collected data from the registers of information maintained by financial entities, which detail their contractual arrangements for ICT services; second, the ESAs conducted a detailed criticality assessment in cooperation with EU-wide competent authorities from the banking, insurance and pensions, and securities and markets sectors; and third, the ICT third-party providers assessed as critical were formally notified and exercised their right to be heard by submitting reasoned statements, following which the final designation decisions were made.

The designated CTPPs provide a wide range of ICT services to financial institutions of all types and sizes across the European Union, reflecting their critical role in the financial ecosystem. The aim is to promote sound ICT risk management through direct supervision by the ESAs, which will assess whether the CTTPs have adequate risk management and governance frameworks in place to ensure the resilience of the services they provide to financial entities, thereby mitigating risks that could affect the operational resilience of the EU financial sector.

EIOPA proporciona su aportación técnica para apoyar el desarrollo de las pensiones complementarias

En el marco del desarrollo de las pensiones complementarias en la Unión Europea, EIOPA ha publicado su aportación técnica para apoyar la estrategia para una Unión de Ahorros e Inversiones de la Comisión Europea.

EIOPA identifica los principales obstáculos que dificultan el desarrollo de las pensiones complementarias en Europa, en-

EIOPA provides its technical input to support the development of supplementary pensions

As part of the development of supplementary pensions in the European Union, EIOPA has published its technical input to support the European Commission's strategy for a Savings and Investment Union.

EIOPA has identified the main obstacles hindering the development of supplementary pensions in Europe, includ-

tre los que destacan la fragmentación del mercado debido a las diferencias normativas entre Estados miembros, la complejidad regulatoria que desincentiva la participación transfronteriza, y la falta de armonización en aspectos fiscales y de protección del consumidor. Asimismo, señala la necesidad de mejorar la portabilidad de los derechos consolidados entre países y empleadores, así como de incrementar la transparencia y la información proporcionada a los partícipes.

La aportación técnica propone diversas medidas para impulsar el mercado de pensiones complementarias, incluyendo la simplificación del marco regulatorio, la promoción de soluciones digitales para facilitar el acceso y la gestión de las pensiones, el fomento de la educación financiera de los ciudadanos, y el establecimiento de estándares comunes en materia de información y divulgación. EIOPA también subraya la importancia de garantizar una supervisión eficaz y coherente en toda la Unión Europea.

Con ello, se busca fortalecer el sistema de pensiones europeo, complementando las pensiones públicas y contribuyendo a la seguridad financiera de los ciudadanos en su jubilación, al tiempo que se canalizan los ahorros hacia inversiones a largo plazo que apoyen el crecimiento económico y la Unión de los Mercados de Capitales.

Esta aportación técnica de EIOPA se enmarca en el contexto más amplio de las iniciativas de la Comisión Europea para desarrollar un mercado único de pensiones complementarias y promover el ahorro a largo plazo en la Unión Europea.

EIOPA lanza nuevas consultas sobre Solvencia II

EIOPA ha abierto una nueva serie de consultas sobre instrumentos legales derivados de la revisión de Solvencia II. Esta ronda de consultas incluye dos estándares técnicos de implementación ("**ITS**") revisados, dos directrices ("**GL**") revisadas, un conjunto de nuevos estándares técnicos regulatorios ("**RTS**") y un conjunto de directrices nuevas. Estas consultas abordan asuntos que van desde el cálculo del margen de riesgo hasta los poderes de supervisión para abordar deficiencias en la gestión de liquidez de las aseguradoras, con el objetivo de implementar mejoras específicas en la regulación y supervisión de (re)aseguradoras en la Unión Europea.

Todas las revisiones en esta serie de consultas se alinean con el enfoque de EIOPA hacia la simplificación regulatoria y la reducción de cargas administrativas. En particular, las propuestas de consulta sobre las directrices revisadas incluyen una reducción del número de directrices de al menos un 25%. Las seis consultas publicadas cubren: plantillas de divulgación para autoridades supervisoras, tratamiento del *matching adjustment*, valoración de provisiones técnicas, *ring-fenced*

ing market fragmentation due to regulatory differences between Member States, regulatory complexity that discourages cross-border participation, and a lack of harmonisation in areas such as tax and consumer protection. EIOPA also highlights the need to improve the portability of vested rights between countries and employers, as well as to increase transparency and the information provided to participants.

The technical input proposes various measures to boost the supplementary pension market, including simplifying the regulatory framework, promoting digital solutions to facilitate access to and the management of pensions, promoting financial education for citizens, and establishing common standards for information and disclosure. EIOPA also stresses the importance of ensuring effective and consistent supervision across the European Union.

This is intended to strengthen the European pension system, complementing public pensions and contributing to the financial security of citizens in retirement, while channelling savings into long-term investments that support economic growth and the Capital Markets Union.

This technical input from EIOPA takes place in the broader context of the European Commission's initiatives to develop a single market for supplementary pensions and to promote long-term savings in the European Union.

EIOPA launches new Solvency II consultations

EIOPA has launched a new set of consultations on legal instruments arising from the review of Solvency II. This round of consultations concerns two revised implementing technical standards ("**ITS**"), two revised guidelines ("**GL**"), one set of new regulatory technical standards ("**RTS**"), and one set of new guidelines. These consultations address issues ranging from the calculation of the risk margin to supervisory powers to address deficiencies in insurers' liquidity management, with the aim of implementing specific improvements in the regulation and supervision of (re)insurers in the European Union.

All revisions in this set of consultations align with EIOPA's approach to regulatory simplification and burden reduction. In particular, the consultation proposals on the revised guidelines include a reduction in the number of guidelines by at least 25%. The six consultations published cover the following areas: disclosure templates for supervisory authorities, the treatment of matching adjustment, the valuation of technical provisions, ring-fenced funds, the simpli-

funds, cálculo simplificado del margen de riesgo, y poderes de supervisión sobre vulnerabilidades de liquidez.

EIOPA invita a las partes interesadas a proporcionar sus comentarios sobre los documentos de consulta antes del 5 de enero de 2026. Todas las respuestas serán publicadas en la web de EIOPA salvo que se solicite lo contrario. La Comisión Europea dispondrá posteriormente de un plazo para adoptar estas normas.

fied calculation of the risk margin, and supervisory powers over liquidity vulnerabilities.

EIOPA invited stakeholders to provide their comments on the consultation documents by 5 January 2026. All responses will be published on the EIOPA website unless otherwise requested. The European Commission will then have a period in which to adopt these rules.

EIOPA lanza una consulta pública para el desarrollo de un paquete de herramientas sobre productos de pensiones de contribución definida

EIOPA ha publicado una convocatoria destinada a recabar información y conocimientos que servirán de base para el desarrollo de un paquete de herramientas sobre productos de pensiones de contribución definida.

Esta iniciativa se enmarca en los esfuerzos continuos de EIOPA por asesorar a los responsables políticos, interlocutores sociales, reguladores y supervisores en un contexto marcado por el crecimiento de las brechas de pensiones debido al envejecimiento de la población y la transición progresiva de sistemas de prestación definida hacia esquemas de contribución definida.

Los estados miembros de la UE se enfrentan al desafío de desarrollar sistemas de pensiones que garanticen a sus ciudadanos ingresos de jubilación adecuados y sostenibles. Los problemas que encuentran son diversos, dependiendo de la naturaleza de las brechas entre pensiones y del grado de madurez del sistema de pensiones complementarias existente en cada país. Algunos estados miembros buscarán introducir nuevos sistemas de pensiones de contribución definida, mientras que otros trabajarán en la mejora de los ya existentes.

Reconociendo que no existen soluciones universales, el paquete de herramientas sobre pensiones de contribución definida ofrecerá orientaciones prácticas y principios que los responsables políticos podrán adaptar para abordar sus necesidades nacionales específicas. Proporcionará consideraciones sobre cómo mantener la flexibilidad en los sistemas de pensiones contribución definida ante las condiciones cambiantes del mercado laboral, orientación sobre el diseño de las fases de acumulación y desacumulación, y principios para garantizar que los planes de pensiones de contribución definida ofrezcan una rentabilidad.

El plazo para participar en la consulta terminó el día 28 de noviembre de 2025.

EIOPA launches a public consultation for the development of a toolkit on defined contribution pension products

EIOPA has published a call for information and expertise to serve as a basis for the development of a toolkit on defined contribution pension products.

This initiative is part of EIOPA's continuing efforts to advise policy makers, social partners, regulators, and supervisors in the context of growing pension gaps due to ageing populations and the progressive transition from defined benefit to defined contribution schemes.

EU Member States face the challenge of developing pension systems that guarantee their citizens adequate and sustainable retirement incomes. The problems they encounter are diverse, and depend on the nature of the pension gaps and the degree of maturity of the existing supplementary pension system in each country. Some Member States will seek to introduce new defined contribution pension systems, while others will work on improving existing ones.

Recognising that there are no one-size-fits-all solutions, the toolkit on defined contribution pensions will offer practical guidance and principles that policymakers can adapt to address their specific national needs. The toolkit will provide guidance on how to maintain flexibility in defined contribution pension schemes in the face of changing labour market conditions, advice on the design of accumulation and decumulation phases, and principles to ensure that defined contribution pension schemes offer a return.

The deadline for participating in the consultation was 28 November 2025.

Principales novedades jurisprudenciales
Main Developments in Case Law

Aspectos generales

¿Desde cuándo contamos?

Se estima el recurso de casación de la demandante al confirmar que los intereses moratorios del artículo 20 de la LCS deben devengarse desde la fecha del siniestro y no desde el emplazamiento, al no haber acreditado la aseguradora que desconocía el siniestro con anterioridad a la reclamación

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1323/2025, de 29 de septiembre (Rec. 2754/2021). JUR\2025\300567

La sentencia de primera instancia estimó íntegramente la demanda de la paciente contra la compañía aseguradora del servicio de salud tras sufrir lesiones como consecuencia de una intervención quirúrgica por hernia discal condenando a la aseguradora al pago de 181.440,82€ más los intereses del artículo 20 de la LCS desde la fecha del siniestro.

La sentencia de segunda instancia estimó parcialmente el recurso de apelación de la aseguradora, confirmando sustancialmente la condena pero precisando que el *dies a quo* de los intereses sería la fecha de emplazamiento de la demanda, y no desde el siniestro.

El Tribunal Supremo reitera su jurisprudencia según la cual, cuando quien reclama es el tercero perjudicado mediante el ejercicio de la acción directa del artículo 76 de la LCS, la regla general del artículo 20.6 de la LCS establece que el día inicial del devengo de los intereses es la fecha del siniestro. Excepcionalmente el asegurador debe probar que no tuvo conocimiento del siniestro con anterioridad a la reclamación o al ejercicio de la acción directa por el perjudicado. Es decir, la no comunicación del siniestro reclamado requiere su demostración por la parte que así lo sostenga, correspondiendo a la compañía demandada la carga de la prueba de justificar que desconocía la realidad del siniestro antes de la primera reclamación dirigida contra ella.

General Issues

When do we start counting from?

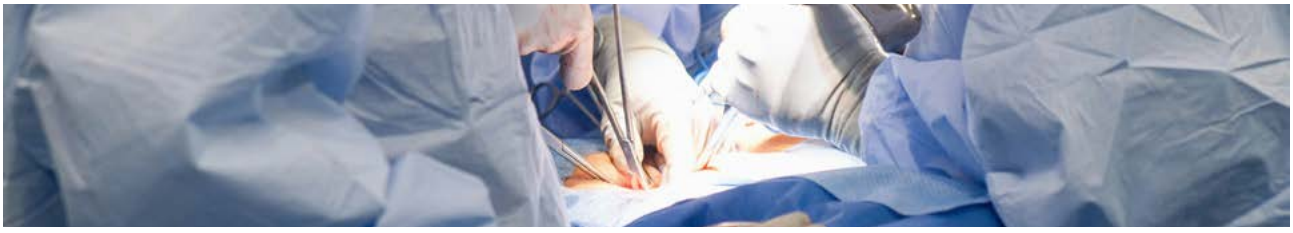
An appeal by a plaintiff was upheld, as it was held that late interest under Article 20 of the LCS should accrue from the date of the incident giving rise to the claim and not from the date of the service of the claim, as the insurer had not proven that it was unaware of the incident prior to the claim

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1323/2025, of 29 September (Rec. 2754/2021). JUR\2025\300567

The first instance judgment upheld in its entirety the patient's claim against the health service insurance company after she suffered injuries as a result of surgery for a herniated disc. The Court ordered the insurer to pay €181,440.82 plus interest under Article 20 of the LCS from the date of the event giving rise to the claim.

The second instance judgment partially upheld the insurer's appeal, substantially confirming the finding of liability but specifying that the start date for the payment of interest would be the date of service of the claim, and not from the date of the incident that gave rise to the claim.

The Supreme Court reaffirmed its case law according to which, when the claimant is a third party who has suffered damage through the exercise of a direct action under Article 76 of the LCS, the general rule of Article 20.6 of the LCS establishes that the start date for the accrual of interest is the date of the incident. In exceptional cases, an insurer must prove that it had no knowledge of the incident prior to the claim or the exercise of a direct action by the injured party. In other words, the failure to report an incident must be proven by the party asserting such failure, and the burden of proof lies with the defendant company to demonstrate that it was unaware of the incident prior to the first claim made against it.



¿Desde cuándo contamos (II)?

Se estima el recurso de casación y se condena a la aseguradora a pagar intereses del artículo 20 LCS desde la fecha del siniestro, no desde la sentencia de primera instancia

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1329/2025, de 29 de septiembre (Rec. 6111/2020).

La sentencia de primera instancia estimó íntegramente la demanda de acción directa contra la compañía aseguradora de una Administración condenándola a abonar 925.402,87€ más intereses del artículo 20 de la LCS desde el siniestro. La Audiencia Provincial estimó parcialmente el recurso de la aseguradora, confirmando el principal, pero fijando el devengo de intereses desde la sentencia de primera instancia en lugar de desde el siniestro.

Sin embargo, el Tribunal Supremo reitera su doctrina y apunta que, según el artículo 20.6 LCS, el término inicial del cómputo de los intereses es la fecha del siniestro como regla general, salvo que el asegurador pruebe que no tuvo conocimiento del siniestro con anterioridad a la reclamación o ejercicio de la acción directa. En ese sentido, el Tribunal Supremo considera que la compañía aseguradora era plenamente consciente del siniestro y manifiesta que la ésta no puede ampararse en que no está obligada a indemnizar si el perjudicado no acude a la vía administrativa, pues el perjudicado no está obligado a ello y goza del derecho de dirigir la acción de resarcimiento en vía civil únicamente contra la aseguradora de la Administración conforme al artículo 76 de la LCS.

When do we start counting from (II)?

An appeal was upheld, and the insurer was ordered to pay interest under Article 20 of the LCS from the date of the incident, not from the date of the first instance judgment

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1329/2025, of 29 September (Rec. 6111/2020)

The first instance judgment upheld in full the direct action brought against the insurance company of a public administration, ordering it to pay €925,402.87 plus interest under Article 20 of the LCS from the date of the event giving rise to the claim. The Court of Appeal partially upheld the insurer's appeal, confirming the main claim but setting the accrual of interest from the date of the first instance judgment rather than from the date of the incident.

However, the Supreme Court affirmed its doctrine and noted that, under Article 20.6 of the LCS, as a general rule, interest begins to accrue from the date of the incident, unless the insurer can prove that it was not aware of the incident prior to the claim or the direct action. In this regard, the Supreme Court held that the insurance company was fully aware of the incident and stated that it could not claim that it was not obliged to pay compensation if the injured party did not pursue administrative proceedings, as the injured party was not obliged to do so and had the right to bring a civil action for compensation solely against the administration's insurer under Article 76 of the LCS.

Una tragedia sin cobertura

El seguro de D&O no cubre los daños personales si la póliza los excluye expresamente, aunque sea un error de gestión

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1349/2025, de 30 de septiembre (Rec. 6903/2022) JUR\2025\300555

Los hechos se remontan al 30 de junio de 2015 cuando una niña de cuatro años, inscrita en un campamento de verano cuyo impreso señalaba expresamente que "no sabe nadar" y "tiene miedo al agua", sufrió un ahogamiento en la piscina del colegio al no disponer de elementos de flotación adecuados ni de medidas de seguridad suficientes, lo que le provocó gravísimas secuelas neurológicas. Tras la absolución en vía penal, se promovió demanda civil reclamando 2.646.245,03€ tras descontar las indemnizaciones ya abonadas por otras aseguradoras.

A tragedy without coverage

D&O insurance does not cover personal injury if the policy expressly excludes it, even if it concerns a management error

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1349/2025, of 30 September (Rec. 6903/2022) JUR\2025\300555

The events date back to 30 June 2015, when a four-year-old girl, who was enrolled in a summer camp using a form that expressly stated that she "cannot swim" and "is afraid of water", came close to drowning in the school swimming pool due to the lack of adequate flotation devices and sufficient safety measures, which caused her to suffer very serious neurological damage. Following an acquittal in criminal proceedings, a civil claim for €2,646,245.03 was filed, after deducting the compensation already paid by other insurers.

El Tribunal Supremo parte de la base de que se trata de un seguro de RC de administrador regulado por el artículo 73 de la LCS, que obliga al asegurador a cubrir el riesgo del nacimiento de la obligación de indemnizar a un tercero los daños causados por un hecho previsto en el contrato, dentro de los límites establecidos en la ley y en el contrato.

La póliza establecía cobertura para los perjuicios derivados de una reclamación por error de gestión en condición de administrador o directivo, incluyendo reclamaciones presentadas por cualquier otro tercero. No obstante, bajo el epígrafe "Exclusiones: lo que NO cubrimos", destacado en negrilla, cursiva y letra más grande, se excluía expresamente cualquier reclamación por daños personales, enfermedad, fallecimiento, daño moral o trastorno emocional, salvo para reclamaciones por prácticas de empleo indebidas.

El Tribunal rechaza la alegación de contradicción en la póliza y la aplicación del principio *in dubio pro* asegurado, al considerar que la interpretación de la exclusión es clara desde el punto de vista literal y sistemático, siendo perfectamente legítimo determinar el riesgo tanto de manera positiva (lo que constituye su objeto) como negativa (lo que se excluye), siempre que se respeten las garantías del artículo 3 de la LCS. Aunque la cláusula pudiera considerarse limitativa, se cumplen los requisitos del artículo 3 de la LCS al encontrarse destacada en cursiva, negrilla, letra de mayor tamaño y amparada con la firma de la tomadora en todas las páginas de las condiciones especiales.

▸ No le basta las mayúsculas

Se estima el recurso de casación interpuesto por la demandante al considerar que la cláusula "claims made" de delimitación temporal de la cobertura no cumplía el requisito legal de destacarse de manera especial

Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1381/2025, de 6 de octubre (Rec. 719/2021). ECLI:ES:TS:2025:42894

La sentencia de primera instancia estimó la demanda y condenó a la aseguradora demandada a abonar el importe correspondiente, entendiendo que la cláusula "*claims made*" no cumplía con el requisito del artículo 3 de la LCS. La Audiencia Provincial estimó el recurso de apelación de la aseguradora y revocó la sentencia de primera instancia, considerando que la cláusula limitativa sí cumplía con las exigencias legales, ya que constaba en "mayúscula y resaltado", y había sido firmada por la tomadora.

El Tribunal Supremo considera que la valoración de la Audiencia Provincial es incorrecta y no se ajusta a la doctrina

The Supreme Court based its decision on the fact that this was a Directors and Officers (D&O) liability insurance policy governed by Article 73 of the LCS, which obliges the insurer to cover the risk of the obligation to compensate a third party for damage caused by an event provided for in the contract, within the limits established by law and in the contract.

The policy provided coverage for damage resulting from a claim for mismanagement as a manager or director, including claims filed by any other third party. However, under the heading "Exclusions: what we do NOT cover", highlighted in bold, italics and using a larger font, any claim for personal injury, illness, death, moral damage or emotional distress was expressly excluded, except for claims for improper employment practices.

The Court rejected the claim that the policy was contradictory and applied the principle of *in dubio pro* insured, holding that the interpretation of the exclusion was clear from a literal and systematic point of view, and that it was perfectly legitimate to assess risk both positively (i.e. what is covered) and negatively (i.e. what is excluded), provided that the guarantees of Article 3 of the LCS were respected. Although the clause could be considered restrictive, the requirements of Article 3 of the LCS were met as the clause was highlighted in italics, in bold, using a larger font, and was endorsed by the policyholder's signature on all pages of the special conditions.

▸ Capital letters are not enough

An appeal filed by a plaintiff was upheld on the grounds that a "claims made" clause, which limited the duration of an insurance policy's coverage, did not comply with the legal requirement that it be specifically highlighted

Judgment of the Supreme Court (Civil Chamber) No. 1381/2025, of 6 October (Rec. 719/2021). ECLI:EN:TS:2025:42894

The court of first instance upheld the claim and ordered the defendant insurer to pay the corresponding amount on the grounds that the "claims made" clause did not comply with the requirement of Article 3 of the LCS. The Court of Appeal upheld the insurer's appeal and overturned the first instance judgment on the grounds that the limitation clause did in fact comply with the legal requirements as it was written in "capital letters and highlighted" and had been signed by the policyholder.

The Supreme Court held that the Court of Appeal's assessment was incorrect and did not follow the Court's case law,

de la Sala, ya que la cláusula limitativa de delimitación temporal de la cobertura ("*claims made*") no cumple la exigencia legal de destacarse de manera especial (artículo 3 de la LCS). Establece que la clave está en que las cláusulas limitativas de derechos figuren "destacadas de modo especial". El asegurado debe comprender su significado y alcance, pudiéndolas diferenciar del resto de cláusulas que no tienen dicho alcance y no pudiendo pasar desapercibida por el tomador. En este caso, aunque su título constase en letras mayúsculas, esta circunstancia era común a todas las demás cláusulas contenidas en las condiciones particulares, por lo que no se considera suficiente para diferenciarla del resto.

since the limitation clause on the time limit for coverage ("claims made") did not meet the legal requirement that it be specifically highlighted (Article 3 of the LCS). The Court stated that clauses limiting rights must be "specially highlighted". Insured parties must understand the meaning and scope of such clauses and be able to differentiate them from other clauses that do not have the same scope, and they must not go unnoticed by the policyholder. In this case, although the title was in capital letters, all the other clauses contained in the specific conditions were also capitalised, and therefore, this was not considered sufficient to differentiate the clause from the rest.

▸ *Cave canem*

El Tribunal Supremo estima el recurso de casación interpuesto por la madre de un menor lesionado tras la mordedura de un perro, confirmando que la aseguradora debe abonar los intereses moratorios del artículo 20 de la LCS

Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1396/2025, de 8 de octubre (Rec. 5166/2020) (JUR\2025\311188)

En primera instancia, el Juzgado condenó a la propietaria del animal a indemnizar con 23.953€ a la madre del menor afectado, pero absolvió a la aseguradora.

En apelación, la Audiencia Provincial modificó parcialmente el fallo y condenó también a la aseguradora al pago solidario de la indemnización, aunque sin aplicar los intereses del artículo 20 de la LCS, limitándose al interés legal.

El Tribunal Supremo corrige este criterio: declara que, una vez condenada la aseguradora, los intereses del artículo 20 de la LCS —que castigan la mora en el pago del seguro— deben imponerse de oficio, sin que ello suponga "*reformatio in peius*", puesto que la aseguradora fue absuelta en primera instancia y condenada en apelación.

En consecuencia, se estima el recurso de casación, se mantiene la condena principal y se añade que la entidad aseguradora deberá abonar los intereses moratorios del artículo 20 de la de la LCS, confirmando el resto de los pronunciamientos de la sentencia recurrida.

▸ Beware of the dog

The Supreme Court upheld an appeal filed by the mother of a minor who was injured after being bitten by a dog and ordered the insurer to pay default interest under Article 20 of the LCS

Judgment of the Supreme Court (Civil Chamber) No. 1396/2025, of 8 October (Rec. 5166/2020) (JUR\2025\311188)

At first instance, the Court ordered the owner of the animal to pay €23,953 in compensation to the mother of the injured child, but found no fault on the part of the insurer.

On appeal, the Court of Appeal partially amended the judgment, and also ordered the insurer to pay the compensation jointly and severally, although without applying the interest provided for under Article 20 of the LCS, thus limiting it to legal interest.

The Supreme Court corrected this approach and declared that once the insurer had been ordered to pay, the interest under Article 20 of the LCS — which penalises the late payment of insurance — must be imposed ex officio, and that this does not constitute a *reformatio in peius*, since the insurer was exonerated at first instance and found liable on appeal.

Consequently, the appeal was upheld, the principal finding of liability was maintained, and the insurer was ordered to pay the default interest under Article 20 of the LCS, thereby confirming the remaining findings of the appealed judgment.

Para no pagar, hay que comunicar

El Tribunal Supremo confirma que una aseguradora no puede liberarse de indemnizar si comunica la resolución del contrato por impago de prima después de que ya se haya producido el siniestro

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección Primera) núm. 1502/2025, de 27 de octubre (ECLI:ES:TS:2025:4681)

El Tribunal Supremo aborda los requisitos que debe cumplir una aseguradora para quedar liberada de su obligación de indemnizar cuando existe impago de la primera prima en seguros obligatorios de responsabilidad civil de automóviles.

En el caso que nos ocupa, el tomador no abonó la prima del seguro obligatorio de automóvil y, tras el impago, tuvo un accidente sin que la aseguradora le notificará la resolución del contrato de seguro. Así pues, el Alto Tribunal ha confirmado que la comunicación de la resolución del contrato al tomador del seguro tiene que haberse efectuado antes de la producción del siniestro, ya que mientras no se realiza esta comunicación, el contrato de seguro sigue subsistente cuando tiene lugar el accidente, con el consiguiente deber de indemnizar por parte de la aseguradora, por ello y para que la aseguradora pueda eximirse de indemnizar a un perjudicado en caso de impago de la prima única, ha de haber comunicado previa y fehacientemente al tomador del seguro la resolución del contrato.

To avoid paying, you must communicate

The Supreme Court confirms that an insurance company cannot be released from its obligation to pay compensation if it communicates the termination of a contract due to the non-payment of premiums after an insured event has already occurred

Judgment of the Supreme Court (Civil Division, First Section) No. 1502/2025, of 27 October (ECLI: ES: ECLI : 2025/4681)

The Supreme Court has addressed the requirements that an insurance company must meet in order to be released from its obligation to pay compensation when the first premium due for compulsory motor vehicle liability insurance has not been paid.

In the case in question, the policyholder did not pay the compulsory motor insurance premium. Following the non-payment, the policyholder had an accident without the insurance company notifying him of the termination of the insurance contract. Consequently, the Supreme Court held that a policyholder must be notified of the termination of a contract before an accident occurs, since until such notification is provided, an insurance contract remains in force when an accident occurs, with the resulting obligation on the part of the insurer to pay compensation. Therefore, in order for the insurer to be released from its obligation to compensate an injured party in the event of non-payment of the single premium, it must have previously and reliably notified the policyholder of the termination of the contract.

A tomar viento los sublímites

Se desestiman los recursos interpuestos por las aseguradoras y demandados confirmando la sentencia que los condenó solidariamente a indemnizar a los herederos de la paciente fallecida por los perjuicios derivados de negligencia médica

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1581/2025, de 5 de noviembre (Rec. 5019/2020)

La sentencia de primera instancia desestimó íntegramente la demanda y absolvió a todos los demandados. Sin embargo, la Audiencia Provincial revocó dicha sentencia condenando solidariamente a los demandados a pagar a la parte actora la suma de 991.712,27€ con intereses del artículo 20 de la LCS desde la fecha del siniestro.

El Tribunal Supremo confirma íntegramente la resolución de la Audiencia Provincial al considerar acreditada la existencia de una relación causal clara y directa entre la negligencia

Forget about the sub-limits

The appeals filed by the insurers and defendants in a medical negligence case were dismissed, thereby upholding a judgment that ordered them to jointly compensate the next of kin of a deceased patient for damage resulting from medical negligence

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1581/2025, of 5 November (Rec. 5019/2020)

The first instance judgment dismissed the claim in its entirety and found that the defendants were not liable. However, the Court of Appeal overturned that judgment and ordered the defendants to jointly and severally pay the plaintiff the sum of €991,712.27 with interest under Article 20 of the LCS from the date of the accident.

The Supreme Court fully upheld the judgment of the Court of Appeal as it considered that there was a clear and direct causal link between the negligence of the defendant doctors

de los facultativos demandados y el daño sufrido por la paciente: falta de ligadura, hemostasia o cauterio de un vaso sanguíneo antes de cerrar el campo operatorio, que provocó un sangrado continuado, sumado a la falta de vigilancia posterior en la UCI, que desembocó en un hematoma del tamaño de un "balón de balonmano" que no fue debidamente advertido a tiempo, produciendo anoxia cerebral y tetraparesia con hipertonía.

El Tribunal Supremo rechaza los argumentos de los apelantes sobre la aplicación de la doctrina del daño desproporcionado, al entender que no hacía falta acudir a dicha doctrina cuando existe una relación causal clara y directa entre la negligencia y el daño, y que no puede existir daño desproporcionado cuando hay una causa que explica el resultado o cuando se trata de un riesgo típico previamente advertido.

Se rechaza también el argumento sobre el límite indemnizatorio por víctima, al considerar que el sublímite por víctima constituye una limitación o restricción de la indemnización que debe reunir los requisitos de validez del artículo 3 de la LCS, que no constan cumplidos, resultando inoponible a los perjudicados.

Finalmente, se confirma la imposición de los intereses del artículo 20 de la LCS, recordando que ostentan un carácter marcadamente sancionador y que la mera judicialización de la reclamación no es causa justificativa para su exoneración, no apreciándose ningún motivo razonable para la oposición de las compañías aseguradoras ante la patente posibilidad de tener que responder por los daños producidos.

and the damage suffered by the patient, namely, the failure to ligate, clamp or cauterise a blood vessel before closing the surgical site, which caused continuous bleeding, coupled with a lack of subsequent monitoring in the ICU, which led to a haematoma the size of a "handball" that was not properly detected in time, causing cerebral anoxia and tetraparesis with hypertonia.

The Supreme Court rejected the appellants' arguments regarding the application of the doctrine of disproportionate damage on the grounds that it was not necessary to apply this doctrine when there was a clear and direct causal link between the negligence and the damage, and that there could be no disproportionate damage when there was a reason that explained the outcome or when it was a typical risk that had been the subject of a previous warning.

The argument regarding the compensation limit per victim was also rejected on the grounds that the sub-limit per victim constituted a limitation or restriction on compensation that had to meet the validity requirements of Article 3 of the LCS, which had not been met, and was therefore unenforceable against the injured parties.

Finally, the imposition of interest under Article 20 of the LCS was upheld. The Court noted that such interest is clearly punitive in nature and that the mere fact that the claim was brought before the courts was not a valid reason not to impose it, as there were no reasonable grounds for the insurance companies to oppose it, given the clear possibility that they would have to compensate the injured parties for the damage caused.

Seguros de daños

▸ La avaricia rompió el saco

Se desestima el recurso de casación del asegurado al confirmar que la indemnización debe corresponder al valor real del inmueble en el momento del siniestro y no a la suma asegurada total

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1216/2025, de 8 de septiembre (Rec. 4053/2020 JUR\2025\282255

La sentencia de primera instancia estimó sustancialmente la demanda del asegurado contra su compañía de seguros tras el incendio fortuito que destruyó totalmente su vivienda, condenando a la aseguradora al pago de 347.186,2€. La aseguradora recurrió alegando que el derrumbe no se debió al incendio y que el asegurado ya había sido debidamente indemnizado con 35.063,74€.

Damage insurance

▸ Greed is a bottomless pit

An insured party's appeal was dismissed, as it was confirmed that compensation must reflect the actual value of the property at the time of the incident and not the total sum insured

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1216/2025, of 8 September (Rec. 4053/2020 JUR\2025\282255)

The first instance ruling substantially upheld the insured party's claim against their insurance company following an accidental fire that completely destroyed their home, and ordered the insurer to pay €347,186.20. The insurer appealed, arguing that the building's destruction was not due to the fire and that the insured party had already been duly compensated with €35,063.74.

La sentencia de segunda instancia estimó en parte el recurso de apelación de la aseguradora, estableciendo que la indemnización debía ascender al valor de la edificación en el momento inmediatamente anterior al siniestro, a determinar en ejecución de sentencia mediante tasación pericial, deduciendo la cantidad entregada a cuenta, más los intereses del artículo 20 de la desde la sentencia de primera instancia.

El Tribunal Supremo confirma que la suma asegurada representa el límite máximo de la indemnización a pagar por el asegurador en cada siniestro, pero sin que tal suma pueda tenerse en cuenta para fijar la indemnización, debiendo atenderse al importe del daño efectivamente causado, tratándose de cláusulas delimitadoras del riesgo y no limitativas de derechos. La indemnización debe coincidir con el valor de reposición de lo dañado equivalente al coste de reconstrucción en un estado similar al que tenía en el momento del incendio, atendiendo al valor del interés asegurado en el momento inmediatamente anterior a la realización del siniestro conforme al artículo 26 de la LCS, sin que proceda una indemnización a tanto alzado que suponga un enriquecimiento injusto para el asegurado.

The second instance ruling partially upheld the insurer's appeal, establishing that the compensation should correspond to the value of the building immediately prior to the incident, to be determined through expert appraisal as part of the enforcement of the judgment, and deducting the amount paid on account, plus interest under Article 20 from the first instance ruling.

The Supreme Court confirmed that the sum insured represents the maximum limit of the compensation to be paid by the insurer in each claim, but that this sum cannot be taken into account when setting the compensation, which must be based on the amount of damage actually caused, as these are clauses that define the risk and do not limit rights. The compensation must correspond to the replacement value of the damage, which is equivalent to the cost of reconstruction in a condition similar to that at the time of the fire, taking into account the value of the insured interest immediately prior to the occurrence of the claim, under Article 26 of the LCS, without any lump-sum compensation that would constitute unjust enrichment for the insured.

▸ Pagamos a pachas

La distribuidora eléctrica debe indemnizar porque no pudo demostrar que su suministro funcionaba perfectamente, pero comparte responsabilidad con el usuario negligente

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1.221/2025, de 10 de septiembre (Rec. 3551/2020)

La compañía distribuidora de electricidad fue condenada a indemnizar a una propietaria debido a que se produjo una explosión y posterior incendio en una vivienda cuando dicha propietaria accionó el interruptor de la luz. Los peritos determinaron que el incendio se originó por un cortocircuito en un enchufe de la pared, que provocó un sobrecalentamiento.

La propietaria tenía conectada una regleta con varios aparatos enchufados, lo que pudo contribuir al problema. Sin embargo, la compañía eléctrica no pudo demostrar de forma concluyente que el suministro eléctrico funcionaba correctamente, por lo que no se descartó que hubiera habido una sobretensión o irregularidad en la red eléctrica.

La Audiencia Provincial concluyó que tanto la posible sobrecarga de la regleta como los problemas en el suministro eléctrico pudieron contribuir al incendio. Por ello, la indemnización se redujo a la mitad (50%), repartiendo la responsabilidad entre ambas partes.

▸ We split the cost

An electricity distributor had to pay compensation because it could not demonstrate that its supply was working perfectly, but it was found jointly liable with the negligent user

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1221/2025, of 10 September (Rec. 3551/2020)

An electricity distribution company was ordered to compensate a homeowner due to an explosion and subsequent fire in a home when the homeowner turned on the light switch. Experts determined that the fire was caused by a short circuit in a wall socket, which caused overheating.

The homeowner had a power strip with several appliances plugged into it, which may have contributed to the problem. However, the electricity company was unable to conclusively prove that the electricity supply was working properly, so the possibility of a power surge or irregularity in the electricity grid could not be ruled out.

The Court of Appeal concluded that both the possible overload of the power strip and the problems with the electricity supply could have contributed to the fire. Therefore, the compensation was reduced by half (50%), and liability was shared between both parties.

El Tribunal Supremo desestimó el recurso de casación de la distribuidora eléctrica, que pretendía negar hechos que la sentencia daba por acreditados, como la existencia del cortocircuito en el enchufe mural y la imposibilidad de excluir una sobretensión en la red, intentando reconstruir la causalidad en términos distintos a los declarados probados. En ese sentido, el Tribunal Supremo consideró que la distribuidora trataba de realizar una impugnación encubierta de la valoración de la prueba, lo cual no representa interés casacional.

The Supreme Court dismissed the appeal by the electricity distributor, which sought to dispute facts that the judgment had found to be proven, such as the existence of a short circuit in the wall socket and the impossibility of ruling out a power surge in the grid, and attempted to re-establish the cause in terms other than those declared to be proven. In this regard, the Supreme Court held that the distributor was attempting to covertly challenge the assessment of the evidence, which did not constitute grounds for appeal.

▸ Si no recurriste allí, no reclames aquí

Se estima el recurso de casación interpuesto por la aseguradora al considerar que no procede ejercitar la acción directa en vía civil cuando la responsabilidad de la Administración asegurada ha sido previamente desestimada por resolución administrativa firme

Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1281/2025, de 22 de septiembre (Rec. 2188/2021). ECLI:ES:TS: 2025:4028

La reclamación interpuesta por los demandantes fue desestimada en vía administrativa, ganando firmeza al no interponerse contra ella recurso contencioso-administrativo. Posteriormente, los demandantes formularon demanda contra la aseguradora en ejercicio de la acción directa del artículo 76 de la LCS. La sentencia de primera instancia estimó en parte la demanda y condenó a la aseguradora.

La sentencia de segunda instancia desestimó el recurso de apelación de la aseguradora y confirmó íntegramente la sentencia apelada, razonando que el previo procedimiento administrativo no tiene efectos vinculantes para el juez civil que conoce de la acción directa contra la aseguradora de la Administración.

▸ If you didn't appeal there, don't file a claim here

An appeal filed by an insurance company was upheld on the grounds that a direct civil action cannot be brought when the insured administration's liability has already been rejected by a final administrative decision

Judgment of the Supreme Court (Civil Chamber) No. 1281/2025, of 22 September (Rec. 2188/2021). ECLI:EN:TS: 2025:4028

The claim filed by the plaintiffs was dismissed in the administrative proceedings and became final when no contentious-administrative appeal was filed against it. Subsequently, the plaintiffs filed an action against the insurer under the direct action provided for in Article 76 of the LCS. The first instance judgment partially upheld the claim and ruled against the insurer.

The second instance judgment dismissed the insurer's appeal and upheld the appealed judgment in its entirety, on the grounds that the previous administrative proceedings had no binding effect on the civil court hearing the direct action against the government insurer.

El Tribunal Supremo estima el recurso de casación y casa la sentencia recurrida, aplicando la doctrina jurisprudencial según la cual los demandantes acudieron voluntariamente a la vía administrativa para reclamar responsabilidad patrimonial, dicha reclamación fue desestimada mediante resolución que ganó firmeza, y en lugar de recurrirla ante la jurisdicción contencioso-administrativa, decidieron promover acción directa contra la aseguradora ante la jurisdicción civil, lo que no era posible en tanto en cuanto ello supondría un trasvase de jurisdicción con atribución a los tribunales civiles la revisión de un acto administrativo. No cabe condenar a la aseguradora a resarcir una responsabilidad patrimonial que se declaró inexistente por resolución administrativa que alcanzó firmeza.

The Supreme Court upheld the appeal and overturned the appealed judgment, applying the case law according to which the plaintiffs voluntarily resorted to administrative proceedings to bring a claim for financial liability. This claim was dismissed by a final decision, and instead of appealing it before the contentious-administrative jurisdiction, the plaintiffs decided to bring a direct civil action against the insurer, which was not possible as it would have involved a transfer of jurisdiction to the civil courts to review an administrative act. The insurer could not be ordered to pay compensation for a financial liability that had been declared non-existent by a final administrative decision.

▸ *Tempus fugit*

Se desestima el recurso de casación y se confirma la prescripción de la acción de responsabilidad civil extracontractual, al haberse iniciado el cómputo del plazo cuando los demandantes tuvieron conocimiento fundado de la causa del daño en 2007

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1397/2025, de 8 de octubre (Rec. 107/2021)

Se desestima el recurso de casación y se confirma la prescripción de la acción de responsabilidad civil extracontractual, al haberse iniciado el cómputo del plazo cuando los demandantes tuvieron conocimiento fundado de la causa del daño en 2007, sin que la inactividad posterior hasta 2015 pueda justificarse.

La sentencia de primera instancia estimó la demanda interpuesta por los padres de un menor que sufrió parálisis cerebral como consecuencia de una mala praxis durante el parto, condenando a la aseguradora de la clínica al pago de 802.202,41€ al menor y 143.363,91€ a los padres. El juzgado consideró que la acción no estaba prescrita porque no fue hasta el 23 de junio de 2015 cuando las partes tuvieron conocimiento fehaciente de que la parálisis cerebral del menor tuvo su origen en una mala praxis de los facultativos que atendieron a la madre durante el parto.

La sentencia de segunda instancia estimó el recurso de apelación de la aseguradora demandada, revocando íntegramente la sentencia de primera instancia y desestimando la demanda. La Audiencia Provincial consideró que la acción estaba prescrita porque desde el 16 de enero de 2007 los demandantes tenían conocimiento de que las lesiones padecidas por el menor fueron consecuencia de la mala praxis de los facultativos que asistieron a la madre durante el parto.

▸ Time flies

An appeal was dismissed, and the limitation period for non-contractual civil liability was upheld, as the limitation period began when the plaintiffs became aware of the cause of the damage in 2007

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1397/2025, of 8 October (Rec. 107/2021)

An appeal was dismissed, and the limitation period for non-contractual civil liability was upheld, as the limitation period began when the plaintiffs became aware of the cause of the damage in 2007, and their subsequent inactivity until 2015 could not be justified.

The first instance judgment upheld the claim brought by the parents of a minor who suffered cerebral palsy as a result of medical negligence during childbirth and ordered the clinic's insurer to pay €802,202.41 to the minor and €143,363.91 to the parents. The Court held that the action was not time-barred as the parties did not have reliable knowledge that the minor's cerebral palsy was caused by negligence on the part of the doctors who treated the mother during childbirth until 23 June 2015.

The second instance judgment upheld the appeal filed by the defendant insurer, thereby completely overturning the first instance judgment and dismissing the claim. The Court of Appeal held that the action was time-barred because, since 16 January 2007, the plaintiffs had been aware that the injuries suffered by the child were the result of negligence on the part of the doctors who treated the mother during childbirth.

El Tribunal Supremo confirma que, conforme a la interpretación actual de los artículos 1968.2 y 1969 del Código Civil, para que pueda comenzar a computarse el plazo de prescripción, el perjudicado tiene que conocer, o debería haber conocido con una diligencia mínima exigible, los hechos que fundamentan su pretensión y la identidad de la persona contra quien puede reclamar. En este caso, como mínimo en 2007, ya había un conocimiento más que razonable de que la causa del padecimiento podía situarse en una cuestionable atención médica durante el parto y la acción era ejercitable, sin que exista justificación jurídica de la inactividad entre esa fecha y la solicitud de una nueva revisión en 2015.

The Supreme Court ruled that, under the current interpretation of Articles 1968.2 and 1969 of the Civil Code, for the limitation period to begin to run, the injured party must know, or should have known with a minimum of diligence, the facts on which their claim is based and the identity of the person against whom they can bring a claim. In this case, as early as 2007, there was already more than reasonable knowledge that the cause of the condition could be attributed to questionable medical care during childbirth and that legal action could be taken, with no legal justification for the inactivity between that date and the request for a new review in 2015.

▸ Germán Coppini

El TS confirma que procede indemnizar el "valor de afección" (30%) además del valor venal en casos de pérdida total de motocicleta

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1435/2025, de 14 de octubre (Rec. 5995/2020)

La sentencia de primera instancia estimó parcialmente la demanda y fijó la indemnización por pérdida total de la motocicleta en 4.550€ (3.500€ de valor venal + 1.050€ de valor de afección del 30%), condenando además al pago de intereses del artículo 20 de la LCS desde la fecha del siniestro.

La Audiencia Provincial de Valladolid estimó parcialmente el recurso de la aseguradora y eliminó el valor de afección, argumentando que este concepto solo se aplica cuando se procede a la reparación del vehículo siniestrado, no en casos de pérdida total.

El Tribunal Supremo casa la sentencia de apelación y confirma la de primera instancia. Aplica la doctrina de la STS 420/2020 y STS 1622/2024, estableciendo que el valor de afección procede también en casos de "siniestro total", ya que la compra de una motocicleta en el mercado de segunda mano supone gastos administrativos y de transacción añadidos, dificultades para encontrar un vehículo similar, e incertidumbre sobre su funcionamiento y sobre si proporcionará el mismo valor de uso que la siniestrada. Asimismo, confirma que los intereses moratorios del artículo 20 de la LCS se devengan desde la fecha del siniestro, tanto para daños personales como materiales, pues la mera discrepancia sobre la cuantía no constituye causa justificada para el retraso.

▸ Germán Coppini

The Supreme Court confirms that compensation for "sentimental value" (30%) is applicable in addition to the market value in the case of the total loss of a motorcycle

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1435/2025, of 14 October (Rec. 5995/2020)

The first instance judgment partially upheld the claim and set the compensation for the total loss of the motorcycle at €4,550 (market value of €3,500 + sentimental value (*valor de afección*) of €1,050 (30%)). The Court also ordered the payment of interest under Article 20 of the LCS from the date of the accident.

The Valladolid Court of Appeal partially upheld the insurer's appeal and eliminated the sentimental value, arguing that this concept only applies when the damaged vehicle is repaired, not in cases of total loss.

The Supreme Court overturned the appeal judgment and upheld the first instance judgment. The Court applied the doctrine of judgments STS 420/2020 and STS 1622/2024, establishing that the value of the damage also applies in cases of "total loss", since the purchase of a motorcycle on the second-hand market involves additional administrative and transaction costs, difficulties in finding a similar vehicle, and uncertainty about its performance and whether it will provide the same value as the damaged vehicle. The Court also confirmed that default interest under Article 20 of the LCS accrues from the date of the accident, both for personal injury and property damage, as a mere discrepancy in the amount does not constitute a justified reason for the delay.

El arrendador no se libra del fuego

Se desestiman las pretensiones de los recurrentes al considerar que el propietario arrendador de una nave industrial es responsable de los daños causados por un incendio que se propagó desde su inmueble por la ausencia o precariedad de las medidas de seguridad contra incendios, a pesar de que la nave estuviera arrendada a un tercero

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1447/2025, de 17 de octubre (Rec. 4167/2020). STS 4565/2025

La sentencia de primera instancia estimó la demanda de los actores y declaró la responsabilidad civil del propietario de la nave y de su aseguradora por el incendio que causó daños en la nave propiedad de los demandantes, condenándoles solidariamente al pago. La sentencia de segunda instancia desestimó el recurso de apelación interpuesto por el propietario y la aseguradora, confirmando íntegramente la sentencia de primera instancia.

El Tribunal Supremo confirma la responsabilidad del propietario arrendador porque, aunque la nave estuviera arrendada, el propietario conserva las facultades de supervisión y control sobre el inmueble en lo relativo a su estado de conservación y a la adecuación de las medidas de seguridad. La sentencia reprocha al propietario haberse desentendido por completo del cumplimiento de las medidas de seguridad contra incendios, sin comprobar la existencia ni suficiencia de los medios de protección exigibles. Esta omisión constituye una infracción del deber de cuidado y vigilancia que le incumbía como propietario que pone en el tráfico un inmueble destinado a uso industrial.

Respecto a los intereses moratorios del artículo 20 de la LCS, el Tribunal Supremo confirma su imposición a la aseguradora al no existir causa justificada para el impago, ya que la aseguradora no realizó ningún ofrecimiento de pago ni consignación mínima durante el plazo de tres meses desde el siniestro, ni atendió la reclamación extrajudicial.

Landlords are not safe from fire

The appellants' claims were dismissed on the grounds that the owner of an industrial warehouse was liable for the damage caused by a fire that spread from his property due to the absence or inadequacy of fire safety measures, even though the warehouse was leased to a third party

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1447/2025, of 17 October (Rec. 4167/2020). STS 4565/2025

The court of first instance upheld the plaintiffs' claim and found the owner of the warehouse and his insurer liable for the fire that caused damage to the warehouse owned by the plaintiffs, and ordered them to pay jointly and severally. The court of second instance dismissed the appeal filed by the owner and the insurer, upholding the judgment of the court of first instance in its entirety.

The Supreme Court confirmed the liability of the owner-landlord because, even though the warehouse was leased, the owner retained the power to supervise and control the property in terms of its state of repair and the adequacy of safety measures. The judgment criticised the owner for having completely disregarded compliance with fire safety measures by failing to check the existence and adequacy of the required means of protection. This omission constituted a breach of the duty of care and vigilance incumbent on him as the owner of a property intended for industrial use.

Regarding the default interest under Article 20 of the LCS, the Supreme Court confirmed its imposition on the insurer as there was no justifiable reason for its non-payment since the insurer did not offer any payment or minimum deposit within three months of the accident, nor did it respond to the out-of-court claim.

Pura responsabilidad por medios

La póliza de seguro de responsabilidad civil-patrimonial debe cubrir los daños derivados de mala praxis médica aunque no exista daño corporal directo

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1459/2025, de 21 de octubre (Rec. 6012/2020)

La sentencia de primera instancia estimó parcialmente la demanda de la Administración autonómica contra la aseguradora, condenando a ésta al pago de 300.000€ más intereses legales desde la fecha de pago, tras haber indemnizado la Administración a los perjudicados en cumplimiento de una sentencia contencioso-administrativa que declaró la responsabilidad patrimonial por error en el diagnóstico prenatal.

La sentencia de segunda instancia estimó el recurso de apelación de la aseguradora y revocó la sentencia de primera instancia, razonando que, según el clausulado de la póliza, el daño moral cubierto era únicamente el derivado o conexo con un daño corporal causado de manera directa por una mala praxis médica, quedando excluidos los que no derivasen de un daño material o corporal ni de una mala praxis.

El Tribunal Supremo analiza las cláusulas 1.5.4 y 3.2 de la póliza y concluye que cuando el daño moral o el perjuicio económico derivan de una mala praxis médica se entienden cubiertos por el seguro, aunque no sean consecuencia directa de un daño corporal, destacando que las cláusulas utilizan la copulativa "o" al referirse a la conexión con daño físico corporal o derivación de mala praxis médica.

El Tribunal Supremo considera probada la existencia de mala praxis constituida por el error de diagnóstico al analizar la resonancia magnética fetal, que impidió advertir a los progenitores de la patología que padecía el feto, provocando la pérdida de la oportunidad de decidir sobre la IVE (daño moral) y el nacimiento de la menor con graves secuelas que comporta un perjuicio económico vinculado al sensible incremento en los costes de su crianza.

El Tribunal rechaza la interpretación restrictiva de la Audiencia Provincial y señala que tanto el daño moral como el perjuicio económico no derivan de la patología que padecía la menor, sino del incumplimiento de la *lex artis* por los facultativos. Además, la cláusula 3.1 de la póliza establece que el contrato se suscribe como "todo riesgo de responsabilidad", de forma que todas las responsabilidades en las que incurra el asegurado se encuentran cubiertas salvo las expresamente excluidas, y al no aparecer expresamente excluidas las responsabilidades objeto de condena, han de entenderse cubiertas.

Pure liability due to the failure to exercise due care

A civil liability insurance policy must cover damage caused by medical malpractice even if there is no direct bodily harm

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1459/2025, of 21 October (Rec. 6012/2020)

The first instance ruling partially upheld the regional government's claim against an insurer, ordering the latter to pay €300,000 plus legal interest from the date of payment, after the government had compensated the injured parties in compliance with a contentious-administrative ruling that declared financial liability due to a prenatal diagnosis error.

The second instance ruling upheld the insurer's appeal and overturned the first instance ruling, on the grounds that, under the terms of the policy, the moral damage covered was only that which arose from or related to bodily injury caused directly by medical malpractice, excluding damage that did not arise from material or bodily injury or malpractice.

The Supreme Court analysed clauses 1.5.4 and 3.2 of the policy and held that when moral damage or a financial loss arises from medical malpractice, it is covered by the insurance, even if such damage is not a direct consequence of bodily injury, and emphasised that the clauses use the conjunction "or" when referring to the connection with physical bodily injury or medical malpractice.

The Supreme Court found that malpractice had been proven in the form of a diagnostic error when analysing the foetal MRI scan, which prevented the parents from being warned of the foetus's condition, resulting in the loss of the opportunity to decide on the termination of the pregnancy (moral damage) and the birth of a child with serious health problems, leading to financial loss linked to the significant increase in the costs of raising the child.

The Court rejected the restrictive interpretation of the Court of Appeal and noted that both the moral damage and the financial loss did not result from the condition suffered by the child, but from the doctors' failure to comply with professional standards. Furthermore, clause 3.1 of the policy established that the contract was taken out as "all risks liability", meaning that all liabilities incurred by the insured party were covered except those expressly excluded, and as the liabilities subject to the finding of liability were not expressly excluded, they had to be interpreted as being covered.

Cortarse la coleta

Se desestiman las pretensiones del demandante al considerar que no puede ejercitar la acción directa contra la aseguradora de la administración sanitaria en vía civil tras haber optado por la vía administrativa y haber consentido que adquiriera firmeza la resolución administrativa desestimatoria

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1501/2025, de 27 de octubre (Rec. 5617/2020). STS 4679/2025

La sentencia de primera instancia estimó parcialmente la demanda interpuesta por el demandado, quien fue intervenido de vasectomía bilateral y, tras acudir al servicio de urgencias por la mayor gravedad de la situación del testículo izquierdo, fue intervenido quirúrgicamente de urgencia. El juzgado condenó a la entidad aseguradora a abonar al demandante la cuantía correspondiente.

La sentencia de segunda instancia desestimó el recurso de apelación interpuesto por la aseguradora. La Audiencia Provincial desestimó la falta de legitimación pasiva alegada por la aseguradora al entender que, ante la negativa de la aseguradora de asumir la responsabilidad reclamada, el perjudicado podía acudir a la vía civil y ejercitar la acción directa frente a la aseguradora, ya que la resolución administrativa carecía de efectos vinculantes en la jurisdicción civil.

El Tribunal Supremo estima el recurso de casación. La acción ejercitada no puede prosperar porque la Sala de lo Civil no puede revisar el acto administrativo que proclamó la inexistencia de responsabilidad patrimonial de la administración, so pena de invadir ámbitos jurisdiccionales que le son ajenos. Tras optar por la vía administrativa, no es posible accionar de forma exclusiva contra la aseguradora de la administración por la vía del artículo 76 de la LCS mediante el ejercicio de la acción directa, al existir ya una resolución administrativa firme que declara la inexistencia de dicha responsabilidad.

La constatación de la responsabilidad del asegurado es presupuesto básico para que pueda prosperar la acción directa ejercitada contra la entidad aseguradora, de tal modo que la inexistencia de responsabilidad de la administración sanitaria excluye la obligación de la aseguradora, y al haber promovido el demandante expediente administrativo de responsabilidad patrimonial de la Administración sanitaria y dejado que la resolución desestimatoria dictada en dicha vía adquiriera firmeza, se le cerró la posibilidad del ejercicio de la acción directa ante los tribunales civiles.

Cutting off the ponytail

A plaintiff's claims were dismissed on the grounds that he could not bring a direct action against the health administration's insurer in civil proceedings after having opted for administrative proceedings and having consented to the finality of the administrative decision that dismissed the case

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1501/2025, of 27 October (Rec. 5617/2020). STS 4679/2025

The first instance judgment partially upheld the claim brought by the plaintiff, who underwent a bilateral vasectomy and, after going to the emergency department due to the seriousness of the condition of his left testicle, underwent emergency surgery. The court ordered the insurance company to pay the corresponding amount to the plaintiff.

The second instance judgment dismissed the appeal filed by the insurance company. The Court of Appeal rejected the insurer's argument that it lacked standing to be named as a defendant, on the grounds that, given the insurer's refusal to accept the liability claimed, the injured party could bring a civil action and take direct action against the insurer, since the administrative decision had no binding effect in the civil courts.

The Supreme Court upheld the appeal. The action brought could not succeed because the Civil Chamber could not review the administrative act that declared that the administration had no financial liability, as this would constitute an encroachment on areas of jurisdiction that were not within its remit. After opting for the administrative proceedings, it was not possible to bring an action exclusively against the administration's insurer under Article 76 of the LCS through the exercise of a direct action, as there was already a final administrative decision that declared that there was no such liability.

The establishment of the insured party's liability was a basic prerequisite for the direct action brought against the insurance company to be successful, such that the absence of liability on the part of the health administration meant that the insurer was not liable, and since the plaintiff had brought administrative proceedings for financial liability against the health administration and allowed the decision dismissing the case to become final, the possibility of bringing a direct action before the civil courts was no longer open.

► *Abbey Road*

Se desestiman las pretensiones de la demandante al considerar que el atropello fue causado exclusivamente por su conducta imprudente al cruzar un paso de peatones con el semáforo en rojo, sin que pueda imputarse responsabilidad alguna al conductor del camión

Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1534/2025, de 30 de octubre (Rec. 4650/2020). STS 4859/2025

La sentencia de primera instancia estimó parcialmente la demanda interpuesta. La sentencia de segunda instancia desestimó el recurso de apelación de la aseguradora y estimó el del conductor, revocando la resolución apelada y desestimando la demanda. La Audiencia Provincial concluyó que la causa exclusiva del accidente fue la conducta imprudente de la peatona y que el conductor del camión no infringió norma alguna ni omitió las más elementales normas de cuidado, descartando toda culpa, incluso concurrente, del conductor.

La Sala del Tribunal Supremo confirma que la víctima se puso voluntariamente en peligro al comenzar a atravesar el paso de peatones cuando el semáforo estaba en fase roja para ella y en verde para los vehículos, bordeando el camión por delante en vez de esperar o cruzar por detrás, caminando muy próxima al vehículo, lo que impedía que el conductor pudiera verla debido a la altura de la cabina.

El Tribunal Supremo destaca que el camión inició la marcha con su semáforo en verde, a velocidad muy reducida y siguiendo las indicaciones de los señalistas de una obra próxima, sin que existiera maniobra prohibida ni comportamiento temerario o negligente, y que el conductor podía confiar razonablemente en que ningún peatón cruzaría el paso estando su semáforo en fase roja. La Sala concluye que el comportamiento del conductor se ajustó plenamente a las reglas de diligencia y prudencia exigibles en la conducción, sin que pueda imputársele infracción alguna ni la más mínima falta de cuidado en la producción del siniestro, cuya única causa fue el actuar imprudente de la peatona.

► Abbey Road

A plaintiff's claims were dismissed on the grounds that an accident was caused exclusively by her reckless behaviour in crossing a pedestrian crossing when the traffic light was red, with no liability attributable to the lorry driver

Judgment of the Supreme Court (Civil Chamber, First Section) No. 1534/2025, of 30 October (Rec. 4650/2020). STS 4859/2025

The first instance judgment partially upheld the claim. The second instance judgment dismissed the insurer's appeal and upheld the driver's appeal, overturning the appealed decision and dismissing the claim. The Court of Appeal concluded that the sole cause of the accident was the pedestrian's reckless behaviour and that the lorry driver did not break any rules or fail to observe the most basic rules of due care, thereby ruling out any fault, even contributory fault, on the part of the driver.

The Supreme Court confirmed that the victim voluntarily put herself in danger by starting to cross the pedestrian crossing when the traffic light was red for her and green for vehicles, walking in front of the lorry instead of waiting or crossing behind it, and walking very close to the vehicle, which prevented the driver from seeing her due to the height of the cab.

The Supreme Court stressed that the lorry started moving when the traffic light was green, at a very low speed and following the instructions of the traffic controllers at a nearby construction site, without any prohibited manoeuvres or reckless or negligent behaviour, and that the driver had reasonable grounds to believe that no pedestrian would cross the crossing when the traffic light was red. The Court concluded that the driver's behaviour was fully in accordance with the rules of diligence and prudence required when driving, and that he could not be blamed for any infringement or the slightest lack of care in causing the accident, the sole cause of which was the pedestrian's reckless behaviour.

Sin nombre, sin prisa: la prescripción se hiela

Se estima el recurso de casación: el plazo de prescripción no comienza a correr hasta que el perjudicado conoce la identidad del organismo asegurador frente al cual debe dirigir la acción indemnizatoria

Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1595/2025, de 11 de noviembre (Rec. 6148/2020). ROJ: STS 4998/2025

Se analiza el caso en el que un accidente de tráfico ocasionado por un vehículo con matrícula extranjera lo cual plantea incertidumbre acerca de la existencia de certificado internacional de seguro o "carta verde" y, en consecuencia, sobre qué organismo asegurador resulta obligado a responder de la indemnización por los daños físicos y materiales producidos. Se deberá aplicar el artículo 21.2 del RD 1507/2008, en el caso de que el vehículo extranjero esté asegurado mediante carta verde, o al artículo 11.1.b) del TRLRCSCVM, cuando el vehículo carezca de dicho aseguramiento.

El Tribunal Supremo recuerda que, conforme a los artículos 1968 y 1969 del Código Civil, el plazo de prescripción de la acción se inicia desde el momento en que ésta puede ejercitarse, de acuerdo con el principio *actio nondum nata non praescribitur*, esto es: la acción que todavía no ha nacido no puede prescribir. Ello exige que el perjudicado disponga de todos los elementos fácticos y jurídicos necesarios para litigar, incluyendo la correcta identificación del sujeto responsable frente al que deba dirigirse la reclamación. El Tribunal Supremo enfatiza que, en los supuestos de incertidumbre respecto a la aplicación de las normas que rigen la prescripción, corresponde una interpretación restrictiva, dado que la regla general consiste en la conservación de los derechos y no en su abandono en beneficio del deudor.

En este contexto, el *dies a quo* no puede fijarse de manera automática en la fecha de estabilización de las lesiones o de cuantificación del daño cuando persiste una incertidumbre razonable sobre la existencia de carta verde y, por ende, la incertidumbre sobre qué entidad debe responder de la indemnización.

En el caso analizado, el Tribunal Supremo concluye que la aptitud plena para ejercitar la acción no concurrió hasta que los demandantes fueron notificados, y, por lo tanto, tuvieron conocimiento efectivo, de la inexistencia de carta verde; momento a partir del cual pudieron dirigir correctamente su reclamación frente al CCS.

No name, no rush: the limitation period is frozen

Appeal upheld: the limitation period does not begin to run until the injured party knows the identity of the insurance company against which they must bring the action for compensation

Judgment of the Supreme Court (Civil Chamber) No. 1595/2025, of 11 November (Rec. 6148/2020). ROJ: STS 4998/2025

This case involved a traffic accident caused by a vehicle with foreign number plates, which raised uncertainty about the existence of an international insurance certificate or "green card" and, consequently, doubts as to which insurance company was liable for compensation for the physical and material damage caused. Article 21.2 of RD 1507/2008 must apply if the foreign vehicle is insured by a green card, or Article 11.1.b) of the TRLRCSCVM, in the event that the vehicle does not have such insurance.

The Supreme Court noted that, under Articles 1968 and 1969 of the Civil Code, the limitation period for bringing an action begins from the moment it can be exercised, in accordance with the principle of *actio nondum nata non praescribitur*, i.e. an action that has not yet arisen cannot be time-barred. This requires that the injured party have all the factual and legal elements necessary to litigate, including the correct identity of the party against whom the claim should be filed. The Supreme Court stressed that, in cases of uncertainty regarding the application of the rules governing limitation periods, a restrictive interpretation is appropriate, given that the general rule is the preservation of rights and not their abandonment for the benefit of the liable party.

In this context, the start date cannot be automatically set on the date of the stabilisation of the injuries or the quantification of the damage when there is reasonable uncertainty about the existence of a green card and, therefore, uncertainty about which entity should be held liable for the compensation.

In this case, the Supreme Court held that the right to bring an action only arose once the claimants were notified and, therefore, had actual knowledge of the non-existence of a green card, at which point they were able to correctly file their claim against the CCS.

Asesinatos no dolosos, repetición no forzosa

Se desestima la acción de repetición ejercitada por la aseguradora contra la compañía asegurada y el autor material de los hechos, al no ostentar éste último legitimación pasiva y no concurrir conducta dolosa en el sentido exigido por el artículo 76 de la LCS

Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1647/2025, de 18 de noviembre (Rec. 6343/2020). ROJ: STS 5298/2025

La aseguradora ejercitó la acción de repetición prevista en el artículo 76 de la LCS contra la mercantil asegurada y contra el autor material de los hechos delictivos, trabajador y socio de aquella, reclamando las cantidades abonadas a los perjudicados en concepto de indemnización. Los hechos traen causa en un delito de asesinato consumado y dos delitos de asesinato en grado de tentativa cometidos por el trabajador, quien fue absuelto en el proceso penal al reconocerse la eximente completa de alteración psíquica prevista en el artículo 20.1º del CP.

En el presente caso, el Tribunal Supremo analiza el concepto de "conducta dolosa" a efectos del ejercicio del derecho de repetición del artículo 76 de la LCS y señala que dicho término debe interpretarse como equivalente a intencionalidad: el asegurado debe provocar el siniestro de forma consciente y voluntaria. La voluntariedad, a su vez, presupone la imputabilidad del sujeto, es decir, su capacidad de comprender y querer sus actos. Por ello, no puede reputarse conducta dolosa cuando el autor, debido a su condición psíquica, carece de plena conciencia, voluntad y capacidad de discernimiento en el momento de actuar.

Asimismo, se rechaza la pretensión de extender la acción de repetición a supuestos de pago indebido por falta de cobertura, dado que el proceso penal ya resolvió, con efectos de cosa juzgada material, que los hechos sí estaban comprendidos dentro de la cobertura de la póliza.

En consecuencia, el Tribunal Supremo concluye que no procede la acción de repetición del artículo 76 de la LCS, al concurrir un doble límite, subjetivo y objetivo. Desde el punto de vista subjetivo, el autor material carece de legitimación pasiva al no ostentar la condición de asegurado conforme a las condiciones particulares de la póliza, que atribuían dicha condición exclusivamente a la mercantil tomadora. Y, desde el punto de vista objetivo, los hechos no pueden calificarse como dolosos, ya que el trabajador actuó sin plena capacidad de juicio debido a su alteración mental; y la responsabilidad de la compañía asegurada, basada en la *culpa in vigilando* conforme al artículo 120.4º del CP, no deriva de una conducta dolosa sino de ausencia del debido control sobre su empleado.

Involuntary manslaughter, voluntary recourse

A recourse action brought by an insurer against an insured company and the perpetrator of the acts in question was dismissed, as the latter did not have standing to be sued, and there was no intentional conduct under Article 76 of the LCS

Judgment of the Supreme Court (Civil Chamber) No. 1647/2025, of 18 November (Rec. 6343/2020). ROJ: STS 5298/2025

An insurer brought a recourse action under Article 76 of the LCS against an insured company and a perpetrator of criminal acts, a worker and partner in the company, in order to recover the amounts paid to the injured parties as compensation. The facts relate to a count of murder and two counts of attempted murder by the worker, who was acquitted in the criminal proceedings due to a mental disorder, as provided for in Article 20.1 of the Criminal Code.

In this case, the Supreme Court analysed the concept of "intentional conduct" for the purposes of exercising the right of recourse under Article 76 of the LCS and noted that this term must be interpreted in the same way as intent: the insured must cause the incident consciously and voluntarily. Voluntariness, in turn, presupposes the culpability of the subject, in other words, their ability to understand and intend their actions. Therefore, conduct cannot be considered intentional when the perpetrator, due to their mental condition, lacks full consciousness, will, and discernment at the time of acting.

Similarly, the claim to extend the recourse action to cases of undue payment due to lack of coverage was rejected, given that the criminal proceedings had already concluded, with the effect of res judicata, that the events were covered by the policy.

Consequently, the Supreme Court held that the recourse action under Article 76 of the LCS was not permissible, as there was a double limitation, both subjective and objective. From a subjective point of view, the perpetrator lacked standing to be sued because he was not an insured party under the specific terms of the policy, which attributed that status exclusively to the policyholder. And, from an objective point of view, the facts could not be classified as malicious, since the worker acted without full capacity due to his mental disorder, and the liability of the insured company, based on *culpa in vigilando* (negligence in supervision) under Article 120.4 of the Criminal Code, did not arise from malicious conduct but from a lack of due control over its employee.

Cosas veredes

Se estima parcialmente el recurso y se condena a la Comunidad de Madrid a indemnizar con 60.000€ por pérdida de oportunidad terapéutica derivada de deficiencias en la asistencia oftalmológica

Sentencia del Tribunal Superior de Justicia de Madrid (Sala de lo Contencioso-Administrativo, Sección 10ª) núm. 812/2025, de 18 de septiembre (Rec. 778/2023)

La sentencia de primera instancia inadmitió la reclamación de responsabilidad patrimonial formulada por el demandante por deficiente asistencia sanitaria. El TSJ de Madrid estima parcialmente el recurso presentado por el perjudicado y anula la resolución administrativa que desestimaba las peticiones del perjudicado.

El TSJ fundamenta la responsabilidad de asistencia sanitaria negligente en el dictamen pericial judicial que identificó múltiples tratamientos de carácter deficiente. El perito concluyó que, si el perjudicado hubiera sido tratado convenientemente, en tiempo y forma, y con un mejor seguimiento habría podido cambiar la situación actual del paciente.

Aplicando la doctrina de la pérdida de oportunidad del Tribunal Supremo, la sentencia reconoce que la incertidumbre sobre el curso que habría tomado la enfermedad si se hubiera atendido correctamente permite atribuir responsabilidad patrimonial sanitaria, siendo el daño indemnizable la privación de expectativas de curación, reduciendo el montante debido a la probabilidad de que el daño se hubiera producido igualmente de haberse actuado diligentemente. La doctrina de la pérdida de oportunidad comporta una indemnización solo parcial por falta de probabilidad suficiente para tener por cierto el nexo causal, descartando la reparación integral del daño.

Precaución amigo conductor

Se estima parcialmente el recurso de apelación al reconocer concurrencia de culpas en un accidente de motocicleta, moderando la responsabilidad de la aseguradora en un 70% por la contribución del lesionado a la producción del siniestro

Sentencia de la Audiencia Provincial de Badajoz (Sección 3ª) núm. 349/2025, de 1 de septiembre (Rec. 211/2025). JUR\2025\308584

La sentencia de primera instancia desestimó íntegramente la demanda interpuesta por el demandante principal y el demandante secundario contra la compañía aseguradora,

Strange things happen

An appeal was partially upheld, and the Community of Madrid was ordered to pay €60,000 in compensation due to the loss of a therapeutic opportunity resulting from deficiencies in ophthalmological care

Judgment of the High Court of Justice of Madrid (Contentious-Administrative Chamber, Tenth Section) No. 812/2025, of 18 September (Rec. 778/2023)

The first instance judgment dismissed the plaintiff's claim for state liability arising from deficient healthcare. The High Court of Justice of Madrid partially upheld the appeal filed by the injured party and annulled the administrative decision that dismissed the injured party's claims.

The Court based its finding of liability for negligent healthcare on the expert opinion that identified multiple instances of substandard treatment. The expert concluded that if the injured party had been treated appropriately, promptly, and with better follow-up, the patient's situation could have been different.

Applying the Supreme Court's doctrine of loss of opportunity, the Court recognised that the uncertainty about the course the illness would have taken if it had been treated correctly allowed for the attribution of financial liability for healthcare, with the compensable damage being the deprivation of the expectation of recovery, reducing the amount due to the probability that the damage would have occurred even if diligent action had been taken. The doctrine of loss of opportunity permitted only partial compensation due to the lack of sufficient probability to establish a causal link, thereby ruling out full compensation for the damage.

Caution, driver friend

An appeal was partially upheld, as it was found that both parties were at fault in a motorcycle accident, with the insurer's liability reduced by 70% due to the injured party's contribution to the accident

Judgment of the Badajoz Court of Appeal (Third Section) No. 349/2025, of 1 September (Rec. 211/2025). JUR\2025\308584

The first instance judgment dismissed in its entirety the claim brought by the principal plaintiff and the secondary plaintiff against an insurance company. The Court exonerated the in-

absolviendo a la aseguradora de todos los pedimentos ejercitados en su contra e imponiendo las costas a la parte actora. Los demandantes recurrieron alegando que la aseguradora había reconocido en su oferta motivada una concurrencia del 20% de su asegurado en la causación del siniestro, oferta que consideraban vinculante, y que tanto el atestado como el informe técnico concluían que hubo dos causas del accidente: la velocidad inadecuada del conductor fallecido y la falta de distancia de seguridad por parte del demandante secundario, solicitando que se reconociera una culpa compartida al 50%.

La Audiencia Provincial admitió el recurso de apelación interpuesto por la representación procesal de los demandantes, dando traslado a la aseguradora para que presentara escrito de oposición. El Tribunal revisó la valoración de la prueba realizada por el Juzgado de Primera Instancia, considerando que la Juez se había apoyado en el atestado de la Guardia Civil para concluir que las lesiones se debieron única y exclusivamente a que no circulase manteniendo la distancia de seguridad y a que no realizase una maniobra evasiva correcta.

La Audiencia Provincial no consideró que la falta de distancia de seguridad y el error en la maniobra evasiva constituyeran la única causa del accidente. Ello se debe a que en el atestado se hizo constar también que el familiar del recurrente conducía a una velocidad inadecuada al tomar la curva, lo que dio lugar a su caída, y a que, de forma imprevista, el lesionado se encontrase con un obstáculo imprevisto en la carretera. Por lo tanto, el conductor asegurado por la demandada también habría concurrido con su conducción inadecuada a la causación del resultado, sin que pudiera afirmarse que se tratara de un supuesto de culpa exclusiva de la víctima. El Tribunal recordó que el artículo 1.1 del LRCSCVM establece que el conductor es responsable en virtud del riesgo creado, quedando exonerado únicamente cuando pruebe que los daños fueron debidos únicamente a la conducta o negligencia del perjudicado o a fuerza mayor extraña a la conducción.

La Audiencia Provincial aplicó el artículo 1.2 del LRCSCVM, que establece que cuando la víctima capaz de culpa civil sólo contribuya a la producción del daño se reducirán todas las indemnizaciones en atención a la culpa concurrente hasta un máximo del setenta y cinco por ciento. Valorando la falta de diligencia de uno y otro que propició el accidente, consideró que el lesionado concurrió a la producción del siniestro en un porcentaje del 70%, por lo que la responsabilidad debería moderarse en tal proporción.

surer of all claims brought against it and ordered the plaintiffs to pay the costs. The plaintiffs appealed, arguing that the insurer had acknowledged in its reasoned offer (*oferta motivada*) that its insured was 20% responsible for causing the accident, an offer they considered binding, and that both the police report and the technical report concluded that there were two causes of the accident: the inappropriate speed of the deceased driver and the secondary plantiff's failure to maintain a safe distance, and requested that the fault be shared equally between the two parties.

The Court of Appeal agreed to hear the appeal filed by the plaintiffs' legal representatives and requested the insurance company to submit a statement of opposition. The Court reviewed the assessment of the evidence carried out by the court of first instance and considered that the Judge had relied on the Guardia Civil's report to conclude that the injuries were solely and exclusively due to the fact that the driver did not maintain a safe distance and did not perform a correct evasive manoeuvre.

The Court of Appeal found that the failure to maintain a safe-distance and the error in the evasive manoeuvre were not the sole causes of the accident. This is because the report also stated that the appellant's relative was driving at an inappropriate speed when negotiating a bend, which caused him to fall, and that the injured party encountered an unexpected obstacle on the road. Therefore, the driver insured by the defendant would also have contributed, through their inadequate driving, to the occurrence of the accident, and it could not be asserted that this was a case of the victim's sole fault. The Court noted that Article 1.1 of the LRCSCVM establishes that a driver is liable by virtue of the risk created and is only released from liability if they can prove that the damage was solely due to the conduct or negligence of the injured party or to a case of force majeure unrelated to driving.

The Court of Appeal applied Article 1.2 of the LRCSCVM, which establishes that when a victim capable of civil fault only contributes to the occurrence of the damage, all compensation shall be reduced in accordance with the contributing fault up to a maximum of 75%. The Court assessed the lack of diligence on the part of both parties that led to the accident and held that the injured party contributed to the accident by 70%, and, therefore, that liability should be reduced by that percentage.

El señor conductor ya se ha muerto

Se desestima el recurso de apelación interpuesto por una aseguradora de automóviles confirmando la sentencia que la condenó a indemnizar a una empresa de transporte de viajeros por los perjuicios derivados de la paralización de un autobús siniestrado en accidente de tráfico

Sentencia de la Audiencia Provincial de Zamora (Sección 1ª) núm. 271/2025, de 2 de septiembre (Rec. 326/2024) (JUR 2025/308818)

La sentencia de primera instancia condenó a la aseguradora a abonar 3.201,62€ más los intereses del artículo 20 de la LCS, al estimar probados los perjuicios ocasionados durante el tiempo en que el vehículo permaneció en reparación.

El apelante recurrió ya que sostenía que la reparación pudo haberse realizado en menos tiempo y que no se había probado el perjuicio. La Audiencia Provincial confirma íntegramente la resolución recurrida al considerar que los retrasos eran razonables por motivos técnicos y confirmó que el autobús estuvo inmovilizado como consecuencia del siniestro y que la empresa demandante tuvo que recurrir al alquiler de otros vehículos para continuar prestando sus servicios.

Además, dado que la aseguradora no consignó cantidad alguna, incurrió en mora sancionada con los intereses del artículo 20 de la LCS.

The driver has already died

An appeal filed by a car insurance company was dismissed, thereby upholding the judgment that ordered it to compensate a passenger transport company for damage resulting from the breakdown of a bus involved in a traffic accident

Judgment of the Zamora Court of Appeal (First Section) No. 271/2025, of 2 September (Rec. 326/2024) (JUR 2025/308818)

The first instance judgment ordered the insurer to pay €3,201.62 plus interest under Article 20 of the LCS on the grounds that the damage caused during the time the vehicle was being repaired had been established.

The appellant appealed on the grounds that the repair could have been carried out in less time and that the damage had not been proven. The Court of Appeal upheld the appealed judgment in its entirety, finding that the delays were reasonable on technical grounds and confirming that the bus was out of service as a result of the accident and that the plaintiff company had to resort to renting other vehicles in order to continue providing its services.

Furthermore, since the insurer did not deposit any amount, it fell into arrears, which was penalised with interest under Article 20 of the LCS.

Lo que no se declara, no se asegura

Se desestima el recurso de apelación interpuesto por el demandante al considerar que no está cubierto el siniestro derivado de una orden de detención preexistente a la contratación del seguro de asistencia en viaje

Sentencia de la Audiencia Provincial de Navarra (Sección 3ª) núm. 1219/2025, de 26 de septiembre (Rec. 1625/2023). JUR 2025/309307

La sentencia de primera instancia desestimó la demanda interpuesta frente a la aseguradora, absolviendo a la de-

What is not declared is not insured

An appeal filed by a plaintiff was dismissed on the grounds that the incident was not covered because it resulted from an arrest warrant that was issued before the purchase of a travel insurance policy

Judgment of the Navarra Court of Appeal (Third Section) No. 1219/2025, of 26 September (Rec. 1625/2023). JUR 2025/309307

The first instance judgment dismissed the claim filed against the insurer, dismissing the claims made against the defend-

mandada de las pretensiones formuladas en su contra. El demandante reclamaba los honorarios que abonó a un abogado durante su estancia en el extranjero, con base en el seguro de asistencia en viaje suscrito. La juez de instancia entendió que la causa del siniestro era preexistente a la contratación de la póliza y que existió un incumplimiento por parte del actor de comunicar a la aseguradora la preexistencia del hecho ocasionador.

La sentencia de segunda instancia desestima el recurso de apelación del demandante, quien alegaba el desconocimiento del procedimiento judicial y de la condena, así como la ausencia de dolo o culpa grave. La Audiencia Provincial considera que la recurrente no pone en duda la preexistencia del hecho y fundamenta su recurso únicamente en el desconocimiento de los hechos, pero ante la falta de prueba del desconocimiento de éstos, procede la desestimación del motivo de recurso presentado. El tribunal señala que la facilidad probatoria al respecto la tiene el recurrente, careciendo de sentido que sea la aseguradora la que deba probar un hecho personal del asegurado.

ant. The plaintiff claimed the fees he paid to a lawyer during his stay abroad, based on the travel assistance insurance he had taken out. The court of first instance held that the cause of the incident predated the taking out of the policy and that the plaintiff had failed to inform the insurer of the pre-existing nature of the event that caused the incident.

The second instance judgment dismissed the plaintiff's appeal, who alleged ignorance of the legal proceedings and the conviction, as well as the absence of intent or gross negligence. The Court of Appeal noted that the appellant did not dispute the pre-existence of the event and based his appeal solely on his lack of knowledge of the facts, but in the absence of evidence of such lack of knowledge, the grounds for appeal were dismissed. The Court noted that the burden of proof in this regard lay with the appellant, and that it made no sense for the insurer to have to prove a personal fact about the insured.

▸ Los peligros de la marcha atrás

La Audiencia Provincial reconoce el nexo causal entre el siniestro y los daños tras revisar la prueba pericial y documental

Sentencia de la Audiencia Provincial de Navarra (Sección 3ª) núm. 708/2025, 1230/2025, de 1 de octubre (ECLI:ES:APNA:2025:1691)

La Audiencia Provincial revoca íntegramente la resolución de instancia y condena de manera conjunta y solidaria al conductor causante del siniestro y a la entidad aseguradora codemandada al pago de 8.918,09€ a los perjudicados, así como a los intereses del artículo 20 de la LCS.

El litigio se centra en determinar (i) la relación de causalidad entre la maniobra realizada por el vehículo asegurado que, al advertir que había sobrepasado el acceso al aparcamiento, inició de forma repentina la marcha atrás, y (ii) el alcance de los daños materiales sufridos por el vehículo de la actora.

La existencia del accidente y la responsabilidad del conductor constan en la declaración amistosa firmada por ambos y en las declaraciones del conductor y de la ocupante del vehículo contrario, documentos no impugnados que la Sala considera dotados de presunción de veracidad.

Además, la Audiencia Provincial pone de relieve que en las actuaciones judiciales no constan dos informes periciales puesto que considera que el informe emitido por la entidad

▸ The dangers of reversing

The Court of Appeal recognises the causal link between an accident and the resulting damage after reviewing expert and documentary evidence

Judgment of the Navarra Court of Appeal (Third Section) No. 708/2025, 1230/2025, of 1 October (SAP NA 1691/2025, ECLI:ES: APNA:2025:1691)

The Court of Appeal overturned a lower court's ruling in its entirety and ordered a driver who caused an accident and the co-defendant insurance company to jointly and severally pay €8,918.09 to the injured parties, plus interest under Article 20 of the LCS.

The dispute centred on establishing (i) the causal link between the manoeuvre performed by the insured vehicle, which, upon realising that it had overshot a car park entrance, suddenly began to reverse, and (ii) the extent of the material damage caused to the plaintiff's vehicle.

The existence of the accident and the driver's liability were confirmed in the amicable statement signed by both parties and in the statements made by the driver and passenger of the other vehicle, which were uncontested documents that the Court regarded as presumptively true.

Furthermore, the Court of Appeal stressed that the proceedings were only based on one expert report rather than two, as it did not consider the report issued by the vehicle's insur-

aseguradora del vehículo no es un verdadero informe pericial, sino que se trata de una simple valoración de daños, dándole mayor valor probatorio al informe pericial judicial.

El perito judicial concluyó que existía nexo causal entre la actuación del vehículo asegurado y los daños reclamados, por lo que, no habiendo abonado la entidad aseguradora la indemnización en el plazo legal sin causa que lo justifique, la Sala también impone los intereses del artículo 20 de la LCS.

Seguros de personas

▸ Poco tiempo trabajó, pero el seguro se lo llevó

Se reconoce el derecho del trabajador temporal a percibir el seguro de vida e invalidez previsto en el Convenio Colectivo, pese a no cumplir el requisito de antigüedad mínima de seis meses, por resultar discriminatorio, y se condena solidariamente al Ayuntamiento y a la aseguradora al pago de la indemnización

Sentencia del Tribunal Superior de Justicia de Andalucía de Sevilla (Sala de lo Social, Sección 1ª) núm. 3481/2025, de 27 de noviembre (Rec. 2815/2023). JUR 2025/410204

La sentencia de primera instancia estimó parcialmente la demanda del trabajador contra la aseguradora y el Ayuntamiento, declarando el derecho del actor a percibir el seguro de vida e invalidez previsto en el artículo 34.3 del Convenio Colectivo del Ayuntamiento, en cuantía de 18.000 €, con los intereses correspondientes, con cargo al Ayuntamiento recurrente.

La sentencia de apelación desestimó el recurso de suplicación interpuesto por el Ayuntamiento, quien denunciaba infracción del artículo 34.3 del Convenio Colectivo, 43 y 238 LGSS y 82 y siguientes ET, alegando que el trabajador fallecido no cumplía con el presupuesto de hecho para tener derecho a la mejora, ya que prestó servicios durante algo más de 3 meses y medio, no contando con la antigüedad mínima de 6 meses exigida por el convenio colectivo. El Ayuntamiento alegaba también que la fecha del hecho causante de la mejora era la del accidente, en la cual la póliza de seguro estaba en vigor, y que, de considerarse que al actor le correspondía indemnización, la responsabilidad era de la aseguradora dentro de los límites de la póliza suscrita.

El Tribunal Superior de Justicia estima parcialmente el recurso formulado por el Ayuntamiento, con revocación parcial de la sentencia recurrida en el sentido de adicionar, a lo ya establecido en el fallo, la condena de la compañía aseguradora al abono de la suma establecida, quedando condenados el Ayuntamiento y la aseguradora solidaria-

ance company to be a true expert report, but rather a simple assessment of the damage, and, therefore, attached greater probative value to the report of the Court's expert.

The Court's expert concluded that there was a causal link between the actions of the insured vehicle and the damage alleged. Therefore, since the insurance company did not pay the compensation within the legal deadline without any justifiable reason, the Court also imposed the interest provided for in Article 20 of the LCS.

Personal insurance

▸ Short time on the job, but the insurance paid the lot

The right of a temporary worker to receive the life and disability insurance provided for in the Collective Agreement was recognised, despite not meeting the minimum seniority requirement of six months, as this was deemed discriminatory, and the Municipal Council and the insurance company were found jointly and severally liable to pay the compensation

Judgment of the High Court of Justice of Andalucia in Seville (Labour Division, 1st Section) No. 3481/2025, of 27 November (Appeal 2815/2023) JUR 2025/410204

The first instance judgment partially upheld the employee's claim against the insurer and the City Council, declaring the claimant's right to receive the life and disability insurance provided for in Article 34.3 of the City Council's Collective Bargaining Agreement, in the amount of €18,000, plus the corresponding interest, at the expense of the appellant City Council.

The appeal judgment dismissed the appeal filed by the City Council, which claimed infringement of Article 34.3 of the Collective Bargaining Agreement, Articles 43 and 238 of the LGSS and Articles 82 et seq. of the Worker's Statute, on the basis that the deceased worker did not meet the requirements for entitlement to the benefit, having provided services for just over three and a half months and thereby lacking the minimum six months' seniority required. The City Council also argued that the date of the event giving rise to the benefit was the date of the accident, when the insurance policy was in force, and that, should the claimant be considered entitled to compensation, the insurer would be liable within the limits of the policy taken out.

The High Court of Justice partially upheld the City Council's appeal, partially revoking the lower court's judgment by adding an order requiring the insurance company to pay the established sum, with the City Council and the insurer being jointly and severally liable. It based its decision on the fact that the differentiation established by the Col-

mente. Fundamenta su decisión en que la diferenciación que establece el Convenio Colectivo en atención al periodo de prestación de servicios pactado inicialmente con los trabajadores temporales supone una clara exclusión de los trabajadores temporales contratados por periodo inferior a 6 meses, aplicándose la reiterada doctrina que considera injustificada la exclusión de los trabajadores temporales de la mejora de Convenio por vulneración del principio de igualdad, al haberse añadido a la penalidad de la escasa duración del contrato la de su exclusión de las mejoras previstas para otros trabajadores con contratos indefinidos o temporales de mayor duración. En cuanto a la responsabilidad, considera que la fecha del hecho causante en incapacidades permanentes derivadas de accidente de trabajo es la del accidente mismo, de modo que, al producirse éste el 17/9/13 y extinguirse la póliza el 19/3/14, el riesgo estaba asegurado y la compañía debe responder del abono de la cantidad asegurada junto con el Ayuntamiento.

lective Bargaining Agreement in relation to the period of service initially agreed with the temporary workers clearly excluded temporary workers hired for a period of less than six months. It applied the settled doctrine which considers the exclusion of temporary workers from the benefit provided under the Agreement to be unjustified on the grounds that it breaches the principle of equality, since the penalty of the short duration of the contract is compounded by their exclusion from the benefits provided to other workers with permanent or longer-term temporary contracts. With regard to liability, the Court considered that in cases of permanent incapacity resulting from an accident at work, the date of the causal event is the date of the accident itself. As the accident occurred on 17 September 2013 and the policy was not terminated until 19 March 2014, the risk was insured and the company was liable to pay the insured amount together with the City Council.

Otros aspectos

▸ Menudo patinazo, compañero

El deber de defensa y ejecución de títulos comprende la necesidad de inscribir las garantías obtenidas en el registro correspondiente, constituyendo una negligencia profesional del letrado la omisión de inscripción en el registro

Sentencia del Tribunal Supremo (Sala Primera, de lo Civil), núm. 1446/2025, de 17 de octubre

El Tribunal Supremo desestimó el recurso de casación interpuesto por un letrado contra la sentencia que confirmó su responsabilidad civil profesional por negligencia en el aseguramiento registral de las garantías obtenidas en favor de su cliente, concretamente por no haber inscrito en el Registro de la Propiedad la escritura de reconocimiento de deuda y garantía hipotecaria ni haber anotado los embargos decretados.

El Alto Tribunal ratificó que el letrado tenía encomendada la defensa y ejecución del crédito de su cliente y que, mostrando una pasividad injustificada, omitió actuaciones esenciales para asegurar la eficacia de las garantías que él mismo había instrumentado. Esta omisión careció de justificación alguna y

Other issues

▸ Big mistake, buddy

The duty to defend and enforce titles includes the obligation to register the guarantees obtained in the corresponding registry, and the failure to do so constitutes professional negligence on the part of the legal representative

Judgment of the Supreme Court (First Chamber, Civil Division), No. 1446/2025, of 17 October

The Supreme Court dismissed an appeal filed by a legal representative against a judgment that confirmed his professional civil liability for negligence in registering the guarantees obtained on behalf of his client, specifically for failing to register the deed of acknowledgement of a debt and a mortgage guarantee in the Property Registry and for failing to record the attachments ordered.

The Supreme Court confirmed that the legal representative was entrusted with the defence and enforcement of his client's debt and that, by showing unjustified inaction, he failed to take essential steps to ensure the effectiveness of the guarantees he himself had arranged. This omission was completely unjusti-

no existió instrucción expresa del cliente que pudiera eximirle de su obligación profesional de proteger registralmente el crédito y las garantías constituidas.

En definitiva, el deber profesional de defensa y ejecución del crédito no se limita a la mera obtención de garantías, sino que comprende necesariamente el aseguramiento de su eficacia mediante la correspondiente inscripción registral, especialmente cuando el letrado es consciente de la insuficiencia de las garantías obtenidas y de la necesidad de adoptar medidas de protección adicionales.

Lazos de sangre

Se estima el recurso de casación de la demandante contra la aseguradora al reconocer su derecho a ser indemnizada como hermana de la víctima de un accidente de tráfico, pese a que la adopción había roto formalmente el vínculo jurídico con su familia biológica, al acreditarse que mantuvo durante toda su vida una relación afectiva fraterna con la fallecida

Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1523/2025, de 30 de octubre de 2025 (ECLI:ES:TS:2025:4873) Rec. 4375/2020

La sentencia de primera instancia desestimó la demanda de la hermana adoptada contra la aseguradora, considerando que el artículo 178 del Código Civil establece que la adopción produce la extinción de los vínculos jurídicos entre el adoptado y su familia anterior, y que no cumplía los requisitos para ser considerada perjudicada funcional ni allegada.

La sentencia de segunda instancia estimó parcialmente el recurso de apelación únicamente en cuanto a no hacer expresa imposición de las costas de primera instancia por apreciar dudas de derecho, pero mantuvo la desestimación de la pretensión principal.

El Tribunal Supremo analiza el artículo 62.3 del TRLRCSCVM sobre perjudicados funcionales o por analogía, destacando que el denominador común de todos los perjudicados en el nuevo sistema de la Ley 35/2015 es el vínculo afectivo que existe entre el perjudicado y la víctima, que ha de ser probado en el caso de los perjudicados funcionales.

El Tribunal Supremo considera que concurren circunstancias singulares que justifican una interpretación del artículo 62.3 del TRLRCSCVM desde la perspectiva del principio de indemnidad: la demandante es hermana biológica de la fallecida, se vio afectada por una ruptura del vínculo jurídico cuando tenía siete años en la que su voluntad no contaba, mantuvo pese a todo

fied, and there was no express instruction from the client that could exempt him from his professional obligation to protect the debt and the guarantees constituted in the registry.

In short, the professional duty to defend and enforce a claim is not limited to merely obtaining guarantees but necessarily includes ensuring their effectiveness through the corresponding registration, especially when the legal representative is aware of the insufficiency of the guarantees obtained and the need to take additional protective measures.

Blood ties

An appeal by a plaintiff against an insurance company was upheld, and the plaintiff was found to be entitled to compensation as the sister of the victim of a traffic accident, despite the fact that adoption had formally severed the legal ties with her biological family, as it was proven that she had maintained a loving sisterly relationship with the deceased throughout her life

Judgment of the Supreme Court (Civil Chamber) No. 1523/2005, of 30 October 2025 (ECLI:ES:TS:2025:4873) Rec. 4375/2020

The first instance judgment dismissed an adopted sister's claim against an insurance company, on the grounds that Article 178 of the Civil Code establishes that adoption extinguishes the legal ties between the adoptee and their previous family, and that she did not meet the requirements to be considered a functional or close relative.

The second instance judgment partially upheld the appeal only insofar as it did not expressly impose the costs of the first instance proceedings due to doubts of law, but upheld the dismissal of the main claim.

The Supreme Court analysed Article 62.3 of the TRLRCSCVM on functional or analogous injured parties, highlighting that the common denominator of all injured parties in the new system of Law 35/2015 is the emotional bond between the injured party and the victim, which must be proven in the case of functional injured parties.

The Supreme Court found that there were special circumstances that justified an interpretation of Article 62.3 of the TRLRCSCVM from the perspective of the principle of compensation: the plaintiff, who was the biological sister of the deceased, was affected by a break in the legal bond when she was seven years old, at which time her wishes were not

la relación fraterna durante toda su vida y sufrió un daño moral innegable de igual intensidad que el resto de los hermanos.

El Tribunal distingue entre parientes "únicos" (progenitores, abuelos, cónyuge) y parientes "acumulativos" (descendientes, hermanos), señalando que en estos últimos la condición de perjudicado funcional no exige necesariamente el incumplimiento de los deberes del pariente desplazado cuando concurren circunstancias especiales como las acreditadas en este caso.

El Tribunal destaca que la Ley 35/2015 erradicó el anterior sistema de perjudicados identificados por categorías excluyentes, y que en el actual sistema de valoración del daño es posible una interpretación del art. 62.3 TRLRCSCVM que cumpla verdaderamente con el principio de indemnidad en los grupos de parientes acumulativos cuando se dan circunstancias tan especiales como las de este caso.

Por tanto, se estima el recurso de casación y se casa la sentencia de apelación, estimándose la demanda y condenando a la aseguradora a abonar a la demandante la suma de 15.400€ más los intereses previstos en el artículo 20 de la LCS desde la fecha de la sentencia, sin imposición de costas.

taken into account; despite this, she maintained a sisterly relationship throughout her life and suffered undeniable moral damage of the same intensity as the rest of her siblings.

The Court distinguished between relatives who are "unique" (parents, grandparents, spouse) and relatives who are "cumulative" (descendants, siblings), noting that in the latter case, the status of functional victim does not necessarily require a breach of the duties of the estranged relative when special circumstances such as those established in this case exist.

The Court stressed that Law 35/2015 repealed the previous system of injured parties identified by exclusive categories and that, under the current system of assessing damage, it was possible to interpret Article 62.3 of the TRLRCSCVM in a way that truly complied with the principle of compensation for cumulative groups of relatives when special circumstances such as those in this case arose.

Therefore, the appeal was upheld, and the appeal judgment was overturned. The claim was upheld, and the insurer was ordered to pay the plaintiff the sum of €15,400 plus the interest provided for in Article 20 of the LCS from the date of the judgment, with no costs being imposed.

▸ No te hagas el longuis

Se desestima el recurso de casación y se confirma la anulación de la declaración de responsabilidad subsidiaria al no haber investigado la Administración los indicios claros de responsabilidad solidaria ni haber motivado las razones por las que descartó su concurrencia

Sentencia del Tribunal Supremo (Sala de lo Contencioso Sección 2ª) núm. 1416/2025, de 5 de noviembre (Rec. 5704/2023)

La sentencia de primera instancia estimó el recurso contencioso-administrativo anulando el acuerdo de declaración de responsabilidad subsidiaria dictado por la Administración de Valencia de la Agencia Tributaria, que había sido parcialmente confirmado por el TEAR de Valencia, anulando la derivación en lo que hace al supuesto de responsabilidad previsto en la letra b) del apartado 1 del artículo 43 de la LGT, manteniendo el de la letra a) del mismo apartado y artículo.

La sentencia de segunda instancia dispone que la declaración de responsabilidad subsidiaria no exige agotar previamente todas las posibilidades de declaración de responsabilidad solidaria, pudiendo la Administración declarar sin más trámites la responsabilidad subsidiaria que aprecie, sin necesidad de exteriorizar el fundamento de su decisión.

▸ Don't play dumb

An appeal was dismissed, and the annulment of a declaration of subsidiary liability was upheld because the tax authorities didn't investigate clear evidence of joint and several liability or explain why they ruled it out

Judgment of the Supreme Court (Contentious Chamber, 2nd Section) No. 1416/2025, of 5 November (Rec. 5704/2023)

The first instance judgment upheld the contentious-administrative appeal and annulled the Valencia Tax Agency's resolution declaring subsidiary liability, which had been partially upheld by the Valencia Regional Economic-Administrative Court, annulling the reference in relation to the case of liability provided for in Article 43.1(b) of the LGT, while maintaining that in Article 43.1(a).

The second instance judgment held that the declaration of subsidiary liability did not require the prior exhaustion of all possibilities of joint and several liability, and that the tax authorities could declare subsidiary liability without further procedural steps, and without the need to disclose the basis for their decision.

Sin embargo, el Tribunal Supremo establece que cuando la persona física o jurídica a quien la Administración tributaria pretende iniciar, o le haya iniciado, un expediente de declaración de responsabilidad subsidiaria, presenta datos que identifiquen a una persona como posible responsable solidario, indicando la relación o vínculo de esa persona con el deudor principal, y estos datos se pueden considerar indicios claros que permitan fundar razonablemente la existencia de esos posibles responsables solidarios, la Administración tributaria está obligada a indagar y comprobar la realidad de tales indicios de forma previa a la declaración de responsabilidad subsidiaria; y cuando considere que no concurren, debe exteriorizar el fundamento de su decisión.

However, the Supreme Court held that when a natural or legal person against whom the tax authorities intend to initiate, or have initiated, proceedings for a declaration of subsidiary liability, presents information identifying a person as a possible jointly and severally liable party, indicating that person's relationship or link with the principal debtor, and this information can be considered clear evidence that reasonably supports the existence of these possible jointly and severally liable parties, the tax authorities are obliged to investigate and verify the authenticity of such evidence before declaring subsidiary liability, and when they consider that there is no such evidence, they must disclose the basis for their decision.

Tribuna Pérez-Llorca
Pérez-Llorca Tribune

Un año de novedades en Europa: preguntas a EIOPA y sentencias del TJUE

A year of developments in Europe: questions to EIOPA and CJEU rulings

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El Reglamento (UE) 1094/2010, del Parlamento Europeo y del Consejo de 24 de noviembre de 2010, por el que se crea una Autoridad Europea de Supervisión (Autoridad Europea de Seguros y Pensiones de Jubilación, más conocida por sus siglas en inglés como "**EIOPA**"), prevé en su artículo 16 ter que cualquier persona física o jurídica, incluidas autoridades competentes e instituciones de la Unión, puede plantear a EIOPA preguntas sobre la aplicación práctica de la legislación en cualquier lengua oficial de la Unión. Las respuestas de EIOPA no son vinculantes y se facilitan al menos en la lengua de la pregunta. EIOPA mantiene así una herramienta web para formular preguntas y publicar respuestas, con un volumen de actividad considerable. Así, por ejemplo, en el año 2025 se podría hablar de todo un cuerpo doctrinal de EIOPA sobre el Reglamento DORA, pero también algunas curiosidades y cuestiones notables de las que hemos tratado de hacer un extracto en esta tribuna.

En el terreno de las curiosidades, en línea con años precedentes, EIOPA rechaza preguntas formuladas por simples propósitos académicos o de investigación. Así, por ejemplo, la interminable pregunta 3310, de 1 de abril de 2025, sobre restricciones a las compras de activos extranjeros por fondos de pensiones y aseguradoras en varios países de la Unión. También preguntas mal formuladas o genéricas, como la pregunta 3364, de 12 de junio de 2025, sobre si EIOPA tenía una posición respecto de escisiones o segregaciones de aseguradoras, sin mayor concreción. O cuestiones que buscan que EIOPA haga una suerte de asesoramiento personalizado al interesado, como la pregunta 3397, de 29 de julio de 2025, sobre requisitos legales que debe cumplir una plataforma o "*marketplace*" digital de seguros. Por supuesto, preguntas sobre cuestiones ya abordadas, como la 3223, de 10 de enero de 2025, sobre el siempre sugestivo tema de los depósitos

Article 16b of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority, better known as "**EIOPA**") provides that any natural or legal person, including competent authorities and Union institutions, may submit questions to EIOPA on the practical application of legislation in any official language of the Union. EIOPA's answers are not binding and are provided in the same language as the question. EIOPA thus operates a web-based platform for asking questions and posting answers, which has generated substantial engagement. For example, 2025 has yielded a comprehensive body of EIOPA interpretation regarding the DORA Regulation, as well as certain interesting and significant matters, a selection of which are highlighted below.

It is worth noting that EIOPA, as in previous years, does not answer questions submitted exclusively for academic or research purposes. This includes, for example, the interminable question 3310 of 1 April 2025 on restrictions on foreign asset purchases by pension funds and insurers in several EU countries. The same goes for poorly formulated or generic questions, such as question 3364 of 12 June 2025, which asked whether EIOPA had adopted a position on demergers or spin-offs of insurance undertakings, without providing further details. Or questions that seek a kind of personalised advice from EIOPA, such as question 3397, of 29 July 2025, on the legal requirements that a digital insurance platform or marketplace must comply with. Unsurprisingly, questions on issues that have already been addressed on other occasions are systematically rejected to avoid repetition. Question 3223, of 10 January 2025, on the recurring topic of security

de garantía en reaseguro, que han sido objeto de tratamiento en otras ocasiones (por ejemplo, preguntas 2830 o 2178, remitiéndose a esta última EIOPA en el caso concreto), son rechazadas para evitar pronunciamientos reiterativos (lo que permite, en todo caso, colegir que EIOPA no ha variado de criterio a lo ya expresado, en este caso en 2020).

El premio absoluto a la consulta "más marciana" en 2025, en todo caso, se lo lleva la 3342, de 13 de mayo de 2025, que debemos transcribir para prevenir incredulidad en nuestros lectores: la pregunta era concretamente "Propuesta – Reconocer el hacer el pino como un tipo de seguro específico", obviamente rechazada. Es una pena no poder conocer quién la formuló, o cómo llegó incluso a ser objeto de publicación, pero arranca sin duda una sonrisa en cualquier día gris al estudioso del mundo asegurador.

Y si entramos en el terreno de las consultas serias e interesantes, aunque habría otras, queremos destacar al menos dos, pese a que la segunda no haya obtenido respuesta sino indirectamente:

- Pregunta 2939, de 15 de diciembre de 2023 (hay que tener en cuenta que esta fecha está referida siempre a cuando se remite la pregunta, no cuando es contestada), en la que se abordan dos cuestiones críticas: (i) si un cambio de residencia de un tomador de seguro supone que el contrato pasa a estar concluido de forma transfronteriza (sea libre prestación de servicios, sea derecho de establecimiento), y (ii) si esto requiere al asegurador notificar en los contratos en cuestión que ha pasado a operar en ese régimen.

  En esta interesante pregunta, se recuerda el razonamiento del Tribunal de Justicia de la Unión Europea ("**TJUE**") de 21 de febrero de 2013, RVS Levensverzekeringen NV vs. Belgische Staat, C-243/11, párrafos 34 y 39, que recuerda que las Directivas no especifican la fecha en la que debe determinarse la residencia habitual del tomador del seguro, decantándose EIOPA por el criterio de "la intención empresarial del asegurador" y no "por la evolución vital de los tomadores de seguros", lo que hace concluir al supervisor europeo que al no ser la intención del asegurador trasladar o prestar servicios en el Estado al que se haya trasladado el cliente, con independencia de la interpretación dinámica que pueda darse desde un punto de vista fiscal, no hay razón para solicitar que el asegurador notifique la nueva jurisdicción donde se ha trasladado el tomador como lugar donde lleva a cabo operaciones.

- Pregunta 3219, de 31 de diciembre de 2024, en la que se plantea si un corredor de seguros puede llevar a cabo actividades de gestión de siniestros, cuestionando tal posibilidad, apuntando a conflictos de interés, etc., y que es rechazada por EIOPA, dado que esta materia está ya contemplada en el

deposits in reinsurance - a matter examined in earlier questions such as questions 2830 and 2178, the latter being specifically referenced by EIOPA- was declined accordingly. Such rejection permits the inference that EIOPA's position remains unchanged from that expressed in 2020.

The top prize for the most unconventional consultation in 2025, in any case, goes to question 3342, dated 13 May 2025, which warrants verbatim citation to convey its unusual nature: "Proposal - Recognising Handstand Teaching as a Distinct Insurance Category", which was, unsurprisingly, rejected. It is a shame that we do not know who came up with it, or how it even came to be published, but it certainly brings a smile to the face of anyone studying the insurance world on a grey day.

Turning to the more substantive and interesting questions, we ought to emphasise at least two, although the second has been addressed only indirectly:

- Question 2939, dated 15 December 2023 (note that this date always refers to when the question is sent, not when it is answered), which addresses two critical issues: (i) whether a change in a policyholder's residence renders the contract cross-border (under either the freedom to provide services or the right of establishment), and (ii) whether this obliges the insurance undertaking to state that it has begun operating under that regime for the existing contracts.

  This intriguing question brings to mind the reasoning of the Court of Justice of the European Union ("**CJEU**") of 21 February 2013, RVS Levensverzekeringen NV vs. Belgische Staat, C-243/11, paragraphs 34 and 39, which notes that the Directives do not specify the date on which the policyholder's habitual residence must be established, with EIOPA opting for the criterion of "the business intention of the insurer" and not "the life developments of the policyholder". This led the European supervisor to conclude that, absent any intention on the insurer's part to relocate to or provide services within the State to which the policyholder has moved, no grounds exist for requiring notification of the new jurisdiction as a location where operations are carried out—notwithstanding any dynamic interpretation that may be adopted from a taxation perspective.

- Question 3219, dated 31 December 2024, which asked whether an insurance broker could carry out claims management activities, raising issues such as conflicts of interest, among others, was rejected by EIOPA, given that this matter is already regulated by Article 2.1.1 of Directive

artículo 2(1)(1) de la Directiva (UE) 2016/97, del Parlamento Europeo y del Consejo, de 20 de enero de 2016, sobre la distribución de seguros (por sus siglas en inglés, "**IDD**"), admitiéndose por tanto que el corredor acometa tales actividades, siempre que no sea a tiempo completo.

(EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution ("**IDD**"), permitting brokers to engage in such activities provided that it is not on a full-time basis.

Además de estas cuestiones ya respondidas, el 2025 nos deja algunas interesantísimas, pendientes de respuesta, y donde sin duda será de gran ayuda conocer el criterio, aunque no sea vinculante como hemos explicado, de EIOPA:

In addition to these questions that have already been answered, 2025 leaves us with some particularly noteworthy questions that have yet to be addressed. While not binding in nature, as previously explained, EIOPA's guidelines on these matters will undoubtedly provide valuable guidance on the following matters:

- Pregunta 3369, de 20 de junio, en la que se cuestiona dónde pueden presentar una reclamación contra el asegurador o distribuidor del contrato las personas aseguradas cubiertas por un contrato de seguro colectivo regido por la legislación de un Estado miembro de acogida, pero cuya residencia habitual puede estar en un Estado diferente.

- Question 3369, dated 20 June, asks where insured persons covered by a group insurance contract governed by the law of a host Member State, but whose habitual residence may be in a different State, can file a complaint against the insurer or intermediary under the contract.

- Pregunta 3383, de 16 de julio, en la que se indaga sobre los seguros de viaje ligados a pagos por tarjeta de crédito, y sobre su consideración a efectos de la excepción del artículo 24.3 de la IDD sobre ventas cruzadas, es decir, si el pago y la contratación del seguro pueden ejecutarse conjuntamente o ha de ofrecerse la opción de que el seguro se adquiera separadamente, y dependiendo de lo que se considere por EIOPA al respecto, qué aplicación tendría en esta cuestión el artículo 20 de la IDD sobre asesoramiento y normas aplicables en ventas sin asesoramiento.

- Question 3383, dated 16 July, which enquires about travel insurance linked to credit card payments and its consideration for the purposes of Article 24.3 of the IDD on cross-selling. Specifically, it seeks clarification as to whether the payment and the purchase of insurance can be executed together or whether the option for insurance to be purchased has to be offered separately, and, depending on EIOPA's position in this regard, how Article 20 of the IDD on advice and rules applicable to sales without advice would apply in this case.

Por su lado, el TJUE nos deja en 2025 algunas sentencias de interés para el Sector (además de alguna otra analizada en números anteriores de esta publicación):

For its part, the CJEU has issued several judgments of interest to the sector in 2025 (in addition to others analysed in previous editions of this publication):

- La Sentencia del TJUE (Sala Novena) de 8 de mayo de 2025 (petición de decisión prejudicial planteada por el Landgericht München I – Alemania) – HUK-COBURG Haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands a.G. in Coburg / Check24 Vergleichsportal GmbH y otros, asunto C-697/23, (HUK-COBURG Haftpflicht-Unterstützungs-Kasse), en la que en el contexto de la Directiva 2006/114/CE del Parlamento Europeo y del Consejo, de 12 de diciembre de 2006, sobre publicidad engañosa y publicidad comparativa, y concretamente su artículo 2.c), se declara que "no está comprendido en el concepto de «publicidad comparativa», contemplado en dicha disposición, un servicio de comparación en línea de productos o de servicios prestado por una empresa que no es un «competidor», en el sentido de esa disposición, es decir, que no ofrece ella misma los productos o servicios que compara y que, por consiguiente, opera en un mercado de productos o de servicios distinto. Lo mismo sucede cuando esa empresa actúa como intermediaria y permite

- The Judgment of the CJEU (Ninth Chamber) of 8 May 2025 (reference for a preliminary ruling from the Landgericht München I - Germany) - HUK-COBURG Haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands a.G. in Coburg v Check24 Vergleichsportal GmbH and Others, Case C-697/23, (HUK-COBURG Haftpflicht-Unterstützungs-Kasse), in which, in the context of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, and in particular Article 2(c), the Court held that "the concept of 'comparative advertising', referred to in that provision, does not include an online comparison service for goods or services provided by an undertaking which is not a 'competitor' within the meaning of that provision, that is to say, which does not itself offer the goods or services which it compares and which therefore operates in a market for separate goods or services. The same applies where that undertaking acts as an intermediary and allows

a los consumidores celebrar contratos con empresas que ofrecen los productos o los servicios de que se trate, sin operar ella misma en el mercado de dichos productos o servicios". La sentencia se planteaba en un supuesto donde un comparador de seguros (Check24) ofrece gratuitamente a sus usuarios el comparar distintos seguros y, en caso de que estén interesados, contratar con los proveedores de esos productos. En el contexto de esa comparación, se asignaban calificaciones o notas a los distintos productos, puntuándolos más o menos favorablemente, algo que para una aseguradora que comercializaba seguros de circulación de vehículos a motor (HUK-Coburg), constituía "publicidad comparativa ilegal con arreglo al Derecho nacional, pues deben considerarse juicios de valor que no pueden ser objeto de publicidad comparativa porque reflejan una falsa objetividad y pueden ser extremadamente engañosas para el consumidor", planteamiento que, como hemos visto, no es acogido por el TJUE.

- La Sentencia del TJUE (Sala Cuarta) de 30 de abril de 2025 (petición de decisión prejudicial planteada por el Landgericht München I – Alemania) - Bundesrepublik Deutschland contra Mutua Madrileña Automovilista, asunto C-536/23, en la que se interpreta el concepto de persona perjudicada. En el supuesto, se solicita al TJUE que dilucide si un Estado miembro —en su condición de empleador y tras indemnizar a un funcionario público lesionado en un accidente de tráfico— puede ser considerado persona perjudicada en virtud del Reglamento (UE) No 1215/2012, de 12 de diciembre de 2012, relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil ("**Reglamento 1215/2012**") para poder demandar directamente a la aseguradora del vehículo en los tribunales del lugar donde está domiciliado el asegurado.

  El TJUE responde afirmativamente. En concreto, interpreta que, cuando un Estado miembro actúa como empleador subrogado en los derechos de compensación de su empleado —y ha continuado pagando su salario durante la incapacidad laboral— ese Estado sí puede considerarse "persona perjudicada" según el artículo 13(2) junto con el artículo 11(1)(b) del Reglamento 1215/2012. Además, el TJUE aclara que, en esos casos, la demanda puede presentarse no en los tribunales del domicilio del funcionario lesionado, sino en los tribunales del lugar donde radica la administración empleadora (es decir, la sede del organismo público). El Tribunal deja claro que esta interpretación no se ve alterada por el hecho de que el Estado también ejerciera funciones de seguridad social o de aseguramiento público: lo relevante es su papel como empleador subrogado en derechos indemnizatorios.

consumers to conclude contracts with undertakings which offer the goods or services concerned, without itself operating in the market for those goods or those services." The case involved an insurance comparison website (Check24) that offers its users a free comparison service for different insurance products and enables them to contract with the providers if they are interested. In the context of that comparison, ratings or grades were assigned to the various products, scoring them more or less favourably. One motor vehicle insurer (HUK-Coburg) argued that this constituted "comparative advertising which is not permitted under national law, on the ground that they must be regarded as value judgments that cannot be the subject of comparative advertising, given that they reflect a false objectivity and may be highly misleading for the consumer", an approach which, as we have seen, is not accepted by the CJEU.

- The Judgment of the CJEU (Fourth Chamber) of 30 April 2025 (reference for a preliminary ruling from the Landgericht München I - Germany) - Bundesrepublik Deutschland v Mutua Madrileña Automovilista, Case C-536/23, concerning the interpretation of the concept of an injured party. The CJEU was asked to clarify whether a Member State - in its capacity as an employer and after continuing to pay the remuneration of a public official injured in a road traffic accident - can be considered an injured party under Regulation (EU) No 1215/2012 of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("**Regulation 1215/2012**") in order to be able to bring proceedings directly against the vehicle insurer in the courts of the place where the insured is domiciled.

  The CJEU answered in the affirmative. In particular, it held that, where a Member State acts as a subrogated employer in the compensation rights of its employee - and has continued to pay his or her salary during the period of incapacity for work - that State can indeed be considered an "injured party" under Article 13.2 in conjunction with Article 11.1(b) of Regulation 1215/2012. Furthermore, the CJEU clarified that, in such cases, the action may be brought not in the courts of the domicile of the injured civil servant, but in the courts of the place where the employing administration is located (i.e. the seat of the administrative body). The Court stressed that this interpretation is not altered by the fact that the State also exercised social security or public insurance functions: what is relevant is its role as a subrogated employer in compensation claims.

Shadow Insurance: seguro por fuera, garantía o servicio por dentro

Shadow Insurance: insurance on the outside, warranty or service on the inside

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Es sabido que, en el ámbito asegurador, la terminología no es un mero recurso comercial, sino un elemento que condiciona la comprensión del producto por el tomador del seguro. Expresiones como "póliza", "seguro", "cobertura", "prima", "franquicia", "siniestro" o "indemnización" forman parte del lenguaje técnico propio del contrato de seguro y, cuando se emplean en fase precontractual, contribuyen a proyectar una expectativa en el tomador del seguro: que el riesgo se traslada mediante el pago de una prima y es asumido por una entidad aseguradora y que, de producirse el siniestro, surgirá la correspondiente obligación de indemnizar o satisfacer la prestación convenida, dentro de los límites pactados, en los términos del artículo 1 de la LCS.

En el mercado español se aprecia una proliferación de operadores y prácticas de comercialización o, en general, de mercado, que adoptan una apariencia aseguradora. Ello ocurre ya sea por el lenguaje empleado, por la estructura del producto o por su forma de comercialización, aun cuando lo ofrecido no siempre constituye una póliza de seguro emitida por una entidad aseguradora. En estos supuestos, el consumidor puede verse inducido a contratar servicios o compromisos privados de prestación, de garantía o de pago al margen del perímetro regulatorio; esto es, sin el respaldo de una entidad autorizada y sujeta a la supervisión de la DGSFP. De ahí que hayan ido ganando terreno —a menudo con un precio inferior— soluciones que prometen cobertura frente a contingencias diversas (por ejemplo, impago, avería, asistencia, asistencia sanitaria o cancelación) y que se presentan bajo una denominación y una narrativa inequívocamente aseguradora, con el consiguiente riesgo de confusión respecto de su verdadera naturaleza y del régimen jurídico y prudencial que les resulta aplicable. Sucede incluso que esas garantías se proporcionan mediante pagos periódicos, que se asemejan mucho a una prima de seguro, lo que acrecienta la potencial confusión.

It is well known that, in the insurance industry, terminology is not merely a commercial resource, but rather an element that determines the policyholder's understanding of the product. Expressions such as "policy", "insurance", "coverage", "premium", "excess", "claim" or "compensation" form part of the technical language of an insurance contract and, when used in the pre-contractual phase, help to create an expectation on the part of the policyholder: that the risk is transferred through the payment of a premium and is assumed by an insurance company and that, if a claim occurs, the corresponding obligation to compensate or satisfy the agreed benefit will arise, within the agreed limits, in the terms of Article 1 of the LCS.

In the Spanish market, there is a proliferation of operators and commercial or, in general, market practices that take on the appearance of insurance. This is either because of the language used, the structure of the product or the way it is marketed, even though what is offered does not always constitute an insurance policy issued by an insurer. In these cases, a consumer may be induced to contract services or private commitments to provide, guarantee or pay outside the regulatory perimeter, i.e. without the backing of an authorised entity subject to the supervision of the DGSFP. As a result, solutions have been gaining ground - often at a lower price - that promise cover against various events (e.g. non-payment, breakdown, assistance, healthcare or cancellation) and which are presented under an unambiguously insurance-related name and narrative, with the consequent risk of confusion as to their true nature and the legal and prudential regime applicable to them. These warranties are even provided through periodic payments, which closely resemble an insurance premium, further increasing the potential for confusion.

El auge de estas estructuras "alternativas" trasciende el plano puramente comercial. En la práctica, responde, más bien, a un incentivo muy concreto que consiste en ofrecer al mercado una promesa de protección funcionalmente equivalente a la del contrato de seguro, esto es, la prestación o el pago cuando se materializa una contingencia o un evento adverso. Con ello, se evita quedar sujeta al perímetro regulatorio propio de la actividad aseguradora. Así, se comercializan productos que, por su diseño y por la experiencia que trasladan al cliente, se aproximan a una póliza de seguro (véase, por ejemplo, elementos como cuota o precio periódico, supuestos de activación, límites de prestación, exclusiones y, en ocasiones, mecanismos equivalentes a una franquicia), aunque, desde el punto de vista jurídico, se configuren como servicios, suscripciones o compromisos contractuales de prestación o de pago.

La distinción anterior es relevante porque, a diferencia de dichas estructuras, la actividad aseguradora no es de libre ejercicio. El ordenamiento español exige autorización administrativa previa para acceder a la actividad aseguradora y reaseguradora y así, asumir la cobertura de riesgos a cambio de una prima y obligarse, en caso de siniestro, a indemnizar o a satisfacer la prestación pactada. En consecuencia, quien accede al mercado queda sometido a un régimen continuado de ordenación, supervisión y solvencia en los términos previstos en la LOSSEAR y su desarrollo reglamentario.

El consumidor que contrata un producto de protección no asegurador, en suma, un producto en el que se le prestan servicios por un empresario, se enfrenta a un entorno mucho menos protector, por una infinidad de diferencias que son críticas, y entre ellas:

- **Inoponibilidad de ciertas condiciones contractuales**. El prestador de servicios no asegurador está sujeto sólo a las constricciones del Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias ("**TRLGDCU**") y la Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación ("**LCGC**"). Esta última afecta igualmente a la entidad aseguradora, pero la diferencia radical que existe entre ambos operadores es que la entidad aseguradora tiene sobre sí el elemento de las condiciones limitativas, siempre de confusa definición y concepción y, sobre todo, la prueba de la aceptación del contrato de seguro, que nuestra jurisprudencia sobre seguros fuerza a límites desfasados con los usos y costumbres de nuestro tiempo. En cambio, ese prestador de servicios no tiene esas reglas específicas, y las pruebas sobre el consentimiento que debe mostrar bajo el TRLGDCU carecen de esa protección especial. De hecho, la LCS contiene un sistema de resaltado no sólo de condiciones limitativas, sino también de

The rise of these "alternative" structures goes beyond the purely commercial scope. In practice, it has more to do with a very specific incentive, which consists of marketing a promise of protection that is functionally equivalent to that of an insurance contract, i.e. the provision or payment of benefits when a contingency or adverse event occurs. This allows these products to avoid being subject to the regulatory framework applicable to insurance activities. Thus, products are marketed that, due to their design and the experience they provide to the customer, are similar to an insurance policy (see, for example, elements such as periodic fees or prices, activation conditions, benefit limits, exclusions, and, in some cases, mechanisms equivalent to a deductible), although, from a legal point of view, they are structured as services, subscriptions, or contractual commitments to provide benefits or make payments.

The above distinction is significant because, unlike these structures, the insurance business is not freely exercisable. Spanish law requires prior administrative authorisation to engage in insurance and reinsurance and, thus, to assume risk coverage in exchange for a premium and to undertake, in the event of a claim, to compensate or satisfy the agreed benefit. Consequently, anyone entering the market is subject to a continuous regime of regulation, supervision and solvency under the terms of the LOSSEAR and its implementing regulations.

Consumers who purchase a non-insurance protection product, in short, a product in which services are provided by a business, can expect less protection due to a number of critical differences, including:

- **The unenforceability of certain contractual conditions**. Non-insurance service providers are subject only to the restrictions of Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law for the Defence of Consumers and Users and other complementary laws ("**TRLGDCU**") and Law 7/1998, of 13 April, on general contracting conditions ("**LCGC**"). The latter also affects insurance companies, but the radical difference between the two operators is that insurance companies are subject to restrictive conditions, which are always vague in their definition and conceptualisation, and, above all, to the requirement to demonstrate acceptance of the insurance contract, which our case law on insurance has forced the insurance industry to comply with, even though it is out of step with the customs and practices of our time. In contrast, service providers are not subject to these specific rules, and the evidence of consent that they must provide under the TRLGDCU lacks this special protection. In fact, the LCS contains a system which highlights not only restrictive conditions, but also exclusions and other warn-

exclusiones y otras advertencias (cfr. sus artículos 8.3 y 22.4), que no existe en un contrato únicamente gobernado bajo el TRLGDCU y/o la LCGC.

- **Falta de protección en caso de circunstancias preexistentes**. La entidad aseguradora, sometida a las reglas del artículo 10 de la LCS, se enfrenta a dos retos: si no pregunta mediante un cuestionario sobre circunstancias preexistentes sobre el riesgo, está aceptando cubrir todas las que presente el asegurado una vez se celebre el contrato de seguro; si, por otra parte, pregunta sobre tales circunstancias, no queda excusado del cumplimiento de su obligación en caso de que el solicitante de seguro haya manifestado reservas o inexactitudes en sus respuestas, sino sólo en la medida en que las mismas guarden una relación directa con el evento dañoso que luego ha de ser objeto de cobertura. El cliente de un prestador de servicios no asegurador, sometido únicamente a las reglas imperativas del TRLGDCU, no encuentra una protección similar, y puede perfectamente serle denegada la cobertura simplemente por haberse reseñado en el contrato que no se cubren prestaciones por problemas preexistentes, o por haberse manifestado alguna reserva o inexactitud en la declaración del riesgo -de serle demandada la misma-.

- **Falta de protección en cuanto a la duración**. Un prestador de servicios no asegurador puede introducir condiciones de resolución que terminen anticipadamente con la vigencia de este (cfr. artículo 60.2.f) del TRLGDCU), mientras que la entidad aseguradora debe respetar el principio de indivisibilidad de la prima, duración determinada conforme a lo pactado en el contrato de seguro bajo las reglas del artículo 22 de la LCS, y carece de derechos de resolución anticipada sino en ciertos casos tasados *ex lege* (artículos 10, 12, 15…).

- **Precio del contrato**. La entidad aseguradora no puede pedir una prima mayor respecto de la definida originalmente salvo en las renovaciones del contrato de seguro y en casos de agravaciones del riesgo asegurado -artículo 12 de la LCS-. Un contrato de seguro puede suponer un resultado económico dificilísimo para la entidad aseguradora si tras ser concertado, se materializa un riesgo de gran magnitud. El prestador de servicios no asegurador tiene escapatorias en ese sentido -además de posibles derechos de terminación anticipada fijados en el contrato-: el artículo 60 *bis* del TRLGDCU define un régimen de posibles pagos adicionales, siempre que medie el consentimiento del cliente, lo que de plantearse en un contrato de seguro sería considerado como lesivo (dado que se estaría diciendo al asegurado que en caso de sobrevenir determinado siniestro de determinada magnitud habrá de hacer pagos adicionales de prima).

ings (see Articles 8.3 and 22.4), which does not exist in a contract governed solely by the TRLGDCU and/or the LCGC.

- **Absence of protection in the event of pre-existing circumstances**. Insurers, subject to the rules of Article 10 of the LCS, face two challenges: if they do not ask about pre-existing circumstances relating to the risk in a questionnaire, they are agreeing to cover all those presented by the insured once the insurance contract is concluded; if, on the other hand, they ask about such circumstances, they are not excused from fulfilling their obligation if the insurance applicant has expressed reservations or inaccuracies in their answers, but only to the extent that these are directly related to the harmful event that is to be covered. Clients of non-insurance service providers, who are only subject to the mandatory rules of the TRLGDCU, do not enjoy similar protection and may well be denied cover simply because the contract states that benefits for pre-existing conditions are not covered, or because they have expressed reservations or inaccuracies in their risk declaration, if they are required to provide one.

- **Absence of protection in terms of duration**. Non-insurance service providers may introduce termination conditions that terminate the contract early (see Article 60.2.f) of the TRLGDCU), whereas insurance companies must respect the principle of indivisibility of the premium, the duration agreed in the insurance contract under the rules of Article 22 of the LCS, and have no right of early termination except in certain cases specified by law (Articles 10, 12, and 15, among others).

- **The price of the contract**. Insurance companies cannot charge a higher premium than that originally agreed, except in the case of insurance contract renewals and in cases of the aggravation of the insured risk (Article 12 of the LCS). An insurance contract can have extremely onerous financial consequences for an insurance company if, after it has been taken out, a major risk materialises. Non-insurance service providers have loopholes in this regard, in addition to possible early termination rights set out in the contract: Article 60 *bis* of the TRLGDCU defines a regime of possible additional payments, provided that the customer consents, which, if included in an insurance contract, would be considered harmful (since it would be informing the insured that, in the event of a certain accident of a certain magnitude, they would have to make additional premium payments).

- **Penalidades en caso de mora**. El prestador de servicios no asegurador elude totalmente el draconiano régimen del artículo 20 de la LCS en lo tocante a mora de la entidad aseguradora, y se ve penalizado únicamente con intereses moratorios comunes. De hecho, no debemos perder de vista que el sistema del artículo 20 de la LCS es simplemente la pieza final de un conjunto de protecciones en los que la atención a las quejas y reclamaciones de los clientes, en el mundo asegurador como parte del sistema financiero, está especialmente cualificado y puede incluso abocar a una entidad permanentemente incumplidora a sanciones muy graves bajo la LOSSEAR.

- **Solvencia**. El prestador de servicios no asegurador no está sometido a los requerimientos de la LOSSEAR y el ROSSEAR o, en general, de Solvencia II y, por tanto, su capacidad financiera para respaldar compromisos futuros no está parametrizada y controlada. El consumidor tiene mucho mayor riesgo frente a la insolvencia de dicho prestador de servicios que el que tendría frente a una entidad aseguradora.

Un elemento aún más preocupante aparece cuando el prestador de servicios no asegurador opera desde fuera de la Unión Europea, algo muy común en venta de bienes sobre los que se ofrecen extensiones de garantías. Aunque parece que la Unión Europea quiere reforzar la protección incidiendo en la figura del representante autorizado, en el día a día los consumidores se enfrentan a desagradables sorpresas de todo tipo (pues ese prestador de servicios ignora totalmente los requisitos del TRLGDCU y se rige por sus condiciones generales de contratación).

Con esta lógica puede entenderse, con las cautelas necesarias, la analogía con el anglicismo "*shadow banking*", entendido, en términos generales, como la prestación o realización de funciones de intermediación financiera similares a las bancarias fuera del perímetro de las entidades de crédito reguladas y, por tanto, sin quedar sometida al mismo nivel prudencial. Trasladado al ámbito asegurador, cabría hablar (en sentido descriptivo) de una suerte de "*shadow insurance*" cuando aludimos a todo este tipo de modelos de prestación de servicios (de asistencia, de reparación, de asistencia sanitaria, etc.). Hoy por hoy, ni EIOPA ni la DGSFP han adoptado puntos de vista públicos sobre la cuestión. De hecho, para EIOPA la mayor preocupación respecto al "*shadow insurance*" era más bien macro (transferencias de riesgos a vehículos aseguradores y reaseguradores controlados por fondos de inversión), que micro, que sería la que nos ocupa respecto de productos que llegan al consumidor final y que no revisten las garantías del contrato de seguro.

¿Estamos ante un problema sin solución? Pensamos que la deriva de garantías pseudo-aseguradoras al régimen de pres-

- **Penalties in the event of late payment**. Non-insurance service providers completely avoid the draconian regime of Article 20 of the LCS regarding late payments by insurance companies, and are only penalised with standard late payment interest. In fact, we must not lose sight of the fact that the scope of Article 20 of the LCS is simply the final piece in a set of safeguards in which the handling of customer complaints and claims, in the insurance world as part of the financial system, is subject to particular qualifications and may even lead to very serious penalties under the LOSSEAR for an entity that is in continuous breach.

- **Solvency**. Non-insurance service providers are not subject to the requirements of the LOSSEAR and the ROSSEAR or, in general, Solvency II, and therefore their financial capacity to meet future commitments is not subject to parameters and controls. Consumers face a much greater risk of insolvency on the part of such service providers than they would face with an insurance company.

An even more worrying issue arises when non-insurance service providers operate from outside the European Union, which is very common in the sale of goods for which extended warranties are offered. Although it seems that the European Union wants to strengthen protection by focusing on the concept of the authorised representative, in everyday life, consumers face all kinds of unpleasant surprises (as these service providers completely ignore the requirements of the TRLGDCU and are governed by their own general terms and conditions).

With this logic, the analogy with "shadow banking" can be understood, with the necessary precautions, as generally referring to the provision or performance of financial intermediation functions similar to those of banks outside the scope of regulated credit institutions and, therefore, without being subject to the same prudential level. When applied to the insurance sector, one could speak (in a descriptive sense) of a sort of "shadow insurance" when referring to all these types of service provision models (assistance, repair, and healthcare, among others). To date, neither EIOPA nor the DGSFP have adopted any public position on the issue. In fact, for EIOPA, the main concern regarding "shadow insurance" was more macro (risk transfers to insurance and reinsurance vehicles controlled by investment funds) than micro, which would be the concern here regarding products that reach the end consumer and do not carry the guarantees of the insurance contract.

Is the problem unsolvable? We believe that the drift from pseudo-insurance guarantees to the service provision re-

tación de servicios es más bien respuesta que problema en sí mismo. Responde a un entorno regulatorio que se ha complicado a niveles inauditos, generando barreras de entrada a la actividad aseguradora que no estimulan la competitividad y la innovación. Los legisladores se van a enfrentar a un problema creciente, en cierta medida inadvertido, que les estallará en forma de quejas de consumidores e incluso escándalos (casos de rehúses de cobertura por el prestador de servicios no asegurador, o de insolvencia de éste que afecte a múltiples clientes, etc.). Y deben reflexionar si no hemos contribuido a generar ese áspero futuro al maximizar los poderes de los supervisores, que prácticamente actúan como si estuviéramos en mercados centralizados e intervenidos.

gime is more of a response than a problem in itself. It reflects a regulatory environment that has become extraordinarily complicated, creating barriers to entry into the insurance business that do not stimulate competition and innovation. Legislators will be confronted with a growing, somewhat unnoticed problem, which will explode in the form of consumer complaints and even scandals (cases of refusals of coverage by non-insurance service providers, or insolvency of non-insurance service providers which affects multiple clients, among others). And they must reflect on whether we have contributed to creating this harsh future by maximising the powers of supervisors, who act as if we were in centralised and regulated markets.

MEXICO

Actualidad Iberoamericana de Seguros
Ibero-American Insurance Update

México
Mexico

Principales novedades normativas y de supervisión
Key Regulatory and Supervisory Developments

Decreto por el que se expide la Ley de Ingresos de la Federación para el Ejercicio Fiscal de 2026

El 7 de noviembre de 2025 se publicó en el DOF la Ley de Ingresos de la Federación para el Ejercicio Fiscal de 2026, que recoge el acuerdo alcanzado entre el SAT y las aseguradoras respecto al tratamiento del IVA derivado de la adquisición de bienes y la prestación de servicios para la reparación de los daños de los asegurados. El IVA que terceros proveedores, tales como, hospitales o talleres de automóviles, trasladan a las aseguradoras por bienes y servicios ofrecidos para dar cumplimiento a las coberturas de las pólizas, no es acreditable a partir del 31 de diciembre de 2024.

Así, las aseguradoras no podrán acreditar el IVA resultante de las indemnizaciones pagadas desde 2025 en adelante, cuando éstas consistan en la reparación del daño o la reposición del bien siniestrado, con el IVA incluido en el pago de las primas. En suma, este impuesto se convierte en un coste no recuperable, especialmente para los ramos de autos, gastos médicos mayores y daños.

En aras a favorecer la regularización fiscal del IVA sin menoscabar la situación financiera de las aseguradoras, se establece un régimen transitorio para la declaración del 2025 que otorga un estímulo fiscal equivalente al monto del IVA acreditado o, en su caso, del crédito fiscal por adeudos de IVA a aquellas aseguradoras que antes del 31 de enero de 2026 lo soliciten, corrijan su situación fiscal antes del 31 de marzo de 2026 y:

- se encuentren inspeccionadas por el SAT sin resolución a 1 de enero de 2026, o
- tengan créditos fiscales por adeudos de IVA correspondientes a servicios recibidos hasta el 31 de diciembre de 2024, siempre que desistan de todos los conceptos impugnados a través de la interposición de medios de defensa o meca-

Decree issuing the Federal Revenue Law for the 2026 Fiscal Year

On 7 November 2025, the Federal Revenue Law for the 2026 Fiscal Year was published in the DOF, which reflects the agreement reached between the SAT and insurers regarding the treatment of VAT arising from the acquisition of goods and the provision of services for the repair of damage to insured parties. VAT that third-party suppliers, such as hospitals or car repair shops, transfer to insurers for goods and services provided to comply with policy coverage is not creditable as of 31 December 2024.

Insurers will therefore not be able to offset the VAT resulting from compensation paid from 2025 onwards, when this consists of the repair of damage or the replacement of damaged property, with the VAT included in the payment of premiums. In short, this tax becomes a non-recoverable cost, especially for motor, major medical expenses and damage insurance.

In order to promote VAT tax regularisation without undermining the financial position of insurers, a transitional regime has been established for the 2025 tax return, granting a tax incentive equivalent to the amount of VAT credited or, where applicable, the tax credit for VAT debts to those insurers who, before 31 January 2026, request it, correct their tax position before 31 March 2026 and:

- are inspected by the SAT without a resolution as of 1 January 2026; or
- have tax credits for VAT liabilities corresponding to services received until 31 December 2024, provided that they withdraw all contested items through the filing of defences or dispute resolution mechanisms. In the event of an

nismos de resolución de controversias. Si se trata de un recurso de revocación pendiente de resolución bastará con desistir por la contribución del IVA. No podrán solicitar la aplicación de este régimen si obtienen una resolución o sentencia definitiva con posterioridad al 1 de enero de 2026.

Este estímulo permite regularizar las declaraciones del IVA de las aseguradoras fraccionando en 12 parcialidades y hasta el 15 de diciembre de 2026 el pago del monto adeudado por los servicios recibidos durante 2025 sin aplicación de recargos ni sanciones. Además, interrumpe el plazo de prescripción y suspende el procedimiento administrativo de ejecución sin obligación de garantizar el interés fiscal.

appeal for revocation pending resolution, it will suffice to withdraw the VAT contribution. They may not apply for this regime if they obtain a final decision or judgment after 1 January 2026.

This incentive allows insurers to regularise their VAT returns by dividing the payment of the amount owed for services received during 2025 into 12 instalments until 15 December 2026, without the application of surcharges or penalties. In addition, it interrupts the limitation period and suspends the administrative enforcement procedure without the obligation to guarantee the tax interest.

Circular modificatoria 4/25 de la Única de Seguros y Fianzas

El 24 de octubre de 2025 se publicó en el DOF la circular modificatoria 4/25 para modificar las disposiciones 1.1.1, 3.2.1, 3.2.3, 3.2.5, 3.2.10, 3.2.11, 3.2.13 y 23.1.16 de la CUSF y adicionar los anexos 3.2.13-A y 3.2.13-B, con el objeto de fortalecer la función de administración de riesgos de las instituciones de seguros y que entrará en vigor el 1 de julio de 2026.

Por un lado, se aclara que, dentro del marco del sistema de administración integral de riesgos, se han de (i) efectuar declaraciones sobre el apetito de riesgo y la tolerancia al riesgo, (ii) adoptar medidas correctivas en caso de desviaciones, (iii) verificar el cálculo y la entrega del requerimiento de capital de solvencia, (iv) generar una base de datos históricos de eventos de pérdida por riesgo operativo, y (v) abordar el funcionamiento del sistema de gobierno en el informe del auditor experto independiente.

Por otro lado, se actualizan los requisitos de idoneidad del funcionario encargado del área de administración de riesgos, que debe contar con conocimientos y experiencia en administración de riesgos técnicos, financieros y operativos, así como el contenido y la presentación del manual de administración de riesgos, el cual debe hacer referencia al apetito de riesgo e incluir la bitácora de cambios para favorecer su supervisión y control.

Finalmente, se añaden los anexos 3.2.13-A y 3.2.13-B para regular la recolección, registro y presentación de datos históricos de eventos de pérdida (económica) por riesgos operativos, entendiéndose por "evento de pérdida por riesgo operativo" cualquiera que tenga un impacto financiero con flujo de efectivo negativo en el estado de resultados:

- El anexo 3.2.13-A recoge los requisitos para (i) la elaboración y actualización de la base de datos del registro histórico, y (ii) la identificación, recolección y registro de datos.

Amending Circular 4/25 of the Single Insurance and Surety Circular

On 24 October 2025, Amending Circular 4/25 was published in the DOF to amend provisions 1.1.1, 3.2.1, 3.2.3, 3.2.5, 3.2.10, 3.2.11, 3.2.13 and 23.1.16 of the CUSF and to add Annexes 3.2.13-A and 3.2.13-B, with the aim of strengthening the risk management function of insurance institutions. It will come into force on 1 July 2026.

Firstly, it clarifies that, within the framework of the comprehensive risk management system, it is necessary to (i) make statements on risk appetite and risk tolerance, (ii) take corrective measures in the event of deviations, (iii) verify the calculation and delivery of the solvency capital requirement, (iv) generate a historical database of operational risk loss events, and (v) address the functioning of the governance system in the independent expert auditor's report.

Furthermore, the suitability requirements for the officer in charge of risk management have been updated. This officer must have knowledge and experience in technical, financial, and operational risk management. The contents and presentation of the risk management manual have also been updated. The manual must refer to risk appetite and include a change log to facilitate supervision and control.

Finally, Annexes 3.2.13-A and 3.2.13-B have been added to regulate the collection, recording and presentation of historical data on (economic) loss events due to operational risks, with "operational risk loss event" understood to mean any event that has a financial impact with negative cash flow on the income statement:

- Annex 3.2.13-A sets out the requirements for (i) the development and updating of the historical record database, and (ii) the identification, collection and recording of data.

Las instituciones deberán realizar igualmente un control de los riesgos operativos con o sin pérdida económica.

- El anexo 3.2.13-B dispone los aspectos generales para la presentación de la base de datos del registro histórico de eventos de pérdida por riesgo operativo a la CNSF a través de su página web.

Institutions must also control operational risks with or without economic loss.

- Annex 3.2.13-B sets out the general factors for the submission of the historical database of operational risk loss events to the CNSF via its website.

Se reforma la LISF para aclarar los supuestos en los que cabe acudir al Código Nacional de Procedimientos Civiles y Familiares

El 14 de noviembre de 2025 se publicó en el DOF el Decreto por el que se reforman diversas disposiciones de diversos ordenamientos legales, en materia de homologación normativa relativa al Código Nacional de Procedimientos Civiles y Familiares, entre ellos, los artículos 193 (fracción III, inciso I), 280 (fracción VI), 281 (segundo párrafo) y 479 (último párrafo) de la LISF.

El Código Nacional de Procedimientos Civiles y Familiares se aplicará:

- supletoriamente en procedimientos de venta de inmuebles para cobrar las cantidades aseguradas en seguros de caución o fianzas garantizadas con hipoteca, fideicomisos o afectación de bienes inmuebles en garantía;
- supletoriamente (junto con el Código de Comercio) en la tramitación de procedimientos procesales contra fianzas, aplicando todas las instituciones procesales previstas en los mismos;
- directamente en incidentes de pago iniciados por el acreedor de la obligación principal, garantizada con una fianza otorgada ante una autoridad judicial (distinta del orden penal), cuando dicha fianza resulte exigible durante la tramitación del proceso en que se exhibe; y
- directamente en la valoración de las pruebas presentadas en procedimientos administrativos sancionadores.

The LISF has been amended to clarify the situations in which the National Code of Civil and Family Procedures may be invoked

On 14 November 2025, the Decree reforming various provisions of various legal systems was published in the DOF regarding regulatory approval relating to the National Code of Civil and Family Procedures, including Articles 193 (section III, subsection I), 280 (section VI), 281 (second paragraph) and 479 (last paragraph) of the LISF.

The National Code of Civil and Family Procedures will apply:

- on a supplementary basis in proceedings for the sale of real estate to collect amounts insured by surety bonds or guarantees secured by mortgages, trusts or the encumbrance of real estate as collateral;
- on a supplementary basis (together with the Commercial Code) in the processing of litigation against bonds, applying all the procedural institutions provided for therein;
- directly in payment incidents initiated by the creditor of the principal obligation, secured by a bond granted before a judicial authority (other than a criminal court), when such bond becomes enforceable during the proceedings in which it is presented; and
- directly in the assessment of evidence presented in administrative sanctioning proceedings.

Resoluciones que modifican las disposiciones de carácter general aplicables a las sociedades controladoras de grupos financieros y subcontroladoras que regulan las materias que corresponden de manera conjunta a las Comisiones Nacionales Supervisoras

El 19 y 22 de diciembre de 2025 se publicaron en el DOF modificaciones expedidas por la Comisión Nacional Bancaria de Valores, la CNSF y la CONSAR con el objeto de reforzar el ejercicio de sus facultades de autorización y supervisión, cada una en el ámbito de su competencia, respecto de la aplicación de

Resolutions amending the general provisions applicable to financial group holding companies and sub-holding companies that regulate matters falling jointly within the remit of the National Supervisory Commissions

On 19 and 22 December 2025, amendments issued by the National Banking and Securities Commission, the CNSF and the CONSAR were published in the DOF with the aim of strengthening the exercise of their authorisation and supervisory powers, each within its sphere of competence, with regard

criterios contables por sociedades controladoras y subcontroladoras de grupos financieros, todo ello en beneficio de la estabilidad del sistema financiero.

Así, se reforma el artículo 44 y se añaden los artículos 44 *bis* y 44 *bis* 1 de las disposiciones de carácter general aplicables a las sociedades controladoras de grupos financieros y subcontroladoras que regulan las materias que corresponden de manera conjunta a las comisiones nacionales supervisoras:

- Se podrán autorizar criterios contables especiales de aplicación temporal cuando sucedan fenómenos naturales perturbadores, según se define en la Ley General de Protección Civil y se decrete por las autoridades competentes, que puedan generar afectaciones económicas e impactar adversamente en la solvencia de dos o más sociedades controladoras y subcontroladoras o, en su caso, del sistema financiero. La autorización puede prorrogarse una sola vez si persisten las afectaciones.

- Se podrán autorizar registros contables especiales durante procesos de saneamiento financiero o reestructuración corporativa, siempre que no se derive en incumplimientos normativos y a fecha de la solicitud no se estén aplicando registros contables especiales.

- Se establecen obligaciones exhaustivas de transparencia para aquellas sociedades autorizadas a aplicar criterios o registros contables especiales, debiendo preparar notas aclaratorias específicas en sus estados financieros correspondientes y en los comunicados públicos de información financiera donde aporten detalles sobre la autorización, alcance del tratamiento especial contable y sus afectaciones.

En tanto que no se obtenga la autorización correspondiente para aplicar dichos criterios o registros contables especiales, las sociedades controladoras y subcontroladoras deberán seguir utilizando los criterios de contabilidad contenidos en el Anexo 1, que se sustituye por la versión actualizada publicada el 22 de diciembre de 2025. La comisión supervisora correspondiente podrá revocar la autorización otorgada por incumplimiento de los requisitos de transparencia o de los términos autorizados y, en ese supuesto, las sociedades controladoras

to the application of accounting criteria by controlling and sub-controlling companies of financial groups, all for the benefit of the stability of the financial system.

Article 44 has been amended and Articles 44 *bis* and 44 *bis* 1 have been added to the general provisions applicable to controlling and sub-controlling companies of financial groups that regulate matters that correspond jointly to the national supervisory commissions:

- Special accounting criteria may be authorised for temporary application when disruptive natural phenomena occur, as defined in the General Civil Protection Law and decreed by the competent authorities, which may generate economic effects and adversely impact the solvency of two or more controlling and sub-controlling companies or, where applicable, the financial system. The authorisation may be extended once if the effects persist.

- Special accounting records may be authorised during financial restructuring or corporate restructuring processes, provided that this does not result in regulatory non-compliance and that no special accounting records are being applied at the date of the request.

- Comprehensive transparency obligations are established for companies authorised to apply special accounting criteria or entries, requiring them to prepare specific explanatory notes in their corresponding financial statements and in public financial information disclosures providing details on the authorisation, scope of the special accounting treatment and its effects.

Until the corresponding authorisation to apply such special accounting criteria or records is obtained, controlling and sub-controlling companies must continue to use the accounting criteria contained in Annex 1, which has been replaced by the updated version published on 22 December 2025. The relevant supervisory commission may revoke the authorisation granted for failure to comply with the transparency requirements or the authorised terms and, in that case, controlling and sub-controlling companies must maintain

y subcontroladoras deberán mantener los acuerdos pactados con clientes derivados de la aplicación de dichos criterios con anterioridad a la fecha de revocación.

the agreements entered into with clients arising from the application of such criteria prior to the date of revocation.

Modificaciones a las disposiciones de carácter general que establecen el régimen de inversión al que deberán sujetarse las sociedades de inversión especializadas de fondos para el retiro

El 4 de noviembre de 2025 se publicaron en el DOF modificaciones expedidas por la CONSAR con el objeto de apoyar el financiamiento a las empresas mexicanas bajo un marco de gestión prudencial de riesgos, facilitar la adecuada inversión de recursos y mejorar la claridad de la normativa aplicable.

En concreto, se introducen las siguientes modificaciones a las disposiciones de carácter general que establecen el régimen de inversión al que deberán sujetarse las sociedades de inversión especializadas de fondos para el retiro:

- Se completa la definición de "valores extranjeros de deuda" para abarcar títulos representativos de derechos de crédito, cobros o flujos de efectivo emitidos, directamente o a través de vehículos, por fuentes externas en un 20% sin que cuenten con aval del Gobierno mexicano.
- Se aclara que las sociedades de inversión básicas podrán adquirir estructuras vinculadas de acuerdo con los lineamientos operativos emitidos por la CONSAR y que las siefores básicas de pensiones podrán adquirir FIBRAS[1] a través de vehículos.
- Se fortalecen las obligaciones de seguimiento de las inversiones en instrumentos estructurados, incluyendo metodologías de medición de rentabilidad, monitorización de rendimientos netos, riesgos y decisiones de inversión, preparación y presentación de reportes a la CONSAR, elaboración de políticas y procedimientos para resolver discrepancias, etc.
- Se deberán aplicar las disposiciones de carácter general en materia financiera de los sistemas de ahorro para el retiro y los criterios del Comité de Análisis de Riesgos a los vehículos cuyos subyacentes sean emisiones simplificadas o empresas mexicanas.
- Se deroga la disposición decimoprimera relativa a las minusvalías en el activo total o administrado por la sociedad de inversión o, en su caso, por el mandatario.

1. Valores emitidos por fideicomisos dedicados a la adquisición o construcción de bienes inmuebles en México destinados al arrendamiento o generar ingresos por el arrendamiento de dichos bienes.

Amendments to the general provisions establishing the investment regime to which specialised retirement fund investment companies must adhere

On 4 November 2025, amendments issued by CONSAR were published in the DOF with the aim of supporting the financing of Mexican companies under a framework of prudent risk management, facilitating the adequate investment of resources and improving the clarity of the applicable regulations.

Specifically, the following amendments have been introduced to the general provisions establishing the investment regime to which specialised retirement fund investment companies must adhere:

- The definition of "foreign debt securities" has been completed to cover securities representing credit rights, collections or cash flows issued, directly or through vehicles, by external sources at a level of 20% without the endorsement of the Mexican Government.
- It has been clarified that basic investment companies may acquire linked structures in accordance with the operating guidelines issued by CONSAR and that basic pension funds may acquire FIBRAS[1] through vehicles.
- The obligations to monitor investments in structured instruments have been strengthened, including methodologies for measuring profitability, monitoring net returns, risks and investment decisions, preparing and submitting reports to CONSAR, and developing policies and procedures to resolve discrepancies, among others.
- The general financial provisions of retirement savings systems and the criteria of the Risk Analysis Committee must be applied to vehicles whose underlying assets are simplified issues or Mexican companies.
- The eleventh provision relating to capital losses in the total assets or assets managed by the investment company or, where applicable, by the agent, has been repealed.

1. Securities issued by trusts engaged in the acquisition or construction of real estate in Mexico intended for leasing or generating income from the leasing of such property.

- Se ajustan los límites del régimen de inversión de los activos objeto de inversión en divisas a fin de maximizar la tasa de reemplazo de los trabajadores.

Las reformas anteriores entraron en vigor el 5 de noviembre de 2025, excepto por: (i) el régimen de inversión extendido a los instrumentos estructurados, que resulta aplicable respecto de aquellos instrumentos adquiridos a partir del 1 de agosto de 2025, y (ii) el marco de gestión prudencial de riesgos aplicable a los vehículos con subyacentes procedentes de emisiones simplificadas o empresas mexicanas, que tendrá efectos una vez se determine.

Programa Institucional de la CONDUSEF 2025-2030

El Programa Institucional de la CONDUSEF 2025-2030 se enmarca en el Plan Nacional de Desarrollo 2025-2030 y el Programa Nacional de Financiamiento del Desarrollo ("**PRONAFIDE**"), que establecen un nuevo paradigma de protección al usuario con repercusiones significativas para todos los operadores del sector asegurador mexicano.

Este programa parte del reconocimiento de una profunda desigualdad estructural entre usuarios e instituciones financieras, agravada por factores interseccionales de género, pertenencia étnica y condición socioeconómica. Ello exige centrar el modelo financiero no solo en la eficiencia y rentabilidad, sino también en derechos humanos, inclusión, sostenibilidad y justicia social a través de estrategias integrales de protección, defensa del usuario y educación financiera.

Se refuerzan las labores de coordinación interinstitucional (seguimiento, reporte y rendición de cuentas) para constatar el cumplimiento de la normativa en materia de transparencia y protección a los usuarios, reduciendo las brechas entre los distintos partícipes del sistema financiero.

La hoja de ruta de la CONDUSEF para 2025-2030 se cimienta para transformar el sistema financiero mexicano en uno más justo, incluyente, sostenible, equitativo y culturalmente pertinente, en el que todas las personas puedan acceder a productos y servicios financieros adaptados a sus contextos y necesidades específicas, poniendo el foco en las siguientes dimensiones:

- Acceso a servicios de ahorro, crédito, seguros, pagos y financiamiento productivo en comunidades rurales e indígenas, mejorando la salud financiera de la población.

- Protección integral por medio de la evaluación, vigilancia, inspección y verificación de la publicidad, digitalización, *onboarding*, calidad e información de los productos financieros.

- The limits of the investment regime for assets subject to investment in foreign currency have been adjusted in order to maximise the replacement rate for workers.

The above reforms came into force on 5 November 2025, except for: (i) the investment regime extended to structured instruments, which is applicable to those instruments acquired on or after 1 August 2025, and (ii) the prudential risk management framework applicable to vehicles with underlying assets from simplified issues or Mexican companies, which will take effect once determined.

CONDUSEF Institutional Programme 2025-2030

The CONDUSEF Institutional Programme 2025-2030 is part of the National Development Plan 2025-2030 and the National Development Financing Programme ("**PRONAFIDE**"), which establish a new paradigm of user protection with significant implications for all operators in the Mexican insurance sector.

This programme is based on the recognition of a profound structural inequality between users and financial institutions, aggravated by intersectional factors of gender, ethnicity and socioeconomic status. This requires a shift in the financial model to focus not only on efficiency and profitability, but also on human rights, inclusion, sustainability and social justice through comprehensive strategies for protection, user advocacy and financial education.

Inter-institutional coordination efforts (monitoring, reporting and accountability) are being strengthened to ensure compliance with regulations on transparency and user protection, reducing the gaps between the different participants in the financial system.

CONDUSEF's roadmap for 2025-2030 is designed to transform the Mexican financial system into one that is more fair, inclusive, sustainable, equitable and culturally relevant, in which all people can access financial products and services tailored to their specific contexts and needs, focusing on the following dimensions:

- Access to savings, credit, insurance, payments and productive financing services in rural and indigenous communities, improving the financial health of the population.

- Comprehensive protection through the evaluation, monitoring, inspection and verification of advertising, digitisation, onboarding, quality and information on financial products.

- Fomentar habilidades financieras para que las personas puedan tomar decisiones informadas respecto a su patrimonio, ahorros o retiro, repercutiendo en su bienestar financiero.
- Convertirse en el organismo público de referencia y cercano a los usuarios, contribuyendo a su orientación, asesoría, protección, capacitación y defensa mediante herramientas innovadoras.

Estas directrices exigen al sector asegurador revisar el diseño de productos y la forma de relacionarse con los asegurados, lo que puede implicar replantear enfoques o modificar contratos de adhesión, pólizas, publicidad e información proporcionada, ya que las nuevas exigencias de transparencia pueden llegar a representar un riesgo operativo y reputacional para las aseguradoras.

Así, los objetivos (y respectivas estrategias) que la CONDUSEF fija para 2025-2030 son:

- **Proteger y defender a los usuarios ante las instituciones financieras, salvaguardando sus derechos e intereses** por medio de servicios de atención oportuna, eficaz y eficiente.
- **Defensoría legal gratuita a los usuarios con el objeto de reducir la inequidad en sus relaciones con las instituciones financieras** por medio de litigios estratégicos destinados a lograr una reparación integral o justa indemnización.
- **Promover el equilibrio en las relaciones usuario-producto financiero-entidad financiera mediante la atención de controversias a través de procesos de protección ante la CONDUSEF**, como mecanismos de conciliación y gestión que propongan soluciones accesibles y justas.
- **Promover el desarrollo de habilidades financieras para la toma de decisiones informadas**, a partir del diseño de mecanismos colaborativos entre las instituciones e incrementando la oferta formativa en eventos, plataformas o acciones de difusión.
- **Proteger derechos e intereses a través de la supervisión en materia de transparencia**, con acciones de verificación del cumplimiento de la normativa y calidad de la información.
- **Asesoramiento técnico y jurídico como mecanismo de protección**, empleando canales presenciales y digitales que sean accesibles, prácticos y culturalmente adecuados.

- Promoting financial skills so that people can make informed decisions about their assets, savings or retirement, thereby improving their financial well-being.
- Establishing itself as the leading and accessible public body for users by providing guidance, advice, protection, training and defence through innovative tools.

These guidelines require the insurance sector to review product design and the way it interacts with policyholders, which may involve rethinking approaches or modifying membership contracts, policies, advertising and the information provided, as the new transparency requirements may represent an operational and reputational risk for insurers.

The objectives (and respective strategies) set by CONDUSEF for 2025-2030 are:

- **Protect and defend users in their dealings with financial institutions, safeguarding their rights and interests** through timely, effective and efficient services.
- **Provide free legal defence to users in order to reduce inequality in their relations with financial institutions** through strategic litigation aimed at achieving full redress or fair compensation.
- **Promote balance in the relationships between users, financial products and financial institutions by addressing disputes through CONDUSEF protection processes**, such as conciliation and management mechanisms that propose accessible and fair solutions.
- **Promote the development of financial skills for informed decision-making**, based on the design of collaborative mechanisms between institutions and increasing the range of training opportunities in events, platforms or dissemination actions.
- **Protect rights and interests through transparency oversight**, with actions to verify compliance with regulations and information quality.
- **Provide technical and legal advice as a protection mechanism**, using accessible, practical and culturally appropriate face-to-face and digital channels.

Desempeño oportuno del sector asegurador y afianzador a 28 de octubre de 2025 por la CNSF

Durante el 3T 2025, la colocación trimestral se mantuvo estable, alcanzando un crecimiento del 7.7% respecto al mismo trimestre de 2024, destacando el aumento en daños (autos, marítimo, transportes, incendio y riesgos catastróficos), vida individual (seguros con componente de ahorro) y accidentes y enfermedades (gastos médicos, dado el aumento de asegurados y costos de primas). En lo que respecta a fianzas, registraron una mejoría del 1%, gracias en particular a las fianzas administrativas y pese a la disminución de las fianzas fidelidad.

Las utilidades se incrementaron en un 5.1% con respecto al mismo trimestre de 2024, obteniendo una utilidad del ejercicio de 65.3 mil millones de pesos, principalmente, por el incremento de las utilidades provenientes de gastos médicos y una desaceleración en el costo neto de siniestralidad. Las operaciones análogas y conexas mantienen una proyección positiva.

Timely performance of the insurance and surety sector as of 28 October 2025 by the CNSF

During Q3 2025, quarterly placement remained stable, achieving 7.7% growth compared to the same quarter in 2024, with notable increases in property damage (automobile, marine, transport, fire and catastrophic risks), individual life (insurance with a savings component) and accidents and illnesses (medical expenses, given the increase in policyholders and premium costs). With regard to surety bonds, there was a 1% improvement, thanks in particular to administrative surety bonds and despite the decline in fidelity surety bonds.

Profits increased by 5.1% compared to the same quarter in 2024, with a profit for the year of 65.3 billion pesos, mainly due to the increase in profits from medical expenses and a slowdown in the net cost of claims. Similar and related operations maintain a positive outlook.

Principales novedades jurisprudenciales
Main Developments in Case Law

▸ Póliza electrificada

Terceros perjudicados por actuaciones del Estado pueden reclamar directamente a la aseguradora en vía civil

Versión taquigráfica de la sesión pública ordinaria del Pleno de la SCJN del 26 de noviembre de 2025

El Pleno de la SCJN debatió el amparo en revisión 230/2025 sobre la constitucionalidad del artículo 147 de la LCS por no contemplar expresamente la vía procedente para reclamar el monto indemnizatorio correspondiente cuando el daño generado deriva de la responsabilidad patrimonial del Estado.

Una aseguradora opuso excepción de incompetencia por declinatoria en vía civil, en el marco de una reclamación de daños (físicos, morales, punitivos y lucro cesante), por las lesiones sufridas por terceros en una descarga eléctrica de cables debido a una irregularidad del Estado. El Pleno determinó que el artículo 147 de la LCS debe interpretarse de manera armónica con el artículo 15 de la Ley Federal de Responsabilidad Patrimonial del Estado, el cual permite emplear instituciones de derecho civil, como un seguro de responsabilidad civil, para resarcir los daños ocasionados por actividades del Estado.

Por tanto, las víctimas de daños cubiertos por un seguro de responsabilidad civil pueden ejercer acción directa contra las aseguradoras en vía civil, con base en el artículo 147 de la LCS, sin perjuicio de las acciones complementarias que procedan en vía administrativa cuando el monto indemnizatorio del seguro resulte insuficiente y así lo prevea la Ley Federal de Responsabilidad Patrimonial del Estado.

▸ Electrified policy

Third parties harmed by actions of the State may file civil claims directly with the insurer

Stenographic version of the ordinary public session of the Plenary of the SCJN of 26 November 2025

The Plenary Session of the SCJN debated the Constitutional Review 230/2025 on the constitutionality of Article 147 of the LCS for not expressly providing for the appropriate means of claiming the corresponding amount of compensation when the damage caused derives from the State's financial liability.

An insurance company filed a jurisdictional objection in civil proceedings, in the context of a claim for loss and damage (physical, moral, punitive, and loss of profits) for injuries suffered by third parties following an electric shock from cables caused by an irregularity on the part of the State. The Plenary determined that Article 147 of the LCS must be interpreted in harmony with Article 15 of the Federal Law on State Financial Liability, which allows the use of civil law institutions, such as civil liability insurance, to compensate for damage caused by State actions.

Accordingly, victims of damage covered by civil liability insurance may bring direct actions against insurers in civil court, based on Article 147 of the LCS, without prejudice to any complementary actions that may be brought in administrative court when the amount of insurance compensation is insufficient and such action is provided for in the Federal Law on State Financial Liability.

▸ Palomeando, palomeando... se volteó

La recepción de una solicitud de pago por una aseguradora verifica la conformidad y completitud de la documentación entregada

Tesis aislada IX.20.C.A.18 C (11a.) del Segundo Tribunal Colegiado en materias civil y administrativa del Noveno Circuito derivada del amparo directo 478/2023, con fecha de publicación 12 de diciembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031602)

Tiene un valor preponderante la solicitud de pago, presentada ante la aseguradora y firmada por la asegurada y el res-

▸ Ticking, ticking... it turned over

The receipt of a payment request by an insurer verifies the conformity and completeness of the documentation submitted

Isolated thesis IX.20.C.A.18 C (11a.) of the Second Collegiate Court in civil and administrative matters of the Ninth Circuit derived from Constitutional Review 478/2023, published on 12 December 2025 in the Federal Judicial Weekly (Digital Reg. 2031602)

The request for payment, submitted to the insurer and signed by the insured and the person responsible for verifying the

ponsable de cotejar la documentación relativa al siniestro, sobre las formalidades o requisitos consignados en el listado de documentación (*check-list*) confeccionado unilateralmente por la aseguradora con posterioridad a la solicitud de pago.

Las aseguradoras están facultadas para solicitar cuanta documentación precisen para completar un expediente y admitir solicitudes de pago y, por tanto, no cabe rechazar el pago de prestaciones una vez aceptadas dichas solicitudes. En el presente caso, la documentación acompañada con la solicitud de pago presentaba "palomeados", como muestra de recepción y confirmación por ambas partes, incluyendo el documento referido a la baja original de la asegurada, y la constancia de la audiencia sin conciliación respecto al "despido" en el Centro Federal de Conciliación sirvieron de prueba para constatar la separación del servicio público garantizada en un seguro de separación individualizado.

documentation relating to the claim, regarding the formalities or requirements set out in the checklist drawn up unilaterally by the insurer after the request for payment, has a predominant value.

Insurers are entitled to request whatever documentation they need to complete a file and accept payment requests and, therefore, the payment of benefits cannot be refused once such requests have been accepted. In the present case, the documentation accompanying the payment request was "ticked off" as proof of receipt and confirmation by both parties. This included the document referring to the insured party's original resignation. Additionally, the record of the hearing without conciliation regarding the "dismissal" at the Federal Conciliation Centre served as proof of the separation from public service guaranteed in an individualised separation insurance policy.

▸ Con mi burrito sabanero

Seguro obligatorio de circulación en las carreteras estatales poblanas

Versión taquigráfica de la sesión pública ordinaria del Pleno de la SCJN del 6 de octubre de 2025

El Pleno de la SCJN debatió la acción de inconstitucionalidad 1/2024 promovida contra diversas disposiciones de la Ley de Movilidad y Seguridad Vial del Estado de Puebla, y examinó si la obligación de contratar un seguro de responsabilidad civil vulnera derechos fundamentales como el libre tránsito, movilidad, seguridad jurídica, legalidad, libertad contractual y autonomía de la voluntad.

El Pleno concluyó que la exigencia de contratar un seguro de responsabilidad civil para manejar por el Estado de Puebla como mecanismo para cubrir los daños a terceros causados por vehículos motorizados constituye una limitación justificada, proporcional y necesaria para proteger los derechos de terceros perjudicados y garantizar el derecho a la reparación del daño. En consecuencia, se declaró la validez de las disposiciones que establecen el seguro obligatorio de responsabilidad civil para vehículos automotrices y sus sanciones correspondientes, incluida la suspensión por un año de la licencia de conducir a quienes den positivo en pruebas de alcoholemia o la multa aplicable en caso de no tener el seguro obligatorio, a excepción de la cancelación de licencia hasta por 10 años, en lo relativo a la falta de seguro, que se declaró inválida parcialmente por ser excesiva y desproporcionada.

▸ With my little donkey

Compulsory motor insurance on the state highways of Puebla

Stenographic version of the ordinary public session of the Plenary of the SCJN on 6 October 2025

The Plenary Session of the SCJN debated Unconstitutionality Action 1/2024 brought against various provisions of the Mobility and Road Safety Law of the State of Puebla, and examined whether the obligation to take out civil liability insurance violates fundamental rights such as freedom of movement, mobility, legal certainty, legality, contractual freedom, and autonomy of will.

The Plenary concluded that the civil liability insurance requirement for motor vehicles in the State of Puebla as a mechanism to cover damage to third parties constitutes a justified, proportionate and necessary limitation to protect the rights of injured third parties and guarantee the right to compensation for damage. Consequently, the provisions establishing compulsory civil liability insurance for motor vehicles and the corresponding penalties, including the suspension of driving licences for one year for those who test positive for alcohol or the applicable fine for not having compulsory insurance, were declared valid, with the exception of the cancellation of licences for up to 10 years for lack of insurance, which was declared partially invalid on the grounds that it was excessive and disproportionate.

Hermanos de distinta madre

Ambos, seguros y fianzas, se deben interpretar de manera favorable para el cliente cuando exista ambigüedad o desconocimiento de los términos contractuales

Tesis aislada I.50.C.215 C (11a.) del Quinto Tribunal Colegiado en materia civil del Primer Circuito derivada del amparo directo 292/2025, con fecha de publicación 14 de noviembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031471)

El Tribunal Colegiado de Circuito establece las equivalencias entre una póliza de fianza y un contrato de seguro, extendiendo por analogía los criterios de la Primera Sala de la SCJN (amparos directos en revisión 1324/2021 y 828/2015) en materia de seguros. Dichas equivalencias se sustentan en tres fundamentos, pues tanto los contratos de seguro como las fianzas:

- se regulan bajo la LISF, cuya finalidad es proteger los intereses del consumidor financiero;
- se erigen como contratos de adhesión donde el consumidor carece de facultad de negociación, lo que exige que toda información sobre coberturas, exclusiones, condiciones sea conocida y aceptada expresamente por el cliente; y
- generan una relación asimétrica donde el cliente se encuentra en una situación de inferioridad, puesto que las aseguradoras/afianzadoras determinan, como expertas en su negocio, el alcance y las características de las soluciones que comercializan, mientras el cliente desconoce o no alcanza a entender qué solución se adecúa mejor a sus intereses.

En consecuencia, la afianzadora debe indicar claramente el alcance, términos, condiciones, exclusiones y limitantes del contrato y acreditar fehacientemente la entrega de documentos con cláusulas adicionales -física o digitalmente, a elección del cliente- y el consentimiento y conocimiento del asegurado. El incumplimiento de estas obligaciones de transparencia únicamente beneficia al cliente. En el presente caso, al no demostrarse la entrega del clausulado único de fidelidad anexado a la póliza, la cobertura resultó favorable al cliente por no ser aplicables las cláusulas limitativas de dicho clausulado único.

Brothers from another mother

Both insurance and surety bonds must be interpreted in favour of the customer when there is ambiguity or ignorance of the contractual terms

Isolated thesis I.50.C.215 C (11a.) of the Fifth Collegiate Court in civil matters of the First Circuit derived from Constitutional Review 292/2025, published on 14 November 2025 in the Federal Judicial Weekly (Digital Reg. 2031471)

The Collegiate Circuit Court established the similarities between a surety bond policy and an insurance contract, extending by analogy the criteria of the First Chamber of the SCJN (Constitutional Reviews 1324/2021 and 828/2015) in insurance matters. These similarities are based on three grounds, since both insurance contracts and surety bonds:

- are regulated under the LISF, whose purpose is to protect the interests of financial consumers;
- are adhesion contracts in which the consumer has no bargaining power, which requires that all information on coverage, exclusions, and conditions be known and expressly accepted by the customer; and
- create an asymmetrical relationship where the customer is in a position of inferiority, since insurers/surety companies, as experts in their business, determine the scope and characteristics of the solutions they market, while the customer does not know or cannot understand which solution best suits their interests.

Consequently, the surety company must clearly indicate the scope, terms, conditions, exclusions, and limitations of the contract. It must also reliably prove that it delivered documents containing additional clauses — physically or digitally, at the customer's choice — and that the insured gave informed consent. Failure to comply with these transparency obligations operates in the customer's favour. In the present case, because the surety company failed to prove delivery of the single loyalty clause attached to the policy, coverage was interpreted in the customer's favour, rendering that clause's limitations inapplicable.

Plumón sin tinta

Pagarés digitales deben suscribirse mediante firma electrónica avanzada generada por un prestador de servicios de certificación para producir efectos como título de crédito

Tesis aislada I.20.C.38 C (11a.) del Segundo Tribunal Colegiado en materia civil del Primer Circuito derivada del amparo directo 27/2025, con fecha de publicación 24 de octubre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031391)

Conforme al principio de equivalencia funcional establecido en el Código de Comercio, los documentos electrónicos equivalen jurídicamente a los físicos cuando reúnen tres condiciones: (i) acceso permanente a la información contenida, (ii) preservación de la integridad del mensaje de datos a lo largo del tiempo y, en su caso, (iii) firma electrónica avanzada que identifique de manera fehaciente al firmante.

El Tribunal Colegiado señala que el prestador de servicios de certificación expide sellos digitales (con fecha y hora de firma), lo cual garantiza la autenticidad, integridad y eficacia probatoria del documento electrónico ante terceros, cumpliendo en este caso las exigencias aplicables a los pagarés digitales.

Ink-free pen

Digital promissory notes must be signed using an advanced electronic signature generated by a certification service provider in order to be valid as a credit instrument

Isolated thesis I.20.C.38 C (11a.) of the Second Collegiate Court in civil matters of the First Circuit derived from Constitutional Review 27/2025, published on 24 October 2025 in the Federal Judicial Weekly (Digital Reg. 2031391)

In accordance with the principle of functional equivalence established in the Commercial Code, electronic documents are legally equivalent to physical documents when they meet three conditions: (i) permanent access to the information contained therein, (ii) preservation of the integrity of the data message over time and, where applicable, (iii) an advanced electronic signature that reliably identifies the signatory.

The Collegiate Court noted that the certification service provider issues digital seals (with the date and time of signature), which guarantees the authenticity, integrity and probative value of the electronic document before third parties, complying in this case with the requirements applicable to digital promissory notes.

El guarura empeoró todo

Los establecimientos comerciales deben asegurar la integridad personal de su clientela durante el desarrollo de su actividad so pena de verse obligados al pago de daños y perjuicios

Tesis aisladas I.40.C.51 C (11a.) y I.40.C.52 C (11a.) del Cuarto Tribunal Colegiado en materia civil del Primer Circuito derivadas del amparo directo 390/2021, con fecha de publicación 14 de noviembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031484 y 2031460)

Una tienda de autoservicio, ubicada en una zona de alto riesgo de robo, es asaltada y condenada al pago de una indemnización por daños materiales y morales por el fallecimiento de una menor y las lesiones ocasionadas a la madre de ésta. El Tribunal Colegiado de Circuito atribuye responsabilidad civil subjetiva extracontractual por la falta de (acreditación y) adopción de medidas preventivas idóneas para la seguridad personal e integridad de los consumidores.

Los establecimientos comerciales deben adoptar y demostrar que han adoptado medidas razonables y adecuadas para evitar riesgos y proteger las instalaciones y espacios en que se

The security guard made everything worse

Commercial establishments must ensure the personal integrity of their customers during the course of their business, or they will be liable for loss and damage

Isolated theses I.40.C.51 C (11a.) and I.40.C.52 C (11a.) of the Fourth Collegiate Court in civil matters of the First Circuit derived from Constitutional Review 390/2021, published on 14 November 2025 in the Federal Judicial Weekly (Digital Reg. 2031484 and 2031460)

A self-service store, located in an area at high risk of robbery, was ordered to pay compensation for material and moral damages following an assault on its premises that caused the death of a minor and injuries to her mother. The Collegiate Circuit Court attributed subjective non-contractual civil liability to the store for failing to adopt (and verify) appropriate preventive measures to safeguard the personal safety and integrity of consumers.

Commercial establishments must adopt and demonstrate that they have adopted reasonable and adequate measures to avoid risks and protect the facilities and spaces in which

desenvuelve la relación de consumo. El estándar de diligencia profesional exigible a un comerciante concuerda con su capacidad de negocio y comprende atender las circunstancias concretas de su actividad y determinar la previsibilidad de riesgos, velar por la eficacia de las medidas implementadas y asumir el coste inherente de lo anterior sin trasladarlo al precio de sus productos o servicios.

Ante un hecho dañoso, la atribución de responsabilidad o negligencia se produce cuando, aun conociendo los riesgos asociados a la actividad comercial, no se establecen medidas de seguridad óptimas para evitar, controlar y aminorar los daños. En el caso concreto, la tienda implementó medidas deficientes que además incrementaron el riesgo; contrató seguridad privada para resguardar sus bienes (y no para el cuidado de las personas), convirtiéndose en el punto de mira de los asaltantes, e instaló cámaras de videovigilancia que quedaron en desuso.

consumer interactions take place. The standard of professional diligence required of a trader is consistent with their business capacity and includes addressing the specific circumstances of their activity and determining the predictability of risks, ensuring the effectiveness of the measures implemented and absorbing the inherent cost of the above without passing it on consumers through pricing.

In the event of harmful damage, liability or negligence is attributed when, despite being aware of the risks associated with the commercial activity, optimal safety measures are not put in place to prevent, control and mitigate damage. In this specific case, the shop implemented inadequate measures that actually increased the risk. It hired private security to protect its goods rather than to safeguard customers, thereby making itself a target for the assailants. Additionally, it installed video surveillance cameras that were not used.

▸ Adhiérete machín

Todos los partícipes, en situación de inferioridad, en un contrato de adhesión se benefician de la protección especial otorgada a los consumidores

Tesis aislada I.50.C.210 C (11a.) del Quinto Tribunal Colegiado en materia civil del Primer Circuito derivada del amparo directo 193/2025, con fecha de publicación 14 de noviembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031452)

En aplicación del precedente de la Primera Sala de la SCJN (amparo directo en revisión 1875/2022), es abusiva la cláusula que en un contrato de adhesión de crédito con garantía hipotecaria autoriza al banco a retirar automáticamente saldos disponibles de cualquier cuenta a nombre del obligado solidario para satisfacer su derecho de cobro ante el incumplimiento del deudor principal. La ejecución de cargos contra depósitos o cuentas de terceros interesados constituye un pacto comisorio inadmisible que vulnera la tutela judicial efectiva de las personas consumidoras.

El Tribunal Colegiado de Circuito extiende así la protección de los consumidores a un tercero interesado, que identifica como consumidor indirecto al asumir obligaciones y participar en la relación asimétrica con el banco sin capacidad para influir en o negociar los términos del contrato. La LPDUSF define al consumidor financiero de manera ampliada bajo el término “usuario”, que permite englobar a todo consumidor indirecto o tercero interesado en un servicio financiero o un contrato de adhesión.

▸ Sign up, mate

All parties in a position of inferiority in an adhesion contract benefit from the special protection granted to consumers

Isolated thesis I.50.C.210 C (11a.) of the Fifth Collegiate Court in civil matters of the First Circuit derived from Constitutional Review 193/2025, published on 14 November 2025 in the Federal Judicial Weekly (Digital Reg. 2031452)

In application of the precedent of the First Chamber of the SCJN (Constitutional Review 1875/2022), a clause in a mortgage loan agreement that authorised the bank to automatically withdraw available balances from any account in the name of the jointly and severally liable party in order to satisfy its right to collection in the event of default by the principal debtor was held to be abusive. The execution of charges against deposits or accounts of interested third parties constitutes an inadmissible forfeiture clause that violates the effective judicial protection of consumers.

The Collegiate Circuit Court thus extended consumer protection to interested third parties, whom it identifies as indirect consumers. These parties assume obligations and participate in an asymmetrical relationship with the bank without the ability to influence or negotiate the terms of the contract. The LPDUSF defines a financial consumer broadly under the term “user”, which encompasses all indirect consumers or third parties interested in a financial service or adhesion contract.

En suma, en los contratos de adhesión prima la protección de los consumidores financieros. Las autoridades judiciales están obligadas a contrarrestar cualesquiera ventajas introducidas unilateralmente por las instituciones financieras en perjuicio de los consumidores, apreciando de oficio aquellas cláusulas que, vinculadas al objeto del litigio, sean abusivas pese a no ser impugnadas expresamente.

In short, financial consumer protection takes precedence in adhesion contracts. The judicial authorities are obliged to counteract any advantages introduced unilaterally by financial institutions to the detriment of consumers, assessing ex officio any abusive clauses that are linked to the subject matter of the dispute, even if those clauses have not been expressly challenged.

Casa chica recién pensionada

No procede condicionar el otorgamiento de la pensión de viudez a causas ajenas al asegurado

Tesis aislada I.110.A.53 A (11a.) del Décimo Primer Tribunal Colegiado en materia administrativa del Primer Circuito derivada del amparo en revisión 394/2025, con fecha de publicación 12 de diciembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031595)

El artículo 152 (actual artículo 130) de la Ley del Seguro Social abrogada vulnera los derechos a la igualdad, no discriminación y seguridad social al limitar la pensión de viudez a requisitos de temporalidad, como la convivencia en concubinato durante al menos 5 años antes del fallecimiento del asegurado, o bien, la existencia de hijos con independencia de la convivencia previa.

El Tribunal Colegiado determina que no se acreditan motivos suficientes y razonables que justifiquen la exclusión de la pensión ni el trato diferenciado respecto de la cónyuge supérstite o la concubina con descendencia, teniendo en cuenta que la SCJN sostiene que se debe evolucionar a las nuevas realidades familiares (véase, coexistencia de (i) cónyuge y concubina, (ii) dos o más cónyuges, o (iii) varias concubinas) y el momento del fallecimiento de una persona es fortuito y de naturaleza incontrolable.

En este caso, la concubina supérstite sin descendencia accedió a la pensión de viudez tras convivir 2 años, 9 meses y 6 días con el asegurado, al declararse inaplicable la exclusión temporal por inconstitucional.

Newly retired second woman

The granting of a widow's pension cannot be made conditional on factors unrelated to the insured person

Isolated thesis I.110.A.53 A (11a.) of the Eleventh Collegiate Court in administrative matters of the First Circuit derived from the Constitutional Review 394/2025, published on 12 December 2025 in the Federal Judicial Weekly (Digital Reg. 2031595)

Article 152 (now Article 130) of the repealed Social Security Law violates the rights to equality, non-discrimination, and social security by limiting the widow's pension to temporary requirements, such as cohabitation in a common-law marriage for at least five years prior to the insured person's death, or the existence of children regardless of prior cohabitation.

The Collegiate Court determined that there were insufficient and unreasonable grounds to justify the exclusion of the pension or treat the surviving spouse differently from the cohabiting partner with children. This conclusion reflects the SCJN's position that the law must evolve to recognise new family realities (including the coexistence of (i) a spouse and cohabiting partner, (ii) two or more spouses, or (iii) several cohabiting partners) and that death occurs unpredictably and beyond anyone's control.

In this case, the surviving cohabiting partner without children was granted a widow's pension after living with the insured person for two years, nine months and six days, as the temporary exclusion was declared inapplicable on the grounds of unconstitutionality.

Así no, doctor

Indemnización integral ante la escasez de insumos en un procedimiento obstétrico erróneo con consecuencias irreversibles y permanentes en el proyecto de vida de una mujer

Tesis aislada XVII.20.P.A.21 A (11a.) del Segundo Tribunal Colegiado en materias penal y administrativa del Décimo Séptimo Circuito derivada del amparo directo 337/2023, con fecha de publicación 21 de noviembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031510)

El Tribunal Colegiado de Circuito recuerda que las intervenciones obstétricas deficientes y temerarias deben analizarse con perspectiva de género para evitar tratos y prácticas discriminatorias contra las mujeres, por su situación de vulnerabilidad, inferioridad y subordinación frente al personal médico durante el embarazo, el parto y el posparto.

La violencia obstétrica vulnera los derechos humanos de las gestantes y se manifiesta con gritos o regaños, y conductas dirigidas a ignorar o presionar a las pacientes para que acepten métodos anticonceptivos o tomen decisiones incómodas sin recibir información previa. En el ámbito de la salud reproductiva se sustrae la capacidad de decisión de las mujeres, cediéndola a los médicos con justificación en su saber profesional, lo que conlleva que, en situaciones de negligencia médica, se desplace la carga de la prueba debido a la falta de conocimientos técnicos especializados del paciente.

Un ejemplo de negligencia y violencia obstétrica es el embarazo gemelar molar de una mujer de 23 años que tuvo que esperar casi 5 horas en urgencias de una institución de seguridad social para que se lo diagnosticaran y se lo trataran con una intervención quirúrgica, sin anestesia suficiente y mediante un procedimiento inadecuado y mucho más riesgoso (sin que prestara su consentimiento), provocándole un paro cardíaco y la pérdida de su matriz. Le dieron el alta al día siguiente de salir de terapia intensiva sin entregarle su expediente clínico ni programarle un tratamiento de seguimiento. Todo ello, derivó en que se le concediera una reparación adecuada, efectiva y rápida por los daños materiales (lucro cesante y daño emergente), personales (disminución física funcional) y morales (aflicciones y sufrimiento).

Not like that, doctor

Full compensation for the shortage of supplies in an erroneous obstetric procedure with irreversible and permanent consequences on a woman's life plan

Isolated thesis XVII.20.P.A.21 A (11a.) of the Second Collegiate Court in criminal and administrative matters of the Seventeenth Circuit derived from Constitutional Review 337/2023, published on 21 November 2025 in the Federal Judicial Weekly (Digital Reg. 2031510)

The Collegiate Circuit Court held that deficient and reckless obstetric interventions must be analysed from a gender perspective to avoid discriminatory treatment and practices against women, who are in a disadvantaged position of vulnerability and subordination to medical personnel during pregnancy, childbirth and the postpartum period.

Obstetric violence violates the human rights of pregnant women and manifests itself in shouting or scolding, and behaviour aimed at ignoring or pressuring patients to accept contraceptive methods or make uncomfortable decisions without receiving prior information. In the field of reproductive health, women are deprived of their decision-making capacity, which is ceded to doctors on the grounds of their professional knowledge. This means that, in situations of medical negligence, the burden of proof is shifted due to the patient's lack of specialised technical knowledge.

An example of obstetric negligence and violence is the molar twin pregnancy of a 23-year-old woman who had to wait almost five hours in the emergency room of a social security institution to be diagnosed and treated with surgery, without sufficient anaesthesia and using an inadequate and much riskier procedure (without her consent), causing her to go into cardiac arrest and lose her uterus. She was discharged the day after leaving intensive care without being given her medical records or scheduled for follow-up treatment. As a result of all of this, she was granted adequate, effective and rapid compensation for material damage (loss of earnings and consequential damage), personal damage (physical functional impairment) and moral damage (distress and suffering).

▸ No te apures, el IMSS o el ISSSTE, ¡te asisten!

No han de existir limitaciones en cuanto a la atención y asistencia médica ni al acceso a distintos centros hospitalarios en casos de enfermedad grave

Tesis aislada XVII.10.P.A.4 CS (11a.) del Primer Tribunal Colegiado en materias penal y administrativa del Décimo Séptimo Circuito derivada de la queja 263/2025, con fecha de publicación 7 de noviembre de 2025 en el Semanario Judicial de la Federación (Reg. digital 2031430)

Una persona puede recibir atención médica en más de una institución de seguridad social cuando se hayan realizado las aportaciones correspondientes y la afiliación no sea de naturaleza gratuita. El derecho a la salud es un derecho humano que exige un alto grado de protección y diversas prestaciones, véase, atención médica y hospitalaria, suministro de medicamentos y asistencia social.

En el presente caso, un servidor público solicitó la afiliación de su padre a Pensiones Civiles del Estado de Chihuahua como beneficiario, quien padecía una enfermedad grave y potencialmente mortal, para que le prestaran la atención médica necesaria en tanto en cuanto el hospital del IMSS en el que estaba internado no cubría el tratamiento de su enfermedad. El Tribunal Colegiado de Circuito concedió la segunda afiliación porque no existe disposición constitucional que restrinja el acceso a servicios médicos a una sola institución, concluyendo que el Estado está obligado a asegurar, en casos de enfermedad, la asistencia médica y los servicios médicos a todas las personas.

La omisión o dilación en la atención médica de enfermedades que ponen en peligro inminente la vida compromete derechos fundamentales vinculados a la vida, salud y dignidad humana, y debe considerarse un acto inhumano. El derecho a la salud prima sobre cualquier circunstancia administrativa y debe proporcionarse con alto grado de calidad conforme a principios de no discriminación y protección completa y eficaz.

▸ Don't worry, the IMSS or ISSSTE will assist you!

There should be no limitations on medical care and assistance or access to different hospitals in cases of serious illness

Isolated thesis XVII.10.P.A.4 CS (11a.) of the First Collegiate Court in criminal and administrative matters of the Seventeenth Circuit derived from complaint 263/2025, published on 7 November 2025 in the Federal Judicial Weekly (Digital Reg. 2031430)

A person may receive medical care in more than one social security institution when the corresponding contributions have been made and membership is not free of charge. The right to health is a human right that requires a high degree of protection and various benefits, such as medical and hospital care, the provision of medicines and social assistance.

In the present case, a public servant requested the affiliation of his father, who was suffering from a serious and potentially fatal illness, to the Chihuahua State Civil Pensions as a beneficiary so that he could receive necessary medical care that the IMSS hospital where he was admitted did not cover. The Collegiate Circuit Court granted the second affiliation because there was no constitutional provision restricting access to medical services to a single institution, concluding that the State is obliged to ensure, in cases of illness, medical assistance and medical services to all persons.

The omission or delay in medical care for life-threatening illnesses compromises fundamental rights related to life, health and human dignity, and should be considered an inhumane act. The right to health takes precedence over any administrative circumstance and must be provided with a high degree of quality in accordance with the principles of non-discrimination and comprehensive and effective protection.

Tribuna Pérez-Llorca
Pérez-Llorca Tribune

“Leído y Aceptado”: El viacrucis digital de las condiciones generales y cómo evitar daños punitivos sin morir en el intento

“Read and Accepted”: The digital ordeal of general terms and conditions and how to avoid punitive damages without dying in the process

Jacinto Ávalos Capín
Socio de Seguros y Reaseguros
Partner, Insurance and Reinsurance

En la práctica aseguradora mexicana existe una verdad incómoda: entregar las condiciones generales no es lo mismo que lograr que el asegurado las lea, las comprenda o, al menos, no pueda negar razonablemente que tuvo acceso efectivo a ellas. Durante años, el mercado operó bajo la lógica —formal y cómoda— de que la sola entrega del documento bastaba para cumplir con la obligación legal. Hoy, esa lógica resulta insuficiente.

La reciente evolución jurisprudencial en materia de daños punitivos ha colocado a las aseguradoras frente a un nuevo estándar de escrutinio judicial. Ya no se analiza únicamente si la reclamación fue correctamente pagada o rechazada, sino la conducta integral de la aseguradora. En ese contexto, las condiciones generales han dejado de ser un anexo operativo para convertirse en un elemento central en la relación aseguradora-asegurado.

La pregunta relevante ya no es si las condiciones generales existen, están registradas o cumplen con la normativa. La pregunta verdaderamente crítica es otra: ¿puede la aseguradora demostrar, de manera convincente, que el asegurado recibió las condiciones generales y tuvo una oportunidad real de conocer su contenido antes de contratar? El punto de partida normativo es conocido. El artículo 7 de la Ley sobre el Contrato de Seguro impone a las aseguradoras la obligación de entregar al contratante la póliza y las condiciones generales que la integran[2]. Tradicionalmente, esta obligación se interpretó de forma predominantemente formal. Sin embargo, el contexto actual exige una lectura más exigente: la entrega debe

In Mexican insurance practice, there is an uncomfortable truth: delivering the general conditions is not the same as getting the insured to read them, understand them, or, at least, not reasonably deny that they had effective access to them. For years, the market operated under the formal and convenient logic that simply providing the document was sufficient to comply with the legal obligation. Today, that logic is inadequate.

Recent jurisprudential developments in punitive damages have placed insurers under a new standard of judicial scrutiny. It is no longer just a question of whether the claim was correctly compensated or rejected, but rather a question of the insurer’s overall conduct. In this context, the general terms and conditions have ceased to be an operational appendix and have become a central element in the relationship between the insurer and the insured.

The key question is no longer whether the general terms and conditions exist, are registered, or comply with regulations. The truly critical question is a different one: can an insurer convincingly demonstrate that the insured received the general terms and conditions and had a real opportunity to familiarise themselves with their contents before taking out the policy? The regulatory starting point is well known. Article 7 of the Insurance Contract Law requires insurers to provide the contracting party with the policy and the general terms and conditions that form part of it.[2] Traditionally, this obligation has been interpreted as being predominantly a formality. However, the current context requires a more demanding in-

2. Ley sobre el Contrato de Seguro, artículo 7.

2. Insurance Contract Law, Article 7.

ser verificable y eficaz, especialmente cuando la contratación se realiza por medios electrónicos.

Este enfoque se refuerza con la Regla 4.11.1 de la Circular Única de Seguros y Fianzas, que reconoce expresamente la comercialización de seguros a través de medios electrónicos y exige que las entidades incorporen en sus condiciones generales cláusulas claras sobre los mecanismos de entrega de la documentación contractual[3]. La regla parte de una premisa relevante: en entornos digitales, la entrega no es evidente ni automática; debe diseñarse y documentarse. Lo que parecía un tema meramente operativo ha adquirido una dimensión completamente distinta a partir del criterio de la Suprema Corte de Justicia de la Nación en materia de daños punitivos. La jurisprudencia 1a./J. 123/2025 (11a.), emitida por la Primera Sala, marca un punto de inflexión. En ella, la Corte sostuvo que una aseguradora puede ser condenada a daños punitivos cuando, además de incumplir el contrato, actúa con un alto grado de reprochabilidad, particularmente cuando no entrega las condiciones generales que contienen exclusiones relevantes o pretende hacerlas valer sin haber acreditado dicha entrega. [4]

El mensaje es claro: el análisis judicial ya no se limita a verificar la existencia de una exclusión, sino que se extiende a la conducta previa de la aseguradora y a la forma en que gestionó la información contractual. La incapacidad de demostrar que el asegurado tuvo acceso efectivo a las condiciones generales puede ser interpretada como mala fe, especialmente cuando están en juego derechos fundamentales como la vida, la salud o la integridad personal. Este giro puede entenderse como una postura adversa al sector asegurador. Por el contrario, desde la perspectiva del regulador puede leerse como una invitación a fortalecer los procesos de contratación, alineándolos con estándares de diligencia que ya existen en otras industrias reguladas.

El sector financiero y bancario ofrece un espejo útil. Desde hace años, los bancos enfrentan un reto similar: cómo probar que el cliente recibió, abrió y aceptó información contractual relevante en entornos digitales y de alta masificación. Contratos de crédito, estados de cuenta electrónicos y avisos de modificación contractual han obligado a desarrollar arquitecturas probatorias robustas: acuses electrónicos, sellos de tiempo, autenticación reforzada, registros de eventos y repositorios digitales auditables. En ese sector, la simple disponibilidad del documento no es suficiente. Se exige trazabilidad: quién accedió, cuándo, bajo qué credenciales y respecto de

terpretation: delivery must be verifiable and effective, especially when the contract is concluded electronically.

This approach is reinforced by Rule 4.11.1 of the Single Insurance and Surety Circular, which expressly recognises the marketing of insurance through electronic means and requires entities to incorporate clear clauses on the mechanisms for delivering contractual documentation into their general conditions.[3] The rule is based on a very important premise: in digital environments, delivery is neither obvious nor automatic; it must be designed and documented. What seemed to be a purely operational issue has taken on a completely different dimension following the judgment of the Supreme Court of Justice of the Nation on punitive damages. The jurisprudence 1a./J. 123/2025 (11a.), issued by the First Chamber, marks a turning point. In this case, the Court held that an insurer may be ordered to pay punitive damages when, in addition to breaching the contract, it acts with a high degree of culpability, particularly when it fails to deliver the general terms and conditions containing relevant exclusions or attempts to enforce them without having demonstrated that they were delivered.[4]

The message is clear: judicial analysis is no longer limited to verifying the existence of an exclusion, but extends to an insurer's prior conduct and the way in which it managed contractual information. The inability to demonstrate that an insured party had effective access to the general conditions may be interpreted as bad faith, especially when fundamental rights such as life, health, or personal integrity are at stake. This shift can be understood as an unfavourable approach to the insurance sector. On the contrary, from the regulator's perspective, it can be interpreted as an invitation to strengthen contracting processes, aligning them with standards of diligence that already exist in other regulated industries.

The financial and banking sector offers a useful mirror. For years, banks have faced a similar challenge: how to prove that the customer received, opened, and accepted relevant contractual information in digital and high-volume environments. Credit contracts, electronic account statements, and notices of contractual amendments have forced the development of robust evidentiary architectures: electronic receipts, time stamps, enhanced authentication, event logs, and auditable digital repositories. In this sector, the mere availability of a document is not enough. Traceability is required: who accessed it, when, using what credentials,

3. Circular Única de Seguros y Fianzas, Regla 4.11.1, emitida por la Comisión Nacional de Seguros y Fianzas.

4. Suprema Corte de Justicia de la Nación, Primera Sala, Tesis 1a./J. 123/2025 (11a.), "Daños punitivos. Su procedencia ante el incumplimiento de un contrato de seguro relacionado con el derecho a la vida, a la integridad o a la salud", Gaceta del Semanario Judicial de la Federación, Undécima Época.

3. Single Circular on Insurance and Surety Bonds, Rule 4.11.1, issued by the National Insurance and Surety Bond Commission.

4. Supreme Court of Justice of the Nation, First Chamber, Thesis 1a./J. 123/2025 (11th), "Punitive damages. Their applicability in the event of the breach of an insurance contract related to the right to life, integrity or health", Weekly Judicial Gazette of the Federation, Eleventh Era.

qué versión del documento. El aprendizaje es evidente: el riesgo legal no se gestiona con archivos PDF, sino con evidencia estructurada.

En el sector asegurador el verdadero reto consiste en dar el siguiente paso, diseñando mecanismos que no solo cumplan formalmente, sino que resulten persuasivos desde una óptica probatoria *ex post*. En este punto, suele aparecer el debate sobre el uso de tecnologías emergentes, como *blockchain*. Conviene evitar extremos. El *blockchain* no es una solución mágica ni un requisito legal; sin embargo, puede funcionar como una capa adicional de integridad e inmutabilidad. El registro de las condiciones generales vigentes al momento de la contratación, vinculado a un evento de aceptación del asegurado, puede fortalecer significativamente la posición probatoria de la aseguradora frente a alegaciones de inexistencia, sustitución o modificación posterior del documento.

Más allá de *blockchain*, existen herramientas igualmente eficaces y menos sofisticadas: aceptación escalonada que impida concluir la contratación sin abrir las condiciones generales; registros de eventos que acrediten el acceso efectivo al documento; aceptación expresa de exclusiones relevantes; y repositorios electrónicos con sello de tiempo y controles de versión. Ninguna de estas medidas, por sí sola, garantiza inmunidad frente a una eventual condena por daños punitivos. Sin embargo, en conjunto construyen una narrativa sólida de buena fe, diligencia y responsabilidad, exactamente los elementos que la Suprema Corte ha señalado como relevantes para evaluar la procedencia de este tipo de sanciones.

Desde una perspectiva pro-aseguradora, resulta clave entender que el regulador no es un adversario en este proceso. La CNSF y la CONDUSEF comparten el objetivo de reducir conflictos derivados de asimetrías de información. La Regla 4.11.1 de la CUSF ofrece un margen razonable de flexibilidad para implementar soluciones tecnológicas, sin imponer formatos únicos ni mecanismos cerrados.

El enfoque correcto no es resistirse al cambio, sino liderar la conversación, proponiendo esquemas eficientes que protejan al usuario sin sacrificar agilidad operativa ni encarecer innecesariamente los productos. En un entorno donde los daños punitivos dejan de ser una figura excepcional y se convierten en un riesgo real, invertir en mecanismos tecnológicos de entrega y evidencia no es un lujo, sino una herramienta de gestión de riesgo legal. El cambio de paradigma es claro. La defensa tradicional de "las condiciones estaban en la póliza" ha dejado de ser suficiente. Hoy, la defensa eficaz es otra: "puedo probar que el asegurado recibió las condiciones generales y tuvo una oportunidad real de conocerlas".

Tal vez el botón de "Leí y acepto" siga siendo necesario. Pero, por sí solo, ya no convence a nadie. Ni al juez.

and regarding which version of the document. The lesson is clear: legal risk is not managed with PDF files, but with structured evidence.

In the insurance sector, the real challenge is to take the next step, designing mechanisms that not only comply formally, but are also persuasive from an *ex post* evidentiary perspective. At this point, the debate on the use of emerging technologies, such as blockchain, often comes up. It is best to avoid extremes. Blockchain is not a magic solution or a legal requirement; however, it can function as an additional layer of integrity and immutability. The registration of the general conditions in force at the time of contracting, linked to an event of acceptance by the insured, can significantly strengthen an insurer's evidentiary position against allegations of non-existence, substitution, or subsequent modification of the document.

Beyond blockchain, there are equally effective and less sophisticated tools: staggered acceptance that prevents the contract from being concluded without opening the general conditions; event logs that demonstrate effective access to the document; express acceptance of relevant exclusions; and electronic repositories with time stamps and version controls. None of these measures, on their own, guarantees immunity from a possible award of punitive damages. However, together they build a solid narrative of good faith, diligence, and responsibility, exactly the elements that the Supreme Court has identified as relevant in assessing the appropriateness of this type of sanction.

From an insurance-friendly perspective, it is key to understand that the regulator is not an adversary in this process. The CNSF and CONDUSEF share the goal of reducing conflicts arising from information asymmetries. CUSF Rule 4.11.1 offers a reasonable margin of flexibility to implement technological solutions, without imposing single formats or closed mechanisms.

The correct approach is not to resist change, but to lead the conversation, proposing efficient schemes that protect the user without sacrificing operational agility or unnecessarily increasing the cost of products. In an environment where punitive damages are no longer an exception but a real risk, investing in technological delivery and evidence mechanisms is not a luxury, but a legal risk management tool. The paradigm shift is clear. The traditional defence of "the conditions were in the policy" is no longer sufficient. Today, the effective defence is different: "I can prove that the insured received the general conditions and had a real opportunity to read them."

Perhaps the "I have read and accept" button is still necessary. But on its own, it no longer convinces anyone. Not even the judge.

Rechazo al acreditamiento del IVA en el sector asegurador

Rejection of VAT crediting in the insurance sector

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Actualmente México atraviesa una época de cambios legislativos y reinterpretaciones administrativas sumamente relevantes que plantean retos constantes para la operativa empresarial. En los últimos años, la intensificación de la actividad recaudatoria de las autoridades fiscales mexicanas ha sido notable: se han dotado de nuevas herramientas que les permiten ejercer una fiscalización más rigurosa sobre los contribuyentes cautivos del país. Este fenómeno, si bien responde a objetivos de fortalecimiento de las finanzas públicas, ha promovido efectos colaterales con los cambios de criterio fuera de ley aplicados en auditorías sectoriales que han representado una carga considerable para los contribuyentes.

La SHCP publica periódicamente en el portal del SAT informes sobre tasas efectivas, que, según su criterio, deberían observar los grandes contribuyentes. Estas publicaciones no están exentas de polémica, pues funcionan como avisos de posibles auditorías, y recogen parámetros y criterios que no reflejan la realidad económica mexicana y adolecen de rigor técnico. La industria aseguradora constituye un ejemplo paradigmático de esta problemática.

En particular, nos referimos a las erogaciones realizadas por concepto de gastos hospitalarios y por servicios de reparación de automóviles u otros, en el marco del cumplimiento de las obligaciones contractuales de las aseguradoras, las cuales han sido rechazadas a efectos del acreditamiento (y reducción) del IVA. Este cambio interpretativo, implementado a partir del ejercicio fiscal 2019, representa una ruptura radical con décadas de práctica administrativa consolidada.

¿Qué es el IVA acreditable?

El IVA grava el consumo de bienes y servicios en territorio nacional con una tasa general del 16% y, en ciertos casos excepcionales, con una tasa preferencial del 0%. Su mecánica fundamental descansa en la regla general de flujo de efectivo, donde los agentes económicos que participan en la cadena de

Mexico is currently undergoing a period of significant legislative changes and administrative reinterpretations that pose constant challenges to business operations. In recent years, Mexican tax authorities have intensified their collection activities: they have equipped themselves with new tools that allow them to exercise more rigorous control over the country's taxpayers. Although this phenomenon is in line with the objective of strengthening public finances, it has caused unintended consequences, with unlawful changes in the criteria applied in sectoral audits that have placed a considerable burden on taxpayers.

The SHCP periodically publishes reports on effective rates on the SAT website, which, in its opinion, should be observed by major taxpayers. These publications are not free of controversy, as they serve as warnings of possible audits and include parameters and criteria that do not reflect the economic reality in Mexico and lack technical rigour. The insurance industry is a prime example of this problem.

In particular, we refer to expenditures made for hospital expenses and for car repair services or others, in the context of the fulfilment of the contractual obligations of insurers, which have been rejected for the purposes of VAT crediting (and reduction). This interpretative change, implemented as of the 2019 fiscal year, represents a radical break with decades of established administrative practice.

What is creditable VAT?

VAT is levied on the consumption of goods and services in the national territory at a general rate of 16% and, in certain exceptional cases, at a preferential rate of 0%. Its fundamental mechanism is based on the general cash flow rule, whereby economic agents participating in the production and distri-

producción y distribución no deben soportar una carga fiscal definitiva, sino únicamente actuar como recaudadores que trasladan el impuesto indirecto hasta el consumidor final[5].

Para garantizar esta neutralidad, los contribuyentes pueden acreditar (deducir de sus obligaciones fiscales) el IVA que les fue trasladado para producir bienes y servicios. El IVA a pagar será la diferencia entre el IVA trasladado al consumidor final y el IVA acreditable que tenga en un periodo mensual definitivo.

El acreditamiento del IVA está sujeto a requisitos formales y sustantivos, entre ellos, destacan:

- Obtener y cumplimentar el comprobante fiscal digital (CFDI) y garantizar el pago efectivo del IVA.
- Las erogaciones sean estrictamente indispensables para la actividad del contribuyente y deducibles para efectos del ISR.

  Debe demostrarse que dichas erogaciones son esenciales para cumplir su objeto social y generar ingresos en México[6]. Este elemento introduce un componente de apreciación subjetiva que otorga a las autoridades fiscales un margen de discrecionalidad para aceptar o rechazar beneficios fiscales.
- El IVA trasladado se encuentre expreso y desglosado en el CDFI correspondiente.

En el caso de las aseguradoras, su modelo de negocio contempla que, ante la ocurrencia de un siniestro, la aseguradora puede optar entre indemnizar al asegurado mediante el pago en efectivo o la prestación directa de servicios de reparación o atención médica, contratando y pagando directamente a talleres, proveedores de piezas automotrices, médicos, proveedores de medicinas, laboratorios, etc., quienes trasladan el IVA correspondiente mediante facturación a las aseguradoras.

Viraje interpretativo para las aseguradoras

Con anterioridad a la administración de López Obrador, la SHCP no se había opuesto a que las aseguradoras acreditaran el IVA de pagos realizados a terceros por los servicios que prestan a los asegurados. En otras palabras, el IVA proveniente de estos servicios, facturado directamente a la aseguradora, podía acreditarse con el IVA generado por las aseguradoras en el periodo

5. Véase el criterio emitido por la Segunda Sección de la Sala Superior del Tribunal Federal de Justicia Administrativa que aparece publicado en la página 192, diciembre 2025, Novena Época de la Revista de ese Tribunal, cuyo título es el siguiente: Impuesto al Valor Agregado. Su mecánica se basa en el sistema de flujo de efectivo.

6. Véase el criterio sustentado por la Primera Sala de la Suprema Corte de Justicia de la Nación, contenido en la página 637 del tomo XXV, febrero 2007, Novena Época, del Semanario Judicial de la Federación, cuya voz es: "Deducción de gastos necesarios e indispensables. Interpretación de los artículos 29 y 31, fracción I, de la LISR.

bution chain do not bear a definitive tax burden but rather merely act as collectors who pass on the indirect tax to the final consumer.[5]

To ensure this neutrality, taxpayers can credit (deduct from their tax obligations) the VAT that was passed on to them to produce goods and services. The VAT payable will be the difference between the VAT transferred to the final consumer and the creditable VAT that they have in a definitive monthly period.

Creditable VAT is subject to formal and substantive requirements, including the following:

- Obtaining and completing the digital tax receipt (CFDI) and ensuring the effective payment of VAT.
- The expenditures must be strictly necessary for the taxpayer's activity and deductible for income tax purposes.
- It must be demonstrated that these expenditures are essential to fulfil their corporate purpose and generate income in Mexico.[6] This element introduces a component of subjective assessment that gives the tax authorities a margin of discretion to accept or reject tax benefits.
- The VAT transferred must be expressly stated and itemised in the corresponding CDFI.

In the case of insurers, their business model provides that, in the event of a claim, the insurer may choose between compensating the insured through a cash payment or the direct provision of repair or medical services, contracting and paying directly to repair shops, automotive parts suppliers, doctors, medicine suppliers, or laboratories, among others, who transfer the corresponding VAT by invoicing the insurers.

Interpretative shift for insurers

Before the López Obrador administration, the SHCP had not opposed insurers crediting VAT on payments made to third parties for services provided to insured parties. In other words, VAT from these services, invoiced directly to the insurer, could be credited against the VAT generated by insurers in the respective period. Historically, this VAT was considered

5. See the ruling issued by the Second Section of the Superior Chamber of the Federal Administrative Court, published on page 192, December 2025, Ninth Edition of the Court's Journal, entitled: Value Added Tax. Its mechanics are based on the cash flow system.

6. See the opinion issued by the First Chamber of the Supreme Court of Justice of the Nation, contained on page 637 of volume XXV, February 2007, Ninth Era, of the Federal Judicial Weekly, entitled: "Deduction of necessary and indispensable expenses. Interpretation of Articles 29 and 31, section I, of the Income Tax Law.

respectivo. Históricamente, este IVA fue considerado acreditable, pues las erogaciones constituyen el cumplimiento mismo del objeto social de la aseguradora: la cobertura de riesgos.

Pese a que esos gastos por servicios de reparación o atención médica fueron históricamente considerados acreditables y que la aseguradora no traslada el IVA de esos servicios al asegurado, el SAT planteó en 2024 una nueva interpretación que rechaza el acreditamiento del IVA a partir del ejercicio 2019. Esta línea interpretativa responde a: (i) la existencia de criterios subjetivos que permiten sostener, a discreción de las autoridades fiscales, la procedencia o no de beneficios fiscales, (ii) las auditorías fiscales realizadas a las aseguradoras, y (iii) fines recaudatorios de la administración.

Los créditos fiscales derivados del IVA que el SAT determina exigibles a partir de 2019 representan una contingencia crítica para varias compañías del sector asegurador y, en varios casos, comprometen su inviabilidad financiera. Según cifras del SAT, las aseguradoras adeudan al fisco aproximadamente 175 mil millones de pesos.

Ante esta coyuntura, las aseguradoras afectadas desplegaron una estrategia de defensa: bien impugnando los créditos fiscales a través de recursos de revocación y juicios de nulidad, o bien promoviendo sectorialmente negociaciones con las autoridades fiscales mexicanas en busca de una solución para reconocer la legitimidad de la práctica seguida hasta entonces.

La gravedad institucional del cambio interpretativo transciende fronteras con el arbitraje de inversión al que acudieron compañías aseguradoras, como Axa y Allianz, contra el Estado mexicano al amparo de sus respectivos Tratados Bilaterales de Inversión, para reclamar la protección de sus inversiones. Si bien estos procedimientos constituyen un terreno poco explorado en controversias fiscales -dada la prevalencia de exclusiones tributarias ("*carve-outs*") en los acuerdos de inversión-, los arbitrajes presentados por Axa y Allianz han permitido visibilizar la inseguridad jurídica asociada al cambio de criterio y dinamizar las negociaciones con el SAT, poniendo de relieve las potenciales implicaciones reputacionales para México como destino de inversión extranjera.

creditable, as the expenditures constitute the very fulfilment of the insurer's corporate purpose: risk coverage.

Although these expenses for repair or medical care services were historically considered creditable and the insurer does not pass on the VAT on these services to the insured, in 2024, the SAT proposed a new interpretation that rejects the crediting of VAT from the 2019 financial year onwards. This interpretation is a response to: (i) the existence of subjective criteria that allow the tax authorities to decide, at their discretion, whether or not tax benefits are applicable, (ii) tax audits carried out on insurers, and (iii) the administration's revenue collection objectives.

The VAT tax credits that the SAT considers to be payable from 2019 onwards represent a critical contingency for several companies in the insurance sector and, in several cases, compromise their financial viability. According to SAT figures, insurers owe the tax authorities approximately 175 billion pesos.

Faced with this situation, the insurers affected deployed a defence strategy: either challenging the tax credits through appeals for revocation and annulment proceedings, or promoting sectoral negotiations with the Mexican tax authorities in search of a solution to recognise the legitimacy of the practice followed until then.

The institutional seriousness of the interpretative change transcends borders with the investment arbitration brought by insurance companies such as Axa and Allianz against the Mexican State under their respective Bilateral Investment Treaties to claim protection for their investments. Although these proceedings are uncharted territory in tax disputes, given the prevalence of tax carve-outs in investment agreements, the arbitration proceedings brought by Axa and Allianz have highlighted the legal uncertainty associated with the change in criteria and galvanised negotiations with the SAT, underscoring the potential reputational implications for Mexico as a destination for foreign investment.

La presión creciente y el riesgo real de insolvencias en el sector fomentaron que en octubre de 2025 se alcanzara un acuerdo político-fiscal plasmado mediante reserva en la LIF 2026. Este acuerdo contempla efectos tanto prospectivos como retrospectivos, ofreciendo un esquema de regularización que permite a las aseguradoras gestionar sus contingencias fiscales sin comprometer su viabilidad financiera inmediata.

La AMIS y otros interlocutores del sector han valorado positivamente este acuerdo como un primer paso necesario para evitar el colapso de instituciones que, de enfrentar simultáneamente el pago de adeudos históricos y la imposibilidad de acreditar el IVA a partir de 2019 hacia adelante, habrían caído en insolvencia técnica, poniendo en riesgo la protección de millones de asegurados.

Sin embargo, celebrar este acuerdo como solución definitiva sería prematuro. Los riesgos derivados son evidentes y preocupantes:

- La imposibilidad de acreditar el IVA en erogaciones por siniestros se traducirá inevitablemente en incrementos de primas para los consumidores finales, quienes absorberán este costo adicional en un contexto económico ya de por sí complejo.

- Existe el riesgo de que las aseguradoras opten por estrategias de integración vertical, adquiriendo o desarrollando talleres de reparación y hospitales propios para contener costos, fenómeno observado en otras jurisdicciones, ello de permitirse por la regulación financiera mexicana. Si bien esto podría generar eficiencias operativas, también concentraría el mercado y limitaría opciones para los asegurados.

- Puede acrecentar la tendencia experimentada en la valoración de siniestros automotrices de declarar los vehículos en "pérdida total" en lugar de repararlos, simplemente porque resulta menos costoso ante la posibilidad de acreditar el IVA de las reparaciones. Esta práctica, económicamente racional desde la perspectiva de la aseguradora, genera externalidades negativas: incremento de precios de automóviles usados, mayor generación de chatarra y, en última instancia, menor penetración del seguro en la población.

Un mercado asegurador menos accesible contradice objetivos de política pública en materia de protección patrimonial y salud. Ante este panorama, han surgido propuestas legislativas para contener las subidas de primas mediante actos normativos. Sin embargo, esta aproximación nos llevaría directamente a la casilla de salida: si se impide a las aseguradoras trasladar costos fiscales a las primas, pero se mantiene el criterio del SAT que les impide acreditar el IVA, el resultado inevitable serían nuevas insolvencias. No se puede resolver mediante decreto legislativo lo que es un problema de diseño fiscal.

Growing pressure and the real risk of insolvency in the sector led to a political-fiscal agreement being reached in October 2025, which was reflected in the 2026 LIF. This agreement has both prospective and retrospective effects, offering a regularisation scheme that allows insurers to manage their tax contingencies without compromising their immediate financial viability.

AMIS and other industry stakeholders have welcomed this agreement as a necessary first step to prevent the collapse of institutions that, faced with the simultaneous payment of historical debts and the impossibility of crediting VAT from 2019 onwards, would have fallen into technical insolvency, putting the protection of millions of policyholders at risk.

However, it would be premature to celebrate this agreement as a definitive solution. The risks involved are obvious and worrying:

- The inability to credit VAT on claims payments will inevitably result in premium increases for end consumers, who will absorb this additional cost in an already complex economic environment.

- There is a risk that insurers will opt for vertical integration strategies, acquiring or developing their own repair shops and hospitals to contain costs, a phenomenon observed in other jurisdictions, if permitted by Mexican financial regulations. While this could create operational efficiencies, it would also concentrate the market and limit options for policyholders.

- It may increase the trend in the valuation of motor claims to declare vehicles a "total loss" rather than repair them, simply because it is less expensive, given the impossibility of claiming VAT on repairs. This practice, which is economically rational from an insurer's perspective, creates negative consequences: increased prices for used cars, greater generation of scrap metal and, ultimately, lower insurance penetration among the population.

A less accessible insurance market undermines public policy objectives in terms of asset protection and health. Against this backdrop, legislative proposals have emerged to contain premium increases through regulatory measures. However, this approach would take us right back to square one: if insurers are prevented from passing on tax costs to premiums, but the SAT's criterion preventing them from crediting VAT is maintained, the inevitable result would be further insolvencies. A fiscal design problem cannot be solved by legislative decree.

La verdadera solución radica en revisar el cambio de criterio del SAT que originó esta crisis. México debe alinearse con la práctica internacional en materia de IVA, reconociendo que las aseguradoras actúan como intermediarias en la cadena de valor y que gravar con impuestos indirectos sus erogaciones operativas distorsiona el mercado y perjudica a los consumidores finales. La neutralidad del IVA, principio fundamental de este impuesto, exige que no genere costos irrecuperables para agentes económicos que no son consumidores finales.

El acuerdo de octubre de 2025 ofrece un respiro temporal, pero no resuelve el problema de fondo. Es momento de que las autoridades fiscales reconsideren un criterio que, lejos de fortalecer la recaudación de manera sostenible, amenaza la viabilidad de un sector estratégico para la economía mexicana.

The real solution lies in reviewing the SAT's change in criteria that caused this crisis. Mexico must align itself with international VAT practices, recognising that insurers act as intermediaries in the value chain and that taxing their operating expenses with indirect taxes distorts the market and harms end consumers. VAT neutrality, a fundamental principle of this tax, requires that it does not generate irrecoverable costs for economic agents who are not end consumers.

The October 2025 agreement offers temporary relief, but does not solve the underlying problem. It is time for the tax authorities to reconsider a criterion that, far from strengthening tax collection sustainably, threatens the viability of a sector that is strategic for the Mexican economy.

PORTUGAL

Actualidad Iberoamericana de Seguros
Ibero-American Insurance Update

Portugal

Principais atualizações regulatórias e de supervisão
Key Regulatory and Supervisory Developments

Circular da ASF n.º 9/2025, de 3 de novembro (Divulgação da decisão do Conselho de Supervisores da EIOPA sobre a colaboração das autoridades de supervisão de seguros dos Estados Membros do Espaço Económico Europeu, para efeitos da aplicação da Diretiva relativa ao acesso à atividade de seguros e resseguros e ao seu exercício e da Diretiva que altera a Diretiva (UE) 2017/1132 na parte respeitante às transformações, fusões e cisões transfronteiriças, no que se refere a atividades transfronteiras e a transformações transfronteiriças)

No dia 3 de novembro de 2025, o Conselho de Administração da Autoridade de Supervisão de Seguros e Fundos de Pensões ("**ASF**") emitiu a Circular n.º 9/2025, com o objetivo de divulgar a Decisão do Conselho de Supervisores da Autoridade Europeia dos Seguros e Pensões Complementares de Reforma ("**EIOPA**") relativa à colaboração das autoridades de supervisão de seguros dos Estados membros do Espaço Económico Europeu. Esta decisão enquadra-se na aplicação da Diretiva Solvência II e da Diretiva da Mobilidade, abrangendo tanto a atividade transfronteiriça das empresas de seguros e de resseguros como as transformações, fusões e cisões transfronteiriças.

A Circular estabelece, de forma detalhada, os procedimentos de notificação e troca de informações que devem ser observados pelas empresas de seguros e de resseguros sediadas em Portugal, bem como a cooperação entre a ASF e as autoridades de supervisão de outros Estados membros. A sua finalidade é clara: assegurar a proteção adequada dos tomadores de seguros, promover a estabilidade financeira e garantir a harmonização da supervisão em todo o Espaço Económico Europeu.

O enquadramento regulatório detalhado na Circular distingue entre diferentes áreas de atuação:

Em primeiro lugar, no domínio da autorização e registo, as empresas de seguros e de resseguros devem fornecer informações detalhadas à ASF, incluindo dados sobre os responsáveis, programas de atividades e eventuais aquisições de participações qualificadas.

Em segundo lugar, relativamente às atividades transfronteiriças, quer se trate de direito de estabelecimento, através de sucursais, quer de livre prestação de serviços, a Circular estabelece a obrigatoriedade de notificação prévia à ASF e às autoridades de supervisão do Estado membro de acolhimento,

ASF Circular No. 9/2025, of 3 November (Disclosure of the Decision of the Board of Supervisors of EIOPA on the collaboration of insurance supervisory authorities of the Member States of the European Economic Area, for the purposes of applying the Directive on the taking-up and pursuit of the business of insurance and reinsurance and the Directive amending Directive (EU) 2017/1132 as regards cross-border transformations, mergers and divisions, with regard to cross-border activities and cross-border transformations)

On 3 November 2025, the Board of Directors of the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*, "**ASF**") issued Circular No. 9/2025, with the objective of disclosing the Decision of the Board of Supervisors of the European Insurance and Occupational Pensions Authority ("**EIOPA**") concerning the collaboration of insurance supervisory authorities of the member states of the European Economic Area. This decision falls within the scope of the application of the Solvency II Directive and the Mobility Directive, covering both the cross-border activity of insurance and reinsurance undertakings and cross-border transformations, mergers and divisions.

The Circular establishes, in detail, the notification and information exchange procedures that must be observed by insurance and reinsurance undertakings headquartered in Portugal, as well as the cooperation between the ASF and the supervisory authorities of other Member States. Its purpose is clear: to ensure adequate protection of policyholders, promote financial stability and guarantee the harmonisation of supervision throughout the European Economic Area.

The regulatory framework detailed in the Circular distinguishes between different areas of activity:

Firstly, in the field of authorisation and registration, insurance and reinsurance undertakings must provide detailed information to the ASF, including data on those responsible, programmes of operations and any acquisitions of qualifying holdings.

Secondly, regarding cross-border activities, whether through the right of establishment via branches or the freedom to provide services, the Circular establishes the obligation of prior notification to the ASF and to the supervisory authorities of the host Member State, including the communication

incluindo a comunicação de alterações ou encerramento de atividades. Todos os procedimentos devem ser cumpridos utilizando os formulários específicos constantes do Anexo I da Decisão, de forma a garantir a uniformidade da informação prestada e a conformidade com o regime jurídico nacional.

No que diz respeito à supervisão em base regular e à troca de informações quantitativas, a ASF deve cooperar permanentemente com as autoridades dos Estados membros de acolhimento, assegurando a troca de informações sobre os riscos das empresas de seguros e de resseguros com sede em Portugal, nomeadamente relativos a sistemas de governação, subcontratação, parceiros de distribuição, gestão de sinistros, verificação do cumprimento normativo e defesa do consumidor.

A Circular aborda também a gestão de reclamações dos tomadores de seguros, estabelecendo regras para o tratamento de conflitos de competência entre autoridades competentes, mesmo em contextos transfronteiriços, garantindo assim proteção contínua ao consumidor. No domínio das transformações, fusões e cisões transfronteiriças, as empresas devem cumprir procedimentos de troca de informações com as autoridades competentes de outros Estados membros, incluindo a obtenção de certificados de solvência quando se trata de empresas cessionárias, garantindo que todas as operações se realizem de forma segura e conforme a legislação aplicável.

A circular pode ser consultada aqui.

of any changes to or cessation of activities. All procedures must be complied with using the specific forms set out in Annex I to the Decision, to ensure the uniformity of the information provided and compliance with the national legal framework.

In terms of ongoing supervision and the exchange of quantitative information, the ASF must cooperate on an ongoing basis with the authorities of the host Member States, ensuring the exchange of information on the risks of insurance and reinsurance undertakings headquartered in Portugal, namely relating to governance systems, outsourcing, distribution partners, claims management, verification of regulatory compliance and consumer protection.

The Circular also addresses the handling of policyholders' complaints, establishing rules for dealing with conflicts of jurisdiction between competent authorities, even in cross-border contexts, thus ensuring continuous consumer protection. In the field of cross-border transformations, mergers and demergers, undertakings must comply with information exchange procedures with the competent authorities of other Member States, including obtaining solvency certificates in the case of transferee undertakings, ensuring that all operations are carried out safely and in accordance with applicable legislation.

The circular may be consulted here (only available in Portuguese).

Consulta Pública ASF n.º 11/2025 (Projeto de norma regulamentar relativa à alteração das Condições Gerais da Apólice de Seguro Obrigatório de Responsabilidade Civil Automóvel, aprovadas pela Norma Regulamentar n.º 14/2008-R, de 27 de novembro)

No passado dia 21 de novembro de 2025, a Autoridade de Supervisão de Seguros e Fundos de Pensões (ASF) colocou em consulta pública o projeto de norma regulamentar destinado a alterar as Condições Gerais da Apólice Uniforme do Seguro Obrigatório de Responsabilidade Civil Automóvel, originalmente aprovadas pela Norma Regulamentar n.º 14/2008-R, de 27 de novembro.

ASF Public Consultation No. 11/2025 (Draft regulatory standard concerning the amendment of the General Conditions of the Compulsory Motor Vehicle Liability Insurance Policy, approved by Regulatory Standard No. 14/2008-R, of 27 November)

On 21 November 2025, the ASF published for public consultation the draft regulatory standard intended to amend the General Conditions of the Compulsory Motor Vehicle Liability Insurance Policy, originally approved by Regulatory Standard No. 14/2008-R, of 27 November.

Esta iniciativa resulta da necessidade de adaptar o regime existente à alteração legislativa introduzida pelo Decreto-Lei n.º 26/2025, de 20 de março, que transpôs para o ordenamento jurídico português a Diretiva (UE) 2021/2118, relativa ao seguro obrigatório automóvel. Esta diretiva europeia introduziu alterações relevantes no âmbito de cobertura do seguro e harmonização das regras aplicáveis nos Estados-Membros, com o objetivo de reforçar a proteção dos lesados e a segurança jurídica.

O projeto, agora em consulta, incide sobre diversas cláusulas da apólice uniforme, destacando-se:

- Atualização do conceito de "circulação do veículo" para uma definição mais ampla, de modo a reforçar a garantia do seguro em situações anteriormente duvidosas, como por exemplo, a utilização de veículos em determinados espaços privados ou fins específicos;
- Inclusão expressa da cobertura de danos resultantes da utilização dolosa do veículo, realidade já reconhecida na jurisprudência nacional;
- Reformulação do regime relativo ao documento anteriormente designado de "certificado de tarifação", agora substituído pela "declaração de historial de sinistros", com regras específicas sobre emissão e conteúdo, o que obriga os seguradores a maior uniformização e celeridade;
- Reconhecimento expresso da validade da prova do seguro realizada por meios eletrónicos, compatibilizando a apólice com as soluções tecnológicas possibilitadas pela Lei n.º 32/2023, de 10 de julho;
- Clarificação das regras aplicáveis ao cálculo do prémio, prorrogação, cessação e resolução do contrato, incluindo o regime de estorno proporcional em caso de cessação antecipada e o regime de comunicação das partes.

Adicionalmente, a cláusula relativa ao âmbito internacional da cobertura passa a prever que a identificação específica dos países abrangidos seja deslocada para as condições particulares, garantindo maior flexibilidade operacional.

Nos termos do artigo 47.º dos Estatutos da ASF, as entidades e interessados podem remeter comentários ao projeto até 23 de dezembro de 2025, exclusivamente por escrito, para o endereço eletrónico: consultaspublicas@asf.com.pt.

Consulte o Projeto de Norma Regulamentar.

Consulte o Documento de Consulta Pública.

This initiative results from the need to adapt the existing regime to the legislative amendment introduced by Decree-law No. 26/2025, of 20 March, which transposed into Portuguese law Directive (EU) 2021/2118, concerning compulsory motor insurance. This European directive introduced significant changes to the scope of insurance cover and harmonisation of the rules applicable in Member States, with the aim of strengthening the protection of injured parties and legal certainty.

The draft, now under consultation, focuses on several clauses of the uniform policy, notably:

- Updating the concept of "vehicle circulation" to encompass a broader definition, to strengthen the insurance guarantee in previously uncertain situations, such as, for example, the use of vehicles in certain private spaces or for specific purposes;
- Express inclusion of cover for damage resulting from the malicious use of the vehicle, which is already recognised in national case law;
- Reformulation of the regime relating to the document previously designated as the "rating certificate", now replaced by the "claims history statement", with specific rules on issuance and content, requiring insurers to achieve greater uniformity and speed;
- Express recognition of the validity of proof of insurance carried out by electronic means, making the policy compatible with the technological solutions enabled by Law No. 32/2023, of 10 July;
- Clarification of the rules applicable to the calculation of the premium, extension, termination and cancellation of the contract, including the proportional refund regime in the event of early termination and the regime for communication between the parties.

Additionally, the clause relating to the international scope of cover now provides that the specific identification of the countries covered must be moved to the particular conditions, ensuring greater operational flexibility.

Pursuant to Article 47 of the ASF Statutes, entities and interested parties may submit comments on the draft until 23 December 2025, exclusively in writing, to the email address: consultaspublicas@asf.com.pt.

View the Draft Regulatory Standard (only available in Portuguese).

View the Public Consultation Document (only available in Portuguese).

Norma Regulamentar ASF n.º 8/2025-R, de 18 de novembro (Índices trimestrais de atualização de capitais para as apólices do ramo "Incêndio e elementos da natureza")

No dia 18 de novembro de 2025, a Autoridade de Supervisão de Seguros e Fundos de Pensões (ASF) aprovou a Norma Regulamentar n.º 8/2025-R, estabelecendo os índices trimestrais de atualização de capitais para as apólices do ramo "Incêndio e Elementos da Natureza" com início ou vencimento no primeiro trimestre de 2026.

Esta atualização decorre do disposto no n.º 1 do artigo 135.º do Regime Jurídico do Contrato de Seguro (**RJCS**), segundo o qual o valor do imóvel seguro ou a sua proporção garantida é automaticamente atualizado de acordo com os índices publicados pela ASF. A finalidade é fornecer aos consumidores um valor de referência que contribua para evitar, de forma expedita, a desatualização dos capitais segurados.

Para o período em referência, o Índice de Edifícios (**IE**) foi fixado em 573,28, registando uma variação de 2,44% face ao trimestre anterior e de 3,81% em relação ao período homólogo. O Índice de Recheio de Habitação (**IRH**) foi fixado em 358,07, com uma variação trimestral de 2,74% e anual de 8,82%, refletindo a evolução dos custos de bens de consumo duradouros, acessórios domésticos e da cotação da onça de ouro. Por último, o Índice combinado de Recheio e Edifícios ("**IRHE**") situa-se em 487,19, registando variações de 2,53% no trimestre e 5,24% em termos anuais.

A metodologia de cálculo baseia-se em dados estatísticos publicados pelo Instituto dos Mercados Públicos, do Imobiliário e da Construção ("**IMPIC**"), pelo Instituto Nacional de Estatística ("**INE**") e pelo Banco de Portugal, onde são ponderados os custos de mão-de-obra, materiais de construção, vestuário, equipamento doméstico, manutenção da habitação e o valor do ouro. Este modelo visa refletir de forma rigorosa os custos reais de reconstrução e reposição de bens, assegurando que os capitais segurados acompanham a realidade económica e técnica do mercado.

É importante sublinhar que, apesar da atualização automática prevista na norma, cabe sempre aos tomadores de seguro certificar-se de que os capitais contratados correspondem ao valor real dos bens, considerando variações regionais ou alterações relevantes no imóvel ou no recheio.

A Norma Regulamentar n.º 8/2025-R, de 18 de novembro, pode ser consultada aqui.

ASF Regulatory Standard No. 8/2025-R, of 18 November (Quarterly indexes update for insured amounts for "Fire and Natural Elements" policies)

On 18 November 2025, the ASF approved Regulatory Standard No. 8/2025-R, establishing the quarterly indices for updating insured amounts for "Fire and Natural Elements" policies commencing or maturing in the first quarter of 2026.

This update arises from the provisions of paragraph 1 of Article 135 of the Legal Framework for Insurance Contracts (*Regime Jurídico do Contrato de Seguro*, **RJCS**), according to which the value of the insured property or its guaranteed proportion is automatically updated in accordance with the indices published by the ASF. The purpose is to provide consumers with a reference value that contributes to preventing, in an expeditious manner, the obsolescence of insured amounts.

For the period in question, the Buildings Index (*Índice de Edifícios*, **IE**) was set at 573.28, registering a variation of 2.44% compared to the previous quarter and 3.81% in relation to the same period of the previous year. The Household Contents Index (*Índice de Recheio de Habitação*, **IRH**) was set at 358.07, with a quarterly variation of 2.74% and an annual variation of 8.82%, reflecting the evolution of the costs of durable consumer goods, household accessories and the price of gold per ounce. Finally, the Combined Contents and Buildings Index (*Índice combinado de Recheio e Edifícios*, **IRHE**) stands at 487.19, registering variations of 2.53% in the quarter and 5.24% in annual terms.

The calculation methodology is based on statistical data published by the Institute for Public Markets, Real Estate and Construction (*Instituto dos Mercados Públicos, do Imobiliário e da Construção*, **IMPIC**), the National Statistics Institute *(Instituto Nacional de Estatística*, **INE**) and the Bank of Portugal, where the costs of labour, construction materials, clothing, household equipment, housing maintenance and the value of gold are weighted. This model aims to rigorously reflect the actual costs of reconstruction and replacement of goods, ensuring that insured amounts keep pace with the economic and technical reality of the market.

It is important to emphasise that, despite the automatic update provided for in the standard, it is always incumbent upon policyholders to ensure that the contracted amounts correspond to the actual value of the goods, considering regional variations or relevant changes to the property or contents.

Regulatory Standard No. 8/2025-R, of 18 November, may be consulted here (only available in Portuguese).

Decreto-Lei n.º 115/2025 (Alterações ao Regime do Registo Central do Beneficiário Efetivo - RCBE)

O Decreto-Lei n.º 115/2025, publicado a 27 de outubro de 2025, vem introduzir alterações significativas ao regime jurídico do Registo Central do Beneficiário Efetivo ("**RCBE**"), inicialmente estabelecido pela Lei n.º 89/2017, de 21 de agosto.

O objetivo central deste diploma é transpor para a ordem jurídica interna o artigo 74.º da Diretiva (UE) 2024/1640, do Parlamento Europeu e do Conselho, de 31 de maio de 2024, adaptando a legislação nacional às exigências europeias de prevenção do branqueamento de capitais e do financiamento do terrorismo. Esta alteração surge, ainda, na sequência do acórdão do Tribunal de Justiça da União Europeia nos processos apensos C-37/20 e C-601/20, WM e Sovim SA/Luxembourg Business Registers, que considerou inválida a exigência de acesso público irrestrito às informações sobre beneficiários efetivos, prevista anteriormente pela Diretiva (UE) 2018/843.

O ponto central desta alteração é o novo regime de acesso ao RCBE, que passa a exigir a demonstração de um interesse legítimo por parte de qualquer pessoa ou organização que pretenda aceder às informações sobre os beneficiários efetivos das pessoas coletivas e dos centros de interesses coletivos sem personalidade jurídica. De acordo com a redação do novo artigo 19.º, n.º 1 do regime, a informação será disponibilizada em página eletrónica apenas a quem possa comprovar tal interesse legítimo, registando-se todos os acessos pelo prazo de cinco anos, incluindo o motivo invocado. Esta medida visa equilibrar a proteção dos direitos fundamentais, em particular a vida privada e a proteção de dados pessoais, com a necessidade de garantir a transparência e a integridade do sistema financeiro da União Europeia.

Outra alteração relevante é a exclusão das heranças indivisas do âmbito de aplicação do RCBE, o que reforça a lógica de que apenas entidades constituídas voluntariamente estão sujeitas à obrigação de registo. Até então, apenas as heranças jacentes estavam expressamente excluídas, e o Decreto-Lei n.º 115/2025 clarifica que as heranças mantidas em

Decree-law No. 115/2025 (Amendments to the Central Register of Beneficial Owners Regime - RCBE)

Decree-law No. 115/2025, published on 27 October 2025, introduces significant amendments to the legal regime of the Central Register of Beneficial Owners (*Registo Central do Beneficiário Efetivo*, **RCBE**), initially established by Law No. 89/2017, of 21 August.

The central objective of this legislation is to transpose into domestic law Article 74 of Directive (EU) 2024/1640 of the European Parliament and of the Council, of 31 May 2024, aimed at adapting national legislation to European requirements for the prevention of money laundering and terrorist financing. This amendment also follows the judgment of the Court of Justice of the European Union in joined cases C-37/20 and C-601/20, WM and Sovim SA/Luxembourg Business Registers, which considered invalid the requirement of unrestricted public access to information on beneficial owners, previously provided for by Directive (EU) 2018/843.

The central point of this amendment is the new regime for access to the RCBE, which now requires the demonstration of a legitimate interest by any person or organisation wishing to access information on the beneficial owners of legal persons and centres of collective interests without legal personality. According to the wording of the new Article 19, paragraph 1 of the regime, the information will be made available on an electronic page only to those who can prove such legitimate interest, with all accesses being recorded for a period of five years, including the reason invoked. This measure aims to balance the protection of fundamental rights, in particular privacy and the protection of personal data, with the need to ensure the transparency and integrity of the European Union's financial system.

Another relevant amendment is the exclusion of undivided estates from the scope of application of the RCBE, which reinforces the logic that only voluntarily constituted entities are subject to the registration obligation. Until then, only unclaimed estates were expressly excluded, and Decree-law No. 115/2025 clarifies that estates kept undivided by agreement

indivisão por vontade dos herdeiros não implicam obrigação de registo, dado que os próprios herdeiros não originam a constituição da entidade. Assim, procura-se uma interpretação coerente com os princípios subjacentes à publicidade dos beneficiários efetivos e à proteção da esfera privada.

No que respeita aos dados a recolher sobre os representantes legais dos beneficiários efetivos menores ou maiores acompanhados, o diploma adota o princípio da minimização de dados, determinando que apenas informações essenciais para comprovar a legitimidade da representação, assegurar meios de contacto e permitir a responsabilização pelo ato declarativo sejam recolhidas. O representante legal é equiparado ao declarante, mas não ao beneficiário efetivo, evitando assim o tratamento excessivo de dados pessoais e respeitando os princípios consagrados no Regulamento Geral sobre a Proteção de Dados (RGPD), nomeadamente os princípios da minimização, da limitação da conservação e da proteção de dados desde a conceção e por defeito.

A alteração recebeu também parecer favorável da CNPD, que reconheceu a proporcionalidade das medidas adotadas: a exigência de demonstração de interesse legítimo para aceder à informação, o registo dos acessos durante cinco anos e a clarificação sobre os dados recolhidos dos representantes legais. A CNPD destacou que a alteração respeita a reserva de lei e prevê controlo prévio sobre as Portarias que regulamentarão o modo de acesso e os dados de identificação dos utilizadores, mantendo a conformidade com os direitos à proteção de dados pessoais.

O Decreto-Lei entrou em vigor no 5.º dia após a sua publicação, ou seja, 1 de novembro de 2025 e pode ser consultado aqui.

of the heirs are not subject to a registration obligation, given that the heirs themselves do not originate the constitution of the entity. Thus, a coherent interpretation is sought with the principles underlying the publicity of beneficial owners and the protection of the private sphere.

Regarding the data to be collected on the legal representatives of beneficial owners who are minors or are under guardianship, the legislation adopts the principle of data minimisation, determining that only information that is essential to proving the legitimacy of the representation, ensuring means of contact and allowing accountability for the declaratory act should be collected. The legal representative is treated as equivalent to the declarant, but not to the beneficial owner, thus avoiding excessive processing of personal data and respecting the principles enshrined in the General Data Protection Regulation (GDPR), namely the principles of minimisation, storage limitation and data protection by design and by default.

The amendment also received a favourable opinion from the CNPD, which recognised the proportionality of the measures adopted: the requirement to demonstrate legitimate interest to access the information, the recording of accesses for five years and the clarification on the data collected from legal representatives. The CNPD emphasised that the amendment respects the reservation of law and provides for prior control over the Ordinances that will regulate the method of access and the identification data of users, maintaining compliance with the rights to the protection of personal data.

The Decree-law entered into force five days after its publication, i.e. on 1 November 2025, and may be consulted here (only available in Portuguese).

A EIOPA publica novas diretrizes de promoção de diversidade nos conselhos de administração e supervisão das (re)seguradoras

A European Insurance and Occupational Pensions Authority ("**EIOPA**") publicou, recentemente, novas diretrizes destinadas a promover a diversidade nos órgãos administrativos, de gestão e supervisão ("**AMSBs**") das empresas de seguros e resseguros.

Estas orientações surgem na sequência de uma alteração à Diretiva Solvência II, que impõe às entidades a obrigação de implementar políticas que promovam a diversidade nos seus órgãos de decisão, incluindo a definição de objetivos quantitativos relativos ao equilíbrio de género. O objetivo das diretrizes da EIOPA é fornecer orientações sobre o conceito de diversida-

EIOPA publishes new guidelines to promote diversity on the boards of directors and supervisory boards of (re) insurers

EIOPA recently published new guidelines aimed at promoting diversity in the administrative, management and supervisory bodies ("**AMSBs**") of insurance and reinsurance undertakings.

These guidelines follow an amendment to the Solvency II Directive, which imposes on entities the obligation to implement policies that promote diversity in their decision-making bodies, including the definition of quantitative objectives relating to gender balance. The aim of EIOPA's guidelines is to provide guidance on the concept of diversity, to ensure that

de, de modo a garantir que a sua aplicação contribua para uma composição mais equilibrada e representativa dos AMSBs.

De acordo com as diretrizes da EIOPA, a diversidade deve refletir não apenas a diferença de género, mas também aspetos como a formação académica e experiência profissional, a idade e a nacionalidade dos membros.

As diretrizes aplicam-se a todas as entidades, independentemente da sua estrutura de governação, e são também extensíveis a grupos de empresas, assegurando consistência com as orientações aplicáveis a outros setores financeiros na União Europeia. Entre os principais pontos, destaca-se a necessidade de proporcionalidade na implementação das políticas, devendo as empresas considerar a natureza, dimensão e complexidade das suas operações. A política de diversidade deve ser estruturada de forma a promover uma ampla gama de competências e experiências, garantindo que as decisões tomadas no AMSB reflitam diferentes perspetivas e experiências.

No que respeita ao equilíbrio de género, as entidades devem definir objetivos quantitativos claros e prazos para a sua concretização, tendo em conta *benchmarks* internacionais e assegurando igualdade de oportunidades na seleção dos membros dos AMSBs. A inclusão de representantes dos trabalhadores pode ser prevista para acrescentar conhecimento prático do dia a dia da empresa, mas não substitui a necessidade de garantir equilíbrio de género. As empresas devem ainda documentar anualmente a conformidade com os objetivos de diversidade, indicando medidas corretivas sempre que os objetivos não forem alcançados.

Além disso, as diretrizes recomendam a implementação de políticas de diversidade para o pessoal, abrangendo aspetos como planeamento de carreira e formação de gestão, assegurando tratamento equitativo e oportunidades iguais para colaboradores de diferentes géneros. Por fim, é reforçada a obrigação de adoção de políticas anti-discriminação, abrangendo género, raça, cor, origem étnica ou social, religião, deficiência, idade, orientação sexual e outros critérios.

A EIOPA prevê que estas diretrizes entrem em vigor a 30 de janeiro de 2027 e que as autoridades competentes incorporem estas orientações nos seus quadros regulatórios e de supervisão, garantindo uma aplicação uniforme e consistente em toda a União Europeia. A implementação destas políticas permitirá harmonizar as práticas de supervisão, promover uma maior diversidade nos AMSBs e contribuir para decisões mais robustas, protegendo simultaneamente os interesses dos segurados e beneficiários e reforçando a estabilidade do sistema financeiro.

As diretrizes e o respetivo relatório final da EIOPA podem ser consultados aqui.

its application contributes to a more balanced and representative composition of AMSBs.

According to EIOPA's guidelines, diversity should reflect not only gender differences, but also aspects such as academic background and professional experience, age and the nationality of members.

The guidelines apply to all entities, regardless of their governance structure, and are also applicable to groups of undertakings, ensuring consistency with the guidelines applicable to other financial sectors in the European Union. Among the main points, the need for proportionality in the implementation of policies is highlighted, with undertakings having to consider the nature, scale and complexity of their operations. The diversity policy should be structured to promote a wide range of skills and experiences, ensuring that decisions taken by the AMSB reflect different perspectives and experiences.

Regarding gender balance, entities must define clear quantitative objectives and deadlines for their achievement, considering international benchmarks and ensuring equal opportunities in the selection of AMSB members. The inclusion of employee representatives may be provided for to add practical knowledge of the day-to-day running of the undertaking but does not replace the need to ensure gender balance. Undertakings must also document their compliance with diversity objectives annually, indicating any corrective measures taken when objectives are not achieved.

Furthermore, the guidelines recommend the implementation of diversity policies for staff, covering aspects such as career planning and management training, ensuring equitable treatment and equal opportunities for employees of different genders. Finally, the obligation to adopt anti-discrimination policies is reinforced, covering gender, race, colour, ethnic or social origin, religion, disability, age, sexual orientation and other criteria.

EIOPA expects these guidelines to enter into force on 30 January 2027, and for competent authorities to incorporate these guidelines into their regulatory and supervisory frameworks, ensuring uniform and consistent application throughout the European Union. The implementation of these policies will make it possible to harmonise supervisory practices, promote greater diversity in AMSBs and contribute to more robust decisions, whilst simultaneously protecting the interests of policyholders and beneficiaries and strengthening the stability of the financial system.

EIOPA's guidelines and final report can be found here.

O painel de riscos do setor segurador da EIOPA revela estabilidade geral face a tensões persistentes

A "EIOPA" divulgou, em outubro de 2025, o seu *Insurance Risk Dashboard*, que fornece uma visão consolidada sobre os principais riscos e vulnerabilidades do setor segurador europeu. Os resultados indicam que os riscos permanecem estáveis em níveis médios, refletindo uma situação geral de estabilidade apesar de algumas tensões persistentes.

Os riscos macroeconómicos mantêm-se em níveis médios, com previsões de crescimento e inflação praticamente inalteradas e expectativas de política monetária sem grandes alterações. Os indicadores fiscais e de crédito continuam fracos, enquanto os mercados de trabalho registaram um ligeiro abrandamento.

Os riscos de crédito mantêm-se estáveis, com uma qualidade sólida das carteiras e impacto limitado das recentes evoluções fiscais e políticas. Os riscos de mercado permanecem elevados, embora estáveis; a volatilidade diminuiu ligeiramente, mas as avaliações continuam esticadas, exigindo atenção contínua. Outros indicadores anuais contribuem para manter o perfil de risco global elevado.

As condições de liquidez e financiamento mantêm-se estáveis, apoiadas por posições de caixa sólidas e alterações mínimas nos principais indicadores. A rentabilidade e a solvência permanecem firmes, com uma ligeira melhoria nas posições de capital dos seguradores e níveis robustos de fundos próprios de elevada qualidade.

No domínio específico dos riscos de seguros, verifica-se uma tendência descendente, refletida na moderação do crescimento de prémios de vida e na estabilização dos resultados de subscrição. Os riscos ESG mantêm-se em nível médio, embora com tendência crescente; os investimentos das seguradoras em obrigações verdes diminuíram ligeiramente como proporção do universo global de *green bonds*, enquanto a exposição mediana a ativos relevantes para o clima aumentou.

Por outro lado, os riscos cibernéticos e relacionados com a digitalização ganham maior relevância, com aumento da perceção de incidentes e preocupações crescentes sobre vulnerabilidades nos sistemas de TI.

O *Insurance Risk Dashboard* da EIOPA baseia-se em dados da Diretiva Solvência II, combinando informação de estabilidade financeira e relatórios prudenciais de 97 grupos de seguros e 2.124 seguradoras individuais, complementados com dados de mercado com data de corte em setembro de 2025. Este painel permite um acompanhamento detalhado dos riscos do setor, contribuindo para decisões regulatórias e estratégicas mais informadas.

EIOPA's insurance sector risk dashboard reveals overall stability amid persistent tensions

In October 2025, EIOPA published its Insurance Risk Dashboard, which provides a consolidated view of the main risks and vulnerabilities of the European insurance sector. The results indicate that risks remain stable at medium levels, reflecting an overall situation of stability despite some persistent tensions.

Macroeconomic risks remain at medium levels, with growth and inflation forecasts practically unchanged and monetary policy expectations without major changes. Fiscal and credit indicators remain weak, whilst labour markets registered a slight slowdown.

Credit risks remain stable, with solid portfolio quality and limited impact from recent fiscal and political developments. Market risks remain elevated, although stable; volatility decreased slightly, but valuations remain stretched, requiring continued attention. Other annual indicators contribute to maintaining the overall risk profile at an elevated level.

Liquidity and funding conditions remain stable, supported by solid cash positions and minimal changes in key indicators. Profitability and solvency remain firm, with a slight improvement in insurers' capital positions and robust levels of high-quality own funds.

In the specific area of insurance risks, a downward trend is observed, reflected in the moderation of life premium growth and the stabilisation of underwriting results. ESG risks remain at a medium level, but trending upwards. Insurers' investments in green bonds decreased slightly as a proportion of the global green bond universe, whilst median exposure to climate-relevant assets increased.

On the other hand, cyber and digitalisation-related risks are becoming more significant, with higher incident rates and growing concerns about vulnerabilities in IT systems.

EIOPA's Insurance Risk Dashboard is based on data from the Solvency II Directive, combining financial stability information and prudential reports from 97 insurance groups and 2,124 individual insurers, supplemented with market data with a cut-off date in September 2025. This dashboard allows detailed monitoring of sector risks, contributing to more informed regulatory and strategic decisions.

O *Insurance Risk Dashboard* completo pode ser consultado aqui.

EIOPA revela soluções digitais inovadoras para colmatar lacunas de pensões em grupos em risco

A EIOPA divulgou recentemente um relatório resumo com os resultados do seu piloto Techsprint dedicado à literacia e consciencialização em pensões. Este evento colaborativo, realizado ao longo de vários dias, reuniu especialistas de diversas áreas, organizados em três equipas, com o objetivo de desenvolver soluções digitais práticas para colmatar lacunas de pensões em grupos tradicionalmente sub-representados: mulheres, membros da geração Z e trabalhadores independentes ou em regime de *gig economy*.

O *Techsprint* resultou na criação de três provas de conceito, cada uma direcionada a necessidades específicas destes grupos, explorando tecnologias digitais e *insights* comportamentais. Os modelos foram concebidos para promover hábitos de poupança sustentáveis e melhorar os resultados em matéria de pensões através de aplicações personalizadas e potenciadas por inteligência artificial (IA):

- O conceito "*Future Me*" destina-se a mulheres, atuando como um verdadeiro co-piloto de pensões. A aplicação oferece dicas, lembretes, simulações de cenários e partilha de experiências entre pares, incentivando o envolvimento precoce e a consciencialização para um planeamento de reforma mais informado;
- A aplicação "FIRE" dirige-se à geração Z, funcionando como um companheiro financeiro digital que combina orientação clara, aprendizagem "gamificada" e validação social, auxiliando jovens profissionais a melhorar hábitos de despesa e a definir objetivos de poupança de longo prazo;
- Por último, o sistema "GIG" propõe um modelo de poupança automática para trabalhadores independentes e em regime de *gig economy*, alocando automaticamente uma parte do rendimento para uma conta de pensões e fundo de emergência, e oferecendo um plano flexível e personalizável.

Para reguladores e supervisores, o *Techsprint* forneceu uma visão concreta de como novas tecnologias podem aumentar o envolvimento do consumidor, enquanto protegem os seus interesses. A colaboração trans-setorial, que envolveu autoridades supervisoras, *start-ups*, académicos, representantes da indústria e organizações de consumidores, fortaleceu o ecossistema europeu de supervisão, de modo a promover a transferência de conhecimento, capacitação e convergência regulatória, bem como um maior entendimento coletivo da evolução da regulamentação perante a inovação tecnológica.

The complete Insurance Risk Dashboard can be consulted here.

EIOPA reveals innovative digital solutions to bridge pension gaps in at-risk groups

EIOPA recently published a summary report with the results of its Techsprint pilot dedicated to pension literacy and awareness. This collaborative event, held over several days, brought together experts from various fields, organised into three teams, with the aim of developing practical digital solutions to bridge pension gaps in traditionally underrepresented groups: women, members of Generation Z and self-employed or gig economy workers.

The Techsprint resulted in the creation of three proofs of concept, each targeted at specific needs of these groups, exploring digital technologies and behavioural insights. The models were designed to promote sustainable savings habits and improve pension outcomes through personalised applications powered by artificial intelligence (AI):

- The "Future Me" concept is aimed at women, acting as a true pension co-pilot. The application offers tips, reminders, scenario simulations and peer experience sharing, encouraging early engagement and awareness for more informed retirement planning;
- The "FIRE" application targets Generation Z, functioning as a digital financial companion that combines clear guidance, gamified learning and social validation, helping young professionals to improve spending habits and set long-term savings goals;
- Finally, the "GIG" system proposes an automatic savings model for self-employed and gig economy workers, automatically allocating a portion of income to a pension account and emergency fund, and offering a flexible and customisable plan.

For regulators and supervisors, the Techsprint offered tangible insights into how new technologies can increase consumer engagement whilst protecting their interests. The cross-sectoral collaboration, which involved supervisory authorities, start-ups, academics, industry representatives and consumer organisations, strengthened the European supervisory ecosystem, so as to promote knowledge transfer, capacity building and regulatory convergence, as well as a greater collective understanding of the evolution of regulation in the face of technological innovation.

Esta iniciativa surge num contexto em que a lacuna de pensões continua a crescer: cerca de 20% dos consumidores ainda não consideraram produtos de pensão pessoal, valor que sobe para 31% entre os 18–24 anos e 25% entre os 25–39 anos. A participação feminina em pensões ocupacionais e pessoais mantém-se abaixo da masculina, com 47% das mulheres a sentirem-se pessimistas quanto à reforma, face a 37% dos homens. Estes dados reforçam a necessidade urgente de os Estados-Membros implementarem medidas direcionadas que assegurem rendimentos de reforma adequados para todos os cidadãos da UE, independentemente da idade, género ou estatuto laboral.

O relatório completo pode ser consultado aqui.

This initiative comes at a time when the pension gap continues to grow: around 20% of consumers have not yet considered personal pension products, a figure that rises to 31% amongst 18–24 year olds and 25% amongst 25–39 year olds. Female participation in occupational and personal pensions remains below that of males, with 47% of women feeling pessimistic about retirement, compared to 37% of men. This data reinforces the urgent need for Member States to implement targeted measures that ensure adequate retirement incomes for all EU citizens, regardless of age, gender or employment status.

The full report may be consulted here.

Apresentação do Plano Estratégico ASF 2026-2028

A Autoridade de Supervisão de Seguros e Fundos de Pensões ("**ASF**") apresentou, no dia 9 de dezembro, o Plano Estratégico desenvolvido para o triénio 2026-2028 sob o mote "*Proteger o Presente, Financiar o Futuro*".

O Plano Estratégico 2026-2028 define a missão, os valores e a visão da ASF, bem como as prioridades e os objetivos estratégicos que irão orientar a sua atuação nos próximos três anos.

Este documento resulta de um diagnóstico aprofundado das envolventes interna e externa, incluindo o contexto regulatório, social e económico, e foi enriquecido com os contributos dos colaboradores da ASF, bem como de representantes dos setores segurador e dos fundos de pensões, dos consumidores e da sociedade em geral.

Em entrevista ao jornal Público, o Presidente da ASF, Dr. Gabriel Bernardino, destaca como prioridades do Plano Estratégico 2026-2028 uma supervisão mais ágil, baseada em dados e tecnologia, reforçando o diálogo sobre poupança de longo prazo e a proteção contra riscos catastróficos.

Introducing the ASF's Strategic Plan 2026-2028

On 9 December, the ASF presented the Strategic Plan developed for the three-year period 2026-2028 under the motto "*Protecting the Present, Financing the Future*".

The Strategic Plan 2026-2028 defines the mission, values and vision of the ASF, as well as the priorities and strategic objectives that will guide its actions over the next three years.

This document stems from an in-depth analysis of the internal and external environments, including the regulatory, social and economic context, and was enriched with contributions from ASF staff, as well as representatives from the insurance and pension funds sectors, consumers and society in general.

In an interview with the newspaper Público, the President of the ASF, Dr Gabriel Bernardino, highlighted as priorities of the Strategic Plan 2026-2028 a more agile supervision, based on data and technology, strengthening dialogue on long-term savings and protection against catastrophic risks.

Circular n.º 10/2025, de 11 de novembro (Prevenção do Branqueamento de Capitais e do Financiamento do Terrorismo)

O Conselho de Administração da ASF aprovou a Circular n.º 10/2025, de 11 de novembro, relativa à divulgação de comunicados do Grupo de Ação Financeira ("**GAFI**"), na sequência da reunião plenária deste organismo de outubro último.

A circular informa também sobre a manutenção de medidas reforçadas de identificação e diligência relativamente à República Popular Democrática da Coreia (Coreia do Norte), à República Islâmica do Irão e à República da União de Mianmar, bem como de contramedidas proporcionais ao risco muito

Circular No. 10/2025, of 11 November (Prevention of Money Laundering and Terrorist Financing)

The Board of Directors of the ASF approved Circular No. 10/2025, of 11 November, concerning the disclosure of communications from the Financial Action Task Force ("**FATF**"), following the plenary meeting of this body in October.

The circular also addresses the continuation of enhanced identification and due diligence measures in relation to the Democratic People's Republic of Korea (North Korea), the Islamic Republic of Iran and the Republic of the Union of Myanmar, as well as countermeasures proportionate to the very

elevado de branqueamento de capitais e de financiamento do terrorismo relativamente às duas primeiras jurisdições.

A Circular n.º 10/2025, de 11 de novembro, pode ser consultada aqui.

high risk of money laundering and terrorist financing in relation to the first two jurisdictions.

Circular No. 10/2025, of 11 November, can be consulted here.

7.º Fórum ASF para a Conduta de Mercado

Realizou-se, no dia 4 de dezembro, a 7.ª reunião do Fórum ASF para a Conduta de Mercado, uma estrutura consultiva criada em julho de 2022 pelo Conselho de Administração da Autoridade de Supervisão de Seguros e Fundos de Pensões ("**ASF**").

A reunião iniciou-se com uma síntese das principais iniciativas, mais recentemente desenvolvidas, no âmbito da conduta de mercado. De seguida fez-se o ponto de situação de algumas atividades que se encontram em curso, como as medidas adotadas pela ASF quanto ao modelo de negócio associado aos seguros de proteção ao crédito, o acompanhamento do cumprimento das regras de dispersão da carteira pelos corretores de seguros e o Observatório da Poupança de Longo Prazo para a Reforma.

Posteriormente, foram apresentadas as linhas gerais do Plano Estratégico da ASF 2026-2028, para recolha de contributos dos membros do Fórum ASF para a Conduta de Mercado, com um especial destaque para o objetivo estratégico mais diretamente relacionado com a conduta de mercado.

A reunião integrou ainda um *tour de table*, no qual cada participante neste Fórum teve a oportunidade de apresentar a sua reflexão sobre os temas atrás mencionados e de sugerir novos temas para posterior ponderação pela ASF.

O Fórum ASF para a Conduta de Mercado tem como objetivo reforçar e aperfeiçoar a regulação e supervisão da conduta de mercado dos operadores supervisionados, promovendo a incorporação, no processo de decisão, dos contributos resultantes da troca de informações, da identificação de áreas prioritárias de intervenção e da partilha de diferentes perspetivas entre os seus membros, com vista ao reforço da proteção dos consumidores e da confiança nos setores sob supervisão da ASF.

7th ASF Forum for Market Conduct

The seventh meeting of the ASF Forum for Market Conduct was held on 4 December. The ASF created this advisory structure in July 2022.

The meeting began with a summary of the main initiatives recently developed around market conduct. This was followed by a progress report on some ongoing activities, such as the measures adopted by the ASF regarding the business model associated with credit protection insurance, monitoring compliance with portfolio diversification rules by insurance brokers and the Long-Term Savings Observatory for Retirement.

Subsequently, the general lines of the ASF Strategic Plan 2026-2028 were presented, to gather contributions from members of the ASF Forum for Market Conduct, with particular emphasis on the strategic objective most directly related to market conduct.

The meeting also included *a tour de table*, in which each participant in this Forum had the opportunity to present their reflections on the aforementioned topics and to suggest new topics for subsequent consideration by the ASF.

The ASF Forum for Market Conduct aims to strengthen and improve the regulation and supervision of market conduct by supervised operators, the integration of stakeholder contributions into decision-making processes through the exchange of information, the identification of priority areas for intervention and the sharing of different perspectives amongst its members, with a view to strengthening consumer protection and confidence in the sectors under ASF supervision.

Sem prejuízo de poderem ser convidadas a participar neste Fórum outras entidades, são membros permanentes a Provedoria de Justiça, o Conselho Económico e Social, a Direção-Geral do Consumidor, a Associação Nacional de Agentes e Corretores de Seguros, a Associação Portuguesa de Fundos de Investimento, Pensões e Patrimónios, a Associação Portuguesa de Seguradores, a Associação de Consumidores de Portugal, a DECO – Associação Portuguesa para a Defesa do Consumidor e três individualidades de reconhecida idoneidade, independência e competência em matérias abrangidas pelo Fórum.

Without prejudice to other entities being invited to participate in this Forum, permanent members include the Ombudsman, the Economic and Social Council, the Directorate-General for Consumer Affairs, the National Association of Insurance Agents and Brokers, the Portuguese Association of Investment Funds, Pensions and Assets, the Portuguese Insurers' Association, the Portuguese Consumers' Association, DECO – Portuguese Association for Consumer Protection and three individuals of recognised integrity, independence and competence in matters covered by the Forum.

Relatório trimestral de Evolução da Atividade dos Fundos de Pensões - 3.º trimestre de 2025

No final do terceiro trimestre de 2025, os montantes geridos dos fundos de pensões registaram um aumento de 1,1% em relação ao final de 2024, totalizando cerca de 19,5 mil milhões de euros.

As contribuições para os fundos de pensões apresentaram um acréscimo de 46,8% face ao período homólogo do ano anterior e no mesmo período os benefícios pagos aumentaram cerca de 1,3%.

No final de setembro de 2025, existiam 239 fundos de pensões sob gestão, na sequência da constituição de seis fundos de pensões e extinção de outros seis.

Consulte o Relatório da Atividade dos Fundos de Pensões (3.º trimestre de 2025) aqui.

Quarterly report on pension funds activity - 3rd quarter of 2025

At the end of the third quarter of 2025, the amounts managed by pension funds registered an increase of 1.1% compared to the end of 2024, totalling approximately €19.5 billion.

Contributions to pension funds showed an increase of 46.8% compared to the same period of the previous year and in the same period benefits paid increased by approximately 1.3%.

At the end of September 2025, there were 239 pension funds under management, following the establishment of six pension funds and the extinction of six others.

Consult the Pension Funds Activity Report (3rd quarter of 2025) here (only available in Portuguese).

Relatório trimestral de Evolução da Atividade Seguradora - 3.º trimestre de 2025

No final do terceiro trimestre de 2025, a produção global de seguro direto relativa à atividade em Portugal aumentou 14,1% face ao período homólogo de 2024, situando-se acima de 11,7 mil milhões de euros. O ramo Vida apresentou um crescimento de 19,7%, tendo sido relevante para este acréscimo o aumento verificado nos seguros de Vida Ligados (58,3%). Os ramos Não Vida registaram um crescimento de 9,2%, de onde se destacam crescimentos de 11,9% no ramo Doença, 9,8% no ramo Automóvel e 8,4% tanto no ramo Incêndio e Outros Danos como na modalidade de Acidentes de Trabalho.

No mesmo período, os montantes pagos de seguro direto apresentaram um decréscimo de 15%. Os montantes pagos do ramo Vida diminuíram 28,7%, enquanto os referentes aos ramos Não Vida cresceram 6,3%.

Quarterly report on insurance activity - 3rd quarter of 2025

At the end of the third quarter of 2025, overall direct insurance production relating to activity in Portugal increased by 14.1% compared to the same period in 2024, standing above €11.7 billion. The Life branch showed growth of 19.7%, driven significantly by the increase in Unit-Linked Life insurance (58.3%). Non-Life branches registered growth of 9.2%, of which notable increases include 11.9% in the Health branch, 9.8% in the Motor branch and 8.4% in both the Fire and Other Damage branch and the Work Accidents category.

In the same period, direct insurance amounts paid showed a decrease of 15%. Amounts paid in the Life branch decreased by 28.7%, whilst those relating to Non-Life branches grew by 6.3%.

O valor das carteiras de investimento das empresas de seguros, no terceiro trimestre de 2025, totalizou 55,8 mil milhões de euros, o que representa um acréscimo de 6,1% face ao final do ano anterior. Na mesma data, o volume de provisões técnicas foi de 46,4 mil milhões de euros.

O rácio estimado de cobertura do Requisito de Capital de Solvência (SCR) – medida do montante de fundos próprios necessários para a absorção das perdas resultantes de um evento de elevada adversidade (VaR 99,5%, um ano) e que resulta da agregação das cargas de capital relativas aos vários riscos a que as empresas de seguros se encontram expostas – foi de 215%, refletindo um acréscimo de sete pontos percentuais face ao final de 2024. O rácio estimado de cobertura do Requisito de Capital Mínimo (MCR) – nível mínimo de fundos próprios abaixo do qual se considera que os tomadores de seguros, segurados e beneficiários ficam expostos a um grau de risco inaceitável – foi de 549%, refletindo um aumento de três pontos percentuais face ao final do ano anterior.

Consulte o Relatório de Evolução da Atividade Seguradora (3.º trimestre de 2025) aqui.

The value of insurance companies' investment portfolios in the third quarter of 2025 totalled €55.8 billion, which represents an increase of 6.1% compared to the end of the previous year. On the same date, the volume of technical provisions was €46.4 billion.

The estimated Solvency Capital Requirement (SCR) coverage ratio – a measure of the amount of own funds necessary to absorb losses resulting from a highly adverse event (VaR 99.5%, one year) and which results from the aggregation of capital charges relating to the various risks to which insurance companies are exposed – was 215%, an increase of seven percentage points compared to the end of 2024. The estimated Minimum Capital Requirement (MCR) coverage ratio – the minimum level of own funds below which policyholders, insured persons and beneficiaries are considered to be exposed to an unacceptable degree of risk – was 549%, reflecting an increase of three percentage points compared to the end of the previous year.

The Insurance Activity Report (3rd quarter of 2025) can be consulted here (only available in Portuguese).

Principais novidades jurisprudencias
Main Developments in Case Law

▸ Não confundir alhos com bugalhos

O Acórdão do STJ revogou o Acórdão do Tribunal da Relação do Porto e absolveu a seguradora em caso de fraude por usurpação de identidade, concluindo que a cobertura deste risco não decorre automaticamente da lei, nem do contrato de seguro de crédito objeto do litígio

Supremo Tribunal de Justiça (STJ), Acórdão de 14 out. 2025, Processo 2219/20.9T8PRT.P1.S1

O Acórdão do STJ versa sobre uma ação intentada por uma empresa portuguesa de comercialização de sapatos, malas e carteiras contra o Banco BB e a Seguradora CC, na qual foi pedida a condenação da Seguradora CC no pagamento da quantia de € 96.156,68, ao abrigo de contrato de seguro de crédito para exportação celebrado entre a Autora e a Seguradora CC.

A Autora havia contratado um seguro de crédito "fatura a fatura" através do Banco BB para proteger operações de exportação com novos clientes europeus, tendo posteriormente fornecido mercadorias a entidades que se apresentaram como uma empresa francesa (S...) e inglesa (J...). O pagamento das mercadorias fornecidas nunca foi efetuado.

Quando a Autora acionou o seguro, a Seguradora CC suspendeu o pagamento da indemnização, invocando que as entidades garantidas negaram ter efetuado ou recebido as encomendas, alegando usurpação da sua identidade por terceiros.

O Tribunal da Relação do Porto decidiu condenar a Seguradora CC a pagar à Autora a quantia peticionada de € 96.156,68, tendo considerado (i) que houve uma violação do dever de comunicação e de informação por parte do tomador do seguro (Banco BB) relativamente às condições gerais, especiais e particulares da apólice, (ii) que essa violação seria oponível à Seguradora CC e (iii) que o sinistro de não pagamento das mercadorias fornecidas pela Autora estaria coberto pelo seguro celebrado com a Seguradora CC.

A Seguradora CC interpôs recurso de revista para o STJ, tendo esse recurso sido julgado procedente quanto à absolvição do pedido.

O STJ qualificou o seguro de crédito como seguro financeiro regulado pelo Decreto-Lei n.º 183/88, de 24 de maio, subli-

▸ Don't confuse apples with oranges: credit insurance is not anti-fraud insurance

The STJ Judgment overturned the Judgment of the Porto Court of Appeal and ruled in favour of the insurer in a case of identity theft, concluding that coverage of this risk does not automatically arise from the law or from the credit insurance contract that was the subject of the dispute

Supreme Court of Justice (Supremo Tribunal de Justiça, "STJ") Judgment of 14 October 2025, Case 2219/20.9T8PRT.P1.S1

The STJ ruling concerns a lawsuit filed by a Portuguese company selling shoes, bags and wallets against Bank BB and Insurer CC, in which it sought an order for Insurer CC to pay the sum of €96,156.68 under an export credit insurance contract entered into between the Claimant and Insurer CC.

The Claimant had taken out "invoice-to-invoice" credit insurance through Bank BB to protect export transactions with new European customers, and subsequently supplied goods to entities presenting themselves as a French company (S...) and an English company (J...). Payment for the goods supplied was never made.

When the Claimant invoked the insurance, Insurer CC suspended payment of the indemnity, arguing that the guaranteed entities denied having placed or received the orders, alleging identity theft by third parties.

The Porto Court of Appeal ruled that Insurer CC must pay the Claimant the requested amount of €96,156.68, considering (i) that there had been a breach of the duty of communication and information on the part of the policyholder (Bank BB) regarding the general, special and specific conditions of the policy, (ii) that this breach was enforceable against Insurer CC and (iii) that the non-payment of the goods supplied by the Claimant was covered by the insurance policy taken out with Insurer CC.

Insurer CC lodged an appeal with the STJ, which upheld the appeal and dismissed the claim.

The STJ classified credit insurance as financial insurance regulated by Decree-law No. 183/88 of 24 May, emphasising that

nhando que a exata determinação do risco constitui elemento essencial da disciplina dos seguros. O tribunal concluiu que o contrato padrão do seguro de crédito não cobre habitualmente o risco de fraude, podendo abrangê-lo apenas mediante contratação de cobertura acessória dependente de cláusula expressa, que não existia no caso concreto. O STJ esclareceu ainda que o seguro de crédito visa proteger o segurado contra o risco de incumprimento por parte de clientes identificados e aceites pela seguradora, pressupondo a existência de uma relação contratual subjacente válida e de um crédito exequível sobre os devedores garantidos. No caso em apreço, não ficou demonstrada a existência de crédito sobre as entidades garantidas, uma vez que estas negaram ter celebrado os contratos ou recebido as mercadorias.

Assim, o STJ concluiu que, sem relação obrigacional válida, não há crédito; sem crédito, não há incumprimento; e sem incumprimento, não há sinistro indemnizável. Neste sentido, o STJ clarificou que o seguro de crédito não funciona como seguro antifraude, nem garante riscos inexistentes ou indeterminàveis. A falha informativa por parte do tomador de seguro Banco BB não tem o efeito automático de ampliar a cobertura ou converter riscos não abrangidos em garantidos.

O Acórdão pode ser consultado aqui.

the accurate determination of risk is an essential element of insurance law. The Court concluded that the standard credit insurance contract does not usually cover the risk of fraud, and it can only be covered by taking out additional cover subject to an express clause, which did not exist in this specific case. The STJ also clarified that credit insurance aims to protect the insured against the risk of default by customers identified and accepted by the insurer, assuming the existence of a valid underlying contractual relationship and an enforceable claim against the guaranteed debtors. In the case in question, the existence of a claim against the guaranteed entities was not demonstrated, since they denied having entered into the contracts or received the goods.

The STJ concluded that without a valid contractual relationship, there was no credit; without credit, there was no default; and without default, there was no claimable loss. In this regard, the STJ clarified that credit insurance does not function as anti-fraud insurance, nor does it guarantee non-existent or indeterminable risks. The failure to provide information on the part of the policyholder Bank BB did not automatically have the effect of extending coverage or converting uninsured risks into guaranteed ones.

The Judgment can be consulted here.

▸ Não se pode estar calado e querer ter razão

O STJ decidiu que, se a seguradora não cumpriu o dever de avisar o tomador do seguro para pagamento do prémio, o contrato de seguro mantém-se em vigor, e que, tendo o Fundo de Garantia Automóvel (FGA) instaurado ação contra o proprietário e condutor do veículo e tendo estes chamado a seguradora aos autos, o tribunal deve pronunciar-se sobre a responsabilidade da seguradora se concluir que o seguro estava válido

Supremo Tribunal de Justiça (STJ), Acórdão de 11 nov. de 2025, Processo 3122/22.3T8LRA.C1.S1

O Acórdão do STJ versa sobre uma ação intentada pelo FGA contra AA e BB, para exercício do direito de reembolso da quantia de € 107.259,06, juntamente com despesas de gestão e respetivos juros, referentes a quantias pagas aos sinistrados por acidente de viação, alegadamente ocorrido por culpa do 2.º Réu condutor do veículo ligeiro de mercadorias de matrícula V1..., propriedade do 1.º Réu, que à data dos factos, alegadamente, circulava sem seguro válido e eficaz.

O 1.º Réu AA alegou a prescrição do direito do FGA e a existência de seguro válido, invocando nunca ter recebido aviso de pagamento nem ter sido informado sobre as consequên-

▸ You cannot remain silent and expect to be right

The STJ has ruled that if an insurer fails to fulfil its duty to notify the policyholder of the premium payment, the insurance contract remains in force, and that, since the Motor Guarantee Fund (*Fundo de Garantia Automóvel*, FGA) brought an action against the owner and driver of the vehicle and they called the insurer to the proceedings, the court must rule on the insurer's liability if it concludes that the insurance was valid

STJ Judgment of 11 November 2025, Case 3122/22.3T8LRA.C1.S1

The STJ ruling concerns a lawsuit brought by the FGA against AA and BB to exercise its right to reimbursement of €107,259.06, together with management costs and interest, relating to amounts paid to victims of a road accident allegedly caused by the 2nd Defendant who was the driver of a light goods vehicle with registration number V1..., owned by the 1st Defendant, which, at the time of the events, was allegedly being operated without valid and effective insurance.

The 1st Defendant AA claimed that the FGA's right had expired and that valid insurance existed, arguing that he had never received a payment notice nor been informed of the consequences

cias do não pagamento do prémio de seguro ou da eventual extinção da respetiva apólice. A Seguradora GG foi chamada a intervir. Na sua contestação, alegou a anulação da apólice subscrita pelo 1.º Réu AA por falta de pagamento.

A primeira instância julgou a ação procedente, condenando os Réus solidariamente e absolvendo a Seguradora GG, por entender que à data do sinistro não existia seguro de responsabilidade civil automóvel válido. Ambos os Réus interpuseram recurso da decisão de primeira instância, tendo o Tribunal da Relação de Coimbra julgado procedente o recurso, absolvendo os Réus dos pedidos formulados pelo FGA. Neste sentido, o Tribunal fundamentou que não se provou que a Seguradora GG interpelou o tomador do seguro para pagar o prémio vencido em 2014, com a indicação das consequências da falta de pagamento, pelo que era legítimo e acertado concluir que, à data do acidente, vigorava o contrato de seguro de responsabilidade civil automóvel.

O FGA interpôs recurso de revista para o STJ, tendo arguido omissão de pronúncia sobre a responsabilidade da Seguradora GG, e defendido que, sendo absolvidos os Réus AA e BB, e tendo o Tribunal concluído pela existência de seguro válido em nome do 1.º Réu AA, então deveria ser condenada a Seguradora GG no pagamento do valor de € 107.259,06.

Decidindo, o STJ confirmou que, na vigência do contrato, o segurador deve avisar por escrito o tomador do seguro do montante a pagar, assim como da forma e do lugar de pagamento, com uma antecedência mínima de 30 dias em relação à data em que se vence o prémio, ou frações deste, devendo do aviso constar, de modo legível, as consequências da falta de pagamento do prémio ou de sua fração. Só após o cumprimento desta formalidade é que poderia ocorrer a resolução do contrato pela Seguradora GG.

O STJ esclareceu ainda que, tendo o FGA instaurado ação de sub-rogação contra o proprietário do automóvel e o condutor deste, para reembolso das quantias pagas aos lesados no pressuposto de que à data do acidente não existia seguro automóvel válido, e tendo os réus requerido a intervenção principal provocada da seguradora, a responsabilidade da

of non-payment of the insurance premium or the possible termination of the respective policy. Insurer GG was joined to the proceedings. In its defence, it asserted that the policy taken out by the 1st Defendant AA had been cancelled due to non-payment.

The court of first instance upheld the action, finding the Defendants A and B jointly and severally liable and absolving the insurer of liability, on the grounds that there was no valid motor vehicle liability insurance on the date of the accident. Both Defendants appealed the decision of the court of first instance, and the Court of Appeal of Coimbra upheld the appeal, finding in favour of the Defendants regarding the claims made by the FGA. In this regard, the Court ruled that it had not been proven that the insurer had requested that the policyholder pay the premium due in 2014, indicating the consequences of non-payment, and therefore it was legitimate and correct to conclude that, on the date of the accident, the motor vehicle civil liability insurance contract was in force.

The FGA lodged an appeal with the STJ, arguing that there had been a failure to rule on the insurer's liability and arguing that, since the Defendants had been absolved and the Court had concluded that there was valid insurance in the name of AA, Insurer GG should be ordered to pay the amount of €107,259.06.

In its decision, the STJ confirmed that, during the term of the contract, the insurer must notify the policyholder in writing of the amount to be paid, as well as the form and place of payment, at least 30 days prior to the date on which the premium or instalments thereof are due, and the notice must clearly state the consequences of non-payment of the premium or instalments. Only after this formality has been complied with could Insurer GG terminate the contract.

The STJ also clarified that, since the FGA had brought an action for subrogation against the owner of the car and its driver for reimbursement of the amounts paid to the injured parties on the assumption that there was no valid motor insurance on the date of the accident, and the defendants had requested the main intervention of the insurer, Insurer GG's liability,

seguradora, uma vez admitido o seu chamamento aos autos, passa a integrar o objeto da causa.

Assim, o STJ concluiu que o acórdão recorrido enferma de omissão de pronúncia, tendo julgado a revista procedente no que concerne à omissão de pronúncia relativamente à responsabilidade da interveniente Seguradora GG e, consequentemente, nessa parte anulou o acórdão recorrido e determinou a baixa dos autos à Relação, a fim de que supra a mencionada omissão.

O Acórdão pode ser consultado aqui.

A César o que é de César

O STJ decidiu que os fiadores de contrato de mútuo bancário não têm legitimidade para contestar a resolução do seguro de vida associado ao empréstimo, se não aderiram ao seguro como pessoas seguras

Supremo Tribunal de Justiça (STJ), Acórdão de 7 out. de 2025, Processo n.º 13305/21.8T8LSB.L1.S1

O Acórdão do STJ versa sobre uma ação intentada pela viúva e pelos pais do falecido mutuário contra a Seguradora FF, o Banco CC e a Ré HH, na qual foi pedida a declaração de nulidade da resolução do contrato de seguro de vida e a condenação da seguradora no pagamento do capital em dívida, bem como a libertação dos Autores de qualquer responsabilidade emergente do contrato de mútuo.

Os Autores BB e CC eram pais de DD, falecido em 28.10.2020, e estavam constituídos como fiadores solidários e principais pagadores de um empréstimo "multiopções" no montante de € 300.000,00, celebrado entre DD e mulher AA (Autora no processo) e a Banco CC. Para garantia deste empréstimo, foi celebrado um contrato de seguro de vida grupo entre a Seguradora FF e a Banco CC, ao qual aderiram DD e AA como pessoas seguras, tendo a Banco CC assumido a condição de tomadora e beneficiária irrevogável. Os riscos cobertos eram os de morte e de invalidez total e permanente por doença ou acidente.

Em 2012, a Seguradora FF não conseguiu cobrar as mensalidades do prémio de seguro referentes ao período de janeiro a março (€ 202,80) por falta de saldo na conta dos mutuários, tendo enviado carta registada à Autora AA a comunicar que procederia à "anulação" do contrato caso o montante não fosse pago até 18 de abril de 2012. A Autora AA não respondeu.

Em 25 de abril de 2015, o mutuário DD sofreu um acidente que resultou numa incapacidade permanente global de 100%. Quando a Autora AA procurou acionar o seguro, a Seguradora FF recusou o cumprimento, alegando que as adesões once their summons to the proceedings had been admitted, became part of the subject matter of the case.

The STJ concluded that the appealed judgment was flawed due to failure to rule, and upheld the appeal with regard to the failure to rule on the liability of the intervening Insurer GG and, consequently, annulled that part of the appealed judgment and ordered the case to be sent back to the Court of Appeal in order to remedy the aforementioned failure.

The Judgment can be consulted here.

Render unto Caesar what is Caesar's

The STJ has ruled that guarantors of a bank loan agreement do not have standing to challenge the termination of the life insurance associated with the loan if they did not take out the insurance as insured persons

STJ Judgment of 7 October 2025, Case No. 13305/21.8T8LSB.L1.S1

The STJ Judgment concerns a lawsuit filed by the widow and parents of the deceased borrower against Insurer FF, Bank CC and Defendant HH, in which they sought a declaration of nullity of the termination of the life insurance contract and an order for the insurer to pay the outstanding capital, as well as the release of the Claimants from any liability arising from the loan agreement.

The Claimants BB and CC were the parents of DD, who died on 28 October 2020, and were joint guarantors and principal debtors of a "multi-option" loan in the amount of €300,000, entered into between DD and his wife AA (Claimant in the case) and Bank CC. To guarantee this loan, a group life insurance contract was entered into between Insurer FF and Bank CC, to which DD and AA adhered as insured persons, with Bank CC assuming the status of irrevocable policyholder and beneficiary. The risks covered were death and total and permanent disability due to illness or accident.

In 2012, Insurer FF was unable to collect the monthly insurance premiums for the period from January to March (€202.80) due to insufficient funds in the borrowers' account, and sent a registered letter to the Claimant AA stating that it would "cancel" the contract if the amount was not paid by 18 April 2012. The Claimant AA did not respond.

On 25 April 2015, the borrower DD suffered an accident that resulted in permanent total disability of 100%. When the Claimant AA sought to make a claim under the insurance policy, Insurer FF refused to comply, claiming that

sões se encontravam anuladas por falta de pagamento de prémios desde 1 de janeiro de 2012.

Tanto a sentença de primeira instância como o Acórdão do Tribunal da Relação de Lisboa proferido no processo julgaram a ação improcedente, absolvendo as rés dos pedidos. A primeira instância considerou que a Autora AA tinha obrigação de ter tomado conhecimento da anulação da apólice e que não seria legítimo, mais de cinco anos depois, os Autores alegarem que estavam convencidos de que o pagamento das prestações do contrato de mútuo estaria salvaguardado pelo seguro de vida. O Tribunal da Relação de Lisboa considerou ainda que os fiadores BB e CC eram terceiros em relação ao contrato de seguro, não podendo exigir à Seguradora FF o pagamento do capital mutuado em dívida, ainda que tivessem interesse indireto nesse pagamento. Os fiadores BB e CC interpuseram recurso de revista excecional para o STJ.

Decidindo, o STJ referiu que os Autores BB e CC, enquanto fiadores do contrato de mútuo, não foram parte nem titulares do negócio jurídico cuja resolução se discutia (o contrato de seguro), e que a possibilidade de invocar meios de defesa do devedor principal ao abrigo do artigo 637.º do CC é limitada ao contrato a que se refere a obrigação principal na obrigação fidejussória (neste caso o contrato de mútuo).

Assim, o STJ concluiu que o fiador no contrato de mútuo não tem legitimidade para opor à seguradora do contrato de seguro conexo os meios de defesa que respeitam a uma relação jurídica que não coincide com a relação jurídica garantida pela fiança.

O Acórdão pode ser consultado aqui.

the policies had been cancelled due to non-payment of premiums since 1 January 2012.

Both the first instance ruling and the Lisbon Court of Appeal ruling in the case dismissed the action, absolving the defendants of liability. The court of first instance considered that the Claimant AA had an obligation to be aware of the cancellation of the policy and that it was not legitimate, more than five years later, for the Claimants to claim that they were convinced that the payment of the instalments of the loan agreement would be safeguarded by the life insurance. The Lisbon Court of Appeal also considered that the guarantors BB and CC were third parties in relation to the insurance contract and could not demand payment of the outstanding loan capital from Insurer FF, even if they had an indirect interest in such payment. The guarantors BB and CC lodged an exceptional appeal with the STJ.

In its decision, the STJ stated that the Claimants BB and CC, as guarantors of the loan agreement, were not parties to or holders of the legal transaction whose termination was being discussed (the insurance contract), and that the possibility of invoking the principal debtor's defences under Article 637 of the CC is limited to the contract to which the principal obligation in the surety obligation refers (in this case, the loan agreement).

The STJ concluded that the guarantor in the loan agreement did not have standing to oppose the insurer of the related insurance agreement with defences relating to a legal relationship that did not coincide with the legal relationship guaranteed by the guarantee.

The Judgment can be consulted here.

▸ Até aqui e não mais além

O STJ uniformizou jurisprudência sobre seguro desportivo obrigatório, decidindo que a indemnização por invalidez permanente parcial é calculada em função do grau de incapacidade fixado, independentemente do dano efetivo, e que não abrange a reparação de danos não patrimoniais como dor, sofrimento ou perda de qualidade de vida

Supremo Tribunal de Justiça (STJ), Acórdão de 13 maio 2025, Processo n.º 489/17.9T8AVV.G1.S1-A

O Acórdão do STJ versa sobre uma ação intentada por AA contra a Seguradora SS e a Ré RR, na qual foi pedida a condenação solidária no pagamento da quantia global de € 39.935,83, acrescida de juros de mora, a título de indemnização no seguimento de acidente desportivo ocorrido durante um treino de rugby que resultou em lesão funcional permanente de um atleta.

▸ Thus far and no further

The STJ has standardised case law on compulsory sports insurance, ruling that compensation for permanent partial disability is calculated according to the degree of disability established, regardless of the actual damage, and that it does not cover compensation for non-pecuniary damage such as pain, suffering or loss of quality of life

STJ Judgment of 13 May 2025, Case No. 489/17.9T8AVV.G1.S1-A

The STJ ruling concerns a lawsuit brought by AA against Insurer SS and the Defendant RR, in which joint and several liability was sought for the payment of a total amount of €39,935.83, plus default interest, as compensation following a sports accident that occurred during rugby training and resulted in permanent functional injury to an athlete.

No dia 21 de outubro de 2014, o Autor, praticante amador de rugby, sofreu um choque de um colega durante um treino que lhe provocou lesões graves no joelho esquerdo, incluindo a rotura de ligamentos. Em consequência do sinistro, o Autor ficou a padecer de Défice Funcional Permanente na Integridade Físico-Psíquica de 2 pontos em 100. À data do acidente encontrava-se em vigor um contrato de seguro de acidentes pessoais celebrado entre o Clube de Rugby e a seguradora, com um capital seguro de € 30.000,00 em caso de morte ou invalidez permanente por acidente.

A primeira instância condenou a Seguradora SS pagar ao Autor a quantia de € 6.675,00, acrescida de juros de mora. O Tribunal da Relação de Guimarães, na sequência de recurso interposto por ambas as partes, confirmou a decisão quanto ao reembolso de despesas e à invalidez permanente num total de € 675,00, revogando no mais a decisão recorrida. O Supremo Tribunal de Justiça, por acórdão de 9 de janeiro de 2024, negou a revista interposta pelo Autor, confirmando o acórdão da Relação.

O Autor interpôs recurso extraordinário para uniformização de jurisprudência, invocando contradição com acórdão do STJ de 10 de outubro de 2023, que havia decidido que a indemnização por invalidez permanente parcial deve ser calculada em função de todos os danos patrimoniais e não patrimoniais sofridos até ao limite do capital garantido.

Decidindo em Pleno das Secções Cíveis e da Secção Social, o STJ analisou a questão de saber se o apuramento do montante de capital devido ao segurado, ao abrigo do contrato de seguro desportivo, por situação de invalidez permanente parcial, nos termos do artigo 16.º, alínea d), do Decreto-Lei n.º 10/2009, de 12 de janeiro, é determinado em função apenas do grau de incapacidade fixado ou em função do dano efetivo sofrido pelo lesado, e se a cobertura do contrato abrange ou não a reparação dos danos não patrimoniais.

O STJ considerou que a lei estabelece que a indemnização deve ser calculada multiplicando o grau de incapacidade fixado pelo capital garantido na apólice, independentemente do dano efetivo sofrido. O tribunal esclareceu que o grau de incapacidade é uma medida numérica da falta de capacidade, e que a utilização pelo artigo 16.º do Decreto-Lei n.º

On 21 October 2014, the Claimant, an amateur rugby player, suffered a collision with a teammate during training, which caused serious injuries to his left knee, including torn ligaments. As a result of the accident, the Claimant was left with a Permanent Functional Deficit in Physical and Mental Integrity of 2 points out of 100. At the time of the accident, a personal accident insurance contract was in force between the Rugby Club and the insurer, with an insured sum of €30,000 in the event of death or permanent disability due to accident.

The court of first instance ordered Insurer SS to pay the Claimant the sum of €6,675, plus default interest. The Court of Appeal of Guimarães, following an appeal lodged by both parties, upheld the decision regarding the reimbursement of expenses and permanent disability in the total amount of €675, revoking the rest of the appealed decision. The Supreme Court of Justice, in a ruling dated 9 January 2024, dismissed the appeal filed by the Claimant, confirming the Court of Appeal's ruling.

The Claimant lodged an extraordinary appeal for the standardisation of case law, citing a conflict with the Supreme Court of Justice's ruling of 10 October 2023, which had decided that compensation for permanent partial disability should be calculated on the basis of all pecuniary and non-pecuniary damage suffered up to the limit of the guaranteed capital.

Deciding in plenary session of the Civil and Social Sections, the STJ analysed the question of whether the calculation of the amount of capital due to the insured under the sports insurance contract for permanent partial disability, under the terms of Article 16(d) of Decree-law No. 10/2009 of 12 January, was determined solely on the basis of the degree of disability established or on the basis of the actual damage suffered by the injured party, and whether or not the contract covered compensation for non-pecuniary damage.

The STJ considered that the law establishes that compensation must be calculated by multiplying the degree of disability established by the capital guaranteed in the policy, regardless of the actual damage suffered. The Court clarified that the degree of disability is a quantitative measurement of the lack of capacity, and that the use by Article 16 of Decree-law No.

10/2009, de 12 de janeiro, do conceito de "invalidez" remete para o conceito previsto no Decreto-Lei n.º 187/2007, de 10 de maio, que utiliza coeficientes numéricos para ponderar os graus de incapacidade.

Quanto à reparação dos danos não patrimoniais, o STJ concluiu que a cobertura do contrato de seguro desportivo obrigatório não abrange a reparação destes danos, fundamentando que a interpretação contrária criaria uma situação contraditória: concederia ao lesado uma compensação por danos não patrimoniais inversamente proporcional ao grau de invalidez sofrido, não tendo lugar nos casos mais graves em que o lesado padece de um grau de invalidez de 100%, uma vez que o capital máximo já teria sido atingido apenas com o cálculo da incapacidade.

Assim, o STJ uniformizou jurisprudência no seguinte sentido: (1) O apuramento do capital devido ao segurado, ao abrigo do contrato de seguro desportivo, por situação de invalidez permanente parcial, resulta da multiplicação da percentagem do grau de incapacidade fixado pelo montante do capital seguro previsto na apólice, independentemente do valor do dano efetivo sofrido pelo lesado; (2) A cobertura do contrato de seguro não abrange a reparação dos danos não patrimoniais sofridos pelo segurado.

O Acórdão pode ser consultado aqui.

10/2009 of 12 January, on the concept of "disability" refers to the concept provided for in Decree-law No. 187/2007 of 10 May, which uses numerical coefficients to weigh the degrees of disability.

Regarding compensation for non-pecuniary damage, the STJ concluded that the scope of coverage of the compulsory sports insurance contract did not extend to compensation for such damage, on the grounds that the contrary interpretation would create a contradictory situation: it would grant the injured party compensation for non-pecuniary damage inversely proportional to the degree of disability suffered, which would not apply in the most serious cases where the injured party suffers from 100% disability, since the maximum capital would already have been reached with the calculation of disability alone.

The STJ therefore standardised case law as follows: (1) The capital due to the insured under the sports insurance contract for permanent partial disability is calculated by multiplying the percentage degree of incapacity set by the amount of the insured capital provided for in the policy, regardless of the value of the actual damage suffered by the injured party; (2) The insurance contract does not cover compensation for non-pecuniary damage suffered by the insured party.

The Judgment can be consulted here.

▸ Beber, cair e provar

O STJ decidiu que cabe ao empregador ou ao segurador provar os factos que descaracterizam o acidente de trabalho, e que a mera demonstração de que o trabalhador estava embriagado não é suficiente para provar o nexo de causalidade entre a embriaguez e o acidente

Supremo Tribunal de Justiça (STJ), Acórdão de 14 jul. 2025, Processo n.º 1994/20.5T8GMR.G1.S1

O Acórdão do STJ versa sobre uma ação especial emergente de acidente de trabalho intentada pela unida de facto e pelo filho do sinistrado CC contra a Seguradora AA e a entidade empregadora, na qual foi pedida a condenação no pagamento de pensões anuais, subsídios por morte e despesas de funeral.

No dia 24 de abril de 2020, o sinistrado, servente de construção civil, caiu de um telhado de uma altura de cerca de 5,20 metros enquanto trabalhava numa obra de reparação, vindo a falecer no mesmo dia. Foi dado como provado no processo que o sinistrado apresentava uma taxa de álcool no sangue de, pelo menos 1,73 g/l e caminhou sobre o telhado de forma cambaleante.

▸ Drinking, falling and proving

The STJ has ruled that it is up to the employer or insurer to prove the facts that disqualify an accident from being classified as a work accident, and that merely demonstrating that a worker was intoxicated is not sufficient to prove a causal link between intoxication and the accident

STJ Judgment of 14 July 2025, Case No. 1994/20.5T8GMR.G1.S1

The STJ ruling concerns a special action arising from a work accident brought by the de facto partner and the son of the injured party CC against Insurer AA and the employer, in which the payment of annual pensions, death benefits and funeral expenses was sought.

On 24 April 2020, the victim, a construction worker, fell from a roof at a height of approximately 5.20 metres while working on a repair job and died on the same day. It was proven in the proceedings that the victim had a blood alcohol level of at least 1.73 g/l and was staggering as he walked on the roof.

A primeira instância julgou a ação procedente, condenando a seguradora e a entidade empregadora no pagamento de subsídios por morte e pensões anuais aos Autores. O Tribunal da Relação de Guimarães, na sequência de recurso interposto pela Seguradora AA, considerou procedente o recurso e determinou a absolvição da seguradora dos pedidos.

Os Autores interpuseram recurso de revista para o STJ, arguindo que a factualidade provada não permite concluir com relativa segurança que não existiu qualquer outra causa para a ocorrência do acidente, e que não tendo a Seguradora AA demonstrado o nexo de causalidade entre o estado de embriaguez e o acidente, não se pode deixar de concluir pela caracterização do sinistro como sendo de trabalho.

Decidindo, o STJ referiu que o direito dos trabalhadores à tutela em caso de acidentes de trabalho é um direito constitucionalmente consagrado (artigo 59.º, n.º 1, alínea f) da Constituição da República Portuguesa). O tribunal esclareceu que a incerteza sobre o que em concreto ocorreu não deve privar o trabalhador da proteção contra acidentes de trabalho, constitucionalmente consagrada, não estando preenchidos os requisitos da descaracterização do acidente como acidente de trabalho.

O STJ reiterou o entendimento jurisprudencial de que é sobre a entidade responsável pela reparação que recai o ónus da prova dos factos descaracterizadores do acidente, tendo em conta que estes constituem factos impeditivos do direito invocado pelo sinistrado ou seus beneficiários. O tribunal salientou que, nos casos em que se prova que o sinistrado apresenta uma taxa de alcoolemia elevada, é entendimento largamente dominante nos tribunais superiores portugueses há mais de três décadas que tal demonstração não é suficiente para que se deva considerar provado o nexo de causalidade.

O STJ considerou que não foi demonstrado nexo de causalidade entre o estado de embriaguez e a queda, uma vez que o trabalhador estava sozinho no telhado quando caiu e o facto de ter sido visto a cambalear não é determinante, pois o cambalear pode ter diversas causas (cansaço, tontura ou indisposição) e mesmo uma pessoa sóbria pode cair de um telhado inclinado.

Assim, o STJ concluiu que o acidente não deve ter-se por descaracterizado enquanto acidente de trabalho, tendo dado provimento à revista, revogado o Acórdão recorrido e restabelecido a sentença de primeira instância.

O Acórdão pode ser consultado aqui.

The court of first instance upheld the claim, ordering Insurer AA and the employer to pay death benefits and annual pensions to the Claimants. The Court of Appeal of Guimarães, following an appeal lodged by Insurer AA, upheld the appeal and absolved Insurer AA of liability for the claims.

The Claimants lodged an appeal with the STJ, arguing that the proven facts did not allow for a relatively certain conclusion that there was no other cause for the accident and that, since Insurer AA had not demonstrated a causal link between the state of intoxication and the accident, the accident had to be characterised as a work-related accident.

In its decision, the STJ stated that the right of workers to protection in the event of accidents at work is a constitutionally enshrined right (Article 59(1)(f) of the Constitution of the Portuguese Republic). The Court clarified that uncertainty about what actually happened should not deprive the worker of constitutionally enshrined protection against accidents at work, as the requirements for disqualifying the accident as an accident at work were not met.

The STJ reiterated the jurisprudential understanding that the burden of proof of the facts that disqualify the accident lies with the entity responsible for compensation, given that these facts prevent the injured party or their beneficiaries from exercising their rights. The Court pointed out that, in cases where it is proven that the injured party had a high blood alcohol level, it has been the prevailing understanding in the Portuguese higher courts for more than three decades that such evidence is not sufficient to prove the causal link.

The STJ considered that no causal link had been demonstrated between the state of intoxication and the fall, since the worker was alone on the roof when he fell and the fact that he was seen staggering was not decisive, as staggering can have various causes (tiredness, dizziness or indisposition) and even a sober person can fall from a sloping roof.

The STJ concluded that the accident should not be disqualified as a work accident, upheld the appeal, revoked the appealed judgment and reinstated the first instance judgment.

The Judgment can be consulted here.

Mais vale tarde do que nunca

O Acórdão do STJ concluiu que não constitui abuso de direito a conduta do segurado que, após tomar conhecimento das cláusulas contratuais relativas ao cálculo dos prémios, formula pedido de restituição de valores pagos em excesso, mesmo que o contrato tenha vigorado por cerca de 20 anos

Supremo Tribunal de Justiça (STJ), Acórdão de 27 nov. 2025, Processo 1142/23.0T8VIS.C1.S1

O Acórdão do STJ versa sobre uma ação intentada por um segurado (AA) contra uma seguradora (FF) e uma mediadora de seguros (JJ), na qual foi pedida a condenação das Rés no pagamento de montantes pagos em excesso a título de prémios de seguro de vida grupo.

O Autor havia aderido, em julho de 2002, a um contrato de seguro de vida grupo, através da mediação da 2.ª Ré JJ, tendo-lhe sido comunicado pela seguradora que o prémio mensal seria de € 130,86. O contrato renovou-se anualmente, mantendo-se em vigor até à data do litígio (2022). Durante a vigência do contrato, os prémios mensais foram progressivamente aumentando, passando de € 312,84 em 2007 para € 956,29 em 2020, sem que o Autor tivesse conhecimento dos critérios de atualização previstos nas condições contratuais. Apenas em 2022, ao questionar a seguradora, o Autor foi informado de que "*a atualização do prémio desta apólice ocorre de 5 em 5 anos em função da idade do segurado*".

A primeira instância julgou a ação procedente, condenando as Rés no pagamento de indemnização

O Tribunal da Relação de Coimbra, na sequência de recurso interposto pelas Rés, revogou a sentença e absolveu as Rés dos pedidos, tendo considerado que, apesar de ter sido incumprido o dever de informação ao segurado, a pretensão por ele formulada constituía abuso de direito, fundamentando que a conduta omissiva do Autor durante 20 anos, sem nunca ter solicitado esclarecimentos sobre o contrato ou questionado os aumentos dos prémios, criou nas Rés a legítima expectativa de conformidade com o conteúdo contratual.

As Rés FF e JJ interpuseram recurso de revista para o STJ. Decidindo, o STJ considerou que o Tribunal da Relação alterou indevidamente a decisão sobre matéria de facto. O tribunal esclareceu que cabia às Rés provar que prestaram ao Autor a informação contratual, por ser seu dever legal, e que, havendo dúvida sobre se a informação foi ou não prestada, essa dúvida deveria ser resolvida contra as Rés.

Better late than never

The STJ judgment concluded that the conduct of an insured person who, having become aware of the contractual clauses relating to the calculation of premiums, makes a claim for the refund of amounts overpaid does not constitute an abuse of rights even if the contract has been in force for around 20 years

STJ Judgment of 27 November 2025, Case 1142/23.0T8VIS.C1.S1

The STJ Judgment considered an action brought by an insured person (AA) against an insurance company (FF) and an insurance intermediary (JJ), seeking an order to repay amounts overpaid as group life insurance premiums.

In July 2002, the Claimant took out a group life insurance contract through the intermediary of the second Defendant, JJ, and was told by the insurer that the monthly premium would be €130.86. The contract was renewed annually and remained in force until the date of the dispute (2022). During the term of the contract, the monthly premiums were progressively increased, from €312.84 in 2007 to €956.29 in 2020, without the Claimant being aware of the update criteria set out in the contractual conditions. Only in 2022, when he questioned the insurer, was the Claimant informed that "*the premium for this policy is updated every 5 years depending on the age of the insured*".

The court of first instance upheld the claim, ordering the Defendants to pay compensation.

The Coimbra Court of Appeal, following an appeal lodged by the Defendants, overturned the judgment and absolved the Defendants of liability for the claims, considering that although the duty to inform the insured had been breached, the claim made by the insured constituted an abuse of rights, arguing that the Claimant's failure to act for 20 years, without ever having sought clarification of the contract or questioned the premium increases, gave rise to a legimitate expectation on the part of the Defendant of compliance with the contract.

Defendants FF and JJ appealed to the STJ. In its judgment, the STJ considered that the Court of Appeal had unduly altered the decision regarding matters of fact. The Court clarified that it was up to the Defendants to prove that they had provided the Claimant with the contractual information, as it was their legal duty to do so, and that if there was any doubt as to whether or not the information had been provided, that doubt should be resolved against the Defendants.

Quanto ao abuso de direito, o STJ salientou que o direito à informação em matéria de seguros é constitucionalmente protegido e que a lei não exige ao segurado qualquer comportamento ativo para obter a informação omitida. O tribunal considerou que a conduta silenciosa do Autor ao longo de 20 anos, ainda que negligente, não violava qualquer dever legal ou regra de probidade que pudesse impedir ou diminuir o seu direito a ser indemnizado pela omissão do dever de informação das Rés.

O STJ esclareceu ainda que o silêncio do Autor não podia valer como aceitação das atualizações dos prémios, uma vez que, nos termos do artigo 218.º do Código Civil, o silêncio só vale como declaração negocial quando a lei, o uso ou a convenção lhe atribuam esse valor.

Assim, o STJ concluiu que não atua com abuso de direito o segurado que, segundo a matéria provada, toma conhecimento das cláusulas contratuais que lhe permitem conhecer como é calculado o prémio de seguro pouco mais de um ano antes de instaurar a ação onde formula o pedido de indemnização pelos montantes que pagou em excesso, ainda que o contrato tenha vigorado por período próximo de 20 anos. O recurso foi julgado procedente, tendo sido revogado o acórdão recorrido e repristinada a sentença de primeira instância.

O Acórdão pode ser consultado aqui.

Regarding for the abuse of rights, the STJ pointed out that the right to information in insurance matters is constitutionally protected and that the law does not require the insured to engage in any active behaviour in order to obtain the omitted information. The Court considered that the Claimant's silence over 20 years, although negligent, did not violate any legal duty or rule of probity that could prevent or diminish his right to be compensated for the Defendants' omission of the duty to inform.

The STJ also clarified that the Claimant's silence could not count as acceptance of the premium updates, since, under the terms of Article 218 of the Civil Code, silence only counts as a negotiating statement when the law, usage or convention give it that value.

Accordingly, the STJ concluded that the insured person who, according to the evidence, became aware of the contractual clauses that allowed him to understand how the insurance premium was calculated just over a year before bringing the action in which he claimed compensation for the amounts he had overpaid, even though the contract had been in force for close to 20 years, did not act in an abusive manner. The appeal was upheld, and the judgment under appeal was overturned and the first instance judgment reinstated.

The Judgment can be consulted here.

▸ Palavra dada, palavra honrada

O TRL decidiu que o regime jurídico geral do contrato de seguro não é aplicável à indemnização por danos em veículos automóveis que tenham contratado a cobertura facultativa de danos próprios, mantendo-se em vigor o regime especial do Decreto-Lei n.º 214/97, de 16 de agosto (DL 214/97)

Tribunal da Relação de Lisboa (TRL), Acórdão de 11 set. 2025, Processo 14294/23.4T8LSB.L1-6

O Acórdão do TRL versa sobre uma ação intentada por um segurado (**AA**) contra uma seguradora (**EE**), na qual foi pedida a condenação da Ré no pagamento da quantia de € 16.366,00, ao abrigo de contrato de seguro automóvel com cobertura de danos próprios. O Autor havia celebrado com a Ré, em 22 de outubro de 2021, contrato de seguro automóvel relativamente ao seu veículo, pelo capital de € 16.700,00, com franquia de 2%. Em 19 de abril de 2022 ocorreu uma colisão, resultando em danos significativos. A seguradora, em 13 de maio de 2022, comunicou ao Autor a perda total do veículo, estimando os danos em € 15.546,00, e colocou à disposição do Autor a quantia de € 5.389,00, correspondente ao valor venal do veículo (€ 12.000,00) deduzido do valor do salvado (€ 6.611,00).

▸ A promise is a promise

The TRL ruled that the general legal regime for insurance contracts does not apply to compensation for damage to motor vehicles that have taken out optional own damage cover, with the special regime of Decree-law No. 214/97 of 16 August (DL 214/97) remaining in force

Lisbon Court of Appeal (Tribunal da Relação de Lisboa, TRL) Judgment of 11 September 2025, Case 14294/23.4T8LSB.L1-6

The TRL ruling deals with an action brought by an insured person (**AA**) against an insurance company (**EE**), in which the Defendant was ordered to pay the sum of €16,366 under a motor insurance contract with own damage cover. On 22 October 2021, the Claimant took out a motor insurance contract with the Defendant for his vehicle, with a sum insured of €16,700 and an excess of 2%. On 19 April 2022, a collision occurred, resulting in significant damage. On 13 May 2022, the insurer informed the Claimant of the total loss of the vehicle, estimating the damage at €15,546, and made available to the Claimant the sum of €5,389, corresponding to the market value of the vehicle (€12,000) less the salvage value (€6,611).

Em 19 de maio de 2022, o Autor interpelou a Ré acionando a cobertura de danos próprios, comunicando que não abdicava da indemnização ao abrigo dos danos próprios e requerendo o acionamento da sua apólice para aquele efeito. A Ré não respondeu a esta comunicação nem às subsequentes reiterações enviadas pelo Autor em 26 de maio e 30 de maio de 2022, tendo o Autor, em 20 de junho de 2022, informado a Ré que iria instaurar ação judicial.

A primeira instância julgou a ação parcialmente procedente, condenando a Ré a pagar ao Autor a quantia de € 9.887,22, acrescida de juros de mora à taxa de 4%, devidos desde 19 de maio de 2022. A Ré EE interpôs recurso para o Tribunal da Relação de Lisboa, arguindo que a decisão violava o princípio indemnizatório vertido nos artigos 128.º e 132.º, n.º 1, do Regime Jurídico do Contrato de Seguro, e que a prestação devida pelo segurador está limitada ao dano decorrente do sinistro até ao montante do capital seguro, não podendo ser superior ao valor do interesse seguro ao tempo do sinistro.

Decidindo, o Tribunal da Relação de Lisboa considerou que o regime jurídico geral do contrato de seguro (DL 72/2008) não é aplicável à indemnização por danos próprios em veículos automóveis com cobertura facultativa. O tribunal esclareceu que o DL 72/2008 não revogou o regime especial do DL 214/97, de 16 de agosto, que estabelece regras específicas para assegurar maior transparência em matéria de sobresseguro nos contratos de seguro automóvel facultativo.

O tribunal salientou que o artigo 3.º do DL 214/97 determina que, quando a seguradora não atualiza os prémios em função da desvalorização do veículo, é obrigada a responder, em caso de sinistro, com base no valor seguro apurado à data do vencimento do prémio imediatamente anterior à ocorrência do sinistro, afastando assim o princípio indemnizatório previsto no regime geral.

No caso concreto, o contrato de seguro foi celebrado em 21 de outubro de 2021, com capital segurado de € 16.700,00 e franquia de 2%, tendo o sinistro ocorrido em 19 de abril de 2022, durante a primeira anuidade, sem que a seguradora tivesse invocado qualquer tabela de desvalorização do veículo. Assim, nos termos do artigo 3.º do DL 214/97, a seguradora responde pelo valor de € 16.700,00, deduzida a franquia de 2% e abatendo o valor do salvado.

Quanto ao cálculo da indemnização, o tribunal considerou que, ao valor do capital seguro de € 16.700,00, deve ser abatida a franquia de 2% (€ 334,00), obtendo-se € 16.366,00, ao qual se deduz o valor do salvado (€ 6.611,00), resultando numa indemnização de € 9.757,00. O tribunal esclareceu que este valor difere do fixado na sentença (€ 9.887,22) porque a primeira instância aplicou incorretamente a franquia sobre

On 19 May 2022, the Claimant contacted the Defendant to activate the own damage cover, stating that he was not waiving compensation under the own damage cover and requesting that his policy be activated for that purpose. The Defendant did not respond to this communication or to the subsequent reminders sent by the Claimant on 26 May and 30 May 2022, and on 20 June 2022, the Claimant informed the Defendant that he would bring legal proceedings.

The court of first instance partially upheld the claim, ordering the Defendant to pay the Claimant the sum of €9,887.22, plus default interest at the rate of 4%, payable from 19 May 2022. Defendant EE appealed to the TRL, arguing that the decision violated the indemnity principle set out in Articles 128 and 132(1) of the Legal Regime for Insurance Contracts, and that the benefit payable by the insurer is limited to the damage arising from the claim up to the amount of the sum insured and cannot exceed the value of the insured interest at the time of the claim.

The TRL considered that the general legal regime for insurance contracts (DL 72/2008) does not apply to compensation for own damage to motor vehicles with optional cover. The Court clarified that DL 72/2008 did not repeal the special regime of DL 214/97 of 16 August, which establishes specific rules to ensure greater transparency in matters of over-insurance in optional motor insurance contracts.

The Court pointed out that Article 3 of DL 214/97 provides that when the insurer does not update the premiums according to the depreciation of the vehicle, it is obliged to pay, in the event of a claim, on the basis of the insured value determined at the date of the premium payment immediately prior to the occurrence of the claim, thus setting aside the indemnity principle provided for in the general regime.

In the present case, the insurance contract was concluded on 21 October 2021, with a sum insured of €16,700 and an excess of 2%, and the claim occurred on 19 April 2022, during the first year, without the insurer having invoked any depreciation table for the vehicle. Therefore, pursuant to Article 3 of DL 214/97, the insurer was liable for the amount of €16,700, less the 2% excess and deducting the salvage value.

As regards the calculation of the compensation, the Court considered that from the sum insured of €16,700, the 2% excess (€334) should be deducted, giving €16,366, from which the salvage value (€6,611) was deducted, resulting in compensation of €9,757. The Court clarified that this amount differed from that fixed in the judgment (€9,887.22) because the lower court incorrectly applied the excess to the result of

o resultado da subtração do salvado, e não sobre o valor do capital seguro, como determinam as Condições Gerais.

O Acórdão pode ser consultado aqui.

Cada um vale o que vale: Rolex merece sublimite adequado

O Acórdão do TRP decidiu que um relógio Rolex, com o valor de € 14.700, deve ser enquadrado na categoria de "Objetos de Valor" e não na categoria de "Joias e Objetos Preciosos", por se tratar inequivocamente de um "relógio de marca" de luxo, de elevado prestígio e risco agravado, beneficiando assim de um sublimite indemnizatório superior

Tribunal da Relação do Porto (TRP), Acórdão de 24 nov. 2025, Processo 16670/24.1T8PRT.P1

O Acórdão do TRP versa sobre uma ação intentada por uma segurada (AA) contra outra seguradora (RR), na qual foi pedida a condenação da Ré no pagamento da quantia de € 24.780, a título de indemnização pelo furto de bens existentes na habitação segura. A Autora havia celebrado, em 7 de maio de 2022, um contrato de seguro multirrisco, com cobertura para furto ou roubo, entre outros riscos.

No dia 13 de novembro de 2022, a residência foi alvo de furto perpetrado por desconhecidos, que subtraíram diversos objetos, no valor total de € 46.604,00. A seguradora, porém, apenas se propôs liquidar à Autora a indemnização de € 10.900, tendo considerado que os objetos furtados, incluindo um relógio Rolex Daytona Cosmograph no valor de € 14.700, se enquadravam na categoria de "Joias e Objetos Preciosos", que apresenta um limite de capital de € 10.000. A Autora rejeitou esta proposta, sustentando que o relógio deveria ter sido enquadrado na cobertura de "Objetos de Valor", com sublimite de € 20.000.

O Tribunal de primeira instância julgou a ação totalmente procedente, condenando a Ré a pagar à Autora € 24.780, acrescida de juros de mora à taxa de 4% desde 16/11/2022 até integral pagamento. A Ré interpôs recurso para o TRP.

subtracting the salvage value, rather than to the sum insured, as required by the General Conditions.

The Judgment can be consulted here.

Everyone is worth what they're worth: Rolex deserves an adequate sub-limit

The TRP decided that a Rolex watch, valued at €14,700, should be classified under the category of "Valuables" and not under the category of "Jewellery and Precious Objects", as it is unequivocally a luxury "branded watch" of high prestige and increased risk, thus benefiting from a higher compensation sub-limit

Oporto Court of Appeal (Tribunal da Relação do Porto, TRP) Judgment of 24 November 2025, Case 16670/24.1T8PRT.P1

The TRP ruling deals with an action brought by an insured person (AA) against another insurance company (RR), in which the Defendant was ordered to pay the sum of €24,780 as compensation for the theft of property in the insured dwelling. On 7 May 2022, the Claimant had taken out a multi-risk insurance contract with cover for theft or robbery, amongst other risks.

On 13 November 2022, the residence was burgled by unknown persons, who stole various items with a total value of €46,604. The insurer, however, only proposed to pay the Claimant compensation of €10,900, having considered that the stolen items, including a Rolex Daytona Cosmograph watch valued at €14,700, fell under the category of "Jewellery and Precious Objects", which had a capital limit of €10,000. The Claimant rejected this proposal, arguing that the watch should have been classified under the "Valuables" cover, with a sub-limit of €20,000.

The court of first instance upheld the claim in full, ordering the Defendant to pay the Claimant €24,780, plus default interest at the rate of 4% from 16/11/2022 until full payment. The Defendant appealed to the TRP.

Decidindo, o Tribunal da Relação do Porto esclareceu que a interpretação das cláusulas do contrato de seguro deve seguir as regras gerais de interpretação das declarações negociais (artigos 236.º a 239.º do Código Civil) conjugadas com as normas especiais do Decreto-Lei n.º 446/85 (Cláusulas Contratuais Gerais). Deve ser atribuído à declaração o sentido que lhe daria uma pessoa comum, medianamente informada e diligente, colocada nas mesmas circunstâncias. Em caso de dúvida, prevalece o sentido mais favorável ao segurado (princípio do in dubio contra proferentem).

O tribunal considerou que o critério distintivo da categoria "Joias e Objetos Preciosos" é a composição material do objeto (pedras ou metais preciosos), sendo o valor irrelevante. Nessa categoria, não se utiliza a expressão "relógios de marca". Por seu turno, na categoria "Objetos de Valor", o critério distintivo é o valor e o risco agravado que o objeto representa, constando dessa cláusula, quanto aos relógios, a expressão "relógios de marca".

O tribunal concluiu que um relógio Rolex Cosmograph Daytona, com o valor de € 14.700, é inequivocamente um relógio de alta relojoaria, de elevado valor comercial e grande prestígio, enquadrando-se perfeitamente na categoria de "Objetos de Valor" por ser um "relógio de marca" que constitui um risco agravado. A marca Rolex é universalmente reconhecida como uma das mais prestigiadas marcas de relojoaria de luxo a nível mundial, e o modelo Cosmograph Daytona é um dos seus modelos icónicos, particularmente cobiçado por colecionadores.

O tribunal salientou que a seguradora, ao fixar um sublimite de € 10.000 para "Joias e Objetos Preciosos" e um sublimite de € 20.000 para "Objetos de Valor", reconhece que estes últimos (onde incluiu expressamente os "relógios de marca") tendem a ter valores superiores. Não faria sentido que a seguradora estabelecesse um sublimite inferior para uma categoria onde pretendesse incluir relógios de elevado valor, quando estabelece um sublimite superior para a categoria onde expressamente menciona "relógios de marca".

Assim, o TRP julgou parcialmente procedente o recurso da seguradora, alterando apenas o dies a quo dos juros, e confirmou a sentença no mais.

O Acórdão pode ser consultado aqui.

The TRP clarified that the interpretation of insurance contract clauses must follow the general rules for interpreting contractual declarations (Articles 236 to 239 of the Civil Code) combined with the special rules of Decree-law No. 446/85 (General Contractual Terms). The declaration should be given the meaning that would be attributed to it by an ordinary person, reasonably informed and diligent, placed in the same circumstances. In the event of doubt, the meaning most favourable to the insured prevails (the principle of *in dubio contra proferentem*).

The Court considered that the distinguishing criterion for the category "Jewellery and Precious Objects" was the material composition of the object (precious or semi-precious stones or metals), with value being irrelevant. In this category, the expression "branded watches" was not used. In turn, in the "Valuables" category, the distinguishing criterion was different: namely the value and the increased risk that the object represented, with this clause containing, as regards watches, the expression "branded watches".

The Court concluded that a Rolex Cosmograph Daytona watch, valued at €14,700, was unequivocally a high-end timepiece of considerable commercial value and great prestige, fitting perfectly into the "Valuables" category as it was a "branded watch" that constituted an increased risk. The Rolex brand is universally recognised as one of the most prestigious luxury watch brands worldwide, and the Cosmograph Daytona model is one of its iconic models, particularly coveted by collectors.

The Court pointed out that the insurer, by setting a sub-limit of €10,000 for "Jewellery and Precious Objects" and a sub-limit of €20,000 for "Valuables", recognised that the latter (where it expressly included "branded watches") tended to have higher values. It would make no sense for the insurer to establish a lower sub-limit for a category where it intended to include high-value watches, when it established a higher sub-limit for the category where it expressly mentioned "branded watches".

Accordingly, the TRP partially upheld the insurer's appeal, altering only the start date for interest, and confirmed the judgment in all other respects.

The Judgment can be consulted here.

O divórcio não apaga o passado: bens comuns permanecem

O Acórdão do STJ negou a revista excecional interposta pelo Réu, confirmando a decisão do Tribunal da Relação do Porto, e concluiu que não era necessário pronunciar-se sobre se os seguros do ramo vida de poupança/unit linked integram, em abstrato, bens próprios ou bens comuns. A solução do caso concreto decorreu da instrução da causa e da aplicação do regime de repartição do ónus da prova, sendo determinante a presunção de comunicabilidade prevista no Código Civil

Supremo Tribunal de Justiça (STJ), Acórdão de 15 mai. 2025, Processo 2286/22.0T8VFR.P1.S1

O Acórdão versa sobre uma ação intentada por uma ex-cônjuge contra o seu ex-marido, na qual foi pedida a declaração de que ativos financeiros no montante de € 1.115.841,00 constituem bens comuns do casal dissolvido e devem integrar a relação de bens para efeitos de conferência, compensação e partilha.

AA e BB casaram em 1991 no regime de comunhão de adquiridos, tendo o casamento cessado em 2003 por divórcio por mútuo consentimento. A Autora é cabeça de casal no processo de inventário para partilha dos bens comuns que corre termos no Cartório Notarial.

Após o divórcio, a Autora descobriu a existência de contas e produtos financeiros adicionais, incluindo seguros de vida de poupança/*unit-linked*, que não tinham sido comunicados durante a partilha. O montante total destes ativos ascendia a € 817.589,68, dos quais € 372.481,96 correspondia aos seguros *unit-linked*. Após o divórcio, o Réu procedeu ao resgate/venda destes produtos sem o conhecimento da Autora.

A primeira instância julgou a ação parcialmente procedente, declarando que o Réu tem de restituir ao património conjugal, para efeitos de conferência, compensação das massas patrimoniais e partilha, o montante de € 105.408,22 proveniente dos títulos que transferiu, bem como o montante que se vier a liquidar proveniente do resgate/venda dos seguros do ramo vida de poupança/unit linked. O Tribunal da Relação do Porto confirmou a sentença.

O Réu interpôs recurso de revista excepcional para o STJ, com fundamento nas alíneas a) e c) do n.º 1 do artigo 672.º do CPC, arguindo que o acórdão da Relação do Porto está em contradição com a generalidade da jurisprudência das Relações e do STJ sobre a questão, que tem entendido que o valor pago no caso do seguro de vida, no termo do contrato, é bem próprio do cônjuge beneficiário.

Divorce does not erase the past: common property remains

The STJ ruling concluded that it was not necessary to rule on whether savings/unit-linked life insurance policies constitute, in the abstract, separate property or common property. The solution to the specific case arose from the evidence presented and the application of the burden of proof regime, with the presumption of community property provided for in the Civil Code being decisive

STJ Judgment of 15 May 2025, Case 2286/22.0T8VFR.P1.S1

The ruling deals with an action brought by a former spouse against her ex-husband, in which it was requested that financial assets amounting to €1,115,841 be declared common property of the divorced couple and should be included in the list of assets for the purposes of collation, compensation and division.

AA and BB married in 1991 under the regime of community of acquisitions, and the marriage ended in 2003 in divorce by mutual consent. The Claimant was the head of the estate in the inventory proceedings for the division of common property being conducted at the Notary's Office.

After the divorce, the Claimant discovered the existence of additional accounts and financial products, including savings/unit-linked life insurance policies, which had not been disclosed during the division. The total amount of these assets amounted to €817,589.68, of which €372,481.96 corresponded to unit-linked insurance policies. After the divorce, the Defendant proceeded to redeem/sell these products without the Claimant's knowledge.

The court of first instance partially upheld the claim, declaring that the Defendant must return to the matrimonial estate, for the purposes of collation, compensation of the patrimonial assets and division, the amount of €105,408.22 from the securities he transferred, as well as the amount to be settled from the redemption/sale of the savings/unit-linked life insurance policies. The TRP confirmed the judgment.

The Defendant lodged an exceptional appeal with the STJ, on the grounds of paragraphs (a) and (c) of Article 672(1) of the CPC, arguing that the TRP's ruling contradicted the general case law of the Courts of Appeal and the STJ on the matter, which has held that the amount paid for life insurance, at the end of the contract, is the separate property of the beneficiary spouse.

Decidindo, o STJ considerou que, não podendo alterar a matéria de facto provada nos autos, não deve tomar posição sobre se os seguros do ramo vida de poupança/unit linked em abstrato são bens próprios ou comuns. Sem prejuízo, o tribunal recordou que, em casamento no regime de comunhão de adquiridos, a regra é considerar bens comuns o produto do trabalho dos cônjuges e os bens adquiridos durante o matrimónio, salvo exceções legais (artigo 1724.º do Código Civil). A natureza dos bens (próprios ou comuns) depende da factualidade apurada. Na dúvida, a lei estabelece uma presunção de comunicabilidade (artigo 1725.º do Código Civil).

O tribunal considerou que, tendo a Autora invocado que os produtos foram adquiridos durante o casamento em regime de comunhão de adquiridos, cabia ao Réu alegar e provar que os bens foram adquiridos apenas com dinheiro ou bens próprios. Não o tendo feito, tais bens têm de ser considerados comuns, pela presunção de comunicabilidade do artigo 1725.º do Código Civil.

Quanto aos seguros de vida de poupança/*unit-linked*, o tribunal aplicou o mesmo raciocínio, considerando que, face à ausência de factos sobre a data da celebração dos contratos, o valor dos prémios pagos, quem e quando os pagou, e se com dinheiro próprio ou comum, valem as mesmas razões relativas ao ónus da prova.

Assim, o STJ concluiu que, independentemente da discussão teórica sobre a natureza jurídica dos seguros *unit-linked*, a solução do caso concreto deve respeitar o ónus da prova e a presunção de comunicabilidade. Como o Réu não provou que os seguros foram constituídos com fundos próprios e em seu exclusivo benefício, os montantes resgatados integram o património comum a ser partilhado.

Pode consultar o Acórdão aqui.

The STJ considered that, as it could not alter the facts proved in the case, it should not take a position on whether savings/unit-linked life insurance policies are, in the abstract, separate property or common property. Nevertheless, the Court noted that, in a marriage under the regime of community of acquisitions, the rule is to consider as common property the product of the spouses' work and the assets acquired during the marriage, except for legal exceptions (Article 1724 of the Civil Code). The nature of the assets (separate or common) depends on the facts established. In the event of doubt, the law establishes a presumption of community property (Article 1725 of the Civil Code).

The Court considered that, as the Claimant had claimed that the products were acquired during the marriage under the regime of community of acquisitions, it was up to the Defendant to assert and prove that the assets were acquired solely with separate money or assets. Having failed to do so, such assets must be considered common property, by virtue of the presumption of community property under Article 1725 of the Civil Code.

As regards the savings/unit-linked life insurance policies, the Court applied the same reasoning, considering that, given the absence of facts about the date of conclusion of the contracts, the amount of the premiums paid, who paid them and when, and whether they were paid with separate or common funds, the same reasons relating to the burden of proof applied.

Accordingly, the STJ concluded that, regardless of the theoretical discussion about the legal nature of unit-linked insurance policies, the solution to the specific case must respect the burden of proof and the presumption of community property. As the Defendant did not prove that the insurance policies were constituted with separate funds and for his exclusive benefit, the amounts redeemed formed part of the common estate to be divided.

The Judgment can be consulted here.

▸ A idade não perdoa: seguro de vida caducou aos 70 anos

O TRL concluiu que o contrato de seguro de vida grupo associado a crédito à habitação havia caducado no final da anuidade em que a pessoa segura completou 70 anos de idade, nos termos de cláusula contratual válida e devidamente comunicada, não se encontrando o seguro em vigor à data do óbito, ocorrido quando a pessoa segura tinha 71 anos

Tribunal da Relação de Lisboa (TRL), Acórdão de 8 mai. 2025, Processo 23136/22.2T8LSB.L1-2

O Acórdão do Tribunal da Relação de Lisboa versa sobre uma ação intentada por três herdeiros (AA, BB e CC) contra a segu-

▸ Age is unforgiving: life insurance lapsed at 70

The TRL concluded that the group life insurance contract associated with a mortgage had lapsed at the end of the year in which the insured person reached 70 years of age, pursuant to a valid and duly communicated contractual clause, and that the insurance was not in force at the date of death, which occurred when the insured person was 71 years old

TRL Judgment of 8 May 2025, Case 23136/22.2T8LSB.L1-2

The ruling deals with an action brought by three heirs (AA, BB and CC) against the insurance company (DD) and the Bank

radora (DD) e o Banco (FF), na qual foi pedida a condenação da seguradora no pagamento do capital seguro do Banco FF na restituição das prestações pagas após o óbito do segurado.

O falecido havia celebrado, em 1 de março de 2006, um contrato de mútuo com hipoteca junto do Banco FF, no montante de € 100.000, tendo aderido ao seguro de vida grupo crédito à habitação destinado a garantir o pagamento do capital seguro em caso de morte ou invalidez. O óbito ocorreu em 17 de agosto de 2019. O óbito foi participado à seguradora, que recusou o pagamento do capital seguro à data da morte, tendo os autores continuado a pagar a prestação do crédito ao Banco FF até à data da ação.

O Tribunal de primeira instância julgou a ação totalmente procedente, condenando a seguradora e o Banco nos termos peticionados. Inconformada, a seguradora interpôs recurso, alegando que o seguro havia cessado no final de 2018, ano em que a pessoa segura completou 70 anos de idade, limite etário previsto nas condições contratuais.

O tribunal esclareceu que, no seguro de vida associado a crédito à habitação celebrado por adesão a um seguro de grupo, existem várias camadas contratuais: as condições gerais emitidas pela seguradora; as condições particulares da apólice que constituem o contrato entre seguradora e instituição de crédito; a adesão da pessoa segura através do boletim de adesão; e o certificado de adesão que prova a aceitação da inclusão no seguro.

O tribunal considerou que, das condições particulares da apólice em causa no processo, na versão de 08/04/2002, constava que as garantias cessam quando a pessoa segura atinge a idade prevista em cada cobertura ou, na falta dessa previsão, aos 70 anos. Da versão de 30/10/2009 constava que a "Garantia de Morte" cessa "no termo da anuidade em que a Pessoa Segura completa 70 anos de idade". Além disso, aquando da adesão, foi entregue ao falecido pelo Banco FF informação escrita de que a cobertura morte terminaria quando perfizesse 70 anos de idade, tendo o falecido tomado conhecimento desta condição.

Ficou ainda demonstrado que, em 30 de abril de 2009, a seguradora remeteu ao segurado uma nota informativa que

(FF), in which the insurance company was ordered to pay the sum insured and Bank FF was ordered to return the instalments paid after the death of the insured.

The deceased had entered into a mortgage loan agreement with Bank FF on 1 March 2006, in the amount of €100,000, and had taken out group life insurance for mortgage purposes to guarantee payment of the sum insured in the event of death or disability. The deceased died on 17 August 2019. The death was notified to the insurer, which refused to pay the sum insured at the date of death, and the claimants continued to pay the loan instalments to Bank FF until the date of the action.

The court of first instance upheld the claim in full, ordering the insurance company and the Bank to comply with the terms requested. The insurance company appealed, arguing that the insurance had ceased at the end of 2018, the year in which the insured person reached 70 years of age, the age limit provided for in the contractual conditions.

The Court clarified that, in life insurance associated with a mortgage taken out by joining a group insurance scheme, there are several contractual layers: the general conditions issued by the insurer; the particular conditions of the policy which constitute the contract between the insurer and the credit institution; the insured person's membership through the membership form; and the membership certificate which proves acceptance of inclusion in the insurance.

The Court considered that the particular conditions of the policy in question, in the version of 08/04/2002, stated that cover ceased when the insured person reached the age specified for each cover or, in the absence of such provision, at 70 years of age. The version of 30/10/2009 stated that the "Death Cover" ceased "at the end of the year in which the Insured Person reaches 70 years of age". Furthermore, upon joining, the deceased was given written information by Bank FF that death cover would end when he reached 70 years of age, and the deceased was aware of this condition.

It was also demonstrated that, on 30 April 2009, the insurer sent the insured an information note clarifying that "death oc-

esclarecia que não estava coberta a "morte verificada após o termo da anuidade em que a pessoa segura atinja 70 anos de idade". Esta carta foi enviada na sequência da entrada em vigor do Regime Jurídico do Contrato de Seguro (DL 72/2008).

O tribunal considerou também provado que, em 3 de janeiro de 2019, o falecido recebeu uma carta da seguradora informando que a sua adesão ao contrato de seguro se extinguia a partir de 31 de dezembro de 2018, por ter atingido a idade limite de 70 anos definida nas condições contratuais.

Assim, o TRL concluiu que, nos seguros de vida grupo associados a crédito à habitação, as cláusulas de caducidade por idade são válidas e eficazes desde que devidamente comunicadas ao aderente. Uma vez cumprido o dever de informação, a caducidade opera automaticamente no termo contratualmente previsto, não sendo exigível o pagamento do capital seguro quando o óbito ocorre após o fim da cobertura.

Pode consultar o Acórdão aqui.

curring after the end of the year in which the insured person reaches 70 years of age" was not covered. This letter was sent following the entry into force of the Legal Regime for Insurance Contracts (DL 72/2008).

The Court also found it proven that, on 3 January 2019, the deceased received a letter from the insurer informing him that his membership of the insurance contract would cease from 31 December 2018, as he had reached the age limit of 70 defined in the contractual conditions.

Accordingly, the TRL concluded that, in group life insurance policies associated with mortgages, age-related lapse clauses are valid and effective provided they are duly communicated to the member. Once the duty to inform has been fulfilled, lapses operate automatically at the contractually agreed term, and payment of the sum insured is not required when death occurs after the end of cover.

The Judgment can be consulted here.

Tribuna Pérez-Llorca
Pérez-Llorca Tribune

O Regulamento DORA nas seguradoras: quando a ciber-resiliência passa a ser "matéria de contrato" e de supervisão

The DORA Regulation in insurance companies: when cyber resilience becomes a "matter of contract" and supervision

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Contexto e nota introdutória

A transformação digital no setor segurador — da subscrição de novas apólices à gestão de sinistros, passando por canais digitais de contacto com o cliente, *back offices* automatizados e ecossistemas de parceiros — trouxe eficiência, mas também uma nova realidade: a continuidade do negócio depende, cada vez mais, de cadeias tecnológicas (muitas vezes externas e quase sempre complexas) e de decisões operacionais que podem ter de ser tomadas sob muita pressão, nomeadamente em caso de incidente.

É precisamente neste contexto que o Regulamento (UE) 2022/2554 (carinhosamente tratado entre nós como o Regulamento DORA) e demais regulamentação europeia conexa veio subir a fasquia: a exigência tecnológica deixa de ser "boa prática" e passa a ser um novo *standard* jurídico, com impacto direto no governo societário de uma empresa de seguros, na redação, negociação e celebração de contratos com fornecedores de tecnologia (os fornecedores TIC), na preparação de documentação relevante para servir não só, mas também, como evidência documental e na forma como (e quando) se reporta um incidente às autoridades competentes.

O Regulamento DORA é aplicável em Portugal (e no resto da Europa) desde 17 de janeiro de 2025 e, juntamente com a regulamentação que o complementa, introduziu um verdadeiro ecossistema integrado para uma gestão zelosa e detalhada de risco TIC, a garantia da resiliência operacional e o rápido e detalhado reporte de incidentes.

De um ponto de vista jurídico, o "ecossistema" DORA traduziu-se em algumas mudanças particularmente relevantes para seguradoras, entre as quais as seguintes:

Background and introductory note

Digital transformation in the insurance sector - from underwriting new policies to claims management, digital customer contact channels, automated back offices and partner ecosystems - has brought efficiency, but also a new reality: business continuity increasingly depends on technological chains (often external and almost always complex) and operational decisions that may have to be made under a lot of pressure, particularly in the event of an incident.

It is precisely in this context that Regulation (EU) 2022/2554 (affectionately known as the DORA Regulation) and other related European regulations have raised the bar: the technological requirement is no longer "good practice" but a new legal standard, with a direct impact on the corporate governance of an insurance company, on the drafting, negotiation and conclusion of contracts with technology suppliers (ICT suppliers), and on the preparation of relevant documentation relevant for how (and when) an incident is reported to the competent authorities.

The DORA Regulation has been applicable in Portugal (and the rest of Europe) since 17 January 2025 and, together with the regulations that complement it, it has introduced a truly integrated ecosystem for zealous and detailed ICT risk management, guaranteeing operational resilience and the rapid and detailed reporting of incidents.

From a legal point of view, the DORA "ecosystem" has resulted in some particularly significant changes for insurers, including the following:

Primeiramente, veio definir que o conceito de "Risco TIC" deixa de ser uma mera preocupação "informática", mas antes uma verdadeira contingência de governação e controlo interno da uma seguradora e, por conseguinte, exigindo políticas, processos e responsabilidades formais e auditáveis nestas instituições.

Por conseguinte, não surpreende que, nesse contexto, o Regulamento DORA tenha obrigado as seguradoras a transformar os seus contratos TIC em verdadeiros "*instrumentos regulatórios*", com cláusulas bem trabalhadas em matéria de auditoria, tratamento e *storage* de dados, cooperação com supervisores, estratégias de saída e períodos de transição.

Curiosamente, o Regulamento DORA tem sido interpretado como legislação especial face ao quadro horizontal europeu de cibersegurança (que, entre nós, foi denominado de NIS2 e é enquadrado pela Diretiva (UE) 2022/2555, recentemente transposta para o ordenamento jurídico português pelo Decreto-Lei n.º 125/2025, de 4 de dezembro) determinando, este último, nos termos do artigo 3.º, n.º 9 do diploma de transposição, que não prejudica o disposto no Regulamento DORA, parecendo conseguir, com algum sucesso, evitar duplicações no setor financeiro, mas mantendo pontes de cooperação com o "ecossistema" NIS.

Alguns destaques e mudanças para as seguradoras portuguesas

O artigo 30.º do Regulamento DORA é uma das disposições que merece uma análise jurídica mais densa e que mais impacto tem para as seguradoras: exige que os direitos e deveres dos fornecedores TIC e das seguradoras estejam claramente alocados e reduzidos a escrito, e define um conjunto de elementos mínimos nas contratações TIC (descrição completa de serviços, localizações de prestação/ armazenamento/ processamento, proteção de dados, recuperação e devolução de dados, assistência em caso de incidentes, cooperação com autoridades, direitos de resolução/terminação, entre vários outros).

Para serviços TIC que suportem funções críticas ou importantes, o Regulamento DORA aumenta brutalmente o nível de exigência: surgem obrigações adicionais em matéria de métricas e objetivos quantitativos/qualitativos de desempenho (SLA), avisos sobre alterações materiais, requisitos de testagem de planos de continuidade, direitos amplos de acesso/ inspeção/auditoria (para a entidade, terceiros nomeados e/ ou para as autoridades competentes), e estratégias de saída com período de transição para garantir mudanças de serviço necessárias sem riscos relevantes de disrupção.

Isto levou a que muitas seguradoras tivessem de passar parte de 2025 a rever contratos existentes, de modo a eliminar restri-

Firstly, the concept of "ICT Risk" has evolved to become more than a mere "ICT" concern. It is now a real contingency within an insurer's internal governance and control framework, therefore requiring formal and auditable policies, processes and responsibilities.

It is therefore not surprising that, in this context, the DORA Regulation has obliged insurers to turn their ICT contracts into real "regulatory instruments", with well-crafted clauses on auditing, data processing and storage, cooperation with supervisory authorities, exit strategies and transition periods.

Interestingly, the DORA Regulation has been interpreted as special legislation in relation to the horizontal European cybersecurity framework (which is known as NIS2 and is framed by Directive (EU) 2022/2555, recently transposed into Portuguese law by Decree-Law no. 125/2025, of 4 December). The latter, under the terms of Article 3(9) of the transposition decree, states that it is without prejudice to the provisions of the DORA Regulation, and seems to have managed, with some success, to avoid duplication in the financial sector, while maintaining bridges of cooperation with the NIS "ecosystem".

Some highlights and changes for Portuguese insurers

Article 30 of the DORA Regulation is one of the provisions that deserves a more in-depth legal analysis and has the greatest impact on insurers. It requires that the rights and duties of ICT providers and insurers be clearly allocated and set out in writing, and establishes a set of minimum requirements for ICT contracts (full description of services, locations of provision/storage/processing, data protection, data recovery and return, assistance in the event of incidents, cooperation with authorities, resolution/termination rights, among others).

For ICT services that support critical or important functions, the DORA Regulation significantly raises the bar. Additional obligations arise in terms of quantitative/qualitative performance metrics and targets (SLAs), warnings about material changes, continuity plan testing requirements, broad access/ inspection/audit rights (for the organisation, appointed third parties and/or competent authorities), and exit strategies with a transition period to ensure necessary service changes without significant risks of disruption.

This has led to many insurers having to spend part of 2025 reviewing existing contracts to remove restrictions on au-

ções a auditorias, cláusulas vagas de subcontratação ou de tratamento de dados, definir estratégias de saída operacionalizáveis e verdadeiramente capazes de evitar disrupções de serviços ou ambiguidades sobre onde os dados são efetivamente processados/armazenados. Muitas destas alterações estão ainda em curso e vão continuar previsivelmente em 2026, tendo em conta os desafios envolvidos na renegociação deste tipo de contratos TIC.

Outra das consequências do novo ecossistema DORA é a crescente importância de criar (e manter!) um registo de informação integralmente auditável como melhor forma de garantir (e provar) o *compliance* de uma seguradora.

O Regulamento DORA exige que as entidades mantenham um registo de informação relativo a todos os contratos de serviços TIC com terceiros, atualizado e passível de ser disponibilizado à autoridade competente sempre e quando solicitado. Isto não é apenas burocracia: é a base documental que vai permitir demonstrar/infirmar (i) dependências, (ii) concentração em fornecedores, (iii) criticidade de serviços, (iv) riscos de subcontratação em cadeia, (v) capacidade de substituição/migração e vários outros elementos — e tudo temas que ganham peso quando há incidentes ou falhas prolongadas imputáveis a um fornecedor.

A partir do Regulamento DORA (e dos normativos complementares constantes das RTS/ITS entretanto publicadas), a lógica de reporte e de tratamento dos incidentes passa também a ser multi-etapas e temporalmente mais exigente.

Nos incidentes TIC "*major*", os prazos previstos nas RTS incluem uma notificação inicial que deve ser feita "*as early as possible*", mas sempre até 4 horas após a classificação do incidente como "major" e no máximo 24 horas após a empresa de seguros ter tomado conhecimento do incidente. Segue-se uma notificação/relatório intermédio até 72 horas após a notificação inicial (e atualizado quando as atividades regulares forem recuperadas) e um relatório final até 1 mês após o intermédio (ou o último intermédio atualizado).

Além dos prazos, a forma como é transmitida a informação passa a estar padronizada: as ITS definem *templates*/campos para notificação inicial, intermédio e final, incluindo identificação (ex.: LEI), qualificação do tipo de entidade, *timestamps*, descrição do incidente, critérios que ativaram a classificação e evolução do impacto.

O objetivo é simples: a comunicação deve ser rápida (quanto não imediata) e clara, utilizando para isso um padrão harmonizado de passos a cumprir e de informação a reportar.

Em Portugal, o tema do reporte de incidentes TIC no setor segurador já vinha a ser densificado por via regulamentar e de

dits, clarify vague outsourcing or data processing clauses, and define exit strategies that are operationally viable and truly capable of avoiding service disruptions or ambiguities about where data is actually processed/stored. Many of these changes are still underway and are likely to continue into 2026, given the challenges involved in renegotiating this type of ICT contract.

Another consequence of the new DORA ecosystem is the growing importance of creating (and maintaining!) a fully auditable information register as the best way to guarantee (and prove) an insurer's compliance.

The DORA Regulation requires organisations to keep an up-to-date register of information relating to all ICT service contracts with third parties, which must be made available to the competent authority as and when requested. This is not just bureaucracy: it is the documentary basis that will make it possible to demonstrate/confirm (i) dependencies, (ii) concentration of suppliers, (iii) criticality of services, (iv) risks of subcontracting chains, (v) replacement/migration capacity and various other elements - all of which gain significance when there are incidents or prolonged failures attributable to a supplier.

Since the DORA Regulation (and the complementary regulations contained in the RTS/ITS published in the meantime), the logic of reporting and dealing with incidents has also become multi-stage and more demanding in terms of time.

In the case of "major" ICT incidents, the deadlines set out in the RTS include an initial notification which must be made "as soon as possible", but always no later than four hours after the incident is classified as "major" and no later than 24 hours after the insurance company learns of the incident. This is followed by an interim notification/report no later than 72 hours after the initial notification (to be updated when regular activities are restored) and a final report no later than one month after the interim notification or the last interim update.

In addition to the deadlines, the way in which information is transmitted is now standardised: ITS define templates/fields for initial, interim and final notifications, including entity identification (e.g. LEI), qualification of the type of entity, timestamps, description of the incident, criteria that triggered the classification, and evolution of the impact.

The aim is simple: communication must be quick (if not immediate) and clear, using a harmonised standard of steps to be taken and information to be reported.

In Portugal, the issue of reporting ICT incidents in the insurance sector had already been addressed in detail by regu-

orientações da supervisão, através da definição de regras da Norma Regulamentar da Autoridade de Supervisão de Seguros e Fundos de Pensões n.º 9/2024-R, que definia os procedimentos associados à comunicação de incidentes de carácter severo relacionados com as TIC e ciberameaças significativas.

O Regulamento DORA não elimina estas exigências nacionais, mas obriga, isso sim, a um maior esforço de harmonização operacional. É crucial de cada seguradora mapeie adequadamente quais os critérios relevantes de qualificação de incidente (o que é "*severo*" *versus* o que é "*major*"), alinhe fluxos internos e garanta que a sua organização consegue cumprir com o prazo mais exigente aplicável, com conteúdos consistentes, completos e auditáveis.

Estes prazos apertados (e a obrigação de cumprir com as regras formais de recolha e transmissão de informação) e ademais conjugar disposições nacionais e europeias que não deixam de ser densas, tornam essencial cada seguradora ter (i) critérios internos de classificação alinhados com as RTS, (ii) uma hierarquia clara no que toca à decisão de identificação e reporte e (iii) evidência sobre o momento em que a entidade "teve conhecimento" do incidente — porque esse relógio passa a ter consequências regulatórias.

O Regulamento DORA optou ainda por criar um quadro europeu de supervisão para os chamados *critical ICT third-party service providers* (por exemplo, grandes fornecedores *cloud*/infraestruturas), com designação e supervisão ao nível das autoridades europeias de supervisão. O ponto sensível para seguradoras neste contexto é que a gestão do risco de terceiros deixa de ser apenas um mero risco de contratação e passa a envolver avaliações em matéria de substituibilidade, cadeias de subcontratação, dependências partilhadas no setor, e robustez das estratégias de saída e migração (incluindo dados e *workloads*).

Conclusão

O Regulamento DORA (e demais instrumentos deste ecossistema) não pode deixar de ser, para as seguradoras, um tema de direito regulatório relevante, tocando nos modelos contratuais com os fornecedores TIC, nas regras de governação da instituição, na forma como se articula com os fornecedores TIC e até de *procurement*, e na definição e aplicação de "*timelines*" de atuação durante incidentes tecnológicos. Quem o tratar apenas como um tema "informático" vai seguramente falhar no essencial — porque o coração deste regime europeu está na capacidade de provar, perante supervisão e auditoria, que a empresa de seguros governa o risco TIC com disciplina, prepara decisões sob pressão e controla dependências externas com instrumentos contratuais e operacionais robustos.

lation and supervisory guidelines. Regulatory Standard of the Insurance and Pension Funds Supervisory Authority No. 9/2024-R defined the procedures associated with reporting severe incidents related to ICT and significant cyber threats.

The DORA Regulation does not eliminate these national requirements, but it does require greater efforts towards operational harmonisation. It is crucial for each insurer to properly map out the relevant incident qualification criteria (what is "severe" versus what is "major"), align internal flows and ensure that their organisation can meet the most demanding applicable deadline with consistent, complete and auditable content.

These tight deadlines (and the obligation to comply with the formal rules for collecting and transmitting information), as well as the combination of dense national and European provisions, make it essential for each insurer to have (i) internal classification criteria aligned with the RTS, (ii) a clear hierarchy for decisions on identifying and reporting incidents, and (iii) evidence of when the organisation first "knew" about the incident - because that moment triggers regulatory consequences.

The DORA Regulation also opted to create a European supervisory framework for so-called critical ICT third-party service providers (e.g. large cloud/infrastructure providers), with designation and supervision at the level of the European supervisory authorities. The sensitive point for insurers in this context is that third-party risk management is no longer just a mere contracting risk, but involves assessments of substitutability, subcontracting chains, shared dependencies in the sector, and the robustness of exit and migration strategies (including data and workloads).

Conclusion

The DORA Regulation (and other instruments in this ecosystem) is undoubtedly a significant regulatory law issue for insurers, affecting contractual models with ICT suppliers, the institution's governance rules, the way it liaises with ICT suppliers and even procurement, as well as the definition and application of "timelines" for action during technological incidents. Anyone who treats it only as an ICT issue misses the point - because the heart of this European regime lies in the ability to prove, before supervisory authorities and auditors, that an insurance company manages ICT risk with discipline, prepares decisions under pressure and controls external dependencies with robust contractual and operational instruments.

Anexo I
Annex I

Otra información de interés
Further Information of Interest

FECHA DATE	ÁREA DE PRÁCTICA PRACTICE	TÍTULO TITLE	AUTORES AUTHORS	PAÍS COUNTRY
24/09/2025 PT	Techlaw	Diella e o mito da imparcialidade digital Diella and the myth of digital impartiality	Adolfo Mesquita Nunes	Portugal Portugal
06/10/2025 ESP	Medio Ambiente Urbanismo Environment Land Planning	Plan RESIDE: modificación del PGOU de Madrid para la protección del uso residencial RESIDE Plan: modification of the Madrid PGOU for the protection of residential use	Alberto Iborch Franch Natalia Ruigómez	España Spain
06/10/2025 ESP ENG	Proyectos, Energía e Infraestructura Projects, Energy and Infrastructure	Publicación de nuevos reglamentos del sector energético Publication of Regulations for the New Energy Sector	Oscar Moreno Silva Jerónimo Ramos Antonio De Lisi María José Raimond-Kedihac	México Mexico
07/10/2025 ESP ENG	Proyectos, Energía e Infraestructura Projects, Energy and Infrastructure	Entrada en vigor del Reglamento de la Ley del Sector Hidrocarburos Entry into Force of the Regulation of the Hydrocarbons Sector Law	Oscar Moreno Silva Antonio De Lisi Manuel Nucci González de Cosio	México Mexico
10/10/2025 ESP	Penal Económico e Investigaciones Propiedad Industrial y Tecnología White Collar Crime and Investigations Intellectual Property and Technology	Próximo inicio del plazo de dos meses para notificar a la Autoridad Independiente de Protección del Informante, A.A.I. los responsables del Sistema Interno de Información Upcoming start of the two-month period for notifying the Independent Authority for the Protection of Whistleblowers (A.A.I.) of those responsible for the Internal Information System	Juan Palomino Adriana de Buerba Raúl Rubio Guillermo Meilán Miriam Abajo	España Spain
15/10/2025 ESP ENG	Competencia Económica Antitrust	El Pleno de la Nueva Comisión Nacional Antimonopolio de México – Qué Significa y Qué Hay que Tomar en Cuenta Mexico's New National Antitrust Commission Board – What It Signals and What to Watch	Patricio Martínez Osorio Michelle Posada Mendoza Grecia Ahumada Velasco	México Mexico

FECHA DATE	ÁREA DE PRÁCTICA PRACTICE	TÍTULO TITLE	AUTORES AUTHORS	PAÍS COUNTRY
17/10/2025 ESP ENG	Fiscal Tax	Devolución del Impuesto Sobre Adquisición de Inmuebles en la Ciudad de México Refund of the Real Estate Acquisition Tax in Mexico City	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto	México Mexico
17/10/2025 ESP ENG	Fiscal Tax	Reformas a la Ley del Impuesto Especial sobre Producción y Servicios Amendments to the Special Tax on Production and Services Law	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto	México Mexico
20/10/2025 ESP ENG	Fiscal Tax	Reformas a la Ley de Amparo Amendments to the Amparo Law	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto	México Mexico
22/10/2025 ESP ENG	Fiscal Tax	Criterios de programación de auditorías para 2026 Tax audit scheduling criteria for 2026	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto	México Mexico
23/10/2025 ESP ENG	Seguros y Reaseguros Insurance and Reinsurance	Qui plectit? Qui plectit?	Joaquín Ruiz Echauri	España Spain
24/10/2025 ESP	Fiscal Tax	Brasil firma el Instrumento Multilateral (MLI) de la OCDE Brazil signs the OECD Multilateral Instrument (MLI)	Clara Jiménez Adolfo Martín Enrique Sánchez de Castro-Martín Luengo	España Spain
29/10/2025 ESP ENG	Medio Ambiente Environment	Decreto por el que se establecen facilidades administrativas para regularizar los títulos de concesión y asignación otorgados a los usuarios de aguas nacionales que se indican Decree establishing administrative facilities to regularize concession and allocation titles granted to the national water users indicated	Enrique Muñoz Guizar Georgina Zavala González	México Mexico

FECHA DATE	ÁREA DE PRÁCTICA PRACTICE	TÍTULO TITLE	AUTORES AUTHORS	PAÍS COUNTRY
30/10/2025 ESP ENG	Fiscal Tax	El SAT y la PRODECON reconocen la procedencia de la compensación como medio de regularización fiscal The SAT and the PRODECON recognize the validity of offsetting as a means of tax regularization	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto	México Mexico
30/10/2025 ESP ENG	Penal Económico e Investigaciones White Collar Crime and Investigations	19.º paquete de medidas restrictivas de la Unión Europea contra Rusia y Bielorrusia 19th EU restrictive measures package against Russia and Belarus	Juan Palomino Jorge Walser Boserman	España Spain
03/11/2025 ESP ENG	Laboral y Seguridad Social Employment, compensation and benefits	IMSS implementará validación biométrica de asegurados en su aplicación “IMSS Digital” para consulta y pago de subsidios por incapacidades temporales para el trabajo The IMSS will implement the biometric validation of insured workers in its “IMSS Digital” application for the consultation and payment of temporary disability benefits	Santiago Villanueva Durán Daniela Hidalgo Martínez	México Mexico
04/11/2025 ESP ENG	Fiscal Tax	Programa de orientación sobre Actividades Vulnerables Guidance Program on Vulnerable Activities	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto	México Mexico
05/11/2025 PT ENG	Fiscal Tax	Regime de Grupos de IVA The VAT Groups Regime	Susana Estevão Gonçalves Nicole Barbetti Miguel Teles	Portugal Portugal
12/11/2025 ESP ENG	Fiscal Tax	Reforma fiscal 2026 Tax reform 2026	Christian Kaye Sergio Fabela Mónica Paulina Miguel Soto María Angélica Domínguez Prado	México Mexico

FECHA DATE	ÁREA DE PRÁCTICA PRACTICE	TÍTULO TITLE	AUTORES AUTHORS	PAÍS COUNTRY
12/11/2025 ESP ENG	Laboral y Seguridad Social Employment, compensation and benefits	Reforma al artículo 29 del INFONAVIT: Ampliación del plazo para el cálculo y entero de amortizaciones correspondientes al 6º bimestre de 2025 Amendment to Article 29 of the INFONAVIT Law: Extension of the deadline for the calculation and payment of amortizations corresponding to the 6th two-month period of 2025	Santiago Villanueva Durán Daniela Hidalgo Martínez	México Mexico
13/11/2025 ESP ENG	Energía Energy	Análisis de las principales medidas contenidas en el Real Decreto 997/2025, por el que se aprueban medidas urgentes para el refuerzo del sistema eléctrico Analysis of the key measures contained in Royal Decree 997/2025, which approves urgent measures to strengthen the electricity system	Ana Cremades Belén Wert Marta Sancho Cervera Belén López Gardey	España Spain
17/11/2025 ESP ENG	Fiscal Tax	Los contribuyentes no residentes también pueden aplicar el escudo fiscal del artículo 31 de la Ley del IP Non-resident taxpayers also qualify for the tax shield under Article 31 of the IP Law	Clara Jiménez José Suárez Alejandra Flores	España Spain
21/11/2025 ESP ENG	Propiedad Industrial e Intelectual y TechLaw Intellectual Property and Technology	Propuesta de Reglamento “Digital Omnibus” Proposal for a “Digital Omnibus” Regulation	Raúl Rubio Andy Ramos Gil de la Haza Sara Molina Pérez-Tomé Adolfo Mesquita Nunes	España Spain
21/11/2025 ESP ENG	Comercio Exterior y Aduanas Foreign Trade and Customs	Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Aduanera Decree Amending, Adding and Repealing Various Provisions of the Customs Law	Félix Ponce Nava Cortés Alejandro Ferro Fong Regina Jordán Álvarez	México Mexico

Anexo II
Annex II

Glosario de términos y normativa — Colombia
Glossary of Legal Terms and Regulations — Colombia

ARL	Administradora de Riesgos Laborales Occupational Risk Management Company
CBCF	Circular Básica Contable y Financiera Basic Accounting and Financial Circular
CC	Código de Comercio Commercial Code
CRLR	Curva de Rendimiento Libre de Riesgo Risk-Free Yield Curve
CSJ	Corte Suprema de Justicia Supreme Court of Justice
CTCP	Consejo Técnico de la Contaduría Pública Technical Council of Public Accounting
DIAN	Dirección de Impuestos y Aduanas Nacionales National Tax and Customs Directorate
FCP	Fondo de capital privado Private equity fund
INVIMA	Instituto Nacional de Vigilancia de Medicamentos y Alimentos National Institute for Food and Drug Surveillance
IOE	Instituciones oficiales especiales Special official institutions
IPS	Institución prestadora de servicios de salud Healthcare provider
IVA	Impuesto sobre el Valor Añadido Value-Added Tax
MURIC	Módulo Único de Reporte de Información de Cartera Single Module for Reporting Portfolio Information
SFC	Superintendencia Financiera de Colombia Financial Superintendency of Colombia
SIIFA	Sistema Integral de Información Financiera y Asistencial Comprehensive Financial and Healthcare Information System

SOAT	Seguro Obligatorio de Accidentes de Tránsito Compulsory Traffic Accident Insurance
URF	Unidad de Proyección Normativa y Estudios de Regulación Financiera Regulatory Planning and Financial Regulation Studies Unit
Decreto Ley 624 de 1989 Decree Law No. 624 of 1989	Por el cual se expide el Estatuto Tributario de los impuestos administrados por la Dirección General de Impuesto Nacionales Issuing the Tax Statute for taxes administered by the General Directorate of National Taxes
Ley 80 de 1993 Law No. 80 of 1993	Por el cual se expide el Estatuto General de Contratación de la Administración Pública Issuing the General Public Administration Contracting Statute
Ley 1796 de 2016 Law No. 1796 of 2016	Por la cual se establecen medidas enfocadas a la protección del comprador de vivienda, el incremento de la seguridad de las edificaciones y el fortalecimiento de la Función Pública que ejercen los curadores urbanos, se asignan unas funciones a la Superintendencia de Notariado y Registro y se dictan otras disposiciones Establishing measures focused on protecting home buyers, increasing building safety, and strengthening the public function exercised by urban curators, assigning functions to the Superintendency of Notaries and Registries, and enacting other provisions
Ley 2160 de 2021 Law No. 2160 of 2021	Por medio del cual se modifica la Ley 80 de 1993 de la Ley 1150 de 2007 Amending Law No. 80 of 1993 and Law No. 1150 of 2007
Ley 2294 de 2023 Law No. 2294 of 2023	Por el cual se expide el Plan Nacional de Desarrollo 2022-2026 Colombia potencia mundial de la vida Issuing the National Development Plan 2022-2026, Colombia, a world power of life
Ley 2475 de 2025 Law No. 2475 of 2025	Por medio de la cual se establece y garantiza el derecho al olvido oncológico en Colombia y se dictan otras disposiciones Establishing and guaranteeing the right to be forgotten in relation to cancer in Colombia and enacting other provisions

Anexo III
Annex III

Glosario de términos y normativa — España
Glossary of Legal Terms and Regulations — Spain

AMAEF	Asociación para la Mediación Aseguradora de Entidades Financieras Association for Insurance Mediation for Financial Institutions
AEPD	Agencia Española de Protección de Datos Spanish Data Protection Agency
CC	Real Decreto de 24 julio 1889 por el que se publica el Código Civil Royal Decree of 24 July 1889 publishing the Civil Code
CCS	Consorcio de Compensación de Seguros Insurance Compensation Consortium
CNMV	Comisión Nacional del Mercado de Valores National Securities Market Commission
CSRD	Directiva (UE) 2022/2464 del Parlamento Europeo y del Consejo de 14 de diciembre de 2022 por la que se modifican el Reglamento (UE) n.o 537/2014, la Directiva 2004/109/CE, la Directiva 2006/43/CE y la Directiva 2013/34/UE, por lo que respecta a la presentación de información sobre sostenibilidad por parte de las empresas Directive (EU) 2022/2464 of the European Parliament and of the Council, of 14 December 2022, amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
DGSFP	Dirección General de Seguros y Fondos de Pensiones Directorate General for Insurance and Pension Funds
DGT	Dirección General de Tributos Directorate General of Taxes
Directiva 2005/29	Directiva 2005/29/CE del Parlamento Europeo y del Consejo, de 11 de mayo de 2005, relativa a las prácticas comerciales desleales de las empresas en sus relaciones con los consumidores en el mercado interior, que modifica la Directiva 84/450/CEE del Consejo, las Directivas 97/7/CE, 98/27/CE y 2002/65/CE del Parlamento Europeo y del Consejo y el Reglamento (CE) nº 2006/2004 del Parlamento Europeo y del Consejo Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')
Directiva 2009/103	Directiva 2009/103/CE del Parlamento Europeo y del Consejo, de 16 de septiembre de 2009 Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009

Directiva 2025/2	Directiva 2025/2 del Parlamento Europeo y del Consejo, de 27 de noviembre de 2024 por la Directiva de Solvencia II en lo que respecta a la proporcionalidad, la calidad de la supervisión, la presentación de información, las medidas de garantía a largo plazo, los instrumentos macroprudenciales, los riesgos de sostenibilidad y la supervisión de grupo y transfronteriza, y se modifican las Directivas 2002/87/CE y 2013/34/UE Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU
Directiva sobre el IVA	Directiva 2006/112/CE del Consejo, de 28 de noviembre de 2006, relativa al sistema común del impuesto sobre el valor añadido Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
Directiva Solvencia II	Directiva 2009/138/CE del Parlamento Europeo y del Consejo, de 25 de noviembre de 2009, relativa a la actividad de las entidades aseguradoras y reaseguradoras Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance
Directiva IDD	Directiva (UE) 2016/97 del Parlamento Europeo y del Consejo, de 20 de enero de 2016, sobre la distribución de seguros Directive (UE) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (Insurance Distribution Directive)
DOUE	Diario Oficial de la Unión Europea Official Journal of the European Union
EBA	Autoridad Bancaria Europea European Banking Authority
EIOPA	Autoridad Europea de Seguros y Pensiones de Jubilación European Insurance and Occupational Pensions Authority
ESAs	Autoridades Europeas de Supervisión European Supervisory Authorities
ESMA	Autoridad Europea de Valores y Mercados European Securities and Markets Authority
EVI	Equipo de Valoración de Incapacidades Disability Assessment Team
IFRS	Normas Internacionales de Información Financiera International Financial Reporting Standards
INSS	Instituto Nacional de la Seguridad Social National Institute of Social Security
IPS IPT	Impuesto a las primas de seguro Insurance Premium Tax

IRPF PIT	Impuesto sobre la Renta de las Personas Físicas Personal Income Tax
ISFAS	Instituto Social de las Fuerzas Armadas Social Institute of the Armed Forces
IVA VAT	Impuesto sobre el Valor Añadido Value Added Tax
LCS	Ley 50/1980, de 8 octubre, de Contrato de Seguro Law 50/1980 of 8 October on Insurance Contracts ("Insurance Contract Law")
LCSP	Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014 Law 9/2017 of 8 November on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014)
LEC	Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil Law 1/2000 of 7 January 2000 on Civil Proceedings
Ley 11/2023 Law 11/2023	Ley 11/2023, de 8 de mayo, de trasposición de Directivas de la Unión Europea en materia de accesibilidad de determinados productos y servicios, migración de personas altamente cualificadas, tributaria y digitalización de actuaciones notariales y registrales; y por la que se modifica la Ley 12/2011, de 27 de mayo, sobre responsabilidad civil por daños nucleares o producidos por materiales radiactivos Law 11/2023 of 8 May 2023 on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalisation of notarial and registry actions, and amending Law 12/2011 of 27 May on civil liability for nuclear damage or damage caused by radioactive material
Ley 35/2015 Law 35/2015	Ley 35/2015, de 22 de septiembre, de reforma del sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación Law 35/2015 of 22 September on the reform of the system for the valuation of loss and damage caused to persons in traffic accidents
Ley 44/2002 Law 44/2002	Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero Law 44/2002 of 22 November on Measures to Reform the Financial System
Ley 57/1968 Law 57/1968	Ley 57/1968, de 27 de julio, sobre percibo de cantidades anticipadas en la construcción y venta de viviendas Law 57/1968 of 27 July on the receipt of advance payments in the construction and sale of housing
Ley de auditoría de cuentas Account Auditing Law	Ley 22/2015, de 20 de julio, de Auditoría de Cuentas Law 22/2015 of 20 July on Account Auditing

Ley de Sociedades de Capital Capital Companies Law	Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital Royal Legislative Decree 1/2010 of 2 July approving the revised text of the Capital Companies Law
Ley del Mercado de Valores Securities Market Law	Real Decreto Legislativo 4/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Mercado de Valores Royal Legislative Decree 4/2015 of 23 October approving the revised text of the Securities Market Law
LGDCU	Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias, al provocar un desequilibrio importante en los derechos y obligaciones de las partes en perjuicio del consumidor Royal Legislative Decree 1/2007 of 16 November approving the revised text of the General Law for the Defence of Consumers and Users and other complementary laws, by causing a significant imbalance in the rights and obligations of the parties to the detriment of the consumer
LGSS	Real Decreto legislativo 8/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social Royal Legislative Decree 8/2015 of 30 October approving the revised text of the General Social Security Law
LIRPF	Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio Law 35/2006 of 28 November on Personal Income Tax and partially amending the laws on Corporate Income Tax, Non-Resident Income Tax and Wealth Tax
LISD	Ley 29/1987, de 18 de diciembre, del Impuesto sobre Sucesiones y Donaciones Law 29/1987 of 18 December on Inheritance and Gift Tax
LIVA	Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido Law 37/1992 of 28 December 1992 on Value Added Tax
LOSSEAR	Ley 20/2015, de 14 de julio, de ordenación, supervisión y solvencia de las entidades aseguradoras y reaseguradoras Law 20/2015 of 14 July on the organisation, supervision and solvency of the insurance and reinsurance undertakings
LRCSCVM	Real Decreto Legislativo 8/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor Royal Legislative Decree 8/2004 of 29 October approving the revised text of the Law on civil liability and insurance in the circulation of motor vehicles
MUFACE	Mutualidad General de Funcionarios Civiles del Estado General Mutual Society of State Civil Servants

MUGEJU	Mutualidad General Judicial General Judicial Mutual Society
NIS 2	Directiva (UE) 2022/2555 del Parlamento Europeo y del Consejo de 14 de diciembre de 2022 relativa a las medidas destinadas a garantizar un elevado nivel común de ciberseguridad en toda la Unión, por la que se modifican el Reglamento (UE) nº 910/2014 y la Directiva (UE) 2018/1972 y por la que se deroga la Directiva (UE) 2016/1148 (Directiva SRI 2) Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive)
ONU UN	Organización de las Naciones Unidas United Nations
ORSA	Evaluación Interna de Riesgos y Solvencia Own Risk and Solvency Assessment
PEPPs	Productos Paneuropeos de Pensiones Individuales, por sus siglas en inglés Pan-European Personal Pension Product
PIAS PAI	Principales incidencias adversas de sostenibilidad Principal Adverse Impacts
PIBS IBIP	Productos de Inversión basados en seguros Insurance-Based Investment Products
Real Decreto Legislativo 7/2004 (RDL 7/2004) Royal Decree-law 7/2004 (RDL 7/2004)	Real Decreto Legislativo 7/2004, de 29 de octubre, por el que se aprueba el texto refundido del Estatuto Legal del Consorcio de Compensación de Seguros Royal Legislative Decree 7/2004, of 29 October, approving the revised text of the Legal Statute of the Insurance Compensation Consortium
Real Decreto-ley 3/2020 (RDL 3/2020) Royal Decree-law 3/2020 (RDL 3/2020)	Real Decreto-ley 3/2020, de 4 de febrero, de medidas urgentes por el que se incorporan al ordenamiento jurídico español diversas directivas de la Unión Europea en el ámbito de la contratación pública en determinados sectores; de seguros privados; de planes y fondos de pensiones; del ámbito tributario y de litigios fiscales Royal Decree-law 3/2020 of 4 February on urgent measures by which various directives of the European Union in the field of public procurement in certain sectors are incorporated into the Spanish legal system; of private insurance; of pension plans and funds; in the tax field and tax litigation

Real Decreto-ley 5/2023 (RDL 5/2023)

Royal Decree-law 5/2023 (RDL 5/2023)

Real Decreto-ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea

Royal Decree-law 5/2023 of 28 June adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposing EU Directives on structural changes in commercial companies and reconciliation of family and professional life for parents and carers; and the implementation and enforcement of European Union Law

Reglamento Delegado (UE) 2022/1288

Commission Delegated Regulation (EU) 2022/1288

Reglamento Delegado (UE) 2022/1288 de la Comisión de 6 de abril de 2022 por el que se completa el Reglamento (UE) 2019/2088 del Parlamento Europeo y del Consejo respecto a las normas técnicas de regulación que especifican los pormenores en materia de contenido y presentación que ha de cumplir la información relativa al principio de "no causar un perjuicio significativo", y especifican el contenido, los métodos y la presentación para la información relativa a los indicadores de sostenibilidad y las incidencias adversas en materia de sostenibilidad, así como el contenido y la presentación de información relativa a la promoción de características medioambientales o sociales y de objetivos de inversión sostenible en los documentos precontractuales, en los sitios web y en los informes periódicos

Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports

Reglamento de Inteligencia Artificial

Artificial Intelligence Act

Reglamento (UE) 2024/1689 del Parlamento Europeo y del Consejo, de 13 de junio de 2024, por el que se establecen normas armonizadas en materia de inteligencia artificial

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828

Reglamento DORA

DORA Regulation

Reglamento (UE) 2022/2554 del Parlamento Europeo y del Consejo de 14 de diciembre de 2022 sobre la resiliencia operativa digital del sector financiero y por el que se modifican los Reglamentos (CE) nº 1060/2009, (UE) nº 648/2012, (UE) nº 600/2014, (UE) nº 909/2014 y (UE) 2016/1011

Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011

Reglamento MiCA

MiCA Regulation

Reglamento (UE) 2023/1114 del Parlamento Europeo y del Consejo, de 31 de mayo de 2023, relativo a los mercados de criptoactivos y por el que se modifican los Reglamentos (UE) n.o 1093/2010 y (UE) n.o 1095/2010 y las Directivas 2013/36/UE y (UE) 2019/1937

Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

Reglamento Solvencia II Solvency II Regulation	Reglamento Delegado (UE) 2015/35 de la Comisión, de 10 de octubre de 2014, por el que se completa la Directiva 2009/138/CE del Parlamento Europeo y del Consejo sobre el acceso a la actividad de seguro y de reaseguro y su ejercicio (Solvencia II) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
Reglamento PRIIPs PRIIPs Regulation	Reglamento (UE) no 1286/2014 del Parlamento Europeo y del Consejo de 26 de noviembre de 2014 sobre los documentos de datos fundamentales relativos a los productos de inversión minorista vinculados y los productos de inversión basados en seguros Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
RGAT	Real Decreto 1065/2007, de 27 de julio, por el que se aprueba el Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos Royal Decree 1065/2007 of 27 July which approves the General Regulations for the actions and procedures for tax management and inspection and for the development of common standards for tax application procedures
RGPD GDPR	Reglamento General de Protección de Datos. Reglamento (UE) 2016/679 relativo a la protección de las personas físicas en lo que respecta al tratamiento de datos personales y a la libre circulación de estos datos. General Data Protection Regulation. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data
Segunda Directiva Second Directive	Segunda Directiva 84/5/CEE del Consejo, de 30 de diciembre de 1983, relativa a la aproximación de las legislaciones de los Estados Miembros sobre el seguro de responsabilidad civil que resulta de la circulación de los vehículos automóviles Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles
Solvencia II Solvency II	Directiva 2009/138/CE del Parlamento Europeo y del Consejo, de 25 de noviembre de 2009, sobre el seguro de vida, el acceso a la actividad de seguro y de reaseguro y su ejercicio Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance)
SFDR Sustainable Finance Disclosures Regulation	Reglamento Delegado (UE) 2022/1288 de la Comisión de 6 de abril de 2022 por el que se completa el Reglamento (UE) 2019/2088 del Parlamento Europeo y del Consejo respecto a las normas técnicas de regulación que especifican los pormenores en materia de contenido y presentación que ha de cumplir la información relativa al principio de "no causar un perjuicio significativo", y especifican el contenido, los métodos y la presentación para la información relativa a los indicadores de sostenibilidad y las incidencias adversas en materia de sostenibilidad, así como el contenido y la presentación de información relativa a la promoción de características medioambientales o sociales y de objetivos de inversión sostenible en los documentos precontractuales, en los sitios web y en los informes periódicos Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports

TAE APR	Tasa Anual Equivalente Annual Percentage Rate of Charge
TEAC	Tribunal Económico-Administrativo Central Central Economic-Administrative Court
TIC ICT	Tecnologías de la información y comunicación Information and communication technologies
TRLPFP	Real Decreto Legislativo 1/2002, de 29 de noviembre, por el que se aprueba el texto refundido de la Ley de Regulación de los Planes y Fondos de Pensiones Royal Legislative Decree 1/2002 of 29 November approving the revised text of the Law Regulating Pension Plans and Funds
UNESPA	Unión Española de Entidades Aseguradoras y Reaseguradoras Spanish Association of Insurers

Anexo IV
Annex IV

Glosario de términos y normativa — México
Glossary of Legal Terms and Regulations — Mexico

AMIS	Asociación Mexicana de Instituciones de Seguro Mexican Association of Insurance Institutions
CNSF	Comisión Nacional de Seguros y Fianzas National Insurance and Surety Bond Commission
CONDUSEF	Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros National Commission for the Protection and Defence of Financial Services Users
CONSAR	Comisión Nacional del Sistema de Ahorro para el Retiro National Commission for the Retirement Savings System
CUSF	Circular Única de Seguros y Fianzas Single Circular on Insurance and Surety Bonds
DOF	Diario Oficial de la Federación Official Gazette of the Federation
IMSS	Instituto Mexicano del Seguro Social Mexican Social Security Institute
ISR	Impuesto sobre la Renta Income Tax
LCS	Ley sobre el Contrato de Seguro publicada en el DOF el 31 de agosto de 1935 Law on Insurance Contracts published in the DOF on 31 August 1935
LIF	Ley de Ingresos de la Federación Federal Revenue Law
LISF	Ley de Instituciones de Seguros y de Fianzas publicada en el DOF el 4 de abril de 2013 Insurance and Surety Bond Institutions Law published in the DOF on 4 April 2013
LIVA	Ley al Impuesto al Valor Agregado publicada en el DOF el 29 de diciembre de 1978 Value Added Tax Law published in the DOF on 29 December 1978
LPDUSF	Ley de Protección y Defensa al Usuario de Servicios Financieros Law on Protection and Defence of Financial Services Users
SAT	Servicio de Administración Tributaria Tax Administration Service
SCJN	Suprema Corte de Justicia de la Nación Supreme Court of Justice of the Nation
SHCP	Secretaría de Hacienda y Crédito Público Ministry of Finance and Public Credit

Q4 2025

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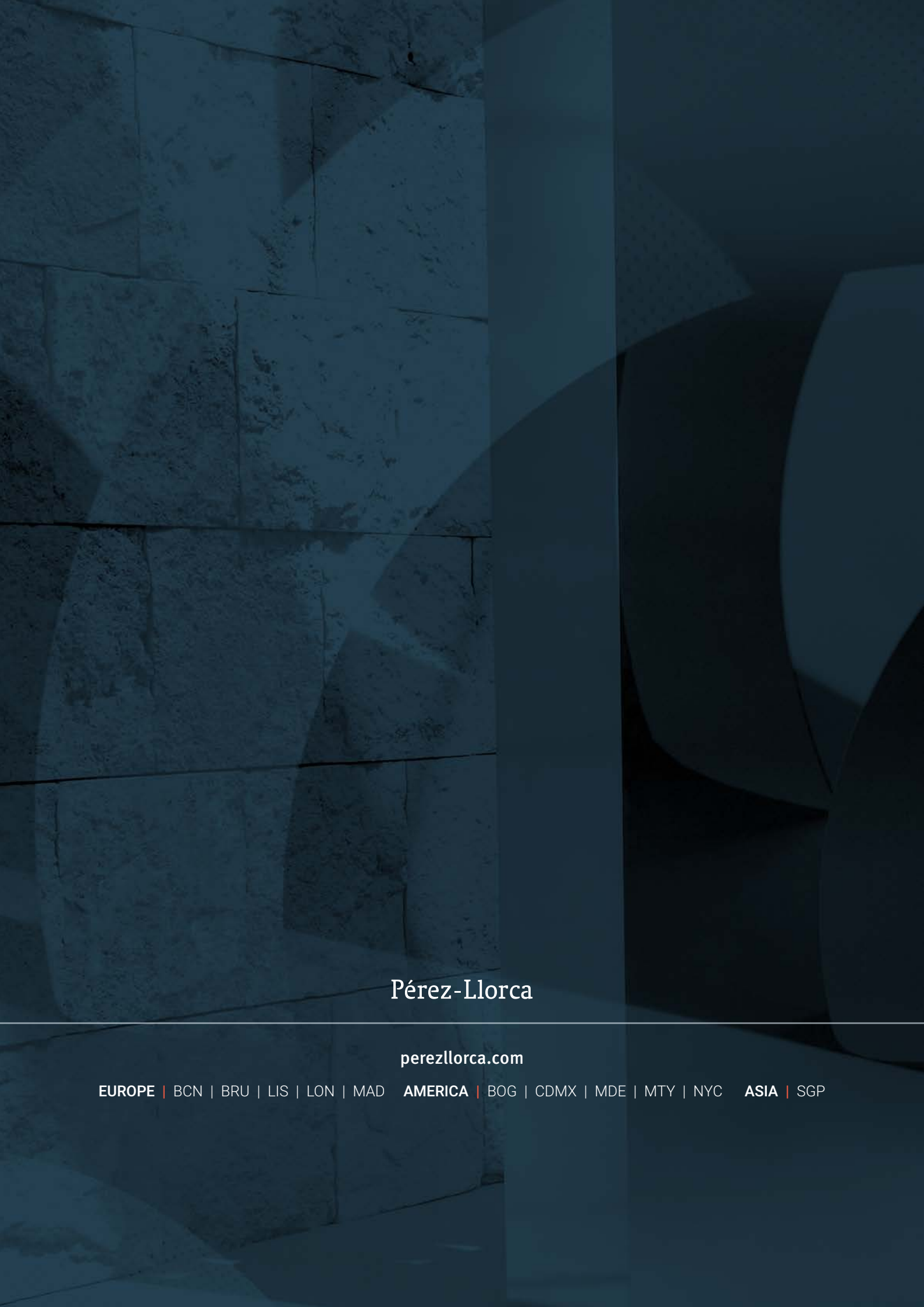

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