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Russia-Ukraine crisis

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Commercial Risk Europe

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Just as many parts of the world began to tentatively emerge from the pandemic, yet another unexpected crisis hit with Russia's invasion of Ukraine.

Although geopolitical risk has featured on many risk radars over the years and Russia's President Vladimir Putin was being carefully watched, the conflict on European soil has come as a shock to many, including the region's risk managers.

Having spent the last couple of years battling with Covid-19 and hoping for a bit of time to take stock and focus on the myriad of 'normal' risks they face, risk managers have had to roll up their sleeves once more and join efforts to help their organisations respond to the war.

At first glance, this double whammy of pandemic and then war must leave the corporate world stretched as it faces up to new risks and others magnified by the Ukraine conflict.

But it is also now battle-hardened, and risk management experts have stressed in this issue of *Commercial Risk Europe* that lessons learnt from Covid-19 should stand risk managers in good stead for the challenges ahead.

And while this issue focuses on how European risk managers can best respond to risks thrown up by Russia's invasion, risk professionals have made clear that it is also important not to forget the other threats that were already causing concern.

So, in this edition of *CRE* we take a look at the EC's proposals on new corporate sustainability due diligence rules, which Ferma said need more clarity and could cause problems for risk managers in combination with other regulations. But the European risk management federation also stresses that the EU's focus on sustainability risk management is elevating the role of risk managers and will require more of their involvement in setting business strategy. Linked to that, we also write about how insurers and brokers can help support risk managers to meet ESG challenges.

On the insurance side, we cover the latest state of play in the European D&O market and discuss what insurers' strong 2021 results will likely mean for the next set of renewals.

Then, there is coverage of French risk management association AMRAE's first in-person conference since the pandemic broke out, and we kick off our annual Risk Frontiers Europe survey of leading risk managers across the continent with a group from Belgium.

We hope you enjoy the read.

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Risk managers face up to Russia-Ukraine crisis bolstered by Covid experience

◇ CRISIS

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Russia's invasion of Ukraine has thrown up a second once-in-a-generation crisis immediately after the pandemic, sending risk managers and their organisations into crisis mode once again. In front of them is a whole new set of risks to deal with, as well as those that have been exacerbated by the conflict. Sanctions, reputation, people, cyber and supply chain risks have all come to the fore, and must all be dealt with at the same time.

Experts agree that risk managers are well placed to help their companies respond to these risks and drive the crisis response, armed with lessons learned from Covid-19 and a new-found corporate respect. But achieving this will not be easy and will require risk managers to use their tried-and-tested tools, while also adapting plans to a set of challenges that are far from black and white.

> "Protecting employees should be the priority as companies look to manage their risks and exposures"

TOP PRIORITIES

François Malan, chief risk and compliance officer at Eiffage, board member of French risk management association AMRAE and 2020 European Risk Manager of the Year, said people risk should be the top priority for any organisation following Russia's invasion of Ukraine.

Carl Leeman, chief risk officer at international logistics firm and port operator Katoen Natie, and vice-president of Belgian risk management association Belrim, agreed that protecting employees should be the priority as companies look to manage their risks and exposures to the war.

"It is an unpredictable situation so we have already moved some of our employees and we have a detailed evacuation plan for the rest," said Leeman. "This includes advising employees to have a bag ready with all the necessary provisions so that they can leave at a moment's notice."

His company has also developed a communications plan in the event that mobile and telecoms networks go down.

Amid all this uncertainty, the main thing you can do is maintain clear instructions for your employees, continued Leeman. "There may be little you can do to protect your assets, so the focus should

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EUROPEAN RISK MANAGEMENT AWARDS 2022

Entries will open soon – watch out for more information

Announcing the European Risk Management Awards 2022

Without doubt, circumstances over the past few years have enabled risk managers to emerge from the shadows. Risk management has cemented its place on the boardroom agenda, as businesses discovered their ultimate success and failure is down to an effective crisis management plan.

Collaborative transition has become a byword for successful risk management, as we move from one global threat to the next. Risk managers and their industry partners are together paving the way forward using innovation and resourcefulness to create a new framework for the future.

This year, as we launch the 6th European Risk Management Awards, we believe it is more important than ever to recognise the achievements of individuals and teams in this critical field. **We invite you to enter your submission for this year's programme, and look forward to seeing you celebrate in-person in London on 22nd November 2022.**

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be on your employees and ensuring that you can continue to pay their salaries and they have access to food and shelter. This means keeping in daily communication and assembling a team that can make decisions quickly if the situation escalates," he said.

Cyber is another big risk facing companies, with attacks increasing dramatically since the conflict broke out. "Risk managers should really be careful when it comes to this risk and work more closely than ever with their IT departments," said Malan.

He added that other risks already prominent on risk registers following Covid-19, such as supply chain issues and cost of materials, will be exacerbated by the Russia-Ukraine crisis.

Malan said the cost of materials such as steel, aluminium and wood are changing by the hour, so it is almost impossible to get a fixed price. In addition, European risk managers are concerned about the availability and cost of energy following price shocks since the conflict broke out, he said.

They can turn to their contracts to try and alleviate some of this price uncertainty, but it is not always easy to achieve

"We need to include in our contracts price revision clauses, which are really difficult to negotiate today. It is easier to have it in public contracts but in private business clients want a fixed price, which is impossible to do. So today a major concern for the risk committee is to come up with a solution to protect our business from this risk," said Malan.

The French risk manager also stressed that the risks from Covid-19 haven't gone away just yet, as highlighted by China's recent lockdown affecting areas producing electric and other goods. "So all in all, we are in a period of real uncertainty," said Malan.

And then there are huge risks from failing to comply with sanctions imposed since the war, agreed risk managers and their advisers.

GRAPPLING WITH SANCTIONS RISK

Alessandro de Felice, chief risk officer at Prysmian Group and past president of Italian risk management association Anra, said there were already sanctions in place against Russian companies before the war broke out but there are now many more, with sanctions also in place on Russian individuals.


Stephen Sidebottom

"As well as directly sanctioned entities, businesses need to look at organisations owned or controlled by these sanctioned entities"

"Sanctions was a big risk already but the risk landscape has worsened with sanctions on individuals," said the Italian.

So the blacklist of companies has expanded and now there is a blacklist for individuals, continued De Felice. It is therefore vital to check whether shareholders are on that blacklist, he said.

Stephen Sidebottom, chair of the IRM, agreed that sanctions risk was already a complex issue for risk managers but is more of a problem now.

"Sanctions lists are rapidly evolving and the current dynamic and divergent nature of lists across different governments and sanctioning bodies is a significant challenge," he told *CRE*.

"As well as directly sanctioned entities, businesses need to look at organisations owned or controlled by these sanctioned entities. Customers who aren't sanctioned themselves but have a relationship with sanctioned individuals may also be a risk," said Sidebottom.

While financial services have historically been a major focus for sanctions, new sanctions put in place since the Russia-Ukraine conflict are impacting a much broader range of sectors, noted the IRM chair.

It is vital therefore that companies have appropriate screening in place to work out whether they are affected and are responding appropriately.

"Businesses need to have adequate sanctions controls covering direct customers and their extended supply chain, particularly in geographies and sectors with strong links to sanctioned countries, organisations, or individuals," said Sidebottom. "Businesses need to ensure they understand their customer data, have a robust screening methodology and tools, and are able to access and work with up-to-date sanctions data," he added.

Risk managers have a critical role to play in assessing and understanding sanctions risk before ensuring companies have the right mitigation systems and processes in place, continued the IRM chair.

But he said a lack of reliable data significantly increases the difficulty of compliance efforts. "Businesses need to be actively looking at the data they hold on customers and how to access the data they need to assess exposure throughout their supply chains," said Sidebottom.

Malan said the biggest difficulty facing risk managers in this area is simply keeping up to date with the many different sanctions and working out who actually owns companies they deal with ."The difficulty of working out who is the end user and owner can be difficult," he said.

But after carrying out such analysis as best they can, companies need to work out how sanctions will affect their contracts.

Malan's firm did this via an in-depth contract review.

"We, as risk managers, need to adapt and improve our sanctions management process and tools. We need to work closely with compliance and legal departments. We did this with Covid when we had to adapt contracts and now, today, we have to do it again," said Malan.

The risk from sanctions is far from certain or clear, stressed Leeman. "The situation is sometimes changing on a daily basis, with both new sanctions by the west or new local laws in Russia. This is not always easy to follow, nor is it simple to find eventual links between sanctioned persons and their eventual involvement in certain companies. Also, on the sanctioned dual-use product list, there seem to be different views in some cases," he said.

Fortunately, there is an unprecedented international consensus on the most important sanctions measures, noted Leeman. This makes it a little easier for multinationals but many questions will remain for risk managers, finance teams and compliance managers.

"Therefore, risk managers must do their utmost to stay as informed as possible but also ensure that any actions regarding counterparties that could potentially be subject to sanctions are recorded, should they need to be reported to regulators or government authorities," said Leeman.

Cvete Koneska, head of advisory at security intelligence firm Dragonfly, noted that sanction risk isn't just about compliance – it brings reputational risk that touches on company values.

"Risk managers need to be part of this conversation about how companies comply with sanctions. Risk is integral to the compliance conversation. Risk managers will be able to see the effect that risks that impact the different levels of compliance will have on the different parts of the business, whether it's profit, people, market share or competition. So they have a big part to play in making organisations more resilient to sanctions risk," she said.

"There is very little precedent here and you need to think and feel your way through this," she advised risk managers.

De Felice agreed that reputational damage is one of the big risks to emerge from the crisis.

While many big brands, mainly on the retail side, have started to close businesses in Russia, such decisions can be very hard, he said.


François Malan

"We can play a central role. We did it for Covid-19 so we have to do it again"

"You can't just send people home and leave families without jobs," so there are big corporate social responsibility issues to consider as part of the bigger picture, he pointed out.

RISK PROFESSIONALS WELL PLACED TO DRIVE RESPONSE AFTER PANDEMIC

The experts believe that risk managers are critical to the Russia-Ukraine crisis response, and well positioned to make their contribution count after Covid-19 sharpened their toolkit and showed the value they can bring.

Koneska, head of advisory at security intelligence firm Dragonfly, said that from what she sees, organisations are prepared to deal with the current crisis and have learnt lessons from Covid-19. But as ever, the best companies and risk managers will be able to adapt their plans to new scenarios, she said.

"Organisations with a mature risk management framework ideally should have arrived at this point well prepared, with the right tools and organisational setup to enable risk managers to play that critical role by pulling critical resources from across the organisation, rolling out the right risk management measures and so on," said Koneska.

"It is still early days but from what I see, I think a lot of organisations came to this well prepared. I think Covid was a good crisis exercise. Those organisations that really invested in their risk management and crisis management should be in a good position to respond to this latest crisis, with the internal resources and tools to do their job properly now," she said.

"However, while you can learn from other crises, the best organisations and risk managers will be flexible and adapt plans to account for the individual situation," she added.

Malan said that as with Covid-19, risk managers have the ability and skillset to manage these types of multifaceted crises. And they are now armed with lessons learnt from the pandemic, he pointed out.

"We can play a central role. We did it for Covid-19 so we have to do it again. It is important to use what we have learnt from the Covid-19 crisis. My CEO asked me to coordinate our actions in the Ukraine crisis, so I think he trusted what I did for Covid-19. So I think we have the legitimacy now," he said.

But Malan also said there is room for improvement and the need for risk managers to seek new ways to conduct risk assessments, so companies are better forewarned of potential threats.

"Risk assessment is a terrific tool but we underestimated the frequency and severity of Covid and it is the same thing with geopolitical risk in Ukraine. So we need to be humble and review how we are conducting our risk assessments… we need

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to improve our way of assessing the risk," he said.

De Felice agreed that Covid-19 highlighted the added value risk management can provide through clear analysis of various scenarios and their impact, which helps companies take strategic decisions.

"Our community is living through a unique situation and opportunity to show added value," he said.

Faced with people and security risk, rising economic risk, cyber threats, reputational damage and many other issues, risk managers have "more than enough" on their plates to "justify their role" and show value, he added.

RISK MANAGERS ADVISED TO THINK AND FEEL THEIR WAY THROUGH CRISIS

Risk managers must think big and take a more holistic approach to risk management to best deal with the many risks thrown up by the Russia-Ukraine war that simply aren't black and white, advised security intelligence expert Koneska. She believes companies need to both think and feel their way through the crisis, keeping ethical behaviour front of mind.

Koneska stressed that the risks facing companies due to Russia's invasion of Ukraine will vary by company and sector. But the bottom line is companies face a range of risks in a complex situation such as this, she said.

The big challenge for risk managers, said Koneska, is getting the risk mix right and understanding how risks interact. And, crucially, she advised taking a high-level, holistic approach to risk rather than focussing on individual threats that could result in other issues being missed.

"That really should be the highest priority now for risk managers. Rather than approaching things piecemeal risk by risk, they need to take a more comprehensive approach and find the right balance of measures that can reduce those risks," she said.

"I am not saying ignore the individual risks, but that piecemeal approach may cause you to miss some dependencies and some of the mitigation for one risk can also reduce another. If you evacuate a lot of your people from Ukraine, you are obviously reducing your security risk, but you might also reduce risk to data and equipment. It's about getting into that mindset to think comprehensively about the risks. This is the exact sort of scenario when you really need to think big," she added.

> **"The legal risks** from sanctions or security risks if you have people in Ukraine are not black and white"

As well as thinking big picture, Koneska urged companies and their risk managers to think fluidly and beyond pure financial numbers in order to deal with many of the political risks thrown up by the crisis. This requires a change in mindset and there is room for improvement, she added.

"The legal risks from sanctions or security risks if you have people in Ukraine are not black and white. So many of the decisions facing companies are a bit less clear cut than in some other risk areas," she said.

"There is a little bit more grey here. I think to be able to navigate that grey space, businesses and risk managers require a bit more fluency in the language of politics and geopolitics and what that means for businesses. Business are very good at numbers and profits but not many so far have been aware as actors in the political space. I think this crisis is really bringing that to the fore, especially for the large multinationals," added the political risk adviser.

People are fleeing Ukraine following its invasion by Russia

D&O market begins to stabilise for European buyers but insurers remain wary

◇ MARKET

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D&O pricing in Europe has begun to stabilise but underwriters remain cautious, amid heightened risks from the post-Covid-19 economic fallout and emerging issues like ESG and cyber.

New capacity and entrants to the market have helped slow D&O rate increases during recent quarters in Europe and the US, which has enabled insureds to increase limits, according to Marsh.

D&O pricing for US publicly traded companies increased just 6% in the fourth quarter, lower than the 10% increase observed in Q3, the broker says in its latest *Global Insurance Market Index*.

> **"Although some** markets are sending light signals of stabilisation, a complete turnaround is not on the horizon"

In the UK, the rate of increase for D&O cover was 24% in the fourth quarter, compared to 61% in the preceding three months, according to Marsh. It describes the continental European D&O market as "stable" as a result of increased insurer competition, appetite and capacity. Select programmes even experienced rate reductions, Marsh says.

In its recent state of the market report, AJ Gallagher says increasing underwriting competition is leading to more significant rate reductions for directors and officers. According to the broker, the global D&O market is now seeing signs of stabilisation, following price increases of about 70% in 2020. New entrants and the recent reduction in US securities class actions support rate reductions in 2022, although rising defence costs and increased underwriting discipline will act as mitigating factors, it adds.

NO TOTAL TURNAROUND

Despite talk of stability returning to the D&O market, corporates buyers are unlikely to see significant market softening,

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Astrid Faber-Wieners, general manager and head of underwriting for professional lines at HDI Global Specialty, told *Commercial Risk Europe*.

"Although some markets are sending light signals of stabilisation, a complete turnaround is not on the horizon. Primaries and international programmes for large corporates and specific industries like financial institutions and Covid-impacted sectors, for example, are unlikely to experience high levels of relief in the near future. This applies all the more as the large loss situation remains extremely tense, accompanied by a rising frequency of smaller claims," she said.

Tough market conditions may be a feature for some time yet, with the pandemic and current economic gloom exacerbating an already hardening D&O market, according to Faber-Wieners.

"As part of their underwriting, insurers are paying attention to sectors and regions particularly exposed to these developments, both when writing new business and when renewing contracts. Bearing in mind that for more than a decade, soft market conditions had an influence on every insurer's D&O book, further measures are needed to return to profitability," she said.

MORE COMPETITION

The most recent January renewals did see a "bit more competition" in the market, according to Mathieu Borneuf, senior vice-president of professional lines in continental Europe at Sompo International, London market and Europe. "There is definitely more capacity than there was this time last year. Across Europe, we still saw rate rises average out at about 11%. Insurers are maintaining underwriting discipline and if all things remain equal, we could expect a slowdown in rate rises this year," he said.

> **"European regulation,** Brexit and other conflicting bilateral interests are also contributing to this volatile setup"

Although the D&O market in Europe hardened later than in the UK and the US, it is already showing signs of stabilisation in some countries, added Borneuf. But certain markets remain "underpriced in our view", he said. "Southern Europe, for example, is particularly dependent on tourism and has been hit hard by Covid, and we may see claims start to raise there in the coming year," said the insurer.

Underwriting discipline is also supported by the volatile and uncertain risk landscape for directors and officers. Covid-19 financial market uncertainties are adding to growing concern over emerging risks like cyber and ESG.

"The current short-term view of many insurers is certainly focused on potential Covid-19-related effects like the expected increase in bankruptcies. Cyber-related D&O claims are currently very much in focus as well. Related incidents could well attract the interest of regulators, shareholders and even customers, and it can be assumed that the number of such claims will increase in future," said Faber-Wieners.

"In the medium to long term we will most probably see new challenges for buyers and insurers resulting from ESG-related topics and the associated expectations of investors and clients. Awareness in these fields is rising but the willingness to invest in the necessary measures still needs to improve. The VUCA [volatility, uncertainty, complexity and ambiguity] environment we are living in will have a long-lasting impact on how company leaders will be assessed, and in case of failures they will be held responsible," she said.

RISK LANDSCAPE

Faber-Wieners noted that the D&O risk landscape is constantly shifting. "A range of stakeholders including shareholders, employees, customers, suppliers, regulators

Bankruptcies are a particular concern for D&O underwriters

and authorities are now closely observing the activities of international companies and their decision-makers. Local legislation and regulatory requirements are constantly developing and varying from country to country," she said.

"European regulation, Brexit and other conflicting bilateral interests are also contributing to this volatile setup. The complexity of legislation means that it is essential that risks are understood, and that individual and robust compliance and risk management systems are in place," Faber-Wieners continued.

One issue of particular concern for D&O underwriters is bankruptcies, which have been at a record low during the last couple of years, said Borneuf. In France, for example, bankruptcies have fallen by almost 50% during the past two years, he added.

"Clearly, these have been exceptional times and we won't see the clear picture until the widespread government financial support that has been in place for companies through the pandemic is lifted. There is clearly a large number of zombie companies still trading that will likely go under this year or next, prompting a wave of claims," Borneuf said.

Insurers are also keeping an eye on regulatory actions and exposures to US securities class actions, he continued. "There's also a continuing trend of heightened regulatory risk – more and more investigations are taking place. This is especially an issue for European companies with securities in the US, who remain more prone to being targeted by litigation funders or activist shareholders than their US counterparts," said Borneuf.

US federal securities class actions actually fell 34% in 2021 to 210, well below the yearly average of 405 for 2017 to 2019, when they surged. According to a recent report from law firm Dechert, securities class action filings against non-US issuers also fell 35% last year.

"Although there were actually fewer US securities class action in 2021 than in previous years, it may be the case that we are simply seeing a reservoir of cases building up that have been out on hold due to the pandemic. This may result in a breaking of the dam in the coming year, with a wave of actions being brought," said Borneuf.

According to AM Best, the pace of securities-related litigation could increase in 2022 as plaintiffs focus on special purpose acquisition company (SPAC) transactions, cryptocurrency or event-driven suits.

The ratings agency also notes in a recent report that defence costs for D&O claims are increasing. The loss ratio for the US D&O market has worsened even as premium has risen, it says.

"Market observers have noted that D&O trends reflect the growth of what is being termed a new global investment class related to litigation financing, epitomised by the funding of group securities class action suits. Additional risk factors such as sexual misconduct lawsuits, discrimination cases and the failure to disclose or address climate risks, are all contributing to the uptick in D&O lawsuits, settlements and payouts – and leading to higher premiums," AM Best states in the report.

Big role for risk managers with new EC sustainability rules but more clarity needed, says Ferma

Managing growing number of regulations could cause headaches

◇ SUSTAINABILITY

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Risk managers will have a big role to play in helping their companies meet proposed new EC corporate sustainability due diligence rules, Ferma has told *Commercial Risk Europe*, but the European risk management federation has called for more clarity on the planned directive to help its members step up to the plate.

It also warned that interaction between the aforementioned Corporate Sustainability Due Diligence Directive (CSDD) and separate Corporate Sustainability Reporting Directive (CSRD), which has been in the pipeline for some time, may cause headaches for business because the two sets of rules have different scopes and won't come into effect at the same time. This is despite the EC wanting them to work hand in hand, with the due diligence directive enforcing accountability and the reporting directive focused on transparency.

> **"Most notably, the** CSDD introduces the concept of a value chain, which is broader than 'supply chain'"

However, Ferma added that the EU's growing focus on sustainability issues is elevating the role of risk managers and will require more of their involvement in setting business strategy and delivering a more holistic corporate response.

The EC laid out its proposals for the CSDD in late February. The directive aims to foster sustainable and responsible corporate behaviour throughout global value chains. Companies will be required

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to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights and the environment. The directive could come into force as early as 2025 but may well take longer.

It aims to make sure that big European companies and those in high-risk industries take a leading role in mitigating human rights and environmental risks across their value chains, while supporting small companies to do the same.

MORE CLARITY NEEDED

Ferma told CRE that the directive puts forward "ambitious and far-reaching proposals" but said there is a "real need for more clarity in certain areas", and particularly around its definition of value chains.

"Most notably, the CSDD introduces the concept of a value chain, which is broader than 'supply chain', and from our preliminary readings we see a real need for more precision in how value chain is, first, defined; and second, what that would then mean operationally for companies and risk managers," said Valentina Paduano, chair of Ferma's sustainability committee.

But it is clear that risk managers' day-to-day activity will be "heavily" impacted by the CSDD, Paduano continued.

"The proposed directive requires companies to identify actual or potential adverse impacts on human rights and the environment, which is clearly something that is part of an enterprise risk manager's DNA. There is also quite an important set of implications for civil liability of companies in the proposal. So there is a lot in there for risk managers," she said.

Several EU member states have already introduced sustainability due diligence rules but the EC's CSDD proposals aim to harmonise rules across the bloc.

If approved, they will apply to the biggest EU firms and those in high-impact sectors. Just short of 13,000 EU companies would fall under the rules.

The first group consists of EU firms with more than 500 employees and net worldwide turnover in excess of €150m. That is about 9,400 companies. The second group is EU businesses with more than 250 employees and net turnover in excess of €40m in high-impact sectors such as textiles, agriculture and mineral extraction. This captures a further 3,400 companies. The rules will apply to the second group two years later than the first.


Valentina Paduano

In addition, a further 4,000 companies from non-EU countries but active in its single market would need to comply.

Micro companies and SMEs are not directly affected by the proposed rules. The idea is they would be indirectly impacted as bigger companies are forced to manage human rights and environmental risks within their global value chains.

The proposals apply to companies' own operations, their subsidiaries and their value chains. The latter is described by the EU as direct and indirect business relationships, but observers, such as Ferma, have said the definition remains unclear.

COMPLIANCE

In order to comply with the proposed corporate due diligence duty rules, companies would need to:

- Integrate due diligence into policies
- Identify actual or potential adverse human rights and environmental impacts
- Prevent or mitigate potential impacts
- Bring to an end or minimise actual impacts
- Establish and maintain a complaints procedure
- Monitor the effectiveness of the due diligence policy and measures
- Publicly communicate on due diligence.

In addition, the big firms would need to have a plan in place to ensure that their business strategy is compatible with limiting global warming to 1.5°C, in line with the Paris Agreement.

The directive establishes a corporate due diligence duty. The proposals would also introduce directors' duties to set up and oversee the implementation of due diligence and integrate this into corporate strategy.

The rules on corporate sustainability due diligence would be enforced through national administrative authorities appointed by EU member states. They can impose fines in case of non-compliance. The EC will set up a European Network of Supervisory Authorities that will bring together national body representatives to ensure a coordinated approach.

The proposals also introduce civil liability, so that victims have the opportunity to take legal action for damages that could have been avoided with appropriate due diligence measures.

The rules on directors' duties will be enforced through existing member states' laws. The directive does not include an additional enforcement regime in this area.

When it comes to potential fines and enforcement, legal firm Travers Smith explained that under the proposed due diligence directive, supervisory bodies will be able to impose sanctions based on a company's turnover. The percentage or amount is not specified in the proposal, however, and it will be left to member states to set the size of fines and other punishment to ensure the rules are enforced, the law firm said.

GAME-CHANGER

Didier Reynders, the EC commissioner for Justice said the CSDD proposal is a "real game-changer" in the way companies operate their business activities throughout their global supply chains.

The EC's two key aims are transparency and accountability

Thierry Breton, commissioner for the internal market, added: "While some European companies are already leaders in sustainable corporate practices, many still face challenges in understanding and improving their environmental footprint and human rights track record. Complex global value chains make it particularly difficult for companies to get reliable information on their suppliers' operations.

"The fragmentation of national rules further slows down progress in the take-up of good practices. Our proposal will make sure that big market players take a leading role in mitigating the risks across their value chains, while supporting small companies in adapting to changes."

The CSDD proposals will now be negotiated with the European Parliament and Council. Once adopted, member states will have two years to transpose the directive into national law.

Travers Smith expects changes to the planned rules during this consultation period. It noted that the EC has an ambitious implementation timetable and the draft CSDD could be approved this year. But the rules are unlikely to come in any sooner that early 2025.

"Depending on how quickly the text progresses through the legislative process, we expect that the due diligence obligations will only begin to apply from 2025 or quite possibly later," Travers Smith said.

SHAPING THE LAWS

Consultation with business organisations, and of course risk managers through their national associations and European federation Ferma, will help shape the final directive.

As well calling for more clarity on key issues such as the definition of global value chains, it seems likely that Ferma will also focus on how the due diligence directive will interact with the sustainability reporting directive.

The latter takes over from what was the Non-Financial Reporting Directive. So what was once called non-financial reporting is now called sustainability reporting. The due diligence directive, meanwhile, aims to push businesses to mitigate human rights and environmental impacts in their value chains, as well as integrate sustainability into corporate governance, explained Ferma.

The EC wants the two directives to work hand in hand to boost sustainability. As chair of Ferma's sustainability committee Paduano explained: "When looking forward as to how the two will interact, it is important to have in mind two key aims of the European Commission: transparency and accountability. Starting with transparency, one of the aims with the CSRD is to bring about more transparent reporting on sustainability matters. This transparency requirement under CSRD is complemented by the CSDD's requirement for companies to better manage the risks they pose in terms of human rights and the environment. Or, put another way, the CSDD is aiming at making companies more accountable to their stakeholders when it comes to human rights and environmental risks."

But Ferma fears the fact that the CSDD and CSRD do not have the same scope may cause a "headache" for businesses and their risk managers.

"The CSDD broadly speaking has in its scope around 18,000 companies that have essentially more than 250 employees and more than €40m in turnover. The scope for the CSRD is wider since it will cover all listed companies and will directly capture certain SMEs. The CSDD will do that only indirectly through the value chain, which is still significant," said Paduano.

"Another point is that the CSRD reporting obligations may come into play as soon as 2024 (covering 2023 activities), whereas with CSDD the political discussions at EU level might take longer, so the two sets of requirements may not impact companies at the same time. And then there is the point about how the CSDD will interact with various pieces of national legislation across the EU. In short, there is a lot still to be discussed and considered," added the risk manager.

OPPORTUNITY KNOCKS

But despite issues that clearly need to be ironed out, the EC's mounting focus on sustainability risk management offers Ferma members and other European risk managers a real opportunity, she continued.

"You could say that CSRD and CSDD elevate sustainability risk management to a higher profile, but it's also true that regulations in other sectors, notably for financial services firms, mean there is a lot of focus on sustainability from a risk perspective. At this stage, and from our own analysis, it certainly seems that there is a key role to be played by risk managers in contributing to shaping their organisations' sustainability strategy more holistically, as well as for compliance with these various pieces of legislation," said Paduano.

◆ To help shed light on some of these issues, Ferma is hosting a MasterClass on the CSRD on 31 March, and will work with its members throughout the coming months and years to transmit more practical information about how risk managers fit into the sustainability picture. Sign up for the webinar here: **https://register.gotowebinar.com/register/4831891131291938060**

Healthy carrier results unlikely to lead to market softening

Mounting macro uncertainty, seriously exacerbated by the Russian invasion of Ukraine, will likely prevent the insurance market softening this year despite healthy 2021 carrier results

Piazza San Marco in Venice, Italy during lockdown: Covid-19 remains a highly uncertain area and the arrival of a strong new variant cannot be ruled out

◇ RESULTS

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Europe's risk and insurance managers should not allow themselves to hope that coming renewals will be much easier than during the last couple of years because the leading insurers have just published much-improved 2021 results.

The good news for insurers is they have pretty much all posted better combined ratios and underwriting profits on the back of further strong rate rises throughout 2021. Worryingly for buyers, this trend continued into the fourth quarter, particularly in the US.

The carriers also posted strong premium growth, largely on the back of rising prices and despite limiting coverage and capacity on offer in key lines such as cyber and D&O.

Primary specialty lines are the most attractive item on the menu currently for the big insurance and reinsurance groups, and delivered exceptional growth rates and returns for most. The primary market is certainly more attractive than the reinsurance space for risk carriers.

It was not a surprise to see the big reinsurers such as Swiss Re, SCOR and Munich Re all post highly positive results for their primary specialty operations and vow to continue their strategies of balancing their core reinsurance books with higher specialty growth.

Normally at this stage in the cycle, risk and insurance managers could expect a flood of fresh capital to come into the market, particularly at the reinsurance and retrocession/insurance-linked securities end. Opportunistic investors would arrive in search of quick profits and quite rapidly ruin the party for the traditional, long-term players. The fresh competition and easier reinsurance terms would rapidly filter down to the primary market and softening begin.

> "There are currently a range of significant forces at play that strongly suggest [a market softening] will not happen any time soon"

But there are currently a range of significant forces at play that strongly suggest this will not happen any time soon this time around, and risk managers should really not get overexcited about their coming renewals.

So, what are these big forces that should bolster the resolve of the carriers to stand firm, despite their much-improved annual results?

ONGOING COVID IMPACT

First, while the insurers generally posted much lower Covid-19-related P&C losses for 2021 compared with 2020, there remains considerable uncertainty about how these could develop over time.

Some players, including Swiss Re Corporate Solutions, actually

boosted their P&C results with reserve releases for Covid-19. But at the same time, Swiss Re's life and health business posted further Covid-19 losses. This remains a highly uncertain area and of course the arrival of a strong new variant cannot be ruled out.

Second, catastrophe losses remained very high in 2021 and seemed to confirm once again that there is actually little meaning in publishing 'normalised' combined ratios based on these extraordinary events not happening. 'Extraordinary' cat losses are surely now 'ordinary' and need to be recalibrated as such.

Peter Zaffino, CEO of AIG, summed this ongoing concern up neatly during his analyst call after reporting much-improved profits.

"Last year [2021] was the sixth-warmest year on record since NOAA began tracking global temperatures in 1880. Hurricane Ida, estimated at $36bn of insured loss, was the third-largest hurricane on record. In North America, $17bn of winter weather losses was the largest on record for this peril. And $13bn of insured loss for European flooding was the costliest disaster on record for the continent," he said, according to results service *Seeking Alpha*.

"While we've been working over the past few years to reposition our portfolio to limit exposure and dampen volatility, changing weather patterns and increased density of risk in peak zones have caused stress on aggregation and have [hampered] the ability of property underwriters to make appropriate risk-adjusted returns on capital deployed. These changes have caused us to look deeper into the exposures we are underwriting in several lines of business," added Zaffino.

INFLATION ON THE MARCH

Third, inflation is on the march worldwide. This significantly impacts underlying claims values in property and liability lines, and must be reserved for in coming years. This demands strong cashflow and thus puts pressure on rates and reserving strategies.

QBE's Andrew Horton said the combination of natural catastrophes, low interest rates and rising inflation means insurers will have to stand firm in negotiations with customers throughout 2022

Marc Grandisson, CEO of Bermuda-based Arch Capital, told analysts he sees little chance of the market softening this year, as he reported Arch's net profits of $2bn for 2021, against $1.4bn in 2020.

"If you look at the risks that are ahead of us, you still have climate change to deal with, you still have inflation concerns (which I guess leads to potential reserve questioning or analysis), cyber risk and Covid reopening. There's a lot of stuff going on right now that sort of leads the whole market to be a lot more careful and thoughtful… right now it's a very disciplined market [and] we haven't seen anything percolating that would indicate that this would change for 2022," said Grandisson when questioned about the market outlook. This was before Russia invaded the Ukraine.

Fourth, investment returns are looking shaky as both bond and equity markets face huge uncertainty. The interest rate environment does not help.

> **"You still have climate** change to deal with, you still have inflation concerns, cyber risk and Covid reopening"

Carriers simply cannot rely on their investment returns to subsidise their underwriting books. Underwriting returns are more important than ever if insurance and reinsurance company CEOs are to maintain any form of credibility with analysts and investors by delivering reasonably consistent and predictable results.

QBE CEO Andrew Horton said the combination of natural catastrophes, low interest rates and rising inflation means insurers will have to stand firm in negotiations with customers throughout 2022.

"Following another year of elevated natural catastrophe claims costs alongside rising inflationary signals and continued low interest rates, the industry operating environment remains highly uncertain. Because of this, the premium pricing environment is likely to remain positive in 2022," said Horton.

RUSSIA FALLOUT

Fifth, the impact of the war in Ukraine could actually lead to quite significant claims, despite war exclusions in key lines.

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Data and analytics firm Russell Group estimates that more than 500 western built aircraft, with a market value of $13bn (£9bn), are grounded in Russian airports.

The company warned that the aviation war market faces the biggest potential loss since 9/11.

Insurance Insider also published analysis showing that market sources estimate that there are $12bn–$15bn of exposed limits on leased aircraft stranded in Russia, assuming that the annual aggregate caps on war policies apply.

It said that total insured limits are believed to exceed $30bn, but accessing such limits would depend upon losses being recovered under all-risks policies that cover "each and every loss".

Marine and cargo underwriters moved swiftly to affirm war exclusions and mitigate potential losses but, as with the aviation market, lawyers will be trawling through policies to look for loopholes and enable claims to be made.

CYBER MARKET IMPACT

The major credit ratings agencies have all warned of potentially major cyber incidents because of the Russia-Ukraine conflict and imposition of sanctions.

Fitch Ratings said the number of cyberattacks has already increased since the conflict broke out.

At the same time, it said there is the risk of more widespread spillover cyberattacks against other, non-primary targets in line with the 2017 NotPetya cyberattack. That began as an attack on the Ukrainian government and the country's businesses, and quickly spread to the rest of the world.

Fitch said critical infrastructure, such as financial services, governments and utilities, will be the main targets for cyberattacks following the outbreak of war.

"Heightened risk exists particularly for issuers conducting business in these countries or with their governments, as well as for entities or countries that impose sanctions or are deemed to interfere," Fitch said.

"Heightened cyber risk exists particularly for issuers conducting business in Russia, Ukraine or with their governments"

Credit ratings agencies have all warned of potentially major cyber incidents because of the Russia-Ukraine conflict

Most cyber policies now also carry war exclusions of course. But the recent decision by the New Jersey Law Division, which held that pharma giant Merck could make claims on cyber coverage within its property policies because the traditional war exclusion did not apply, sent shockwaves through the market.

Cyber is, of course, a potentially huge market for insurers and reinsurers. Munich Re said during its results presentation that its cyber business is now showing "sustainable profitability and long-term growth", on the back of "substantial rate increases".

Cyber premium growth at Munich Re since 2017 is impressive. Gross written cyber premiums that year were $354m. Last year, the group booked $1.47bn despite restricting cover.

Insurers and reinsurers have reacted to the Merck case, which it seems will be appealed. But have they acted swiftly and sternly enough to prevent significant likely claims filtering through? Legal experts are not sure.

"The ruling, while of only limited precedential value, is of great interest to the market as it is

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WTW's Laura Burns said she is getting calls from clients about forced abandonment claims already

one of the first related to war and cyber. It highlights that insurers should be concerned about the application of war exclusions for cyberattacks, and the need to put in place specific cyberwar and terrorism clauses," Julian Miller, a partner at law firm DAC Beachcroft, recently told *Commercial Risk Europe*.

"Both sides have an interest in clarifying cover, whether they exclude or include. At this point, I don't believe ambiguity is helpful as this is now a much higher probability event than it was. A few years ago, you could have said it was unlikely to happen, now it's a question of when not if," added Michael Bahar, partner and co-lead of global cybersecurity and data privacy at Eversheds Sutherland.

"Insurers need to look at their wordings and make sure [war and terrorism] clauses are up to date for cyberattacks. The threat of Russia-sponsored cyberattacks [due to] the conflict in Ukraine shows that this issue needs to be urgently addressed," said Hans Allnutt, partner and head of DAC Beachcroft's cyber and data risk team.

POLITICAL RISK UNCERTAINTY

International insurers active in the political risk market will be nervous too. Laura Burns, senior vice-president, US political risk product leader for WTW, told our sister publication *Business Insurance* that she is in a lot of contact with risk managers.

She said she is speaking with existing policyholders to determine, for instance, if a notice of circumstance that could give rise to a loss should be filed with an insurer. She is also dealing with enquiries from prospective clients at companies operating in countries such as Poland.

"We are getting calls from clients with respect to forced abandonment claims already," Burns said. These claims result from a policyholder's need to abandon an operation or shut it down, even if they have not suffered property damage. Political risk policies are typically multiyear and can go out as far as 20 years, added Burns.

Neil Duchesne, managing director at Marsh JLT Specialty, said claims arising out of the conflict could include physical damage losses from political violence, as well as forced abandonment of assets and forced divestiture of Russian shareholdings as the crisis deepens.

> **"Insurers need to look at** their wordings and make sure [war and terrorism] clauses are up to date for cyberattacks"

One possible threat to businesses is the potential seizure of assets by Russian officials in retaliation to sanctions. Other exposures include trade disruptions and cyber threats.

Add to this the very difficult-to-assess effect on the insurance market from the global supply chain crunch that the Russian invasion and restrictions on travel are going to cause, and you have a highly uncertain outlook for the market.

WISHFUL THINKING

Given these circumstances, risk and insurance managers would be well advised to tread carefully in their coming discussions with CFOs about likely insurance costs and renewals this year.

As noted above, CFOs could be forgiven for wishfully thinking that the market may be ready to turn after insurers posted such healthy 2021 results on the back of hardening during the last two to three years.

But the macro political, economic and financial outlook is arguably even worse now than at the height of the Covid-19 crisis, and don't forget we are still paying the economic cost of the virus.

For this reason, prudent risk and insurance managers would be well advised to firmly quash any hopes held by their CFOs of an overall market softening this year and into 2023.

Of course, the insurance and reinsurance company leaders always stress that now is not the time for a return to the soft market during their analyst calls, even when announcing record profits.

But this time, given the scale of the uncertainty faced by us all and potential for serious direct and indirect losses from the Russia-Ukraine conflict, some of the quotes should probably be taken literally this time around.

Insurance industry willing and able to support risk managers on ESG

◇ ESG

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Faced with a rising tide of environmental, social and governance (ESG) reporting, risk managers are turning to insurers and brokers for help with data and risk assessment tools.

Large companies are increasingly required to disclose information on a range of ESG-related risks, including climate change, diversity, inclusion and, most recently, supply chains. Stakeholders such as banks, insurers, investors and supply chain partners are requesting more ESG information, while governments and regulators are busy drafting and implementing new mandatory disclosure requirements.

In Europe, the proposed EU Corporate Sustainability Reporting Directive (CSRD) will require large companies to report their sustainability risks and opportunities, as well as their impact on the environment. From April, UK companies will be required to report climate data in line with recommendations from the Task Force on Climate-Related Financial Disclosures (TCFD). Meanwhile in the US, the Securities and Exchange Commission has been reviewing its ESG disclosure requirements with the intention of updating its climate and ESG reporting guidance.

According to Eugenie Molyneux, chief risk officer of commercial insurance at Zurich Insurance, requests from customers for help with ESG risks are growing. "We do see customers approaching us with respect to assessing risks. That includes supply chain, but climate change is a key topic at the moment. In particular an assessment of the physical risks," she says.

Companies in Europe will soon have to comply with the proposed EU Corporate Sustainability Reporting Directive

"Climate change is a key topic at the moment. In particular an assessment of the physical risks"

RISK MANAGER ROLE

Risk managers can play an important role in ESG reporting, particularly on climate change assessments and risk related disclosure.

The involvement of risk managers in sustainability matters, and their requests for support from their brokers and risk advisers, varies depending on the specific reporting and disclosure requirements of their organisations, says Bruno Dotti, continental Europe practice leader, enterprise risk services and ESG at Marsh.

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Sustainability managers typically lead the overall sustainability reporting effort, with risk managers providing information about the risks associated with the most important material topics of the organisation, explains Dotti. "This information comes primarily from the annual ERM risk assessment cycle and/or from other forward-looking strategic risk assessment exercises," he says.

For more specific reporting elements, such as carbon emissions disclosure, risk managers may have a more active role, especially if their organisation seeks to comply with the TCFD requirements, Dotti says. "Climate is an area with increasing disclosure requirements, and risk managers have a key role in understanding the risks," he adds.

In addition to providing risk information, risk managers can coordinate the overall disclosure effort, explains Dotti. "We can expect, especially in Europe, risk managers to be increasingly involved in sustainability-related matters, due to obligations arising from requirements associated with the EU taxonomy and the CSRD. This may lead to an increase in the number of organisations with risk and sustainability responsibilities consolidated into the same function," he says.

Once a risk is identified, the most challenging step can be to form a granular view, says Molyneux. "Data availability is a key input, so if there are data challenges then one's risk assessment may also be less robust than is desirable for decision-making purposes. This is particularly true where a risk is still emerging or evolving," she says.

Take climate change as an example. Scientific estimates of future warming already contain a high degree of uncertainty, points out Molyneux. "When you layer on to that the uncertainty and effect of mitigating activities that a third party might take, and finally add data availability challenges, then the assessment may be valuable from a directional perspective in the early stages. As time goes on and estimates firm up, evidence or data is gathered and mitigating actions are known, then the assessment itself also becomes more robust," she says.

"We can expect risk managers to be increasingly involved in sustainability-related matters"

For specific reporting elements such as carbon emissions disclosure, risk managers may have an active role

ESG CHALLENGES

According to Dotti, risk managers face several ESG challenges. These include understanding 'transmission' channels and how to balance risk quantification with more qualitative data.

"A better understanding on the first point will properly complement the information coming from ESG ratings," says Dotti.

"The second point is especially true for climate change. Aside from the physical risks, especially the acute ones that are already here, most exposures are medium and long term in nature. It is never easy

to balance the need of quantitative information, which is frequently requested by international best practices for stress-testing purposes, with the significance of this information that will inevitably deteriorate over time," he adds.

INSURERS' ROLE

Insurers are uniquely placed to assist customers with their ESG assessments, given the nature of the industry and its access to data, according to Simon Tighe, group head of investments, treasury and credit risk at specialty insurer Chaucer. His company recently teamed up with Moody's to deliver a new scorecard to evaluate a business's ESG credentials.

"One of the big issues with ESG is the availability of data in a consolidated location. You can access data but normally it is through multiple channels. What we are doing is bringing that together in one place and consolidating it, removing the pain point for customers of having to answer questionnaires and then overlaying that with the risk assessment skills of the group," says Tighe.

"If we can provide a Chaucer view of the counterparty's ESG profile, then that counterparty can use that to create their transition plan. Key to remember is that Chaucer is committed to supporting the transition to sustainability and this scorecard is a tool that will help with that," Tighe says.

Molyneux also believes that insurers are in a good position to help risk managers with their ESG requirements. "Through years of underwriting risks, insurers have extensive experience at assessing risks. Therefore, at Zurich we are very well versed in assessing a wide range of risks, including ESG related risks," she says.

While each company should report what is relevant to them, there is value to be gained by looking at ESG-reporting leaders across a wide variety of industries, explained Molyneux. It also helps to understand the journey that companies have been on, reporting-wise. In most cases, there is natural improvement and progression, she says.

"With ever-increasing requirements, whether from investors, regulators or others, in the area of ESG reporting, this is an essential topic for companies to focus on. A lack of plans for, or clarity surrounding, ESG can be an existential threat to a company," Molyneux warns.

Insurers are uniquely placed to assist customers with their ESG assessments, given the nature of the industry and its access to data

KEY TOPIC

With sustainability now a key strategic and risk management topic, Marsh is also developing its climate and sustainability risk value proposition, according to Dotti.

"We support clients in embedding ESG risks into their ERM/risk management frameworks, with the goal of prioritising and improving ESG risks. We have developed an ESG rating that is both risk- and performance-centric, and enables clients to steer their improvements towards the factors that will generate more stakeholder value," he says.

"On climate, and especially on physical risks, we use both our scenario modelling capabilities and risk engineering expertise to support clients in assessing the magnitude of these risks through a technical lens, which is very much required to direct long-term investments, especially in capital intensive sectors. However, our capabilities expand into helping clients understand, manage and report on the breadth of climate risk across transition, physical and liability," he adds.

AMRAE sets the tone for 2022: Rebuild trust and real partnerships to cope with volatile risk environment

The 29th Rencontres de l'AMRAE took place in Deauville, Normandy at the start of February

◇ CONFERENCE

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The 29th Rencontres de l'AMRAE that took place in Deauville, Normandy at the start of February was the first major face-to-face gathering of risk and insurance managers and their partners in the insurance sector on mainland Europe since the last AMRAE meeting back in February 2020.

Over the years, the gathering in Deauville has arguably become a corporate-insurance version of the Monte Carlo Rendez-Vous, as French risk managers takes the chance to hold important face-to-face meetings with their key brokers and carriers, discuss what happened at the last renewal and start looking forward to the next.

The carriers that normally attend AMRAE were quite possibly relieved that Covid-19 prevented such face-to-face contact during the last couple of years, as French risk managers became increasingly frustrated and angry with the attitude of their supposed partners during renewals in this difficult period.

The market was turning before Covid-19 hit, of course. But the arrival of the virus appears to have hardened the stance of insurers and, some suspect, gave them the excuse to make brutal underwriting decisions on prices and limits on offer, which bore little relation to loss experience or exposure.

AMRAE's member survey of 65 insurance buyers published last October found that 95% suffered rate increases in their P&C covers during their latest renewals.

> **"At a moment when** companies try to address cyber risk... the market has had a tendency to evaporate"

Exclusions have escalated and wordings have become more generic, indicating that underwriters are taking less heed of risk management at individual company level.

The situation is particularly worrying in segments such as cyber, where buyers are still struggling to find the limits they need when their exposures are growing at breakneck pace.

"At a moment when companies try to address the risk, and have understood that cyber insurance is important, the market has had a tendency to evaporate," said Léopold Larios de Piña, a vice-president at AMRAE and head of group risk management at Mazars, as the results of AMRAE's member survey were launched in Paris.

PARADIGM SHIFT

Not surprisingly, AMRAE president Oliver Wild chose to focus on this topic of rebuilding partnerships through the association's recent event.

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Construction Risk Management

Planning for the new world

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An expected boom in global construction projects will require new approaches to managing risks for risk and insurance managers but also presents a growth opportunity for the insurance industry, and will hopefully attract new capital and new products to the market.

Population growth and urbanisation, as well as climate change, are expected to be the main drivers in the demand for infrastructure construction and home building in coming years. Climate change and the race to net-zero targets are arguably the greatest challenges that face the construction industry. They will lead to big changes in construction processes and methods, while the industry is already undergoing a technological transformation, with digitalisation and growth in modern manufacturing methods. As the sector grows, so too does the risk of greater pollution and waste.

The industry is set to be a global engine for economic growth and recovery from Covid-19, with average annual global infrastructure construction forecast to grow by 5.1% per year. Some of the highest growth rates will be in North America and Asia-Pacific, while western Europe is forecast to grow by 23%.

The long-term growth in the construction market will bring new challenges to risk and insurance managers and an increased need to transfer risk into insurance programmes. It could also lead to an increase in complex insurance claims.

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DAY 2

Why are construction risks so complex? The insurers' views...

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AMRAE president said that without risk management, there is no trust between the parties

"Have you noticed the paradigm shift?" he asked during his address. "Risk mapping is no longer a mere tool, it has become the reassurance, before insurance, that all lines of defence are solid and agile… Not a single responsible investor will risk their money without it. In other words, without risk management, there is no trust between the parties," he continued.

"I understand that organisations are changing their skins and I hear you too, you risk managers… (who are) vexed by the absence of our historical allies," Wild added, obviously referring to the carriers.

Robert Leblanc, chairman and CEO of Aon France, told *CRE* during the event that French buyers faced severe challenges at January renewals and there are few, if any, signs that the situation will get any better in the near future.

"Renewals were difficult in January. Maybe even more difficult than last year," he said. "There was a reduction of capacity and it was not easy to communicate with underwriters."

"At several large insurers, the people we talked to have no power to make underwriting decisions. They needed to refer to higher echelons that are far away from our clients. The chain of information exchange is too long, and at the end of that chain there are people who do not know the companies that we are talking about," Leblanc added.

He complained that underwriters who represent global insurers in France have taken an automated approach to analysing clients' business, taking no heed of risk management efforts made by companies to make their risks more attractive to the market.

"They do not even look at clients' dossiers and [instead] say they do not meet the requirements of the computer. Many processes are closed too quickly. It all makes the renewal work enormously more complicated," Leblanc said.

CAPTIVES

No-one should be surprised then to find AMRAE working hard to push the concept of captives in France, and at the highest level.

> **"At several large insurers,** the people we talked to have no power to make underwriting decisions"

When faced with hugely challenging risks such as cyber, pandemics, climate change and natural catastrophes, French corporations cannot just sit and hope the insurance market will step up to the plate.

The experience of the market during the last three years has surely shown this. It is to be hoped that the French Finance Ministry will deliver the goods and come up with a workable solution that will persuade the many AMRAE members currently looking at captives to take the leap and take more control of their risks.

INTO THE LION'S DEN

Joachim Mueller, CEO of Allianz Global Corporate & Specialty (AGCS), was invited to give the keynote speech from the insurance sector at AMRAE's conference, and was brave enough to take the podium – entering the lion's den perhaps.

Mueller did not mince his words. He responded that AGCS, while having significantly rewritten its book during the last few renewals along with most rivals, is also seriously investing in the data, analytics and people to help move the market forwards, away from the old cyclical ups and downs that help no-one and onto a more consistent and technical future.

As he and Oliver Wild stressed during the event, this really is all about genuine collaboration and partnership, not fine-sounding words that are forgotten when the market takes a shift following the next big event.

It really will not be good for anyone if carriers continue to hunker down and play an overly defensive game, then see their core customers seek out alternative options for the wrong reasons.

This does need to be a team game, as France and the rest of Europe prepares to deal with the consequences of the Russian invasion of Ukraine, the ongoing global supply chain crisis and the next major catastrophe that will inevitably follow.

Following are some of the leading stories *Commercial Risk Europe* published during this year's AMRAE meeting in Deauville, stressing the need for a new spirit of partnership in the risk and insurance sector during 2022

Wild calls for greater trust from insurers to rebuild mutual confidence

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The president of France's risk management association AMRAE has urged the insurance partners of French companies to "trust" them in order to restore mutual confidence in the marketplace.

Speaking at the opening session of the 29th Rencontres de l'AMRAE, Olivier Wild also said risk management is a "vaccine" against fears over taking the necessary risks to make the best of the post-pandemic business relaunch.

"Dear partners, trust us," Wild said, referring to the "historic allies" of French companies and their risk managers. He did not mention the insurance industry specifically but it was clear it was being addressed.

AMRAE, as much as other European risk management associations, has been vocal about the constraints made in recent years by insurers and reinsurers, which have slashed capacity in key lines such as cyber and raised prices across the board.

Risk managers in France and across Europe concede that, by 2019, the market was due for a correction after more than a decade of falling prices and a spate of costly natural catastrophic events.

But buyers have complained that, currently, underwriters are not taking into account their risk management practices when pricing risk.

Wild also used the platform provided by the Rencontres to make a strong defence of the risk management profession, especially at a time when ESG concerns are focusing the minds of companies and investors.

Wild said companies must not fear taking risks that are necessary in the post-Covid-19 recovery.

He stressed that, in that context, ESG-focused companies have already understood the importance of a responsible approach to risk. "I have good news," he said. "There is a vaccine: risk management."

AMRAE demands collective solutions for cyber coverage

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AMRAE's leadership and members are pressuring insurers to up their game in the critical area of cyber risk, or face losing a potentially huge future market as companies "go elsewhere", warned the association's president Oliver Wild.

French risk and insurance managers struggled along with their peers across Europe to find adequate cyber coverage at recent year-end renewals.

Limits on offer have been evaporating as prices spiral, leaving risk and insurance managers struggling to complete their programmes.

Wild said the approach from insurers simply does not make sense, when only five years ago they were talking of cyber being the only game in town.

He also said AMRAE members are frustrated by the lack of appreciation shown by carriers for good risk management and loss prevention work carried out by clients in recent times.

But he conceded that part of the problem is the lack of demand from SMEs, and public bodies in particular, for cyber cover. This is not making it easy for players in the insurance market to build an adequate pool of risks to diversify their books and offer better terms and conditions.

A big push from the whole risk and insurance management community is needed to overcome this supply-and-demand "imbalance", said Wild.

"Cyber is a typical example of insurers' strong aversion to risk. This is mainly because of the lack of dialogue on the good work done by companies. Cyber is very high on risk maps now and there has been a very strong investment from companies to develop a platform and build frameworks to deal with cyber crises," Wild told *Commercial Risk Europe* as the AMRAE Rencontres got underway in Normandy.

"Obviously it is good to have such protection mechanisms in place, but the hackers are ahead of the game. Therefore, we need to balance protection and training to manage cyber crises… We have been calling for more dialogue for some time. Customers need a common understanding, questionnaires and the like to agree what level of protection is expected," continued AMRAE's president.

Wild conceded that AMRAE members have to make an effort to constantly upgrade their cyber loss prevention and risk management system, and 'sell' those efforts to insurers.

But he also feels strongly, along with many risk and insurance management leaders in Europe, that insurers haven't covered themselves in glory during recent renewals in this critical line of business.

"We need to rebuild those strong partnerships with insurers and not have to go to a new carrier every year. Today, price is not really the issue because often we don't even get a quote. Not even getting an answer at renewal is not acceptable," said Wild.

"If you don't have consistency, you cannot make an informed decision about what limits you get… Therefore, at Deauville we are asking the market to sit around a table and work this out. If they don't, then there will be other solutions from risk managers and not just captives," concluded Wild.

AMRAE hopes for French captive legislation by the summer

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French risk managers can expect comments from the European Commission on proposals to help with the creation of captives and broader self-insurance provisions in France in the near future.

Legislation will follow hopefully by the summer but certainly before the next year-end renewals, according to AMRAE president Oliver Wild.

During AMRAE's 2022 annual conference, Wild updated members on the progress of the association's campaign to make it easier for French companies to create captives in France.

Wild explained that while it is disappointing that provisions for captives and other self-insurance mechanisms had not been included in the latest French Finance Bill, he is confident that it will happen this year.

This will hopefully mean that French risk managers can enjoy the same kind of environment for captives as other onshore EU domiciles – such as Luxembourg, Ireland and Malta – making the country a "fertile land for captives", Wild told *Commercial Risk Europe*.

"On captive solutions, in the government and at all levels it is agreed that provisions are needed for self-insurance for smaller companies and captives for larger companies. It is agreed that more flexibility is needed to set aside provisions for a rainy day," Wild explained.

"We expected legislation in France at the end of the last quarter but that did not happen. We then decided to submit the proposals at EU level because France has presidency of the EU. Comments are expected in the next couple of months and legislation hopefully in the summer, but certainly before the renewals of January 2023," he added.

"The proposals are not that different from those in place in Ireland and Luxembourg, so don't expect any major changes from those. This will allow France to become a fertile land for captives. Currently, there are only nine or ten French captives. But our latest survey identified at least 50 captive projects underway, obviously stimulated by the hard market," continued Wild.

Wild said another great benefit of captives is that senior company managers and directors such as the CFO will join the captive board, thus raising awareness and appreciation of the value of structured risk and insurance management.

Risk managers need 'more skin in the game', says Mueller

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Joachim Mueller, CEO of Allianz Global Corporate & Specialty (AGCS), has responded for calls from AMRAE for a more collaborative approach from the insurance market by saying that his firm is certainly up for the challenge.

During his keynote speech at the AMRAE conference in Deauville, Mueller said that following the group's stiff re-underwriting process in recent renewals, which saw it shed €700m of premiums, AGCS is back on track and ready to grow again.

Mueller said, however, that a big challenge lies ahead as risk managers and their partners in the insurance sector face up to huge and fast-developing emerging risks, not least those brought by climate change and cyber.

He said AGCS is investing heavily in improving its data collection and analysis to help more effectively price risk and recognise the risk management and mitigation efforts of customers.


Joachim Mueller

But Mueller warned AMRAE members that, while insurers clearly need to up their game, so do their customers. Greater transparency and better data are needed from clients to help insurers model and underwrite risks, said Mueller.

Risk and insurance managers also need to more effectively demonstrate that their risk management strategy is a "core part of their corporate DNA, from top management to employees", he said.

Mueller said that, given the scale of the challenge facing customers and insurers, risk managers will need to have "more skin in the game".

"Capacity is restricted and is likely to remain so for the more technical and highly rated insurers. This means companies should also be ready to have more 'skin in the game' through higher self-retention or captives," he said.

"It's a new world, a changing world. And this new situation requires a new response. Not just from insurers, but from business as a whole – and naturally the risk management industry should be at the forefront of this. It's not an easy journey because it requires transformation, not just in what we do on our own but also in how we work together. Because partnership, collaboration and joint efforts are, for me, at the centre of this," said Mueller.

Belgium

RISK FRONTIERS EUROPE: **BELGIUM**

Commercial Risk Europe has partnered with HDI Global to launch its annual survey of European risk managers. The Risk Frontiers Europe 2022 survey will seek insight from risk managers on the challenges they face as we emerge from Covid-19 and face up to a host of new risks following Russia's invasion of Ukraine. The research will ask how recent renewals went for buyers, their expectations for the year ahead and where they want insurers to improve. We will also ask risk managers how their roles are changing and what skills they need to meet the ever-changing demands placed upon them.

To kick off the annual survey, we spoke to risk managers in Belgium to gather their views. This builds towards delivering the final 2022 report later in the year, to help champion the cause of the European risk and insurance management community. We will cover our discussions with leading risk managers over the next few issues of *Commercial Risk Europe*, but readers can also take part in an online survey that will feed into the final Risk Frontiers Europe 2022 report. To take part, please visit: **https://www.surveymonkey.co.uk/r/RF-22**

War in Ukraine threatens all economies, warn risk managers

Russia's invasion of Ukraine is threatening stability across Europe and could impact businesses of all sorts and sizes, warned a group of Belgian risk managers speaking to **Liz Booth** as part of our Risk Frontiers Europe 2022 survey

The war in Ukraine is understandably front and centre of everyone's mind at the moment, not least for the human suffering. It will also have a big impact on business in the year ahead.

A group of Belgian risk managers taking part in our Risk Frontier Europe 2022 survey are worried as the war in Ukraine shows no signs of stopping.

For Nathalie Vandenbroucke, insurance, risk and compliance manager at Eiffage in Benelux, the crisis has bought political risk a little closer to home. "We have sub-contractor teams in Poland who have stopped work. They were from Ukraine and have chosen to go home to help their families or even to fight," she said.

And for Marie-France Theys, corporate risk and insurance manager at Schneider Electric, the threat is closer still. "We have a distribution centre in Ukraine and about 150 employees who are facing incredible difficulties to move out or to stay in their country and support the needs of their families."

She has had little direct involvement in the response because Schneider set up a crisis management team with business continuity planning and logistics experts to manage the rapidly evolving situation. Decisions about whether or not to close a centre, or what will happen next, are being managed by that team and senior management, Theys said.

Russia is a major country for Schneider and again, the decisions will be taken at that higher level, Theys added.

KNOCK-ON EFFECTS

The group of risk managers agreed that whether or not they have direct links to the conflict, there will be repercussions for all businesses. Bart Smets, head of insurance and risk at Umicore, said: "The main risk for this year is supply chain, whether or not it's related to the Ukraine situation."

He added that the greatest problem is the lack of visibility on what supply chain risk might look like in even a few weeks' time. Smets warned that the procurement of raw materials is likely to slow down even further in the coming weeks – something that started with Covid-19.

Vandenbroucke noted that the risks ahead go far beyond the Ukraine crisis, citing issues like ESG and CSR that need to be maintained, whatever the situation facing business.

For example, Smets said Umicore has a total no-tolerance policy towards child labour. It is actively working to ensure that there is no risk of child labour involvement throughout its supply chain.

Frédéric Lycops, corporate risk and insurance manager at Recticel, said his firm has strict guidelines and rules on ESG matters when dealing with suppliers.

CYBER THREAT

For Yves Brants, risk manager at NRB, the situation is a little different. As the risk manager at an IT company, the greatest risk is a cyberattack. "Our main risk is about cybercriminality as a result of the conflict [in Ukraine]," he said.

It is an issue that has been raised by several European governments. Belgium is at particular risk because it is also home to the European Union, NATO and other global organisations that might be a target for Russia, explained Brants.

He said his company is facing the risk of cyberattacks every day, but this is not his only concern. "We do have supply chain issues because it has become hard to obtain various electrical components – many of them come from China and that market has yet to fully recover from Covid-19, so is not back up to full steam," he said.

TIME TO ADAPT

It is difficult to mitigate supply chain issues but it can be done, said Theys. "We are fortunate because we operate in more than 100 countries. We are able to balance our risks between various countries, when one is up, another might be down, but overall we find a balance on a global level. Our supply chain has proved its resiliency," she said.

"The ability to adapt is key. We need to be ready to adapt to changing geopolitics or economics and that has been one of the strengths of our company in finding alternative solutions when things get tough. We have changed a lot to make sure we can cope," she added.

By way of example, Theys said her company has set up mirror factories, so if one has to close for any reason, the other can carry on and production does not stop. "It is a little like the data centres that many firms established after 9/11 to ensure they could carry on if their main office was hit," she explained. "I think resilience is key."

The group of risk managers all acknowledged they will be facing challenges when it comes to rising costs and inflation. Belgium has long been relatively dependent on Russia for its gas supplies, and even before the Ukraine war was seeing big price rises.

"Look at gas prices, they have risen by a factor of 30 in a year. It is not only a risk for individuals but it is an emerging risk for us as a company, particularly for those involved in manufacturing. Rising energy prices will have a huge impact for us all," said Smets.

"I don't think we will be able to pass all these increases onto our customers and it could put certain businesses at risk," added Lycops.

The group expects to see some business close as a consequence in the coming months, which is yet another risk to factor into their plans.

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Global Programmes

Managing global programmes in a changing world

15–16 JUNE 2022 |
Leonardo Royal London Tower Bridge, London

After a couple of tumultuous years, we have all learned to be adaptable and to cope with fast-changing environments. Looking ahead, it is clear some things will have changed forever, others are in a state of flux and a few things will remain the same as always.

This two-day conference will consider what living with change will look like in the context of global programmes. It will cover issues such as supply chain vulnerability, flexible working, the acceleration of digitalisation, higher taxation, growing inflation, greater protectionism and, undoubtedly, ESG.

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CONFERENCE

SESSIONS INCLUDE:

DAY 1

Living with change
Lessons learned
Claims management
2022 and the state of the market
Integrating employee benefits
Technology and digitalisation
Workshops: Insuring different multinational exposures: Property; Casualty; D&O; Cyber; EIL

DAY 2

Changing world, changing risk landscape
A new world for tax and regulation
Case study: a global programme – first steps
A level playing field
Retentions on the up
Finding the alternatives
Workshops: Insuring different multinational exposures: Business Interruption; Credit and political risk; PVT Marine; Accident and health

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Drinks reception and networking, full access to all interactive workshops, exhibitor area

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Live streamed sessions, virtual networking, selected workshops available.

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IN ASSOCIATION WITH

Risk and insurance management makes big shift

◇ PROFESSION

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Risk managers have seen their jobs evolve massively, in a process that started about five years ago, according to a group of Belgian risk managers.

Speaking as part of our Risk Frontiers Europe 2022 survey, the group agreed there has been a seismic shift towards enterprise risk management (ERM) and away from pure insurance management.

Nathalie Vandenbroucke, insurance, risk and compliance manager at Eiffage in Benelux, said it has been an evolution rather than a revolution for her, but is still very much a work in progress.

CHALLENGES

The transition has not been without its challenges. Frédéric Lycops, corporate risk and insurance manager at Recticel, admitted he was anxious when his company announced his role would be changing.

> **“ You have to step** out of your comfort zone, so it was an eye-opener”

“I welcomed the opportunity but you have to step out of your comfort zone so it was also an eye-opener,” he said. Lycops added that the challenge was one he was glad to accept.

But not everyone has had to face the same challenge and every role is slightly different.

The group acknowledged that much depends on the size and format of the organisation you work for.

For example, Marie-France Theys, corporate risk and insurance manager at Schneider Electric, is not involved with ERM because the group has a separate ERM department.

The good news, she said, is that the ERM team and her team are increasingly working together. This is resulting in better outcomes for the business as a whole, but their separate roles remain clearly defined.

For Theys, working within a large organisation also means there is a separate compliance programme and sustainability department.

“Since 2020, the organisation has changed, so we have insurance, risk and audit all working under governance. As a result, things like ESG are gaining in importance and we now ask all our suppliers to comply with ISO26000 evaluations, and we verify that they have reached certain standards. It is a very new approach for us,” she explained.

ESG CONVERSATION

Being on the stock market adds to the pressure and the need for measurable ESG standards, she said.

The group of risk managers agreed that demands from insurers are also driving the ESG conversation internally. Insurers increasingly use ESG scores when evaluating risk. Not meeting their demands means it is harder to get the right cover, explained the risk managers. This trend is only likely to grow, the survey participants agreed.

The group also expects more environmental legislation as ESG demands grow.

Is cyber risk becoming uninsurable?

◇ CYBER

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Risk managers in Belgium say the question about whether some risks can remain insurable is beginning to reach board level.

Taking part in our Risk Frontiers Europe 2022 survey, the group said cyber risk insurance is the biggest area of concern.

Bart Smets, head of insurance and risk at Umicore, was among those who said that overall, the last round of renewals was not as tough as in the preceding two years. However, cyber cover was the outlier as it was still immensely difficult to find the right cover with the right capacity at the right price, said Smets.

"For the most part, the last renewals were okay. Rates for most of the programme seem to be more stable than in the past two years and we achieved what we needed with either the same prices or maybe a 5% increase. On certain lines, we now have higher limits. Overall, it was a very positive process but we were making more use of our captive to achieve that," he told *CRE*.

Smets is hopeful that prices will either soften a little or stabilise further this year. "For certain lines, particularly property and liability, I think they have reached the maximum that they can in terms of increases," he said.

CYBER CONCERNS

However financial lines were not so easy, in particular cyber, he continued. "Cyber remains a big problem. We are beginning to have questions about whether cyber can remain an insurable risk at all," he said.

His words were echoed by others in the group. Frédéric Lycops, corporate risk and insurance manager at Recticel, was among them. "I have had discussions internally about whether cyber will continue to be an insurable risk," he said.

The risk is that the cover will become too expensive, even if companies can access the capacity they need. Buyers are already


Bart Smets

seeing prices rise for much less cyber cover. The question has become whether or not they can manage the risk internally without having to rely on insurance.

Some of the group felt there will be more money spent on cybersecurity to negate the need for insurance, while others felt they would buy what they could afford and use insurance as a true last resort.

TOUGH QUESTIONS

Whether insurance remains relevant and cost-effective is one of the big questions that risk managers and their boards have been addressing during the past couple of years.

Most risk managers have faced tough questions from their boards about the cost of insurance and whether it is worth the investment as prices rose in the hard market. The risk managers admitted it has left them with a sour taste in the mouth from the whole experience.

And they are not out of the woods yet. Marie-France Theys, corporate risk and insurance manager at Schneider Electric, remains disappointed by the changing level of decision-making from insurers.

"We are still being kept at a distance from the decision-makers within the insurance companies. It is much easier for an insurer to refuse your coverage when they are working at such a distance. The relationships we have with local offices have not been lost but the ultimate decision to cover or not is beyond their control," she said.

"It also means there is a lack of real understanding of what we are about, how we manage our risks and what we need form the insurer," she added.

Nathalie Vandenbroucke, insurance, risk and compliance manager at Eiffage in Benelux, summed it up: "If you think what we went through in the past two years as risk managers, we were getting hurt from our boards and pressure from insurers. But we have an opportunity to think about risk and transfer in different ways and also to think more deeply about prevention."

WHOLE PACKAGE

That brought Lycops onto the subject of what insurers could do to better serve their clients.

"It is not just about pricing but about the whole service package. They could be using new technology to assist us with loss prevention, among other things," he said.

Smets added: "They need to invest in technology – but for their own sake. As an insurer, they need to evaluate the risks better. But as insureds, we also need to take control of this and own the information that we have. We need to be able to explain to insurers what we need and to be able to argue why they should be involved with these risks."

None of the risk managers are expecting anything but tough times ahead and they acknowledge that there will be more seismic shocks, either within Belgium, Europe or on the global stage.

They are disappointed that discussions on things like pandemic pools appear to have fallen by the wayside without anything concrete being achieved. They said efforts early in the pandemic appear to have come to nothing and there is concern that nothing will be done until the next crisis.

The group agreed that part of the risk management role is to think ahead and not just fire-fight once the blaze is alight. There was also a feeling that some of the emerging risks are becoming simply too big for any one organisation to handle.

They believe that going forward, governments are going to have to step up with more than short-term debt solutions, free loans or moratoriums.

SPONSORS

Evolution not revolution

◇ HDI GLOBAL

Dealing with the unexpected is second nature for insurers but these last few weeks have been particularly challenging, **Chris Staes**, managing director of HDI Global Belgium, sponsor of this year's Risk Frontiers Europe survey, tells **Liz Booth**


Chris Staes

In a month in which the news has been dominated by the Ukraine crisis, it is no wonder that political risk is top of mind for many in the insurance industry across Europe.

Chris Staes, managing director of HDI Global in Belgium, is no exception. "What is going on in Ukraine is a major concern, not just for us as insurers but for clients and brokers too. There has been an immediate and necessary focus around sanctions and compliance to ensure we are doing the right things as the situation changes around us," he says.

"Every day it seems that new sanctions are being imposed, which we must comply with," he adds.

Staes says this is particularly true when it comes to ensuring global programmes remain compliant and are functioning properly. While Belgium falls under the European Union sanction framework, as a global insurer HDI Global faces a host of sanction regimes and has to ensure both it, and its clients, remain compliant.

SUPPLY CHAIN

The second major risk from the Ukraine crisis is supply chain-related, and particularly energy supply, says Staes. He acknowledges that it is way too early to predict what will happen, but expects that both energy and food will be in short supply following Russia's invasion of Ukraine.

> **"There is so much** interdependency throughout the entire supply chain and insurers are not immune"

"Belgium is too dependent on other countries for gas and the price has gone up five or six-fold from just six months ago. On top of that, we also still have the impact of the Covid-19 pandemic, which continues to disrupt some supply chains and is fuelling price inflation," he says.

These factors will produce new risks for clients and insurers. "When the prices of raw materials are rising because of shortages, so does the cost of everything else – including all the spare parts needed to rebuild after an insurance claim," warns Staes. "There is so much interdependency throughout the entire supply chain and insurers are not immune."

Although it is difficult yet to assess the impact on claims, it is something that HDI Global will be monitoring closely.

CYBER AND OTHER RISKS

The insurance industry will also be keeping a watchful eye out for any surge in cyberattacks. This is something that many European governments, including Belgium, have warned could happen in the wake of Russia's attack on Ukraine.

"There may be business interruption as a result of a cyberattack. Clients need to be better prepared and to optimise their cybersecurity. But it is still too early to tell what will actually materialise," says Staes.

Despite the war, he stresses that is important not to forget other risks, pointing to natural catastrophes in particular. "Only two weeks ago we had a major storm, storm Eunice, which will result in one of the biggest claims for the Belgian property insurance market," he says.

However, that brings Staes back to supply chains once more. He points out that many of the claims from storm

Eunice will be impacted by the supply chain crisis that existed before the war in Ukraine, a leftover from the Covid-19 pandemic.

"As an insurer, it is so important that we emphasise our risk engineering capabilities and prevention services. We try to discuss that with our clients. It is about transparency and collaboration," stresses Staes.

Expecting the unexpected has never been more apt, he continues. "Two weeks ago we were worrying about storms, now it is once again cyberattacks and, of course, the impact of the Ukraine crisis. Before that it was the pandemic, and that has not gone away yet either. Risks are becoming more and more complex," he warns.

PARTNERSHIP

HDI Global positions itself as a stable partner for the long term and Staes says the past two years have shown the value of this approach. Rates have risen but Staes says that through disciplined underwriting and a one-to-one approach, HDI Global has managed to maintain and even grow its client base.

> **"We are paying a lot** of attention to the environmental part of the conversation. We have a goal of net zero by 2030 for our own operations"

The company's strength in captive management and other alternative solutions has also paid dividends. It has been able to support clients as they looked to new mechanisms for their programmes, says Staes. The insurer adds that it is hard to predict what might happen for 2023 renewals, but notes that the Ukraine-Russia situation may well have a bearing on proceedings.

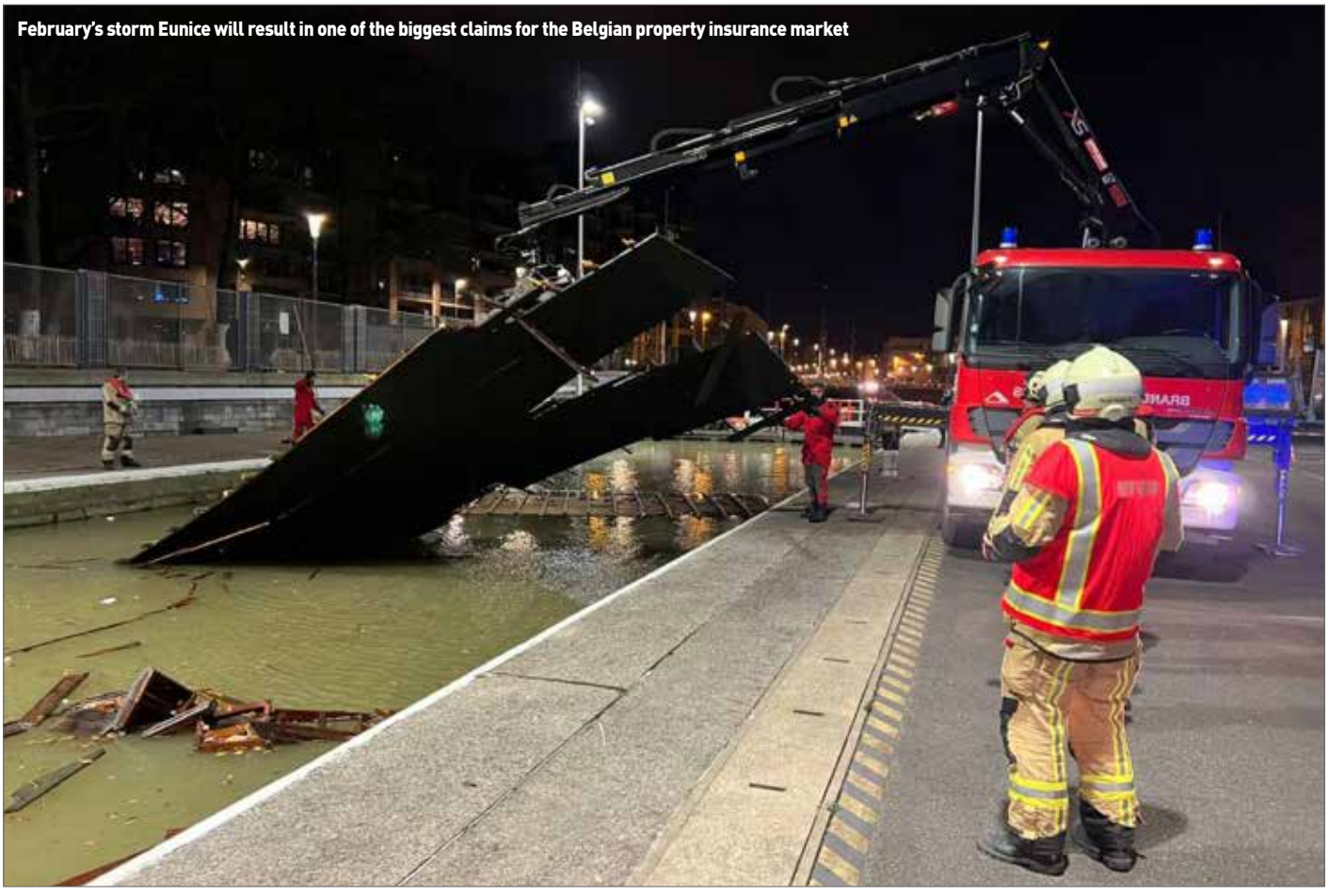
But he does predict that there is unlikely to be an even picture for future renewals, with cyber an area of particular concern. "With cyber we need to get a clear view of the risk situation. Transparency between us and our clients will be key," says Staes.

ESG ISSUES

Looking forward, he says it will be important for both insurers and insureds to keep ESG issues top of mind.

"It is high on the radar for all of us. We are paying a lot of attention to the environmental part of the conversation. We, as a company, have a goal of net zero by 2030 for our own operations; and we will be supporting our clients through the period of transition. We also offer insurance solutions for renewable energy. And of course, as a company, we need to comply with all the new rules and regulations as they come along," says Staes.

He is keen to stress that "this is an evolution" and HDI Global wants to know and understand how its clients see the transition to net zero, before then working to support those goals.



February's storm Eunice will result in one of the biggest claims for the Belgian property insurance market

Credit: Brussels Fire Brigade

Further exposure inevitable for the UK residential development industry?

The Grenfell fire tragedy led to extensive investigations into building safety

◇ CONSTRUCTION

Jonathan Brown
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Professional support lawyer, Clyde & Co

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Following extensive investigations into building safety following the Grenfell fire tragedy, the UK government plans for the Building Safety Bill (BSB) will take effect this year. Some of the most significant changes to the risk profile for those involved in residential development are the proposed amendments to the obligations set out in the Defective Premises Act 1972 (DPA).

THE CURRENT DPA DUTY

- S1 of the DPA imposes a duty upon "a person taking on work for or in connection with the provision of a dwelling", to "see that the work is done in a workmanlike (or as the case may be) a professional manner, with proper materials, so that... the dwelling is fit for habitation when the work is completed".
- Liability under S1 of the DPA is currently prospective only and the limitation period runs for six years from the date of completion. That can include defects that were latent at completion, if it can be proved that the property was unfit for habitation at the date of completion.
- The duty applies to new 'dwellings' (through construction or conversion) and works carried out to remedy defects in the original construction, in which case, a new, separate limitation period of six years will run from the date of completion of those remedial works.
- The S1 DPA duty is owed by contractors and design professionals involved in the design and construction of the dwelling, as well as developers commissioning a project.
- The duty is owed to the "commissioner" (the building owner, or the employer under a construction contract) and to any person who acquires a legal or equitable interest in the dwelling and their successors in title.
- Issues with the common parts of a building that directly impact upon the potential safety of a dwelling can in principle also give rise to claims under S1 of the DPA, such as potentially dangerous external cladding or wall insulation, if it can be proven that this prevented the dwelling being fit for habitation at completion.

> **"It is likely there will** be an increased number of claims under the DPA soon after the BSB takes effect"

THE PROPOSED EXTENSION OF THE DPA DUTIES

Extension of the works covered under the DPA.

- Where works are undertaken in the course of a business, the BSB will extend the S1 DPA duty to include buildings that are mixed use, where they contain one or more dwelling.
- Significantly, the new provisions will cover refurbishment and extension works to existing dwellings in the course of a business – this will be provided for in a new S2A duty in the DPA.

EXTENSION TO DPA LIMITATION PERIODS

The BSB will extend the limitation period for key claims under the DPA:

- From six to 15 years for S1 and S2A DPA claims, which are claims that will accrue after the BSB takes effect; and
- From six to 30 years for S1 claims retrospectively – that is, claims that accrued before the BSB takes effect. (Initially, a 15-year period was proposed but this has been replaced with a 30-year period).

The S1 DPA retrospective claims will not expire until at least one year after the new limitation period comes into force, in order to protect potential claimants who are close to the end of the 30-year retrospective limitation period at the time the BSB comes into effect.

Where a S1 DPA claim is made retrospectively, there are two provisos. The first requires a court to dismiss a newly resurrected retrospective claim if it breaches a defendant's rights under the Human Rights Act 1998. Secondly, a claim that has previously been settled or finally determined cannot be revived simply because of the extended limitation period.

> "The 24-year retrospective extension to the limitation period for S1 DPA claims is daunting for potential defendants and their insurers"

WHAT WILL BE THE EFFECT OF THE CHANGES TO THE DPA?

Most buildings affected will have been assessed in the aftermath of the Grenfell tragedy, which is now more than four and half years ago, meaning that some claims will already have been resolved.

It is however likely there will be an increased number of claims under the DPA soon after the BSB takes effect, to take advantage of the one-year buffer protecting claimants who are close to the end of the 30-year limitation period.

The 24-year retrospective extension to the limitation period for S1 DPA claims is daunting for potential defendants and their insurers, and an increase in the number of claims must be expected.

The ambit of the DPA right remains restrictive however, as it will still only relate to defects that prevent a dwelling being fit for habitation at the time of completion; this may be hard to evidence 25-30 years later.

◇ On 18-19 May 2022, Commercial Risk will host its third **Construction Risk Management Conference**. For more information about attending, speaking or partnering please visit: **www.commercialriskonline.com/events/construction-2022**

◇ LEGAL EYE: THE BRIEFS

Shell's directors sued for failing to manage climate change risk

◇ Shell's directors are being sued for failing to properly manage climate change risk, in what is being described as a first-of-its-kind case that could see more claims filed against boards that don't have adequate net-zero plans in place.

The legal action is being brought by environmental law firm ClientEarth, a Shell shareholder, against the company's 13 executive and non-executive directors. ClientEarth is urging other shareholders to join the case. The shareholder litigation against Shell in the UK argues that the oil and gas multinational has failed to properly prepare for the energy transition.

Recent legal victory likely to 'dramatically increase' UK Covid BI claims

◇ The recent UK legal victory for restaurant group Corbin & King over its insurer AXA for Covid-19 BI claims is welcome news for many policyholders, who may now be entitled to payments and should review their position in light of the ruling, according to a leading buyer-side lawyer.

In a note since the ruling, Aaron Le Marquer, a partner at Fenchurch Law, which works for insureds, said the legal developments will "come as welcome news to a great many policyholders who have either had their Covid-19 BI claims declined under prevention/denial-of-access wordings".

"The Corbin & King decision will also serve as an important authority for those policyholders who are seeking full indemnity for losses suffered at multiple premises. Policyholders in any of these groups should now therefore review their position with their advisers, to consider whether any further action is now required," he said.

Facebook fined €17m for GDPR breaches

◇ Facebook Ireland, now known as Meta Platforms Ireland, has been fined €17m by the Irish data protection regulator following an investigation into 12 reported breaches dating back to 2018 under Europe's GDPR.

Ireland's Data Protection Commission (DPC) said Facebook failed to have the necessary controls in place to comply with personal data protection processing requirements for EU users.

"Meta Platforms failed to have in place appropriate technical and organisational measures, which would enable it to readily demonstrate the security measures that it implemented in practice to protect EU users' data," the DPC said.