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TRANSPARENCY

Summary: 1. – Introduction. 2. – *The Aida World Congress 2014: progress of work.* 3. – *Transparency: the first session of Aida World Congress 2014.* 4. – *Transparency: general rules and specific insurance rules.* 5. – *Transparency: the main goals.* 6. – *Transparency and Corporate Governance.*

1. Introduction.

Let me start by making a general remark: our next World Congress of 2014 is also an important anniversary, the 52nd anniversary of the first AIDA World Congress which took place in Rome, in 1962, under the Presidency of Antigono Donati, one of the most important Italian scholars in Insurance Law, with the presence of the President of the Italian Republic.

I think that over half a century of activity of our Association is really a great achievement, that makes us rightly satisfied.

2. The Aida World Congress 2014: progress of work.

The organization of the Congress, that Jérôme Kullmann has already synthetically illustrated, has been entrusted to Alfonso De Virgiliis - that we all have to thank again for his professional and efficient work – and is proceeding on schedule.

A “special purpose organization” – 2014 World Congress – has been set up under the Presidence of Alfonso De Virgiliis. An executive team is cooperating with him.

Hotels in Rome and Florence have been optioned. Negotiations for a special transfer – with a reserved train – from Rome to Florence are in progress. Specific contacts have been set up for special events, in Rome at the Vatican Museum and in Florence at the *Galleria dell'Accademia*.

The European University in Rome has reserved to us the seat of the first part of the Congress.

Next year the contracts with the hotels, the seat of the Congress in Florence, the transfer organization will be completed; the registration of the participants will start in due time; financial contributions of the participants can be received.

An updated schedule of the various deadlines (registration, payment, paper submission etc.) will be sent to all the Chapters by the end of the year.

3. Transparency: the first session of Aida World Congress 2014

Despite the order of today interventions, I have to highlight that *Transparency*, in the organization of the 2014 Congress, as you can check in

the Draft Program that you have received, is the main Insurance Law topic that will be dealt with and widely discussed.

In fact *Transparency* is the subject matter of the First Plenary Session, which has been prepared in accordance with the traditional format. Every national Aida Chapter has received a detailed Questionnaire, prepared by Giovanna Volpe Putzolu (and myself), with the strong cooperation of a team of Italian Scholars, Marco Frigessi, Sara Landini, and Gianluca Romagnoli.

The Questionnaire aims at outlining a complete and analytical picture of the *policyholder protection*, in the different States, against misleading terms of insurance policies and the disclosure requirements to be met by insurers and insurance intermediaries prior to the conclusion of an insurance contract.

Reports should outline any applicable *laws* and *regulations*, and any *legal remedies* available against non-compliance, such as civil actions, financial penalties or disciplinary measures.

Particular attention should be paid to transparency rules on life insurance contracts, including a comparison with similar rules applicable to financial intermediation.

The results will be summarized by a General Report of Professor Giovanna Volpe Putzolu with the cooperation of Professors Frigessi, Landini, and Romagnoli.

First of all it is important to investigate whether *general rules on consumer protection* do apply to insurance contracts and which is their relationship with the specific protection rules for insurance contracts, if any, as experienced in the main legal systems considered in the analysis.

Another section of the Report will examine the topic of *pre-contractual information*.

4. *Transparency: general rules and specific insurance rules*

All legal systems provide for a *bona-fide* negotiations rule, meaning the general duty to negotiate fairly, to refrain from malicious or even merely reticent behaviours and to provide the other party with any relevant information that is known – or even merely knowable with reasonable care – with a view to contract execution.

However many countries have recognized the need to introduce specific rules in order to clarify and to detail the standard of conduct required to insurance companies.

The Italian case is paradigmatic: the Supervisory Agency (ISVAP) has approved a *General Regulation on pre-contractual information* which details the general principle of the Italian Civil code – “the parties in negotiation and in the formation of the contract must act according to bona-fide principle” (art. 1337 Italian Civil code) – in an analytic system of 54 provisions.

Specific attention will be given to the different sets of rules applicable to the different *types of contracts* (life insurance contracts, liability contracts, insurance products contracts...), to the status of *insurance intermediaries*, and to *transparency and fairness* in advertising.

Finally the question of *remedies* is crucial, in order to understand how invalidity of the contract, invalidity of individual provisions, termination of the contract and indemnification interact among each other and are in different ways combined.

Problems of *jurisdiction* are also critical and, on this point, the link with the Arbitration section is quite evident.

In the short time of my speech I can only try to briefly point out which are the main functions of Transparency in Insurance Regulation.

5. *Transparency: the main goals*

Insurance companies need to be more transparent in the perspective of maximizing customer value.

It can be pointed out that full disclosure is a key aspect of a correct relationship between financial intermediaries and consumers in general: in mainstream economic analysis disclosure is effective whenever there are information asymmetries .

Therefore, in the present time we can say that "transparency and duty of disclosure" are both global principles for insurance contracts.

Transparency has different meanings: the information before the conclusion of the contract and during its life; the comprehensibility of contractual provisions, as well as the possibility for the policyholder to compare different proposals; an obligation of high professional assistance. Insurance companies and intermediaries must behave with diligence, correctness and transparency towards policyholders.

Intermediaries must take into account the personal characteristics of the consumers (age, employment and family, financial and insurance position, expectations in terms of insurance coverage, duration and financial risks in case of life insurance).

Examples of plain legal language are hardly to be found in the standard provisions of the traditional insurance contract. This fact is clear to anyone who has ever tried to interpret, understand, or enforce an insurance agreement. The intrinsic complexity and technicality of insurance products make it difficult for the average consumer to understand them. Thus, intermediaries are also required to explain to the policyholder, in a clear and easy-to-understand language, the characteristics of the contract proposed analytically. Moreover, in case of financial insurance products, intermediaries must illustrate any financial risks connected to the execution of the contract. Different factors affect consumers' perception and comprehension of information about the risks related to investments. Insurance companies and intermediaries must assess their clients' profile, with specific regard to non professional clients, based on standard suitability criteria (such as their knowledge about, and experience with, financial products and their financial situation) and on their investment objectives, as appropriate.

In the different countries we find a plurality of strategies, remedies and forms of government intervention in case of lack of transparency.

Typical private law remedies for lack of transparency are rescission (and/or termination) of the contract, on the one side, and damages, on the other.

However we must also consider the intervention of regulatory agencies and government agencies in the insurance market.

A comparative analysis of the different approaches to the transparency problem will give us a meaningful outlook on the current insurance global market.

We can, finally, sum up on this point: transparency may very well be considered as the battlefield where we will experience, over the next few years, a *struggle* for fairness in insurance transaction system and, therefore, for a more efficient model of contractual relationships.

In a general systematic and comparative approach, aware of the trends of globalisation, we have to go on – as I have already underlined – with an attentive scientific study on the relationships between the special insurance rules and the general principles of *bona fide* and of consumer protection.

6. *Transparency and Corporate Governance*

Corporate Governance and Insurance is not a specific topic of the 2014 Congress; nevertheless I am absolutely convinced that this issue plays a crucial role in Insurance debate and I will deal with it in my general introduction to the Congress.

First of all composition of the board; function of independent directors; conflict of interests and related parties transactions regulation; internal audit, risk management, compliance procedures; supervisory Agencies are the fundamentals of an efficient system, able to arrange in advance successful barriers against rules violations, fraud and also risks of financial or economic default.

Furthermore – here is the link with the topic – *transparency* is a sort of “transverse element” that contributes - in many aspects of the structure and of the conduct of insurance Companies - to the right functioning of a sound corporate governance system.

In Italy, for example, a specific ISVAP Regulation (Reg. 20/2008) has introduced innovative rules that impose to Insurance Companies to adopt an internal regulation aimed at realizing an efficient coordination among the different auditing and supervising bodies (statutory board, audit committee, antibribery body, leading independent director, chief financial officer, actuarians, auditors etc.). A real point of reference in the general Corporate Governance debate: more than ever good procedures, efficient coordination, enforcement are in fact the conditions and the challenge in the times ahead.

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Transparency is a pre-condition for both a fair contractual system and for good corporate governance: rules on contract separated from rules on corporate governance are an halved answer to consumer protection demand.

Turin-London, 05 September 2012