Boletín del Grupo Internacional de Trabajo
"Nuevas Tecnologías, Prevención y Seguro"

Nº 6-2009

A. PRÓXIMA REUNIÓN DEL GRUPO DE TRABAJO NTPS EN MONTEVIDEO (URUGUAY), EL DÍA 23 DE ABRIL 2009, A LAS 17 hrs., SALA PICASSO DEL HOTEL RADISSON

NEXT MEETING OF THE GROUP NTPI IN MONTEVIDEO (URUGUAY), 23th. APRIL 2009, 17hrs, ROOM PICASSO, HOTEL RADISSON

AGENDA

17:00-17:15. Saludos y palabras de presentación del Presidente.
Joaquín Alarcón, *Secretario General de SEAIDA.*

17:15-17:30. Informe de actividades del Grupo de Trabajo
Dra. Teresa Rodríguez de las Heras Ballell. *Profesora Titular Interina, Área de Derecho Mercantil, Departamento de Derecho Privado*, Universidad Carlos III de Madrid (España).

17:30-17:45. Avances del Informe final, Paris 2010
Joaquín Alarcón, *Secretario General de SEAIDA.*

17:45-18:15. Informe y presentación de la Sección Uruguaya del Grupo de Trabajo
Dra. Andrea Signorino Sub Gerente de Adm.Legal y Responsable de RRHH y Dr. Pablo Mansilla, Abogado

18:15-18:30. Presentación: "Comercio Electrónico y Derecho del Seguro: E-Marketplaces y nuevas estructuras organizativas en el sector asegurador"
Dra. Teresa Rodríguez de las Heras Ballell. *Profesora Titular Interina, Área de Derecho Mercantil, Departamento de Derecho Privado*, Universidad Carlos III de Madrid (España).

Email: seaida @seaida.com

18:30-18:45. Presentación: "La segunda generación de la contratación electrónica del seguro"
Dr. Rafael Illescas Ortiz. *Catedrático, Área de Derecho Mercantil, Departamento de Derecho Privado*, Universidad Carlos III de Madrid (España). Presidente de UNCITRAL.

18:45-19:00. Debate

AGENDA

17:00-17:15. Opening remarks by the Chairman. Salutation and introduction of speakers.
Joaquín Alarcón, *Secretario General de SEAIDA.*

17:15-17:30. Report on the Working Party's activities
Dr. Teresa Rodríguez de las Heras Ballell. Associate Professor. *Profesora Titular Interina, Área de Derecho Mercantil, Departamento de Derecho Privado*, Universidad Carlos III de Madrid (España).

17:30-17:45. Progress on the Draft Final Report to be presented in Paris Paris 2010
Joaquín Alarcón, *Secretario General de SEAIDA.*

17:45-18:15. Report and invited talk by the Uruguayan Section
Dra. Andrea Signorino Sub Gerente de Adm.Legal y Responsable de RRHH y Dr. Pablo Mansilla, Abogado

18:15-18:30. Invited Talk: "Comercio Electrónico y Derecho del Seguro: E-Marketplaces y nuevas estructuras organizativas en el sector asegurador" / "Electronic Commerce and Insurance Law: E-Marketplaces and new organizational structures for the insurance industry"
Dra. Teresa Rodríguez de las Heras Ballell. Associate Professor. *Profesora Titular Interina, Área de Derecho Mercantil, Departamento de Derecho Privado*, Universidad Carlos III de Madrid (España).

18:30-18:45. Invited Talk: "La segunda generación de la contratación electrónica del seguro" / "Second Generation on the electronic commerce of insurance policies"
Dr. Rafael Illescas Ortiz. Professor of Law. *Catedrático, Área de Derecho Mercantil, Departamento de Derecho Privado*, Universidad Carlos III de Madrid (España). Chairman of UNCITRAL.

18:45-19:00. Discussion

B. NOTA SOBRE LA REUNIÓN DEL GRUPO INTERNACIONAL DE TRABAJO *NUEVAS TECNOLOGÍAS, PREVENCIÓN Y SEGURO,* EN BUDAPEST Noviembre 2008

En el marco de la X AIDA Budapest Insurance Colloquium y la II AIDA Europe Conference que se celebraban en Budapest, el Grupo Internacional de Trabajo *Nuevas Tecnologías, Prevención y Seguro* (GTNTPS) convocó con fecha 26 de noviembre de 2008 una reunión internacional que tendría lugar en el Hotel Gellért para definir el programa de trabajo y concretar las líneas de actuación adecuadas para conducir el esfuerzo y las tareas conjuntos de los próximos años hasta la preparación del informe final en París 2010. Siendo París 2010, sin duda, el objetivo último del programa de trabajo, se marcaron además determinadas etapas intermedias que permitirán valorar el grado de cumplimiento de los hitos marcados y recopilar, en diferentes etapas, los datos y los informes nacionales para consolidar el proyecto definitivo. En concreto, se mostró la intención de disponer de un primer borrador orientativo del trabajo en curso para ser presentado y evaluado en la próxima reunión prevista para abril 2009 en Montevideo.

La reunión resultó muy satisfactoria para todos los asistentes. Además de la presentación del estado del trabajo desarrollado hasta la fecha y la propuesta del esquema y la metodología de investigación e intercambio de información para los próximos meses a cargo de la sección española del grupo, la reunión contó con la aportación de la sección húngara que presentó los resultados de un estudio realizado sobre los recientes desarrollos en Nanotecnología y Genética en Hungría, que resultó de interés.

Se optó por mantener la metodología de trabajo acordada en la reunión celebrada en mayo 2008 en Hamburgo, consistente en la distribución de un cuestionario entre todos los países participantes con objeto, primero, de recabar información de contenido técnico procedente de fuentes legislativas, jurisprudenciales y doctrinales y de la práctica profesional, completa y actualizada, y, segundo, de consolidar un informe conjunto en el que se delimiten las áreas de interés, se identifiquen los problemas y las oportunidades y se perfilen propuestas, sugerencias y recomendaciones de tipo interpretativo, de desarrollo o reforma normativa, o de naturaleza práctica. No obstante, con el deseo de agilizar el trabajo de los próximos meses, facilitar la respuesta a aquellos países que han venido siendo participativos desde entonces y afinar los datos y la información recabados, se propuso y, así lo aceptaron los asistentes, que la sección española remitiría un cuestionario personalizado a cada sección y encajado en el esquema general del informe tal y como había sido presentado. De este modo, se pretende guiar las respuestas hacia su definitiva incorporación en el informe del grupo para París 2019 y minimizar la dispersión de las respuestas en un estado de desarrollo como en el que nos encontramos en que la información básica ya ha sido recabada y se cuenta con una visión general bastante aceptable del estado legislativo, judicial y doctrinal y de la práctica profesional en algunos de los países participantes en cuanto a los efectos de las nuevas tecnologías de la información, la biotecnología y la nanotecnología en la actividad aseguradora y reaseguradora.

Debía consensuarse principalmente en la reunión el esquema del informe, al menos tentativo, para guiar el trabajo hasta 2010. Se propuso y se aceptó el siguiente esquema:

ESQUEMA PROPUESTO PARA EL INFORME FINAL DE PARIS 2010

I. Planteamiento general. el impacto de las tic, la genética y la nanotecnología en el seguro

Identificación de los riesgos y las oportunidades que plantean las tres áreas de estudio desde una doble perspectiva. De un lado, desde la visión científica y técnica que proporcione el contacto y

la cooperación con expertos en cada una de las materias. De otro lado, desde una aproximación jurídica que encauzará los siguientes apartados.

II. Análisis por ramos del seguro

1. Seguro y Nuevas Tecnologías de la Información

1.1. Concepto y aplicaciones
1.2. Repercusiones en el seguro de carácter general
1.2.1. Diversos ramos
1.2.2. Repercusión en la etapa precontractual: identificación de los riesgos, riesgos del desarrollo, análisis de riesgo y descripción.
1.2.3. Fase contractual: "claim-made/occurrence", exclusiones, obligaciones del tomador (mantenimiento del nivel científico-técnico adecuado, investigación de los peligros conexos), deberes del asegurador (control del cumplimiento de los deberes por parte del tomador)
1.2.4. Fase de siniestro
1.3. Medidas de prevención y aminoración
1.4. Reaseguro

2. Biotecnología y Genética

2.1. Concepto y aplicaciones
2.2. Impacto en las pólizas de seguro: dimensiones
2.2.1. Ramos del seguro
2.2.2. Etapa precontractual
2.2.3. Fase contractual
2.2.4. Fase de siniestro

2.3. Tests Genéticos: cuestiones relacionadas con la protección de la intimidad y con las repercusiones en los elementos esenciales del contrato de seguro
2.4. OMGs: Organismos Modificados Genéticamente
2.5. Medidas de prevención y de aminoración
2.6. Reaseguro

3. Nanotecnología

3.1. Riesgos y oportunidades de la Nanotecnología
3.2. Impacto en las pólizas de seguro: dimensiones
3.2.1. Ramos del seguro
3.2.2. Etapa precontractual
3.2.3. Fase contractual
3.2.4. Fase de siniestro
3.3. Escenarios de riesgo: identificación de los riesgos, delimitación de los daños y establecimiento de la relación causal
3.4. Medidas de prevención y de aminoración
3.5. Reaseguro

III. Conclusiones y recomendaciones para el sector asegurador

COMMENT ON THE MEETING OF THE INTERNATIONAL WORKING PARTY ON *NEW TECHNOLOGIES, PREVENTION AND INSURANCE,* X AIDA BUDAPEST INSURANCE COLLOQUIUM and II AIDA Europe Conference, November 2008

On the occasion of the X AIDA Budapest Insurance Colloquium and the II AIDA Europe Conference celebrated in Budapest, the International Working Party on *New Technologies, Prevention and Insurance* (WPNTPI) held an international meeting on 26 November 2008 at the Hotel Gellért with the aim of defining the work program and setting the most suitable measures for scheduling and coordinating joint efforts to be undertaken in the next future in order to elaborate the draft final report to be presented in Paris 2010. Along with Paris 2010 as final time horizon, several medium-term milestones were established with the purpose of gauging the fulfilment of the agreed schedule and partially gather domestic reports and information to be incorporated into the final draft. In this regard, a first draft document systematizing the ongoing work was agreed to be presented and put for consideration in the next meeting in Montevideo, April 2009.

The development of the meeting and its main results were considered very satisfactory by the delegates attending the conference. Spanish section expounded the proposed structure and the guiding methodology for coordinating the sections' work toward the elaboration of the final draft. In addition, an overview of the latest developments on Genetics and Nanotechnology in Hungary was presented by the hosting delegation.

Questionnaire-based methodology, agreed at the previous meeting in Hamburg last May 2008, was newly endorsed by the delegates present at the Budapest meeting. Nevertheless, Spanish section proposed to personalize the questionnaire to be distributed among delegations in order to refine collected data and avoid useless duplications of information. Questionnaire shall be also embedded into the proposed structure for the final draft Paris 2010, instead of remaining a separate document.

The following structure for the final report to b presented in Paris 2010 was proposed by the Spanish section and agreed by the attending delegates:

PROPOSED STRUCTURE FOR THE FINAL DRAFT TO BE PRESENTED IN PARIS 2010

I. Overview. the influence of ict, genetics and nanotechnology in risk analysis, description of insurance risk and claims management, and prevention in insurance policies

With the aim of assessing risks and opportunities posed by ICTs, Genetics and Nanotechnologies as far as insurance and reinsurance industry is concerned, a better understanding of the said areas should be gained with the help of scientists and experts thereon. Delegations are encouraged to contact and cooperate with them in order to identify opportunities and risks of new technologies from a technical view, discuss on the existence or the appraisal of a general public risk, and appreciate the efforts and attempts undertaken to prevent and attenuate the emerging risks.

II. Sector-based analysis

An assessment on whether general liability rules are able to grapple with the risks and responsibilities stemming from the selected areas and industries would be the starting point. Connected liability legislation suitable for combating risks caused by new technologies should

be identified (defective products, environmental liability, drugs liability rules, bioscience legislation, Internet Service Providers). In addition, *lege ferenda* proposals on the need of a reversal of the burden of proof, the extent of the duties imposed on the involved parties, the convenience of compulsory insurance, an eventual proportional liability or liability limitations should be presented and discussed on.

1. Insurance Policies and ICT

1.1. Concept and applications
1.2. Impact on insurance policies: general remarks
1.2.1. Classes of insurance
1.2.2. Pre-contractual stage: identifying risks, risk analysis and description.
1.2.3. Contractual stage: "claim-made"/"occurrence", exclusions, duties of policy holder (maintenance of technical and scientific level, investigation of connected dangers), duties of the insurer (control of the fulfillment of the duties to be complied with by the policy holder).
1.2.4. Claims management: offensive prevention, risk management tools.
1.3. Prevention and mitigation measures
1.4. Reinsurance

2. Biotechnology and Genetics

1.1. Concept and applications
1.2. Impact on insurance policies: general remarks
1.2.1. Classes of insurance
1.2.2. Pre-contractual stage: identifying risks, risk analysis and description.
1.2.3. Contractual stage
1.2.4. Claims management
1.3. Genetic tests: privacy concerns and effects on insurance contract essential elements
1.4. GMOs
1.5. Prevention and mitigation measures
1.6. Reinsurance

3. Nanotechnology

3.1. Risks and opportunities of Nanotechnologies
3.2. Impact on insurance policies: general remarks
3.2.1. Classes of insurance
3.2.2. Pre-contractual stage: identifying risks, risk analysis and description.
3.2.3. Contractual stage
3.2.4. Claims management
3.3. Risk scenarios: identification, delimitation and establishment of causal link
3.4. Prevention and mitigation measures
3.5. Reinsurance

III. Conclusions and recommendations for insurance sector

C. INFORME DE LA SECCIÓN HÚNGARA DEL GRUPO DE TRABAJO NTPS SOBRE LOS ÚLTIMOS DESARROLLOS EN NANOTECNOLOGÍA E INGENIERIA GENÉTICA EN HUNGRÍA

VERVIEW OF THE LATEST DEVELOPMENTS IN NANOTECHNOLOGY AND GENETIUCS IN HUNGARY

Introduction

The aim of this study is to give an overview of the current standing of the aforementioned disciplines, including related risks. The aim of this overview is not to provide a complete, scientific review of recent developments but just a short introduction.

I. The work of the European Innovation and Technology Institution (EIT) in Budapest

The European Union is increasing its engagement in and spends ever more on technological development. As a vanguard initiative of the EU, the European Innovation and Technology Institution was established in Budapest to improve the strength innovation activity in Europe. Due to its seat in Budapest, a surge of interest in cutting-edge technologies can be expected in Hungary.

The development of the institutional establishments regarding the newest technologies is expected to uplift other areas like economy, industry and even law –making.

II. Nanotechnology

1. The latest institutional developments in the field of nanotechnology in Hungary: Nanopolis Miskolc.

The research of nanotechnology in Hungary is increasingly well sponsored. Under a Hungarian-Russian investment agreement in the amount of more than HUF 1, 8 billion, a nanoresearch centre, the Nanopolis Miskolc is going to be primarily active in industrial research, mostly in the fields of nano-powder, drugs, insulation, dentures, meteorological instruments and nano-dispergation technologies[1]

The Budapest University of Technology is also planning the establishing of an independent institute for nanotechnology.

[1] www.nanopolis.hu

2. Legislation, jurisprudence, practice

In Hungary so far, no laws or other regulatory materials have been enacted relating to nanotechnology, this field is regulated through several international agreements about technological and economic cooperation.

3. The scope of applications of nanotechnology in Hungary

The scope of applications of products made possible through nanotechnology is very large. According to the opinions of Hungarian scientists[2], nanotechnology should not be applied in Hungary as a single industrial sector, but integrated with the development of other industrial sectors.

An example is the digital paper industry, which needs glossier, and smoother surfaces than what was possible before. This can be achieved with fiber structure changed through nanotechnology[3].

The most well-known application of nanotechnology is in nanoelectronics. The achievements of nanotechnology are used in this field in general for the continued decrease in size of electronic devices.

Many examples can be found in the area of medical industries, where, from a physiological point of view, nanomedicines bear a substantional importance. The targeted application of pharmaceuticals within the human body is an important area of research[4] .

There is certainly an endless list of industrial and economic sectors which can use the achievements of nanotechnology, and therefore bear an interest in its research. A detailed description of all these areas would go beyond the scope of the discussion therefore we shall proceed to risks and risk management.

4. Risks

At present in Hungary, nanotechnology is supported by a majority of public opinion, since the development of research and the encouragement of its industrial application of

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[2] Miklos Boda, Dr. István Bársony, Frau Dr. Dániel Sztaniszlav, Dr. Imre Mojzes. In: Lehet-e húzóágazat a nanotechnológia? Ha igen, miért nem? /Can Nanotechnology be Leading Industry? If Yes, then Why Not?/ Klick netlap, 7. Dec. 2005., www.klick.hu/cikk_nyomtathato.php?cikk_id=11618&...2008.11.06, 13:58

[3] Levente Csóka, György Grozdits, Yuri Lvov: Nanotechnológia alkalmazása a papíriparben/The Application of Nanotechnology in the Paper Industry/In: Papíripar, 2007/2, S.47-52 (47)

[4] Magyar Élelmiszer-biztonsági Hivatal: Nanotechnológi: a nanorészecskék egészségi és környezeti kockáza/Ungarische Lebensmittelsicherheitsamt: Die Umweltrisiko der Nanotechnologie und der nanopartikeln/. www.meibh.gov.hu/szakmaiinfo/tudomanyosinfo/egyeb/211/. 11.11.2008, 14:34

nanotechnology[5]. These warn us that in electrotechnics and in surface treatment, as well as in food production, applied nanotechnology may result in poisonous effects. According to some opinions the human body is not prepared for the nanoparticles, which could harm the whole body by infiltration through the skin. However, in order to prove the harmful effects of nanotechnology, further and more accurate research will be needed, since there are numerous applications where the risk of the health damage can be positively excluded [6].

III. Genetic Engineering

1. Legislation, jurisprudence, practice

In the area of genetic engineering, Hungary can boast of advanced legal results.
In 2002, Hungary joined the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (signed on 4□ □ April 1997), and has therein undertaken to review and control bioethical and medical research, and to promulgate laws in this field. The Hungarian Health Act (Act No. CLIV from 1997) was created in accordance with the regulations of the convention; therefore it bans and forbids cloning for reproductive purposes. The Hungarian Penal Code even threatens with prison sentences the selection of an embryo's sex, and the modification of the gene pool of the human embryo.

In this field, the following European Community regulations (all of which were implemented in Hungarian law) are worth mentioning: Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells mentioned.

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[5] Siehe z.B.: Richard Balázs: Kockázatosabb a nanotechnológia, mint gondolnánk/Nanotechnology Is More Dangerous than We Would Think/. In: www.Sg.hu/cikkek/56450/kockazatosabb_a_nanotechnologia_mint_gondolnank.11.11.2008.14:28.; Magyar Élelmiszer-biztonsági Hivatal: Nanoltechnológia: a nanorészecskék egészségi es környezeti kockáza/Hungarian Food Segurity Authority: Nanotechnology: The Health and Environmental Risks of Nanotechnology/. www.meibh.gov.hu/szakmaiinfo/tudomanyosinfo/egyeb/211/11.11.2008, 14:34

[6] Dr. György Bánhegyi: Nanotechnológia: áldas vagy átok? Egy konferencia margójára/Nanotechnology: Blessing or Curse? On the Margins of a Conference/ In: Múanyag és gumi, 2004/12. Jahrgang 41. S 461-465.

Act No. XXI. of 2008 has been realised this year, on the protection of the human genetic data and on the rules of human genetic test and research, as well the operation of biobanks. In spite intense controversy, the new act allows employers and insurance companies to complete genetic tests and allows them to use the results, although a precondition of any sort of use of these results is the prior written consent of the subject of the tests.

Summary

Nanotechnology is currently being researched and developed in Hungary. The analysis of possible risks needs further in-depth research. Accordingly, Hungary is currently occupied with institutional developments for the support of research and industrial application, which is receiving considerable support fromboth the economy and the state.

Within genetic engineering, the existence of risks has already been discovered, and legislature reacted to known risks with adequate acts. The legal framework for the research of genetic engineering and the application of the results obtained meet the requirement of international conventions.