

Insurance Europe considerations on the EC proposal for a regulation introducing a European Services e-card and related administrative facilities

On 10 January 2017, the European Commission published a set of legislative measures aiming to further facilitate the provision of services in the EU. Insurance Europe supports the EC's aim to further improve the functioning of the single market for services. However, Insurance Europe is concerned that the insurance-related provisions in the EC's proposal for a regulation introducing a European services e-card and related administrative facilities (COM(2016) 824 final) will not contribute to this objective. Rather, they will introduce burdensome requirements on insurers without visible improvements to the provision of cross-border services, as explained in more detail below.

Insurance Europe maintains that insurers can and do offer cover for markets other than their own, for example via an insurer's Europe-wide network or brokers. Insurance Europe believes that the insurance-related provisions in the proposal are founded on the incorrect assumption that businesses are being impeded from conducting cross-border business due to a lack of available insurance.

Insurance Europe believes that more emphasis should be placed on providing professionals with better access to information about the professional requirements for the market in which they wish to operate.

Certificate of insurance (Article 5)

Article 5 obliges insurers to deliver an insurance certificate describing the coverage upon request from their policyholders. The EC reserves the right to define a harmonised format for such a certificate through an implementing act.

A harmonised certificate for Professional Indemnity Insurance (PII) would be almost impossible to produce because:

- Cover varies greatly depending on the profession, national liability regime, risk exposure and specific local requirements.
- Commercial PII tends to be tailor-made to the needs of the policyholder and the contractual information can therefore be very detailed.
- Existing national legislation can lay down specific requirements on what a certificate must show (for compulsory insurance). These requirements vary greatly between professions/occupations.

Harmonisation will not help companies demonstrate compliance with legal requirements in the host member state:

- National authorities will continue to require proof of insurance conforming to local regulations, therefore a standardised EU certificate or the home member state certificate will not contain the information needed.
- In addition, a harmonised format would reduce the content of the certificate to the lowest common denominator, thereby deteriorating the relevance of the information provided.

Delivering contractual information through a standardised insurance format will be costly:

The obligation on insurers to deliver a standardised insurance certificate on request would be difficult and costly to comply with, in light of the differences across member states, business sectors and insurance companies' practices as outlined above.

Insurance Europe therefore does not support the introduction of such a certificate.

Claims history statements or track records (articles 11 and 12)

Article 11 obliges insurers to provide a statement concerning the third party liability claims of a policy upon request. This relates to the activities covered by the contract of professional liability insurance. The EC reserves the right to draw up a harmonised presentation of such a statement through an implementing act.

Article 12 requires insurers to take account of the information provided in the above statement in their acceptance policy and in the calculation of premiums, in a non-discriminatory manner.

Article 11

Insurance Europe does not believe that policyholders' track records can or should be harmonised at EU level. As Insurance Europe has [expressed](#) in the past, it is common practice for insurers to provide a client with a report on that client's claims experience/track record. However, there is no single approach taken towards these records due to the diversity of situations not only across the EU member states, but also within a single country.

Not only would it be very difficult and costly to standardise Claims History Statements (CHS)...

- The risks posed by service providers are not homogeneous and differ according to occupations and business sectors as well as between individual enterprises in relation to the particular scope of the work they intend to do.
- Due to the diversity in track record formats, harmonisation would involve large costs for insurers that could potentially impact premiums.

... it would not be useful in practice:

- Each insurer uses its own criteria to assess a customer's risks and calculate premiums. It would be impossible to produce a standardised document that would fulfil the criteria of all insurers across all EU member states.

Article 12

- Although potentially useful, a client's track record is only one criterion used by insurers to underwrite.
- In any event, obliging insurers to take into account a service provider's loss history at home is a limitation of insurers' freedom to conduct business and price policies.
- Insurers should also not be obliged to justify on a case-by-case basis the admissibility of such a document.

General considerations on Articles 11 and 12:

- These measures could lead to discriminatory issues and create distortion of competition between service providers: service providers with a clean loss history potentially due to the type of liability regime in their home country would have an advantage over providers in the host member state.
- Applying the provisions on claims history statements in the Motor Insurance Directive (MID) to PII is not appropriate.
 - This is because insurance against civil liability in respect of the use of motor vehicles is to some extent regulated at EU level, whereas PII is not. Added to this is the fact that unlike PII, MTPL refers to a specific type of risks, i.e. risks associated with driving a vehicle. This means that, even though MTPL insurance can vary greatly between countries, there is a certain degree of convergence in the MTPL market which does not exist in PII.

Insurance Europe therefore strongly opposes the introduction of standardised claims history statements and the obligation for insurers to take account of them when pricing policies.

Highlights of the EC's impact assessment accompanying its proposal for a regulation introducing a European services e-card

■ Regarding costs for insurers in providing a "certificate"

Extract from page 61:

As to insurers, no tangible increase of costs is expected from option 3.1a. Firstly, the 2009 Solvency II Directive already provides for the possibility of Member States to require insurers to be more transparent towards their clients (through a certificate of insurance notably), in a general trend of recent EU legislation to require the provision of more information to insurance service recipients. Secondly, given that the insurers have sold these insurance policies to the service provider they will have provided them also with the terms of the insurance contract. It would only be a limited effort for insurers to transfer the relevant parts of this contractual information into the insurance certificate.

Our comments:

The EC appears to be referring to Article 179 of the Solvency II directive, which states:

Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating the following:

(a) the specific legal provisions relating to that insurance;

(b) the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where that Member State requires proof that the obligation to take out insurance has been complied with.

This provision is a consequence of the fact that it is a matter of member state competence to decide on the risks against which insurance is compulsory and as a result on the type of proof of insurance considered satisfactory within their own jurisdictions. Therefore, this provision should not be referred to as a basis for a European framework.

In addition, the EC refers to "a general trend in recent EU legislation", likely referring to initiatives such as the Insurance Product Information Document (IPID) in the Insurance Distribution Directive (IDD) and the Key Information Document (KID) for packaged retail and insurance-based investment products (PRIIPs), among other examples. It should be stressed that all these documents provide **precontractual information, and are not applicable to post-contractual information documents**. In addition, standardising the information to be included in the certificate would be difficult due to the potentially high level of tailoring of individual commercial contracts and to the fact that they are tailored to national legislation and risks.

■ Regarding costs for insurers in providing a track record:

Extract from page 65:

As to insurers, no tangible increase in costs is expected. Options 3.1b and 3.2a already reflect a widespread practice amongst insurers in cross-border situations (according to InsuranceEurope) to provide their clients with a report on compensation claims and take into account claims history statements while negotiating coverage and premiums. These elements will therefore not generate significant additional costs for insurers.

Extract from the summary of the 6 September 2016 conference on the European services e-card (page 97):

iv. On the issue of insurance, stakeholders representing the insurance sector (on the side of the insurance industry and not customers) showed contradiction with the trends identified in the responses to the public consultation, indicating that it would be complicated for the insurance industry to make use of track-records.

Stakeholders from the customers' side would however favour an easier solution for them to contract cross-border insurance contracts.

Our comments:

Insurance Europe does not agree with the reference to Insurance Europe stating that producing a claims history statement would not generate significant additional costs for insurers. This consequence was drawn using only part of Insurance Europe's position as justification. Specifically, although Insurance Europe stated that it is common practice for insurers to provide a client with a report on that client's track record, it also noted that there is no single approach due to the diversity of situations and that therefore standardising such a document would be nearly impossible, expensive and not useful in practice.

Insurance Europe therefore wishes to reiterate its view, expressed throughout the stakeholder consultation process, that it would be difficult for insurers to provide customers with and take into account claims history statements to be used on a cross-border basis.

■ **Insurance as a barrier to the provision of cross-border services**

Considerations on page 26:

The EC refers to stakeholder consultations and workshops where insurance was flagged as barrier to the provision of cross-border services. However, it admits that *it is not possible to quantify the number of cross-border transactions that have been annulled or frustrated because of problems of obtaining adequate coverage for professional indemnity.*

Our comments:

Insurance Europe wishes to stress that it did not participate in workshops where insurance was referred to as a barrier to the provision of cross-border services. Rather, during the 6 September 2016 workshop, on the issue of professional indemnity insurance (PII) for cross-border work, whereas the EC suggested that cross-border service providers were having trouble in accessing such cover, no stakeholder commented that PII was, in fact, a concern for their sectors. To the contrary, the keynote speaker from the architecture industry commented that obtaining PII was rather "easy" and not at all a problem. Insurance Europe still believes the EC has to provide evidence that insurance acts as a barrier to the provision of cross-border services and that this deserves regulatory action at EU level.

■ **Regarding who is affected by the initiative and how:**

Considerations on page 99:

The EC mentions that the following stakeholders would be affected by the initiative: service providers, national authorities and the EC.

Our comments:

Insurance Europe is of the opinion that the insurance sector has to be included in this list. If left unchanged, the specific insurance-related provisions in the EC's proposal which oblige insurers to make use of standardised insurance certificates and claims history statements would have a huge impact on the insurance sector in terms of compliance and implementation costs.



■ **Regarding the insurance sector's contribution to the EC consultation:**

Considerations on page 81:

The EC received 179 responses to the stakeholder consultation. The EC notes that most of the responses came from the business services sector (accountants, architects, engineers, tax advisors) and to a lesser extent from the construction and the insurance sector:

Respondents from the insurance sector, although much less numerous in total, showed overall support for an initiative facilitating access to insurance in a cross-border context, but a forthcoming initiative should not put into question contractual freedom for insurers.

Our comments:

Insurance Europe feels that this does not adequately reflect the weight of its response, considering it responded in representation of around 95% of the European insurance industry.