

## Retail Financial Services consultation response

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### Insurance Europe Retail Financial Services Green Paper consultation response

#### **1A. For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?**

Please tick all relevant boxes

Current accounts Saving accounts Mortgage credit Consumer lending

Payment services (e.g. mobile payments) Car insurance

Life insurance

Private health insurance

Saving and investment products

**Other**

Don't know / no opinion / not relevant

Assessment of cybersecurity risks and threats, including identifying cybersecurity challenges and sectors most at risk

Please specify for which other financial products could improved cross-border supply increase competition on national markets in terms of better choice and price:

*Insurance Europe welcomes the European Commission's efforts to strengthen the internal market for retail financial services to the benefit of consumers, insurers and the economy. We welcome the objective of offering consumers and businesses more opportunities to move and operate within the single market. In the responses to questions (Qs) 8, 16, 17, 18, 22, 24, 30, 32 and 33, we propose concrete measures that may further support achieving these objectives.*

*Insurance Europe believes that the expansion of cross-border insurance within the EU should remain a market-driven evolution, based on real demand. Insurance Europe is not currently aware of evidence of latent demand for cross-border insurance products that is not being met. Insurers already make wide use of the freedoms provided for by the European Treaties, notably the freedom of establishment (FOE) through subsidiaries or branches and, to a lesser degree, the freedom of provision of services (FOS). This is illustrated by the DSF policy paper, referred to in the Consultation document, which notes that 36% of total gross written*

premiums (GWP) in the EU is written by foreign-controlled subsidiaries (31 %) or branches (5%). The report concludes that this is a very high level of cross-border activity, for example when compared to the banking sector (25%).

In addition, in some instances, the acquisition of foreign insurance companies can be the most sensible option to overcome barriers of entering new markets from a business perspective: it considerably reduces the resources necessary to achieve the optimal business structures and acquire the specific market know-how. Acquisitions also ensure that the new market participant avoids the risk of negative selection if it is not familiar with the local market.

As an alternative to establishing own subsidiaries, insurers also cooperate with insurers in other countries through "European networks". In those circumstances, the target country network partner will issue – on instruction by the home insurer – appropriate local policy documentation conforming to all specific local requirements. The local risk will, as a rule, in reality be insured by the home insurer. Intermediaries (brokers) also operate international networks that can assist consumer with purchasing insurance in another market.

Insurance Europe would like to stress that the decision to offer cross-border products is a commercial decision and is dependent on:

(1) the extent of consumer demand to justify the launching of a product in a foreign market.

In this respect, Insurance Europe would remind that consumers predominantly prefer local providers of financial services. In the Special Eurobarometer 373 (April 2012), 80% of respondents said they would not consider purchasing a financial product in another member state; only 3% said they would consider buying a mortgage, "other" insurance products, credit card or investment fund cross-border; and only 2% said they would potentially buy a personal loan or life insurance cross-border. Moreover, the Commission's 2009 Retail Insurance Market Study concluded that consumers are mostly satisfied with their insurance offerings and that the latent demand for cross-border trade in insurance is low.

(2) the ability of insurers to meet demand, considering the resources and expertise required to adapt insurance cover to country-specific factors and to handle claims on a cross-border basis. Such decisions take into consideration the differences that exist between markets, notably in terms of regulatory, risk and socio-economic factors (see answer to Q2A).

Insurance Europe previously participated in the Commission's expert group on the impact of differences in insurance contract law on the cross-border provision of insurance. Insurance Europe's responses to that working group are in large part relevant to this consultation and are available on our website (<http://www.insuranceeurope.eu/contract-law>). The submissions made by Insurance Europe explain the various obstacles that exist to the provision of cross-border insurance services. These include 'knowing your customer', understanding the true risk proposed for cover (which will necessitate a thorough understanding of the applicable law, local legal interpretations in the courts, the interaction between different branches of law, and customs), language, culture (including expectations of the local policyholder), the form and prevalence of fraud, the tax environment and the supervisory environment. It also explains the distinctiveness and complexity of certain classes of insurance.

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**2A. What are the barriers which prevent firms from directly providing financial services cross-border?**

Please tick all relevant boxes

- ✓ **Language**
- ✓ **Differences in national legislation**
- ✓ **Additional requirements imposed by national regulators**
- ✓ **Impossibility of verifying the identity of cross-border customers**
- ✓ **Lack of knowledge of other markets**

✓ **Cost of servicing clients cross-border (without local infrastructure)**

No EU passport available

✓ **Other**

Don't know / no opinion / not relevant

Please specify what other barriers prevent firms from directly providing financial services cross-border:

*The set of regulatory and socio-economic obstacles outlined in Q1A can make it less attractive for insurers to make full use of the Freedom to provide Services (FOS). The existing differences relating to taxation and insurance fraud also play a role in the decision to offer products cross-border.*

*In insurance, product design, risk pricing, claims-handling and customer support are all directly influenced by the local market and regulatory conditions.*

*Insurance is a service industry and policyholders quite reasonably have certain expectations of the levels of service that they will receive in return for the premiums they have paid. Insurers may consider that they need a local presence in order to offer appropriate levels of customer service and that this makes cross-border transactions less than optimal. A decision to enter a foreign market therefore requires an extensive understanding and knowledge of that market.*

*Further examples of the many factors that must be considered as part of an insurer's risk calculation and which may therefore act as barriers include:*

- *Life insurance products are dependent on the national social and labour laws of the markets in which the products are offered; account needs also to be taken of the local taxation conditions.*
- *Health insurance is an area of member-state competence; the specific role and tasks of private health insurers are therefore intrinsically linked to the national health system (such as the availability of social care services locally and the medical infrastructure).*
- *Liability insurance is closely tied to national and regional liability legislation (rules of causation, proof of loss and liability determination) and professional association requirements, as well as cost-related factors surrounding personal compensation (cost of medical procedures for injury or loss of income due to disability caused by an accident).*
- *Motor insurance reflects similar factors to liability insurance, as well as other, road-related factors such as: local driving behaviour; weather conditions or road terrain that affect driving ability; and local traffic conditions that can increase the risk of accidents (refer to our 2015 Motor Report, <http://www.insuranceeurope.eu/european-motor-insurance-markets>).*
- *In legal expenses insurance, national legislation on legal costs, such as lawyers' fees, differ.*
- *Property insurance faces similar factors. In addition to civil law and insurance contract law other rules, such as building regulations, have to be followed. In building insurance, geological (earthquake, land subsidence), meteorological (storm, hail) and technical risks (fire, leakage) need to be taken into account. Factors include: preventive risk factors, loss prevention measures, vulnerability of different building materials, firefighting. In claims settlement, crucial factors are local standards, as well as laws and regulations for construction or ecological modernisation.*

*In addition to the class-specific barriers, other commercial barriers exist. Where insurers do provide cover across borders, they are more likely to do so for large, complex or specialist commercial risks, where the costs of developing that offer can be economically justified. In contrast, for mass risks, local insurers with good knowledge of their markets are likely to be better able to provide cover at a reasonable price.*

*Individual premiums for personal lines business, such as motor or household, tend to be relatively small and an underwriter needs to achieve a critical mass to make a book of business sustainable. The insurer must have local facilities to collect premiums as well as provide the policyholder with pre-contractual and contractual documentation, often in a local language that is different and in compliance with local legal requirements. It is possible to build up appropriate functions in other member states on an outsourced basis, but this is not a straightforward process and, under Solvency II, entails the establishment of substantial*

*control and oversight functions.*

*It is also necessary to have an appropriate, local presence for claims-handling and customer service when an insurance event occurs. Claims assessments, destruction of damaged material, repair and, for house insurance, rebuilding and access to temporary replacement housing, all require a local presence or a good network of partners. The costs associated with a satisfactory customer service and claims-handling can be too high to warrant entering a new market.*

*Insurance Europe notes that establishing a branch or a subsidiary in another market is a means of overcoming some of the above-mentioned obstacles to the direct provision of cross-border services in relation to smaller premium business.*

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**3. Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?**

Yes

✓ **No**

Don't know / no opinion / not relevant

Please explain your answer to question 3:

*Insurance Europe believes that technology may help to lower the investments necessary to offer cross-border insurance so long as the legal environment reflects developments in technology, such as the equivalence of electronically submitted documents and signatures with paper-based documentation and signatures (please refer also to the answer to Q 17).*

*Digitalisation is key to the development of new and innovative data-based insurance products that can enable insurers to develop a more comprehensive risk profile in other markets, i.e. incorporating relevant individual risks and pooling other relevant risks together. This includes, for instance, facilitating access to online platforms (eg motor telematics) or online geo-data (property). For example, personal driving data collected from motor vehicles can help establish individual driving behaviour (i.e. connected intelligent transportation systems, or "C-ITS"). This innovation can be of benefit to an insurance customer whose driving behaviour poses minimal risk, as insurers may then factor the driving data collected from that customer's vehicle – supporting the conclusion of low risk – into the premium for his motor insurance policy. An insurance contract would need to be in place before the data could be received by the insurer.*

*Secondly, digitalisation may create new methods for verifying the identity of cross-border customers, thereby assisting insurers to increase cross-border insurance offerings and to combat insurance fraud.*

*Thirdly, digitalisation may assist insurers in providing claims handling and customer service support in new and innovative ways.*

*However, one should keep in mind that many of the barriers listed in Q2A are fundamental barriers that arise from national variances, which include tax provisions, regulatory practices and legislation. Technology on its own is unlikely to overcome these barriers. Ultimately, its relevance to and impact on the insurance industry will, among other factors, depend on customer acceptance of its increased use, along with the acceptance of supervisory authorities and judicial courts.*

*As a distinct factor, it is not yet clear that technology will act as a silver-bullet to increase the volume of cross-border insurance.*

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**4. What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?**

Please tick all relevant boxes

**Improved access to digital means**

Digital training offered by the financial industry

Digital training offered by NGOs

**Digital training offered by public authorities**

**Other**

Don't know / no opinion / not relevant

Please specify what else can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate:

*Digitalisation is already changing how companies and consumers interact, bringing with it many opportunities. Digitalisation is reshaping the way insurers innovate, distribute, underwrite, interact with their customers and compete. Consumers are becoming more connected and demand digitalised services, also in the insurance sector. The insurance sector is embracing digitalisation to respond quickly and efficiently to consumer demands. The interactive tool on Insurance Europe's website provides an overview of some of the different initiatives that have been undertaken by the industry throughout the EU, notably in the field of digitalisation, to offer new and alternative means of accessing services (<http://www.insuranceeurope.eu/consumer-focus-2?category=digitalisation>). These include, for example, interactive applications allowing consumers to report their claims in a straightforward and fast way, comparison and calculation tools, as well as informative tools such as pension-tracking tools or risk management guidance.*

*However, at the same time, it remains key to support non-digital consumers who may find it difficult to use new digital services. The industry's business model is evolving towards a multichannel environment where insurance services are made available through digitalised channels as well as through more traditional channels, responding to different consumers' demands and preferences. In order to avoid any form of financial exclusion, regulatory initiatives should not favour one channel over the other, thereby allowing the diversity of channels to benefit consumers, whose cultures, needs and preferences vary between markets. Ultimately, consumers should be able to choose which means they wish to use to access insurance products and services. For the time being, traditional (paper-based) and modern (digitally driven) distribution should remain possible, in order not to exclude any customers from getting appropriate products meeting their specific needs.*

*In addition, increasing the financial capability of consumers in the EU should be considered through continued financial and insurance education, particularly in the digital environment. Raising awareness of the importance of financial education in the digital environment should become a priority for all stakeholders. The insurance sector is actively engaged in raising financial awareness throughout Europe (see <http://www.insuranceeurope.eu/consumer-focus-2?category=transparency%20and%20financial%20education> for an overview of different initiatives (including online initiatives) that have been taken by the insurance sector in the field of financial education and transparency).*

*Insurance Europe welcomes the fact that many countries have already recognised the significance of financial education and incorporated it into their school curricula. These programmes should be enhanced by adding the digital dimension of financial and insurance services. As education remains under national competence, the Commission's role in this area is to encourage states to tackle financial and digital education issues and to facilitate the exchange of good practices.*

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**5. What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?**

*Insurance Europe supports an effective and sound EU regulatory framework that empowers and protects insurance consumers, including in a digital environment. The recently agreed rules in the Insurance Distribution Directive (IDD) will enhance conduct of business rules for the entire sales process for insurance and further strengthen the level of consumer protection across Europe. These rules will also apply to any new digital technologies that impact the distribution of insurance products and will therefore ensure an appropriate level of consumer protection throughout the EU. Combined with the recent Network and Information Security (NIS) Directive and the Data Protection Regulation, there is currently no need for further action in this area.*

*Should additional regulatory initiatives be considered, we would call on the Commission to ensure that these proposals have a clear and demonstrable benefit to consumers and do not restrict their access to a wide and diverse range of appropriate insurance products and services. Indeed, the European insurance industry continually strives to innovate and to enhance its products and services to meet consumers' constantly evolving needs and demands. The spread of digital technologies and the provision of digitalised insurance services also responds to consumers' demand for immediate and easily accessible information and services. Therefore, when proposing new consumer policies and specific consumer protection legislation, the real benefits to consumers and their needs should be thoroughly assessed. The benefits must, in turn, be balanced against both the costs of implementation and, even more importantly, against the risk of overregulation that can hamper product innovation and growth. Requirements should be tailored, balanced, proportionate and, crucially, adapted to benefit consumer in practice and meet their needs.*

**6. Do customers have access to safe, simple and understandable financial products throughout the European Union?**

✓ **Yes**

No

Don't know / no opinion / not relevant

Please explain your answer to question 6:

*Consumers do have access to safe, simple and understandable insurance products in the EU. There is a wide diversity of products with different characteristics offered in retail financial markets across the EU and this is a proven way to meet different consumer needs. This wide choice of products presents consumers with an opportunity to select the product which suits them best.*

*As already summarised in the response to Q2A, several factors at local level impact product design, pricing, benefits and availability. Any European regulatory framework should take account of these differences and avoid hindering innovative practices. Otherwise, there is a risk of reducing product choice, which would be to the detriment of consumers. Insurance products developed in a particular market and which could be considered simple and transparent by EU policymakers are not necessarily directly transferable from one market to another. Insurance products are designed with specific features and contexts in mind, which can differ significantly between EU countries. Companies also differ in their size, the variety of markets in which they operate, their business strategies and risk appetites (please refer also to the answer to Q14, particularly the section on 'commercial perspective').*

*In line with the provisions of the Insurance Mediation Directive (IMD) and the newly agreed Insurance Distribution Directive (IDD), distributors are required to not only provide information to consumers in a comprehensible form to allow them to make informed decisions, but also to consider the respective demands and needs of the consumer when offering or selling insurance products. In addition, the IDD introduces new*

product oversight and governance provisions for manufacturers and distributors of insurance products that aim to ensure insurance products meet the needs of an identified target market. It will also aim to ensure that products in the market are regularly reviewed to ensure that they remain consistent with the needs of that market.

Insurance Europe would also like to highlight that both the PRIIPs Regulation's Key Information Document (KID) for investment products including insurance-based investment products, and the IDD's Product Information Document (PID) for non-life insurance products, aim to provide consumers with standardised and understandable information to be able to compare different products throughout Europe.

Considering that this new regulatory framework related to the distribution of insurance products has very recently been adopted and is not yet transposed into national legislation, Insurance Europe considers that it would be premature to assess the need to further enhance the transparency and comparability of insurance products until the IDD has been implemented and been given time to bed down. It is of the utmost importance that the cumulative impacts of these pieces of legislation on national markets and the European market are evaluated first.

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**7. Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?**

Yes

No

**Don't know / no opinion / not relevant**

Please explain your answer to question 7:

No Insurance Europe response.

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**8. Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?**

Competition in retail financial services provides better services, more choice and greater opportunities for consumers and businesses.

As far as insurance products are concerned, Insurance Europe is calling for the full renewal of the Insurance Block Exemption Regulation (IBER) in 2017, notably on the basis that the current IBER facilitates the opening of markets, in particular to foreign, as well as to small and medium-sized insurers, by supporting them in accessing information and gaining the experience to cover risks. This enhances the variety of products and coverage available to consumers at lower prices. The cooperation facilitated by the IBER assists insurers in offering innovative products and services that meet consumers' constantly evolving needs and expectations and cover the fast emergence of new risks.

Notwithstanding the above, Insurance Europe notes that, despite increased information and experience, there are certain unrelated factors that will remain and impact insurers' commercial decision to offer cross-border cover, as already summarised in the response to Q2A.

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**9. What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?**

Please tick all relevant boxes

Independent pan-European comparison websites, including the information on cross-border products

Information campaigns by regulators

Information campaigns by consumer organisations

- ✓ **Marketing campaigns by financial services providers or their associations**
- ✓ **Financial intermediaries empowered to offer cross-border financial products**
- ✓ **Other**

Don't know / no opinion / not relevant

Please specify what other channel would be the most appropriate to raise consumer awareness about the different retail financial services and insurance products available throughout the Union:

*Financial services providers and intermediaries are best placed to advertise the retail products that they can offer cross-border and are also in the best position to target the most appropriate demographic.*

*Insurance Europe cautions that independent, pan-EU comparison websites would be very complex to create and are unlikely to provide a meaningful comparison, given the large number of variables and huge differences in cover between member states (refer also to Q32 and Q34 on premium comparisons).*

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**10. What more can be done to facilitate cross-border distribution of financial products through intermediaries?**

*The Insurance Distribution Directive (IDD) already contains provisions on freedom of services (FOS) and establishment (FOE) that will help intermediaries who wish to engage in cross-border distribution of financial products to do so. Therefore, Insurance Europe believes that there is currently no need for further measures in respect of distribution of financial products through intermediaries.*

*However, there are a number of important factors to be borne in mind that will have an impact on any possible development of cross-border distribution.*

*Firstly, from the perspective of consumers' preferences, the Commission's Retail Insurance Market Study (MARKT/2008/18/H, Final Report by Europe Economics, Nov 2009) cited "consumer preferences towards local offerings" as one of the reasons why integration and competition has not reached its full potential in the internal market. Indeed, in the retail financial services sector as a whole, there is a general preference among consumers for local providers and physical proximity. Further factors that affect mobility and consumers' lack of willingness to switch providers include customer satisfaction, convenience, and confidence and trust in the relationship with their provider. In fact, in the Commission's Consumer Satisfaction Survey (Final Report by IPSOS INRA, May 2007), the level of commitment to insurance companies was found to be very high in all EU countries (87%). Consumers tend to stay with their current insurance provider and have no intention of switching in the short term, with the vast majority preferring to deal with domestic insurance companies. The survey revealed that consumers believe that there is enough competition in insurance services in the EU (88%) and that it is easy to change from one insurance company to another (77%). Further, as set out in the response to Q34, the Commission's own Special Eurobarometer 373 (April 2012) confirms that 8 out of 10 consumers would not consider purchasing cross-border financial products or services.*

*Secondly, the issue of practical convenience and satisfaction in dealing with their provider is a strong reason for consumers to remain loyal to their current provider. This has particular significance in the insurance sector, where consumers are risk-averse in their decisions and their relationship with their insurer is based on trust. This factor would be amplified for more complex insurance products about which the consumer has limited knowledge or understanding. The Retail Insurance Market Study concludes that it is "unlikely that there will be a significant increase in cross-border activity in the near future", referring to a Eurobarometer survey finding that only 4 per cent of consumers would consider purchasing motor insurance from a firm located in another member state within the next five years (Eurobarometer 230: Public Opinion in Europe on Financial Services).*

Moreover, from a supply-side perspective, differences in insurance contract law between member states make it "costly for insurers to conduct cross-border transactions" in terms of researching the local legal framework, which may limit the level of cross-border activity. The study also refers to the "unavoidable costs and difficulties of establishing a presence in another Member State", which include researching the local laws, culture and market conditions, staff recruitment and marketing, with market research likely to comprise a substantial proportion of set-up costs.

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**11. Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State?**

- Yes, at Member State level
- Yes, at EU level
- No**
- Don't know / no opinion / not relevant

If further action is necessary, what action and for which product segments?

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**12. What more can be done at the EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU?**

- Please tick all relevant boxes
- Aligning cross-border and domestic fees
  - Before every transaction, consumers should be clearly informed what fee they will be charged and for comparison should be presented the fee for national payment
  - Before every transaction consumers should explicitly accept the fee they will be charged
  - No further action is needed
  - Other
  - Don't know / no opinion / not relevant**

Please specify what else can be done at the EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. Credit transfers) involving different currencies in the EU:

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**13. In addition to already existing disclosure requirements\*, are there any further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions?**

\* Articles 59 and 60(3) of the revised Payments Services Directive (PSD2): European Parliament legislative resolution of 8 October 2015 on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013)0547 – C7-0230/2013 – 2013/0264(COD))

- Please tick all relevant boxes
- No further action is needed
  - Before every transaction, consumers should be clearly informed what conversion fee they will be charged and for comparison should be presented the average market conversion fee (e.g. provided by the European Central Bank)
  - Before every transaction consumers should explicitly accept the conversion fee they will be charged
  - Other
  - Don't know / no opinion / not relevant**

Please specify what other further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions:

**14. What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?**

*First, one important observation must be underlined: the fact that a given insurance product sold in one national market is not available to customers from other member states does not constitute unjustified discrimination. All insurance products are calculated on the basis of a series of factors that vary from state to state and together form the 'risk' on which the product is priced.*

*We would also make a clarification. The consultation states that "In insurance, consumers' places of residence, rather than their individual risk profiles, define the options available, as insurers will draw up policies based on the risk pool as determined by local demand". Insurance Europe would like to stress that consumers' place of residence is a very important aspect of their risk profile, as risk is directly tied to regional factors such as local legislation (e.g. the type and scope of damage), compensation schemes, regulatory rules (e.g. local restrictions imposed by state authority), safety standards (for non-life insurance), taxation (for life insurance), different claims costs, differences in the real purchasing powers, and rules or cultural attitudes regarding compensation (e.g. level of requirements for proof of damage or average settlement awards) (see also answers to Q1 and Q2). This is further clarified in Insurance Europe's publication 'How insurance works' (<http://www.insuranceeurope.eu/how-insurance-works>).*

*The use of geographical factors/location is crucial to insurers from both a prudential and commercial perspective and is distinguishable from "geoblocking" (restricting access to online content based upon the user's geographical location).*

*From a prudential perspective, insurance companies are obliged to fully assess the risks they are looking to underwrite and to maintain adequate reserves. Geographical location is a fundamental element of an insured risk. For instance, in property insurance, various regional statistical data and other scientific, geo-based data is a condition precedent to a transparent and non-discriminatory risk assessment. Earthquake insurance or flood insurance are bound to be priced differently in the UK than in, say, Italy or Greece. This principle further applies to life insurance risk profiles, as life expectancies between member states also vary significantly. Without a robust risk assessment that properly factors in local risks, adequate reserves may be jeopardised.*

*From a commercial perspective, underwriting involves the investigation and settlement of claims where they occur. It is therefore in the interest of consumers that insurers do not offer products in areas where they have not established the necessary facilities to properly service their needs. For instance, for motor insurance, insurers strive to have a strong network of third party service providers to assist in the event of car accident claims (e.g. local repairers, part and paint suppliers, credit and hire firms and local lawyers). It takes considerable time and investment to build up a reliable network of service providers that can ensure a suitably high level of customer care.*

*Further, not all insurers are capable (either in terms of financial capacity and/or expertise) to cover foreign risks or else have the risk appetite (i.e. business strategy) to offer products in a foreign market. Without adequate local knowledge of the specific risks, in most instances it would not make commercial sense for an insurer to enter a foreign market, given the inevitable potential for either overpricing (i.e. not competitive) or underpricing (i.e. prudentially unsafe).*

*Insurance Europe would caution against prohibiting the use of geographical factors/location in*

*insurance. The discretion to choose which risks to underwrite must remain with the insurer and any obligation of an insurer to underwrite an unknown risk would have a detrimental impact on insurers' ability to accurately assess the risk. Any EU initiatives obliging insurers to provide their products to a person resident in a different market (i.e. a different risk and conditions the insurer does not fully appreciate) may lead to a number of negative implications: first, insurers may refuse to provide some policies altogether, since the risks of having to provide cover in some areas are too great; second, insurers may become reluctant to launch new products because the risks associated with new products generally can be mitigated if they are initially launched only in a limited geographic location; third, consumers may purchase products that insurers do not have the facilities to support properly; and, fourthly, the financial stability of insurers could be threatened if insurers were required to provide cover in circumstances that they do not consider to be prudent.*

**15. What can be done at the EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?**

Please tick all relevant boxes

Prohibit insurance firms from geographically limiting cover to the country where the policy-holder is living

Encourage insurance firm to sell insurance products with wide geographical coverage

**Other**

Don't know / no opinion / not relevant

Please specify what else can be done at the EU level to facilitate the portability of retail financial products:

*Insurance Europe cannot identify a particular action to be taken at EU level that would facilitate the portability of insurance products. The decision to follow a customer into another market should be left to individual companies, who must take into consideration certain factors, as described below. This being said, as discussed in response to Q3, technological developments and digitalised innovation are likely to enhance insurers' ability to service their clients in foreign markets.*

*In their decision to follow a customer into another market, insurers must consider:*

- Their familiarity with national insurance, health or liability laws.*
- The ability to identify and measure localised risk exposure.*
- Whether they have sufficient financial capacity to cover claims in the new member states (MS) and fulfil solvency requirements and financial obligations to investors (essential for ensuring adequate insurance capacity).*
- Their ability to comply with the new MS legal and regulatory requirements (e.g. licensing, taxation, scope of cover).*
- Their ability to issue policies and handle claims in a different language that is legally clear.*
- Sufficient staff to manage claims in the new MS and follow foreign claims or judicial procedures.*

*In addition to the above factors, insurers must perform ongoing risk analysis to sustain the product, such as:*

- continually assess the foreign market situation to adapt the cover to the foreign risk as necessary;*
- collect and store the foreign actuarial data in order to continue calculating premiums; and*
- update its risk portfolios accordingly so as to build sufficient financial capacity for its contractual obligations to policyholders.*
- Generally speaking, as explained in the response to Q1, insurers will decide to engage cross-border (and thus follow a client abroad) if there is sufficient demand, by enough customers, to justify the investment which operating in a different market implies.*

*There are also specific factors to be considered for individual sectors, as outlined below.*

Health insurance

*Portability of private products is extremely difficult to facilitate at EU level, mainly because health is an area of individual member state competence. Each state has a unique healthcare system shaped by social, political, regulatory and economic factors and there are therefore significant differences in the role and structure of private health insurance, which can be duplicative, supplementary complementary or substitutive. Moreover, in some states individuals are required to comply with local compulsory insurance requirements. Nevertheless, insurers do develop tailor-made coverage for citizens moving cross-border.*

Life insurance

*Life insurance products are designed according to national rules of general good and do reflect the demand – and traditions – of different markets, as well as local social and labour laws and taxation rules, which are matters of national competence.*

Non-life insurance (motor, liability)

*Liability insurance is closely tied to national liability legislation (rules of causation, proof of loss and liability determination) as well as cost-related factors surrounding personal compensation (cost of medical procedures for injury or loss of income due to disability caused by injury). Motor insurance reflects similar factors to liability insurance, as well as other, road-related factors including: local driving behaviour; weather conditions or road terrain that affect driving ability; and local traffic conditions that can increase the risk of accidents.*

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**16. What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?**

*Due to the heterogeneity of liability regimes and thus of insurance obligations, service providers sometimes lack knowledge of applicable regulation and obligations in case of cross-border activity. For this reason, Insurance Europe supports providing professionals with better access to information about:*

- (1) the professional requirements for the market in which they wish to operate; and*
- (2) how to obtain the type of insurance they need to cover their professional liabilities under national and regional law and professional association requirements.*

*This could conceivably be achieved through better use of the Points of Single Contact (PSCs) provided for in the EU Services Directive. PSCs are online government e-portals set up for the purpose to advise cross-border service providers on rules, regulations or formalities applying to service activities in its respective member states, as well as to assist service providers with administrative procedures. While the PSCs fall under national competence, they should not be viewed as a guarantee of cover for cross-border services or relied upon as decision-making bodies on insurance provision. However, if implemented properly, they could be instrumental in assisting consumers with understanding the professional indemnity insurance requirements in another market.*

*Notwithstanding the above, it should be noted that different insurance needs between member states often stem not from the access to or availability of insurance, but from diverging liability legislation as well as national requirements for professionals (see also response to Q1 and Q2). In October 2015, the Commission issued its Single Market Strategy, including a Staff Working Document (SWD) that discusses potential barriers to the freedom of movement of service providers. The SWD highlights concern over the need to obtain new insurance cover – or “double insurance” – in order to operate in another market. The SWD states that certified or authenticated documents of foreign service (such as proof of professional*

indemnity insurance) are "often not accepted" by the host member state, even if they serve an equivalent purpose to those documents offered by other, domestic services providers. Even if a member state accepts a document, a regional or devolved region of that member state may not, due to its own requirements.

This demonstrates that the procedure of certifying a foreign service provider is tied to national practices and thus is not an issue isolated to insurance. This also explains why an insured performing the same type of service in different member states may have a different risk profile in each state of operation, the risk being linked to the applicable legislation. . Consequently, a service provider will, in many cases, require a different insurance solution when crossing borders. This can lead to confusion over why a service provider needs to expand or "top-up" their policy to cover a new risk profile.

**17. Is further action at the EU level needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?**

Yes

✓ **No**

Don't know / no opinion / not relevant

Please explain your answer to question 17:

Insurance Europe supports the objective to achieve effective transparency and comparability of insurance products throughout Europe. Both the PRIIPs Regulation's Key Information Document (KID) for investment products including insurance-based investment products, and the Insurance Distribution Directive (IDD)'s Product Information Document (PID) for non-life insurance products aim to provide consumers with standardised and understandable information to be able to compare different products throughout Europe.

Insurance Europe believes that the EU can further improve the newly adopted regulatory framework for the distribution of insurance products, and strengthen consumer trust by addressing the following two regulatory impediments to comparability of insurance products and consumers' informed decisions, particularly in a digital context:

Firstly, according to the new PRIIPs Regulation, the Solvency II Directive and the IDD, the number of EU disclosure requirements applicable to the online sale of an insurance-based investment product by a broker will double, totalling 148 different pieces of pre-contractual information. In addition, the newly agreed EU legislation includes numerous duplicative rules, which means in practice that consumers risk receiving the same type of information twice, but in a different wording and a different format. Looking forward, there is a risk that this situation will worsen as work on Level 2 and Level 3 of the IDD develops. Insurance Europe is therefore calling on the EU to consider the cumulative impact of this information overload and duplication, and to take steps to remove them where they exist. This is even more key in a digitalised environment. The EU regulatory framework should allow consumers to compare offers and take informed decisions including online. Moreover, consumers, in particular when they are shopping for insurance online, expect a simple and straight-forward purchasing process.

Secondly, according to the IDD and the PRIIPs Regulation, pre-contractual information should be provided to the consumer on paper by default. It is only by way of derogation and under certain conditions that this information can be provided through a durable medium other than paper, or a website. The conditions to be met depend on the medium and include, for instance, evidence that the retail investor has access to the internet, explicit choice from the retail investor that can be evidenced, etc. Looking forward, it will be crucial to ensure that the formats used are suitable and workable in a digital context to allow consumers to fully benefit from them. In order to fully support the development

*of digital solutions, the Commission should ensure that preference is not given to alternative means of accessing information or services over digital means, as to do otherwise would impede their future development.*

**18. Should any measures be taken to increase consumer awareness of FIN-NET\* and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?**

*\* FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries that handle disputes between consumers and financial services providers*

**Yes**

No

Don't know / no opinion / not relevant

18.1 If measures should be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation, what of the following could be done to ensure the above?

Please tick all relevant boxes

**Better inform consumers about the availability of out-of-court settlement schemes for cross-border disputes**

Provide out-of-court settlement schemes with effective means to solve consumers' cross-border problems

Ensure that out-of-court settlement schemes operate according to the same rules and offer equally effective means to help consumers across the EU

Ensure that out-of-court settlement schemes operate independently from the financial industry

**Other**

Don't know / no opinion / not relevant

Please specify what else could be done to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation:

*Insurance Europe welcomes measures that aim to encourage consumers to resolve their conflicts through out-of-court proceedings and measures that aim to improve consumer awareness of these.*

*Out-of-court dispute settlement schemes that offer a flexible, cheap and fast settlement procedure are valuable alternatives to court-based proceedings and benefit both insurers and consumers. The Directive on ADR for consumer disputes (2013/11/EU) and the Regulation on online dispute resolution for consumer disputes (No. 524/2013) set out useful standards including information requirements. Insurance Europe cannot identify any need for further regulation or changes.*

*Similarly, cross-border insurance disputes are dealt with efficiently through FIN-NET. The extent of FIN-NET's involvement in cross-border disputes has consistently increased (please refer to FIN-NET's annual reports) and there does not appear to be a need for changes to FIN-NET.*

*The ADR Directive is reinforcing promotion of the FIN-NET network through, for instance, enhanced disclosure requirements. Its implementation will thus already increase awareness of the network and its use.*

*However, Insurance Europe would support measures to promote further the FIN-NET network so as to continue to increase its success. Consumer awareness of FIN-NET could be improved by (1) publicising its benefits and (2) encouraging member states to urge their ADR schemes to join FIN-NET, thereby improving its effectiveness in the context of the implementation of the ADR Directive. The FIN-NET website could also be reviewed to keep it up-to-date, relevant, user-friendly and informative.*

.....  
**19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance?**

**Yes**

No

Don't know / no opinion / not relevant

Please explain your answer to question 19:

*Consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance on three grounds:*

- *Firstly, all consumers in the EU can go to court and seek damages in the case of mis-selling.*
- *Secondly, the Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts imposes an obligation on member states to have national legislation against unfair terms.*
- *Thirdly, most member states have compensatory collective redress mechanisms against the mis-selling of retail financial products under the Commission recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in member states concerning violations of rights granted under Union Law.*

*In addition, the ADR Directive (2013/11/EU), which has just been implemented, and the Regulation on online dispute resolution for consumer disputes (No. 524/2013), which has recently become applicable, will make this access even easier. Further action is not necessary. In any case, the effects of this new legislation should be awaited. The Commission will report on the impact of the ADR Directive in July 2019.*

.....  
**20. Is action needed to ensure that victims of car accidents are covered by guarantee funds from other Member States in case the insurance company becomes insolvent?**

Yes

**No**

Don't know / no opinion / not relevant

Please explain your answer to question 20:

*Insurance Europe and the Council of Bureaux recognise the importance of all EU citizens benefitting from the protection guaranteed in the codified Motor Insurance Directive (MID – 2009/103/EC).*

*In most member states, a guarantee of financial compensation does not raise any difficulty, not even in the event of the insolvency of an MTPL insurer. Insurance Europe and the Council of Bureaux are nevertheless aware that there have been cases in some member states raising consumer protection concerns that need to be addressed.*

*In cases where a motor insurer is offering services cross-border, it is also important to avoid situations where the host member state's national guarantee fund has to support unduly the final cost of paid compensations that can no longer be covered by that insurer due to its own insolvency.*

*Insurance Europe and the Council of Bureaux are committed to looking into this issue in further detail. At the same time, it is important to keep in mind the diversity of guarantee schemes already in place at national level, as most systems have proven effective to deal with compensation of victims.*

*Compensation Bodies and Guarantee Funds, as provided for in the codified MID, are competent for guaranteeing that the victim will not remain without compensation where the insurer of the liable party is dilatory in settling a claim or where the vehicle which caused the accident is uninsured or unidentified. In order to guarantee a similar protection to victims of road traffic accidents where the motor third party liability (MTPL) insurer of the liable party becomes insolvent, Compensation bodies and/or Guarantee Funds have concluded two voluntary agreements. The agreements in question are as follows:*

- **The 2008 AGREEMENT** (*Agreement between Compensation Bodies and Guarantee Funds in the event of insolvency of an insurance undertaking providing civil liability motor insurance in the Single Market*): provides for the intervention of Compensation Bodies and reimbursement by Guarantee Funds in cases where the insurer of the liable party becomes insolvent. This is a system envisaged in analogy to the one foreseen under Article 25 of the codified MID. The victim who suffered an accident in another country than his country of residence and caused by a vehicle insured with an MTPL insurer which becomes insolvent, can file a claim with the Compensation Body of his country of residence. The Compensation Body compensates the victim and will be reimbursed by the Guarantee Fund of the state where the tortfeasor's vehicle is normally based. However, the accident must have occurred in the same country as the one where the vehicle is normally based.

*The particularities of the 2008 Agreement are that:*

- *it cannot be applied in a country the laws of which do not provide for the intervention of the Guarantee Fund where an MTPL insurer is insolvent, consequently*
  - *it is a voluntary agreement, based on reciprocity and not all countries of the European Economic Area are signatories to it;*
  - *it cannot be applied in cases where the accident occurred in an EEA country other than where the vehicle is normally based.*
- **The 1995 AGREEMENT** (*Convention on recourse between Guarantee Funds in case of insolvency of a motor liability insurer operating in the Single Market*): was concluded with a view to allocate the financial burden of the insolvency of an MTPL insurance undertaking operating also in various countries under Freedom to Provide Services or Freedom of Establishment. The idea is that the financial consequences should be borne by the market where the financial supervision of the undertaking takes place (home country control principle). Thus, the agreement provides for a reimbursement mechanism by which the sums paid as compensation by the Guarantee Fund of the host country have to be paid back by the Guarantee Fund of the home country of the insurance undertaking.

*However,*

- *the difference in national laws regarding protection mechanism for the insolvency of insurance companies offering MTPL policies render the application of the Agreement difficult;*
- *it is a voluntary Agreement, and thus was not signed by all the Guarantee Funds of the European Economic Area.*

*The organisation responsible for administering the agreements is the Council of Bureaux, which is the managing organisation of the Green Card system, the system of compulsory MTPL insurance created under the aegis of the United Nations. The Council of Bureaux also provides secretarial services for the bodies created by the Motor Insurance Directives (Compensation Bodies, Guarantee Funds and Information Centres).*

**21. What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products?**

*The Insurance Distribution Directive (IDD) will introduce a product information document (PID) for all non-life insurance products that will further enhance transparency and the ability of consumers to make well-informed decisions regarding the purchase of ancillary insurance products (Article 20). In addition, where an insurance product is ancillary to a good or a service which is not insurance, the IDD provides for an obligation to offer the customer the possibility of buying the good or service separately (Article 24). Moreover, the soon-to-be-in-force IDD text as a whole regulates conduct of business rules for the sale of all insurance products, including ancillary products. No further rules are necessary given that the relevant measures have only recently been discussed and agreed by the co-legislators.*

21.1 With respect to the car rental sector, are specific measures needed with regard to add-on products?

Yes

No

✓ **Don't know / no opinion / not relevant**

**22. What can be done at the EU level to support firms in creating and providing innovative financial digital services across Europe, with appropriate levels of security and consumer protection?**

*An innovative and digitally connected financial services industry across Europe is fundamental for the future of the industry and for the consumer. Insurance Europe is therefore calling on the EU to address the existing regulatory obstacles to the digitalisation of the insurance sector, and its products and services in line with consumer demand.*

*Firstly, consumers shopping for insurance online expect a simple and straight-forward purchasing process, and the regulatory framework should allow consumers to compare offers and take informed decisions online. However, with the new PRIIPs Regulation, the Solvency II Directive and the Insurance Distribution Directive (IDD), the number of EU disclosure requirements applicable to the online sale of an insurance-based investment product by a broker will double, totalling 148 different pieces of pre-contractual information. In addition, the newly agreed EU legislation includes numerous duplicative rules, which means in practice that consumers risk receiving the same type of information twice, but in a different wording and a different format. Looking ahead, there is a risk that this situation will worsen as work on Level 2 and Level 3 of the IDD develops. Insurance Europe has therefore been calling on the EC to consider the cumulative impact of this information overload and duplication, and to take steps to remove them where they exist.*

*Secondly, according to the IDD and the PRIIPs Regulation, the pre-contractual information should be provided to the consumer on paper by default. It is only by way of derogation and under certain conditions that this information can be provided through a durable medium other than paper, or of a website. The conditions to be met depend on the medium and include, for instance, evidence that the retail investor has access to the internet, explicit choice from the retail investor that can be evidenced, etc. A default paper requirement, with stringent conditions on alternatives, is not conducive to allowing consumers to easily reap the benefits of access to information and services in a digital format.*

Thirdly, the IDD introduces a new Product Information Document (PID) for non-life insurance products and gives EIOPA the task of developing a standardised presentation format for it. It will be crucial to ensure that this is workable in a digital context, as well as in paper form. In order to fully support the creation of innovative digital financial services across Europe, the Commission should not give preference to one means of accessing information or services over another, particularly where this could be to the detriment of digital services and inhibit their future development.

Fourthly, Insurance Europe believes that the conditions for access to data in general, and access to in-vehicle data in particular, must guarantee free and fair competition and open choice for consumers. Such conditions are essential in order to enable innovation in financial digital services. Regarding motor insurance more specifically, the introduction of eCall will eventually contribute to a generalisation of intelligent transport systems (ITS) and, consequently, the further spread of telematics. It is therefore necessary for action to be taken early to ensure these technologies are available on an "open access" basis, without prejudice to requirements such as data protection, privacy and security. Access to in-vehicle data should not be restricted to a proprietary model, under the control of one stakeholder, at the detriment of free consumer choice and fair competition.

Finally, Insurance Europe would like to stress that the frameworks provided by the Digital Single Market, the Network and Information Services Directive and the General Data Protection Regulation will provide the necessary foundation for this future innovation and the Commission should encourage these rules to be fully embedded before proposing further regulation or review of these texts.

.....

**23. Is further action needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?**

Yes

**No**

Don't know / no opinion / not relevant

If further action is needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework, please state additional comments on possible actions (e.g. guidelines at EU level, etc.):

Please explain your answer to question 23:

The 4<sup>th</sup> Anti-Money Laundering Directive (AMLD4) is currently being implemented in member states. Moreover, the European supervisory authorities are currently working on guidelines to enhance the convergence of AML practices. Further legislative action at EU level is not warranted before the outcome of the implementation of AMLD4 and the ESAs AML guidelines is clear.

AMLD4's article 25 allows obliged entities to rely on third parties to meet the Directive's customer due diligence requirements. This is essential to enable distance-selling in life insurance and the further digitalisation of insurance, without undermining the AML framework.

.....

**24. Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?**

✓ **Yes**

No

Don't know / no opinion / not relevant

If further action is necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards, please state additional comments on possible actions:

*Insurance Europe generally welcomes initiatives at EU level that enable and further the implementation of secure mobile identification technologies and applications. While regulatory measures beyond the e-ID Regulation (910/2014 on electronic identification and trust services for electronic transactions) are not necessary, the insurance industry would welcome more action on enabling and trust-building measures such as certification/seals of quality and funding for campaigns.*

*Verification of the identity of the contracting party is vital to insurance companies. The secure identification of consumers is not only required to fulfil the legal obligations to combat money laundering but also contractual liability or legally binding mandates for SEPA direct debit authorisations.*

*The rise of electronic commerce – national as well as cross-border – means the challenges of secure identification become more and more difficult. In the UK, for instance, insurers are precluded from accepting online evidence from clients. It seems outdated that there remains a requirement for customers to provide hard copy, non-internet evidence of identity. This is inconvenient for consumers.*

*A number of innovative technologies and applications as well as initiatives on secure electronic identification are currently evolving in the market. The Swiss Regulator (FINMA), for instance, is currently consulting on whether online identification should be permitted to promote acceptance of business through digital channels.*

*Some innovative technologies might help to overcome the obstacle of an identity check of foreign customers and may, at the same time, strengthen legal certainty with respect to digital business transactions.*

*In the UK, as firms increasingly go down the digital route, electronic identification (e-ID) verification is employed. However, it is extremely difficult for firms to ensure that these e-ID solutions fully comply with UK regulatory requirements.*

*e-ID providers are sometimes unable or reluctant to provide the underlying algorithm information, on the grounds, for example, that such information is commercially sensitive. This can make it difficult for firms using e-ID systems to be able to show that their customer due diligence processes are compliant – a UK regulatory requirement.*

*The development of an EU-wide compliance standard for e-ID providers would be extremely helpful: firstly in promoting consistency across member states and, secondly, for insurers and other users to present to regulators.*

**25. In your opinion, what kind of data is necessary for credit-worthiness assessments?**

No Insurance Europe response.

**26. Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?**

Yes, at Member State level

Yes, at EU level

✓ **No**

Don't know / no opinion / not relevant

Please explain your answer to question 26:

*In insurance, the process of assessing the risk of the policyholder is called underwriting. Insurers rely on relevant data in this assessment. The premium and terms of the insurance contract are based on the insurer's assessment of the level of risk.*

*To make sure that each insured pays a fair premium, insurers make use of a series of rating factors to assign the level of risk. Access to certain types of personal data is of paramount importance in designing insurance policies that fit the insured's risk profile. In general terms, the more relevant the information held about an individual risk, the more the premium can be tailored to that risk.*

*Identifying the relevant risk factors (which is only possible through access to a wide range of data) contributes to avoiding adverse selection, which is a situation in which higher risk individuals are more likely to take out insurance.*

*Exchange of information between insurers and policyholders also contributes to avoiding moral hazard, defined as the risk that the behaviour of policyholders changes once they have entered into an insurance contract in a way that makes the risk event more likely to happen.*

*Data processing is also an essential part of evaluating and paying policyholders' claims, complying with EU regulations, and in the detection and prevention of fraud. Ultimately, data processing lies at the very heart of insurance and benefits both consumers and insurers.*

*The recently adopted General Data Protection Regulation (GDPR) clarifies the use of personal data by service providers, and safeguards consumers' rights in the use of such data. No further action at EU level is required. Action is, however, required at EU level in order to ensure access to "in-vehicle" data is not restricted by a proprietary model but remains open and based on the consent of the consumer. This is particularly important for insurers, as having access to data generated by motor vehicles in a standardised format will enable them to speed up the process of paying claims; to develop pay-as-you-drive and pay-how-you-drive insurance policies; and to devise other innovative services to better respond to consumers' needs. Insurers, like other services providers, should be able to access in-vehicle data, provided the policyholder consents to it. To achieve this goal, Insurance Europe believes that 'open platform technologies' are the best models available to both facilitate the provision of services and ensure consumer protection given the increased use of personal data. Insurance Europe would therefore welcome further EU action to ensure this approach is promoted.*

**27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?**

Yes

✓ **No**

Don't know / no opinion / not relevant

Please explain your answer to question 27:

*Insurance claims histories (also known as "claims history statements") are most relevant for motor insurance. The EU Motor Insurance Directive gives policyholders the right to request at any time a statement relating to the third-party liability claims (or lack thereof) involving the vehicle(s) covered by the insurance contract at least during the preceding five years of the contractual relationship (Article 16).*

*In 2014 Insurance Europe published a set of voluntary and non-binding Guidelines on information for motor insurance claims history declarations for cross-border use (<http://www.insuranceeurope.eu/guidelines-information-motor-insurance-claims-history-declaration-cross-border-use>). These guidelines aim to facilitate the circulation of information about claims history and assessment of bonus/malus by insurers operating in two distinct national markets. However, the guidelines note that national requirements, including any national regulations, must be considered and, as a result, the guidelines may need to be adapted in order to accommodate them.*

*A change in the requirements of insurance claims histories is not necessary or feasible.*

*Motor insurance claims history statements are used in bonus/malus systems in order to adjust a policyholder's premium. The insurer may give a discount upon renewal of a policy so long as there are few or no claims made within a certain period preceding the renewal (a "bonus"). Conversely, the insurer may increase the premium if a certain number of claims was made (a "malus").*

*Bonus/malus systems in Europe vary significantly and reflect the differences between national markets, including:*

- *a bonus/malus system may only be available where the future year of MTPL cover remains with the same insurer, whereas in other markets the benefit may be accrued by the policyholder even where there is a change of insurer;*
- *in some systems it is only a bonus that is applied on the basis of a "no-claims" history, whereas in other markets drivers may both benefit as well as be penalised for their claims history;*
- *a bonus/malus system may be limited to a claims history arising from contracts terminated within a specific number of years preceding the current proposal for a contract of MTPL insurance; and*
- *in some markets all insurers offer some form of bonus/malus to policyholders, while in other markets only a number of the insurers who offer MTPL insurance offer a bonus/malus system.*

*Bonus/malus systems are also based on each insurer's own judgment. It is important for insurers to retain the freedom to set the premium rates for the cover they offer and to retain discretion to determine how information on claims history is incorporated into their bonus/malus activities.*

*With this in mind, given that the information to be provided on claims history statements varies from market to market, and depending on the information needs of insurers, the data used in the application of bonus/malus systems cannot be standardised.*

**28. Is further action necessary to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?**

Yes, at Member State level

Yes, at EU level

**No**

Don't know / no opinion / not relevant

Please explain your answer to question 28:

*Insurance Europe believes the decision to offer cross-border insurance should remain market driven and therefore does not see a current need to support firms in providing post-contractual services in other member states where they do not have a subsidiary or branch office. As set out in our response (refer to answer to Q1, Q2, Q14 and Q30) the manner in which insurers choose to offer cross-border insurance, if this fits within their commercial strategy and objectives, must remain a commercial decision.*

*Motor insurance claims settlement procedures for European cross-border accidents (which is therefore not a post-contractual service) do not require any further actions as they are handled appropriately under the procedures in the Motor Insurance Directive 2009/103/EC or the Green Card system. Nonetheless, no future action for the improvement of post-contractual services should compromise the existing system established for the protection of victims of road traffic accidents, including the nomination of a representative in the host country where the activities under FOS are performed.*

*For life insurance products there is no need for claims management procedures abroad.*

**29. Is further action necessary to encourage lenders to provide mortgage or loans cross-border?**

Yes

No

**Don't know / no opinion / not relevant**

**30. Is action necessary at the EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?**

**Yes**

No

Don't know / no opinion / not relevant

If action is necessary at the EU level to make practical assistance available from Member State governments or national competent authorities in order to facilitate cross-border sales of financial services, particularly for innovative firms or products, please state additional comments on possible actions:

*Should the Commission decide to take action in this field, it should place emphasis on a greater understanding of the different liability regimes that exist across Europe. This could conceivably be achieved by better use of the Points of Single Contact (PSC) under Article 21 of the EU Services Directive (see also answer to Q16). For example, the PSCs could assist insurers in understanding what types of cover are required in other markets as*

well as the features that cover should take in order to comply with local compulsory insurance laws (ie scope of cover, policy limits). Similarly, the PSCs could aid service providers wishing to operate cross-border in identifying the most appropriate insurance cover for their particular needs.

Insurers and consumers alike could contact the market's PSC for possible assistance in understanding existing insurance laws and, in the case of consumers, how to possibly obtain insurance to accommodate those requirements. While the PSC should not be viewed as a guarantee of cover for cross-border activities, it may assist as a first step in informing service providers about the tools they need to successfully enter a new market.

Notwithstanding the above, the development and offering of insurance products should remain of the prerogative of the private insurance market. As a purely administrative body, the PSC must not interfere with valuable insurance market operations.

Furthermore, the Commission could look at a mechanism to provide interested parties with up to date detailed information on rules governing insurance premium tax (IPT) in member states (including tax rates, additional applicable (stamp) duties, competent authorities, applicable administrative procedures and requirements, etc.).

Determining details about other member states' insurance premium tax details is difficult and time-consuming for insurers, especially those without their own presence in the target member state. Reliable and comprehensive information provided by the European Commission would reduce insurers' administrative burden and costs. This could help insurers thinking of offering insurance cross-border.

Insurance Europe does not believe, however, that legislative action is warranted to facilitate the sale of insurance services on a cross-border basis. As explained in the response to Q1A, insurance is an inherently local business. Insurers will therefore decide to engage in cross-border activities only if it makes commercial sense to them, taking into account the cost of designing a new product and the potential demand for it. Insurers deciding to engage in cross-border activities can make use of the freedom to provide services (FOS) and of the freedom of establishment (FOE), as provided for by the EU treaties. Risks in a specific markets are therefore covered either by local players or by companies operating in various markets but with a very good knowledge of local conditions and risks.

.....

**31. What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?**

No Insurance Europe response.

.....

**32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?**

Please tick all relevant boxes

Life insurance (This work would build on existing EIOPA research on the Pan-European Personal Pension product)

Mortgage

**Other**

None

Don't know / no opinion / not relevant

Please specify for which other retail financial services products standardisation or opt-in regimes might be most effective in overcoming differences in the legislation of Member States:

*It is currently not clear that the introduction of standardised templates or opt-in regimes for specific types of insurance would be effective in overcoming differences in national legislation. This question was also explored during the work of the Commission's expert group on European insurance contract law in 2013-14. In its submissions (particularly the responses on specific types of insurance, including liability, motor and pensions, refer to <http://www.insuranceeurope.eu/contract-law>), Insurance Europe set out the multitude of factors that impact an insurance policy and its terms, and the complexity of the interactions and consequences of various factors.*

*As set out in response to several questions in this consultation (refer to the answers to Qs 1, 2, 14, amongst others), there are many more obstacles to EU-wide standardisation of insurance products than presented in this consultation.*

*Standardised products would limit the freedom to design products. There is thus a risk that products would not meet the demands and needs of consumers. The benefits and added value to consumers of such products would therefore be questionable. Since standardisation is likely to impede product diversity, it is unlikely to bring about the benefits intended by the European Commission.*

*Another difficulty with an introduction of standardised insurance products or opt-in regimes is that consumers would be expected to be able to compare accurately under which regime (national or EU-standardised) an insurance product covering a given risk would be most advantageous to them. In this context, the difference in complexity between, say, a simple bank account and a particular insurance product is crucial. For insurance products, it may be more effective to await the outcomes of recent EU initiatives to increase product-information provision to consumers. In parallel, improving consumers' understanding of financial products in the EU should be considered through continued insurance education. Please refer to the Insurance Europe website, which showcases initiatives by local insurers to assist consumers (<http://www.insuranceeurope.eu/consumer-focus-2>, specifically the section on transparency and consumer education). As education remains under national competence, the Commission's role in this area is to encourage states to tackle financial and digital education issues and to facilitate the exchange of good practices.*

*With regard to the role of the European supervisory authorities (ESAs), Insurance Europe would caution against an expansion of their role into this field of work without evidence illustrating the need for a standardised or opt-in regime.*

*Insurance Europe would urge caution in proposing a 29<sup>th</sup> regime for life insurance products building on the work carried out by EIOPA on a pan-European personal pension product (PEPP). The need for any standardised or opt-in regime in this field would need to be demonstrated and supported with clear evidence. Furthermore, it is still premature to endorse the work carried out so far by EIOPA on a 29<sup>th</sup> regime for a PEPP. The insurance industry believes that the introduction of PEPPs – much like a possible standardised life insurance product – faces major challenges, particularly in light of close links (ie subsidiarity) to areas of national competence (taxation, social and labour law structures).*

*Insurance Europe cautions against a simple comparison of premium rates between member states – as done in the consultation – as a justification for envisaging the introduction of a standardised product.*

*Price divergences in the EU are due to legal and regulatory differences and demand-driven product design. They should not be taken to indicate a market failure. Explanations of differences in premium for what appear to be similar products include:*

- *The products may not have exactly the same features. For instance, some products may offer additional protection (such as work incapacity, civil liability).*
- *The products may have non-linear premiums (e.g. the premium changes yearly depending on age,*

*making the first year look cheaper, or the commission is charged in the first years, making them look more expensive, or there is a discount for one-off payment of the premium instead of monthly installments).*

- *The underlying risks differ between member states (e.g. differences in life expectancy, purchasing power, corporate income tax etc.).*
- *The products are subjected to different risk assessment criteria or the criteria are given different weight in the assessment (smoker, non-smoker, motorcyclist, BMI, etc).*

*Even within a single member state, significant differences in prices are justified due to different benefits and risk assessment. This is due to demand-driven product design and should not be taken to indicate a market failure.*

**33. Is further action necessary at the EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?**

Yes

✓ **No**

Don't know / no opinion / not relevant

If further action is necessary at the EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector, please state additional comments:

n/a

Please explain your answer to question 33:

*Insurance Europe is not aware that the current EU legal framework on choice of law in cross-border insurance contracts for mass risks poses an obstacle to the supply of such contracts. This is because other factors such as language, culture, 'knowing your customer', local customs and legal, tax and supervisory environments are likely to have a greater impact on the decision to provide cross-border insurance of mass risks than the ability to choose the law applicable to the contracts. This is also a current topic of review by the Commission, which awaits the outcome of a study on Rome I in 2016. Insurance Europe therefore does not believe that further action is needed.*

*Some EU non-life insurers do carry on mass risk business on a cross-border basis. Rather than trying to sell the same contracts as they provide in their home state, they may work with insurance intermediaries in the host member state to offer insurance contracts that are in line with the expectations of local customers. Often the contracts will be subject to the law of the host member state, which is usually the member state where the risk is situated and the policyholder has his habitual residence. Not only does this comply with Rome I, Art. 7, it is generally in line with customer expectations.*

*Larger insurers may also make use of a "partnership network", in which they can contact a partner insurance company in a foreign market, i.e. the "host insurer" to issue the necessary policy in the local language and according to local requirements. Premiums are collected by the host insurer and sent back to the home insurer – minus a fee for the host insurer's local services - meaning that the home insurer then reinsures the risk. Should a claim arise, the host insurer handles the claim directly and settles it where appropriate. The host insurer then sends the claim back to the home insurer for reimbursement as per their partnership agreement.*

*Making the contract subject to the law of, say, the insurer's home member state would mean that, in the event of a dispute, the customer would either have to bring a legal case in the insurer's home*

*member state, which is likely to be a costly process, or a court in the host member state would deliver a ruling based on the law of another member state, probably an unsatisfactory procedure. This is likely to affect the ability of the insurer to sell the product. So the choice of local law to govern a contract is not just a matter of legal compliance, but has a commercial motivation as well.*

*In Insurance Europe's experience, the choice of law is an exception for mass risks. This may be influenced by the fact that clients are often focussed on their well-known national law and insurance conditions. As mass risks are subject to standardised processes, an insurer will tend to apply only one contract law to its mass risks.*

*Insurers will generally tend to offer insurance contracts, including for mass risks, in markets where they understand the risks to be insured so that they are able to accurately price their products in reference to relevant actuarial data. Insurers will also want to take account of both the business environment (for example the legal, tax and supervisory environment) and other factors (such as local culture, language, customs and customer expectations) that may affect the insurance contract. Insurers will also want to ensure they are able to establish a network to service the insurance contracts in accordance with their business needs and reputational objectives. The appropriate servicing of the contract before and throughout its duration, and the ability to manage claims arising from the contract (including providing additional assistance to policyholders) will have an impact on the decision to offer cross-border insurance of mass risks.*

*EU insurers must also take into account the General Good provisions of other member states in which they offer insurance products. These often include detailed insurance contract law provisions.*

*References to "general good" in EU provisions such as the Solvency II Directive are not very clear and the concept is sometimes not well-understood by national supervisors. Consequently, member states' general good measures do not necessarily meet the criteria set out in the Commission Interpretative Communication of 2000. It would therefore be appropriate for the Commission to review the use of general good provisions in the insurance sector.*

*Although insurers may choose to supply insurance products cross-border, which in the case of mass risks will tend to be subject to the law of the host member state, the barriers listed in answer to Q2 above will be the obstacles to be overcome where it is deemed that there is a sufficiently large demand in another member state to justify the investments necessary.*

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**34. Please provide any additional comments in the box below:**

■ **Switching**

*In the introductory section of the current consultation, it is alleged that low switching rates by consumers in retail financial services arise from deficiencies in the market. Insurance Europe would caution against relying on the outcomes of the Special Eurobarometer 373 for switching rates, reasons and implications in the insurance market, as it does not cover insurance (only bank accounts, mortgages, loans and credit cards). Further, the absence of switching in a market is not synonymous with a lack of competition or detriment to consumers. In insurance, stability in commercial relationships and consumer loyalty likely reflect consumer contentment with providers (many factors impact this, such as the complexity of the product, its duration, its impact on consumers' lives, the service levels offered) or that providers work hard to retain consumers by price matching, retention bonuses, etc.*

■ **Distinguishing between retail financial services**

Care must be taken to distinguish between simple financial products (e.g. a current account) and more complex or long-term products (and also between different types of insurance products). The obstacles to cross-border provision as well as demand will differ and should be considered individually and separately. The Insurance Europe publication "How insurance works" (<http://www.insuranceeurope.eu/how-insurance-works>) explains the specifics of insurance and why insurance differs from other financial products.

■ **Latent demand**

The current consultation is based on an underlying assumption that consumers wish to pursue cross-border business. This may be true for simple financial products (such as a simple bank account) but for insurance there is currently no evidence (from the EC or Insurance Europe) to support such an assumption or to believe that there is a large latent demand that is not currently being met. For instance, the Commission's own Special Eurobarometer 373 (April 2012) confirms that 8 out of 10 consumers would not consider purchasing cross-border financial products or services. The report goes on to state that 'most do not see the benefit or need'. The report concludes there is a clear need for improving financial literacy – an endeavour insurers support. Therefore, improving consumers' understanding of what insurance is already available to best meet their needs may be of greater benefit to consumers than adding to the complexity of choice with cross-border insurance provision.

■ **Preference for FOS over FOE**

The current consultation could be taken as indicating an EU policy preference for cross-border provision of retail financial services by means of freedom of services rather than freedom of establishment. For insurance, Insurance Europe would caution against such a preference, as it ignores the specific characteristics and complexities of cross-border insurance provision. As explained throughout the response to this consultation, cross-border insurance provision is complicated by several local factors that impact the ultimate design and offering of an insurance product. Insurance products therefore tend, in general, to be offered cross-border through freedom of establishment (branches) or partnership agreements. This enables insurers to establish the proper network needed to offer good insurance products and associated services.

■ **Premium comparisons**

The current consultation compares the premium charged for insurance products in various member states and concludes that wide variances in premium suggest market deficiencies.

Insurance Europe would caution against such an oversimplification. When comparing premiums (both within and between member states) care must be taken to compare like with like. As explained in response to Q32, various differences are likely to apply to the terms and scope of insurance products that may be given a similar name or description or seek to meet similar needs. They will thus vary in premium charged. This is not a sign of deficiencies in the market but rather a sign of the efforts insurers make to be competitive by seeking to meet consumer needs and demands through innovation in product design. Examples of differences are set out in answer to Q32. The differences quoted in the Green Paper in the prices of term-life insurance products (12.40 EUR in Spain vs. 65 GBP in the UK) are therefore questionable. Likewise, on page 7/8 of the Green-Paper the EC refers to the European Insurance Report on European Motor Insurance Markets. The EC quotes that in the case of motor insurance, the premium varies even for the same car model (Chart 2). However, that chart does not show the premium per model but the average mandatory third party liability premium by country.

■ **Support for EU action**

In the responses to Qs 8, 16, 17, 18, 22, 24, 30, 32 and 33 Insurance Europe explains its support for EU-level action in several areas that can strengthen the internal market for retail financial services and consumer protection.