

Insurance Europe contribution to the Council of Europe consultation on predictivity, genetic testing and insurance

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Section I

Insurance underwriting and genetics

Insurance Europe noticed that in the consultation there are several parts referring to private health insurance (*ie the functioning of private insurance, collection and use of health related personal data for insurance purposes*) that are not entirely correct and therefore clarification is needed. Some of the underlying assumptions outlined in the document need to be re-examined to ensure accuracy and a full assessment of all options would be necessary. We hope that the clarification provided below is helpful in this respect.

How insurance works¹

Insurance Europe would like to highlight the following two points:

- Insurance is about the **transfer of risk**. It transfers the risk of financial losses as a result of specified but unpredictable events from an individual or entity to an insurer in return for a fee or premium. If a specified event occurs, the individual or entity can claim compensation or a service from the insurer.
- Insurance is therefore a means of **reducing uncertainty**. In return for buying an insurance policy for a smaller, known premium, the possibility of a larger loss is removed. By pooling together premiums from a number of policyholders and several insured events, the financial impact of an event that could be disastrous for one policyholder is spread among a wider group.

The vast majority of insurers have underwriting philosophy documents with details about their practices and underwriting standard. Both regulatory requirements and good practice result in insurers' **compliance** that is also regularly monitored through **internal audits**. In the case of reinsured products, **reinsurers** are also carrying out **audits** to ensure that insurers are following the guidelines.

Where appropriate an insurer should provide references to the evidence base that has been used in arriving at an underwriting decision. Nevertheless, actuarial data should not be made publicly available because it could

¹ For more information about "How insurance works" we attached the Insurance Europe booklet that has just been published.

allow competitors to understand the individual business methods of the other party. This could be in breach of competition law. Secondly, less competition would not benefit consumers.

In a competitive market, insurers have to determine the best price according to the risk. In this context, they keep themselves informed of scientific progress and other advancements, by considering systematic reviews and guidelines. They use data that has been accepted by medical best practice and is clinically relevant. In fact, insurers require sufficiently long follow up periods as their business is long-term. New drugs which have been proven to have a positive impact in the short term may have long-term side effects.

Genetic predictive data and tests

The **definition** of genetic predictive data and tests used across many countries **varies** considerably as does the approach taken by each country. Generally speaking however, it can be said that **each country** has its **own appropriate approach** already, which is based upon its specific individual market characteristics and the broader national context (e.g. the social security system in place).

The genetic test definition used in Chapter 2 section 1a, is very broad and includes any test that can give information on an inherited condition. Any proposed definition should be more narrowly defined to ensure legal certainty.

Insurance Europe highlights that despite these variations the common thread is that **insurers do not ask applicants to undergo predictive genetic testing. Also they generally do not make use of predictive genetic tests results, except in very specific cases defined and regulated at national level.** Insurance Europe therefore strongly disagrees with a general prohibition of the use of genetic predictive data - a one size fits all approach which would not capture the diversity of the markets and would therefore not bring any added value either to the consumers or insurers.

However, if there was a ban of the use of genetic predictive testing results, exceptions must be allowed depending on the type of risk and the level of cover provided. The predictive values of the test per se are an inadequate criterion for restrictions because it varies dramatically between conditions.

Finally, Insurance Europe would like to highlight that if the applicant has used such a test without disclosing the result, he would be able to benefit from the information at the expense of the insured persons community. Whether or not the applicant discloses the result depends on the Member States system.

Non-genetic predictive examinations

Insurance Europe believes that it is essential to recognise the difference between **predictive genetic tests, diagnostic tests** and **non-genetic examinations**: the predictive genetic test taken by patients who have no sign or symptoms of a disease while the diagnostic genetic test is a confirmatory test confirming disease or determining subclasses of disease. Insurers have to assess the risk in order to apply the best price and provide the most appropriate cover. Most of the non-genetic examinations focus on data that result from lifestyle, behaviour related and avoidable risk factors.

Predictive non-genetic examinations are **key for insurers** because these tests give insurers necessary information about the probabilities of risk the insurance applicant bears when he/she is asking for cover. They may include medical and behavioural risk factors such as cholesterol levels, blood pressure, smoking status, family history and profession among others.

For these reasons, Insurance Europe believes that insurers should be **able to use non-genetic predictive examinations** and diagnostic genetic test results and access to this kind of information should be ensured. As explained above, countries have different approaches already established and in some examples, these approaches are detailed by law. For this reason, it is appropriate to permit individual countries to apply the approach which most closely matches their individual needs and experiences.

Family history

Family history is relevant for the risk assessment and insurers must be allowed to ask for/and use this kind of information. Insurance Europe highlights that the value of the information about **family history depends on the disorder**. For instance, family history such as a sudden death in a large number of relatives

should be examined thoroughly as it could in fact save lives to do so. Therefore, the relevance of certain conditions is very significant and hence used in clinical practice. Family history is highly predictive of risks irrespective of genetic status and is used for the fine tuning of an established risk or as a way to identify other risk factors.

Moreover, the relevance of family history in relation to **life and health insurance** can be very significant, and is a valuable part of an effective risk framework. There are a number of conditions where family history can identify increasing incidence that impact upon risks for all major classes of business, ie life, critical illness and disability insurance.

Any risk factors are dealt with in a fair and proportionate manner. As stated in our comments above, insurers only take into account relevant and necessary information when underwriting. The important principle is that if an applicant knows something that could increase his/her risk (and therefore potentially encourage anti-selective behaviour) the applicant should share the information with the insurer. Where the applicant is **not aware of his/her family history**, there is **no information to disclose** and no anti-selective behaviour.

Section II Health Questionnaire and Medical Examinations

Health questionnaires

Health questionnaires, which are drawn in collaboration with doctors and are based on best insurance practice, address in principle a wide range of potential disorders so that insurers can evaluate the risk applicants represent. As the intention of a health questionnaire is to obtain relevant and proportionate information, **objective questions** are asked. This is achieved by contacting the applicant and asking for specification of the given information. The questions asked help consumers disclose the appropriate information when making an application, and can also help speed up claims processing.

In combination with the objective questions, insurers also use certain so called "**subjective (open) questions**", from which insurers deduct information on the applicant's self-assessment that has also some significance for the risk evaluation process. It should be noted that frameworks for subjective (open) questions are set out in the consumer protection legislation of some EU Member States.

The questions must be transparent and the applicant should be provided with clear cut information about his/her rights and obligations. Moreover, the explanations given to the applicant with regard to the questionnaire must also be simple and understandable. However, in case the applicant needs **clarification** on the meaning of the questions, he/she should **request it from insurers**. Insurers have a number of ways to clarify the meaning of the questions, including:

- Customer guidance provided by the insurer or industry-wide guidance
- By using a helpline, where customers call and receive answers to their questions
- By way of tele-underwriting, where well trained staff take the customer through the application over the telephone.
- Notices, information leaflets attached to the questionnaire, links on the online application
- Points of sale : interactive health questionnaires where the next questions pop up depending on your answer to the previous one

Medical examinations

Insurance Europe would like to clarify that qualified professionals are employed by insurers who have to follow appropriate standards and filter the information received by the applicant and identify relevant information. The relevant **medical examination finding** is then looked at in the context of other risk relevant information such as sum insured, insurance product etc to come to a final underwriting decision. How the medical record from the medical practitioner to the insurance company is transferred is highly regulated. Strict data protection guidelines apply.

Insurers should have an appropriate evidence base for the information they rely on and to apply best practice standards - what is appropriate information depends on the product.

Finally, a distinction should be made when talking about **clinical standards** in medical examinations, depending on their use: a **clinician** is using clinical standards in order to identify the best possible treatment or treatment goals; an **insurer** is using clinical standards to identify long-term predictors for mortality and morbidity so as to assess the applicant's risk.

Section III – Other issues

Transparency and consumer protection

Insurers support efforts to **promote transparency** and to **improve communication** with consumers. Therefore, insurers, **when requested**, will provide information to an applicant where special terms are applied or where it was not possible to provide the cover sought.

Regarding consumer protection, it should be noted that there are rules in place (in the form of legislation, regulation and industry practice) to support transparency and communication with the consumer in terms of the processes and practices insurers have. It should be not disregarded that the compliance officer monitors the whole underwriting procedure of all contracts. Where consumers or regulators feel that more is needed, there are dispute mechanisms in place (such as Ombudsman to resolve conflicts). Therefore, further costly and complicated monitoring would not have any added value for the consumer, and may detract from the procedures already in place.

Continuing professional development

Insurance Europe would also like to highlight that underwriters are highly trained and undergo on-going assessment and **continuing professional development** is a well-established requirement. Proper interpretation of the data is ensured by internal underwriting guidelines internal quality control and internal compliance officer. Insurance doctors are trained in insurance medicine or clinical epidemiology, depending on the nature of their work.

In addition, reinsurers play an important role in supporting direct insurers' office staff by providing Continuing Professional Development opportunities through seminars and newsletters on a regular basis. Reinsurers also have specialist research and development functions in their underwriting departments with relevant research information. This information is passed on to direct insurers and they can use it in their underwriting process.

Data protection issues

Insurers can demonstrate long standing compliance to data protection legislation. In this context, Insurance Europe supports the general principle that the **applicant/insured person should be able to access information** held by the insurer **on request**. This does not necessary include information regarding the applicant's medical journal; in some countries this is information that he/she can get only from his/her doctor. Under EU data protection legislation the applicant has the right, through the Subject Access Request to access information related to him/her.

Moreover, privacy laws allow the storage of data no longer than necessary for the achievement of the goal for which the information was collected. Therefore, the data collected for insurance purposes should be **kept for the period that is justified**, ie in the context of a dispute concerning the rejection of an application for insurance coverage, but also when this is **required by other EU or national legislation**, for different purposes, ie anti-fraud and anti-money laundering legislation.

CoE suggestion for a stakeholders' consultation

Insurance Europe agrees that well-balanced relationships and transparency are important, particularly between the consumer and the insurer who share information for the formation and execution of the insurance contract. Insurers acknowledge that regular dialogue is important.

Dialogue and increased transparency should be encouraged to reduce mistrust and explain both parties' positions. Nevertheless, there should be no regulation that requires regular consultations. A platform for discussion would be preferable and at national level such initiatives already exist in various forms adapted to



the national contexts. It could counteract well-functioning existing initiatives and add unnecessary bureaucracy to set up a central permanent body for this purpose.

Social aspects and intervention of public authorities

Insurance Europe agrees with the principle that there are social risks that require intervention by public authorities to ensure proper coverage. Consumers should have confidence that they will receive the help they need during times of distress, such as during an illness or after the death of a family member.

However, this is an issue that can only be addressed by individual countries based upon their own healthcare set up and social security systems. This is because the appropriate level of coverage depends entirely on the citizenry, and particularly the social security and health systems in operation. Further these systems are different between Member States, and it is important that interventions reflect these differences.

Moreover, what is a “proper coverage” and to what extent people’s needs should be covered by the state or not, is a political question. One way to ensure that people get at least proper coverage should start with an examination of consumer needs and the extent to which those needs are being met.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe’s economic growth and development. European insurers generate premium income of over €1 100bn, employ nearly one million people and invest almost €7 500bn in the economy.

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