

Addendum to Insurance Europe's response to EC Services Passport consultation

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Referring to:

EC Consultation on proposal to introduce a Services Passport and address regulatory barriers in the construction and business services sectors

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Insurance Europe acknowledges the benefits of a single market and fully supports the freedom of movement and freedom of the establishment of services that brings opportunities to European businesses and professional service providers.

In relation to the Commission's consultation on an EU services passport, while Insurance Europe shares the Commission's interest in the facilitation of insurance for cross-border services, it questions the ability of a services passport to ensure a service provider is able to satisfy cross-border insurance obligations.

Specifically, based on the European Commission's consultation document, it remains unclear to Insurance Europe: (1) how an EU services passport would facilitate the provision of insurance for cross-border services providers; and (2) what role insurers would play with respect to the development and delivery of the services passport.

This document addresses these questions, as well as aspects of the envisaged EU services passport that are not covered by the EC's consultation. It should therefore be read in conjunction with Insurance Europe's [response](#) to the public consultation.

Insurance needs reflect the risks tied to local factors

Different insurance needs between member states often stem from national liability legislation, national requirements for professionals and local costs that influence damage claim amounts. For instance:

- professional indemnity risks reflect national and regional rules on civil liability, causation, proof of loss and judicial procedure;
- national professional association requirements may include a specific type or scope of insurance cover; and
- cost-related factors surrounding compensation, such as medical treatment or local property value, vary depending on the country's economic development or litigation/compensation culture.

Consequently, an insured person or business performing the same type of service in different member states may have a different risk profile in each state of operation. Thus, in many cases, a service provider will require



a different insurance solution for each market. This explains why a service provider may need to expand or “top-up” an existing policy to cover new risks.

As mentioned in Insurance Europe’s response to the EC consultation, many insurers can and do offer cover for markets other than their own on a daily basis. While some may use subsidiaries to help facilitate this cover, others rely on “Europe-wide networks” where a partner insurer can assist in offering the local cover. Insurance intermediaries also operate through such networks to assist insurers with understanding and serving local markets.

Considering that insurance for cross-border services exists and is accessible, 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 in that market. This awareness could be increased through better use of the Points of Single Contact (PSCs) already provided for in the EU Services Directive, as opposed to the harmonisation methods outlined in Question 94 of the Commission’s consultation.

The design of an EU services passport

It is Insurance Europe’s understanding that the services passport will introduce a single, common, EU-level, electronic procedure with clear timelines for service providers wishing to operate cross-border, with the home member state acting as a single interlocutor. Insurance Europe understands that this passport will be voluntary for service providers to request but mandatory for member states to deliver, and that it is targeted primarily at medium-sized businesses and professional individuals.

Insurance Europe also understands that the Commission is looking at the possibility of standardising the type of information that may be contained on a professional indemnity insurance certificate, which may then serve as “proof of insurance” to the host member state. The EC seems to consider that this certificate could build on existing legislative tools such as Article 179 of the Solvency II Directive (Solvency II) or Article 20 of the Insurance Distribution Directive (IDD).

Finally, Insurance Europe understands that the Commission wishes to facilitate the provision of information on a service provider’s track record between home and host member state insurers. The Commission notes that this could help prevent the service provider from being viewed as a “start-up” company in the host member state that has no available track record to evaluate.

This document contains preliminary views on these suggestions not covered in the services passport consultation.

The role of insurance in the services passport

It is our understanding that the Commission’s intention is that a home member state would be charged with delivering the services passport and is thus charged with presenting to the host member state that the service provider fulfils the necessary requirements to operate in that host member state. Considering that insurance is, as discussed above, tied to national and regional liability legislation, professional requirements and costs, it is unclear how the passport would enable a service provider to bypass these differences.

Moreover, it is also unclear how the services passport would transmit information about a service provider’s insurance cover, considering that this type of information is held by the service provider’s insurer. If the Commission seeks to relay this information through a “proof of insurance” certificate, it is questionable how this certificate would relate to the services passport, as the certificate would also be issued by the service provider’s insurer.

Furthermore, standardising information in order to establish proof of insurance for cross-border business purposes may be difficult to achieve:

- Key elements to include in a standardised document summarising an insurance policy are likely to differ based on each member state's own liability regime.
- Standardised information may omit crucial information depending on the type of cover provided. For instance, many medium and large companies take out very specific and tailored products that a standardised form does not provide enough detail on.

Finally, the public authorities of different member states may be interested in different aspects of a service provider's cover. Therefore, it would be very complex to standardise the type of information that would be satisfactory for the public authorities of every EU member state.

Use of existing legislation to build a proof of insurance certificate

The referenced legislations (Solvency II and the IDD) serve very different purposes to the services passport and should not be considered as solutions for facilitating the provision of insurance for cross-border services.

Article 179 of Solvency II mandates that member states must provide the details that must be given on a certificate issued by a non-life insurance undertaking to an insured person in order to demonstrate that the insured has fulfilled a statutory insurance obligation. This imposes a duty *on the member states* to regulate in an area concerning *their own national laws*, as well as to provide insurance undertakings with guidance on the "proof of insurance" considered satisfactory *within their own jurisdictions*.

With regards to the IDD, Article 20 concerns the Product Information Document, or "PID", that is submitted to a consumer prior to inception of the insurance contract in order to help facilitate that consumer's understanding about what is to be purchased. The PID is a non-personalised, general information document that illustrates the differences between different types of non-life insurance products so that the consumer may be well-informed before purchase of the product. This differs from a "proof of insurance" certificate, which would ideally contain detailed information about a policy once it enters into force.

Considering the above, it is difficult to see how these two legislative frameworks can serve as a basis to build a new type of certificate proving insurance cover and which is used in cross-border contexts. It should also be noted that the existence of a certificate would not have an impact on the fact that local liability and risk factors necessitate specific insurance solutions, which are likely to remain different for different markets.

The assessment of a service provider's track record

As mentioned in Insurance Europe's response to the EC consultation on the services passport, it is common practice for insurers to provide a client (possibly via a broker) with a report on that client's claims experience/track record. However, considering the diversity of situations across the EU member states, there is no single approach taken towards these reports. Each insurer has its own criteria for evaluating its customers' risk profiles and for determining what aspects of that profile are important for the provision of cover.

Additionally, because each insurer assesses its customers' risk profiles differently and within the context of *local risks*, it would be impossible to standardise the type of information that is considered by all insurers in EU markets when evaluating the track record of a new customer.

Due to the fact that insurers maintain different risk assessment criteria for evaluating the track record of their customers, *even within the same market*, communication between insurers in different markets would be difficult in practice, further complicated by the difference in languages between the markets.

For the reasons outlined in this document, we would recommend that the provision of, and better access to, information by relevant organisations and individuals is the best way to support the facilitation of insurance for cross-border services.



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