

Pre-Contractual Duties of Information in light of the Insurance Distribution Directive (IDD)

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"De-Mystifying InsurTech: a Legal and Regulatory
View"

Working Party: Distribution of Insurance Products

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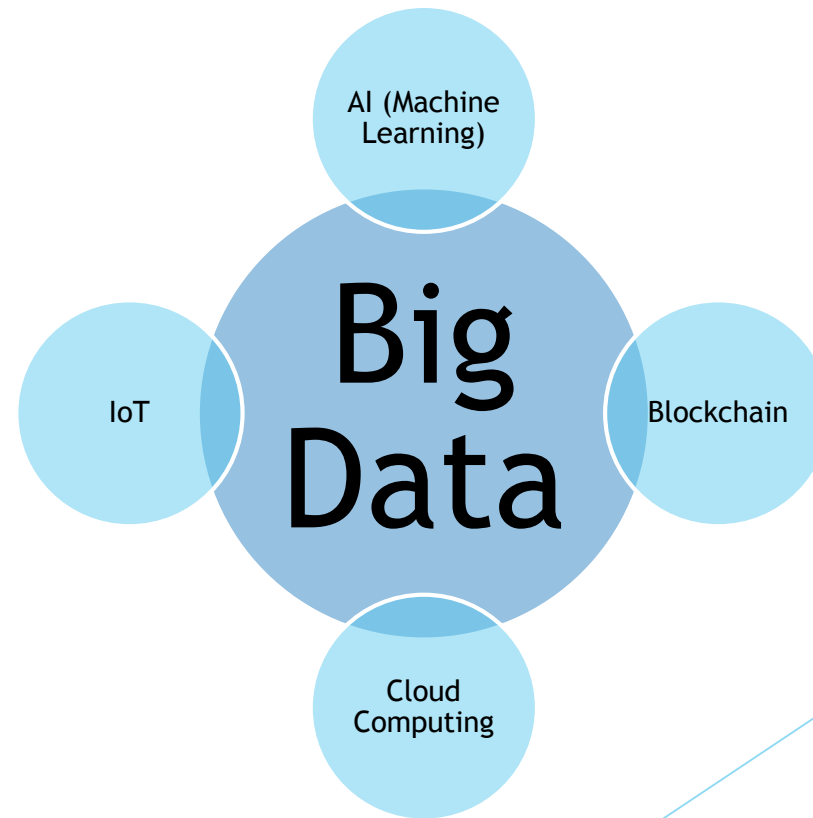
1. Impact of InsurTech at the Pre-Contractual Stage

Insurtech

- No legal term
- Many definitions:
 - As a transformational process: *“InsurTech is the FinTech sub-segment addressing existing insurance challenges.”* (PricewaterhouseCoopers, *Opportunities await: How InsurTech is reshaping insurance*, June 2016)
 - To define certain insurance players: *“Insurtechs” are technology-led companies that enter the insurance sector, taking advantage of new technologies to provide coverage to a more digitally savvy customer base.* (McKinsey & Company, *Insurtech - the threat that inspires* -Report, March 2017)
- For the purpose of this presentation: **Innovative technologies with a potential material impact on the insurance value chain**

InsurTech at the pre-contractual stage: an ecosystem with Big Data at the center

- Product design, distribution and underwriting are directly impacted
- Insurance players with the capacity to create and process significant amounts of different types of information (including personal data) which, in turn, may be channeled to the development of innovative applications
 - Relevant technologies:
 - Big Data
 - Internet of Things (IoT)
 - AI (Machine Learning)
 - BlockChain
 - Cloud Computing



Potential applications of InsurTech at the pre-contractual stage

- **Product Design**
 - Bespoke products
 - On demand and just-in-time insurance products
- **Distribution**
 - Massification of the use of robots
 - Website comparisons
 - Distribution of insurance products on a personalized basis
- **Underwriting and Pricing**
 - Faster and cheaper underwriting processes
 - Waiver of information formalities
 - Better predictive accuracy of risks and greater homogenization of risk profiles
 - More risk based-pricing

Raised concerns

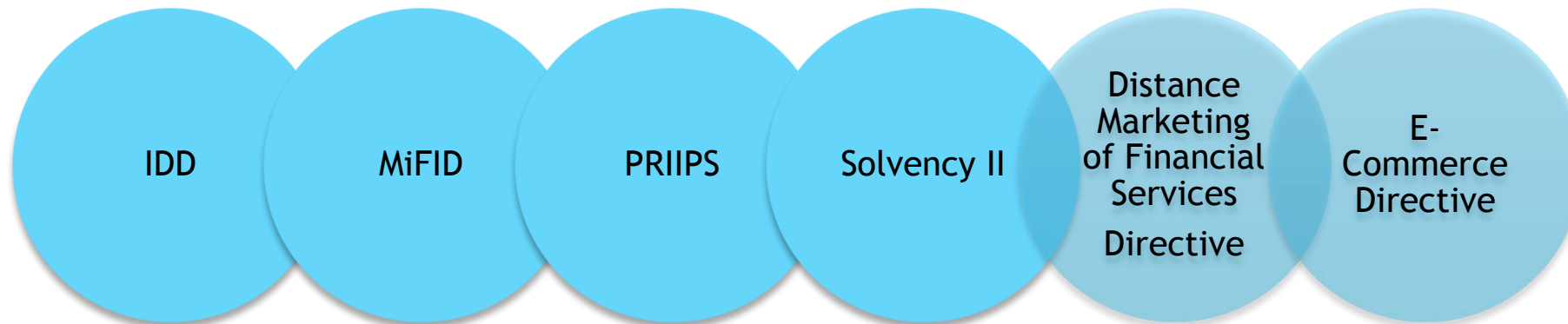
- Data privacy and security
- Discrimination and market exclusion of high risk profiles (at cost of social solidarity)
- Ethical, fairness and transparency
- Shift on disclosure dynamics
- Unprecedented regulatory challenges

2. Insurer's pre-contractual duties of information and IDD

Pre-contractual duties of information: What for?

- A strategy to address information asymmetry at formation of an insurance agreement:
 - Disclosure by the proponent of facts or circumstances material to the risk (as a mean of ensuring the risk is properly assessed)
 - Disclosure by the insurer of all the relevant information on the insurance contract (as a mean of ensuring informed decisions by consumers)

Insurer's pre-contractual duties of information: Where?



Pre-contractual duties of information in IDD

- *Consumers should benefit from the same level of protection despite the differences between distribution channels. In order to guarantee that the same level of protection applies and that the consumer can benefit from comparable standards, in particular in the area of the disclosure of information, a level playing field between distributors is essential. (Recital (6) of IDD)*
- A more robust and comprehensive EU disclosure framework to prevent insufficient quality of information provided to consumers

Pre-contractual duties of information in IDD

Article 17

- **General Principles:**
 - Insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers
- All information conveyed to costumers must be fair, clear and not misleading

Articles 18 and 19

- **Conduct of Business Information:**
 - Status of distributor
 - Structure and arrangements of the distribution

Article 20

- **Insurance Product Information:**
 - Demands-and-needs test
 - Further information with advice
 - Insurance Product Information Document (IPID)

Pre-contractual duties of information in IDD

Additional information requirements: IBIPs

Article 29

Additional information to customers with regard to IBIP's, costs and related charges

Article 30*

Assessment of suitability and appropriateness

Pre-contractual duties of information in IDD: Information conditions

Article 23

- In a clear and accurate manner, comprehensible to the customer
- Paper as default, but other durable medium or a website available if certain requirements are met
- Suitability statement only on a durable medium (article 30 (5))

3. InsurTech and IDD: Friends or Foes?

Collection and the usage of large sets of personal data: A threat to consumer protection?

- A shift in the dynamic of information disclosures: increased capacity of distributors to use previously collected personal data to relate the customer with a particular risk category.
 - IDD: Requirements of fairness towards customers (Article 17)
- Rather than for risk classification, distributors may use collected personal data to better meet subjective information requirements (where and if not exclusively bound to *information obtained from the customer*):
 - IDD: Articles 20 and 30

The deploy of Robotic Process Automation: Within the scope of IDD?

- Automation as an alternative distribution model to traditional broker-insurer relationship
- A problem of advice (and information)?
 - IDD: Provides no explicit or specific provision on automation in the context of distribution, however,
 - *“Several existing EU Directives and/or other regulatory requirements already apply to automated advice, even if they do not make an explicit reference (...) Such is the case, for example, for (...) the Insurance Distribution Directive (IDD) - Joint Committee of the three European Supervisory Authorities (ESAs) - Report on Automation in financial Advice*
 - Suitability assessments shall not be negatively affected by automated or semi-automated systems (Article 12 of Delegated Regulation (EU) 2017/2359)
 - Comparison websites (Recital (12) of IDD)

IDD information requirements at odds with digital transformation trends?

- The cases of:
 - ▶ Products based on “instant” processes
 - ▶ Online services
 - ▶ Paperless systems (blockchain)

4. Final Remarks

Are consumers protected?

- While algorithms improve risk classification and automation ensures less distortion of information:
 - ▶ GDPR must be taken into account
 - ▶ The human factor (or lack thereof) is still relevant
- Is IDD technology neutral? More a question of uniform high standards than regulatory barriers
- IDD directly or indirectly address some of the issues raised by the upcoming insurer's capacities, but is the legal contractual framework on pre-contractual stage entirely adequate?

THANK YOU!