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INSURANCE IN TODAY'S SHARING ECONOMY: THE IDD IMPACT

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INSURANCE IN TODAY'S SHARING ECONOMY: THE IDD IMPACT

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M. Lima Rego/ J. Campos Carvalho: “Insurance in today's sharing economy: a contract law analysis” (forthcoming in P. Marano/ K. Noussia (eds), *De-Mystifying InsurTech – a Legal and Regulatory View*, Springer 2018).

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INSURANCE IN TODAY'S SHARING ECONOMY: THE IDD IMPACT

1. Introduction: the sharing economy

Sharing economy: any economic activity involving online peer-to-peer (P2P) transactions in an open-source marketplace, through a platform which provides information and facilitates direct contacts between supply and demand, thus allowing for a collaborative optimisation of resources through an effective use of excess capacity.

Some popular examples: Uber / Airbnb / eBay

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1. Introduction: the sharing economy

In the insurance sector the term peer-to-peer insurance is used to describe business models where part or the entirety of the risk is carried by persons other than insurance companies.

For centuries, this has been done by mutual insurers. In today's sharing economy, online collaborative platforms provide regular people with new, apparently simpler means to pursue this age-old end.

INSURANCE IN TODAY'S SHARING ECONOMY: THE IDD IMPACT

2. Insurance in today's sharing economy: some real-life examples

- the broker model: *Friendsurance* / *Inspeer* / *Insurpal*
- the carrier model: *Lemonade* / *Hey Guevara*
- the self-governing model: *Teambrella*

These business models provide insurance consumers with new risk-sharing and risk-retaining ways which explore and, to varying degrees, try to take full advantage of **the principle of mutuality**.

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3. The Insurance Distribution Directive and its impact on P2P insurance models
Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution: the ‘Insurance Distribution Directive’ (‘IDD’).

The IDD ‘lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance distribution in the Union’ (Art. 1/1). It ‘applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to take up and pursue the distribution of insurance and reinsurance products’ (Art. 1/2).

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3. The Insurance Distribution Directive and its impact on P2P insurance models

In the self-governing model, the question is: for the purposes of insurance regulation, **does this qualify as insurance?** In other words: **are the contracts entered into through these platforms insurance contracts?**

» The IDD does not put forward any definition of insurance, nor does it provide any clues as to which contracts should qualify as insurance contracts for the purposes of the IDD.

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‘Insurance distribution’ means ‘the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media’ (Art. 2/1/1).

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Recitals 5 to 8 of the IDD provide a very clear picture of the reasoning behind it: since the protection of insurance consumers requires a level playing field between all distributors, the scope of prior regulation must be extended so that it applies evenly and uniformly to all channels.

The extension was aimed at increasing the types of insurance-selling entities to be covered by the new regulation. The extension was not aimed at widening the concept of insurance so as to increase the types of products which could qualify as insurance products under the new regulation.

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In the self-governing model, the question is: for the purposes of insurance regulation, does this qualify as insurance? In other words: are the contracts entered into through these platforms insurance contracts?

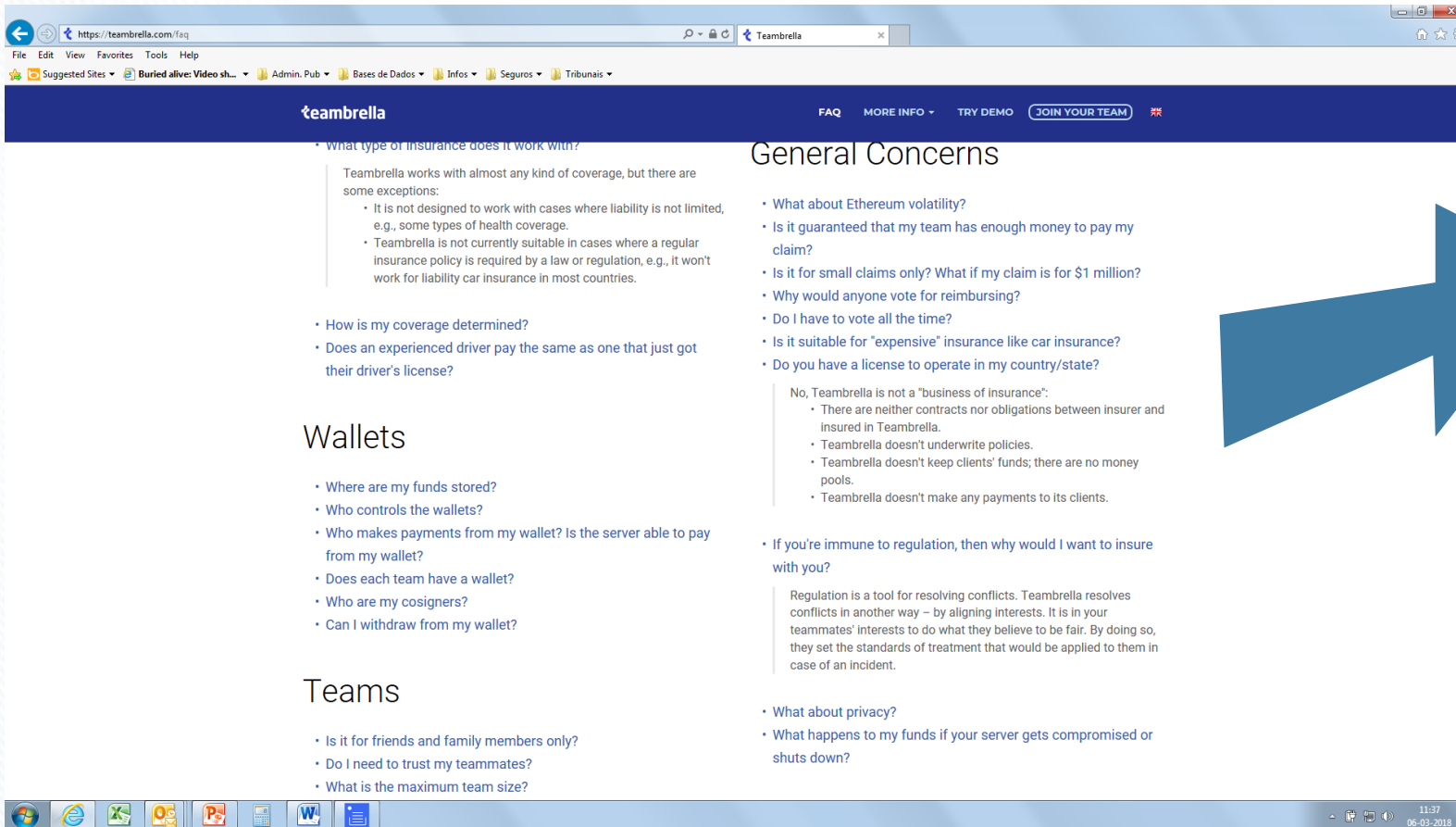
» A peak at Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II):

In the non-life business it does not apply to ‘operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves’ (Art. 5/3).

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teambrella FAQ MORE INFO TRY DEMO JOIN YOUR TEAM

General Concerns

- What type of insurance does it work with?
Teambrella works with almost any kind of coverage, but there are some exceptions:
 - It is not designed to work with cases where liability is not limited, e.g., some types of health coverage.
 - Teambrella is not currently suitable in cases where a regular insurance policy is required by a law or regulation, e.g., it won't work for liability car insurance in most countries.
- How is my coverage determined?
- Does an experienced driver pay the same as one that just got their driver's license?

Wallets

- Where are my funds stored?
- Who controls the wallets?
- Who makes payments from my wallet? Is the server able to pay from my wallet?
- Does each team have a wallet?
- Who are my cosigners?
- Can I withdraw from my wallet?

Teams

- Is it for friends and family members only?
- Do I need to trust my teammates?
- What is the maximum team size?

General Concerns

- What about Ethereum volatility?
- Is it guaranteed that my team has enough money to pay my claim?
- Is it for small claims only? What if my claim is for \$1 million?
- Why would anyone vote for reimbursing?
- Do I have to vote all the time?
- Is it suitable for "expensive" insurance like car insurance?
- Do you have a license to operate in my country/state?

No, Teambrella is not a "business of insurance":

- There are neither contracts nor obligations between insurer and insured in Teambrella.
- Teambrella doesn't underwrite policies.
- Teambrella doesn't keep clients' funds; there are no money pools.
- Teambrella doesn't make any payments to its clients.

If you're immune to regulation, then why would I want to insure with you?

Regulation is a tool for resolving conflicts. Teambrella resolves conflicts in another way – by aligning interests. It is in your teammates' interests to do what they believe to be fair. By doing so, they set the standards of treatment that would be applied to them in case of an incident.

What about privacy?

What happens to my funds if your server gets compromised or shuts down?

Do you have a license to operate in my country/state?

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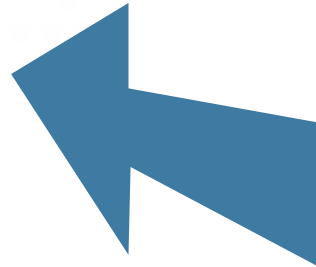
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3. The Insurance Distribution Directive and its impact on P2P insurance models

How do I pay premiums? Is it on a monthly basis?

There are no set premiums. When your team settles a teammate's claim you may need to pay your part of reimbursement directly to the teammate.



Basic Information

- What is it?
- How does it work?
- How is it different to regular mutual insurance companies?
- Is there a pool?
- How do I get reimbursed?
- Who decides if a claim is valid?
- Who decides what amount should be reimbursed?
- How is voting carried out?
- How do I pay premiums? Is it on a monthly basis?

There are no set premiums. When your team settles a teammate's claim you may need to pay your part of reimbursement directly to the teammate.

Experts

- How would professionals get involved? How would they be compensated?
- How is risk modeling done such that users can understand?
- Can startup insurance agencies use your platform?
- Who's going to investigate that claims are valid?

Technology

- Why not PayPal or Visa?
- Is it completely decentralized?
- Why do you need a server?
- How would you take fees?

Security Concerns

- Is there a central point of failure? What happens to my funds if your server gets hacked?
- How are fraudulent claims prevented?
- What stops a teammate to withdraw funds when he's asked to pay a reimbursement?
- How can I be sure that the team I'm joining is not a scam setup?

Wallets

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Whether or not the **self-governing model** distributes insurance products should not be the real issue: even if such products are not to be qualified as insurance products, they are designed to meet market demand for insurance products. The economic needs they fulfil are exactly the same:

‘Not insurance. A lot better’ (*Teambrella*’s motto).

In the interest of levelling the playing field between all insurance distributors so as to protect insurance consumers, does it make sense to leave these providers out of the scope of insurance regulation?

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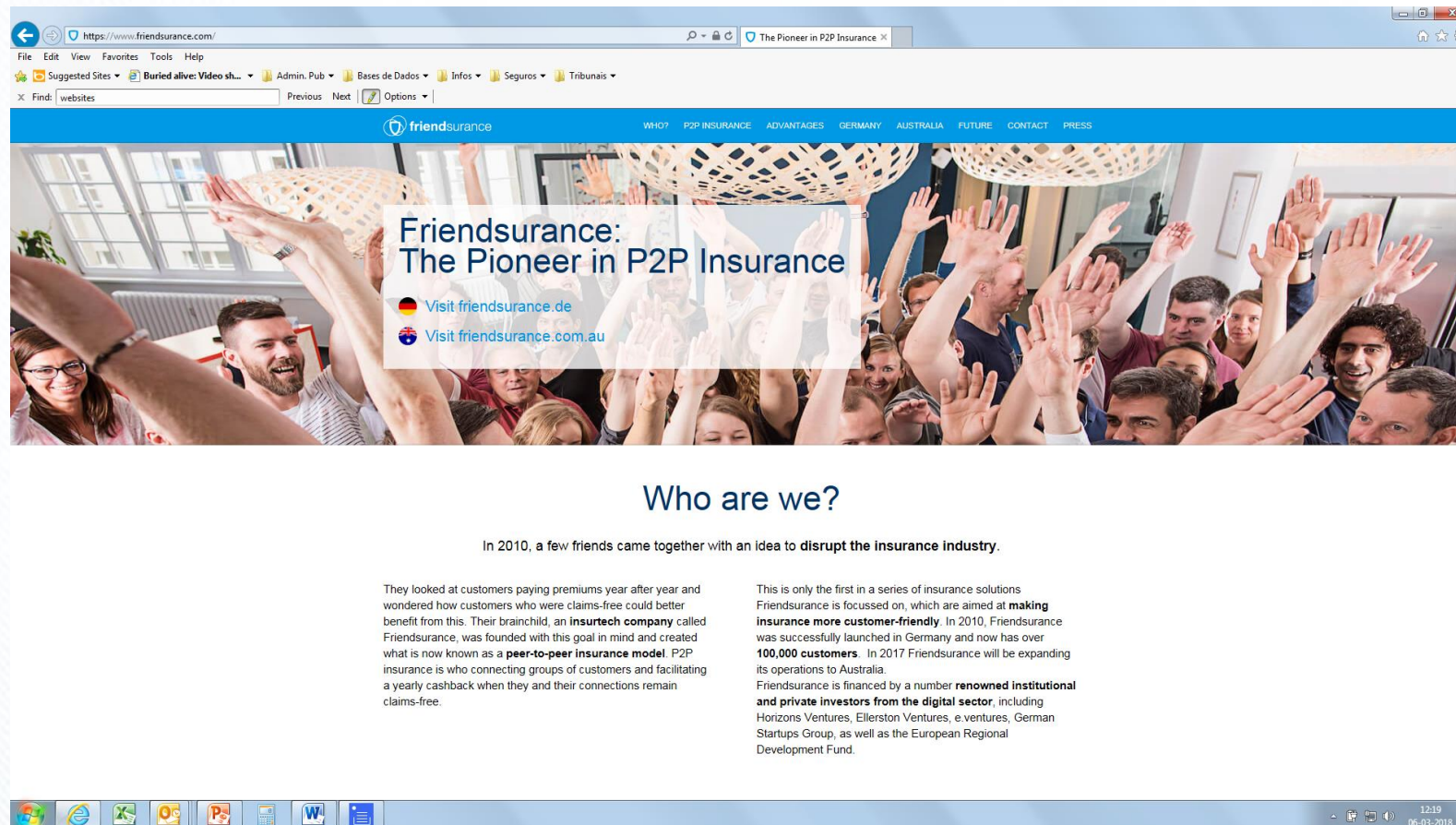
The IDD is fully applicable to the broker model and the carrier model. Such models are respectively set up by licensed intermediaries and by licenced insurance undertakings who undeniably distribute insurance products.

One such case is that of *Friendsurance* (an example within the broker model).

Another such case is that of *Lemonade* (an example within the carrier model).

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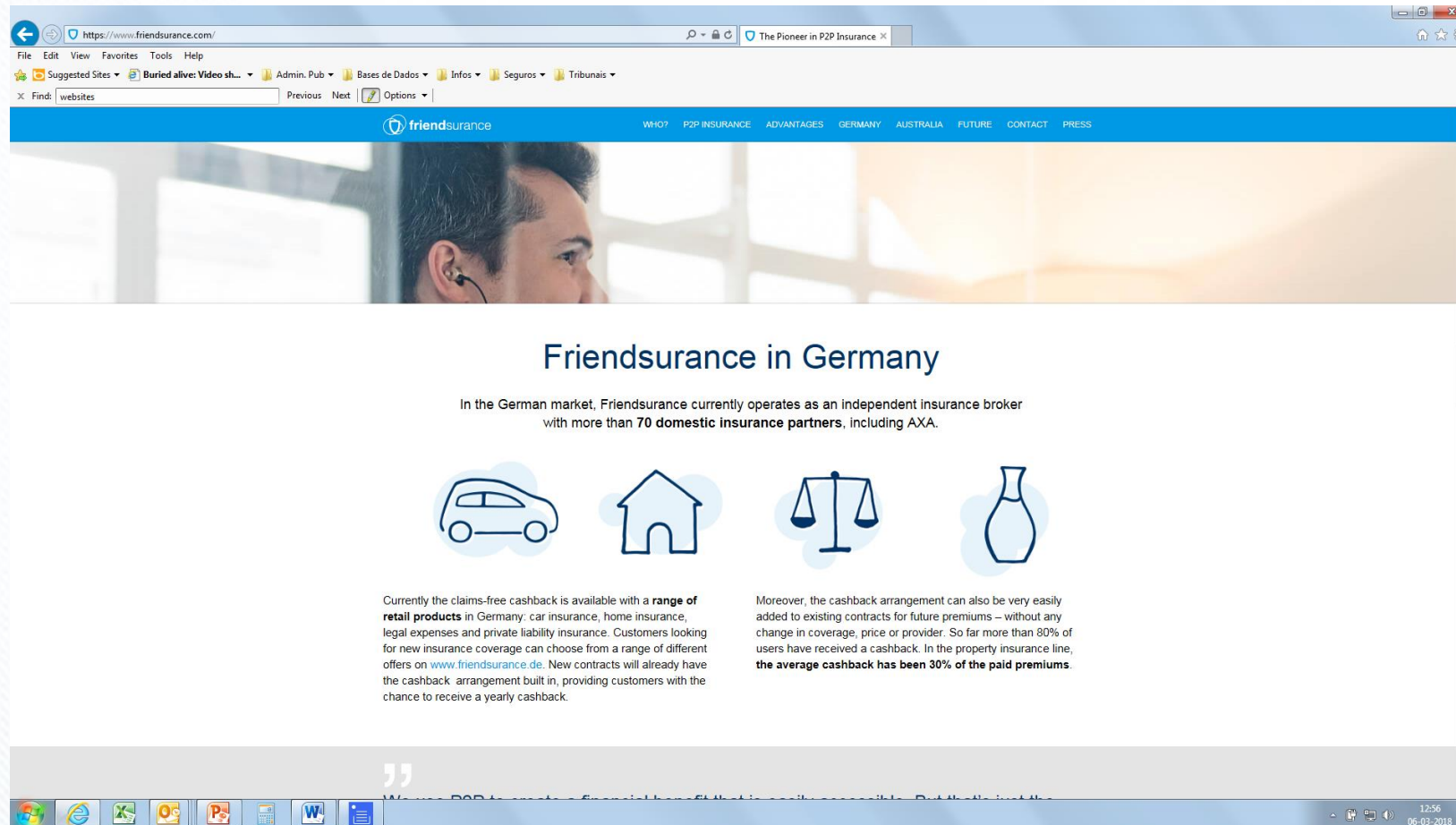
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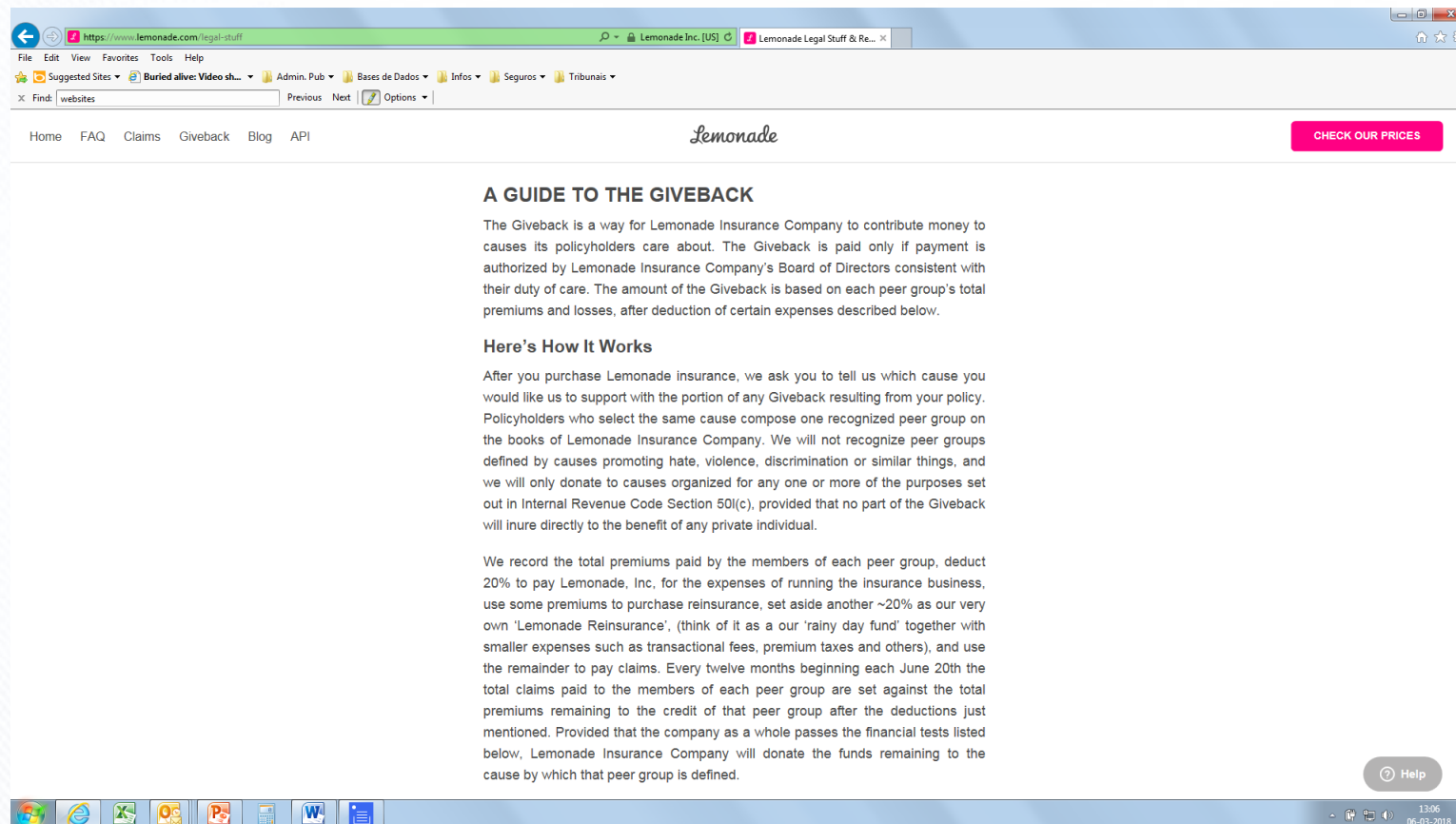
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The **broker model** and the **carrier model** try to enrich traditional insurance players by letting customers take on part of the risks insured by the group they happen to fall into or choose to adhere to, or at least by making customers feel like they are taking on those risks, and paying them back whenever the claims history of the group allows it. The industry is well-versed in such attempts: for many years life-insurers have been giving back part of their surplus to their policyholders in the form of yearend bonuses.

» **These are not true P2P models.**

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4. Conclusions

- The main question is whether or not the self-governing P2P model can escape insurance regulation, in particular that set forth in the IDD. Neither the broker model or the carrier model purports to escape the IDD.
- The distributor as the professional: the B2C paradigm is an underlying assumption throughout the IDD (product oversight and governance requirements, the demands-and-needs test, etc.). How does it work in a P2P context? The self-governing model is the only P2P model. The broker model and the carrier model are not true P2P models. Hence no real difficulties seem to emerge from such models when faced with the requirement to apply the IDD: the IDD is aimed at professionals but will apply to professionals, as that is what one gets in the broker and the carrier models.



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Thank you!

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