

QUESTIONNAIRE FOR AIDA WORLD CONGRESS, RIO, 2018

New Technologies **(Autonomous Vehicles and Robots- Cyber Risks- New Technologies and Insurance Process)**

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I. DRIVERLESS/AUTONOMOUS VEHICLES AND VESSELS

1. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to liability in tort for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.

Comment: answers may include the liability of drivers, producers of vehicles and the suppliers of satellite technology.

As at the current date there are no laws already adopted or proposals for laws already submitted specifically on this subject-matter in Portugal. We believe that the Government might be studying the possibility of enacting such legislation in a near future but some of the issues are quite complex and would call for very relevant amendments in existing legislation, possibly even including the Constitution (or at least how it is currently construed).

N.B. Any references to future legal developments in our answers to this questionnaire will be made from a strictly local perspective, since future legislation currently under development at an EU level was deemed to be out of scope.

2. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to compulsory insurance coverage for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.

Comment: answers may relate to motor vehicle insurance and product liability insurance.

Same as above (except that no constitutional issues are anticipated).

3. How do you envisage the future of personal lines in motor vehicle insurance in the next 5-10 years in your jurisdiction?

Comment: you may wish to comment on the future of motor vehicle insurance and the plans being made by the industry for new products

From a legal perspective we believe that in Portugal regulation of this subject-matter will continue to be mostly driven by EU Law (no pun intended).

From a market perspective it will be interesting to see how the industry will adapt to Usage Based Insurance (UBI).

Data protection requirements might hinder the outspread of new types of insurance made available by new technologies that record the mileage and driving behavior of the insured. The national data protection regulator has been very strict in its interpretation and enforcement of data protection requirements and insurers are weary of being too innovative in this respect. Perhaps due to this, known examples of UBI have come, thus far, from abroad. But we believe that market pressure will eventually prevail. Starting with a simple mileage based discount, where the insured pays more or less depending on how much he drives (PAYD, Pay As You Drive), we believe that the insurance industry will advance to a behavior based insurance. These new products, known as PHYD (Pay How You Drive), will make discounts available for good drivers. As for aggressive drivers, they will have to pay higher premiums, since one's driving behavior is really the essential risk factor, other factors being used at the moment merely playing the role of surrogates for what the industry is really after when assessing one's risk. The industry appears therefore to be moving – albeit still slowly in Portugal – towards a more personal, tailored insurance, where how much and how we drive will strongly determine how much we pay for coverage.

4. Driverless cars and autonomous vehicles apart, how do you assess the following technological developments that are expected to not only reshape the auto sector but also the insurance industry around it?

- (a) connected cars (i.e., Internet enabled vehicles, (IEV));
- (b) automated driver assistance systems (ADAS);
- (c) car/ride sharing;
- (d) alternative fuel vehicles.

Comment: answers may include identifying the legal and regulatory regime and provisions in your jurisdiction.

Although some of these new developments are currently being offered throughout the territory, car/ride sharing proving to have already become relatively popular, local law has yet to identify and regulate most of the above mentioned technological developments in the auto sector. There is some local legislation being informally discussed but still at a very early stage.

We would highlight the following potential for a clash between auto assistance insurers and private security companies: although the current situation is far from clear, there is some concern that the operation of some of these systems might be off limits to insurers, because, unlike in most jurisdictions, the local definition of private security activities – which may be pursued exclusively by duly licensed private security companies – includes “the operation and management of reception and monitoring stations for alarm signals and video surveillance, as well as response services the performance of which is not the responsibility of the security forces and services” (Article 3 of Law 34/2013).

II. CYBER RISKS

5. Identify the concerns have emerged in your jurisdiction as a result of cyber risks. Is there any legislation in place or under consideration that might affect such risks?

Comment: possible matters include cyber-terrorism, hacking, computer or software failure and financial fraud.

Law 109/2009 (the Cyber Crime Law) is the only local statute in place dealing with cyber risks. This diploma implemented Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems. It also harmonized local legislation with the Budapest Convention on Cybercrime. This law includes the following crimes:

Cyber forgery (article 3): criminalizes interference with data processing so as to produce non genuine data or documents.

Damage to computer programs and other electronic data (article 4): criminalizes interference with computer programs and other electronic data which affect their usability.

Computer sabotage (article 5): prohibits the interference with computer programs causing grave disruption to their proper functioning.

Illegitimate access (article 6): criminalizes the unauthorized access to a computer program.

Illegitimate interception (article 7): criminalizes the unauthorized interception of electronic data transmissions.

Illegal reproduction of protected software (article 8): prohibits the illegal reproduction of protected software.

6. How has the insurance industry responded to cyber risks? In particular:

- (a) do property policies cover losses from cyber risks, or is special insurance required?
- (b) is insurance and reinsurance readily available?
- (c) are there any special restrictions imposed on cyber risks, e.g. event limits or deductibles?

a) The insurance industry has responded by offering insurance products that are specifically tailored to cover the insured against cyber risks. Some wide-ranging property policies can also cover losses from cyber risks. However, it is increasingly common for such risks to be excluded from regular policies and for customers to be offered to buy a specific cyber risks insurance policy instead.

b) Insurance is readily available; several insurance companies are already offering insurance against cyber risks. In fact, marketing of these products is comparatively quite aggressive.

c) The most significant restrictions that we can identify are on loss arising out of, based upon, related to or attributed to criminal activities, non-compliance with legal or regulatory security measures, dishonest, fraudulent, criminal or malicious acts, errors or omission or any intentional or knowing violation of the law or regulation. We have not come across any unusual limits or deductibles.

III. NEW TECHNOLOGIES AND THE INSURANCE PROCESS

7. To what extent have the availability of new technologies affected the way in which insurance policies are placed? In particular:

- (a) has there been any effect on the traditional use of agents and brokers?
- (b) has the underwriting process been affected by the availability of information, particularly big data, from sources other than the applicant for insurance?
- (c) has the means of providing information to policyholders changed significantly, e.g. are written documents provided or are policyholders directed to websites?

a) The internet has brought new ways of contracting insurance. Brokers are increasingly being supplanted by a peer to peer approach (P2P). The possibility of direct contact has reduced the need for the traditional use of agents, given that insurance companies and potential customers can come into direct contact online. However, we are still quite far from a scenario where intermediaries become superfluous.

b) The insurance industry is being influenced by the enormous potential of big data. However, such influence has not been as deep as one might expect. For instance, in life insurance some players informally protest how risks are still being assessed in exactly the same way as before, with potential customers being asked to undergo medical exams and fill out a questionnaire containing the same old questions. Nonetheless, we believe that inevitably, in the next few years the way the industry evaluates the risk, whether in general or in individual terms, is bound to suffer deep changes made possible by the availability of vast data bases, providing in depth knowledge of personal profiles.

c) More and more, policyholders are contacted via email, and relevant information is made available to them on websites. Online user accounts, where policyholders can consult their personal information, are becoming more and more standard in the insurance industry.

8. To what extent is genetic testing regarded as important by life and accident insurers? Is there any legislation in place or in contemplation restricting requests for genetic information, and are there any relevant rules on privacy that preclude its disclosure?

Law 12/2005 on personal genetic information and health information is extremely restrictive and clearly prohibits the use of any and all genetic data by insurance companies. Its Article 12 reads as follows:

1. Insurance companies may not ask or use any type of genetic information in order to deny life insurance or raise deductibles.

2. Insurance companies may not ask to perform genetic tests on their potential policyholders for life or health insurance purposes, or other purposes.

3. Insurance companies may not use the genetic information obtained through genetic tests previously carried out on their existing or potential customers for life or health insurance purposes, or other purposes.

4. Insurance companies may not require or use genetic information obtained through the collection and recording of family history to refuse insurance or raise deductibles or for other purposes.

9. Has the assessment of claims been affected by the availability of data. In particular, are there any industry-wide arrangements in place whereby insurers can share information on fraud?

Officially there are no industrywide arrangements where insurers could share data so as to combat insurance fraud. However, insurers' internal policies and procedures are becoming increasingly sophisticated. In any case, since this is a small country, frauds are still sometimes detected simply by chance, by employees of different companies who happen to meet at an event and chat about their most interesting cases and incidentally discover strange similarities between some of their accounts.

10. Are there any other ways in which the new technologies have affected the insurance process in your jurisdiction?

The Portuguese Insurers Association has developed an app on which policyholders can submit a claim. This has helped facilitate claims handling and has sped up communications between insurers and their customers as well as between different insurers.

IV. OTHER NEW TECHNOLOGY RISKS

11. Are there any other particular risks from the new technologies that have been identified in your jurisdiction? If so, is there any legislation in place or under consideration to regulate them?

There are no further risks from the new technologies that we have identified in Portugal.

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