To: markt-consultation-disasterinsurance@ec.europa.eu

Response to consultation

This is in response to the Green Paper on the insurance of natural and man-made disasters, issued Strasbourg, 16.4.2013, COM(2013) 213 final.

The Respondent: The Insurance Law Research Group (ILRG) is based at Southampton Law School at the University of Southampton and is a leading centre for research in and teaching of insurance law, both nationally and worldwide.

Yours sincerely,

The Insurance Law Research Group at the University of Southampton

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(1) What is your view on the penetration rate of disaster insurance in the European Union? Please provide details and data to support your arguments. Is more research needed to understand any possible gaps in insurance supply and demand, insurance availability and coverage?

> In our view, the penetration rate of disaster insurance is closely associated with both awareness about the existence of insurance as such and disaster risk awareness. Although not an EU Member State, Turkey is an excellent example of a country where raising the awareness of the public in these respects proved crucial to the wider take-up of the state insurance against earthquake damage, the Turkish Catastrophe Insurance Pool (TCIP). At first, lack of awareness about the existence of catastrophe insurance was a major obstacle to a uniform implementation of the TCIP. Lack of risk awareness was yet another problem. Although 96% of Turkey lies in an active earthquake zone, most people have never considered whether their houses would withstand an earthquake. As a result, while the danger and cost brought about by seismic activity finally received governmental recognition, potential damage remained greatly underestimated by the citizens. It must be emphasised at this point that making natural catastrophe insurance compulsory is not the most appropriate course of action where low demand for such cover is caused by lack of general information. If consumers do not purchase insurance because they lack awareness about the probability and magnitude of the risk, information remedies are the appropriate answer to cure these deficiencies.[1] Therefore, in order to increase the

[1] See, in particular, A Schwartz and L Wilde, "Intervening in markets on the basis of imperfect information: a legal and economic analysis" (1979) University of Pennsylvania Law Review 630.

general penetration rate of disaster insurance, a far-reaching publicity campaign would be desirable.

(2) What further action could be envisaged in this area? Would mandatory product bundling be an appropriate way to increase insurance cover against disaster risks? Are there any less restrictive ways, other than mandatory product bundling, which could constitute an appropriate way to increase insurance coverage against disaster risks?

A very technical question arises as to the nature of the relationship established between the insurer and the insured when natural disaster risks are deemed to be included in the cover for another risk, such as fire policies: is the natural disaster cover an implied term in a contract (there is no doubt that the fire policy itself is an insurance contract), or is the natural disaster risk bundled or tied in with the fire insurance? The former means that contractual interpretation and remedies apply to the natural disaster insurance, and the latter may give rise to competition issues. Recently, a court of law in another common law jurisdiction confirmed such relationship to be of a non-contractual character.[2] Consequently, the type of solution adopted in New Zealand and Iceland is to be preferred to that presented by the TCIP. Although such a model would impinge on *laissez-faire*[3] to the same extent as the 'stand-alone product' framework, it would not pose a parallel conceptual dilemma of infringing the doctrine of freedom of contract. Since no contract would be imposed upon the insured, he would not be subject to comply with an agreement entered into regardless of consent. Should the assured occupy a property not exposed to the risk of flooding at all, it could be argued that he would suffer from an additional burden placed upon him by the scheme under an existing contract of fire insurance. Still, such an auxiliary obligation might be convincingly justified on the ground of solidarity or social responsibility.

It is convenient to focus on property ownership as a convenient method for establishing a consumer's liability for premiums. Quasi-compulsory insurance could be achieved by requiring property owners to demonstrate that they possess property insurance when concluding contracts for utilities such as electricity and water. This could also enable a focus on particular risks in particular geographic areas.

(3) Which compulsory disaster insurance, if any, exists in Member States? Are these insurance products generally combined with compulsory product bundling or obligation for insurers to provide cover? Is compulsory disaster insurance generally accompanied by a right for the customer to opt out of some disaster risks? What are the advantages/possible drawbacks? Would EU action in this area be useful?

In UK, there is no compulsory disaster insurance other than for marine environmental risks covered by international conventions, namely the Convention on Civil Liability for Oil Pollution 1969 and the Bunker Oil Pollution Convention 2001.

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[2] See *Coughlan v Earthquake Commission* [2007] NZHC 178. See above.

[3] For the concept of the doctrine, see JS Mill, *Principles of Political Economy* (Appleton and Company, New York 1885), available at <http://www.gutenberg.org/files/30107/30107-pdf.pdf> (accessed 26 July 2013). See also S Fine, *Laissez Faire and the General-Welfare State a Study* (The University of Michigan Press, Ann Arbor 1956).

In relation to universal compulsory disaster insurance, a technical contract law issue also arises under English and Welsh law. A disaster policy against named perils taken out by a homeowner who is not at risk of those perils is arguably a contract where the insured receives no consideration in return for its premium. Doubts therefore arise in relation to how appropriate it is to compel people not living in areas subject to any natural disaster risk at all to purchase compulsory flood insurance. The argument is moot wherever there is any element of peril whatsoever – then there can be no failure of consideration on the part of the insurer, even if the insurance is vastly overpriced in relation to the risk – that would simply be a bad bargain but not an invalid contract. However if insurance is made compulsory by law, and there is just one homeowner in the territory whose property is not subject to any form of natural disaster risk whatsoever, there is a failure of consideration. Therefore the mandatory nature of the insurance needs to be carefully considered and possibly adapted to the territory.

Depending on the nature of the disaster insurance, the contract may be of a contractual or statutory nature. If it is to be treated as a contract of insurance rather than a mere statutory arrangement, and for such a contract to be valid, it must be supported by consideration.[4] It can be "some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other".[5] Although consideration need not be adequate, it must always be sufficient.[6] By way of example, a contract of flood insurance with respect to a property situated in an area not at all susceptible to flooding does not confer any benefit whatsoever upon the insured in return for the premium paid. It is therefore appropriate to question the enforceability of such an arrangement. Indeed it would be legally impossible to compel people not living in areas subject to any flood risk to purchase mandatory flood insurance unless such a contract was to be made expressly enforceable by a statute. Otherwise, failure of consideration would render the agreement void *ab initio*. Needless to say, a provision to that effect would constitute a direct impeachment of the underlying principle of English law, i.e. freedom of contract. In the opinion of the authors therefore, it is best to look for a solution that bundles a large array of natural disaster risks to avoid that any individual contract be avoided and to avoid regulatory solutions that would offend against basic principles of English insurance contract law.

These arguments are based upon the assumption that there are properties which are genuinely not exposed to even the slightest risk of the natural disaster risks to be contemplated by the scheme. The validity of the discourse is also dependent upon the scope of the cover which would be provided under the compulsory scheme.[7] If a mandatory scheme of earthquake insurance were restricted solely to properties located in areas susceptible to earthquakes, the issues outlined above would not be of any concern.[8]

[4] See *Currie v Misa* (1875) L.R. 10 Ex. 153.
[5] ibid., 162 (Lush J.).
[6] See *Dunlop v Selfridge* [1915] A.C. 847.
[7] For instance, if the definition of 'flood' adopted under such a policy is limited to natural hazard only and does not encompass flooding due to escape of water accumulated on the roof following an ordinary rainfall or burst water pipe, it would be difficult, if not impossible, to ascertain the benefit conferred upon the insured. For the definition of 'flood' in the UK, see above.
[8] It is understood that the operation of the model proposed by the ABI would be confined to areas at risk of flooding. It is, however, not altogether clear whether the government will endorse such a notion.

(4) How can state or state-mandated disaster (re-)insurance programmes be designed and financed to prevent the problem of moral hazard?

The concept of moral hazard denotes behaviour where people take increased risks or fail to take precautions because they expect that the insurer will pay for any damage. The concept includes fraudulent behaviour or failure to disclose information but is not limited thereto.

There are several appropriate avenues to respond to this issue. One is to compel low risk individuals to take out insurance by making it compulsory. This would probably mean bundling various compulsory disaster risks into a single policy. Another potential response is to endeavour to guarantee the local character of broking services. While an insurer based in the capital with little local knowledge might set the premiums for a post code as a whole, a local insurance broker would be able to make a more finely tuned assessment of the insurance service required and the reasonable premium. As a result, low risk properties in a high risk post code would obtain insurance at a reasonable premium, possibly on market terms but certainly from a state-mandated insurer. The premiums available for remaining high risk properties in high risk post codes would go up as a result, but the overall lack of insurance would arguably be reduced and as a result also the human misery involved in the natural disaster.

It is useful also to distinguish between existing or older properties and newbuilds and properties under planning or construction.

First, there are people who live in existing accommodation which has recently become at risk of natural disaster or where the risk has increased. The moral hazard implications here are that such insureds may neglect to take technical preventive measures such as installing flood doors or flood bricks, tiling the floors for ease of cleaning and generally keeping valuable goods on the top floor instead of the ground floor. This type of moral hazard can be countered by insurers by placing conditions on the insurance. The insured can be asked to guarantee that a list of specific natural-disaster related precautions will be taken.[9] The insured's moral hazard is mitigated by the fact that they will be inclined to protect the original or purchase value of their home or property: thus an uninsurable property is likely to become unmortgageable and by extension worthless.

A second type of moral hazard occurs in the case of new construction. Construction that does not mitigate or perhaps even increases natural disaster risk (eg by paving over absorbent ground and modifying the water table in zones of flood risk) is from the perspective of the builder just as profitable as safe construction, and perhaps more so if eg earthquake safe bricks are more costly than regular bricks. Insurability may in fact be the only difference between a new home at risk and one not at any risk. Creating opportunities to insure where market forces would not normally allow it will contribute to the saleability of badly constructed properties situated in earthquake

[9] Following the entry into force of the Consumer Insurance (Disclosure and Representations) Act on 6 April, 2013, such guarantees cannot be made by way of basis clause in a proposal form but must be made individually or in the form of conditions precedent rather than (the more severe type of term) warranties.

zones or on flood plains and will arguably enhance the market forces providing the impetus for such construction. Counteracting the moral hazard in this regard thus has a snowballing effect on construction, mortgages and the housing market: an uninsurable home may not be mortgageable and may therefore not command the same price as a well-built or safely located one.

The appropriate response to this form of moral hazard is regulatory. Planning applications should be required to detail precautions taken in the new-build against the natural disaster from which the property is at risk. Zoning laws should prevent construction in areas at risk. Appropriate safety standards should be encouraged. Further, outside the scope of the insurance industry innovation and promotion of products such as flood safety doors, ventilation bricks and earthquake resistant construction materials should be encouraged by channelling funding into research and development.

(5) Do you see any difficulties, barriers or limitations in using information to generate parametric insurance? Which factors could scale-up the promotion and uptake of such innovative insurance solutions?

There is an issue with the validity of policies under English law where the triggering event is the loss of a life. In such policies, the Life Assurance Act 1774 requires the insured to possess an insurable interest in that life at the time of making the policy. Where the triggering event is not in the nature of loss of life this should not be a problem as there seems to be no general requirement for an insurable interest outside specific statutory requirements.

(6) Could risk-based pricing motivate consumers and insurers to take risk reduction and management measures? Would the impact of risk-based pricing be different if disaster insurance was mandatory? Do insurers in general adequately adjust premiums following the implementation of risk prevention measures?

Risk-based pricing may hamper development in areas prone to natural disasters. High cost of insurance against natural disasters for properties located in areas susceptible to such hazards might severely reduce the chance of these properties being sold or otherwise dealt with.

On the other hand, lack of risk-based pricing would encourage risk-taking unless there is some other factor incentivising behaviour to the contrary. It is desirable that insureds be given the opportunity to reduce their insurance premium by undertaking risk reduction measures. Such an incentive benefits wider society. By way of example, where property owners are incentivised by a reduced premium to plant trees and substitute lawn for tarmac, the net flood water absorption capacity of the neighbourhood may improve. In relation to compulsory insurance, where drivers are offered the opportunity to reduce their premium in return for monitoring driving standards by means of a black box, careful driving is incentivised and traffic safety immediately affected.

(7) Are there specific disasters for which flat-rate premiums should be suggested? Should flat-rate premiums be accompanied by caps on pay-outs?

No response.

(8) What other solutions could be offered to low-income consumers who might otherwise be excluded from disaster insurance products?

One method of addressing the problem of affordability of catastrophe insurance is to subsidise the payment of premium for households with low income.

(9) Is there a case for promoting long-term disaster contracts? What would be the advantages/drawbacks for insurers and the insured persons respectively?

No response.

(10) Do you think there is a need to harmonise pre-contractual and contractual information requirements at EU level? If so, should the approach be full or minimum harmonisation? What requirements concerning the commitment should be included, for instance:
– the nature of the insured risks,
– adaptation and prevention measures to minimise the insured risks,
– features and benefits (such as compensation of full replacement costs, or depreciated, time value of assets),
– exclusions or limitations,
– details for notifying a claim, for instance, if both the loss and its notification must fall within the contract period,
– who and to what extent bears the costs of investigating and establishing the loss,
– contractual effects of a failure to provide relevant information by the insurer,
– the remedies, costs and procedures of exercising the right of withdrawal,
– contract renewals,
– complaints handling?

Failure to provide information

Regarding a failure to provide information, the simple answer to whether there is a need to harmonise pre-contractual and post-contractual information requirements at EU level is ‘no’, and that is so for a number of reasons.

Almost any principled action on any of these points would have very far reaching consequences beyond the provision of disaster insurance and our view is emphatically that specific legislation for contract law should not be included among the measures proposed. Quite apart from the traumatic, disproportionate and unjustifiable incision into national insurance contract law that this would entail, it would be particularly inappropriate to side-line the work on the Principles of European Insurance Contract Law (PEICL). On the other hand, the PEICL was not designed specifically with disaster insurance in mind and is therefore unlikely to be better adapted for that specific purpose than the contract law of any of the individual member States.

Insurance is very dependent on the individual contract terms supplied by the insurer, which allow it to raise or reduce the premium required in accordance with the excess and other terms. If a large number of contract terms were subjected to standardisation, there would no longer be room for a competitive market. What room there may be for competitive sales of policies in this field should be safeguarded, as the State concerned will find itself forced to intervene, ready or not, whenever the market is unable to supply cover. It is to be noted that standardisation of terms was recently removed from the scope of the insurance block exemption precisely because it is desirable that insurers operate on competitive terms.

Nature of the insured risk

The information provided by the insured to the insurer is intrinsic to the resulting insurance cover. Standardising the information to be provided would really mean standardising the insurance cover. Such a measure has implications from a competition law perspective.

Although standard policy conditions are in common use in the insurance sector, they do give rise to competition concerns. On a general level, problems occur whenever an association of undertakings imposes on its members an obligation to use common terms and conditions of sale and purchase. This inevitably has an impact on competition as in the first place it limits the freedom of the undertakings involved to provide conditions which vary from the one imposed upon them. Most importantly, consumers may also be harmed by such practices as their choice of service providers is inevitably narrowed down.

Standard policy conditions are less likely to have a detrimental impact on competition where members of the association of undertakings retain the freedom to adopt different conditions if they wish to do so. The freedom to implement diverse conditions was an essential condition for the block exemption. Standard policy conditions can still have an adverse effect on competition if a large proportion of the insurance undertakings adopt the same policy conditions. In such a case, the theoretical freedom to adopt different standard policy conditions does not represent a safety net since customers may be left with little or no choice in practice.

After the introduction of Regulation 267/2010, insurance standard policy conditions are no longer covered by a block exemption. A scenario without a block exemption inevitably gives rise to the compelling need to identify suitable ways to regulate the flow of information related to insurance policies.[10]

Apart from issues related to consumer protection, the repeal of the block exemption for standard policy conditions has created a scenario where the compliance of agreements between insurance undertakings with Article 101(3) TFEU must be assessed on a case-by-case basis. On the basis of Art 101(3), individual exemptions will be granted if specific conditions apply: agreements on standard policy conditions will qualify for exemption insofar as they create efficiencies that outweigh the

[10] See R. Eisen, P. Zweifel, W. Muller,*"Unternehmerische Versicherungswirtschaft: Konsequenzen Der Deregulierung Fur Wettbewerbsordnung Und Unternehmensfuhrung"*, Munchen, Florenz, 1993, pp. 17-18. See also M. Faure, in *"Insurance and competition law: balancing the conflicts"*, above, p. 12.

restriction of competition, consumers obtain a fair share of those benefits, there are no less restrictive means of achieving the efficiencies, and competition is not eliminated altogether.

In order to comply with Art 101(3), an association of insurance undertakings that adopts common definitions of natural disaster risks in standard policy conditions will have to be able to demonstrate that leeway is granted to its member undertakings concerned in terms of the permissibility of deviation from the agreement providing alternative conditions.

If that definition were to be introduced by statute, its validity would be consistent with EU competition law, provided only that the rationale for a common statutory definition lies with consumer protection. The idea of a common definition would act as a counter-agent vis-à-vis a scenario of possible confusion for consumers, unable otherwise to understand the exact extent of their insurance policy.

Nevertheless, it is submitted that in order to comply with the EU competition regulatory framework, apart from common definitions, insurers should retain the freedom to provide alternative policy conditions. For instance, an agreement binding only on specific pre-determined terms related to natural disasters, leaving the freedom to provide diverse conditions in relation to other matters will be likely to benefit from an individual exemption. Conversely, agreements which will not confer any degree of freedom to provide alternative conditions will be considered anticompetitive unless beneficial for consumers. Under such circumstances, individual exemption may be granted to standardisation agreements rendering particularly hermetic policy conditions intelligible to consumers[11].

In order to pass the competition test enshrined in Art 101(3), the introduction of standard definitions of natural disasters is permissible only if it will ultimately be beneficial to consumers. In the case of flood insurance, it does appear that the ultimate rationale for the introduction of this common definition is grounded in the consumer-protection related need to avoid having a confusing range of definitions of the same concept. As noted in the above, the Australian Securities and Investments Commission once noted that:

> "[t]he terminology in policy documentation can be confusing. The use of technical terms, differing definitions for common words (including the word 'flood'), and technical meanings for otherwise commonly used words (such as 'watercourse') might not be understood by consumers."[12]

Speaking in the House of Representatives, former Assistant Treasurer and Minister for Financial Services and Superannuation, Bill Shorten stated:

[11] After the decentralization process of the enforcement of the EC competition rules introduced by Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1 /1) , the Commission is no longer the only body entitled to grant individual exemption. Anti-trust national authorities and national courts are also currently involved in checking the validity of co-operation agreements *vis-à-vis* Art, 101(3) of the Treaty. The burden of proof is high and lays on the applicants.

[12] ASIC, *Report 7: Consumer understanding of flood insurance*, June 2000, 9, available at <http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/floodreport.pdf/$file/floodreport.pdf> (accessed on 21 March 2013).

> "[a] standard definition of flood will reduce consumer confusion regarding what is and is not included in insurance contracts. It will also avoid situations where neighbouring properties in the same street, affected by the same flood event, receive different claims assessments because the policies covering them use different definitions of flood".[13]

The two grounds above ought to suffice for an exemption under Art 101 (3) TFEU.

If therefore the insurance sector were to agree – without government interference – on single definitions of natural disasters, it is not unreasonable to expect that an exemption could be allowed under Art 101 (3) TFEU. By the same token, a common statutory definition should be considered to be compliant with EU competition rules.

(11) Do deductibles, excesses, co-insurance and other exclusions effectively prevent moral hazard? What alternative terms and conditions could be appropriate for disaster insurance, given that the insured party may be unable to take effective risk reduction measures against a disaster?

Risk reduction measures are crucial even where there is no means of averting the risk itself. The proposer of insurance may be asked by the insurer to undertake recommended measures or to describe any measures undertaken to guard against natural disaster risks perceived for the particular area.

Behavioural change subsequent to the purchasing of insurance is relevant also to being fully informed by the insured during contract negotiations as to the exact scope of cover. Albeit deductibles are usually stipulated into contracts to avoid small claims, they should be read in conjunction with clauses having the purpose of aggregating losses or claims which is usual practice in many common law jurisdictions.[14] According to the wording of the aggregation clause, the insured may have to pay a deductible per each loss, event or occurrence. Where a single event results in many losses for an insured person and where the aggregation clause stipulates that the deductible is payable per 'event', it may follow that the insurer would be responsible to pay only once for all the losses arising from the same event.

This position is very similar in the context of policy limits as aggregation clauses may also affect the limit to be paid by the insurer per loss or event. By way of example, a wording to the effect of "$50,000,000 any one loss or series of losses arising out of any one event" connotes that $50,000,000 is the policy limit for each loss arising from the same natural disaster event, and not the overall limit under the policy for all losses.[15] The wording of such clauses may undoubtedly raise many further arguments as to what constitutes an 'event' under the policy, i.e. whether for instance an

[13] The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, House of Representatives Hansard, 23 November 2011, 23.

[14] For instance in the United Kingdom, most liability policies contain aggregation clauses and there has been considerable litigation as to their construction, the number of claims and deductibles payable, see *Australia and New Zealand Bank Ltd v Colonial and Eagle Wharves Ltd* [1960] 2 Lloyd's Rep. 241, 255; *Haydon v Lo & Lo and World-Wide Marine and Fire Ins Co Ltd* [1997] 1 Ll.L.Rep. 336; *Standard Life Assurance Ltd v Oak Dedicated Ltd* [2008] Lloyd's Rep I.R. 552.

[15] See *Earthquake and War Damage Commission v Waitaki* [1992] 1 NZLR 513, Privy Council

aftershock should be considered a separate event or part of the original earthquake and therefore not a separate event capable of causing distinct loss. In practice, some insurance and reinsurance policies contain what is called 'hours clauses' which ensure that natural disasters occurring successively are treated as a single event.[16] Deductibles to be paid under policies containing such clauses would thus be payable once for all the events occurring in a given period of time. Albeit deductibles are considered as elements to prevent moral hazard, they are subject to the wording of aggregation clauses where the policy contains such clauses. Even in their absence, it would be necessary to ascertain whether deductibles shall have to be paid per loss, per natural disaster event or for all the events and losses arising therefrom occurring in one policy year, therefore they may not necessarily be considered as a very efficient measure of risk reduction.

Another important aspect regarding contractual terms that could be appropriate to prevent moral hazard is exclusion clauses as to losses occasioned by natural disasters and the use of causation wordings. There may be more than one cause contributing to the occurrence of a loss and it is crucial, for the purposes of a policy providing cover against natural disaster, that the loss is caused by the catastrophe and not caused or aggravated by for instance negligence of the insured in taking reasonable precautions against the disaster or by its wilful misconduct. It may be preferable for insurers to stipulate clear, firm and unambiguous causation wordings to cover merely "losses directly caused by the natural disaster" and to exclude such losses where the disaster was no more than a contributing cause.[17] The insurer may even wish to create a condition precedent for liability that the insured has exercised due diligence in undertaking proper precautions. However, a condition precedent based purely on due diligence may be too vague a term for some insurance contract law systems. The undertaking of specific measures on the other hand is usually an easily observable and verifiable entity.

(12) How could data on the impacts of past disasters be improved (e.g., by using standard formats; improved access to and comparability of data from insurers and other organisations)?

No response.

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[16] For an example, see http://pacificcoastes.com/assets/DICNA_Endorsement_200_Earthquake_Coverage_10_08.pdf "Each loss by Earthquake shall constitute a single loss hereunder, provided that, if more than one Earthquake shock occurs within any period of 168 hours during the term of this Policy, such Earthquake shocks shall be deemed together to be a single Earthquake Occurrence within the meaning hereof. We shall not be liable for any loss caused by any Earthquake shock occurring before the effective date and time of this Policy, nor for any Earthquake shock or loss occurring after the expiration date and time of this Policy."
For a further example, see the reinsurance arrangements of the New Zealand Earthquake Commission where "Catastrophe" is defined so as to include all earthquakes happening in the 720 consecutive hours (30 days) and a 250 kilometre radius of the original earthquake, as referred to in *Re Earthquake Commission* [2011] 3 NZLR 695, para 48.

[17] The cover provided by the New Zealand Earthquake Commission under the Earthquake Commission Act 1993 is for losses occurring "as a direct result of a natural disaster", Condition 1 of Schedule 3. The Commission's reinsurance arrangements define a "loss occurrence" as "all individual losses arising out of and directly occasioned by "one catastrophe"", as referred to in *Re Earthquake Commission* [2011] 3 NZLR 695, para 48.

(13) How could the mapping of current and projected/future disaster risks be improved (e.g., through current EU approaches in flood risk mapping under the Floods Directive 2007/60/EC, civil protection cooperation30 and promotion of EU risk guidelines)?

No response.

(14) How could better sharing of data, risk analysis and risk modelling methods be encouraged? Should the available data be made public? Should the EU take action in this area? How can further dialogue between insurance industry and policymakers be encouraged in this area?

No response.

(15) How can the Union most effectively help developing countries to create solutions for financial protection against disasters and shocks and what should be the priority actions? What types of partnerships with the private sector and the international institutions should be pursued for this purpose?

> For small and closely allied economies, it could be considered to deploy transitional guarantees based on the Union's favourable credit rating and financial strength in support of a disaster fund. Unless there were a disaster, the guarantee would not be called upon and it is therefore in fact a form of development aid with a relatively small risk of dissipation or misuse. On the other hand, given that home and small business insurance penetration tends to be modest in developing economies, insurance based solutions may not be very effective and guarantee support for a government-created fund may be an unavoidable option in most cases. If a guarantee is not an option for political, financial or diplomatic reasons, know-how may offered on how to set up and manage a disaster fund.

(16) What are the most important aspects to look at when designing financial security and insurance under the Environmental Liability Directive 2004/35/EC?

> In view of the recent report on this matter,[18] no response will be provided to this question.

(17) Are there sufficient data and tools available to perform an integrated analysis of relevant and emerging industrial risks? How can data availability, sharing and tool transparency be ensured? How can co-operation between insurers, business and competent authorities be strengthened to improve the knowledge base of liabilities and losses from industrial accidents?

No response.

[18] BIO Intelligence Service et al. (2012) *Study to explore the feasibility of creating a fund to cover environmental liability and losses occurring from industrial accidents*, Final report prepared for European Commission, DG ENV, http://eldfund.biois.com/home, accessed on 14 July 2013.

(18) Considering the specificities of the offshore oil and gas industry, what kind of innovative insurance mechanisms could be appropriate? Are there ways for the insurance industry to reduce the uncertainty regarding the assessment of risks and calculation of premiums? What type of information should be publicly available to promote the development of insurance market products to cover major accidents?

No response.

(19) Should contractual conditions of third-party liability insurance policies be disclosed to third parties in case of man-made disasters? If so, how?

> Especially in the case of compulsory insurance, it is essential that there is a means of obtaining knowledge of the identity of the insurer as a first step towards pursuing a claim. This can be done on a prospective basis whether or not there is a casualty, such as for employer's liability insurance in the UK where insurers are bound by regulatory action to supply the identity of those whom they insure against employer's liability. Such a measure can be supported by penalties for failure to supply the information and may in fact be easier to enforce and maintain than a more confidential right to obtain information after the fact, which really requires good intelligence activities by the claimants and an enforceable right of discovery of which the claimants can avail themselves.
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> Where insurance is compulsory, the information can be sourced from the insured on the basis that failure to supply it will result in a penalty, and from insurers on the basis that they are obliged to supply the information. The fact that they are both separately under a duty to supply the information should be a fairly efficient tool.

(20) Are there specific aspects of loss adjusting which would benefit from more harmonisation? If so, which? Are there practical difficulties for loss adjusters to operate cross-border?

No response.

(21) This paper addresses specific aspects related to the prevention and insurance of natural and man-made disasters. Have any important issues been omitted or underrepresented? If so, which?

> If a special vehicle is set up in the form of a pool or fund, the funding mechanism in the early days of that body needs to be considered and some form of support needs to be secured, in the form of guaranteed payments from industry members or in the form of a public funding guarantee, to ensure the viability and performance of the scheme from the very beginning. It is also crucial that the management be done not in the form of a public administration but by skilled and specialised insurance investment and management professionals.