IRSG

INSURANCE AND REINSURANCE STAKEHOLDER GROUP

Advice on the right to be forgotten (RTBF)

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THE RIGHT TO BE FORGOTTEN (RTBF)

The latest European developments

In 2020, four million new cancer cases were recorded in Europe. In addition, data suggests that half of all European citizens will develop cancer at some point in their lives. Nonetheless, in recent years, mortality rates have declined, and more and more people are surviving the illness.

Certain cases exist where cancer survivors are facing difficulties when accessing private insurance. These cases must be addressed by ensuring a fair access to private insurance. The European Commission's Beating Cancer Plan[1] has therefore raised the question of fair access for cancer survivors to financial services, including life insurance linked to credit or loan agreements. To ensure such access, several options exist, but discussions at EU level seem to favour one of them in particular: the right to be forgotten (RTBF).

The issue of fair access of cancer survivors to financial services is currently addressed as part of the European Commission's work to develop a code of conduct in collaboration with stakeholders, including cancer patient groups and insurers. The work is due to commence shortly, in 2023, with a view to developing a code of conduct that would then be applicable from 2024. At the same time, an EU-wide RTBF has been included by the European Parliament in the legislative proposal to revise the Consumer Credit Directive (CCD).

During its meeting on 25 October 2022, the IRSG determined that there is interest in reflecting on the benefits, risks and opportunities that an EU-wide RTBF may provide. This IRSG own-initiative report aims to contribute to this debate.

What is an RTBF?

An RTBF is usually understood as the obligation for insurers to disregard cancer survivors' prior cancer diagnosis after a defined period of time based on scientific, medical and actuarial data, and following the end of their cancer treatment as well as the complete remission of cancer. The end of cancer treatment consists in the cessation of the active treatment which corresponds as the use of surgery, radiation, chemotherapy, immunotherapy, bone marrow transplant and any other therapies according to the current state of medical-scientific knowledge to cure a cancer, shrink a cancer or stop the progression of a cancer while complete remission means the recovery from all evidence of disease.

Some member states have already implemented RTBF mechanisms (BE, CY, FR, IE, LU, NL, PT and RO), but with different features, and either via a law or a market initiative while some other countries (ES, GR, and IT) are facing an increasing pressure for introducing an RTBF.

[1] "Europe's Beating Cancer Plan", European Commission, December 2021.

All these RTBFs are quite recent, with the oldest one dating back only to 2016, and no impact assessment has been conducted on any of these schemes at this stage. As these schemes usually concern products with a long duration (e.g., life insurance), the consequences of an RTBF on consumers, including those groups of consumers that do not benefit from the RTBF, on overall premium levels and on product availability remain unknown.

Private insurance relies on the principles of mutualisation and risk-based underwriting

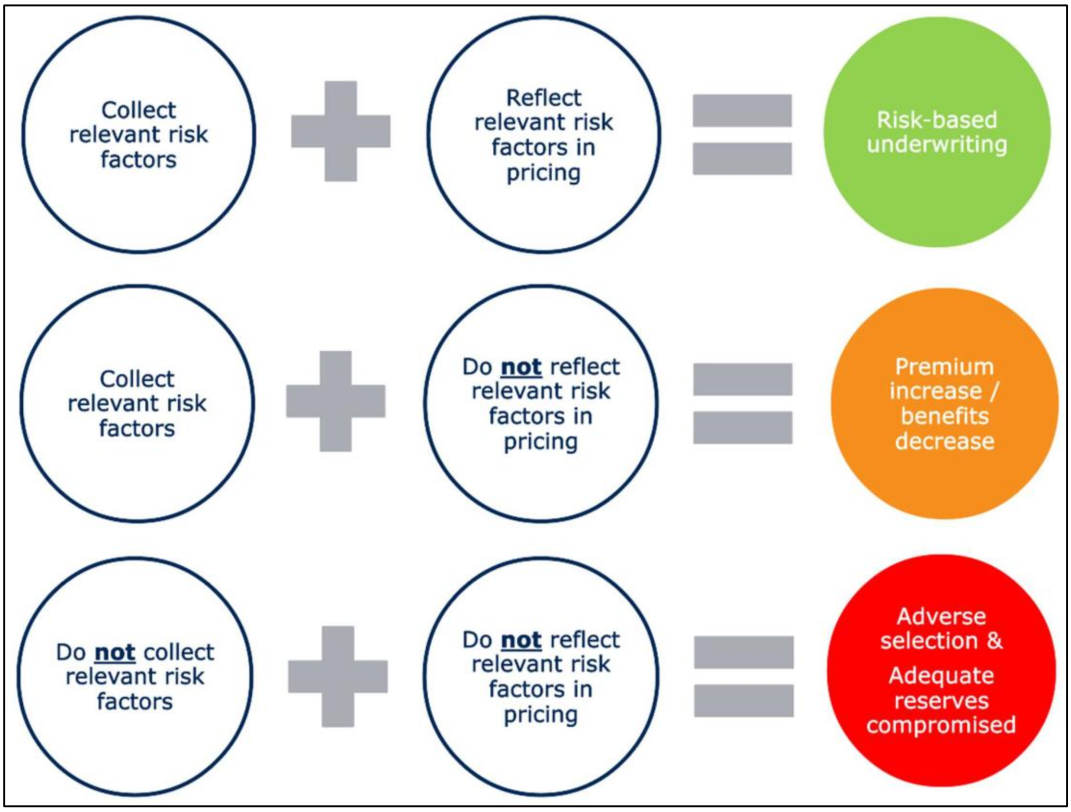

Fig. 1: *Risk pooling and underwriting in private insurance*

The functioning of insurance is based on the principles of mutualisation of risks and risk- based underwriting. The mutualisation of risks means that all policyholders finance through the premiums they pay the compensation paid to victims. The mutualisation model ensures that the cost of insurance is spread out among a larger group of policyholders, making it more affordable for everyone and ensuring a better access to insurance.

Risk-based underwriting consists of determining insurance premiums and benefits based on the risk an applicant brings to the pool of insureds. Premiums and benefits will therefore vary according to the likelihood of a loss occurring in a particular pool of risks. This probability of occurrence is based on the assessment of relevant risk factors that are weighted and compared to similar risk factors weighted in a similar way. Insurers therefore base the decision on whether and how to insure an applicant – including the premium level – on data relevant to the risk the insurer takes on.[2]

The funds from the premiums paid are then used to create appropriate pool (technical provisions) to pay for the future claims. According to Article 105 (4) of the Solvency II Directive that relates to the calculation of the basis Solvency Capital Requirement (SCR) under the health underwriting model, the calculation of the reserve should consider accurate and appropriate data such as the consumer's medical history to determine the risk to cover. When this data is not available which would be the case under a RTBF where insurers could not have access to cancer survivors' medical history, the actuary would have to take the additional uncertainty into account both in how the required technical provisions are calculated and how the SCR is determined. This would have an impact on the price charged. As a result, insurers will very likely increase premiums in order to ensure that the reserve contains sufficient assets to pay for the future claims and the capital held is large enough to cover the extreme risks. It is generally accepted that risk-based underwriting is the fairest way to set each policyholder's contribution to that pool.

The risk-based underwriting system therefore relies on the fact that insurers access relevant information about the risks to be covered in order to assess these risks effectively, to ensure premiums are aligned with the underlying risks a policyholder brings to the pool and to be able to propose attractive products that offer adequate protection at a competitive price.

Risk-based underwriting contributes to the prevention of anti-selection. Anti-selection occurs when the premium does not reflect the relevant risks so that those consumers with a lower risk realise they are overpaying and those with a higher risk realise they are underpaying. Consumers with a higher risk are more likely to take out insurance.

The consequences of an RTBF on risk-based underwriting principles

By its very nature, an RTBF jeopardises the fundamental mutualisation and risk-based underwriting principles that underpin private insurance. It refers more to solidarity mechanisms, as all consumers who are not covered by an RTBF are expected to pay a higher premium compared to the one they would have had to pay under a risk-based underwriting system in order to compensate for the lower premiums paid by cancer survivors benefitting from the RTBF. While a solidarity scheme might be relevant in some cases, it is not the basis of insurance and can lead to higher costs for all policyholders in the long-term, raising concerns on accessing insurance. Indeed, an RTBF could lead to lower-risk policyholders feeling they are paying too much and ceasing to take out insurance, while higher-risk policyholders become overrepresented in the pool of insureds. In the longer term, this will be to the detriment of all policyholders, as products

[2] Article 82 and 84 of the Solvency II Directive requires insurance companies to guarantee the appropriateness, completeness and accuracy of all the data used in the calculation of their technical provisions. Article 19 of the Delegated Regulation (EU) 2015/35 containing implementing rules for Solvency II establishes detailed data accuracy/quality requirements.

become more expensive to cover the risks insured or are withdrawn because the products become unfeasible.

Consideration of the introduction of an RTBF and its design features therefore requires careful analysis and robust impact assessments to avoid unintended consequences to the detriment of those such a scheme is intended to protect and the other consumers.

Carrying out an assessment of existing national RTBFs to understand what the consequences on national (re)insurance markets have been (availability of the products, increase in premiums, effects on of (re)insurance companies) is therefore required. The data-evidence gathered will help to correctly assess the extent of impact of an EU RTBF and its consequences, especially on premiums.

Moreover, identifying existing safeguards in sectorial pieces of legislation when processing health-related data is also required necessary to conduct a proper impact assessment.

The benefits of insurers' access to cancer survivor's data

When processing consumers' data, insurers are subject to the General Data Protection Rules (GDPR). They must respect a certain number of rules, including those that ensure consumers have access to and be informed about the storage and processing of their personal data. While this framework ensures that consumer data benefits from a high level of protection, it would however be counterproductive to forbid the access to cancer survivors' data when this might lead to positive outcomes. This is the case for the data of cancer survivors as insurers' access to data of cancer survivors may help to render previously uninsured risks insurable.

For the few situations that remain uninsurable, or insurable but at a very high premium, insurers' access to data, in combination with the use of ever-advancing analytics tools, enables insurers to start developing insurance solutions for cancer survivors. Without access to data, insurers would not be able to adequately assess the risk and develop tailored solutions. By getting closer to assessing a risk as it is, insurers will have a better understanding of a situation and what level of risk it would bring to the pool of insureds. Insurers will therefore be able to insure risks that were previously insurable, improving access for cancer survivors to insurance.

The example of insurance for HIV carriers is a case in point. The increasing availability of data in this area and the further development of analytical methods, in combination with medical progress, have allowed insurance companies to propose life-term insurance to HIV carriers under certain conditions. This was not possible only ten years ago. Allowing insurers to access data might therefore lead to offering insurance protection for risks that were previously uncovered.

Data access will allow insurers to carry out an even more accurate assessment. Additionally, through the use of data analytics tools, insurers might identify correlations, between factors like age, gender, lifestyle choices, geographic areas, and the development of certain types of cancer.

Consequently, data access therefore helps insurance companies better understand the long-term health risks associated with cancer.

Insurance companies may offer wellness and prevention programs to encourage healthy behaviors and lifestyles that can help reduce the risk of developing cancer, such as smoking cessation programs, weight loss programs, healthy eating programs and physical activity incentives. This will help individuals to cope with the emotional charge and physical burden of cancer while it will also lead to reducing the risk of cancer.

In combination with data analytics tools, access to consumers' data might lead to ensure a better access to insurance for cancer survivors as well as allowing insurers to propose better tailored products to cancer survivors.

Why accessing information about cancer history is key to mitigating the negative impact of an RTBF

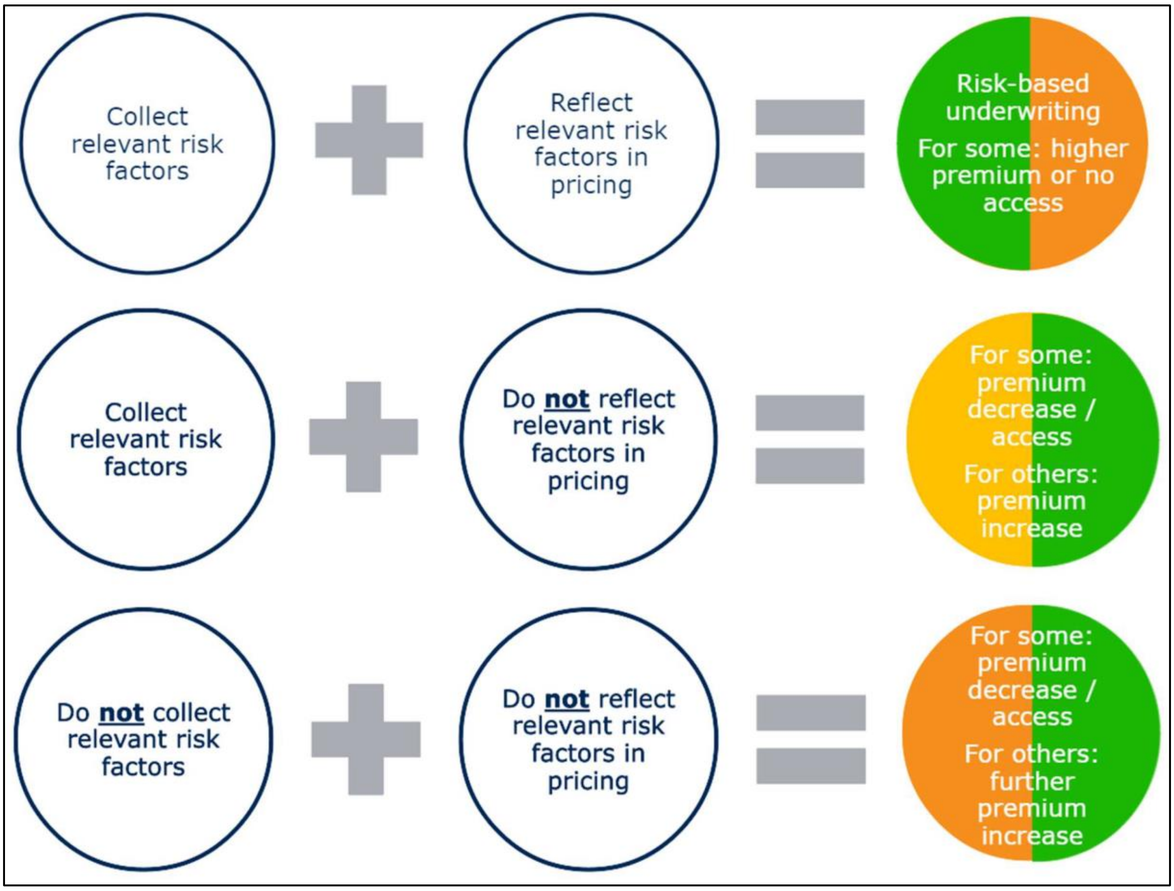

***Fig 2:** Impact of an RTBF on cancer survivors*

Take the example of an applicant with a cancer history. Their past cancer diagnosis may be a relevant factor to consider in the underwriting process because of its impact on their mortality and morbidity. In such a case, in risk-based underwriting, the cancer history would be reflected in the insurance pricing and may lead to a higher premium.

However, risk-based underwriting principles implies that insurers would disregard that diagnosis if the mortality or morbidity risk is not higher than that of a person without such a diagnosis. It also means that they will not reject an application for such an insurance nor increase the premium or lower the benefits. In that case, the applicant will pay a similar premium and have similar access to insurance as any other consumers in the same situation but with no cancer history.

In contrast, under an RTBF, a prior cancer diagnosis would be disregarded a fixed period after treatment ends, irrespective of whether there is still a heightened risk.

The impact of the RTBF would, however, vary depending on whether the insurer continues to be allowed to access information about the cancer history but without reflecting it in the premiums and benefits. The RTBF would also have a different impact on the different groups of consumers.

While accessing consumer data allows insurers to pursue public health objectives by insuring risks that were previously uninsurable, the use of data can also have a beneficial impact on maintaining premiums at a reasonable level.

Under an RTBF in which insurers can still collect data through the use of medical questionnaire addressing past cancer but not reflect it in pricing, consumers with a past cancer diagnosis that has an impact on their mortality and morbidity will pay a lower premium than they would in a risk-based underwriting model, and they will have no issues accessing insurance. In contrast, applicants with a past cancer that has no impact on their mortality and morbidity and consumers with no cancer history will pay higher premiums than in a risk-based system in order to cross-subsidise the lower premiums paid by the former category of cancer survivors.

Under an RTBF in which insurers are neither permitted to have access to consumers' cancer history nor to reflect it in pricing, insurers would not be able to do a proper risk assessment and determine the composition of their portfolio, e.g., the proportion of cancer survivors with a relevant cancer history. Based on prudential rules, insurers would need to compensate for that uncertainty, they would need to build in risk buffers to compensate for the unknown percentage of cancer survivors within their pools in order to cover the unpriced claims that might occur in the future. The use of a medical questionnaire addressing cancer history is therefore necessary to correctly quantify actuarial risks in insurers' portfolios.

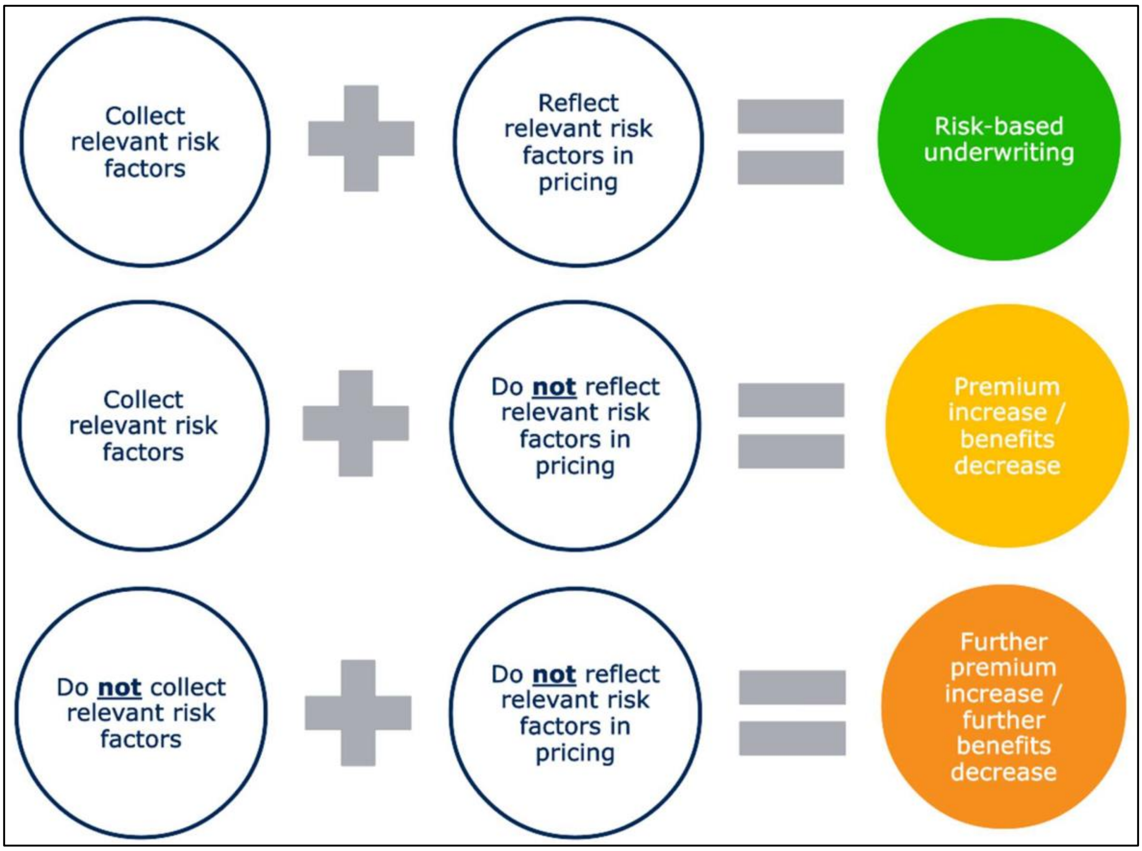

Fig. 3: *Impact of an RTBF on other consumers*

As a result, applicants with a past cancer that would have had an impact under the risk- based underwriting approach may pay a lower premium compared to the premium they would pay under a risk-based underwriting approach. Nonetheless, both cancer survivors with a past cancer with no impact on the risk and consumers with no past cancer will have to pay increased premiums to finance the additional risk buffer. This may raise significant issues in terms of affordability and access to insurance for the latter categories of consumers in the shorter term and for all consumers in the longer term.

Moreover, under an RTBF in which insurers do not have access to consumers' cancer history, cancer survivors will have the responsibility to determine whether a prior diagnosis and treatment should be reported to the insurer. This model places additional stresses on the applicant, who must determine whether they benefit from an RTBF or not. This comes with potentially serious consequences, since non-disclosure of material facts could lead to the coverage being voided.

In contrast, in the other type of RTBF, applicants must make full disclosure and it is for the insurer to then determine when this information must be disregarded for the purposes of pricing and the benefits under the contract. This spares the applicant stress and uncertainty when the contract is concluded and likewise avoids that stress for loved ones in the event of a claim, placing the responsibility instead on the insurer.

Ensuring insurers' access to consumers' cancer history, even when an RTBF does not allow its use for pricing, is of central importance to limit as much as possible the negative consequences of deviating from risk-based underwriting and the prevention of anti- selection. Access allows insurers to have a proper overview of their portfolios' composition, including the level of risk related to past cancers. It also creates a better understanding of a consumer's situation and makes it possible to propose better tailored products at a suitable price, matching consumers' needs.

What are the risks of extending the RTBF to other diseases?

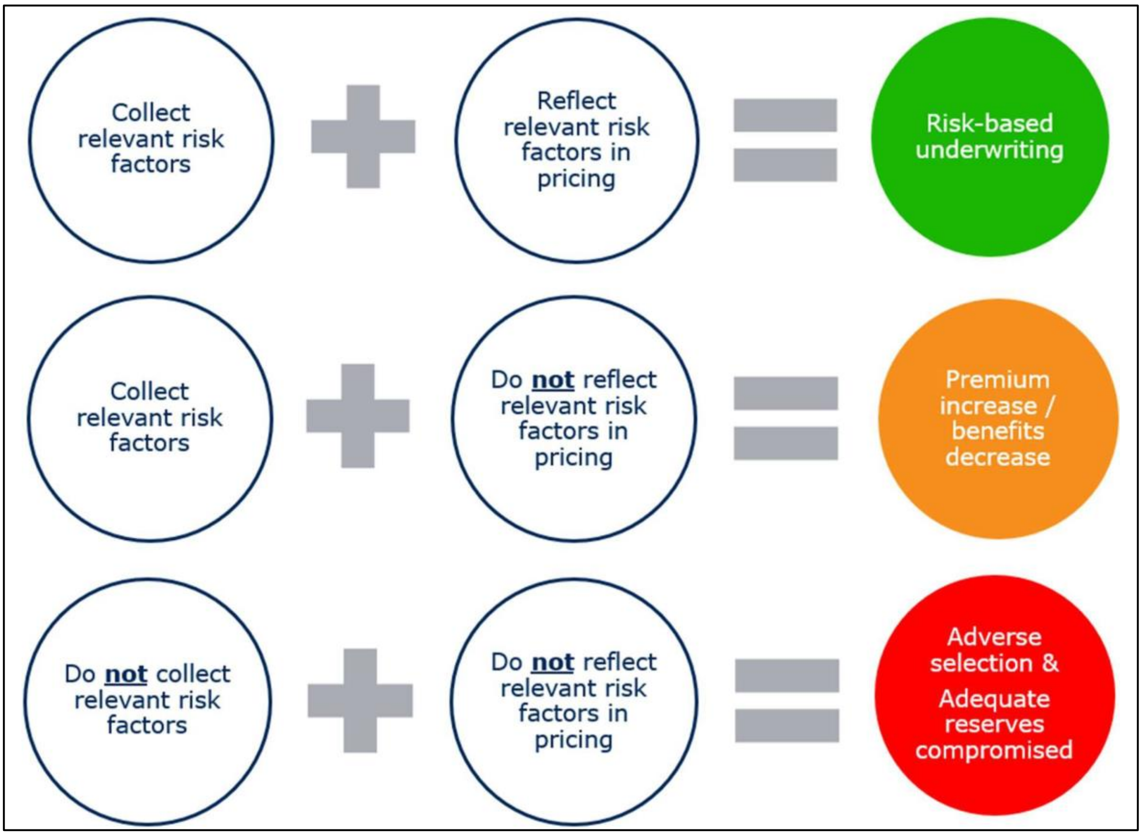

Fig. 4: *Impact of an RTBF if extended to other diseases beyond cancer*

Any RTBF scheme may also lead to questions over the types of diseases it covers. Consumers who have suffered and recovered from other illnesses may feel unfairly treated compared to cancer survivors who benefit from an RTBF, so the question of extending the scope of an RTBF initially limited to cancer to other types of diseases may quickly arise.

Expanding the scope to other diseases would, however, lead to a move away from a risk- based underwriting model to a solidarity system in which the risk level would no longer be considered and in which premiums would increase significantly to ensure cross-subsidisation. This would be detrimental to all consumers, starting with healthier and mostly young individuals, and result in a higher risk of anti-selection and of compromising insurers' regulatory obligations. The diminishing (re)insurance options and products would be even worse due to the uncertainty resulting from such an expansion. This makes it important to target the scope of any RTBF in order to limit unintended consequences as much as possible.

Conclusions

THE IRSG welcomes the EC's upcoming work on a code of conduct. This work will provide an opportunity for dialogue, evidence-gathering and reflection on the consequences — both intended and unintended — of any potential solution to ensure fair access to financial services for cancer survivors.

Indeed, an RTBF may help cancer survivors that suffer from higher mortality or morbidity risk resulting from their cancer history to access insurance on similar terms as other consumers with no heightened risks due to past cancer.

Nonetheless, an RTBF may also result in undesirable consequences. Cancer survivors who do not meet the RTBF criteria and the other consumers — i.e., most consumers — would need to compensate and cross-subsidise via higher premiums to ensure adequate reserves to pay future claims.

An RTBF would therefore be expected to have a knock-on effect on the terms, pricing and possibly the diminishing availability of insurance products in the longer term.

The impact of an RTBF would, however, vary significantly depending on the RTBF features, with more unintended consequences to consumers, including some cancer survivors if insurers have no access to relevant information, including applicants' potential cancer history, and if the RTBF scope is wider.

The implementation of an RTBF must be accompanied by safeguards to ensure that cancer survivors are not concentrated in the same insurance companies which could distort the (re)insurance market and therefore be in breach of European competition rules.

Consideration should therefore be given in the EC work to alternative solutions to an RTBF that have a lower risk of unintended consequences. These could include solidarity solutions such as the approach taken by Sweden to ensure the fair treatment of consumers, including cancer survivors, via an obligation placed on insurers to consider all applications irrespective of the medical history and to carry out individual risk assessments based on up-to-date medical and statistical data.

Policy options:

- **Option 1** - RTBF with access to data: insurers are allowed to access consumers' cancer history but cannot reflect it for pricing.
- **Option 2** - RTBF with no access to data: insurers cannot have access to their portfolios which will result in higher premiums.
- **Option 3** – Establishing an obligation to contract, including individual risk assessments, to ensure fair treatment of all customers.

Impact on premiums:

- **Option 1** – insurers have access to consumers' cancer history:
  - Benefits:
    - Cancer survivors with a heightened risk will pay lower premiums.
    - Premiums increase to cross-subsidise, but limited uncertainty.
    - Insurer must determine whether a consumer benefits from an RTBF – which might prevent unintended dramatic consequences.
  - Costs:
    - Premiums are no longer aligned with the underlying risks brought by an applicant to the pool of insureds.
    - Most of consumers, including cancer survivors with no heightened risk, will pay higher premiums to cross-subsidise.
- **Option 2** – insurers do not have access to consumers' cancer history:
  - Benefits:
    - Cancer survivors with a heightened risk will pay lower premiums.
  - Costs:
    - Insurers have no view over their portfolio compositions which result in higher uncertainty for calculating technical provisions.
    - Higher premium increase for most of consumers, including cancer survivors with no heightened risk, and anti-selection.
    - Higher risk for consumer as decides whether he has to disclose past cancer or not which could lead to higher risk of mistake and coverage being voided.
- **Option 3** – establishing an obligation to contract:
  - Benefits:
    - Risk-based underwriting principles remain which is the fairest way to set each policyholder's contribution.
    - No discrimination between different consumer groups.

Access to insurance:

- **Option 1** – insurers have access to consumers' cancer history:
  - Consequences:
    - Cancer survivors with a heightened risk will have a better access to insurance.
    - Although other consumers, including cancer survivors with no heightened risk, pay higher premiums, anti-selection as well as the risks of cancellation will be mitigated.
- **Option 2** – insurers do not have access to consumers' cancer history:
  - Consequences:
    - Cancer survivors with a heightened risk will have a better access to insurance.
    - Because other consumers, including cancer survivors with no heightened risk will pay higher premiums to cross-subsidise, there is a high risk that they withdraw from their insurance as well as anti-selection.
- **Option 3** – establishing an obligation to contract:
  - Consequences:
    - Ensures the fair treatment of all consumers including cancer survivors without cross subsidising.

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