

(RE)INSURANCE VALUE CHAIN AND NEW BUSINESS MODELS ARISING FROM DIGITALISATION:

Feedback statement to the Discussion Paper

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1. Introduction

Article 1(6) of the Regulation establishing the European Insurance and Occupational Pension Authority (EIOPA) (Regulation (EU) No 1094/2010)¹ requires EIOPA to contribute to promoting a sound, effective and consistent level of regulation and supervision, ensuring the integrity, transparency, efficiency and orderly functioning of financial markets, preventing regulatory arbitrage and promoting equal competition. In addition, Article 9(2) requires EIOPA to monitor new and existing financial activities. The above is a key motivation underpinning EIOPAs work on digitalisation.

On 10th July 2020, EIOPA launched a public consultation on a '[Discussion paper on \(re\)insurance value chain and new business models arising from digitalisation](#)' to obtain a better picture on possible fragmentation of the EU insurance value chain and supervisory challenges related to that. This Discussion Paper was a first step, scrutinising the situation with the aim to support supervisors in the challenges arising from the new business models and the possible fragmentation of the (re-)insurance value chain as a result of new technologies, business models and actors entering the insurance market.

EIOPA proposed in the Discussion Paper the following possible areas for further work:

- More specific analysis of possible regulatory responses to third parties in the value chain. This could include exploring ways of getting a better overview on market developments involving third parties active in the insurance value chain, including understanding ownership structures, partnership agreements and new forms of outsourcing in order to assess who actually underwrites the risk and where risks are concentrated;
- A follow-up study focusing on the impact of platforms and ecosystems and their practical supervision (licensing, outsourcing, consumer protection, product oversight and governance rules), including the application of EU law and possible gaps;
- Adapting disclosures and advice requirements to the digital world, based on an assessment of customers' capabilities and new behaviour patterns and ways of providing information and advice;
- Further analyse broader measures that might underpin sound digital markets in insurance and insurance-related data, e.g. open insurance.

EIOPA received responses from the industry, national industry and consumer associations, InsurTech companies, technology providers and academia. Based on the feedback, a cluster of different issues can be highlighted such as general comments, oversight of the complex value chains, issues related to platforms, ecosystems and comparison websites, supervisory competences, Big Data/AI and digital ethics, consumer protection and access to data/open insurance.

A high-level summary of the responses received can be found in section 2, together with EIOPA reactions. The full list of all the non-confidential comments provided can be found on the EIOPA [public website](#).

EIOPA will consider the feedback in its on-going and future work on digitalisation, subject to prioritisation and EIOPA's work programme. Based on the feedback, the proposed follow-up work seems to remain generally valid.

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

EIOPA is already working on the topic of digital ethics in insurance² and has published a [discussion paper and launched a public consultation on blockchain and smart contracts in insurance](#). EIOPA has also recently published a [discussion paper on open insurance: accessing and sharing insurance-related data](#) to better understand open insurance developments. These work streams are addressing a further “deep dive” on some of the issues highlighted by stakeholders. The feedback received has provided valuable input into these work streams.

Additionally, on 2 February 2021, the European Commission requested technical advice (Call for Advice (CfA))³ from the European supervisory authorities (ESAs) on three topics⁴:

- Regulation and supervision of more fragmented or non-integrated value chains;
- Platforms and bundling of various financial services;
- Risks of groups combining different activities.

The feedback will also support EIOPA’s informed input for the CfA. Finally, the feedback could also support EIOPA’s work related to the upcoming Insurance Distribution Directive⁵ (IDD) review.

EIOPA would like to thank all the participants to the public consultation for their comments on the Discussion Paper.

² https://www.eiopa.europa.eu/content/eiopa-establishes-consultative-expert-group-digital-ethics-insurance_en

³ https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210202-call-advice-esas-digital-finance_en.pdf

⁴ There are additional requests for technical advice from the EBA on non-bank lending and protection of client funds and the articulation to the deposit guarantee scheme directive (DGSD).

⁵ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19–59)

2. Summary of main comments received and EIOPA reactions

General comments

Most of the stakeholders supported the overall direction of the discussion paper and the proposed potential follow-up work – considering it timely and that will help to advance the debate on new business models. An overall agreement on risks and benefits was reported, including on the view that most of them are not new, but rather amplified by the increased digitalisation.

However, it was pointed out that the reality is more complex and markets are different; the potential benefits and risks are mixed and dependent upon specific behaviour of different business models, partners involved, components of the value chain concerned and risk management/governance of co-operation. Some respondents did not fully agree on all the risks (e.g. possible financial inclusion due to fragmentation) and noted that 'benefits' needed more consideration.

Stakeholders noted that specialisation in the value chain (co-operation/collaboration models) in insurance has always existed (e.g. intermediation, reinsurance, etc.), but indeed technological developments are increasing the extent and ways by which insurers rely on third parties throughout the chain.

It was highlighted that, from the business perspective, optimising the benefits of innovation through buying in capabilities from third parties is becoming increasingly unavoidable, as different specialised competencies contribute to deliver relevant and cost-efficient solutions to the customer. Collaboration can speed up development, increase innovation and reduce time-to-market for new initiatives.

Insurers noted that many co-operation arrangements are between partners within the perimeter of the insurance regulatory framework and, in cases where the co-operation partner is not regulated itself, effective protection is often ensured by requirements the insurer has to comply with (e.g. outsourcing requirements).

Insurers were also of the opinion that most of the cooperation activities with partners not within the insurance regulatory perimeter are still at an early stage (e.g. platforms and ecosystems) and digitalisation currently relies largely on in-house innovation or collaboration with partners that are subject to insurance supervision. Hence, it is difficult to predict to what extent fragmentation of the insurance value chain can be expected or how important insurance distribution via platforms or digital ecosystems will become. Future market developments will depend on various influencing factors and their complex interactions.⁶

Respondents from the industry (both insurers and intermediaries) and academia also highlighted that many regulatory issues are already addressed by existing regulations (e.g. Insurance Distribution Directive (IDD) distribution rules, the definition and rules on outsourcing under the Solvency II Directive⁷, and group supervision, including supervision of intra-group transactions). The emphasis was

⁶ E.g. strategic decisions of hundreds of (incumbent and start-up) insurers, intermediaries, and non-financial firms, taking both the advantages (e.g. potential efficiency gains) and disadvantages (e.g. potential reputational risks) of co-operation or outsourcing into account, consumer preferences and buying decisions, societal trends, risk landscape or technological and regulatory developments.

⁷ 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) (OJ L 335, 17.12.2009, p.1

on the need to review existing regulation and guidelines, and their application and interpretation, before adopting new requirements or guidance.

The importance of a greater EU harmonisation was also highlighted and a call for current regulations to be applied consistently across the business models and Member States was made. Respondents from Academia pointed out that there might be a need for enhancing group supervision to capture better new co-operations. Insurers referred to the need to introduce direct supervision of relevant third parties (e.g. cloud service providers) as part of a critical infrastructure instead of further industry-specific requirements.

There was a call for overall dynamic future-proof regulation and supervision to ensure level playing field, fair competition and technological neutrality. Rules should be principles-, risk- and activities-based. It was also highlighted that any possible revision of the legislation must take into account the specificities (or commonalities) of all players and be in the interests of SMEs in the sector. The need to monitor new provisions regularly to assess whether they are effective was also highlighted.

Additionally, it was pointed out that supervisory initiatives and guidance should consider the impact of other regulations (e.g. data privacy requirements) in order to avoid duplicative or conflicting requirements. Insurance supervisors should work collaboratively with other regulators, supervisors and standard-setting bodies responsible for these issues.

Industry associations also encouraged EIOPA to continue to monitor (including through national innovation facilitators) the changes in the insurance business and technology landscape and the impact on consumer choice and consumer outcomes that may result from a concentration of market power in limited number of platforms/ecosystems.

EIOPA reaction:

- EIOPA will consider how to channel awareness of digitalisation / business model change in upcoming regulatory and supervisory work and continue monitoring the developments in the EIOPA InsurTech Task Force (ITF), as well as in the European Forum for Innovation Facilitators (EFIF)⁸.
- EIOPA will continue to engage in associated initiatives such as the DORA Regulation, in particular the Oversight framework for ICT and data critical third parties and potential impact in the outsourcing rules under Solvency II and other sectoral legislation.

⁸ <https://esas-joint-committee.europa.eu/Pages/Activities/EFIF/European-Forum-for-Innovation-Facilitators.aspx>

Solvency II obligation of insurance undertakings to limit their objectives to the business of insurance and operations arising directly therefrom

Article 18(1)a of the Solvency II Directive states that Member States shall require every undertaking for which authorisation is sought in regard to insurance undertakings, to limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business. Hence, some new digital activities might be classified as “non-insurance business”.

Industry associations stated that, for a level playing field, Article 18 should be clarified in a way that non-insurance activities shall be allowed if they are either not associated with increased financial risks for the insurance company, or if they are included within the company’s (internal) model or if services are provided by insurance companies for other regulated entities. Similarly, it was stated that the issue is also relevant in light of the IDD review (e.g. to avoid preferential treatment of platforms).

More recently, the Expert Group on Regulatory Obstacles to Financial Innovation⁹ also stated that the impact of existing activities restrictions for financial institutions’ non-core business (e.g. Article 18 of Solvency II Directive) should be reviewed to determine whether these restrictions remain proportionate. According to the expert group, this review should pay particular attention to cross-sectoral considerations, in order to ensure a level playing field between different types of actors in the financial sector, including BigTech.

EIOPA reaction:

- EIOPA has touched on it under the work on licensing requirements and principle of proportionality in an InsurTech context¹⁰, stating that “*Article 18 provides some flexibility to InsurTech companies as far as the activities are directly related to core business. However, a practical implementation of this provision can vary in different Member States and hence it might be relevant to analyse more in-depth the different national approaches (e.g. the application of this provision to different risk prevention activities, which are becoming more widespread in an InsurTech context) as well as the need for possible legislative change.*” There might be a need to re-visit this issue, including in light of the work on Commission Call for Advice on Digital Finance and the IDD review when it comes to intermediaries.

⁹ https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation_en

¹⁰ EIOPA Report on Best Practises on Licencing Requirements, Peer-to-Peer Insurance and the Principle of Proportionality in an InsurTech Context, 2019. https://www.eiopa.europa.eu/content/report-best-practises-licencing-requirements-peer-peer-insurance-and-principle_en

Oversight of the complex value chains

Industry associations pointed out that although the value chain and the interaction between the involved parties are changing, the general and essential parties appear stable: customers, intermediaries and risk carriers.

Hence, the rights and obligations of the different parties – coming from the already existing regulatory frameworks (e.g. IDD, Solvency II, General Data Protection Regulation¹¹) – have to be sharpened and correctly assigned to the (possibly new) players/parties of the value chain. This requires that the different and possibly new tasks along the value chain are transparent and assigned to eligible entities.

However, one industry association also felt there is insufficient transparency towards supervisors. It was proposed that the risk carriers/intermediaries have to disclose – separated by product line/segment – any cooperation (tech, data analysis, distribution, co-manufacturing) in order to make transparent the rights and responsibilities of the different involved parties.

EIOPA reactions:

- Solvency II Chapter IV provides for general conditions governing business, including rules on outsourcing. Article 49(3) of Solvency II states that insurance and reinsurance undertakings shall, in a timely manner, notify the supervisory authorities prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities. However, this only covers critical and important outsourcing and not other co-operation and ownership models. EIOPA is currently conducting a Peer Review on outsourcing. This might provide further input on the topic. No explicit provisions relating to outsourcing exist in the IDD.

In addition, EIOPA Guideline 61 on the System of Governance states that when an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an undertaking, the undertaking should ensure that the activity of this intermediary is subject to the outsourcing requirements.

- EIOPA Cloud Outsourcing guidelines¹² state that as a part of its governance and risk management system, the undertaking should keep record of its cloud outsourcing arrangements, for example in the form of a dedicated register kept updated over time. Similar provisions are foreseen in the proposal for a regulation on digital operational resilience for the financial sector (DORA).¹³

- Further analysis would be needed to assess business models and their attendant risks to enhance supervisory oversight of key third parties for financial stability, prudential and conduct supervisory purposes.

¹¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹² https://www.eiopa.europa.eu/content/guidelines-outsourcing-cloud-service-providers_en

¹³ As part of their ICT risk management framework in DORA, financial entities shall maintain and update at entity level and, at sub-consolidated and consolidated levels, a Register of Information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers. The ESAs are mandated to develop draft regulatory standards on the types of information to be included in the Register of Information.

Issues related to platforms/ecosystems and comparison websites

Industry associations seemed to agree that traditional insurers do not always have the same market power as third-party providers, and this imbalance in market power can challenge insurers' bargaining position and their ability to influence third-party providers. Traditional insurers bear the greatest portion of the regulatory obligations, but, in practice, a traditional insurer may not be able to control the activities of these third parties or enforce its compliance with consumer rules and guidance due to the dominant market power of the third-party provider.

Platforms which target directly consumers and offer insurance products could change the client ownership. A traditional insurer may not be able to control the activities of these third party platforms or enforce its compliance with consumer rules and guidance due to the dominant market power of the third-party platforms.

A dominant market player may also use its unchallenged market position to set prices, policy terms and conditions in a fashion that may be reduce the value delivered to customers through insurance policies (so-called 'reverse outsourcing'). In addition, some respondents made reference to the need for an effective competition policy to deal with dominant market positions that could otherwise have a substantially negative impact on market conditions and prices.

Stakeholders also highlighted the importance of a level playing field ('same activities, same risks, same rules'). The rules and governance of undertakings and distributors should also be leveraged where these roles are conducted by platforms to create a level playing field in competition and to safeguard customers from misconduct.

Specific measures mentioned mainly by consumer organisations included steps on consumer protection, promoting innovation and creating a level-playing field among participants. This could include increased transparency standards and effective dispute resolution procedures. Online platforms must be regulated regarding transparency in general terms and conditions, methods of listing, ranking and de-listing, the existence of a contractual relationship (as remuneration) that influences the listing or ranking on the platform.

Insurers also highlighted transparency in light of comparison websites (although this is also applicable in wider platforms/ecosystems context). Comparison websites – acting often as insurance intermediaries – frequently suggest to the end user that they provide an independent, unbiased and full comparison of the most common insurance products. However, such comparison websites might pursue commercial objectives, which might have an impact on the ranking of search results.

In addition, there is the risk that customer reviews are presented in a biased manner or that individual products or services are given a more prominent placement outside of the ranking against remuneration. Most of the comparison websites only cover part of the insurance market with the products/services they present. Customers are often not aware of these specifics.

To ensure fair competition and better protect undertakings and consequently customers against unfair practices and an abuse of market power, a number of measures were proposed:

- Prohibition of exclusive distribution agreements and the use of most-favoured-nation clauses in the EU¹⁴;
- Transparency regarding “top recommendations”;
- Protection against biased presentation of customer reviews;
- Transparency requirements regarding advertisements in the form of abstract comparisons on their websites;
- It should be easy for the consumer to identify which providers are included in the comparison and which are not;
- Transparency on the main parameters determining rankings.

EIOPA reactions:

- EIOPA aims to take this feedback into account in the IDD review process.
- EIOPA is also planning follow-up work on platformisation in light of the Commission CfA on Digital Finance.
- In terms of conduct oversight, post-COVID-19 work might be anticipated on consumer challenges/experience with digital distribution, barriers/consumer behavioural issues/business models and ensuring a proper level playing field; this could be a target for a future thematic review/mystery shopping exercise.

¹⁴ Most-favoured-nation clauses are clauses that limit the price at which the insurance provider can offer a product through other sales channels. There might be limits on how to address this in the insurance law as this is also a competition issue.

Supervisory competences: engagement and education

Stakeholders highlighted that supervisors need to ensure they have adequate technical resources, expertise, skills and capabilities in order to fully appreciate and understand digitalisation developments and the different roles of the various actors belonging to the ecosystem and the contribution from each of them to the insurance processes (e.g. product design and manufacturing, user experience design, product sales). A reference was made to dedicated training programmes, including for NCA senior managements and EIOPA's role in coordinating this.

Continuous interaction with stakeholders across the value chain to understand different approaches/case studies/business models was also highlighted while it was also referred that the collaboration and coordination among different authorities supervising different areas e.g. data protection and insurance might be a challenge.

EIOPA reaction:

- EIOPA will explore possibilities to facilitate training courses for NCA staff on digital finance and will organise workshops and thematic reviews.
- EIOPA will continue discuss and exchange knowledge and experience on innovation developments in the EIOPA InsurTech Task Force (ITF), as well as in the European Forum for Innovation Facilitators (EFIF)¹⁵

Big Data/AI and digital ethics

Stakeholders highlighted the importance of transparency, explainability, fairness and auditing standards of algorithms. In addition, broader societal questions were raised on issues related to risk avoidance vs "steering"/ freedom of lifestyle, including in light of preventive services, and on the interest of the individual consumer versus group of insureds as well as on the role of insurance in society and economy in general which could serve more supervisory attention.

An activity-based approach to regulating the use of data was proposed by some stakeholders, whereby a distinction should be made whether data is used for underwriting purposes or for additional services such as prevention and prediction. This could include setting limits on which data is strictly necessary, depending on the area (health insurance, motor insurance, home insurance etc.). Consumer representatives also questioned whether this might justify creating an authority which is in charge of clarifying data purpose limitations and what data is strictly necessary for the provision of various services.

More concretely, insurance intermediaries proposed that any insurance product using data sets from third party sources should disclose both the sources and the exact types of personal data used to determine cover and price. Similarly, on personalised products (such as instant insurance) consumer representatives proposed full transparency about how the premiums are calculated (including disclosing "yearly" price for informed comparison).

¹⁵ <https://esas-joint-committee.europa.eu/Pages/Activities/EFIF/European-Forum-for-Innovation-Facilitators.aspx>

Industry associations also pointed out that restrictions on the transmission, storage and processing of data across borders have impeded insurers' ability to use big data analytics, including machine learning and artificial intelligence. They encouraged EIOPA and other insurance standard setters and supervisors to engage in dialogue to promote collaboration and trust mechanisms to facilitate the more effective transfer and use of data across borders and to study possible issues of using Big Data in the insurance sector.

EIOPA reaction:

- EIOPA will consider this feedback in its on-going work on digital ethics in insurance as well as in the possible follow-up work in this area.

Consumer protection

Industry associations referred to the fact that the IDD and Solvency II are good starting points. They also highlighted the importance of a level playing field and to ensure that customers enjoy the same level of protection, regardless of whether they are served by established providers or new entrants to the market.

All new market entrants should be within the scope of insurance regulation, including by ensuring insurance-specific market conduct requirements when insurance is provided within complex ecosystems where different players perform different roles in the value chain. Overall, distribution-related issues were proposed to be looked at in the context of the upcoming IDD review.

Linked to that, regulatory perimeter issues were also mentioned, including the need for more analysis on what kind of "insurance-like products" (e.g. warranty systems, embedded insurance, replacement, and the emergence of decentralised 'self-insurance' on public blockchain) could be included in insurance regulation, ultimately leading to a broader discussion "what is insurance?". The blurring of lines between financial and non-financial sector was also highlighted, requiring multidisciplinary cooperation between different authorities/supervisors.

Another cluster of issues were related to transparency. Consumer representatives noted that consumers can become frustrated by interacting with so many applications on competing platforms, especially if the information obtained is not comparable, transparent or easy to understand. Related to that, known issues such as possible problems with dedicated insurance policies such as smartphone insurance were also highlighted by consumer representatives, including the difficulty to assess value for money of those products by consumers.

Some stakeholders noted that disclosures on their own might be insufficient, as consumers will simply not be able to assess whether taking out dedicated insurance policies is worth the money. Such assessment could be problematic, especially if consumers need to subscribe to many dedicated policies, e.g. individual policies for every single appliance, and to navigate contractual clauses and exclusion criteria unique for each policy.

A general sense of poor understanding of the insurance product by the clients and insufficient information obligations not improving the public's understanding of insurance products was also highlighted, as well as the importance of proper

disclosures on products and on all players involved in the value chain ('who is doing what and who is accountable?') to address lack of transparency.

Insurance intermediaries referred to cross-selling as an area for further study, especially cross-selling and cross-data analysis where non-insurance activities are combined with insurance activities (in particular where the non-insurance service provider is in a strong position to cross-sell). Similarly, some industry associations mentioned that it should be assured that freedom of choice remains within the consumer when the insurance is integrated in the buying process (e.g. when buying new smartphone or new glasses).

Insurance intermediaries also referred to the fact that consumers who are offered insurances (or quasi-insurances) in combination with non-insurance products should be warned that they may have an interest in seeking further guidance from an insurance professional in order to avoid double insurance, or to get a better deal. The merger of the different insurance segments (i.e. life, health and non-life) was also highlighted as this could pose challenges for NCAs.

Finally, stakeholders highlighted the importance of financial and technological education to avoid financial exclusion and EIOPA was encouraged to consider and discuss with insurance standard setters, including the International Association of Insurance Supervisors (IAIS), the role of insurance supervisors in consumer education.

EIOPA reactions:

- EIOPA will consider the implications of stakeholders' comments in the forthcoming IDD review.
- EIOPA will continue to monitor cross-selling, including tying and bundling of products, as well as innovative business models (such as decentralised blockchain-based models).

Access to data/open insurance

Both consumer and industry associations highlighted that the increased fragmentation of the insurance value chain places greater focus on data privacy and protection as access to consumer data becomes a key business and competitive advantage. Due to the strong presence of network effects in the digital framework, which is strongly data-driven based, consumers and firms are locked-in in ecosystem that are controlled by few market players (entry barrier; restricted competition).

Hence, it was proposed that data portability should be at the core of the regulatory framework. Individuals should be aware that risk sensitive data are collected by social media, car manufacturers or wearables and telephone operators and used for insurance purposes (directly or indirectly). Proper access to this data could allow consumers to transfer this data to other insurers or intermediaries if they wish so.

More concretely, consumer associations proposed to re-interpret and clarify data portability rights to mean the right for consumers to host their own data on a data hosting service of their choice. This means that services such as social platforms would no longer host a user's data on their own servers, but would simply be authorised by the user, to access the data that the user has generated on the platform. However, it was also noted by some stakeholders that without regulatory thrust, open insurance is subjected to many challenges such as consumer data privacy issues, consumer consent issues, liability risk and risk of APIs.

EIOPA reaction:

- EIOPA has published a [discussion paper on open insurance: accessing and sharing insurance-related data](#) to understand open insurance developments more and to facilitate broader multi-stakeholder discussion.

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