Insurance Europe response to EIOPA stakeholder survey on InsurTech

Potential gaps and issues in the existing rules and possible regulatory responses

Q.7 Please indicate the gaps and issues in the existing regulation, e.g. InsurTech firms/business models that may fall and operate outside of the regulated space, or InsurTech firms for which there may be a need to clarify which rules apply in different circumstances or InsurTech firms that may deem it necessary that changes are made to the existing rules.

Regulation and supervision should be activity-based (ie "same activities, same rules") to ensure that customers are effectively and equally protected both when they purchase their insurance products from established insurers and from new market entrants, whatever their business model. This means that the comprehensive EU consumer protection rules applicable to insurance activities and distribution, such as the Solvency II Directive, the Insurance Distribution Directive, the PRIIPs Regulation and the General Data Protection Regulation, as well as all their respective Level 2 and 3 measures, should apply equally to established insurers and new market entrants/start-ups, where they carry out the same activities. This being said, the rules should also be applied in a proportionate and pragmatic manner (for example, to ensure that the IDD rules also work in a paperless environment).

Technology neutral regulation is key where the same standards are applicable; however, the way to comply with these standards can be different.

Rather than automatically introducing new regulation to address new market developments, policymakers at EU and national level should review how the application of existing rules and policy approaches might be adapted to meet these developments without incurring major regulatory change. The crucial issue is to ensure that customers enjoy the same level of protection, regardless of whether they are served by incumbent providers or new entrants/start-ups. All elements of the insurance value chain are sufficiently regulated and serve the regulatory objective of policyholder protection. New insurtech start-ups should be brought within this regulation; there is no need for any additional, specific regulation for new insurtechs. The average customer does not differentiate between an incumbent provider or an insurtech start-up. In both cases, the customer should be equally protected.

Q.8 Have you met any difficulties when applying for a licence? Do you see any licencing requirements that are not relevant? Please explain.

Based on experiences in the German and French markets, for example, difficulties relating to licensing can occur due to insufficient and inconsistent application of the principle of proportionality. However, this is not only applicable to innovative business models, but it is a general problem, in particular for smaller insurance undertakings irrespective of their exact business model. It should therefore be generally assessed how proportionality and flexibility are applied by national supervisory authorities. Furthermore, the regulatory framework should be reviewed to allow flexibility and proportionality. As Solvency II represents a sophisticated supervisory regime, the principle of proportionality needs to be applied consistently in order to work properly without excluding smaller undertakings and innovative business models. It should be examined whether – within the scope of the Solvency II framework – small insurers with a simple risk profile and business model, regardless of the technology used, might also meet existing supervisory standards by applying other, less complex requirements.

In the Netherlands, there are some reported cases where InsurTech/FinTech companies applying for licences ran into difficulties regarding certain licensing requirements (eg management should have a certain experience in the industry and/or consist of a number of persons when scaling up).

P2P Insurance

Q.9 Are you a P2P insurance provider? If so, are you licensed?

N/A

Q.10 Have you met difficulties with regard to P2P insurance in terms of authorisation? If yes, please specify the gaps and issues that you may have identified (e.g. regulatory barriers, defining P2P insurance).

N/A

Q.11 Do you believe that there is a case for developing specific regulation for P2P insurance to operate? Please explain.

Insurance Europe is supportive of a level playing field and therefore does not see any need for developing specific regulation for P2P insurance. The label "P2P insurance" as used in the current discussion on regulation and supervision encompasses a broad spectrum of different activities. However, Insurance Europe believes that regulation and supervision should be determined by the material content of a business model, not its label (ie P2P insurance). It is therefore crucial that regulation and supervision are activity-based to ensure that consumers are effectively and equally protected both when they purchase their insurance products from established insurers and from new market entrants, whatever their business model. Additionally, an activity-based approach safeguards against regulatory arbitrage and competitive distortions which could arise from regulating specific business models instead of looking at the same risks and activities.

Q.12 Please describe your P2P business models (e.g. under what type of licence you operate? When is the protection pool constituted? What types of products are distributed? Is the payment of claims limited by the size of the protection pool? Are premiums redistributed at the end of the year in case of good claims experience? What is the distribution channel? Is it a P2P model based on a blockchain / DLT?).

N/A

Legal barriers to InsurTech

Q.13 Have you identified any barriers to InsurTech in European insurance legislation? If so, please provide concrete examples of these, which in your view could require an adaptation, explaining why you believe that this is a barrier to financial innovation and how do you think the issue should be addressed?

In the context of identifying possible regulatory barriers to financial innovation, Insurance Europe would like to share the following examples of obstacles created by existing European insurance legislation and its recommendations to address them. It also wishes to stress the importance of ensuring proper and consistent application of the principle of proportionality to enable both established market participants and new InsurTech start-ups to provide innovative products, and avoid giving a competitive advantage to one type of market participant over another when the activity and risk are the same.

- **Paper requirements (eg IDD & PRIIPs)**

One of the main factors for technologically driven cost efficiency is the possibility to process data digitally throughout the entire process. Any disruption of processes, eg by requiring the use of paper/written form, leads to less efficient processes. Therefore innovation – not limited to the financial sector – in consistently digital processes needs to be fostered. For example, with regard to the distribution of insurance products, the Insurance Distribution Directive (IDD) applies to all insurance distributors, including automated advisory tools. In order to be able to optimally adapt the advisory and selling processes to the relevant business model, a paper requirement for the compulsory provision of information should be avoided. However, Article 23 of the IDD, sets out a default paper requirement and should therefore be appropriately modified. Similarly, Article 14 of the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs) should be adapted to be more reflective of digital innovation. It should be possible to offer consumers an entirely digital experience through the provision of information in new, digital forms. The paper-driven nature of these information disclosure conditions will hinder digital innovation.

Insurance Europe therefore recommends ensuring that all EU legal texts are digital-friendly, technologically neutral and sufficiently future-proof. For example, Article 23 of the IDD should be revised to avoid the use of paper as a default requirement for the provision of information. The information conditions as set out in this article do not reflect the growing digital trend and will hinder the further development of new digital distribution channels, at a time when the benefits of the digital economy are repeatedly being promoted at EU level. Similarly, Article 14 of the PRIIPs Regulation should be revised accordingly. Insurance Europe's suggested wording for Article 23 of the IDD and Article 14 of the PRIIPs Regulation can be found in its paper on regulatory obstacles to digital innovation in the insurance industry, which can be found at the following link:
https://www.insuranceeurope.eu/sites/default/files/attachments/Examples%20of%20regulatory%20obstacles%20to%20digital%20innovation%20insurance%20industry.pdf

- **Unnecessary, burdensome reporting requirements**

All providers, ie incumbents and new InsurTech start-ups, would benefit from reduced complexity of supervisory provisions. In particular, rules which have proven to be unnecessary or overly-burdensome need to be identified and revoked. One example of overly-burdensome provisions are excessive reporting requirements as stipulated under Solvency II. Undertakings have to submit reports for numerous reference dates. Additionally, submitted reports can comprise a large number of data sets, eg 120 000 data fields for quarterly reporting and up to 330 000 data fields for annual reporting.

Insurance Europe therefore recommends reducing the current overly-burdensome and excessive reporting requirements, and engaging in dialogue with the industry on how technology could be used to improve and

streamline the reporting process, for example by analysing the total scope of the supervisory reporting requirements in order to remove duplications and overlaps.

- **Overly strict requirements in case of outsourcing of functions/insurance activities**

For the insurance industry, the existing outsourcing requirements are overly rigorous. Although all undertakings are allowed to outsource functions or insurance activities, full compliance with all supervisory rules and requirements needs to be ensured. To this end, undertakings must adopt a written policy for the outsourced functions and insurance activities. If an undertaking also intends to outsource key tasks – eg one of the four key functions – it must designate an "outsourcing officer" responsible for supervising the outsourcing process. However, the ultimate responsibility of the management board (or other persons appointed to represent the undertaking) for the outsourced function or insurance activity cannot be delegated but always remains within the undertaking. The current regulatory and supervisory framework regarding outsourcing therefore creates severe obstacles for the use of digital solutions and InsurTech. This makes it difficult to use external service providers or even special group-internal companies for digital business and innovation. The provisions of Article 274 of Commission Delegated Regulation (EU) 2015/35 (and in particular national administrative requirements such as in Germany) are very far-reaching for outsourcing activities of an insurance company. It would, for example, be desirable if there were less restrictive regulatory requirements in the case of group-internal outsourcing activities compared to the use of external service providers. Moreover, restrictions or additional requirements regarding service providers located in a different country as well as the extent and scope of required inspection and audit rights hinder the use of InsurTech.

Insurance Europe recommends ensuring that the administrative supervisory procedures related to outsourcing are not overly burdensome and that existing requirements are applied proportionally. The procedures should only target risks that could arise from specific outsourcing arrangements as they are of lesser relevance where, for example, outsourcing is arranged within a group or to a highly-regulated sector or where outsourcing concerns non-material business segments/activities.

- **Product oversight and governance – product testing requirements**

An additional requirement under the IDD that may present a legal barrier to innovation concerns the provisions on product oversight and governance (POG) and the specific requirement to carry out appropriate product testing. In an environment of innovation, speed is key and product testing is carried out in real-time. It is important therefore to ensure that any requirement to carry out appropriate product testing is reasonable and conducive to supporting innovation, and does not lengthen the time to bring innovate products and solutions to the market. Such a consideration should apply regardless of whether the product is developed by an established incumbent insurer or a new InsurTech start-up.

- **Restrictions on (re)insurance licensing and scope of (re)insurance activities**

A further barrier to innovation concerns restrictions on (re)insurance licensing and the scope of (re)insurance activities under the Solvency II Directive. There are significant limitations on the types of products / solutions that (re)insurers can offer, according to Article 18(1) (a) and (b) of Solvency II. As (re)insurers are increasingly entering the tech solution development space (eg app development), it is not clear, for example, whether a reinsurer could receive a fee-based remuneration for the service it provides to the cedant where no prior reinsurance contractual relationship with the cedant exists. Restrictions around business activities which are not directly linked to (re)insurance should either be abolished or at least be interpreted more liberally (noting that current practice is considered restrictive) to make sure incumbents are also able to experiment with new business models or technology, and to benefit from the same innovation facilitators as other market players.

Q.14 Have you identified any barriers to InsurTech in European legislation that is not specific to the insurance sector? If yes, please provide concrete examples of such barriers, which could require an adaptation of the legislation, explaining why do you believe that this is a barrier to financial innovation and how do you think the issue should be addressed?

In the context of identifying possible regulatory barriers to financial innovation, Insurance Europe would like to share the following examples of potential obstacles created by European legislation that is not specific to the insurance sector, as well as its recommendations.

- **Restrictions on international data flows and their impact on (re)insurance**

International data flows are particularly relevant to the (re)insurance business. By its nature, (re)insurance is a global activity that requires detailed data to offer protection. Restrictions on data movement and data localisation will present a challenge for many types of (re)insurance, thus limiting the available (re)insurance capacity in different markets. This reduction in capacity could result in inadequate (re)insurance programs, increase the possibility of basis risk (different coverage between original policy and reinsurance treaty), and eliminate certain (re)insurers from the market. Restrictions on data movement and data localisation will reduce the oversight of the risk that a cross-border (re)insurance group is exposed to by limiting its ability to centralise, monitor, manage and analyse cross-border data, including personal data.

Insurance Europe recommends ensuring that the freedom of (re)insurance is not impaired by local restrictions on data flow. Such policy measures can represent trade barriers for (re)insurers:

- When designing restrictions on data movements and data localisation, existing international agreements, such as the WTO GATS should be considered and commitments therein upheld.
- New bilateral or plurilateral trade agreements should specifically cover the area of international data flows, ensuring that a mutual recognition of existing and prospective future data regimes is acknowledged and do not hamper free trade of (re)insurance.

- **Lack of an appropriate framework for data access and (re-)use in the platform economy**

Insurers do not generally produce or control the online platforms that generate data, nor the data collection devices that comprise the Internet of Things. If producers of such devices and owners of such platforms have the ability to restrict access to raw data (either by the customer or by potential competitors), it could lead to a monopoly on access to big data; this is relevant both for the retail (personal data regulated by GDPR) and commercial segment. The Internet of Things thus raises urgent questions, eg who may access data collected by connected vehicles, smart homes or other connected devices. Here, consumers must be strengthened in their freedom of disposition regarding the data created by them or at their request. Inappropriate concentration of data based market power must be avoided. In addition, regulators and supervisors should have potential barriers to a functioning market and fair competition in view. For example, the consumer owning and using an interconnected device has the right to determine the use of the data generated by his device. The data interfaces in consumer products therefore should be open and follow interoperational technical standards in order to allow other market players non-discriminatory access on fair terms to the data the consumer wants to provide them with. This is a considerable factor in the road vehicle service market, where the user must be able to decide who has access to the data collected by his or her car.

The ability to fully utilise large data sets is core to insurance in the development of customer centric innovative tailor-made products, deepening understanding of risks to the benefit of the customer and society, increasing product innovation and encouraging competition.

Insurance Europe therefore recommends adopting provisions at EU level to ensure consumers (drivers) decide who can access their vehicle data and for what purpose, by putting all stakeholders on an equal footing regarding in-vehicle access to this data.

Cyber insurance

Access to data and information sharing

Sharing of information about attempted or actual cyber-incidents is vital. Cyber insurance is a difficult market to underwrite. There is a lack of loss data, little correlation between risk classes and limited value of historical loss data because cyber risks are constantly evolving. Insurers and policymakers need to work together to create more data and understand and manage cyber risks. On one hand, information could be shared within the industry and other interested stakeholders on a voluntary basis. Although there is currently no single data structure that allows such sharing cross-industry and no common standard that describes and codifies all types of incidents, the work being done in this area (via CRO Forum, Insurance Europe personal data breach notification template) should be taken into consideration. On the other hand, insurers should be granted access to the data gathered as a result of cyber incident reporting requirements, such as the notification obligations under the GDPR and NIS Directive. This data will help insurers better understand and underwrite cyber risks. Insurance Europe´s developed EU template for personal data breach notifications could structure the authorities' database, making it a valuable source for underwriting.

Cyber risks are an evolving threat, difficult to mitigate and quantify. Therefore, Insurance Europe recommends that provisions be put in place at EU level to maximize the use of the data gathered under the different upcoming reporting requirements (GDPR, NIS Directive). These provisions should allow insurers to access this data in an anonymised format, which would help improve coverage and protection against cyber risks for companies of all sizes.

Public private cooperation

Beyond sharing information, there are different roles that the government and the insurance industry should play in cyber risk management and both sectors need to cooperate. Possible fields of cooperation – already taking place at national level in some markets – are:

- Raising standards of risk management and resilience is crucial to a thriving cyber insurance market. As a first step, policymakers should incentivise a voluntary approach towards better risk management based on industry good practices (eg FERMA's Cyber Risk Governance guidelines).
- Greater awareness of cyber risk will aid the expansion of the cyber insurance market. At present, preparedness is still at an insufficient level.

Finally, cyber risks are borderless in nature, therefore any barriers to cross-border cooperation and global governance efforts should be removed. Policymakers must address this to create an effective risk management framework, looking to the private sector as an "agent of change". The global nature of cyber risks will only increase as digitalisation and the Internet of Things gathers pace.

As part of their national cybersecurity strategies, member states should cooperate closely with the insurance sector. On one hand, national authorities would benefit from the insurance sector's expertise in dealing with risks with similar characteristics. On the other hand, insurers would gain a better insight into cyber risks and thus be able to improve their offer of cyber insurance.

ePrivacy Regulation

Electronic communication is a key element of InsurTech. Because of that, there should be a fair balance between justified data protection targets and the possibility of developing and using new digital business models. Against this background, the currently discussed ePrivacy regulation should complement the GDPR without contradicting

its rules. It should be ensured that there should not be any legal uncertainty stemming from inconsistencies between the upcoming ePrivacy regulation and the GDPR.

- **Data ownership**

Data is key for innovation, whether it is created and/or used by established insurers, InsurTech start-ups, BigTech, banks or (not always regulated) third parties, such as manufacturers of cars or smart tech devices (eg Internet of Things). It is important to safeguard data ownership: data is owned by the customer and not by the manufacturer. EU legislation must always ensure that it is the customer who decides who is allowed to use his/her data and for which purpose and duration. It is for the industry and manufacturers to facilitate the needs of customers by means of open standards.

Innovation facilitators

Q.15 How do you think competent authorities could take part in the facilitation of InsurTech?

In a more general sense, we are observing the key trend that insurers, InsurTech start-ups, incumbent technology firms and other relevant market players are finding ways to cooperate (e.g. form partnerships, work together in innovation labs, etc). New tech based services and products are launched in a regulated environment. This creates different challenges and there are lots of more technical questions. It is important therefore that the current positive dialogue on innovation between the industry and competent authorities continues.

Regulators and supervisors should be encouraged to take initiatives to support market players' innovation that benefits consumers. These initiatives should be made available to both new market entrants/start-ups and established insurers that are trying to develop innovative products or services. This could be further complemented by, for example:

- Enhancing the exchange of information between supervisory authorities and market participants, eg by providing a platform for dialogue between supervisory authorities and companies to clarify questions concerning applicable rules or expectations from supervisory authorities.
- Encouraging supervisors/regulators to exchange information on the different types of innovation facilitators.
- At international level, engaging with policymakers around the world to promote mutual understanding, consistency and convergence of policy solutions in order for the EU to take a leading role in international policy developments concerning innovation in the insurance sector.

At the same time, it is crucial to ensure that insurance legislation, rules or guidelines are digital-friendly, technologically neutral and sufficiently future-proof to be fit for the digital age and encourage digital innovation.

Regulatory and supervisory frameworks for insurance should therefore be conducive to innovation and allow consumers, established insurers and new market entrants/start-ups to benefit from the opportunities digitalisation can offer. This entails finding the right balance between safeguarding high standards in consumer protection and fair competition on the one hand, and removing regulatory obstacles and actively encouraging innovation on the other.

In this regard, we welcome the approach taken by the European Commission in its Action Plan on FinTech to introduce targeted initiatives for the EU to embrace digitalisation of the financial sector and create an environment that is supportive of innovative FinTech products and solutions, while at the same time recognising that the case for broad legislative or regulatory action or reform at EU level at this stage is limited. Emerging

technologies will bring benefits for both consumers and industry, so it is crucial that competent authorities continue their open dialogue with industry to facilitate on-going innovation.

Q.16 Please share your thoughts on the following facilitator approaches:

- **Innovation hubs**
- **Regulatory sandboxes**
- **Innovation accelerators**

Insurance Europe believes that the use of innovation facilitators by national supervisory authorities should be supported and encouraged by the EU. We welcome and support the fact that the European Commission seeks to encourage competent authorities at national and EU level to take initiatives to facilitate innovation.

At the same time, however, we do not consider that guidelines or regulations are needed to harmonise such approaches (eg regulatory sandboxes) in member states. National supervisory authorities are best placed to run the appropriate solution that works best for their market. There may, however, be scope at European level for mapping exercises to look at what might be good practices. In this respect, Insurance Europe welcomes the proposal from the European Commission to engage in a mapping exercise regarding the use of FinTech facilitators by national supervisory authorities. This would allow those member states that have not yet adopted any such approach to facilitating innovation to draw inspiration from the existing wide variety of tools. The identification of best practices should, however, focus on broad principles and avoid trying to be too granular in nature, as national supervisory authorities are best placed to determine the appropriate solution that works best for their market and to ensure that their market can continue to foster innovation effectively.

Insofar as best practices for sandboxes are examined, careful consideration should be given to the level playing-field principle. There appear to be challenges related to the fact that only a limited number of participants can enter a sandbox and benefit from potentially preferential treatment compared to other companies which were not eligible or selected for the sandbox. This could result in competitive disadvantages for undertakings operating outside sandboxes. In light of these obstacles, it might be worthwhile exploring whether the intention to foster innovation could be achieved by a more consistent, technology-neutral application of the proportionality principle. In doing so, innovation would be fostered without limiting the effect to innovative business models.

Moreover, when looking at innovative supervisory practices, it would be helpful to ensure consistency and clarity of understanding regarding the terminology used. Current experience of innovation facilitators worldwide, for example sandboxes, demonstrates that the same term may have a different meaning and scope, depending on the jurisdiction in which it has been introduced. It is crucial therefore that policymakers aim for as clear a description as possible of the nature of the innovation facilitator to which they refer.

While there should be no unnecessary barriers to InsurTech start-ups having proper market access as new entrants, it is equally important that existing insurers have the opportunity to develop innovative products and services aimed to benefit consumers, and have equal access to supervisory initiatives and tools supporting innovation. These initiatives and tools should therefore be made available to both new market entrants/start-ups and established insurers that are trying to develop innovative products or services to ensure an effective level-playing field and to further encourage innovation.

In addition to established insurers and new market entrants, the use of innovation facilitators can be of equal value to regulators and supervisors in helping to identify where existing regulations hinder innovation, and in striking the right balance to encourage innovation and protect consumers. Insurance Europe would further encourage national supervisors and regulators to exchange information on, and experiences with, new regulatory tools aimed at supporting and facilitating innovation, both at EU and international level. We would also encourage the European Commission to engage at the international level with policymakers around the world to promote mutual understanding, consistency and convergence of policy solutions in order for the EU to take a leading role in international policy developments concerning innovation in the insurance sector.