

## Examples of regulatory obstacles to digital innovation in the insurance industry

### Introduction

In the context of the work of EIOPA's InsurTech Task Force, particularly with regard to identifying possible regulatory barriers to financial innovation, Insurance Europe would like to share the following examples of obstacles created by existing legislation and recommendations to address them. This input is provided on the basis of on-going discussions between Insurance Europe and its members. Insurance Europe therefore may identify additional examples of regulatory barriers that it will share with EIOPA as appropriate.

As EIOPA has also indicated that it intends to assess how the principle of proportionality is being applied in practice specifically in the area of financial innovation, Insurance Europe 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.

#### Paperless interaction remains subject to restrictive conditions



**Recommendation:**

**EU legal texts should be 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. The suggested wording for Article 23 of the IDD and Article 14 of the PRIIPS Regulation are listed as an annex.**

■ **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.

**Recommendation:**

**Reduce the current overly-burdensome and excessive reporting requirements, and engage 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. For instance, requirements for an unrestricted right to request onsite audit can prove challenging in case of outsourcing to public cloud infrastructures. It would be desirable to review those requirements eg by giving preference to independent control reports as opposed to onsite audit.

**Recommendation:**

**Ensure 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.**

■ **Restrictions on international data flows and their impact on reinsurance**

International data flows are particularly relevant to the reinsurance business. By its nature, reinsurance 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 reinsurance, thus limiting the available reinsurance capacity in different markets. This reduction in available reinsurance capacity could result in inadequate reinsurance programs, increase the possibility of basis risk (different coverage between original policy and reinsurance treaty), and eliminate certain reinsurers 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.

**Recommendations:**

**Ensure the freedom of reinsurance is not impaired by local restrictions on data flow. Such policy measures can represent trade barriers for reinsurers.**

- **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 reinsurance.**

■ **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 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, where the consumer owning and using an interconnected device has the right to determine the use of the data generated and makes use of it by agreeing to a certain processing of this data, the data interfaces in consumer products should be open and follow interoperational technical standards in order to allow access to the data the consumer wants to share. 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 of 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.

Portable, standardised risk information could provide for more convenience providing for improved access for new customers (see a best practice example from Poland):



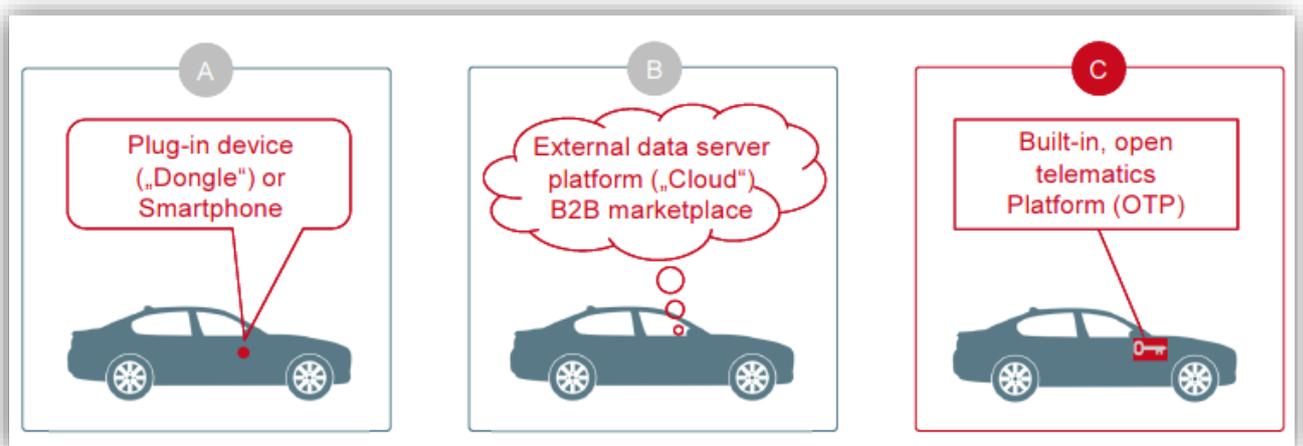
Best practice from Poland

Motor claims history statement (tbd)

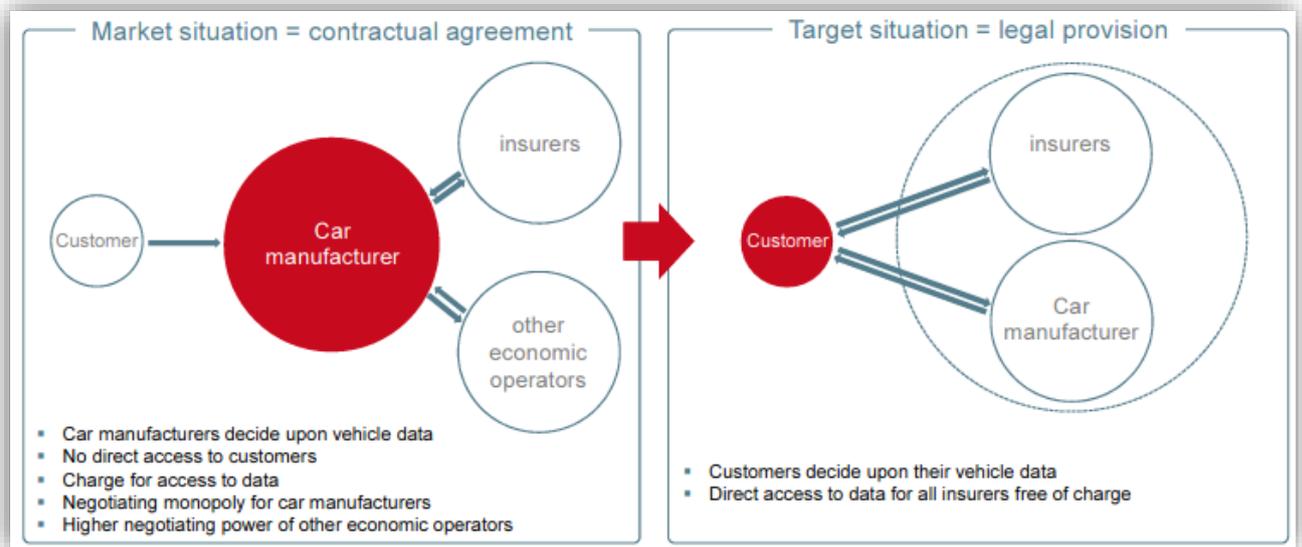
QR Code on the vehicle registration certificate contains data on the vehicle, the vehicle owner and a link to the bonus/malus data base

- Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, Art 16
- Directive 1999/37/EC on the registration documents for vehicles, Annex I

Rewarding the driving behaviour of insurance clients could be further developed by technical standard options for access to in-vehicle data like mileage, speeding, time, geolocation, claims etc.



It is also essential to empower consumers to choose from a wide variety of service providers by ensuring equal access for all economic operators, instead of allowing a data monopoly for the benefit of car manufacturers.



**Recommendation:**

**Adopt 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**

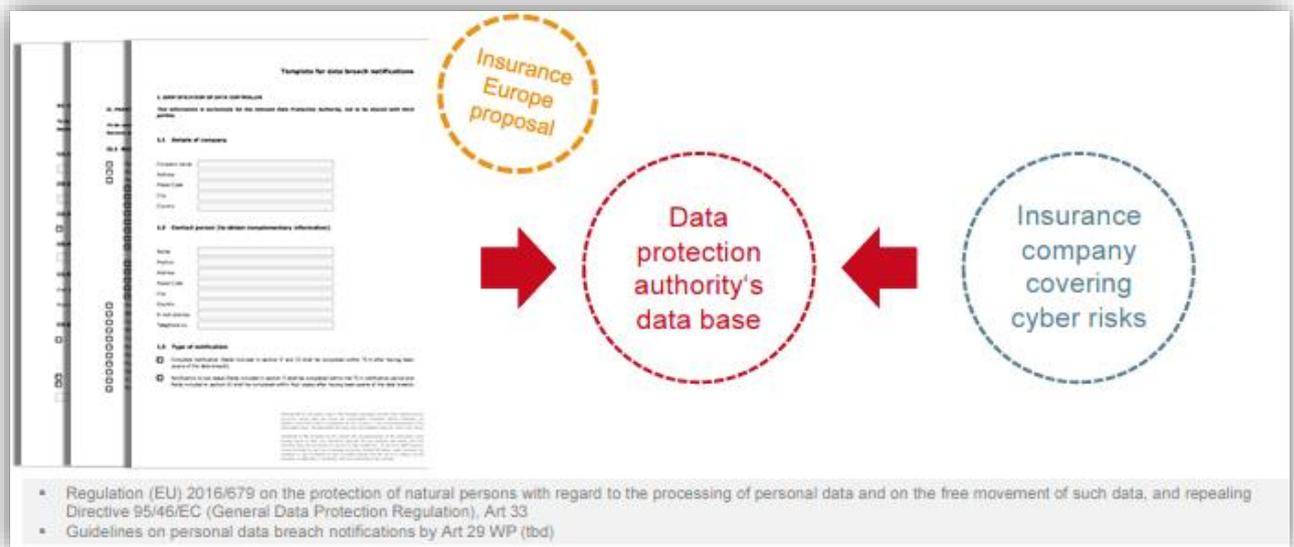
■ **Access to data and information sharing**

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:



**Recommendation:**

**Cyber risks are an evolving threat, difficult to mitigate and quantify. Therefore, provisions should 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.

**Recommendation:**

**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.**

**Suggested wording for Article 23 of the IDD and Article 14 of the PRIIPs Regulation**

The suggested modification to the text of Article 23 of the IDD as highlighted below would offer a more balanced wording that treats the different media equally:

*Article 23*

*Information conditions*

1. All information to be provided in accordance with Articles 18, 19, 20 and 29 shall be communicated to the customer:

~~(a) on paper;~~

(b) in a clear and accurate manner, comprehensible to the customer;

(c) in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and

(d) free of charge.

2. ~~By way of derogation from point (a) of paragraph 1 of this Article,~~ The information referred to in Articles 18, 19, 20 and 29 may be provided to the customer on one of the following media:

(a) on paper; or

~~(a) another~~ durable medium other than paper, where the conditions laid down in paragraph 4 of this Article are met; or

~~(b) a website where the conditions laid down in paragraph 5 of this Article are met.~~

3. However, where the information referred to in Articles 18, 19, 20 and 29 is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

4. The information referred to in Articles 18, 19, 20 and 29 may be provided using a durable medium other than paper if the following conditions are met:

(a) the use of the durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer; and

(b) the customer has been informed that they may request the information on paper. ~~given the choice between information on paper and on a durable medium, and has chosen the latter medium.~~

5. The information referred to in Articles 18, 19, 20 and 29 may be provided by means of a website if it is addressed personally to the customer or if the following conditions are met:

(a) the provision of that information by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;

(b) the customer has been informed that they may request the information on paper. ~~or consented to the provision of that information by means of a website;~~

(c) the customer has been notified electronically of the address of the website, and the place on the website where that information can be accessed;

(d) it is ensured that that information remains accessible on the website for such period of time as the customer may reasonably need to consult it.

6. For the purposes of paragraphs 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the insurance distributor and the customer if there is evidence that the customer has regular access to the internet. The provision by the customer of an e-mail address for the purposes of that business shall be regarded as such evidence.

7. In the case of telephone selling, the information given to the customer by the insurance distributor prior to the conclusion of the contract, including the insurance product information document, shall be provided in accordance with Union rules applicable to the distance marketing of consumer financial services. Moreover, even if the customer has chosen to obtain prior information on a durable medium other than paper in accordance with paragraph 4, information shall be provided by the insurance distributor to the customer in accordance with paragraph 1 or paragraph 2 immediately after the conclusion of the insurance contract.

Similarly, Article 14 of the PRIIPS Regulation should be modified as follows:

#### Article 14

1. The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge.

2. The person advising on, or selling, a PRIIP shall provide the key information document to the retail investor in one of the following media:

(a) on paper, ~~which should be the default option where the PRIIP is offered on a face to face basis, unless the retail investor requests otherwise;~~ or

(b) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or

(c) by means of a website where the conditions laid down in paragraph 5 are met.

3. Where the key information document is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge. Retail investors shall be informed about their right to request a paper copy free of charge.

4. The key information document may be provided using a durable medium other than paper if the following conditions are met: (a) the use of the durable medium is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor; and

(b) the retail investor has been ~~informed that they may request the provision of the key information document on paper. given the choice between information on paper and in the durable medium, and has chosen that other medium in a way that can be evidenced;~~

5. The key information document may be provided by the means of a website that does not meet the definition of a durable medium if all of the following conditions are met:

(a) the provision of the key information document by means of a website is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor; and

(b) the retail investor has ~~been informed that they may request the provision of the key information document on paper; given the choice between information provided on paper and by means of a website and has chosen the latter in a way that can be evidenced;~~

(bc) the retail investor has been notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed;

(cd) the key information document remains accessible on the website, capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it.

Where the key information document has been revised in accordance with Article 10, previous versions shall also be provided on request of the retail investor.

6. For the purposes of paragraphs 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the person advising on or selling a PRIIP and the retail investor if there is evidence that the retail investor has regular access to the internet. The provision by the retail investor of an email address for the purposes of that business shall be regarded as evidence.