

## Insurance Europe submission to the EC consultation on the “Stocktaking of the Commission’s better regulation approach”

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### I. The European Commission and better regulation-general questions

#### **General remarks**

Insurance Europe supports the European Commission’s “better regulation agenda” and its objectives to improve internal processes and stakeholder consultation across the policy-making process. Important steps have been taken to increase transparency of decision-making, allowing stakeholders the possibility to provide input on draft legislative initiatives. The tools developed, notably the “Have your say” portal and its multiple sections, stakeholder consultations and public hearings are a first step in the right direction to ensuring an appropriate and effective policy-making process and ultimately high-quality and fit-for-purpose legislation.

Insurance Europe actively participates in the process at all levels and has made submissions to the REFIT Platform and to the “Task force on subsidiarity, proportionality and doing less more efficiently”.

While the tools for stakeholder consultation are welcomed, in this paper Insurance Europe outlines several deficiencies in their practical application. Insurance Europe also puts forward several practical recommendations for ensuring that the better regulation processes and stakeholder engagement add value to EU regulation.

#### ***Does the Commission inform stakeholders about its regulatory plans early enough and does it involve them in a satisfactory manner?***

#### **Insurance Europe recommendations:**

As the key insurance stakeholder in the EU legislative process, Insurance Europe is generally aware of relevant, planned legislative initiatives by the Commission due to active and continuous interaction with the

Commission's services. Active in an often highly technical financial services space, Insurance Europe notes, however, that there are several areas where improvements in the Commission's processes would be needed and welcome, specifically:

- 1. Transparency of the Commission's legislative process**
- 2. Systematic and open consultation of stakeholders**
- 3. Time allowed for stakeholder consultation**
- 4. Time allowed for a serious and thorough review of stakeholder feedback**

Suggestions for improvements on these points and specific examples follow below.

### **1. Transparency of the Commission's legislative process**

The Commission should be more transparent regarding its processes and internal deadlines. There is currently no official overview of clear timelines for planned adoption of draft legislative acts, consultation of stakeholders, consultation of Council of the EU expert groups, etc.

### **2. Systematic, open consultation of stakeholders**

The Commission should consult all relevant stakeholders on its proposals systematically and in an open way. This is currently not the case based on Insurance Europe's experience.

For example, the Commission proposal on representative actions — which was part of the April 2018 consumer package consultation — was at times restricted to specific stakeholders via the REFIT platform and a targeted consultation. This meant Insurance Europe was not able to participate in all stages of the consultation, despite being an interested party.

Moreover, consultations have not always allowed open input. For instance, the call for evidence on representative actions, in summer 2017, was biased in favour of obtaining claimant input, and so prevented Insurance Europe from providing the industry's perspective. Truly open consultations should be the norm, not the exception.

### **3. Time allowed for stakeholder consultation**

More time should be allotted for stakeholders to provide meaningful contributions during the policy-development phase. For example, the current four-week consultation period for delegated and implementing acts is often too short to allow stakeholders to provide meaningful technical contributions. Moreover, consultations should be scheduled considering the working periods of the year, as to facilitate the provision of good quality and meaningful input:

- For example, consultations on draft delegated and implementing acts in financial services regulation which include regulatory technical standards (RTS) have shown that a four-week consultation is insufficient to provide the technical input required. In this regard, the technical nature of these standards requires precise and complex input, that generally is not possible to provide in the time currently allotted.

Importantly, as the legislative process stands, this four-week consultation is the sole opportunity where affected stakeholders can provide their technical input to RTS delegated acts. After this consultation, the delegated acts will be adopted by the Commission and endorsed by the Council and the European Parliament, and amendments will no longer be possible. Consequently, drafting workable RTS within the consultation period is vital, therefore and as explained, the consultation period should be extended.

- The Commission's proposal for a Motor Insurance Directive review was published in May 2018. The stakeholder consultation in the months that preceded the proposal was conducted within a very short timeframe. Two consultations were launched in quick succession, not allowing adequate time for key stakeholders to form a clear view on the proposed measures. Ultimately in this case, it was Insurance Europe's feeling that it is undue political pressure to finalise a proposal in a short frame that compromised the consultation process, contradicting the better regulation principles.

#### **4. Time allowed for a serious and thorough review of stakeholder feedback**

The Commission should take stakeholders' input into account before adopting final regulations for the Parliament and/or Council's review. Moreover, the Commission should explicitly embed appropriate time to review stakeholder input in the process and seriously consider it before finalising its work. Recent experience shows that the Commission has either not allotted any time for reviewing stakeholder input, or has only allowed very limited time, which means the process is not meaningful or credible.

Importantly, recent experience shows that stakeholder processes exhibit strong form over substance, and this approach means that stakeholder input is not meaningful. For example, there have been cases where:

- Proposals were adopted by the Commission and sent to the Parliament and/or Council, while stakeholder consultations were running in parallel. By the time allowed for stakeholders to provide input elapsed, the Parliament and Council had already released views and even final opinions. This means that in practice stakeholders' input was not assessed ahead of co-legislator discussions. Examples include: proposals for regulations on the establishment of a framework to facilitate sustainable investment (COM (2018)353) and on disclosures relating to sustainable investments and sustainability risks (COM (2018) 354), which were open for feedback from 24 May to 23 August. In the meantime, the Parliament and Council commenced discussions and examination of the proposal. A draft Committee report on the proposal on disclosures was released by the Parliament on 2 August.
- Proposals were adopted by the Commission a few days after the deadline for the stakeholder input elapsed. Such a short deadline does not make the process credible and proves that the process is more of a formality rather than a real opportunity for stakeholder feedback. Examples include the consultation on the Commission's Delegated Regulation amending Delegated Regulation (EU) 2015/35 regarding the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings. The stakeholder feedback period on the draft Delegated Act was from 17 April to 15 May 2018 and it was adopted by the Commission on 1 June 2018.

#### ***Does the Commission provide enough evidence to back up its proposals?***

##### **Insurance Europe recommendations:**

The Commission must do more to provide conclusive evidence supporting legislative action. Too often, impact assessments are a lengthy and detailed account of the Commission's preparatory work, public hearings or stakeholder consultation, and do not provide for a clear analysis of the need for legislative action. Moreover, stakeholder consultation results are sometimes mis-weighted or not presented in full, or even not at all, to justify a certain policy direction.

Insurance Europe notes the following areas for improvement:

- 1. The Commission should have the right technical expertise and the appropriate amount of resources to be able to run an impact assessment, whenever needed and justified.**

Over-reliance on the technical expertise and input of European Supervisory Authorities (ESAs) is not appropriate, especially since the ESAs have different objectives in their mandates and may not have the same objectives as the Commission, for instance in relation to growth and jobs.

**2. The Commission should put more emphasis on justifying the need for a specific policy proposal**

Specific examples follow below.

**1. The Commission should have the right technical expertise and the appropriate amount of resources to be able to run an impact assessment, whenever needed and justified.**

Recent experience with the Solvency II 2018 review process revealed an over-reliance on the European Insurance and Occupational Pensions Authority's (EIOPA) technical advice. On specific areas (eg, risk margin) the industry provided extensive technical evidence that proved concrete flaws in EIOPA's work and advice, and also proved how EIOPA's advice runs counter to the Commission's overarching objectives of supporting growth and jobs. Unfortunately, the Commission decided to go ahead with EIOPA's advice, and one of the justifications has been the lack of resources to run an in-depth analysis of the issues to support the Commission's impact assessment.

**2. The Commission should put more emphasis on justifying the need for a specific policy proposal**

An example of a lack of evidence can be found with the proposal for a services e-card and related administrative facilities (COM (2016) 824 final). The stated aim of the proposal was to facilitate the provision of services in the EU through a voluntary electronic procedure that would allow service providers to complete the formalities required.

Insurance companies did not fall under the scope of the proposal as potential beneficiaries of the e-card, however, insurance was perceived as a barrier to the provision of cross-border services. The regulation would have obliged insurers to:

- Provide a standardised certificate of proof of insurance upon request
- Provide a standardised claims history statement upon request
- Take into account a service provider's claims history statement when calculating their premium

Insurance Europe took part in the discussions prior to the launch of the public consultation and also fed into the impact assessment. However, the Commission's impact assessment did not fully take into account Insurance Europe's feedback and misrepresented parts of the input provided. The Commission also failed to assess the impact these measures would have had on the insurance sector, which would have been burdensome and costly to comply with.

Finally, and more importantly, the Commission did not provide proof to substantiate its assertion that insurance is a barrier to the provision of cross-border services. In fact, during the consultation process and in its workshops, there were no examples put forward to support this view. *Additional information on Insurance Europe's comments on the process can be found [here](#).*

Insurance Europe is of the opinion that the Commission's proposal for a regulation on a services e-card fell short of meeting the proportionality criteria under EU law, and that its impact assessment did not provide a convincing need for legislative action.

***Does the Commission take the subsidiarity principle sufficiently into account when putting forward policy proposals?***

**Insurance Europe recommendations:**

Insurance Europe believes that the Commission could do more to assess subsidiarity and proportionality of its proposals. In a submission to the Commission's taskforce on "subsidiarity, proportionality and doing less more efficiently", Insurance Europe put forward concrete proposals to improve the procedures leading to adoption of EU legislation:

1. Consideration could be given to lowering the threshold for national Parliaments' reasoned opinions/contributions impacting a legislative proposal; the threshold is currently 12 member states
2. Better consideration of the principles of subsidiarity and proportionality at inception stage of policy development so that a political objective is not doggedly pursued despite mounting input from stakeholders of a developing problem over the observance of these principles
3. Greater care and weight given to the evidence underpinning the Commission's alleged need for legislative proposals. This could be achieved by updating the interinstitutional agreement, at Article 25, to include a requirement that proposals are equitable as to the parties affected by the proposal
4. Review clauses in legislative texts should explicitly include a 'do nothing' option

The submission also highlighted examples of legislative proposals where the principles of subsidiarity or proportionality have not been adequately considered, notably the Single Market Information Tool (SMIT) and the ESAs review.

■ **The Single Market Information Tool**

On 2 May 2017, the EC (DG GROW) published its proposal for a single market information tool (SMIT), alongside its impact assessment supporting the proposal. The proposal would enable the EC to require undertakings and associations, subject to the threat of imposition of penalties or fines, to provide confidential and commercially sensitive data to support EC infringement actions against member states or for EC policy development purposes.

Insurance Europe believes that the SMIT proposal suffered from a lack of proportionality in seeking to achieve its goals of a better functioning internal market. Further, the proposal did not satisfy the principle of subsidiarity because it disregards the division of competences between the EU and member states.

■ **The review of the European Supervisory Authorities**

On 20 September 2017, the Commission (DG FISMA) published its proposal on the review of the ESAs, alongside its Impact Assessment supporting the proposal. If adopted, the proposals would introduce changes to the ESAs' governance structure and powers, moving significant parts of the responsibility away from local national competent authorities (NCAs) into the ESAs' remit.

The Commission's proposals for the ESAs review do not respect the principle of subsidiarity, as they risk obfuscating the balance of power between the ESAs and NCAs, as well as the delineation in their roles. The proposals also risk not being proportional, as they seek to introduce changes for all three ESAs that may not, on an evidence basis, be needed for all three ESAs.

***What can the Commission improve to achieve its goals to simplify existing EU laws and to reduce costs (REFIT)?***

**Insurance Europe recommendations:**

The Commission should improve its efforts in translating the REFIT Platform recommendations into the Commission's legislative drafting process and so address existing deficiencies and avoid their repetition.

As stated above, Insurance Europe supports the "better regulation agenda". In this regard, it recognises the key role of the REFIT Platform. This is why, last year Insurance Europe submitted input through the REFIT online tool and obtained a favourable opinion from the Platform in March 2018.

Insurance Europe's submission included concerns regarding information overload and duplication, and unfriendly digital rules. The REFIT opinion considered that the current legislative framework leads to unnecessary information overload and duplication and that the rules are not in line with a digital environment. Consequently, the Platform recommended that the concerned legislations should be reviewed to address these concerns.

While Insurance Europe welcomed the Platform's outcome and awaits the Commission's response to address the recommended actions, it is clear that the Platform's work is not properly aligned with the Commission departments that are drafting legislation. For example, in the REFIT submission Insurance Europe raised the issue of information overload and duplication, which was accepted. However, subsequent Commission proposals for a pan-European Personal Pensions Product (PEPP) and on sustainability disclosures have been drafted in a way that, instead of limiting information overload and duplication, increases these problems. Moreover, this concern of information overload and duplication is never considered in the impact assessments accompanying legislation.

## **II. Consulting the public and interested parties**

***How can the Commission improve its stakeholder consultation practices?***

**Insurance Europe recommendations:**

Adequate time should be provided for stakeholders to provide meaningful input and for policy makers to be able to assess and consider the input.

This matter has been partially addressed above under the question "*does the Commission inform stakeholders about its regulatory plans early enough and does it involve them in a satisfactory manner?*" Insurance Europe wishes to reiterate that it supports and welcomes the opportunity to comment on Commission proposals via the "have your say platform" and add the need for adequate time to respond to consultations.

A lack of adequate timelines is also a problem that is constantly repeated. Not only do stakeholders lack sufficient time to provide their technical input, as explained in the question above, but policymakers also lack the time to consider this input when drafting their proposals.

For example, Insurance Europe's feedback is often not considered due to the very limited timelines to which the legislative drafting and implementation procedures are subjected. In other words, the legislative process, as it

stands, does not allow policymakers to consider and introduce stakeholders' input (ie, provided through the "have your say platform"), before the proposals have to be passed-on to the co-legislators.

It is also not clear what happens to feedback provided through the "have your say" tool, whether it is considered, analysed, or summarised for co-legislators. Insurance Europe has not observed any cases where the feedback has been communicated to co-legislators. This process should be clarified.

### **III. Evaluating existing EU laws**

#### ***How can the Commission improve the evaluation of existing EU laws?***

##### **Insurance Europe recommendations:**

Reviews under the better regulation framework should function as a quality check of existing legislation, and so address any existing deficiencies, but never worsen the quality of the existing text.

The majority of financial services legislation affecting the insurance sector is subjected to regular reviews. Insurance Europe welcomes this approach when, for example, reviews are necessary to simplify legislation, adapt to new developments or address unnecessary costs. However, due to the often too short intervals and variety of views delaying the legislative process, deadlines cannot always be met, and consequently reviews overhaul each other.

Furthermore, reviews often lead to further overlaps and inconsistencies in the timelines of legislative processes. Reviews under the better regulation framework should function as a quality check of existing legislation, and so address any existing deficiencies, but never worsen the quality of the existing text. This is a principle Insurance Europe very much supports.

Moreover, there is often a lack of transparency regarding the timelines of reviews and the process. For example, the Packaged Retail Investment and Insurance Products (PRIIPs) Regulation establishes that its review is due on December 2018. However, Insurance Europe understands that the Commission will not meet this deadline, but this has not been formally communicated to stakeholders, adding uncertainty for the industry.

### **IV. Assessing new Commission proposals**

#### ***How can the Commission improve impact assessments and how can it better justify its proposals under the scope of subsidiarity and proportionality?***

##### **Insurance Europe recommendations:**

1. The Commission should adequately consider the impact of planned proposals on the different sectors targeted by the proposal, but also sectors not directly in the scope of the proposal.
2. The Commission should carry out a stronger and more consistent analysis to guarantee the principles of subsidiarity and proportionality; checking the box is not enough.

3. The Commission should conduct a more thorough legal assessment when analysing the appropriateness of the legal basis justifying a proposal. This assessment should be conducted in line with the principles of proportionality and subsidiarity.
4. The Commission should systematically assess the cumulative impact of the planned proposal when it is combined with other existing or proposed rules.

While transparency is usually achieved via extensive impact assessments supporting new Commission proposals, quantity does not always guarantee quality. The option ultimately chosen between a range of policy options presented (in detail), is not always justified to a sufficient extent. Similarly, the Commission's assessment of conformity with the principles of subsidiarity and proportionality is often conducted after a generic check-list without considering the specifics of the proposal at hand.

Moreover, this has occurred in several files where questions have been raised over the legal basis of proposals. This was the case on the proposal for a SMIT where serious concerns were raised by the legal services of the Council and the Parliament, as well as the its JURI Committee. Moreover, a dozen member state delegations and a handful of member state parliaments raised their own legal concerns, alongside many business stakeholders, including Insurance Europe. The safeguards imposed on the Commission when developing legislative proposals have been shown by this file to be deficient in catching poorly justified and wholly disproportionate proposals. Without a proper legal basis to justify action at EU level, unnecessary and disproportionate action is taken.

The Commission should adequately consider the impact of planned proposals on the different sectors targeted by the proposal, but also sectors not directly in the scope of the proposal. As an example, the Commission proposal for a services e-card imposed obligations on insurers to implement new systems of reporting, which would have been very costly to implement and without any substantial added value for service providers. The Commission impact assessment did not adequately consider the impact on the insurance sector, as it was not seen as a core beneficiary of the proposal. In line with comments raised above, feedback provided by the insurance sector during the preceding consultation process was not taken into account.

Importantly, the Commission should systematically assess the cumulative impact of a proposal when it is combined with other existing or proposed rules. Even well intentioned and potentially very useful regulations can fail to work as intended because they are still developed in an "old school" way. This means each of them is developed separately, in isolation, without having the business or sales process in mind. For instance, if this cumulative impact assessment had been carried out thoroughly for the PRIIPs Regulation and the Insurance Distribution Directive (IDD), the Commission would have been able to prevent unintended information overload and duplication before putting forward its proposals.

Moreover, it is not clear how the Commission reviews comments made on impact assessments once published. A process should be in place where factual errors or misinterpretations can be challenged, especially in cases where these are used to justify policy direction.

## **V. Scrutinising the quality of impact assessments and evaluations**

### **Insurance Europe recommendations:**

The role of the RSB should be further clarified and strengthened. In this regard, proposals presented to the college of Commissioners should always have the green light of the RSB.

Insurance Europe considers the Regulatory Scrutiny Board (RSB) as a welcome addition to the proposal drafting stages. However, there should be more clarity on the impact of the RSB opinions on the final outcome. Insurance



Europe understands that the RSB's role is to ensure quality of the proposal, to scrutinise subsidiarity and proportionality, and to make recommendations for improvements. It also understands that the RSB's opinions come with a red-yellow-green classification. It is, however, not clear how this classification or the RSB's opinions affect final legislation.

Sometimes legislative draft proposals are presented to the College for approval merely on a "yellow" basis, which means that concerns on some elements of the proposal have been raised, but not adequately addressed. Insurance Europe believes that all proposals presented to the college of Commissioners should pass with a "green" backing of the RSB. This would further improve the quality of legislative proposals.

Moreover, the RSB should further focus on scrutinising the Commission services choice of policy objectives, for example, by reviewing justifications and evidence in support of the chosen policy objective, and scrutinising political guidelines, proportionality and subsidiarity of presented measures.

## **VI. Areas where the Commission has made progress since 2014 and areas where the Commission should make improvements in the future**

### **Insurance Europe recommendations:**

More should be done to increase the usability of the Commission's "have your say" online tool.

The tools developed, notably the "have your say" portal and its multiple sections, stakeholder consultations and public hearings are a right first step to ensuring an appropriate and effective policy-making process and ultimately high-quality and fit-for-purpose legislation. While a central portal for consulting and commenting on draft Commission initiatives is useful, the functionality of the tool is not satisfactory. The website is slow, its structure is confusing, and the search function yields at times inaccurate, random results. A more user-friendly experience would increase stakeholder and citizen input significantly.

Insurance Europe is the European insurance and reinsurance federation. Through its 35 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €1 200bn, directly employ over 940 000 people and invest over €10 100bn in the economy.