REPORT ON BEST PRACTICES ON LICENCING REQUIREMENTS, PEER-TO-PEER INSURANCE AND THE PRINCIPLE OF PROPORTIONALITY IN AN INSURTECH CONTEXT

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REPORT ON BEST PRACTICES ON LICENCING REQUIREMENTS, PEER-TO-PEER INSURANCE AND THE PRINCIPLE OF PROPORTIONALITY IN AN INSURTECH CONTEXT

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ABBREVIATIONS

AI	Artificial Intelligence
AMSB	Administrative, management or supervisory body
BoS	Board of Supervisors
DLT	Distributed Ledger Technology
EIOPA	European Insurance and Occupational Pensions Authority
EMD	Electronic Money Directive (Directive 2009/110/EC
ESAs	European Supervisory Authorities (the EBA, ESMA and EIOPA)
FSB	Financial Stability Board
IaaS	Infrastructure as a Service
IDD	Insurance Distribution Directive (2016/97/EC)
ITF	InsurTech Task Force
MCR	Minimum capital requirements
NCAs	National Competent Authorities
P2P	Peer-to-peer
PaaS	Platform as a Service
PSD2	Payment Services Directive 2 (Directive 2015/2366/EU)
SaaS	Software as a Service

EXECUTIVE SUMMARY

Taking into consideration the European Commission's Fintech Action Plan[1] and the InsurTech Task Force (ITF) Mandate,[2] EIOPA mapped current authorising and licencing requirements and assessed how the principle of proportionality is being applied in practice in the area of financial innovation. This includes the approach to InsurTech start-ups such as peer-to-peer (P2P) insurers.

The aim of this report is to provide an overview of this mapping and assessment, as well as to highlight some emergent best practices for national competent authorities (NCAs). The best practices draw from supervisory experiences, survey answers, as well as from the discussions held in EIOPA InsurTech Roundtables with wider stakeholders, and aim at supporting a more systematic approach to InsurTech licencing requirements and the application of the principle of proportionality in view of consistent and effective supervisory practices across NCAs.

Based on the evidence gathered, the EU InsurTech market is at an early stage but evolving. Most NCAs have limited experience with InsurTech companies or they do not differentiate those with "digital" business models from others. However, the ITF's work on innovation facilitation found that 24 NCAs have implemented an innovation facilitator.[3] This implies that most NCAs within the EU are well aware of the importance of innovative technologies and new market players, and the need to understand well risks and benefits.

Both NCAs and external stakeholders highlighted the need for a level playing field, proportionality and technological neutrality. This is directly linked to EIOPA´s approach to digitalisation, which is to strike a balance between enhancing financial innovation and ensuring a well-functioning consumer protection framework and financial stability. EIOPA also believes that regulation and supervision must be technology neutral and ensure a level playing field.[4]

It is important to point out that facilitating innovation is not about deregulation. To the extent that InsurTech activities involve the carrying out of a regulated activity, the appropriate licence is required. In line with normal authorisation practices, a proportionate approach may be applied for the assessment of conformity with the conditions for authorisation.

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1 FinTech Action plan: For a more competitive and innovative European financial sector, European Commission, March 2018, https://ec.europa.eu/info/sites/info/files/180308-action-plan-fintech_en.pdf

2 InsurTech Task Force Mandate (EIOPA-BoS-17/258) https://eiopa.europa.eu/Pages/Working%20Groups/InsurTech-Task-Force.aspx

3 See https://eiopa.europa.eu/Pages/News/ESAs-publish-joint-report-on-regulatory-sandboxes-and-innovation-hubs.aspx

4 See EIOPA Single Programming Document 2019-2021 with Annual Work Programme 2019, p. 4, 7, 10 and 38. https://eiopa.europa.eu/about-eiopa/work-programme

Since the types of licences in the insurance sector are much more limited than in for instance the banking sector[5] and at this stage there is, apart from P2P business, no obvious InsurTech related development that has been seen as challenging the current licencing framework, there seems at the moment no need for further regulatory steps on licencing. This conclusion is supported also by the overall preference of technological neutrality as well as a level playing field.

However, NCAs should – where appropriate – adapt their internal processes and know-how to the general process of digital transformation. At the same time diverging supervisory practices amongst NCAs must be avoided. In addition, it is important to note that some InsurTech developments have a cross-border/cross-sectoral coverage.

InsurTech is constantly evolving and developments have to be monitored closely. NCAs should engage further with one another and exchange experience with each other and with EIOPA considering the rise of new technology driven business models (e.g. P2P), the use of new technologies (e.g. artificial intelligence (AI), Distributed Ledger Technology (DLT)) and the licencing / on-going supervision of highly digitised insurers in order to avoid supervisory arbitrage (e.g. through different sensitivities to the use of crypto assets to pay claims and/or premiums). This is essential to prepare for emerging risks.

EIOPA aims to facilitate this process, working with NCAs and InsurTech firms in the promotion of sound financial innovation in the European insurance and pensions market.

This could include:

- exploring options to develop a European insurance innovation hub for the benefit of NCAs and InsurTech firms;
- the assessment of InsurTech-related data which should be collected systematically to support NCAs and EIOPA work on InsurTech;
- understanding how risks shift given new technologies and business models, so spearheading further work on understanding different business models, including InsurTech´s impact on traditional business models on insurance companies;
- other topics worth of further attention and regular monitoring are those of outsourcing, developments in licencing InsurTech companies and potential growth of the P2P insurance market.

5 E.g. (i) credit institutions under the Capital Requirements Directive, (ii) payment institutions under the Payment Services Directive 2 (PSD2), (iii) hybrid payment institutions under the PSD2), (iv) electronic money institutions under the Electronic Money Directive (EMD), (v) hybrid electronic money institutions under the EMD, (vi) investment firms under Markets in Financial Instruments Directive II, (vii) credit intermediaries under the Mortage Credit Directive, (viii) exempted entities under the PSD2 or the EMD. There can be also entities regulated pursuant to an entity-specific regulatory regime under national law (e.g. lending-based crowdfunding platforms).

1 INTRODUCTION

1.1 BACKGROUND AND RATIONALE

Article 1(6) of the Regulation (EU) No 1094/2010 (EIOPA Regulation)[6] requires EIOPA *inter alia* 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) of that regulation requires EIOPA to monitor new and existing financial activities. The above is key motivation underpinning EIOPA´s work on InsurTech.

In June 2017 the Board of Supervisors (BoS) confirmed EIOPA's commitment in the area of InsurTech and agreed to establish a multidisciplinary ITF.

Taking into consideration the European Commission's Fintech Action Plan and the ITF Mandate, the tasks of the ITF include mapping current authorising and licencing requirements and assessing how the principle of proportionality is being applied in practice, specifically in the area of financial innovation (e.g. regarding InsurTech start-ups such as peer-to-peer (P2P) insurers), also with a view of determining efficient and effective supervisory practices in the form of best practices, by Q1 2019. Where appropriate, EIOPA could issue guidelines on authorising and licencing approaches and procedures or best practises, and present recommendations, where necessary, to the European Commission on the need to adapt EU financial services legislation.

To facilitate this work, on 23 June 2018 EIOPA launched a survey of NCAs on licencing requirements and barriers to InsurTech. The survey was addressed to the NCAs of 31 countries[7] and 25 answers were collected by 11 July 2018. It was decided to adopt a wide scope for the exercise in order to capture all types of innovative firms in insurance, regardless of their size and the technology used.

EIOPA also launched an online stakeholder survey on the same topics to collect the views of the insurance industry and those not directly active in the insurance value chain.[8] There were altogether 40 respondents from 14 countries, including insurance companies active in both life- and non-life lines of business, trade associations and unions, academics, investors, insurance/intermediary associations, experts and consumers.

Additionally, EIOPA organized a 3rd InsurTech Roundtable in June 2018 with the aim to learn from different stakeholders about innovation facilitators, principle or proportionality and P2P insurance business models and to support EIOPA´s work on these topics.

1.2 OTHER EIOPA INSURTECH TASKFORCE WORK

EIOPA is currently also working on other topics related to the topics covered in this report. The European Commission, in its FinTech Action Plan, mandated EIOPA, along with the other European Supervisory Authorities, to carry out other specific tasks relating to FinTech:

- conduct further analysis and identify best practices on innovation facilitators;
- explore the need for guidelines on outsourcing to cloud service providers.

6 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).

7 Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Liechtenstein, Luxembourg, the Netherlands, Malta, Norway, Poland, Portugal, Romania, Slovenia, Slovenia, Spain, Sweden and UK.

8 EIOPA's InsurTech Insight Survey https://eiopa.europa.eu/Pages/Surveys/EIOPAs-InsurTech-Insight-Survey.aspx

This work is conducted under separate EIOPA InsurTech Taskforce work streams.

Additionally, EIOPA is currently mapping possible barriers to InsurTech.

1.3 STRUCTURE OF THE REPORT

The document is divided into seven parts and annexes.

The introductory part of the document consists of a general overview of the rationale of the exercise and the survey, and sets out the structure of the document.

The main part of the document is divided into:

- Mapping of the InsurTech market;
- Licencing requirements;
- Principle of proportionality;
- P2P insurance;
- Outsourcing.

In each part, an overview of the background and applicable EU law is provided. This is followed with an overview of the survey answers, some conclusions and best practices.

An overall conclusion is provided at the end of the report.

1.4 LEGAL BASIS

The best practices in this report have been developed by EIOPA and should be seen as a complementary guidance to applicable European and/or national legislations. The legal basis is Articles 29(2) of EIOPA Regulation.

These best practices are **not** legally binding on competent authorities or financial institutions as defined under EIOPA Regulation and are **not** subject to the "comply or explain" mechanism provided for under Article 16 of the EIOPA Regulation. Nevertheless, EIOPA encourages the voluntary adoption of the best practices set out in this report.

2 MAPPING OF THE INSURTECH MARKET

2.1 METHODOLOGY AND SCOPE OF THE MAPPING EXERCISE

EIOPA undertook a mapping exercise to gain a better insight into the number of both licenced and non-licenced[9] InsurTech firms in EU, and the part of the value chain they operate within.

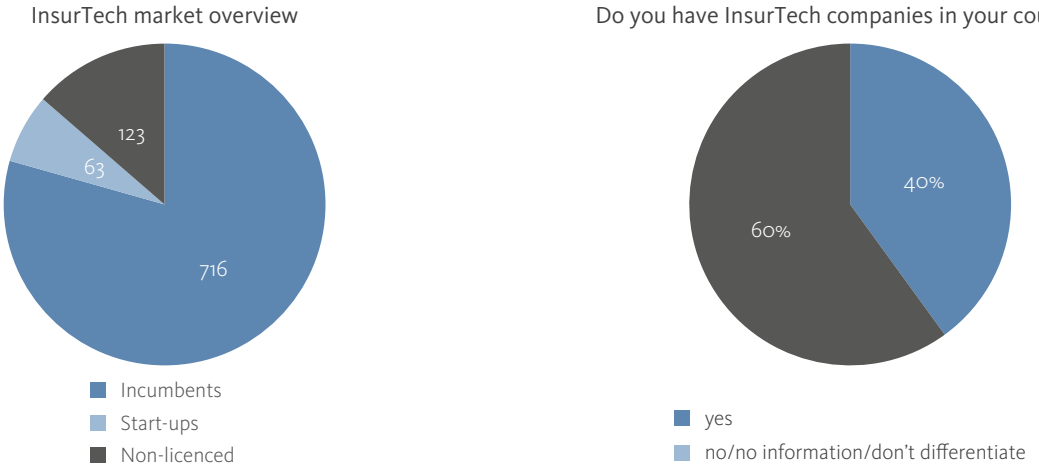
For the purpose of the questionnaire, EIOPA used the very broad definition of InsurTech developed by the Financial Stability Board (FSB).[10]

2.2 OVERVIEW OF THE SURVEY ANSWERS

Given the lack of a legal definition of InsurTech and InsurTech firms, these questions were not easy to answer. Given the principle of technological neutrality the extent to which a 'digital' business model is in place or a firm uses specific technologies has not in itself been a basis for supervisory classification. Only the nature of the products or services that shall be offered and the risks that are taken by the undertaking are relevant to classify an undertaking as insurance intermediary/broker, (re-)insurance undertaking, or as another financial services provider etc.

NCAs identified a total of 779 regulated InsurTech firms and 123 non-licenced InsurTech firms. However, the number is likely to be significantly higher, taking into account the fact that some NCAs pointed out that difficulties were encountered when trying to assess exact numbers as most large insurance players could somehow be included as InsurTechs (technologically advanced and utilize modern technology).

Figure 1. InsurTech market overview



9 Please note that the survey covered also InsurTech companies which do not have an insurance licence (e.g. those collaborating with incumbents in the development of innovative solutions) e.g. they do not need a licence as their activity is not considered a regulated activity.

10 See http://www.fsb.org/what-we-do/policy-development/additional-policy-areas/monitoring-of-fintech/

More than half of the NCAs stated that there are no insurers or insurance intermediaries that would qualify as InsurTech firms in their country, or they do not differentiate whether an insurer or insurance intermediary has digital business model/is an InsurTech company/start-up or not.[11]

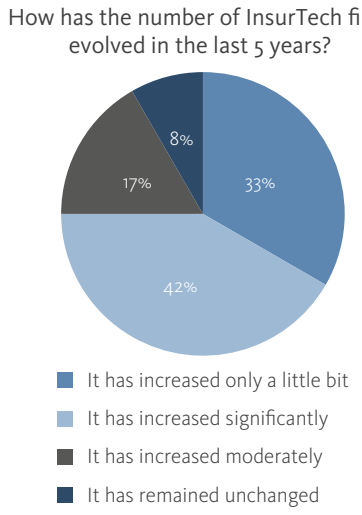
Most of the NCAs responded that they did not possess structured information regarding value chains and unlicenced InsurTech Firms.

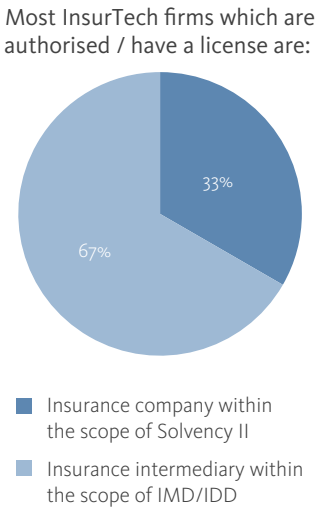
In regard to supervisory activities on **licenced** InsurTechs and key findings, it can be concluded that most of the NCAs have not carried out any specific action in the field of InsurTech with regard to ongoing supervision, since they have so far not seen the need to do so.[12]

In regard to **non-licenced** InsurTechs most of the NCAs did not provide information on this question, again partly due to the reason that they considered there were no InsurTech companies in their jurisdictions or that they could not provide any information about such companies. From the answers it can be concluded that NCAs mostly have had discussions with different service providers concerning qualification of services, i.e. whether a service requires an authorisation or not (e.g. if certain comparative website is under regulation or not), and on applicable licencing requirements.[13]

Based on the answers of qualitative questions it can be concluded that, according to NCAs, the number of InsurTech firms has increased in the last 5 years.[14] 77% of the respondents stated that there are more licenced than un-licenced InsurTech firms. [15] 73% of the respondents stated that most InsurTech firms are active in non-life insurance, while 27% reported that most of the InsurTech firms are active both on life and non-life insurance.[16] In regard to the value chain, 55% of the respondents reported that most InsurTech firms are active in more than one area of the value chain, while 27% mentioned sales and distribution, and 18% product design and development.[17] According to half of the respondents most of the InsurTech firms are insurance carriers, while for the other half they are insurance intermediaries.[18] Most InsurTech firms that are insurance intermediaries were registered as brokers (67%).[19]

Figure 2. InsurTech market development and type of authorisation





11 It is important to note that even when the data was provided, it was often subject to the reservation that it is based upon own judgement/ best estimates. It should also be taken into account that some NCAs only provided information on insurance companies and others only on insurance intermediaries. Similarly, some NCAs reported all of their insurance undertakings as InsurTechs.

12 NCAs pointed out regular meetings with insurance undertakings, covering digitalisation issues and on-site inspections of insurance intermediaries (Robo Advisors e.g.). One NCA stated that supervisory activities are planned for 2019.

13 One NCA mentioned that it is conducting thematic researches (questioning), on-site inspections at service providers premises, regular monitoring interviews with individual feedback to institutions and requests for improvement plans or norm-transferring discussion. Another NCA stated that supervisory activities considering non-licenced InsurTechs are planned for 2019.

14 Out of 8 respondents, 92% reported that the number of InsurTech firms has increased.

15 13 NCAs responded to this question.

16 11 NCAs responded to this question.

17 11 NCAs responded to this question.

18 10 NCAs responded to this question.

19 9 NCAs responded to this question.

2.3 CONCLUSION

The level of the available data related to InsurTech (e.g. information on which companies can be considered as InsurTech companies, the occurrence of different kinds of InsurTech companies in each jurisdiction, technologies and business models used, what part of the value chain they operate, etc.) and the data quality vary across NCAs but also across the kind of InsurTechs (e.g. with regard to licenced InsurTechs it occurs that the data is available but the lack of a common understanding of InsurTechs makes it difficult to map them). Therefore, the observations extracted are preliminary and intended to be a first step in promoting the understanding of the EU InsurTech market.

However, it should be remembered that data is key to a preventative risk-based supervision. The large set of actors, and the wide range of risk factors mean that comprehensive, granular and reliable data is essential so that finite supervisory resources can be proportionately applied. The data available from the EIOPA survey is not sufficiently granular or comprehensive.

Given the result of ITF's work stream on Innovation Facilitation that NCAs have implemented an innovation facilitator, it can be concluded however that this picture is evolving. Many NCAs within the EU appear well aware of the importance of the rise of innovative technologies and new market players, and the need to understand related risks and benefits. However, since the market relevance of new market players and the penetration of new technologies is still at an early stage there has not yet been the necessity to adapt ongoing supervisory processes to the phenomenon, and to evaluate data systematically.

EIOPA considers that future work could assess if and if so, what InsurTech-related data might be collected systematically to support NCAs in this regard.

In addition, in the context of innovation, understanding how risks shift given new technologies and business models used is crucial and hence EIOPA considers that, in engaging with the supervisory community and the industry, more work on understanding different business models, including InsurTech impact on traditional business models on insurance companies, could be done.[20]

20 In line with that the ITF mandate states that one tasks of the ITF is the evaluation of insurance value chain and new business models arising from InsurTech - the ITF may further scrutinise and propose remedies to the supervisory challenges arising from the new business models and the possible fragmentation of the (re)insurance value chain as a result of new technologies and actors entering the insurance market. Among other things, this work would cover the increasing collaboration between (re-) insurance undertakings and non-regulated firms such as data vendors. Additionally, EIOPA regularly organises InsurTech Roundtables to discuss with all the stakeholders involved (incumbents, start-ups, consumers, regulators, IT firms and academics) the different aspects of complex InsurTech developments.

3 LICENCING REQUIREMENTS

3.1 INTRODUCTION

Insurance is a regulated activity for good reasons (e.g. financial stability, consumer protection). A legal entity which intends to engage in insurance activities must be licenced[21] before it can operate within a jurisdiction.[22] Licencing contributes to efficiency and stability in the internal market's insurance sector and strict conditions governing the formal approval through licencing are necessary to protect consumers. In the EU, licencing requirements are regulated in Solvency II Directive and in Insurance Distribution Directive (IDD).

3.2 EU LAW

3.2.1 SOLVENCY II

Conditions for granting authorisation are stated in Article 18 of the Solvency II Directive.[23] Thus, there is no opportunity for "gold-plating" and conditions for granting authorization in different Member States shall be applied in the same way (with sufficient consideration of the principle of proportionality, see more in depth in Chapter 4).

Certain undertakings which provide insurance services are not covered by the system established by the Solvency II Directive due to their legal status or their nature (see Articles 5–10 of the Solvency II Directive). In addition, Article 4 of the Solvency II Directive provides an exclusion from its scope due to size.[24]

It is possible for Member States to require undertakings that pursue the business of insurance and which are excluded from the scope of this Directive to obtain a licence. In this case Member States may subject those undertakings to national supervision. This means that Member States may decide to exclude the former undertakings entirely from the regulation, design their own bespoke legal framework, apply Solvency I or fully apply Solvency II (or a combination thereof). However, any such "light touch" regime does not provide an undertaking with an EU passport. This consequently means that there is no convergent approach at the EU level - national "light touch" regimes can vary and domestic licencing requirements can be different.

Exemptions under Solvency II are motivated by practical considerations. It can be assumed that:

- very small undertakings typically have less complex risk profiles;
- the costs of interpreting, applying and checking compliance with EU regulation may be disproportionately high given the immaterial nature of the risk;
- such undertaking may provide products or services that are very specific to national markets (or even specific affinity groups), and it would not be in the interests of policyholders to cause the withdrawal of such business by imposing an excessive regulatory burden.

Creating two classes of undertakings – those operating inside and those operating outside the full scope of EU regulations – should not result in two classes of policyholders. In order to protect policyholder interests, Member States need to apply appropriate domestic regulation to all undertakings that offer insurance services. This may

21 Licencing in this document refers to granting authorisation under Solvency II, registration under IDD as well as to national licencing/registration/authorisation regimes. Conditions on authorisation are not solely related to the instance of obtaining a 'licence' but ongoing in nature.

22 See more in depth in ICP 4 of the Insurance Core Principles. https://www.iaisweb.org/page/supervisory-material/insurance-core-principles.

23 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)

24 However, those undertakings have the option to seek authorisation under this Directive in order to benefit from the single licence regime.

include e.g. setting capital requirements. In practice, many supervisors apply very similar standards to undertakings outside the scope of the current EU law as to those within. Other supervisors may adopt a minimum approach.

The system of exemptions under Solvency II provides certain flexibility for Member States to apply a proportional approach and the possibility to design their own regimes taking into account national market conditions and peculiarities. In theory, this could be a benefit in the light of InsurTech.

However, it is again important to note that entities under national regimes do not have an EU passport, which can be the motivation to not use such exemption regimes, even if it is possible under national law. Furthermore, most start-up undertakings, which apply for a licence as insurance company, seek a fast and steep growth (also to satisfy investors´ interests) and therefore outrun the conditions given in Article 4 of the Solvency II Directive easily.

National regimes can vary and no EU-wide mapping has been done in this regard after Solvency II entered into force. Hence it is not clear how far the existence of divergences in such regimes are in practice acting to a barrier to InsurTech or leading to regulatory arbitrage, or where the hurdles to full Solvency II compliance amount to additional barriers.

3.2.2 IDD

Directive 2016/97 on insurance distribution[25] (IDD) lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance distribution in the EU. It applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to take up and pursue the distribution of insurance and reinsurance products.[26]

IDD does not apply to ancillary insurance intermediaries carrying out insurance distribution activities where certain conditions are met.

Similar to the Solvency II Directive, there are also activities that are not considered insurance distribution.[27]

However, IDD is a minimum harmonisation directive, and should therefore not preclude Member States from maintaining or introducing more stringent provisions in order to protect customers, provided that such provisions are consistent with EU law.[28] This means that Member States have room to introduce more stringent licencing requirements for intermediaries, as well as to bring into scope ancillary insurance intermediaries exempted from IDD, or regulate activities which are not considered insurance distribution. Hence, licencing requirements in different Member States can vary, depending on which approach is chosen.

3.3 OVERVIEW OF THE SURVEY ANSWERS

EIOPA mapped with NCAs current licencing approaches as applied by Member States toward InsurTech and to identify possible innovative business models for which licencing requirements are not the same.

1. GAPS AND ISSUES IN THE EXISTING RULES

NCA survey answers

NCAs were asked for information on potential regulatory gaps and issues observed in respective jurisdiction. The intention of these questions was to enable a mapping of

25 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)

26 Article 1(2) of the IDD.

27 Article 2(2) of the IDD states that for the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:
(a) the provision of information on an incidental basis in the context of another professional activity where:
(i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;
(ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
(b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims; (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract; (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.

28 Recital 3 of the IDD.

business models of InsurTech firms that may fall and operate outside of the regulated space or may need further clarity as to the rules which apply. As a result, the answers to this topic overlapped with the answers given considering barriers to InsurTech.

The majority of the NCAs stated that they are not aware of any gaps or issues considering licencing requirements. However, four pointed out that some gaps and issues exist. Most of the gaps and issues highlighted are overlapping with the barriers to InsurTech (e.g. IDD paper requirement by default[29], minimum capital requirement (MCR)). Some of the gaps and issues, however, are not under EIOPA´s mandate (e.g. data protection) or are based on national regulation.[30] Some other topics that were pointed out as gaps and issues are already covered under upcoming work streams (blockchain technology, crypto assets, AI).

The focus in this report is on licencing.

Online survey answers

Stakeholders were also requested to identify possible gaps and issues. Several respondents highlighted the importance of a level playing field in financial legislation, stating that regulation and supervision should be activity-based (i.e. "same activities, same rules") and technological neutral. It was also highlighted however that rules should be applied in a proportionate and pragmatic manner.

It was noted by some respondents that the concept of insurance might need to be adjusted, for regulatory purposes, so as to make clear that any entities, which aim to meet an insurance need, will fall under the umbrella of insurance regulation, even if no classic insurance contracts are entered into (such as in some P2P business models). It was stated that InsurTech companies that are not controlled by insurance companies, and therefore not subject to the regulatory framework applicable to the insurance sector, may have the possibility to develop insurance-like services that are in competition with the more traditional offering of the insurance companies. However, no respondent gave actual examples of such business models.

On the other hand, it was also stated that 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 in its practical application to address such developments.

2. REGULATORY REQUIREMENTS NECESSARY TO OBTAIN A LICENCE

NCAs were also asked to provide information on which regulatory requirements are necessary to obtain licence/authorisation/registration in their jurisdiction, on the legal basis for these requirements, why these requirements might be particularly relevant in an InsurTech context (e.g. where the NCAs has met difficulties applying a requirement for InsurTech firms), and if and how the principle of proportionality for InsurTech firms is applied for each particular provision.

NCA survey answers

When asked if existing requirements were particularly relevant in an InsurTech context, most NCAs stated that the outlined licencing requirements are not particularly relevant in an InsurTech context. Partly this answer was driven by a lack of experience with InsurTech firms in their jurisdiction. Some NCAs pointed out that insurance undertakings which would like to pursue InsurTech activities requiring an authorisation should prior comply with all applicable legal requirements in order to maintain sufficient protection of policyholders and consumers.

More specifically, the following regulatory requirements were highlighted:

29 Article 23 of the IDD and Article 14 of the PRIIPS regulation establish the requirement to provide information to the customer on paper or, if the consumer agrees, in a durable medium other than paper or by means of a website.

30 E.g. One respondent pointed out that according to their insurance law, an executive manager can't have any other executive position in any other company, even is about a start-up related to the main business. However, it is not a restriction coming from European insurance legislation.

Regulatory requirement	EIOPA´s preliminary assessment
The obligation of insurance undertakings to limit their objectives to the business of insurance and operations arising directly therefrom One NCA highlighted that it might be burdensome to restrict the activity in case an InsurTech firm has some important IT business. There can be mixed models and some activities might have to be provided by the InsurTech firms regarding the projected services, although not directly from the business. However, it was also pointed out that the purpose of this provision is to safeguard the interest of the policyholders. This purpose can be best achieved if the insurer only pursues the business of insurance and operations for which a licence was granted. This applies to all insurance undertaking, including InsurTech.	Article 18(1)a of the Solvency II Directive states that Member State 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. In this way, it 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.
The obligation to have a proper scheme of operation and system of governance It was stated that it can be resource intensive for InsurTech companies. Also, actuarial competence may be hard or expensive to acquire/hire. It was also stated that the business of an InsurTech firm might require different risk management, internal control, internal audit and actuarial function than a "traditional" insurance undertaking.	EIOPA is in the opinion that lack of resources can never be an excuse for not complying with supervisory standards as long as these standards are still justified in an evolving environment. Since what is required of an undertaking has always to be proportionate to the risk it runs, these requirements should not be viewed as a supervisory burden but rather as a necessary part of good risk management.
Capital requirements In regard of capital requirements, it was stated that for start-ups and minor undertakings it can be difficult to raise a high amount of capital before testing activity/at the beginning of the business as licence is often prerequisite for venture capital and without venture capital undertakings might have difficulties to get the licence. One NCA pointed out a situation where start-ups wish to move from intermediary to insurance carrier. In this case the MCR can be viewed as a strong barrier (given the small number of customers they have at first). The same NCA stated that as a solution it is possible to inform the start-ups to look for partnerships with licenced insurance companies that would bear the risks, and concentrate at first on the other aspects of the value chain.	Safeguarding financial stability (and ultimately consumers) are the reasons behind the capital requirements foreseen in Solvency II; they aim to enable insurance and reinsurance undertakings to absorb significant losses and that gives reasonable assurance to policyholders and beneficiaries that payments will be made as they fall due.

Online survey answers

Additionally, in the online survey EIOPA also asked if external stakeholders have met any difficulties when applying for a licence or do they see any licencing requirements that are not relevant. Most of the respondents stated that there are no problems with licencing requirements. One respondent pointed out that difficulties relating to licencing can occur due to insufficient and inconsistent application of the principle of proportionality.

More specifically, the following regulatory requirements were highlighted:

Regulatory requirement	EIOPA´s preliminary assessment
One respondent stated that there are cases where InsurTech/FinTech companies applying for licences ran into difficulties regarding certain licencing requirements (e.g. management should have a certain experience in the industry and/or consist of a number of persons when scaling up). The same topic was also highlighted in EIOPA´s 3rd InsurTech Roundtable - in the InsurTech context it could be hard or impossible to find (or find resources for hiring) people who have both insurance background and technology background (e.g. data analytic, big data expert, data protection expert).	The assessment of the experience of members of the administrative, management or supervisory body (AMSB) should take into account the nature, scale and complexity of the business of the InsurTech company as well as the responsibilities of the position concerned. Fit and proper requirements for persons who effectively run the undertaking or have other key functions are regulated in Article 42 of the Solvency II Directive and Solvency II delegated regulation[31] Articles 258 and 273. In addition, EIOPA Guidelines on system of governance states that the AMSB should collectively possess appropriate qualification, experience and knowledge about **at least**: a) insurance and financial markets; b) business strategy and business model; c) system of governance; d) financial and actuarial analysis; e) regulatory framework and requirements. The experience and knowledge of technological side is not *expressis verbis* mentioned in the list. However, it is an open list and for an InsurTech company, additionally the experience and knowledge on the technological side should be taken into account.[32] Depending on the business model, it may indeed be necessary. Thus, it can be concluded that the current regulation does already provide some flexibility to take into account InsurTech specificities.

3. PARTIAL LICENCES

Taking into account a reported increase in the number of un-licenced InsurTech firms cooperating with incumbents, NCAs were also asked if they believe that allowing partial licences could be beneficial.

All of the NCAs who answered stated that their regulation does not provide for a partial licence. NCAs who have a sandbox, stated that the full set of regulatory/supervisory requirements is applicable in the sandbox.

Most of the NCAs also did not see the need for partial licences. It might cause too many varieties and potentially subjective assessments and thus the level playing field can be in jeopardy, while it is a possible source of risks and the holistic view on them where only part of the activities of the company would be regulated.

One NCA stated that such "partial" licences would have to be clearly specified. E.g. granting partial licences for specific functions or business activities does not seem to be of pressing interest at the moment, as the (re)insurance undertaking remains responsible for meeting all prudential requirements.

One NCA stated that the concept of "same business, same risk, same rules" has proved successful and should be applied to licenced InsurTech entities in the same way as to "traditional" entities.

Only three NCAs considered that allowing partial licences could be beneficial. It was pointed out that partial licence might contribute to a more competitive insurance market whilst promoting supervisory control at the same time.

3.4 CONCLUSION

Facilitating innovation is not about de-regulation. If an InsurTech company offers the same services and products as an established insurance provider and is exposed to the same risk portfolio, it should be subject to the same legislation and supervision regarding the services and products in question. This ensures that customers are effectively and equally protected both when they purchase

31 Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1–797).

32 The explanatory text under guideline 11 says that: "The members of the AMSB are not each expected to possess expert knowledge, competence and experience within all areas of the undertaking. However, the collective knowledge, competence and experience of the AMSB as a whole have to provide for a sound and prudent management of the undertaking."

their insurance products from established insurers and from new market entrants. Of course this also means differences between business models and the risks they carry, including differences embedded in the use of technology, need to be well understood by firms and by NCAs.

In regard to concrete regulatory requirements necessary to obtain a licence/authorisation/registration, it is important that policyholders should not be subject to a lower degree of protection simply because their cover is provided by a smaller undertaking, InsurTech company or a start-up. All undertakings have to provide the means necessary to introduce the appropriate systems, processes and measures or, alternatively, reduce the risks they face. Lack of resources can never be an excuse for not complying with supervisory standards as long as these standards are still justified in an evolving environment. Since requirements for an undertaking always have to be proportionate to the risk it runs, these requirements should not be viewed as a supervisory burden but rather as a necessary part of good risk management.

In regard to gaps and issues in general it can be stated that most of the NCAs did not see material gaps or issues in the existing rules.[33] The types of licences in the insurance sector are much more limited than in for instance the banking sector[34] and there are, apart from P2P business models (see more in depth in chapter 5) no obvious InsurTech related developments that could be a challenge to the current European licencing framework. Therefore, at the moment there seems to be no need for further regulatory steps considering licencing requirements. This conclusion is supported by the overall preference for technological neutrality as well as for level playing field.

3.5 BEST PRACTICES

Insurance law is to a large extent harmonized in the EU. Where EU law allows for the possibility[35] Member States may decide to exclude some activities from the definition of insurance activities subject to licencing provided that any such activities are explicitly stated in the national legislation.

Similarly, Member States may allow a simplified process for non-significant entities (e.g. limited geographic scope, limited size, and limited lines of business) for the purposes of licencing, if EU law provides for.

EIOPA CONSIDERS IT BEST PRACTICE THAT:

- A Member State which applies provisions regulating insurance in addition to those set out in EU law, should ensure that the administrative burden stemming from those provisions is proportionate with regard to consumer protection and financial stability and remains limited and technology neutral.
- In order to protect policyholders interests, Member State should seek to apply appropriate domestic regulation to all undertakings that offer insurance services.
- All national licencing requirements should clearly set out their applicability, the substance of their requirements and processes to follow.

The role of the supervisor in the licencing of InsurTech companies is to assess whether those undertakings are able to fulfil their obligations to policyholders[36] on an ongoing basis. The relevant licencing criteria should be applied consistently to promote a level playing field. Licencing requirements and procedures should not be used to prevent or unduly delay access to the market.[37] It is also important that the digital transformation process and the associated changed information culture increase certain expecta-

33 E.g. InsurTech firms 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 under which circumstances or InsurTech firms that may require some changes to the existing rules.

34 E.g. (i) credit institutions under the Capital Requirements Directive, (ii) payment institutions under the Payment Services Directive 2 (PSD2), (iii) hybrid payment institutions under the PSD2), (iv) electronic money institutions under the Electronic Money Directive (EMD), (v) hybrid electronic money institutions under the EMD, (vi) investment firms under Markets in Financial Instruments Directive II, (vii) credit intermediaries under the Mortage Credit Directive, (viii) exempted entities under the PSD2 or the EMD. There can be also entities regulated pursuant to an entity-specific regulatory regime under national law (e.g. lending-based crowdfunding platforms).

35 E.g. Article 4 of the Solvency II Directive.

36 'Policyholder' refers also to beneficiaries and claimants.

37 This should be understood as there should not be any intention to prevent or delay market access. However it should be taken into account that sometimes difficulties can arise during the licencing process which might generate delays that are felt excessive by the company, but are necessary (e.g. complex and novel InusrTech business models).

tions that supervisors themselves are more digitally aware. Communication and regular accessibility is important (e.g. support, information sharing and on-going dialogue with NCAs). Online systems can facilitate the consistency and uniformity of the documents submitted for review.

In EIOPA´s 3rd InsurTech Roundtable it was highlighted that supervisors are also expected to be more agile, promoting information sharing and on-going dialogue with NCAs, as well as an efficient licencing process. Different innovation facilitators have the objective to promote the former goal.[38] Regarding the latter, the Solvency II Directive does not regulate the deadlines for authorisation process – it is domestic decision. Article 3(5) of the IDD lays down that Member States shall ensure that applications by intermediaries for inclusion in the register are dealt with within three months of the submission of a complete application, and that the applicant shall be notified promptly of the decision.

EIOPA CONSIDERS IT BEST PRACTICE THAT:

- NCAs, taking into account their national InsurTech market, develop and implement adequate supervisory procedures and criteria to assess licencing requirements in a risk-based supervisory framework. The requirements and procedures for licencing are clear, objective and public, and applied consistently.
- NCAs issue guidelines on how to file an application for a licence, which include advice on the required format of documents and seek to be clear on the estimated duration of an application process or parts of the process to the applicant, when such an estimation is possible and the communication of an estimated duration seems appropriate. The duration of an application procedure depends on how well an application is prepared by applicants.
- Licencing or registration requirements are technological neutral and apply without preferential treatment for some segments – insurance undertakings which would like to pursue InsurTech activities should comply with all applicable legal requirements.
- In order to better understand the regulatory perimeter and applicable laws, NCAs should consider issuing online decision trees which help entities to decide if a certain activity is regulated or not. This could also be done or augmented by Q&As on relevant topics, which would help the potential applicant to better understand the applicable legal environment. EIOPA considers best practice to recommend the possibility of bilateral discussions with NCAs to discuss remaining areas of uncertainty.
- When NCAs evaluate the fulfilment of AMSB fitness requirements, they take into account the undertaking´s nature, scale and complexity of its activities, including InsurTech specificities, and the position concerned.
- Licencing requirements should be easily accessible (e.g. on the webpage of the NCA).
- NCAs should consider establishing online systems which will be easily accessible and allow the submitting of licencing applications directly online.[39] NCAs should also consider online systems that allow tracking of the status/progress of applications for a licence.
- In order to facilitate the process of receiving feedback or discussing a specific InsurTech topic and the laws applicable to it, NCAs should consider publishing a list of topics that are important for undertakings to analyse before the meeting with NCA.

38 EIOPA is currently mapping the innovation facilitators set up by the different jurisdictions in the area of InsurTech, with a view of establishing efficient and effective supervisory practices.

39 This is already compulsroy under Article Art 3(2) of the IDD which explicitly states that Member States shall establish an online registration system. That system shall be easily accessible and allow the registration form to be completed directly online.

4 PRINCIPLE OF PROPORTIONALITY

4.1 PRINCIPLE OF PROPORTIONALITY IN GENERAL

The principle of proportionality (also proportionality; proportionality principle) is a generally acknowledged principle of the due course of law and is therefore not comprehensively defined in EU insurance law. It is also a concept embedded in the *acquis communautaire* and therefore has a broad application, including the exercise of a proportional approach to supervision.[40]

The principle of proportionality applies throughout the EU law and, as a consequence, to all future implementing measures. It has two aspects:

- proportionality has to be taken into account when implementing the requirements laid down in the EU law; and
- supervision has to be carried out in a proportionate manner.

The principle of proportionality applies both in the area of licencing/authorization/registering and on-going supervision. This principle shall be applied regardless of whether it is explicitly mentioned in a certain provision or not.[41]

In the broadest sense all legal provisions need to be suitable and necessary to achieve their objective as well as appropriate in light of the nature, scale and complexity of an undertaking's[42] risk profile.[43] The two aspects have to be taken into consideration and put into relation to each other: the purpose that is to be achieved and the means employed to serve this purpose. In order to be considered proportionate a measure has to be, at least, suitable and necessary to achieve its objective as well as appropriate. A measure is necessary if there is no less onerous method available that is equally or even better suited to serve the objective. Appropriateness requires that the drawbacks of a measure are not totally disproportionate to the benefits it reaps.

The principle of proportionality is a safeguard against the unlimited use of legislative and administrative powers, according to which an administrative authority may only act to exactly the extent that is needed to achieve its objectives.

The principle of proportionality does not mean the introduction of automatic and systematic simplifications for certain undertakings. The individual risk profile should be the primary guide in assessing the need to apply the proportionality principle. The principle will be applied where it would be disproportionate to the nature, scale and complexity of undertakings' business to apply the general rules (quantitative and qualitative) without relief.

The principle of proportionality is not meant to allow any entity to be exempt from its legal obligations but only to allow for their proportionate application. It needs to be clear that principle of proportionality is not the same as disapplication of rules.

40 Article 5(4) of the TFEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties".

41 The mention of the principle of proportionality in certain EU law provisions should not lead to the conclusion *a contrario* that it does not apply or applies less where it is not explicitly mentioned.

42 Insurance undertaking, undertaking and insurer includes also insurance intermediaries if not otherwise stated in the text.

43 Similarly, The International Association of Insurance Supervisors (IAIS) describes the proportionality principle in their Insurance Core Principles by stating that „supervisory measures should be appropriate to attain the supervisory objectives of a jurisdiction and should not go beyond what is necessary to achieve those objectives.". It is also recognised that supervisors need to tailor certain supervisory requirements and actions in accordance with the nature, scale and complexity of individual insurers. In this regard, supervisors should have the flexibility to tailor supervisory requirements and actions so that they are commensurate with the risks posed by individual insurers as well as the potential risks posed by insurers to the insurance sector or the financial system as a whole.

4.1.1 EU LAW

4.1.1.1 Solvency II

The taking-up and pursuit of the business of insurance in EU is regulated in the Solvency II Directive. The main objective of supervision under Solvency II is the protection of policyholders and beneficiaries. Supervision must be based on a prospective and risk-based approach. It must include the verification on a continuous basis of the proper operation of the insurance business and of the compliance with supervisory provisions by insurance undertakings. Member States must ensure that the requirements laid down in Solvency II are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.[44] The principle of proportionality should be applied throughout all areas (pillars) of Solvency II: capital requirements, governance, and reporting and disclosure.

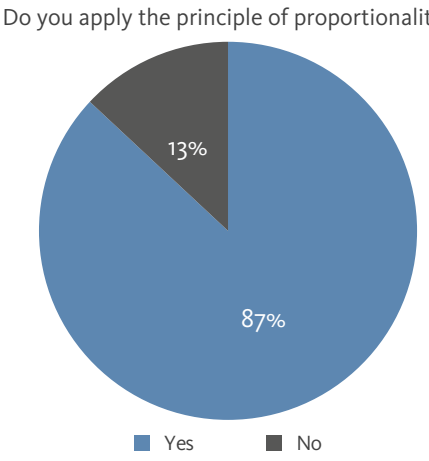
4.1.1.2 IDD

Solvency II does not address the business conduct rules. This gap is filled by IDD. IDD lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance distribution in the Union. IDD also introduces proportionality principle stating in recital 23 that in order to ensure the effectiveness of supervision, all actions taken by the competent authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of a particular distributor, regardless of the importance of the distributor concerned for the overall financial stability of the market.[45] Furthermore, similarly to the Solvency II Directive, recital 72 of the IDD states that it should not be too burdensome for small and medium-sized insurance and reinsurance distributors. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance distributors and to the exercise of supervisory powers.

4.2 OVERVIEW OF THE SURVEY ANSWERS

The majority of the NCAs stated they apply the principle of proportionality, referring to the Solvency II Directive and IDD and/or national legislations/EIOPA guidelines. Some NCAs stated that there is no specific application of the principle of proportionality for InsurTech.

Figure 3. The application of principle of proportionality



The answers of the survey varied. Different NCAs pointed out that:

- principle of proportionality is applied to a certain extent in the area of Pillar II, e.g. during the supervision of the system of governance where the size and complexity of insurers is taken into account.
- principle of proportionality is applied on the basis of the size of the company.
- principle of proportionality does not apply to the registration as such or the information disclosure to clients.
- principle of proportionality is mostly applied in the on-going supervision taken into consideration the scale, nature and complexity of the risks. During the licencing and authorisation it is barely applied.

44 Solvency II recital 19 states that this Directive should not be too burdensome for small and medium-sized insurance undertakings. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance undertakings and to the exercise of supervisory powers. Additionally, Solvency II Art 29(3) states that Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking. Art 29(4) states that the delegated acts and the regulatory and implementing technical standards adopted by the Commission shall take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings. The draft regulatory technical standards submitted by EIOPA in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010, the draft implementing technical standards submitted in accordance with Article 15 thereof and the guidelines and recommendations issued in accordance with Article 16 thereof, shall take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings.

45 IDD Recital 23.

- principle of proportionality is applied when imposing financial sanctions.
- as it is not possible to supervise all entities, all the time, supervision is performed considering a risk-based assessment. The decision of who and how to supervise should be proportional to the risks presented by supervised entities.
- large companies are more often subject to on-site inspection than smaller companies.

For interpreting those who stated they did not apply proportionality, it is important to mention that these countries also reported no InsurTech companies or stated that there is no specific application of the principle of proportionality for InsurTech.

NCAs were also asked about Solvency II exclusions and possible application in an InsurTech context. Most of the NCAs did not consider them relevant in an InsurTech context or they do not apply these exceptions differently in an InsurTech context as compared to other firms.

NCAs were also asked for concrete examples of how the proportionality principle applied in an InsurTech context in their Member State. While most of the NCAs did not provide concrete answers, most of those who answered pointed out examples explicitly mentioned in the Solvency II Directive (e.g. Article 35(6)).

4.3 CONCLUSION

The understanding and application of principle of proportionality varies in different Member States.

However, the application of the proportionality principle should ensure that the same level of protection is guaranteed for all policyholders across EU.

Publicly disclosed supervisory guidance is a way to ensure the InsurTech market knows about supervisory expectations. This aim can also be achieved through InsurTech-related roundtables and training activities held by NCAs for different stakeholders (InsurTech start-ups, incumbent companies, technology firms).

Internal written guidance can be particularly useful for NCAs with a larger number of staff involved in supervision of InsurTech companies. However, there are also other means available to ensure coherence, such as regular meetings and information sharing between individual supervisors or supervisory teams or tracking of cases through a data management system regarding administrative decisions to ensure a consistent and coherent approach regarding the application of the principle of proportionality.

4.4 BEST PRACTICES

EIOPA CONSIDERS IT BEST PRACTICE THAT:

- NCAs, taking into account their national InsurTech market, should consider internal and/or external written supervisory guidance (e.g. consisting of quantitative and/or qualitative criteria) for applying the principle of proportionality, especially in an InsurTech context in their respective jurisdiction. If this kind of guidance already exists, a specific focus on InsurTech might be considered. Written guidance can be particularly useful for NCAs with a larger number of staff involved in supervision or with a high number of InsurTech companies. However, there are also other means to ensure coherence, such as regular meetings and information sharing between individual supervisors or supervisory teams or tracking of cases through a data management system.
- Aside from the publication of written supervisory guidance, other supervisory initiatives may also be developed. For example, NCA roundtables, meetings and/or information sessions with the InsurTech industry in order to clarify aspects on the application of the proportionality principle. NCAs could also consider sending circular letters to their market participants providing clarifications on the application of the principle.
- NCAs could consider setting up internally a supervisory panel, which discusses and advises supervisors about complex InsurTech issues, including regarding the application of the proportionality principle. An expert panel could consist of staff with different backgrounds and experience, e.g. in compliance, risk management, actuarial issues and audit. This panel could advise supervisors how to deal with the proportionality principle in relation to InsurTech. The panel's advice can be used by the NCA as good national practices for its InsurTech sector. This system ensures a consistent and coherent approach within the NCA. There are also other means to ensure coherence, such as regular meetings and information sharing between individual supervisors or supervisory teams.
- In an InsurTech context additional criteria related to 'nature, scale and complexity' of the risks inherent in the business of the InsurTech undertaking is considered:
  - type of technology used and the degree of innovation/market penetration(e.g. blockchain/DLT compared to ordinary online distribution channel)
  - technological complexity
  - the use of Big Data, AI and/or machine learning
    - The level of automation
    - The level of self-learning of algorithms
    - The extent of the use of personal data (e.g. only general personal data or health data/other sensitive data)
    - Use of robo-advice or chatbots
  - the extent of the use of outsourcing (e.g. data vendors, cloud providers)
    - The use of Cloud Computing as well as other platform services, including different deployment models (private, public, community, hybrid) and service models used (SaaS, PaaS, IaaS).
  - possible concentration risks due to monopolies/oligopolies on the side of service providers
  - complexity of distribution channel (e.g. use of blockchain or distribution through social media)

- type of products offered
- business model
- the fact that the business model is novel and/or not tested in practice before
- the reliance on technology to interact with customers

5 PEER-TO-PEER INSURANCE

5.1 INTRODUCTION

Digitalisation is changing the whole insurance value chain starting from how insurance is designed, priced, sold and ending with claims handling.

The increasing move towards P2P platforms and sharing economy is also starting to have an impact. As in other areas, such as crowdfunding or car sharing, technology is facilitating the rise of online P2P platforms (often managed by insurance undertakings or intermediaries) where individuals can attract others to form co-insurance pools.

It can be argued that such platforms do not fundamentally change the core of insurance. Rather, they could provide new and potentially efficient ways of serving customers. Indeed, if P2P insurance models are well-designed and managed with the appropriate expertise and resources, P2P insurance can be beneficial to the public, e.g. lower insurance premiums through the return of excess funds to members, improved claims experience by providing incentives for member to not inflate claims.

However, if these models are not appropriately managed, they might subject consumers to sudden loss of coverage, additional unforeseen costs or failures in claim payments. They can also cause reputational risk for the insurance sector.

During the EIOPA InsurTech Roundtable held in April 2017, some participants suggested that regulatory authorities should assess the adequacy of the current insurance rules in relation to the legal status of a peer group of individuals or the "money pool" created from the contributions of a group of individuals. The definition of 'insurance' was also discussed: is P2P insurance – i.e. the constitution of a "money pool" by a peer group, dedicated to paying their claims up to its original amount – really insurance? Some participants suggested that there was a basis for developing specific regulation for P2P insurance.[46]

In order to develop a better understanding of the country specificities and the extent of regulatory and supervisory divergences existing among the Member States, including regarding the application of proportionality principle, EIOPA sought specific input from NCAs and stakeholders on P2P insurance, in order to understand current licencing practices, the application of the principle of proportionality, and potential gaps in this area.

5.2 DEFINITION AND OVERVIEW OF DIFFERENT P2P INSURANCE BUSINESS MODELS

There is no common terminological understanding or clarity as to what is meant when referring to P2P insurance.[47] The differences to traditional undertakings such as mutual insurers are not always evident (some consider them as "micro-mutual insurance").

In essence, P2P is generally commercialised as a risk-sharing network where a group of individuals with mutual

46 Note that there is a legislative proposal for crowdfunding. See proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Crowdfunding Service Providers (ECSP) for Business. COM/2018/0113 final - 2018/048 (COD).

47 For the purpose of ITF work on P2P insurance, EIOPA has defined P2P insurance as risk sharing digital network where a group of individuals with mutual interests or similar risk profiles pool their "premiums" together to insure against a risk/to share the risk among them, and where profits are commonly redistributed at the end of the year in case of good claims experience. For comparison, National Association of Insurance Commissioners (NAIC) has described P2P insurance as follows: *"Peer-to-peer (P2P) insurance is a new innovation that allows insureds to pool their capital, self-organize, and self-administer their own insurance. The core idea of P2P is that a set of like-minded people with mutual interests group their insurance policies together introducing a sense of control, trust, and transparency while at the same time reducing costs."* NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories.

interests or similar risk profiles pool their "premiums" together to insure against a risk. Thus, P2P insurance enables individuals with similar interests to share the risk between themselves. Often these individuals are somehow connected, e.g. personally (friends), or through mutual business or other common criteria (e.g. owning premium class bicycle). The size of the P2P insurance group depends on the type of insurance and the expected benefits to be generated. In general, it can be argued that at the moment P2P insurance pools are small and focus on specific foreseen risks. New P2P risk pools may thereby have natural limits on their size and ability to displace traditional insurance.

In most P2P models premiums from the members of the pool are collected in advance in order to create an ex-ante protection pool. The risk absorbing capacity is provided collectively by members of the network, while the P2P platforms organise individuals into groups and process claims. The schemes typically only offer aggregate cover up to the total amount of pooled premiums, meaning that they either partner up with re/insurers for excess of loss provision, or claims payments are capped at a certain threshold[48]. In practice it can work in a way that policyholders pay a portion of their premiums into a mutual pool and the remainder goes to an ordinary insurance company (note that at least at the moment most of the P2P business models operate in a way that both tasks are done by a licenced insurance company). The mutual pool covers minor losses and possible remaining funds are returned to the group members at the end of the fixed period (e.g. a year). Alternatively, group members might get lower rates for the following year. On the other hand, if claims exceed the coverage provided by the group, a traditional insurance company covers the difference, or out-payments are capped.

One of the characteristic features of the sharing economy is the simplification of processes which *inter alia* could involve the elimination of professional intermediaries. Although in most cases P2P insurance does not appear to work as a completely decentralized platform as with P2P models in other sectors, this might be changing due to ongoing technological developments. New technology such as DLT/Blockchain and smart contracts could increase both the scalability and decentralisation of P2P insurance. With the Blockchain design, each member of a pool can keep actionable record without the need for a trusted third party such as an insurer or platform provider. Additionally, smart contracts can be executed automatically once a certain criterion is fulfilled. In this way certain functions of a traditional insurer could be performed by a P2P network. These developments could potentially establish truly decentralised platforms/purely technical service providers/platform providers without an underlying insurance carrier.

To conclude, there are three broad types of P2P business models/platforms:

a) acting as an **insurer**: P2P insurance sold directly through a licenced insurer, following all relevant insurance legislation. The platform assumes risk by insuring members for: (i) risks not covered by the P2P arrangement; and/or (ii) claims that exceed contributions made to the pool fund.

b) acting as an **intermediary**: P2P insurance sold via a licenced broker/intermediary backed by a licenced insurance undertaking, following all relevant insurance legislation. The platform arranges insurance policies with external insurers on behalf of its members to insure (i) risks not covered by the P2P arrangement; and/or (ii) claims that exceed contributions made to the pool fund.

c) acting as a **technical service provider**: purely technical service providers/platform who acts as an administrator for the risk sharing groups, without an underlying insurance carrier. The platform acts purely as an administrator for the risk sharing groups (e.g. it might leverage Blockchain and smart contracts and facilitate users coming together and creating their own "pools").

P2P platforms that operate under models a) and b) will be licenced as an insurer or insurance intermediary, respectively, and consequently follow all insurance regulation. However, platforms that operate under operating model c) will not be so easy to place under current regulation. It is the matter of evaluating concrete business models and the outcome can be that it is also operating under insurance regulation, or it is outside of the regulation, e.g. more in the context of payments services, for instance.

From the regulatory perspective there can be different approaches of defining the (legal) status of purely technical service provider/peer group of individuals/ the "money pool" created from the contributions of a group of individuals. Significant questions on the definition and regulation of perimeter cases of insurance arise.

48 In practice there could be an inequality between first claims (entirely indemnified) and claims at the end of the year (potentially not indemnified at all.

5.3 RISKS AND BENEFITS

The advance in technology has resulted in the emergence of P2P insurance as an alternative to traditional insurance policies. If P2P insurance models are well-designed and managed with the appropriate expertise and resources, P2P insurance can be beneficial for consumers, e.g. lower insurance premiums through the return of excess funds to members, improved claims experience by providing incentives for member to not inflate claims.

Indeed, it can be said that P2P insurance models try to foster lower-risk, responsible behaviours amongst the members of the group through transparency, social emulation and economic incentives. In addition, P2P insurance firms typically redistribute surplus funds amongst the members of the pool at the end of the year. They also promote transparency in their operations by pooling premium funds with groups of acquaintances; members usually know who is in the group, who is filing a claim, and how much money is in the pool. By pooling together small groups of people with mutual interests and redistributing amongst them the non-used funds at the end of the year, P2P insurance aims to mitigate the conflict that could potentially arise between shareholders in a traditional insurer and policyholders. However, it is important to note that many of these features can be found also in traditional insurance companies, e.g. where they only keep a fixed margin on premiums. To conclude, by combining ownership and policyholder roles, P2P insurance can align incentives between insurer and customer and in this way reduce the potential for adverse selection and moral hazard.

Although there can be many positive aspects in P2P insurance it is also important to consider possible risks to find a balanced approach. If these models are not appropriately managed, they might subject consumers to sudden loss of coverage, additional unforeseen costs or failures in claim payments. Technological developments might impact the nature of the insurance value chain and the parties involved. New players may push the boundaries of national legal frameworks including the definition of insurance. This is especially relevant in the light of technical service providers, where no licenced insurance company is engaged as a party to a contract. P2P insurance providers may try to stay outside of the insurance regulatory framework, arguing they do not carry risk or provide any consumer advice or services directly, but merely provide the algorithm and platform to aggregate consumers to provide services amongst themselves or pool their own risk (regulatory avoidance risk).[49] Indeed, P2P platform providers often consider that they do not carry any insurance risk themselves (the insured do, via the money pool) and that there is no real risk as there is no guarantee. This gives rise to a basic question of guaranteeing insurance coverage in the event where the risk is underestimated by the peer group of individuals, entailing uncertainty as to how real is the risk cover.

5.4 CURRENT EU REGULATORY FRAMEWORK

5.4.1 GENERAL

There is no specific provision on P2P insurance in the current EU regulation. Additionally, there is no exact definition of insurance at EU level, either as an activity or as a contract. Some Member States have adopted a statutory definition of insurance (e.g. Belgium, the Netherlands). In addition, insurance can be defined differently depending on whether one contemplates the legal relationship (insurer, policyholder, insured and beneficiary), the technical process (the mutualisation of a large number of risks) or even the tax qualification (e.g. in the case of life insurance or pensions). Main features of insurance contracts often result from case law. For example in France, the *Cour de Cassation*[50] has ruled that an insurance contract has three main characteristics: a risk, defined as a future uncertain event independent from the will of the parties; a premium; and the payment of a sum of money or the performance of an agreed task in case the risk materializes.[51]

5.4.2 SOLVENCY II

According to the Solvency II Directive, taking-up and pursuit of the business of insurance is a regulated activity, which requires authorisation. Solvency II Directive, however, does not provide for a definition of "insurance". It just states that "insurance undertaking means a direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14".[52]

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49 Application paper on the use of digital technology in inclusive insurance. IAIS. Draft 29 January 2018. Page 33.

50 Cass. Civ. 1, 31 January 1956, N° pourvoi 2306; Published in Bulletin 1956 N° 52.

51 Final Report of the Commission Expert Group on European Insurance Contract Law. European Commission, 2014, p 38 ff.

52 Article 13(1) of the Solvency II Directive.

When considering what is insurance, it is, however, important to note that certain undertakings that provide insurance services are not covered by the system established by the Solvency II Directive due to their size, their legal status, or their nature.[53]

5.4.3 IDD

IDD lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance distribution in the EU. It applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to take up and pursue the distribution of insurance and reinsurance products.[54]

IDD does not apply to ancillary insurance intermediaries carrying out insurance distribution activities where certain conditions are met.[55]

Article 2(1)(1) of the IDD defines insurance distribution.[56]

Every activity that falls under this broad definition is a regulated activity according to IDD and requires that undertaking is authorised as an insurance undertaking under Solvency II or is registered as an insurance intermediary under IDD. Thus, if a certain P2P business model falls under this definition, it should follow respective EU law provisions. In practice however the definition of an insurance contract determines these other terms.[57]

Pure service provider might not be a contracting party. Ultimately, it raises the question of the status of the contract between peer group of individuals (whether or not it can be considered as an insurance contract). Here again, national approaches can vary. Furthermore, it can even be argued that, as all members of the group are at the same time insured persons and "insurers", they all need licences to operate. Thus, in practice it is a question of a concrete business model analysis, and the outcome depends on, *inter alia*, what role platform providers have.

Similar to the Solvency II Directive, there are activities that are not considered insurance distribution.[58] However, it is important to keep in mind that IDD is a minimum harmonisation directive, and should therefore not preclude Member States from maintaining or introducing more stringent provisions in order to protect customers, provided that such provisions are consistent with EU law.[59]

5.4.4 POSSIBLE REGULATORY RESPONSES

Taking into account the dynamic nature of innovative business models and different interpretations across Member States of existing EU legislation a large variety of regulatory approaches could emerge for P2P insurance providers, ranging from no regulation to a strict regulatory framework.

Given the principle that all entities engaged in insurance activities must be licenced, any exclusion of certain insurance activities from licencing requirements should give due consideration to having appropriate alternative safeguards in place to protect policyholders. In any case it is important that P2P insurance companies have an obligation to be financially strong, well rated and properly reinsured (by third party reinsurers of the substantial ratings) in order to meet their financial obligations to their policyholders. However, most P2P start-ups considered that they did not carry any insurance risk themselves (the insureds do, via the money pool) and that there is in a way no real risk as there is no guarantee. Therefore, they consider the financial requirements for insurance companies excessive in their case, and that their only obligation is to secure the funds, which they do via payment service provider agent status.

Possible ways forward include:

1. The services provided by technical P2P insurance service providers are considered as licenced insur-

53 More specifically, Solvency II Article 4 gives Member States an option e.g. to introduce their own rules for P2P insurance. However, in this case these undertakings are not subject for EU passport (see more in depth in Chapter 3.2.).

54 Article 1(2) of the IDD.

55 Article 1(3) of the IDD. All the following conditions shall be met: (a) the insurance is complementary to the good or service supplied by a provider, where such insurance covers: (i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider; (b) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a pro rata annual basis; (c) by way of derogation from point (b), where the insurance is complementary to a service referred to in point (a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

56 Insurance distribution is defined as the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

57 E.g. "work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts".

58 See Article 2(2) of the IDD.

59 Recital 3 of the IDD.

ance activity, similar to any other insurance activity. Possible argumentation for this option is that consumers expects indemnification from P2P insurance platforms, and therefore they are actually subject to the same expectations as traditional insurers. A rule of thumb might be, that whenever a client can think he is insured, then that activity is on the face of it insurance and has to be done by a company ensuring the same level of security as a regulated insurer. This could mean bringing P2P platforms clearly within the scope of the IDD insurance distribution definition.

2. The services provided by technical P2P insurance service providers are considered as licenced activity, but regulated under a bespoke regime at EU level (e.g. different disclosure rules, capital requirements taking into account P2P insurance specificities, etc.). This can be achieved e.g. through creation of a "small insurance company status", requiring for instance that a licenced reinsurer should reinsure a very high proportion of the business as well as establishing caps into the maximum number of customers allowed. The inspiration for defining small insurance undertaking can be found in Article 4 of the Solvency II Directive. This topic, however, needs more in-depth analysis and consideration of all possible risks and benefits. Possible argumentation for this option is similar to option 1.

3. P2P insurance platforms could be regulated as platforms, either at EU or Member State level. From a consumer protection perspective it is expected that these platforms disclose clearly and prominently that they are not providing or selling any insurance cover[60], and hence are not a regulated activity. In addition, such platforms must also clearly disclose to consumers their lack of access to the usual consumer safeguards, such as independent dispute resolution and protection scheme, if applicable. In principle, the possible regulation could consist of provisions on transparency, disclosure, market communication and complaints handling, conflict of interest and, as a step further, also authorisation and fit and proper rules.

4. It is not regulated under EU level. It should be noted that insurers who fulfil the conditions of the Article 4 of the Solvency II Directive are excluded from the scope of that directive. This gives Member States the option to subject those undertakings to national supervision (e.g. to exclude these undertakings entirely from the regulation or design their own bespoke legal framework (or a combination thereof). If pure P2P insurance platforms were to considered a regulated activity, this option would allow Member States to design their own regulation for pure P2P insurance platforms.

60 Some national insurance regulations state *expressis verbis* that the business name of an insurance undertaking shall include the word „insurance" and the word "insurance" may be used in its business name or trade mark only by an insurance undertaking or insurance agent which is licenced as insurance company/intermediary.

5.5 OVERVIEW OF THE SURVEY ANSWERS

The majority of the NCAs did not report on licenced P2P insurers. One NCA stated that the P2P "brand" is rather used for marketing purposes as this entity has to follow all relevant rules as other licenced insurance undertakings.

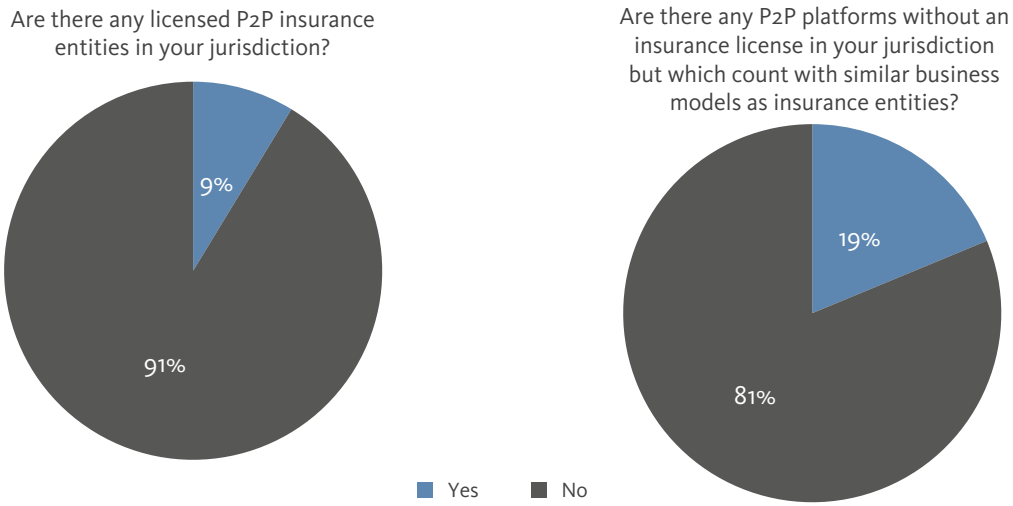
Similarly, most of the NCAs answered that there are no P2P platforms without an insurance licence in their jurisdiction.

However, it is important to note that NCAs who responded that they have un-licenced P2P insurers in their country, clarified that they are examining a few cases at the moment but cannot give details on them, thus it is not clear whether they would need a licence or not.

Most of the NCAs stated that in their jurisdiction there is a definition for "insurance", "insurance contract", "insurance business", and/or "insurance intermediaries". No NCA reported the definition of P2P insurance. Some NCAs stated that there is no exact definition in the national legislation. When certain elements are identified in the business, it is qualified as insurance. However, the evaluation is done on a case by case basis, taking into account classical definition criteria of insurance (law of large numbers/statistics, risk sharing within the collective, existing aleatory risk, premium, protection from unforeseen, external force etc.). In some Member States, the scope of the definition of insurance is stated in the legislation and in some cases subject to court rulings, thus the situation varies.

When asked about the difficulties they have encountered with regard to P2P insurance in terms of authorisation and/or on-going supervision, one NCA stated that the lack of clear definitions in the legislation creates an uncertain regulatory environment for both the authorities and companies. One NCA stated that they are aware that self-insurance through a mutual fund could pose prob-

Figure 4. Overview of P2P insurance market



lems in terms of the abusive exercise of insurance business, risk management and the establishment and management of separate assets. Further problems may arise in the area of compulsory insurance (e.g. motor vehicle liability insurance). One NCA stated that there was one case where all the participants in the P2P had needed an insurance licence due to the business model.

In regard to the regulatory response, most NCAs stated that there is no plan for special P2P insurance at the moment. Some NCAs stated that the specific regulation would be useful if such market would start growing; at the moment it is very limited and thus it is too early to determine a need for special legislation. Indeed, an estimated size of the P2P business was considered to be very limited. However, it can also be argued that there are not so many platforms/clients because the legislation is not clear.

NCAs reported no consumer complains on P2P insurance yet.

One external stakeholder who stated that there is a need for special regulation highlighted that it is needed because of transparency and financial security, for customer protection and to reduce unfair competition. One respondent pointed out that this could be an unregulated channel raising consumer concerns.

Respondents who did not see a need for special regulation stated that they support a regulatory framework which is rather activity-based than applying to specific business models. It was highlighted that consumers should have the same protection regardless if they chose insurance from a P2P insurance operator or another type of insurance provider. It was also pointed out that specific problems should be dealt with ad hoc by resorting first to effective supervision rather than by introducing new rules.

5.6 CONCLUSION

Although there is no exact definition of both P2P insurance and insurance in general at EU level, either as an activity or as a contract, it can be broadly said that there are three types of P2P business models– a) P2P insurance managed by a licenced insurer, b) P2P insurance managed by licenced broker/intermediary backed by a licenced insurance undertaking, following all relevant insurance legislation, and c) purely technical service providers/platform who acts as an administrator for the risk sharing groups, without an underlying insurance carrier.

P2P platforms that operate under models a) and b) will be licenced as an insurer or insurance intermediary, respectively, and consequently follow all insurance regulation.

However, platforms that operate under operating model c) will not be so easy to place under current regulation. It is a matter of evaluating concrete business models.

In order to define what is insurance and what is not insurance according to EU insurance law, it is first important to note that the Solvency II Directive does not define what is insurance. It can give some guidance through its exclusions – when certain activity falls under the exclusions of the Directive, it is not a regulated activity at EU level. Guidance can also be found in IDD, which defines

insurance distributions. Every activity that falls under this broad definition of insurance distribution is a regulated activity according to IDD and requires that undertaking is authorised as an insurance undertaking under Solvency II Directive or is registered as an insurance intermediary under IDD. Thus, if certain P2P business model goes under this definition, it should follow respective EU law provisions.

Unlike the banking and investments sectors where there is a specific legislative proposal for crowdfunding, there is no such specific legislative proposal for P2P insurance. On the one hand, it can be argued that the absence of clarity can be the reason why P2P insurance models are not so popular and hence if the broader policy option would be to facilitate this kind of alternative risk management options (together with its strengths and weaknesses), a special regulation can be considered. In any case, an in-depth impact assessment would be needed.

When considering possible legislative options, it is important to define how and where to intervene. In general, any regulatory responses should be:

1. neutral in terms of the way that a product or service is distributed (i.e. the principle of "technological neutrality") and;
2. ensure that regulatory responses reflect the business model, size, systemic significance, as well as complexity and cross-border activity of the regulated entities (i.e. proportionality).[61]

Taking this into account it can be concluded that at this point there is no clear need for special P2P insurance regulation, but this might be the case in the future, if P2P insurance evolves. However, an ongoing monitoring of the P2P insurance market should be considered, and possible EU-level action reconsidered in view of such market monitoring.

5.7 BEST PRACTICES

EIOPA CONSIDERS IT BEST PRACTICE THAT:

- NCAs, taking into account their exact mandate, are encouraged to use available measures to facilitate general consumer awareness (e.g. through publishing circular letters and issuing notices or warnings etc.) on non-supervised P2P insurance platforms, where possible.
- NCAs could encourage pure P2P insurance platform providers to disclose to consumers clearly and prominently that they are not providing or selling any insurance cover and hence are not under insurance regulation and to clearly disclose to consumers on their lack of access to the usual consumer safeguards such as independent dispute resolution and protection scheme, if applicable.
- NCAs exchange views on treatment of different P2P business models and national licencing approaches to those business models.

61 OECD Policy guidance note. Financial consumer protection approaches in the digital age. Draft. April 2018. page 12.

6 OUTSOURCING

6.1 OUTSOURCING IN GENERAL

Outsourcing/use of third-party services is nothing new in insurance sector. However, technological developments are arguably increasing the extent to which insurers rely on third-parties within the insurance value chain.

The two primary drivers of this trend are:

1) Technology firms (outside of the traditional insurance landscape) are demonstrating that certain processes within the insurance value chain can be carried out cheaper, more efficiently and more effectively with new technologies;

2) Customers are increasingly purchasing and interacting with businesses via eco-systems / platforms for which insurance may only be an ancillary offering of a wider service or product purchase.

Given that most InsurTech start-up reportedly cooperate with insurance undertakings under outsourcing agreements, without the need to apply for a licence itself, NCAs were also asked if the current outsourcing rules of insurance undertakings and distributors are sufficient.

6.2 OVERVIEW OF THE SURVEY ANSWERS

Most of the NCAs answered that current outsourcing rules for insurance undertakings and distributors are sufficient and there is no indications for the necessity to adapt current outsourcing rules.

One NCA considered outsourcing rules not sufficient as the definition of what a 'critical an important function' is unclear under the Solvency II framework. This is particularly evident in the use of cloud services by insurance undertakings**.** One NCA stated that no specific legislation outside of consumer protection legislation exists for insurance intermediaries. One NCA pointed out that outsourcing rules in general are sufficient, however regarding cloud services they might cause barriers in some cases.

Some stakeholders pointed out that in some cases, strict outsourcing requirements could limit the involvement of third parties in the insurance value chain (e.g. partnerships or other agreements not strictly or ambiguously considered as outsourcing).

6.3 CONCLUSION

Although most of the NCAs found current outsourcing rules sufficient, it was, however, highlighted that the definition of what a 'critical an important function' is unclear. This is particularly evident in the use of cloud services by insurance undertakings.

From a broader supervisory perspective it can be asked what is the most efficient risk-based approach for regulators to get oversight of a firm's reliance on third parties. Reporting of outsourced arrangements can be highly variable and often depends on a firm's definition of what it deems is material. From supervisory perspective it can be also asked to what extent these developments become material for consideration of firm operational resilience and at what point should regulators consider oversight of currently non-regulated activities and to what extent does the supervisory operating model need to adapt, and how to tackle with potential concentration risk.

In this regard it is important to underline that in the FinTech Action Plan The Commission invites the European Supervisory Authorities (ESAs) to explore the need for guidelines on outsourcing to cloud service providers by Q1 2019. Hence, the question of cloud outsourcing is dealt with separate ITF work stream. Additionally, the ITF Mandate foresees that in 2019, the ITF may further scrutinise and propose remedies to the supervisory challenges arising from the new business models and the possible frag-

mentation of the (re-)insurance value chain. Among other things, this work would cover the increasing collaboration between (re-)insurance undertakings and non-regulated firms such as data vendors.[62]

62 InsurTech Task Force Mandate (EIOPA-BoS-17/258) https://eiopa.europa.eu/Pages/Working%20Groups/InsurTech-Task-Force.aspx

7 OVERALL CONCLUSION

InsurTech have an impact across all steps of the value chain in the insurance and pension sectors, including through the emergence of start-ups, often in cooperation agreements with incumbent undertakings. The business models of undertakings and the consumer experience are being transformed as a result of the proliferation of financial innovations and technology.

Based on the evidence gathered, the EU InsurTech market is at an early stage, but evolving. Most NCAs have limited experience with InsurTech companies or they do not differentiate those with "digital" business models from others. However, the ITF's work on Innovation Facilitation found that 24 NCAs have implemented an innovation facilitator. This implies that most NCAs within the EU are well aware of the importance of innovative technologies and new market players, and the need to understand well risks and benefits.

Both NCAs and external stakeholders pointed out the need for a level playing field, proportionality and technological neutrality. This is directly linked to EIOPA´s approach to digitalisation which is to strike a balance between enhancing financial innovation and ensuring a well-functioning consumer protection framework and financial stability. EIOPA also believes that regulation and supervision must be technology neutral and ensure a level playing field.

Given the technological neutrality of legislation it is not relevant how digitised a company is or which technology it is using, only the nature of the products or services that shall be offered and the risks that are taken by the undertaking are relevant to classify an undertaking as insurance intermediary / broker, (re-)insurance undertaking, other financial services provider etc. Furthermore, since the legal framework adopts a risk-based approach companies have to identify, assess, monitor and manage all risks a company is exposed to, whilst supervisors should allocated their resources regarding risks exposures.

It is important to point out that facilitating innovation is not about de-regulation. To the extent that InsurTech activities involve the carrying out of a regulated activity, the appropriate licence is required. Accordingly, the firm concerned will need to submit an application, following normal authorisation procedures, for the appropriate licence. In terms of assessing compliance with the conditions for authorisation, for firms requiring licences to carry out a regulated activity, no 'light touch' approach applies. Put another way the InsurTech firm, as for any other firm applying for the same licence, will need to demonstrate, that all the conditions are satisfied in order for the licence to be granted.

In line with normal authorisation practices, a proportionate approach may be applied for the assessment of conformity with the conditions for authorisation (e.g. in terms of expectations regarding governance processes, systems and controls requirements, which take into account the specificities and risks inherent to InsurTech).

NCAs may, in exercise of general powers, also impose limitations or restrictions on firms as an additional risk mitigation tool to support a more proportionate approach to the assessment of compliance with the conditions for authorisation/ongoing supervision.

In this context, the ability for the competent authorities to impose limitations or other restrictions can be regarded as a lever for proportionality in the licencing/supervision process. EIOPA is in the opinion that so far there seems to be no need for "more" regulation considering licencing and principle of proportionality. However, NCAs should–where appropriate–adapt their internal processes and know-how to the general process of digital transformation. At the same time diverging supervision amongst NCAs must be avoided. In addition, it is important to note that some InsurTech developments have a cross-border/cross-sectoral coverage.

The best practices highlighted in this report aim at supporting a more systematic approach to InsurTech licencing requirements and the application of the principle of proportionality in view of consistent and effective supervisory practices across NCAs.

InsurTech is constantly evolving and developments have to be monitored closely. It is also important that the developments have a potential global reach, so it is important that developments in the EU take note of supervisory and other developments across the globe.

NCAs should engage further with one another and exchange experience with each other and with EIOPA considering the rise of new technology driven business models (e.g. P2P), the use of new technologies (e.g. AI, DLT) and the licencing / on-going supervision of highly digitised insurers in order to avoid supervisory arbitrage (e.g. through different sensitivities to use of crypto assets to pay claims and/or premiums). This is essential to prepare for emerging risks.

EIOPA aims to facilitate this process, working with NCAs and InsurTech firms in the promotion of sound financial innovation in the European insurance and pensions market.

This could include:

- exploring options to develop European insurance innovation hub for the benefit of NCAs and InsurTech firms;[63]
- the assessment of InsurTech-related data which should be collected systematically to support NCAs and EIOPA work on InsurTech;
- understanding how risks shift given new technologies and business models, so spearheading further work on understanding different business models, including InsurTech´s impact on traditional business models on insurance companies;
- other topics worth of further attention and regular monitoring are those of outsourcing, developments in licencing InsurTech companies and potential growth of the P2P insurance market.

63 See InsurTech Taskforce Mandate (EIOPA-BoS-17/258) https://eiopa.europa.eu/Pages/Working%20Groups/InsurTech-Task-Force.aspx

ANNEX 1. DEFINITIONS USED IN THE SURVEY

For the purpose of the exercise, **InsurTech** is defined as 'technology-enabled innovation in insurance that could result in new business models, applications, processes or products with an associated material effect on the provision of insurance products and services.[64]

The survey covered **InsurTech firms** which have an insurance licence (e.g. insurance undertaking licenced under Solvency II, insurance agent and broker licenced under IDD and undertakings covered by national licence) as well as those which do not have an insurance licence (e.g. those collaborating with incumbents in the development of innovative solutions).

The definition of **InsurTech** and **InsurTech firm** considers any size and development stage of undertakings (e.g. start-ups and incumbent companies). It captures a wide range of business models, processes, or products in the insurance sector (e.g. P2P insurance, Big Data, Internet of Things, blockchain/distributed ledger technology, Artificial Intelligence, Cloud Computing etc).

Start-ups are defined as firms which have been granted an insurance licence within the last 5 years, which commonly are SMEs and count with innovative digital business models. The latter may also include small autonomous subsidiaries that form part of larger insurance groups. **Incumbent companies** should be considered those entities that are not start-ups.

Peer-to-peer (P2P) insurance is defined as risk sharing digital network or platform where a group of individuals with mutual interests or similar risk profiles pool their "premiums" together to insure against a risk/to share the risk among them, and where profits are commonly redistributed at the end of the year in case of good claims experience.

64 FSB, 'Financial Stability Implications from FinTech', 27 June 2017

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