

## Comments on EIOPA discussion paper on open insurance

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Contact person: Arthur Hilliard

E-mail: [hilliard@insuranceeurope.eu](mailto:hilliard@insuranceeurope.eu)

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### Executive summary

Insurance Europe welcomes the opportunity to share its views on the European Insurance and Occupational Pensions Authority's (EIOPA) discussion paper on a possible framework for open insurance.

Promoting a data-driven financial sector is an important and valuable aim. For insurers, a greater availability of data could lead to improved risk monitoring and assessment, a better customer experience and increased fraud detection. Increased access to data generated by both public and private sectors could also provide the opportunity to increase innovation and competition in the insurance sector.

The insurance industry is therefore supportive of efforts to facilitate appropriate data sharing. However, while open insurance has the potential to positively impact both consumers and insurers, the design of any future framework will determine its overall impact. Further elaboration of the exact scope and objectives of such a framework is therefore necessary.

There are a number of challenges that will arise with the development of any data sharing framework, many of which would also be dependent upon the exact scope of the framework. It is vital, for example, that any framework takes account of the business model of insurers, in particular the data they use. Policymakers must avoid applying a copy of the payment services framework (PSD2) to the insurance sector. The focus should instead be on:

- Learning what has or has not worked under PSD2; and
- Ensuring any framework respects the features and complexities of the insurance sector.

At the same time, it will be important to safeguard consumers' ownership of their data and to ensure that data sharing is consent-based. Consumers, as data subjects, should have absolute confidence in the security of their data and the right to determine to which services and under what conditions their personal data will be used. The purpose of the data sharing should also be clear.



The European insurance sector is a comprehensively regulated and supervised sector with a sound conduct of business and prudential framework in place. As new market entrants appear, it will be important to respect the principle of “same activities, same risks, same rules” between the different market players. Maintaining a true level playing field will be key to ensuring:

- Consumers enjoy the same level of protection regardless of which company they are dealing with.
- A fair allocation of costs among the parties to ensure a balanced approach to the funding and development of any new infrastructure.

Further consideration and on-going discussion between the industry and policymakers will be crucial in finding an optimal and balanced solution for consumers, insurers and their supervisors. Insurance Europe stands ready to engage further with policymakers in future discussions around any such framework.

Below are Insurance Europe’s responses to a consultation by EIOPA on its discussion paper.

**Q1.** *Do you agree with the definition and the approach to open insurance highlighted in the Discussion Paper? If not, please describe what aspects would be essential to consider additionally?*

Open insurance has the potential to positively shape the insurance sector. However, the design of any potential framework is crucial and will play a key role in determining its overall impact. The European Commission's plans for an initiative on open finance and EIOPA's discussion paper are an opportunity and the insurance industry is ready to actively participate in any discussions in this area.

As an initial remark: data usage, access and sharing should be considered in a broad context, with the focus on cross-sectoral data sharing across the economy. The focus of open insurance should not be solely on the insurance sector, but on all sectors of society, with the emphasis placed on the data itself rather than the different actors.

With regard to the approach highlighted in EIOPA's discussion paper, the definition used for open insurance could be further improved by taking into consideration the following points:

- **Scope:** EIOPA notes that it has considered open insurance "in the broadest sense", without any limits to its scope. This is problematic, as it is difficult to assess the net impact from any of the suggested consumer, industry or supervisory angles.
- **Definitions:** Sub-elements or terms used should be clearly defined and not left open to interpretation.
- **Objective:** Further elaboration of the purpose or objective of an open insurance framework is required. It is not clear who the main intended beneficiary is of such an approach, as it looks at consumer, industry and supervisory angles. Furthermore, the aggregate effect on society is currently not addressed, which is problematic, as insurance first and foremost exists to facilitate risk sharing in society. Comparable data sharing regulations (eg PSD2) have a clear, goal-oriented purpose and structure, and are strongly anchored in consumers' interests. At the same time, they do not involve all customer data, but rather a defined data set serving the purpose of the regulations. A similar approach would be necessary for any open insurance initiative.

With regard to the different angles examined by EIOPA, the insurance industry has the following remarks:

- **Consumer angle:** Insurance Europe agrees that there should be a clear focus of any open insurance framework on the consumer and the benefits that this can bring.
- **Industry angle:** The example of motor insurance in Figure 2 should also include car manufacturers and other original equipment manufacturer (OEMs). After a consumer gives consent to data sharing to an insurer, a manufacturer should be obliged to share in-vehicle data with an insurer in the EU chosen by the consumer (even if there is no pre-existing partnership between car manufacturer and the insurer). This would leave the consumer in full control of their data and enable insurers to introduce more competitive insurance offers for the consumer (and the consumer would therefore have more choice of insurance products, and this is good for competition).
- **Supervisory angle:** Insurance Europe notes EIOPA's statement that open insurance could also open doors to new supervisory tools. The industry agrees with EIOPA's view that the use of technology could allow supervisors to deliver innovative and efficient supervisory solutions that will support a more effective, flexible and responsive supervisory system. The industry takes the view that there is potential for the use of technological solutions, such as APIs, to facilitate the sharing of annual and quarterly reporting data with supervisors. Supervisory reporting is the area that offers the greatest potential benefit for an open framework in the supervisory context. This would allow for automated reporting procedures and would help to reduce the administrative burden for insurers. It could also be a source of

optimisation and time savings by focusing on data sets or aggregated data, rather than granular data. The primary focus in this area should be on the reduction of burden for both the insurance industry and supervisors, and to lower the overall costs associated with regulatory compliance and supervision. Technological solutions could also be used to further enhance the exchange of data between supervisory authorities.

It should also be noted that real-time access to insurance company's data for supervisory purposes is difficult to achieve and creates many challenges from both the security and practical perspectives, so it is therefore probably not the right starting point.

Any sharing of data with supervisory authorities needs to be carried out in an efficient and proportionate manner, and in line with regulatory requirements. In this respect, it would be important to be transparent and clear about the precise benefits and objectives of any proposed supervisory angle. It is also important that there is transparency from supervisors in terms of what data they are accessing and for what purposes so that firms can provide the necessary context for discussions.

**Q3.** *Do you think regulators/supervisors should put more focus on public comparison websites where the participation is compulsory for undertakings? What lines of business could be subject for that? What risks, benefits and obstacles do you see?*

Insurance Europe does not believe that comparison websites should be a public responsibility, and participation should not be compulsory. We see a number of risks and obstacles in this regard:

- "Race to the bottom": There is a risk that a focus on price alone – ie offerings ranked according to price on a comparison website with little or no emphasis on: eg terms & conditions, the level of coverage or protection provided, service levels (availability/SLAs [eg 24/7 support]), available channels (automated digital services vs. human follow-up) – which will lead to a "race to the bottom". The benefits of any increased price transparency would come at the cost of less product transparency (eg coverage, service levels), as competitors seek to offer lower prices to gain a competitive edge in the rankings to the detriment of the protection features and the actual demands and needs of the consumer. The main focus should remain on finding the best protection for customers.
- Removing incentives for product innovation: A comparison based on price alone is contrary to the current focus of the insurance industry, which focuses on the development of insurance products and services that meet the demands and needs of customers. An excessive focus on price would likely act as a disincentive to product/service innovation, which is not in the long-term interests of consumers.
- Examples from other heavily aggregated markets, eg hotels and flights, illustrate particularly well how excessive price focus could make the offers difficult to evaluate effectively and are often associated with poor service standards or low quality offerings for those that are ranked best according to price, which results in questionable consumer value.

**Q4.** *Please describe your own open insurance use case/business model and challenges you have faced in implementing it, if any.*

There are a range of open insurance use cases. These range from risk assessment solutions in motor and liability insurance facilitated by data exchange between insurers, car manufacturers and OEMs (telematics data, data from advanced driving assistance systems, sensors in self-driving cars, garage and maintenance data etc) to risk assessment and claims prevention in home owner and SME insurance facilitated by data exchange with IoT vendors (data from smart devices, building-related sensors, energy consumption data, predictive maintenance data etc).

The challenges in this area concern access to data, as well as data protection and competition rules and the associated regulatory obstacles (see response to Question 14).

**Q5.** *Do you see other open insurance use cases in RegTech/SupTech that might be worth to look at further from supervisory/consumer protection perspective?*

In general, Insurance Europe supports initiatives from European or national regulators whose purpose is to streamline existing regulatory practices. However, every such proposal must be clearly justified, in order for costs to not outweigh the expected benefits.

As noted in the response to Question 1, the use of technology could allow supervisors to deliver innovative and efficient supervisory solutions that will support a more effective, flexible and responsive supervisory system. There is potential for the use of technological solutions such as APIs to facilitate the sharing of annual and quarterly reporting data with supervisors. However, any such data exchange should come with reporting relief and operational benefits for insurers.

Other initiatives that could help support the development of a fully digitalised supervisory approach could include analysing the data needs of different EU bodies. It could be useful, for example, to develop a directory of all the different reporting/publication requirements established by different EU bodies regarding the financial sector. This directory could then be used to identify overlapping information needs: eg for statistical purposes by the European Central Bank (ECB) and for supervisory purposes by EIOPA. As a second step, information exchange between different EU bodies could also be fostered to reduce the number of duplicate reporting obligations to zero. European authorities should strictly follow the principle of "collecting data only once".

**Q7.** *Do you agree the potential benefits for the a) industry, b) consumers and c) supervisors are accurately described?*

Insurance Europe does not agree with all of the benefits listed and has doubts as to whether some are feasible as described.

**(a) Industry:**

- **Data as a commodity:** The insurance industry is fundamentally data driven. Data gives insurance companies a foundation for risk calculations and pricing, and should not be viewed as a commodity.
- **More tailored insurance products:** Mandatory standards and regulatory requirements may actually result in somewhat narrowing insurers' ability to innovate on products, with an impact on competitive dynamics.
- **Facilitate the adoption of a consumer-centric approach:** This is already the case in the insurance industry and will likely not result in additional benefits due to open insurance.
- **Lower entry barriers:** Entry barriers should be the same for all players whether start-ups or not. If entry barriers are lowered, then it should be applicable for all players (current and new). The industry questions whether the goal of open insurance should be to lower entry barriers.
- **More efficient flow and exchange of information:** The industry agrees, to an extent, eg to detect signals of insurance fraud, but has doubts as to whether insurers will benefit from real-time oversight of distribution networks. If real-time oversight is the goal of open insurance, then the roles of different actors would be questioned. For example, independent intermediaries should be independent and not monitored on a real-time or near real-time basis by insurers. The goal of open insurance should not be to change the responsibilities of different actors with respect to product oversight and governance requirements.

**(b) Consumers:**

- **More product variety:** As mentioned above, mandatory standards and regulatory requirements may narrow insurers' capacity to innovate on products, leading to less product variety for consumers.
- **Reduce costs:** It is not clear whether open insurance will reduce costs for consumers or result in the offering of a lower price. There should also be a focus on value for consumers as price and value go hand in hand. Convenience, new tech-based products and services could lead to totally different (dynamic) pricing structures for new offerings, depending on demand and supply, than those currently available in the market. Market results will depend on the success of open insurance and adoption by market players and consumers. A sound open insurance framework will require significant investments from all players and the costs will ultimately be transferred to consumers.
- **Comparison sites:** The industry does not view comparison sites as a pure benefit to consumers (see response to Question 3).

It should be noted that there are more customer types than only (retail/end-)consumers (eg organisations/unions, corporate clients, SMEs, single-owner entities), and customer relations may be complex (eg B2B2C, B2B2B), ie where the buyer of the insurance product might not be the insured party etc.

**(c) Supervisors:**

- **Supervisory technology (SupTech):** As already noted in the response to Question 1, the use of technology could allow supervisors to deliver innovative and efficient supervisory solutions that will support a more effective, flexible and responsive supervisory system. The industry takes the view that there is potential benefit in making existing mandatory reporting more efficient. However, real-time access to company's data is difficult to achieve and creates many challenges from both the security and practical perspectives, so it is therefore probably not the right starting point. Possible SupTech and regulatory technology (RegTech) solutions must first demonstrate that there will be a significant reduction of costs, administrative burden and implementation for the industry.
- With respect to consumer-centric product design and development process, the industry does not see any benefits for supervisors, as this is the role of insurers.

**Q10.** *Do you agree the potential risks for the a) industry, b) consumers and c) supervisors are accurately described?*

Insurance Europe notes that the potential risks very much depend on the design of an open insurance framework. Insurance Europe believes that there needs to be an appropriate focus on evaluating and assessing the impact of PSD2: eg ensuring lessons are learned and that policymakers quantify and qualify the increased costs of such a framework compared to the actual benefits and risks faced by the financial sector.

Furthermore, not all of the potential risks identified by EIOPA should be regarded as risks. For example, risk-based pricing and the search for enhanced risk assessment is integral to private insurance markets. Adaptations in products and pricing are an essential part of the competitive and innovative process. Heterogeneity in data, products and pricing strategies are a benefit to customers, as it ensures there is a choice of offerings available at different price points.

This being said, in general the industry agrees with the risks as described, but have identified the following additional risks:

**(a) Industry:**

- **Increased cost of regulatory compliance:** Both in the form of direct costs (eg administration), and indirect costs (eg lost opportunity cost).

- **Distorting competition:** It should be made very clear that trade secrets, business sensitive information or insurers' proprietary data are not to form part of any compulsory data sharing requirements, as to do so would have serious consequences for companies' competitive standing. Some reassurance should be given to insurers that there is an acceptable framework that safeguards anti-trust and competition law.
- Risks relating to data privacy and data security
  - **Not knowing who accesses what data:** With an increasing number of access points and authentications methods, there is a risk that insurers will simply not know who accesses what data, with the associated compliance issues this triggers (eg breaching the General Data Protection Regulation (GDPR), EIOPA's Guidelines on ICT).
  - **Increased data security/privacy risks:** If regulations are inadequate in terms of logical security (eg as is the case with PSD2), it is unreasonable that industry players should be held liable for any data breaches/misuses. PSD2 induces risk to incumbents in this area, in terms of account servicing payment service providers (ASPSPs) potentially being liable for third-party providers' GDPR data breaches.

**(b) Consumers:**

- **Untransparent business models:** Risk of inducing untransparent business models: eg "freemium" approaches, where the consumers data becomes monetised.
- **Race to the bottom:** Standardised sharing of price and product information is likely to fuel the growth of price comparison services, with a risk of creating a 'race to the bottom scenario' (see response to Question 3).
- **Consent fatigue:** Consumers are frequently asked to accept elaborate texts on small handheld devices, often granting access without consideration. There is a real risk of customers therefore not understanding the scope and consequences of their consent. This actually calls for one consumer consent framework instead of many different models for consent. Consumer education should be key in a sound open insurance framework.
- Privacy and security:
  - **Data breaches.** Given the sensitive nature and "long-lifetime" (insurance data contains facts that might be true for the remainder of the customer's life, and beyond), insurance data should not be leaked. Priority should be given to safeguard the risks of data breach, misuse and fraud, as well as ICT/cybersecurity risks. This could have a negative impact on willingness of consumers to share their data and have severe impact on the reputation of the insurance industry.
  - **Ability to hold parties accountable.** There is a risk of unclear responsibilities for data breaches. It is critical that the data holder is aware of who accesses data, and on which parties' verifiable consent, and that customers and regulators are able to hold the accessing party liable for any breaches, even several years in the future.
- **Other risks:** Other types of risks are also important, but they should be addressed when they actual occur in practice under an open insurance framework. For example, if financial exclusion appears, then regulatory options may need to be considered, but before that it should be left to the market to take appropriate measures to tackle the issue.

It should be noted that there are more customer types than only (retail/end-)consumers (eg organisations/unions, corporate clients, SMEs, single-owner entities etc), and customer relations may be complex (eg B2B2C, B2B2B): ie where the buyer of the insurance product might not be the insured party etc.

**(c) Supervisors:**

- **SupTech:** It is not realistic or practically feasible for supervisors to have "access to consumer insurance services-related data and/or product information data, including ultimately on a real-time basis, to improve their oversight capabilities".

- **Cross industry open finance regulation:** Open finance is fairly broad in nature and addresses complex interconnected industries. Consequences should therefore be thoroughly thought through and evaluated and a careful step-by-step approach should be followed.

**Q12.** *Do you consider that the current regulatory and supervisory framework is adequate to capture these risks? If not, what can be done to mitigate these risks?*

The European insurance sector is a comprehensively regulated and supervised sector with a sound conduct of business and prudential framework in place. However, while new technological opportunities and new customer behaviour enable new service concepts, new service providers (eg BigTech) have also entered the market. For these providers, regulatory requirements are often less strict than those in the traditional insurance industry. Maintaining a true level playing field between insurers and BigTech players, while avoiding regulatory arbitrage at European level, will therefore be crucial, particularly in terms of access to data and data monopolies. It should also be noted that there are challenges around data reciprocity as a clear mitigating concept, as the data that different parties hold and are allowed to share is often not comparable, or even incompatible with the different actors business models. For example, with regard to the respective business models, most financial institutions are incapable of generating value from the data in the same manner as BigTech (ie monetising behavioural data to make money via advertising), which leaves financial institutions at a disadvantage. However, BigTech may gain a much larger value from verifiable personal data that is obtained from financial institutions. It is therefore crucial to respect the principle of "same activities, same risks, same rules" and strive for a true level playing field, as recognised in Recommendation 13 of the ROFIEG.

It is also worth considering Recommendation 24 of the ROFIEG, which states that the impact of existing activities restrictions for financial institutions' non-core business (eg Article 18 of Solvency II) should be reviewed to determine whether these restrictions remain proportionate (see response to Question 14). Policymakers must also ensure that financial customers enjoy the same level of protection, regardless of whether they are served by established providers or new entrants to the market, by bringing all new market entrants within the scope of insurance regulation.

In addition, given the sensitive nature of financial data, if any mandatory data-sharing framework is introduced, customers must have absolute confidence in the security of their data, full control over the data being shared and the right to determine to which services and under what conditions their personal data will be used. The scope of the customer's consent must be clear and verifiable, particularly when it comes to what data is to be shared. The purpose of the data sharing should also be clear. Consent should be provided in a free and informed manner and an appropriate mechanism should exist that allows the consumer to revoke consent at any time.

It is also important to ensure a coherent regulatory framework for insurance at EU level to ensure that any new regulations, eg in the data sphere or the Digital Operational Resilience Act (DORA), are aligned with rules on conduct of business or governance.

It is also crucial that supervisors are adequately equipped in terms of resources (staff, budget, technical expertise) to be able to effectively supervise any new frameworks covering digital, data or new technologies.

**Q13.** *Do you agree with the barriers highlighted in this chapter?*



In the context of potential barriers, Insurance Europe wishes to stress the importance of ensuring that the introduction of any data-sharing framework does not act as a barrier, but rather as an enabler, to already existing and new initiatives in the insurance sector.

**Q14.** *What additional regulatory barriers do you see?*

In the insurance sector, there are possible limitations and restrictions for insurance undertakings wishing to implement innovative digital strategies. Under the Solvency II regulatory framework, some new digital activities might be classified as “non-insurance business”. Consequently, they would not be permissible for insurance companies. This is counter to the level playing field principle, as it puts insurance companies at an unjustified disadvantage relative to other participants in the digital economy. Therefore the current definition of “insurance business” should be reconsidered in a way that the new cooperation and digitally related activities of insurers are encouraged and will be considered as an integral part of their core insurance business.

The industry would also refer to Recommendation 24 of the ROFIEG, which proposes that the impact of existing activities’ restrictions for financial institutions’ non-core business (eg Article 18 of Solvency II) should be reviewed to determine whether these restrictions remain proportionate. According to the ROFIEG, in this review particular regard should be paid to cross-sectoral considerations, in order to ensure a level playing field between different types of players in the financial sector, including BigTech.

In addition, data sharing should be carefully considered in the context of competition law and intellectual property law, which may constitute obstacles by impeding the contractual parties’ ability to exchange data. Data which constitutes trade secrets or business sensitive information should not be subject to any data sharing requirements.

**Q15.** *What are your views on possible areas to consider for a sound open insurance framework highlighted by EIOPA in this chapter? Are there additional underlying aspects or other aspects under concrete areas to consider for a sound open insurance framework?*

EIOPA notes that there is no uniform understanding or definition as to what open insurance means exactly. However, a sound open insurance framework must be based on a firm understanding of the purpose and intended goals, while always maintaining a customer-focused approach.

If mandatory data sharing is deemed to be an appropriate measure, care should be taken to ensure that the conditions under which the data is to be shared are thoroughly evaluated and weighted against expected benefits.

With this in mind, the insurance industry would like to share a number of key issues that should be considered for a sound open insurance framework:

- **Responsibilities:** Who bears the risk, and is that actor compensated adequately for taking/maintaining the risk of, for example, data breaches? For clarity in responsibility, the data holder should be the one collecting consent.
- **Allocation of costs:** It is important to have a balanced approach towards costs. There are potential benefits for society, for insurers and for consumers from an open data-sharing framework. However, given the costs involved in setting up an open insurance framework, it will be necessary to ensure that there is a fair cost allocation among the parties as one of the requirements of such a framework (eg for developing and running APIs, the implementation of technical standards etc). Otherwise, the insurance sector would be left to fund all of the new infrastructure from which others receive a net benefit.

- **Identity and access management:** Modern and secure identity and access management solutions will be crucial to control the access to data via APIs at the user, application and partner level. Authentication methods with appropriate level of assurance (LoA) – as defined by the ISO/IEC 29115 Standard – for the data which are to be accessed are needed (eg LoA 4 should be required for accessing sensitive data).
- **Consent:** The framework needs to carefully consider the sharing of sensitive personal data, and to ensure that any compulsory data sharing operates under a consent-based framework (except if there are other legal purposes to share the data, eg that an insurer is obliged to report certain data to authorities or data sharing for anti-fraud purposes).
- **Privacy:**
  - **Revealing sensitive personal information.** The open insurance framework should duly consider the sensitive nature and “long-lifetime” (insurance data contains facts that might be true for the remainder of the consumers life, and beyond) of some insurance data.
  - **Ability to hold parties accountable.** Risk of unclear responsibilities for data breaches, especially several years down the line if the entity does not even exist.
- **Supervision:** All actors dealing with insurance data need to come under the same degree of supervision (see response to Question 12).

**Q16.** *What are the key differences between the banking and insurance industry which are important to consider in light of open insurance implementation? (eg higher variety of products, more data, including sensitive health data in insurance).*

In considering the key differences between insurance and banking in an open insurance context, the industry assumes that EIOPA is seeking to contrast open insurance with the PSD2 framework. Insurance Europe therefore wishes to stress that PSD2, in contrast to open insurance, is not an industry-wide framework but rather specific legislation that regulates payment services only. The respective scope of these two concepts is therefore fundamentally different and arguably not comparable.

The payment services industry is fundamentally different to insurance in terms of its business and operating model. Furthermore, the scope of the discussion paper covers multiple business lines of insurance – eg life, non-life, pensions etc – each with its own characteristics. Care should, therefore, be taken when transferring insights from PSD2 to the insurance sector.

It is important to be further aware that the type of data that is subject to the data sharing framework under PSD2 is vastly different in type, level of detail and reliability to the data that underpins the insurance sector. As the EC noted in its digital finance strategy consultation, the PSD2 framework is limited to payment data held by payment services providers, and does not cover other types of data relevant to financial services and held by other firms within and outside the financial sector. In contrast, insurance data consists of a complex mixture of very diverse types of data which are heterogenous in nature. For example, the products and services offered by the insurance sector are multiple, varied and involving a wide range of personal data that concerns the private life of the insured (eg health data, insured movable or immovable property, travel, savings, life insurance beneficiaries, family situation, sports activities, animals, compensation for bodily injury, disputes involving liability insurance or legal protection insurance etc). The PSD2 framework cannot therefore simply be replicated for other types of financial data. Different financial services are not comparable because of their different characteristics and the nature of the data they process.

Many insurance activities process sensitive personal data, which then must take into account all relevant regulatory provisions: eg using data processors and cloud services both within and outside the EU. Therefore, ensuring that the data subject’s right to data portability pursuant to Article 20 of the GDPR can be complied with and the development of common standards should be considered under open insurance as well.

**Q17.** *What are the 'lessons learned' from open banking that might be relevant to consider in open insurance?*

Insurance Europe finds it important that the impact, costs and benefits of the PSD2 framework are carefully and comprehensively assessed and analysed from an insurance point of view before proceeding with any open insurance related work.

It is important to avoid a direct copy-across of the PSD2 framework to the insurance sector, for the reasons highlighted in response to Question 16. The focus should be on learning the lessons of what has and has not worked under PSD2, as part of a thorough review of the existing framework, while also ensuring that appropriate consideration is given to the particular features and complexities of the insurance sector, and the data it uses, that would make such a framework more complex and challenging than for payments.

Several weaknesses and challenges have been identified within the PSD2 framework. Any new initiative in the area of data sharing should therefore not be based on the PSD2 framework as such. For example, data protection, protection of business secrets and security related issues must be carefully considered and solved before introducing legislation regarding data sharing beyond PSD2. Furthermore, it should be borne in mind that the PSD regulations cannot simply be transferred to other financial data. Different financial services are not comparable because of their different characteristics.

This has implied significant investments into infrastructure and compliance. Observers note how PSD2 has led to a stalemate situation around infrastructure development, where incumbents are unwilling to make the necessary investments on the TPPs behalf, given they are not compensated for infrastructure provision (implementation, operational running costs) nor indirect costs (opportunity cost, alternative cost considerations), which also means there is lack of incentives for investing further into the enhancement of infrastructure. Another aspect is the customers' willingness to pay. Many services today are based on two-sided platforms where you have "free" access for end clients (paying with their data) while the customer data is the product being sold B2B. The banks are regulated and cannot work this way, neither can insurers.

It has proven difficult under the PSD2 framework to harmonise standards for information exchange and APIs. The process of approval of APIs by national authorities has been burdensome and challenging, and in some cases problematic as the same APIs have been approved in one country and not in another. At the same time, it is important to select or develop standards that are workable for the market, as to force certain standards on the market that are sub-optimal may lead to a stifling of innovation. Appropriate consideration therefore needs to be given to the standardisation of APIs. These challenges and costs associated with PSD2 are likely to be compounded in an insurance context, due to the higher complexity (eg heterogeneity in coverages [eg unique for different markets, even multiple standards within individual markets], span of products on offer [spanning life, non-life & pensions]). Allowing the insurance industry to provide input early on would ensure that the intended goals are technically and practically feasible.

Lastly, it should be noted that PSD2 has not yet led to the blocking of so-called screen scraping and reverse-engineering practices, which was one of the intents of the regulation and which introduces severe privacy and security risks for the actors whose services are being mis-used in this manner.

**Q18.** *Do you think open insurance will develop without any regulatory intervention? (eg without PSD2 type of compulsory data sharing provisions)*

Insurance Europe believes that data-sharing initiatives will continue to develop without any regulatory intervention. This is evidenced by the number of already existing market-driven solutions based on voluntary

data sharing initiatives that have developed in the absence of any regulatory requirements in the insurance sector. As insurance is a regulated industry, collaboration with regulators is necessary to find the right balance given the risks and benefits of open insurance, consumer protection, data protection requirements and innovation.

The insurance industry has ample experience of standardisation and the electronic exchange of data. For many intra-group and intra-industry use cases, there are already data exchange mechanisms in place, which have been implemented by the industry on a voluntary basis. For example, in motor insurance, claims experience and the amount of time without an accident are important risk factors for pricing. Therefore, both insurers and policyholders have an interest in migrating this data in case of switching motor insurer. Similar mechanisms exist for other areas of insurance such as property insurance. The insurance industry stands ready to share its expertise on the subject matter throughout the further development of an open finance framework.

**Q19.** *Do you think open insurance should be driven voluntarily by industry/private initiatives or driven by regulatory intervention?*

Insurance Europe welcomes the consideration of this important aspect but is of the view that it is premature at this point in time to decide on a single, most suitable approach. There are numerous on-going and planned initiatives at European level, not only in the context of data sharing but more broadly covering data governance and digital finance. Moreover, there is still considerable uncertainty over the potential scope, the level of openness and the definition of open insurance. It is therefore important to first define a clearer purpose for open insurance, and to then deploy appropriate and proportionate responses to ensure the purpose is most effectively and efficiently achieved.

Currently, the market is driven by a range of self-regulatory initiatives that are industry-led and based on voluntary agreements or in the framework of data partnerships. These existing initiatives in the insurance sector work well and have proven to be successful. It should be ensured that these can continue to thrive.

At the same time, a number of challenges may arise where any data sharing framework would be extended to other sectors and include non-financial entities, such as BigTech companies, car manufacturers, telecoms companies, energy companies etc. Questions would arise over how to ensure an effective level playing field between the different actors, how to safeguard customer consent and how to guarantee data reciprocity and fair and equal access to data. Many of these issues would also be dependent upon the exact scope of any potential framework.

Further consideration and on-going dialogue would therefore be necessary in order to find an optimal and balanced solution for consumers, the insurance market and supervisors. Insurance Europe stands ready to engage further with policymakers in future discussions around any such framework.

At this point in time, Insurance Europe believes that it would be beneficial to start with a step-by-step approach by looking at specific use cases to see where there could be a clear benefit for consumers in having a framework in place. In terms of the different open insurance approaches listed by EIOPA, there could be merit in introducing a specific framework for IoT data sharing (eg car telematics data) in order to increase the legal certainty and create an appropriate framework for innovation in insurance. As EIOPA notes in Case Study 5, IoT data is a category of data that is important for the insurance industry, covering both the data insurers collect themselves (eg through black-boxes in vehicles), and also the data collected by third parties (eg self-driving car manufacturers). A specific framework could therefore be considered to address black box and in-vehicle data interoperability. This could make use of API standards and set out how the data should be accessible and interoperable between different insurers, black box providers and self-driving car manufacturers. Ensuring full

portability of consumer-generated IoT data could provide benefits both for consumers and the industry, and facilitate the offering of new and innovative services.

Insurance Europe welcomes the opportunity for on-going dialogue with EIOPA to explore such use cases further and welcome the steps EIOPA has taken so far to assess the potential impact for industry.

**Q21.** *What datasets should be definitely included in the scope of a potential open insurance framework? What data should be definitely excluded from the scope of open insurance framework? Are there any data sets you currently do not have access or do not have real-time access or where you have faced practical problems, but you consider this access could be beneficial? This could include both personal and non-personal data (eg IoT devices data, whether data, sustainability-related data, data on cyber incidents etc). Please explain your response providing granular examples of datasets.*

■ **Data sharing should focus on personal data controlled by consumers**

Data that is solely generic (ie data that a policyholder provided to the insurance company like date of birth, address, mobile phone number etc) and at the individual level (provided by a legal person, for only a legal person) could be covered by any possible future open insurance framework, provided that this is done in full compliance with all applicable data protection rules. The focus should therefore be on current context-relevant customer data.

The industry agrees with EIOPA, as mentioned on page 31 of the discussion paper, that open insurance must be based on the principle that the personal data supplied by and created on behalf of insurance service consumers is owned and controlled by those consumers. In a mandatory framework, data should not be accessed without the explicit consent of the consumer and there should be possibility for the data subject to withdraw consent and have their data erased.

Data which is linked to third parties in the context of liability insurance should not be made available for compulsory sharing since the company often does not have the consent of the third party or overriding legitimate interests.

■ **Access to data from other sectors**

It is important that there is a legal basis for insurers to have access, with consent from consumers, to data (eg IoT, black box, in-vehicle data from self-driving cars etc) from other sectors as mentioned in Case Study 5 of Annex 1. This would allow motor insurers to develop innovative insurance solutions for consumers and would introduce more competition in the market.

For insurers, a greater availability of data could lead to improved risk monitoring and assessment, better customer experience and increased fraud detection. The more data that is available for the common good, the better the digital solutions and analytical models will be. Enhanced access to public sector data sets would also therefore be beneficial for the insurance industry.

■ **Insurers should not be obliged to share proprietary data**

Insurers should not be obliged to share proprietary data that they have generated and analysed (eg internally modelled, enriched) themselves, and which is the outcome of their own work. This information is distinct from the personal information that belongs to the customer and is consequently captured by the GDPR data portability rules, which provide data subjects with the 'right to receive the personal data concerning him or her, which he or she has provided to a controller'. In contrast, proprietary data is a result of companies building risk profiles as well as underwriting & claims performance models. As such, it represents a competitive advantage and should be seen in the context of an insurer's portfolio, which differs from one insurer to another. Any work done in this regard (eg including any internal risk models, or data from such internal risk models) and any classification is individual and tailored to the insurance company and should not be under any requirement to be shared.

■ **Data should always be provided by the source of origin**

Insurers host a lot of data, collected from a variety of sources. Insurers often have limited licensing for this data and might not be legally able to share it or may have to incur significant additional costs to do so.

**Q22.** *In your opinion, which regulatory/licensing approach would be best for the development of sound open insurance framework (eg unlocking the benefits and mitigating possible risks)? Could an increased data sharing require revisions in the regulatory framework related to insurance data? Please explain your response.*

As explained in the response to Question 19, there are numerous on-going and planned initiatives at European level, not only in the context of data sharing but more broadly covering data governance and digital finance. It will be important to ensure consistency between all these new initiatives. At the same time, the regulatory framework in the insurance sector should continue to be activity-based (ie "same activities, same risks, same rules").

Further consideration and on-going dialogue is necessary in order to find an optimal and balanced solution for the market, but the starting point should be a step-by-step approach that looks at specific use cases to see where there could be a clear benefit for consumers: eg a possible specific framework for car telematics data.

However, without any doubt third party providers entering the market should be brought under the regulatory framework and if necessary be licensed.

**Q23.** *Could you provide information which helps to evaluate the cost of possible compulsory data sharing framework (eg based on your experience on PSD2 adoption)?*

While the industry does not have specific estimates of the costs of such a framework, Insurance Europe stresses the importance of having a balanced approach towards costs. There are potential benefits for society, for insurers and for consumers from an open data-sharing framework – however, it is essential to weigh these benefits up against the costs imposed. If a compulsory framework is pursued, it will be necessary to ensure that there is a fair cost allocation among the parties, so as to ensure that the insurance sector is incentivised to continue to invest into the infrastructure and not required to fund new infrastructure (and send customer data into it), which other players can profit from but not contribute towards.

**Q24.** *In the absence of any compulsory data sharing framework in insurance as it is currently the situation, how do you see the role of EIOPA and national supervisors to guarantee proper market oversight and consumer protection?*

EIOPA and national supervisors have an important role to play generally in ensuring continuous market monitoring, which will also be relevant for any open insurance solutions. Existing supervisory powers ensure effective market oversight, consumer protection and financial stability in the insurance sector, and these tools are also enhanced by digital and technological solutions.

By its very nature, any data sharing framework would likely also require close collaboration with relevant competition and data protection authorities.

It should also be stressed that regulation and supervision in the insurance sector should continue to be activity-based (ie “same activities, same rules”) to ensure that customers are effectively and equally protected both when they purchase their insurance products from established insurers and from new market entrants, whatever their business model. This means that the comprehensive EU consumer protection rules applicable to insurance activities and distribution, such as the Solvency II Directive, EIOPA’s ICT Security and Governance guidelines, the Insurance Distribution Directive, the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and the GDPR, as well as all their respective Level 2 and 3 measures, should apply equally to established insurers and new market entrants/start-ups/third-party providers, where they carry out the same activities.

**Q25.** *This Discussion Paper highlighted some of the ethical issues relevant to open insurance (eg price optimisation practices, financial exclusion, discrimination). Do you see additional ethical issues relevant in light of open insurance?*

Insurance Europe takes the view that the focus of any consent-based data sharing should always be on the consumer’s willingness to share their data. It is paramount that customers have full control over what data is shared and with whom, and that consent is provided in a free and informed manner.

Insurance data can also be highly personal in nature and include sensitive information regarding illnesses or other life situations, which could pose problems if it were to be leaked (either intentionally or by accident/as a result of an incident). As such, when evaluating the risk, not only the likelihood but also the consequence needs to be adequately weighted. Any data holder has to account for the possibility of data leaks.

**Q26.** *What functions and common standards are needed to support open insurance and how should they be developed? Please consider this both from self-regulatory angle and from possible compulsory data sharing angle.*

Open insurance data and its purpose must be clearly defined to provide recommendations for standards which best support the goals and purpose. Nevertheless, Insurance Europe wishes to stress that there are best practices in the markets that can be followed. The most important is that APIs for insurance data must be viewed as products from the insurers and not mere technical interfaces. They need lifecycle management, legal agreements and control of who has access.

In any potential open insurance framework, it will be important to develop standards to facilitate data sharing. The starting point for any data sharing should be market-led, based on a common taxonomy that is developed in close coordination with industry. In order to ensure these standards are well aligned with specific national and general industry standards and practices, Insurance Europe looks forward to being involved into this work going forward.

Standardisation of APIs would be a prerequisite for the opening of insurance data in order to facilitate data sharing. It is also important that data is retrievable in a structured format and allows for automated data feed and analysis. Data should therefore be made available in open, easily readable file formats (JSON, XML, CSV, txt). Both the format and interface chosen should consider the type of data that is being processed.

Wherever possible, open insurance should seek to build on existing standards and practices to accelerate the implementation process and reduce costs for industry.

Insurance Europe also wishes to stress the importance of considering the economic costs of developing and implementing any standards, which should not be underestimated as this will play a role in the overall success



of the framework and impact the scale of their adoption. It would be interesting to see what lessons have been learned with respect to PSD 2 in this aspect.

Another important consideration concerns the integrity of the data and the carrying out of quality control checks to ensure the validity of the information.

**Q28.** *Do you believe that open insurance only covering insurance-related data could create an un-level playing field for incumbent insurance undertakings vis-a-vis other entities such as BigTech firms? Please explain your response.*

Insurance Europe supports efforts towards fair data sharing in which the treatment of different players is based on a true level playing field and the principle of “same activity, same risk, same rules”.

The impact of an open insurance framework on incumbent insurers vis-a-vis BigTech very much depends on the exact design of the framework. In the industry’s view, ensuring a level playing field between different market players and avoiding disadvantaging incumbent providers should be a key consideration. With a market-driven, voluntary approach, insurance companies and other market participants are free to decide on their cooperation partners and keep their data sovereignty.

In contrast, developing a compulsory framework that would focus only on insurance-related data would undoubtedly give rise to an unlevel playing field. Other market participants that generate and collect non-financial data inherent to their business model (eg BigTech firms) but are not obliged to share it, or do not do so in an easily utilisable format, could develop unfair competitive advantages over incumbent insurance undertakings by combining financial data with non-financial user data, eg from social media platforms. If BigTech firms are allowed to utilise this much broader understanding of consumers and businesses compared to insurers, driven by their much more frequent interactions with consumers and ability to price discriminate based on behavioural data, they could offer new services and solutions (including insurance solutions) leaving incumbents at a competitive disadvantage.

This could allow BigTech firms to further consolidate their already dominant positions in the data market and further gain market share in financial services. These firms could use their market power when entering into partnerships or commercial agreements with certain financial service providers or provide them with favourable conditions to the detriment of their competitors. This could result in restricting the access to certain services by other financial service providers, or imposing unfair terms and conditions, eg requiring payments to be made only via their own platform.

Therefore, any open insurance framework that involves the mandatory sharing of insurance-related data must avoid the creation of an unlevel playing field for insurers vis-à-vis other firms.

**Q29.** *How do you see the market will develop in case the data sharing is extended to non-insurance/non-financial data? What are the biggest risks and opportunities?*

The insurance industry believes that increased access to data generated by other sectors (both public and private) provides potential for innovation and increased competition for the industry. It will allow the industry to introduce new data driven products and services with legal certainty at scale across Europe.

The ability to fully utilise large data sets is core to insurance in the development of customer centric innovative tailor-made products, deepening understanding of risks to the benefit of the customer and society, increasing product innovation and encouraging competition. Data is key for innovation, and new connected objects (IoT, eg



connected cars, connected house) is assumed to become a major source for both product and underwriting innovation for the industry.

At the same time, it is important to safeguard data ownership: data should be owned and controlled by the customer and not by, for example the car manufacturer. EU legislation must always ensure that the customer retains their data sovereignty.

**Q30.** *Do you have any comments on the case studies in Annex 1?*

As indicated in the response to Question 19, there could be merit in introducing a specific framework for IoT data sharing (eg car telematics data) in order to increase the legal certainty and create an appropriate framework for innovation in insurance. As EIOPA notes in Case Study 5, IoT data is a category of data that is important for the insurance industry, covering both the data insurers collect themselves (eg through black-boxes in vehicles), and also the data third collected by parties (eg self-driving car manufacturers). A specific framework could therefore be considered to address black box and in-vehicle data interoperability. This could make use of API standards and set out how the data should be accessible and interoperable between different insurers, black box providers and self-driving car manufacturers. Ensuring full portability of consumer-generated IoT data could provide benefits both for consumers and the industry, and facilitate the offering of new and innovative services.

**Q31.** *Are there any other comments you would like to convey on the topic? In particular, are there other relevant issues that are not covered by this Discussion Paper?*

■ **Purpose-led initiative**

Open insurance should also be seen through the lens of general market impact, competitiveness and long-term stability of the insurance industry. Regulatory initiatives should be driven from market failures or rooted in a clear and demonstrable benefit to consumers.

■ **Further issues with standardisation**

With regard to a European standardisation of data sharing, it should be noted that insurance products are generally not standardised across markets, but instead tailored to meet local market needs.

Motor third party liability insurance is regulated at EU level and thus standardised throughout all EU Member States. In its current proposal to amend the Motor Insurance Directive, the European Commission suggests that the Claims History Statement (CHS) should be standardised to allow insurers to accept it also in cross border situations.

However, European standardisation does not work when products are not regulated at EU level due to the lack of comparability. Such products vary considerably in different member states, as they are dependent on national laws. Life insurance products for example are dependent on the national social and labour laws of the markets in which the products are offered. Furthermore, local taxation conditions have to be taken into account. Health insurance is an area of member state competence. The specific role and tasks of private health insurers are therefore intrinsically linked to the national health system (such as the availability of social care services locally and the medical infrastructure). Furthermore, liability insurance is closely tied to national and regional liability legislation (rules of causation, proof of loss and liability determination) and professional association requirements, as well as cost-related factors surrounding personal compensation (cost of medical procedures for injury or loss of income due to disability caused by an accident). In legal expenses insurance, national legislation on legal costs, such as lawyers' fees, differ. Property insurance faces similar factors. In addition to civil law and

insurance contract law other rules, such as building regulations, have to be followed. In building insurance, geological (earthquake, land subsidence), meteorological (storm, hail) and technical risks (fire, leakage) need to be taken into account. Factors include preventive risk factors, loss prevention measures, vulnerability of different building materials, firefighting. In claims settlement, crucial factors are local standards, as well as laws and regulations for construction or ecological modernisation. Therefore, for all these products standardised data sharing would be challenging.

■ **Miscellaneous aspects not fully elaborated in the discussion paper:**

- When discussing the opening up of insurance data, there is a need to clearly define the related security and privacy guidelines, such as identity and access management aspects. It would not be possible for the insurance industry to utilise or protect its data, if it does not know who has access to it.
- In some member states, there are insurance plans based on collective agreements between labour market participants, which provide financial support in the event of incapacity for work due to sickness, work injury, shortage of work, death and parental leave. In these insurance plans, where the collective agreements are signed by the employer, but the coverage is for the employee, the individual customer is not always known. This creates challenges when it comes to sharing customer data, including the possibility of securing consent for the sharing of data.

Insurance Europe looks forward to continuing to discuss these challenging topics as part of an on-going dialogue on open insurance with EIOPA in order to find an optimal and balanced solution for the insurance sector.

*Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies – the national insurance associations – it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe’s economic growth and development. European insurers pay out almost €1 000bn annually – or €2.7bn a day – in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.*