

Response to the consultation on EIOPA Supervisory Statement on exclusions in insurance products related to risks arising from systemic events

Our reference:	COB-DIS-22-112	Date:	15 July 2022
Referring to:	Consultation on EIOPA Supervisory statement on exclusions in insurance products related to risks arising from systemic events		
Related documents:	Supervisory statement on exclusions in insurance products related to risks arising from systemic events		
Contact person:	Francesca Bertolo, Emma Coles Senior policy advisor, Conduct of business	E-mail:	bertolo@insuranceeurope.eu coles@insuranceeurope.eu
Pages:	15	Transparency Register ID no.:	33213703459-54

Questions to stakeholders

Q1: *Stakeholders' views on the treatment of exclusions on risks relating to systemic events are sought. In particular, do stakeholders agree on the possible risks identified for consumers and insurance undertakings?*

Insurance Europe agrees that clear communication is key to building a solid and long-lasting relationship with customers. It is not in the interests of insurers to undermine consumers' trust or to pave the way for litigation.

The Insurance Distribution Directive (IDD) framework, including product oversight and governance (POG) and the Insurance Product Information Document (IPID), already provides a solid basis for addressing consumers' demands and needs, while ensuring that insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.

Moreover, European insurers have taken many initiatives across the EU to enhance the protection of consumers and ensure that they are properly informed and treated fairly.

More specifically, due to COVID-19 and the invasion of Ukraine, efforts have already been made by the insurance sector within the limits imposed by legal and regulatory requirements.

As recognised by EIOPA, there are limits to what can be insured. Moreover, Insurance Europe would like to emphasise the current differences in markets in terms of, insurance cover, national preparedness and responses to extreme events, which require a flexible and proportionate supervisory approach. Furthermore, extreme events can have a non-linear evolution, so it takes time to fully understand their impacts.

If a risk becomes uninsurable, it is natural that insurers need to revise their products' coverage and exclusions. This is a necessary measure that does not undermine the value of the insurance protection that can still be provided against risks arising in everyday life.

Q2: Stakeholders' views on the treatment of exclusions in the POG process are sought.

An overly bureaucratic approach should be avoided: the POG provisions are intended to be applied proportionately, and existing POG rules already require the consideration of exclusions where relevant.

The POG process is also only one part of a comprehensive legal framework that already includes requirements on general terms and conditions — based on Directive 93/13/EEC on unfair terms in consumer contracts (last amended by Directive (EU) 2019/2161). If disagreements should nevertheless arise, out-of-court complaints systems with the supervisory authority and the insurance ombudsman can provide simple options to resolve conflicts.

There are also exchanges with the national supervisory authority. These are actively pursued if risks are identified by the supervisory authority, consumer advocates, insurance associations or the insurance companies themselves.

Exclusions, including those for systemic events, are also part of an insurer's risk assessment process. It is up to the insurer to determine the financial viability of its products based on the requirements of Solvency II. It is important to bear in mind that this process is not part of product governance in the IDD. Existing regulation already takes into account these aspects when they are relevant. In its opinion 17/048, EIOPA states that the "Product oversight and governance arrangements are without prejudice to basic principles in insurance, in particular the principles of solidarity, mathematical methods and risk pooling. The interests of customers that need to be taken into account when designing products following the product oversight and governance arrangements, comprise individual and collective policyholder interests which need to be duly balanced".

Q3: Stakeholders' views on how to ensure clarity on exclusions are sought. In particular, in relation to how to ensure a balance between providing an exhaustive list of exclusions versus making the terms and conditions overly complex.

The information summarised in the IPID and marketing materials, which are already regulated under the IDD, is complemented by more detailed contractual documents. Such contractual documents are subject to the contract law of the different jurisdictions and might necessarily include more technical language and longer explanations to avoid legal uncertainty.

As noted in the answer to Q2, the clarity of the information provided to customers on exclusions is already protected by the comprehensive requirements of the law governing general terms and conditions. In addition, insurers themselves have an interest in achieving an appropriate balance between comprehension and comprehensiveness and thus attention is always paid to comprehensible wording — in each case tailored to the specific set of terms and conditions.

Q4: Stakeholders views are also sought on how to ensure balanced approach that takes in consideration that providing all exclusions may not be possible whilst not mis-lead consumers to believe some risks are excluded (i.e., the ones mentioned in the example) and others are not (i.e., the one not mentioned).

Overall, Insurance Europe believes that the IPID works well in practice as it is a consumer-friendly document with clear headings and easy icons. This is also underlined by Prof. Marano in an interview in EIOPA's "Report on the application of the IDD" (p.8), where he mentions that "the introduction of the IPID has enabled the customer to make more informed decisions."

The IPID is meant to summarise the main covers and exclusions, and it clearly states that complete pre-contractual and contractual information on the product is provided in other documents.

Exclusions of individual risks have always existed. Although EIOPA recognises that there are limits to what can be insured, the draft Supervisory Statement refers exclusively to the protection of the individual perspective of the person who inquires about an insurance contract and encounters gaps in coverage. As drafted, it fails to recognise that exclusions are by no means arbitrary, but are rather incalculable risks, which cannot be taken on by the insurer solely for the protection of insured persons collectively.

Even if, over time, it becomes clear that a risk that was insured is no longer insurable, there must be an appropriate response. This is likely to be a revision of the coverage and exclusions of a product. This does not undermine the value of the insurance cover that can still be provided against everyday risks.

Exclusions are a normal part of any product and do not automatically result in consumer detriment. Without exclusions, private property lines, for example, would be uninsurable under Solvency II or would lead to an extreme increase in premiums, which would lead to a sharp drop in market penetration.

Q5: *Stakeholders view on how to ensure a balanced and consumer centric product review when a risk becomes uninsurable because of a systemic event are sought.*

The inclusion of "systemic events" as part of ongoing product reviews is common, necessary and provided for in existing POG provisions. When a risk is no longer insurable, or when a systemic event makes it clear that a risk is no longer insurable, the appropriate insurer action is to discontinue coverage for that risk.

Existing POG rules already provide for the inclusion of systemic events in the review, but explicit mention in the Supervisory Statement may also be helpful.

What is important is that the objectives of the Supervisory Statement remain clear. It cannot become an instrument that dictates which risks should or should not be excluded through overly onerous prescriptions of product reviews and revisions of coverage.

Q6: *Do you agree with the proposed EIOPA approach to the assessment of the treatment of exclusions on systemic events in insurance contracts?*

Insurance Europe agrees that national competent authorities (NCAs) and insurance providers should assess the terms and conditions of existing insurance products in the light of COVID-19, the Russian invasion of Ukraine and extreme events, and take remedial actions where needed (eg, review disclosures, review exclusions if a risk becomes uninsurable, enhance communication mechanisms and/or review the distribution strategy).

The value of explicitly requiring each stage of the process to consider systemic events is unclear, as the existing POG rules already require their inclusion where relevant. In terms of the cost-effectiveness of the new provisions, the following aspects should be considered:

- The definition of risks arising from systemic events is not clear. As it stands, the definition used in the consultation paper is too broad and could encompass any extreme event, regardless of its scale or impact on retail insurance products. It could also create confusion with the more common expression "systemic risk". No practical examples are provided by EIOPA using real-case scenarios. EIOPA could consider a different wording, such as "system-wide events, characterised by their exceptional nature, very broad scope and very serious adverse impacts".
- It is not clear how the POG proportionality principle would apply in practice, since all insurance products seem to be included in the scope without differentiation.
- A multiplication of guidance on POG leads to higher complexity, compliance efforts and costs, while the POG principles are already sufficient. Such layered guidance will not necessarily serve EIOPA's purpose.
- A proper understanding of the direct and indirect impacts of extreme events, and the assessment of the value for money of a product, requires a sufficiently long period of observation.

Q7: Do you agree with the policy option chosen by EIOPA (Annex I)?

There is already an abundance of rules, guidance and statements on POG all contained in different documents. It is also not clear what the relationship between this POG Supervisory Statement and those already produced in response to COVID-19 would be.

The current approach could centre attention on extreme events, which by their nature are rare and often not the most relevant consideration for customers.

Q8: Do you agree with the analysis of costs and benefits (Annex I)?

The costs of implementing changes to the POG process should not be underestimated. This involves changes to internal processes that involve a large number of internal functions.

Changes to customer communications are also costly and difficult to implement.

As explained in the previous answers, there is limited benefit to supplementing existing systems for the handling of exclusions. In this respect, options 2 and 3 listed in Annex I by EIOPA do not necessarily represent benefits that would justify the implementation costs, especially if the scope and expectations are not clearly defined.

Context and objective

2.1. *Pandemics, climate change or large cyber-attacks are examples of systemic events. These are defined¹ as severe events which cause broad-based disruptions, significant adverse effects to public health or safety, to the economy or to national security. In the wake of such events, other financial risks develop as a result of increasing insolvencies or vulnerabilities, making society prone to suffer from indirect impacts as well direct ones, further increasing vulnerability and ultimately resulting in a loss of trust from consumers and capital.*

The Supervisory Statement can only be applicable and work in practice if the scope is clear, so NCAs have a clear understanding of what they need to monitor.

As it stands, the definition used by EIOPA of "systemic event" is too broad and can encompass pretty much anything: pandemics; climate change; large cyber attacks; natural catastrophes; negative developments in the financial sector; terrorism; global supply-chain disruptions; or any extreme events at both local or global level (eg, even the 2011 floods in Thailand since, while local, they caused a shortage of computer parts in the rest of the world).

The reference to climate change as a systemic event does not seem appropriate. Climate change could be referred to as a possible source of systemic events (like natural catastrophes) rather than as an example of a systemic event itself.

The term "systemic risk" can be overused in the context of insurance, as the term originated in the financial crisis to describe the interconnected nature of banks and the fact that a run on one bank was likely to spread to another. On the contrary, the insurance industry itself does not represent a potential source of the "systemic" events addressed by this EIOPA consultation. Therefore, the use of the term "systemic" could be misleading.

¹ EIOPA staff paper on measures to improve the insurability of business interruption in light of pandemics, 12 February 2021. Available at: EIOPA publications. This followed the publication of Issues paper on shared resilience solutions for pandemic risks, 27 July 2020 and EIOPA engagement of further technical analysis, in exchange with European Commission and industry representatives.

In order to be clearer and more effective, the EIOPA's final Supervisory Statement should focus on system-wide events, characterised by an exceptional nature, very broad scope and very serious adverse impacts. This would be more coherent with the objective of addressing the concerns identified by EIOPA in the context of the COVID-19 pandemic and the Russian invasion of Ukraine.

2.2. *Following these events, there is an increasing risk that insurance products may become unaffordable, or unavailable for these events. There is also a risk that products which may have had originally covered these events and/or which may have been silent in relation to coverage for these events may explicitly exclude them.*

The best way to limit risks, including risks of a potentially systemic nature, is by increasing resilience. The industry can also play its part through its traditional risk-transfer role (within appropriate limits), and here increasing the insurability of the risk should be a priority going forward. However, it should be borne in mind that insurers' capacity to underwrite risks is by definition limited to the availability of funds backing the risks assumed.

EIOPA should carefully assess the costs/benefits of this Supervisory Statement if the following aspects are not reviewed:

- A definition of "systemic events" that is too broad.
- A definition of the target market that is too granular.
- Excessive expectations in terms of the consumer tests to be performed by product providers
- The need to review products' POG and disclosures too frequently if any market development or local event could be interpreted as "systemic".

With specific reference to disclosures, it is not the role and responsibility of insurers to carry out consumer testing on product disclosures, as this would require costly investments and very specific expertise. Besides, consumer testing at company level would come far too late in the process: insurers develop pre-contractual disclosures in compliance with EU legislation and local requirements, and they cannot fix elements that are prescribed in the legislative texts.

When considering further interventions on disclosures, prior to any legislative action, the EU institutions need to perform consumer testing on a broad and diverse sample of consumers in different markets, technical testing on all the products in scope and a careful impact assessment.

2.3. *For example, the COVID-19 pandemic crisis unveiled issues in relation to clarity and possible protection gaps for non-damage business interruption insurance coverage and travel insurance coverage. Climate change heightens the risk of an increase in the current insurance protection gap for natural catastrophes. The current invasion of Ukraine by Russian forces, which increases the risk of cyberattacks, also highlights the risks that cyber protection gaps may increase as cyber risks may become unaffordable or uninsurable.*

Risk monitoring is an essential part of insurance business, and insurers are constantly investing in research into new risks, but there are limits to what can be insured, especially in global, interconnected markets.

Beyond risk monitoring by insurers, state interventions in terms of risk mitigation and prevention in specific areas related to systemic events (eg, climate change, pandemic crises) is key. Public-private partnerships can also be important to build up resilience to certain risks.

The statement makes specific reference to travel insurance, however it should be noted that insurance coverage varies across European markets. The scope of insurance cover against pandemic risks varies in typical travel insurance lines. The market is developing very dynamically and offers additional packages depending on the desired cover. This also applies to the question of whether the risks of the pandemic are insured. Regardless of this, unexpected serious illnesses are insured.

2.4. *Beyond the above considerations, these systemic events also underlined increasing consumer detriment in light of ambiguous contractual terms and lack of clarity on whether losses arising from such events are covered leading to disputes between policyholders and insurance undertakings, reputational risks for the sector and significant losses for all parties involved. With the aim to limit disputes and to avoid losses due to ambiguous contractual terms when such events materialise insurers review of their terms and conditions may not be carried out in accordance with product oversight and governance (POG)² process, which would ensure that consumers' interests and needs are balanced vis-à-vis other business needs and considerations.*

Commission Delegated Regulation (EU) 2017/2358 is sufficiently comprehensive and clear.

Furthermore, in a call to action issued on 1 April ([link](#)), EIOPA urged insurers to take into account the impact of COVID-19 when applying the POG requirements. It also recommended carrying out product reviews to assess the impact of COVID-19 and to see whether the products remain consistent with the needs, characteristics and objectives of the target market and, if not, to take relevant measures.

Given the differences in markets in terms of insurance cover, national preparedness and responses to extreme events and the non-linear evolution that a crisis can have, Insurance Europe believes that the value of a product should be assessed over its lifetime and not at a specific point in time and based on a limited period of experience.

The changing environment should be considered, as well as the financial situation of the individual company and any goodwill initiatives it may have already undertaken. This broader view is also reflected in the EIOPA statement on POG of 8 July ([link](#)).

Insurers have made great efforts to create clearly understandable and concise terms and conditions in line with the rules of Directive 93/13/EEC on unfair terms in consumer contracts. These will be supplemented by the more concise product information in the IPID.

2.5. *This creates an expectation gap which can be significantly detrimental to consumers and indirectly to the sector at large in view of reputational impacts and political exposure.*

Insurance Europe agrees that consumer satisfaction is key. That is the reason why, when considering further interventions on disclosures, prior to any legislative action, EU institutions need to perform consumer testing on a broad and diverse sample of consumers in different markets, technical testing on all the products in scope and a careful impact assessment.

Insurance is not a universal right to unlimited compensation. Against the background of the requirements of the Solvency II Directive — namely to ensure the financial stability of insurance companies in order to protect customers — risk-based calculations and risk exclusions are necessary. Without them, many risks would be uninsurable, or insurers would become insolvent after major events.

2.6. *Clear communication and disclosure to potential policyholders on the scope of the coverage and level of protection offered by insurance policies is crucial, in order to avoid a mis-match between policyholders' expectations and actual coverage provided.*

Insurance Europe agrees that clear communication is important.

The IDD IPID provides a good basis for communication with customers but should not be confused with a full terms and conditions document.

² Article 25(1) of the Directive 2016/97/EU (Insurance Distribution Directive – IDD)

A lot of work has been carried out by the industry over recent years on ensuring clarity of contracts. Supervisors should focus on clarity and consumer understanding rather than expecting exhaustive lists covering all possible eventualities.

2.7. *While the key issues in relation to exclusions vary across lines of business, National Competent Authorities (NCAs) observed the following:*

- Product complexity and unclear policy wording in insurance contracts magnify uncertainty over the insurance coverage and increase consumer complaints and legal disputes. For instance, during the pandemic it has been observed that product complexity and unclear policy wording has generally led to a number of complaints, often resulting in court disputes. This not only generated uncertainties for insurance undertakings but also led to consumer detriment. A sample-based study carried out by EIOPA on travel insurance shows that the pandemic has also had a negative effect on how consumers perceive insurance.

-Following systemic events, manufacturers often review existing products to clarify wording on exclusions or to include new exclusions. Issues may arise in the disclosure of these changes to policyholders and consumers' understanding of the coverage provided. Concerns also exist in relation to adequate and sufficient application of POG either as to whether the product review process has been followed or as to whether these changes constitute significant adaptations. In case of insurers reviewing products or including new exclusion to limit their losses, the lack of a proper POG process could result in insurers disregarding possible detriment for consumers.

- New products being advertised as offering protection for systemic risk but issues with consumers' expectations have been identified. Consumers often rely on advertising practices and marketing material which clearly state that the relevant event is covered, without fully assessing what is covered or not (e.g. for COVID-19 issues have been observed in relation to products which generally advertise covering this risk whilst in practice only covering hospitalisation and not covering other expenses such as forced quarantines or cancellations).

CDR (EU) 2017/2358 is sufficiently comprehensive and clear. A multiplication of guidance on POG leads to higher complexity, compliance efforts and costs, while the POG principles are already sufficient.

A regular review of existing products — independent of systemic events — is already provided by the POG process. This is taken very seriously by insurers and is adhered to. If new exclusions are added, this is because the risk is not calculable and it is to protect insured persons collectively.

In the second bullet point, the review of policy wording around exclusions following systemic events is presented in a negative way, highlighting a potential detriment to consumers due to this review. However, one of the main messages of this Supervisory Statement is the expectation that insurance providers take the necessary measures to address the lack of clarity for policyholders, applying the lessons learnt after a systemic event (such as COVID-19).

The NCAs' observations confirm that many insurers have already applied the recommendations in paragraphs 3.2 and 3.3. These paragraphs should be redrafted in order to acknowledge the review of policy wording on exclusions as a good practice.

The IPID and other pre-contractual documents contain information on the coverage of the insurance product concerned. This notwithstanding, specific legislation is already in place at national and EU level (including 2005/29/EC on unfair business-to-consumer commercial practices) that prevents misleading advertising.

EIOPA and National Competent Authorities (NCAs) work

2.8. *EIOPA's and NCAs' market monitoring activities have explored the treatment of pandemic exclusions. As a consequence, Union-wide Strategic Supervisory Priorities (USSPs) for 2021-2023 identified issues in relation to exclusions from insurance coverage as an area of strategic priority.*

N/A

2.9. *The aim of this Supervisory Statement is to promote supervisory convergence in the approach by NCAs on the treatment of exclusions of risks arising from systemic events in insurance contracts from a consumer protection and conduct perspective. This Supervisory Statement is of general application and also covers issues, inter alia, identified in the COVID-19 pandemic and issues which could emerge in relation to the current invasion of Ukraine by Russian forces.*

To be as useful as possible and to limit confusion, the scope of the Supervisory Statement should be more clearly defined. Many of the suggested supervisory approaches could be equally applicable to POG processes or disclosures more generally.

In addition, at times the statement seems to seek to include all exclusions, not just those related to "systemic events".

The focus should only be on those areas in which there is a specific need for guidance on the approach to systemic risk and should not seek to make more general comments on the supervision of product exclusions.

Supervisory expectations

3.1. *In light of the market monitoring duties and POG requirements under the IDD, EIOPA recommends NCAs to dedicate higher attention, where appropriate, to insurance manufacturers' assessment of the terms and conditions of their existing insurance products, to the extent such products have been impacted by the COVID-19 pandemic, the current invasion of Ukraine or other systemic events such as natural catastrophes. The aim of this assessment should be to assess whether the applicable exclusions from coverage are clear, and contract clarity is ensured for policyholders, taking into account the target market's characteristics and level of understanding of insurance products.*

Based on Article 5 of Commission Delegated Regulation (EU) 2017/2358, providers shall only design and market insurance products that are compatible with the needs, characteristics and objectives of the customers in the target market. When assessing whether an insurance product is compatible with a target market, providers should take into account the level of information available to the customers in that target market and their financial literacy.

To be as useful as possible and to limit confusion, the scope and the objectives of the Supervisory Statement should be clearly defined.

Beyond any regulatory requirements and their supervisory monitoring, financial literacy is vital to enable the public to understand the principles of insurability and the critical role of exclusions in insurance. It should be understood that exclusions are not "bad" *per se*, but a tool for insurers to properly manage the risks assumed that permits them to deliver cost-efficient products to consumers.

3.2. *In cases where issues have been identified, insurance manufacturers are expected to take the necessary measures to address the lack of clarity for policyholders.*

N/A

3.3. *Moreover, if the risk arising from a systemic event, becomes uninsurable or there is limited clarity as to whether the risk is covered or not, insurance manufacturers are expected to make an assessment of the terms and conditions and of the scope of coverage taking into account the needs, objectives and characteristics of the identified target market. If the assessment shows that coverage is unclear and/or because the event has become uninsurable they need to revise coverage, they should follow the steps outlined below.*

N/A

Communication with consumers in general

3.4. *Consumers should benefit from the same level of protection and clarity in the insurance contract irrespective of distribution channels.*

Sufficient consumer protection — online and offline — is already ensured by the IDD, which applies regardless of the distribution channel.

3.5. *Notwithstanding national civil and insurance contract laws, insurance distributors are expected to communicate with existing or potential policyholders in a clear manner and avoid misleading information regarding the actual cover provided³.*

Article 17 of IDD already obliges distributors to ensure that all information, including marketing communications, addressed to customers or potential customers is fair, clear and not misleading.

This is also ensured by the legal requirements on general terms and conditions (see Q2).

3.6. *When drafting exclusions insurance manufacturers should avoid vague terms or complex wording that consumers might not understand. Vague wording like "full coverage", "complete coverage" or "similar events" can be misleading given there is no common understanding on what it is actually included in the coverage and/or how could events be associated with one another and this could result into a mis-match between consumers' expectations and the actual coverage provided.*

The expressions "full coverage" and/or "complete coverage" could be misleading in some instances. However, sometimes it might be necessary to refer to "similar events", simply because it is not possible to provide an exhaustive list covering all variants and combinations of circumstances.

Clarity is also ensured by the legal requirements on general terms and conditions (see Q2).

³ Article 17(2) of the Directive 2016/97/EU (Insurance Distribution Directive – IDD)

3.7. *When selling insurance products, insurance distributors should ensure they adequately and sufficiently assess the product's exclusions vis-à-vis consumers' demands and needs.*

The existing POG rules are already sufficient for considering exclusions, where relevant, and already contain specifications for the determination of the target market. Moreover, there is already an abundance of rules, guidance and statements on POG, all contained in different documents.

In addition, it should be taken into account that exclusions are based on the lack of calculability of risks and are therefore not arbitrary but serve to protect insured persons collectively.

3.8. *Exclusions in insurance policies should be clear so that consumers can understand whether coverage for a risk arising from a systemic event is provided in their insurance product. In case that insurance manufacturers and insurance distributors list one or more events to exemplify exclusions related to systemic events, they should list a reasonable number of events that were foreseeable of being excluded when the latest version of terms and conditions was drafted. Each example of event should be pertinent to the identified target market rather than general in nature and the number of examples used should ensure that consumers clearly understand the scope of the exclusion (for instance, avoid listing some examples of systemic events that could suggest that others are covered when they are not).*

In general, the drafting of this paragraph is unclear and leads to more questions than it answers. It is not clear to which document this refers.

In any case, the reference to the target market seems unnecessary. The identified target market might be irrelevant to the pertinence of the examples. The text could instead refer to the expectation that examples are pertinent to the characteristics of the product.

Furthermore, it should be considered that examples provide a way to clarify exclusions but this is always accompanied by legal uncertainty as to what effect this will have for cases that are not explicitly listed as examples.

Finding the right balance between simple information to customers and more and more refined clarity on exclusions can be very difficult if insurers are expected to be able to include clarity on remote scenarios upfront. To some extent, it is difficult to predict all future developments. The example of the pandemic shows that we are learning by experience. Based on this real-life experience, policy terms can be adapted.

3.9. *Insurance manufacturers and insurance distributors should also clearly state if the scope and the type of coverage provided relates to direct and/or indirect losses caused by systemic events.*

N/A

3.10. *Where relevant, manufactures should pay special attention to insurance product information document (IPID) with a particular focus on "What is insured?" and "What is not insured?" sections. Language should be plain and jargon should be avoided, facilitating the customer's understanding of the content of that document and shall focus on key information which the customer needs to make an informed decision. Icons should be compliant with legal requirement and should not mislead⁴.*

Insurance Europe agrees that the use of the IPID is important in supporting consumer understanding. The IPID is meant to summarise the main covers and exclusions, and it clearly states that complete pre-contractual and

⁴ Commission implementing Regulation (EU) 2017/1469 of 11 August 2017 laying down a standardised presentation format for the insurance product information documents. Available at: https://eur-lex.europa.eu/eli/reg_impl/2017/1469/oj

contractual information about the product is provided in other documents. Exclusions related to systemic events may be less relevant than other exclusions; therefore, exclusions related to systemic events should not necessarily be included in the summary of exclusions presented in the IPID.

3.11. *In any case, insurance product manufacturers should consider that the burden of proof regarding the existence of the exclusion to the coverage, may often rest with the insurance undertaking, unless insurance contract law states otherwise.*

This paragraph should be deleted. There is no legal basis in the IDD framework to explicitly put the burden of proof on the product manufacturer. The rules regarding the interpretation of contracts are more a matter of national contract law.

The treatment of systemic exclusions in the POG process when new products are developed

3.12. *Product development processes should ensure the target market's needs, objectives and characteristics are sufficiently taken into account and exclusions-related aspects should be properly dealt with from the product design phase onwards and not solely at the point of sale or claim stage.*

N/A

3.13. When developing new products, insurance manufacturers are expected to comply with the POG requirements before bringing them to the market. In particular, they should:

a) Take exclusions into account in the identification and definition of the target market for the product, including negative target market (if relevant). Exclusions in the product should be assessed against the target market characteristics and needs. The granularity of the target market should be proportional to the detail of the main exclusions. For example, if damages from flooding events are excluded for people living in lower floors the floor in which people live in should be considered an element of the target market.

b) Test the exclusions vis-à-vis the target market's needs, objectives and characteristics. They should assess whether in light of the exclusions the product remains aligned with the target market's needs, objectives and characteristics – i.e., it brings value to the target market.

c) Test product disclosures to ensure that consumers make well-informed decisions in light of a clear understanding of the exclusions. Manufacturers should ensure products are comprehensible allowing consumers to understand what they are covered for. Insights related to consumers' behaviour should be part of the product design process. Manufacturers are expected to test whether the presentation of exclusions in the consumer journey do not induce them to purchase the product without being aware of what it is not covered, in particular they should test whether the way in which exclusions are presented could lead to an expectation gap and if so review the product disclosures or the target market.

d) Ensure that the selected distribution strategy takes into account any aspects emerging from the testing as to how products and information should be delivered to consumers to ensure they take exclusions into account. When testing products, manufacturers should assess whether different distribution channels could lead to differences in the nature of consumers' engagement with and understanding of exclusions in the delivery phase (i.e. face-to-face sales, online distribution). This should be reflected in the distribution strategy. Manufacturers are also expected to ensure that distributors are sufficiently able to deliver clear information to consumers on exclusions.

e) Implement monitoring activities to detect consumer detriment in relation to exclusions which may lead to ad hoc review. This could include detriment emerging from product features, changes to the risk profile of the target market, communications to consumers or misalignments with the distribution strategy. Manufacturers are expected to monitor indicators which could support the detection of issues with exclusions

such as claims ratios, claims rejection rates and reasons, consumers' questions or doubts at the pre-contractual and post-sale phase, consumers' complaints, etc. to identify possible detriment for consumers.

f) Ensure that the intervals of review enable a timely identification of potential negative effects on consumers in the target market arising from exclusions. *The level of complexity and as a result of the granularity of exclusions and the type of events covered/excluded should be considered when determining the frequency of reviews.*

It is not clear why this refers to all exclusions, not just "systemic events".

The requirement for the granularity of the target market to be proportional to the detail of the main exclusions seems too burdensome and unnecessary. Depending on the characteristics of the product, certain exclusions may be relevant for the purpose of target market identification but that will not be always the case. A less prescriptive wording of this paragraph (paragraph a, in particular, would be welcome.

It should be acknowledged that, while efforts during the product design phase may be helpful, a demands and needs assessment at the point of sale is the best way to understand whether a particular exclusion is relevant.

To be as useful as possible and to limit confusion, the scope of the Supervisory Statement should be more clearly defined. Many of the suggested supervisory approaches could be equally applicable to POG processes or disclosures more generally.

In addition, at times the statement seems to seek to include all exclusions, not just those related to "systemic events".

The focus should only be on those areas in which there is a specific need for guidance on the approach to systemic risk and should not seek to make more general comments on the supervision of product exclusions.

3.14. *Treatment of exclusions applicable to systemic events in the POG process when terms and conditions need to be clarified and/or when a risk becomes uninsurable. Manufacturers may review exclusions due to lack of clarity in the contractual conditions or following the identification of risks that may become uninsurable due to systemic events.*

To be as useful as possible and to limit confusion, the scope of the Supervisory Statement should be more clearly defined. The focus should only be on those areas in which there is a specific need for guidance on the approach to systemic risk and should not seek to make more general comments on the supervision of product exclusions.

3.15. *When manufacturers are reviewing existing products that were manufactured and/or commercialised before the effective date of transposition measures of the IDD that is the 1 October 2018⁵, they should assess whether the changes represent a significant adaptation.*

N/A

⁵ [1] European Commission answer on a Q&A on significant adaptation of an existing product under (EU) No 2016/97 - Insurance Distribution Directive 2266 | Eiopa (europa.eu). European Commission answer on a Q&A on product testing and review for existing products under (EU) No 2016/97 - Insurance Distribution Directive 2267 | Eiopa (europa.eu)

3.16. *In case of significant adaptation of the product, manufacturers are expected to follow the POG process and undertake an evaluation of:*

a) The degree of impact caused by the changes to exclusions in order to ensure a balance between the need to limit their losses and the need for the product to be aligned with the target market needs, objectives and characteristics regardless of whether the definition of the target market emerges from the significant adaptation or at a previous stage.

b) Whether the adaptation of the insurance product changes the suitability and comprehensibility of the product for the target market and whether the target market and communication to policyholders including the IPID needs to be reviewed as well.

c) Whether the distribution strategy is consistent with the changes to the insurance product.

d) The impact that the changes to the product could have on the level of the distributor's knowledge of the product features and the appropriateness of the respective interaction with consumers. Manufacturers are expected to:

- Assess whether revised product disclosures and information provided to distributors are clear, complete, and up to date; and

- Communicate the changes implemented to distributors in a timely and clear manner to ensure that distributors understands the changes made to the products.

In case manufacturers identify a substantial impact on distributors' understanding and knowledge of the product characteristics enhanced mechanism of communication is expected.

N/A

3.17. *All expectations in the previous item are equally applicable to changes on exclusions relating to products manufactured and/or commercialised since 1 October 2018. The above elements should be taken into account in the product review process and where relevant manufacturers should put in place enhanced monitoring and review to ensure the early detection of consumer detriment emerging from changes to terms and conditions and the potential misalignment between the protection offered and the target market's needs and characteristics.*

N/A

Supervision of POG process as regards to the treatment of systemic exclusions

3.18. *NCA's should monitor their market from a risk-based perspective to ascertain that insurance product manufacturers comply with POG requirements. If issues pertaining to systemic events-related exclusions have been identified (i.e. increase of court cases on policy clauses for similar insurance products, uncertainty about the effective cover of unexpected events materialising for a high number of individuals and/or the level of cover of such event, etc.) NCA's should evaluate the impact and, where relevant, monitor whether insurance manufacturers have sufficiently assessed and tested their policy coverage limitations and exclusions against the target market characteristics and needs, and whether insurance manufacturers have the necessary processes in place to ensure that exclusions-related issues are identified timely.*

The expression "systemic exclusions" should be avoided. "Exclusions related to system-wide events, of an exceptional nature, very broad scope and very serious adverse impacts" seems more appropriate.

To be as useful as possible and to limit confusion, the scope of the Supervisory Statement should be more clearly defined. Many of the suggested supervisory approaches could be equally applicable to POG processes or disclosures more generally.

In addition, at times the statement seems to seek to include all exclusions, not just those related to "systemic events".

The focus should only be on those areas in which there is a specific need for guidance on the approach to systemic risk and should not seek to make more general comments on the supervision of product exclusions.

3.19. *In the event of suspicion of systemic events and considering the data available, supervisory authorities should carry out an enhanced monitoring of low claim acceptance rate if relevant from a risk-based perspective, to explore whether such systemic events are triggering the refusal of cover on the basis of exclusions.*

It is not clear what is meant by "suspicion of systemic events".

3.20. *As relevant and following the materialisation of systemic events, supervisory authorities should monitor, in a risk-based manner, low claims acceptance rates so as to engage with insurance product manufacturers and assess whether exclusions are driving such low ratios. If so, supervisory authorities should assess whether low claim acceptance rates result from either poor wording which may have led consumers to believe a risk was covered.*

It is not clear what is meant by "risk-based manner".

3.21. *NCA should evaluate, if relevant, how insurance manufacturers consider exclusions-related aspects in their distribution strategy and communication to intermediaries.*

This is a sensible application of existing POG rules but seems to go beyond the scope of this Statement and applies to all exclusions.

3.22. *Where issues have been identified in relation to exclusions and / or lack of clarity in coverage, NCAs should take actions to address them, as relevant and appropriate considering their powers and legal tools as well as national insurance contract law.*

This is a sensible application of existing POG rules but seems to go beyond the scope of this Statement and applies to all exclusions.

Additional comments

Unfortunately, a more detailed assessment is not possible due to the short time available. Four weeks is insufficient to give the issues in this Statement due consideration.

In order to improve consumers' awareness and understanding of possible exclusions applicable to systemic events, supervisors could also contribute by providing guidance to consumers (as EIOPA did during the COVID-19 outbreak)⁶.

With respect to uninsurable or potentially uninsurable risks, the role of governments and public authorities becomes more prominent as a safety net of last resort for citizens. Insurers can still contribute with their technical knowledge and risk management expertise. Public-private partnerships can also be important for building up resilience to certain risks.

The consultation paper refers to systemic risks that are predominantly business-to-business risks — such as business interruption — and are not consumer-related. The interpretation of risk exclusions is subject to national jurisprudence and, in many cases, courts have not yet taken a decision.

Learning from experience, insurers strive to improve their services, so that they remain consumers' preferred choice in a competitive and fast-changing world. European insurers have taken many initiatives across the EU to enhance the protection of consumers and ensure that they are properly informed and treated fairly: developing innovative products and services; improving the clarity and transparency of the information about those products and services; offering more risk-management advice and assistance; and developing best practices in the conduct of their business. Insurers also invest continually in research.

Insurance Europe is the European insurance and reinsurance federation. Through its 36 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 over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.

⁶ See [CONSUMER GUIDE: Understand your insurance coverage during Coronavirus/COVID-19 Outbreak | Eiopa \(europa.eu\)](https://www.eiopa.europa.eu/consumer-guide/understand-your-insurance-coverage-during-coronavirus/covid-19-outbreak)