Insurance Europe's position paper on the European Commission's (EC) public consultation on the Digital Fairness Act (DFA) proposal

Our reference:	COB-25-115	Date:	24-10-2025
Referring to:	Digital Fairness Act public consultation		
Contact person:	Conduct of Business Department	E-mail:	COB@insuranceeurope.eu
Pages:	3	Transparency Register ID no.:	33213703459-54

Introduction

Insurance Europe welcomes the opportunity to contribute to the EC consultation on its DFA proposal. This position paper is intended to supplement the response provided via the online survey to add greater clarity and context to Insurance Europe's answers.

The industry believes it is important that consumers feel confident and protected when interacting with digital products and services. At the same time, it is essential to note that the insurance sector is already subject to extensive regulation and supervision. On horizontal level, for example, the Consumer Rights Directive (CRD) has recently been amended to include up-to-date provisions on the distance marketing of consumer financial services. Alongside this, the Unfair Contract Terms Directive (UCTD) and the Unfair Commercial Practices Directive (UCPD) provide a well-established legal framework on consumer protection. Furthermore, insurance is one of the most highly regulated industries in Europe, with a long-standing framework of sector-specific rules that safeguard consumers while allowing insurers to provide essential protection and security. These provisions apply regardless of whether the contact between an insurance undertaking and a consumer takes place in a digital or face-to-face environment. For this reason, any new rules adopted should be contemplated only where real regulatory deficits exist.

To illustrate this point, Insurance Europe has addressed below specific topics raised in the consultation where additional regulation in relation to insurance would be inappropriate.

■ Gamification and scoring systems

The consultation raises concerns about the use of manipulative design practices, such as loot boxes, pay-to-win mechanisms or other features of digital products that resemble gambling or scoring systems.

However, it is vital that any new rules do not inadvertently prevent insurers from using gamification for educational purposes, for example in the context of financial education and risk prevention. Insurers increasingly rely on digital engagement to raise awareness of financial risks and to help consumers understand how to protect themselves. For example, gamified tools and scoring systems are used to improve financial literacy and to raise

Insurance Europe aisbl
Rue du Champ de Mars 23, B-1050 Brussels
Tel: +32 2 894 30 00
E-mail : info@insuranceeurope.eu
www.insuranceeurope.eu

awareness of the different risks for which insurance coverage may be necessary. These tools are designed to help consumers make more informed choices and contribute to broader EU objectives, such as encouraging responsible behaviour through awareness of risk prevention and improving financial inclusion.

Telematics provides a clear example of how gamified tools and scoring systems can be used to incentivise safer or more sustainable driving. Usage-based motor insurance schemes, like "Pay-as-you-drive" and "Pay-how-you-drive" are a type of car insurance cover that allows the policyholder to reduce the premium based on the actual mileage driven and/or driving behaviour. As such, they can benefit anyone who wants to take control of their insurance costs. Pay as/how you drive policies often go hand in hand with driver coaching, further incentivising safe as well as sustainable driving. These data-driven services can:

- Benefit young and inexperienced drivers who would otherwise pay higher premiums.
- Contribute to road safety by rewarding low-risk drivers with lower premiums.
- Reduce insurance costs for drivers who drive less frequently, thereby both improving road safety and helping to cut greenhouse gas emissions.
- Encourage drivers to lower emissions by maintaining a consistent speed and minimising sudden acceleration or braking through coaching.
- Greatly reduce the length of the claims process and deter fraudulent claims

The use of personal data in this context is already strictly regulated by the e-Privacy Directive, the General Data Protection Regulation (GDPR) and by insurance-specific rules, and it is overseen by both data protection and insurance supervisors.

Any new provisions in this area should therefore not prevent insurers to continue to provide these innovative services to the benefit of consumers and society.

- **Use of personal data in the context of insurance (risk-based underwriting)**

The consultation also highlights the risks that can arise when companies use personal data to personalise offers, particularly if such practices exploit consumer vulnerabilities.

However, it is essential to differentiate between certain commercial practices and the use of personal data in insurance to understand and analyse the risks and to price coverage fairly. Insurance is built on the principle of risk-based underwriting, meaning that premiums are calculated based on the level of risk presented by each customer. Private insurance works by pooling the premiums paid by the many to create a reserve to pay for the claims of the few. With risk-based underwriting, individuals or entities with similar risk profiles are charged similar premiums and given similar coverage terms, meaning that when the risk profiles are different, different premiums are charged. A higher risk will be therefore reflected in a higher premium. This is called differentiation, and is not the same as discrimination, which is illegal. Risk-based underwriting is a fundamental mechanism in private insurance. Potential policyholders that are low risk may not want to pay for a higher price that does not match their risk. Pricing based on risk can attract more low-risk policyholders, so they take part in a risk pool. The larger the pool, the more the cost of potential losses can be spread among the portfolio of policyholders. This is the nature of insurance: to pool risk so that individuals share the risks, and no-one has to bear the entire economic loss on their own. Risk-based underwriting therefore ensures that insurance products remain viable, affordable and accessible for consumers.

It is therefore crucial that any new rules do not create restrictions that could inadvertently limit or contradict risk-based underwriting, which in turn would only create legal uncertainty and undermine the availability and affordability of insurance products.

- **Influencer marketing**

The consultation points to concerns about hidden advertising, particularly through social media influencers.

However, advertising and promotion in the insurance sector are already subject to robust rules under the Insurance Distribution Directive (IDD), which requires marketing communications to be fair, clear and not misleading. Moreover, the EC's Retail Investment Strategy (RIS) proposal is expected to introduce additional requirements in this area, including stricter rules for financial influencers (ie "finfluencers"). Adding another layer of rules under the DFA would therefore create unnecessary duplication and risk inconsistencies between horizontal and sector-specific legislation. To ensure coherence, any new rules should clearly acknowledge that insurance is already subject to detailed advertising and distribution rules, and that those rules should continue to apply as the lex specialis.

The upcoming DFA should therefore not inadvertently impact insurance, as the existing EU rules already provide sufficient safeguards while taking into account the specificities of the sector. An explicit recognition of the specific nature of insurance in the DFA would prevent overlaps and legal uncertainty and would allow the new legislation to focus on real gaps in consumer protection, while respecting the strong frameworks that protect European insurance consumers.