

Ref: Open insurance: accessing and sharing insurance-related data

Link to consultation: https://www.eiopa.europa.eu/content/eiopa-consults-open-insurance_en

BETTER FINANCE Response on Open insurance: accessing and sharing insurance-related data

About BETTER FINANCE

BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the public interest non-governmental organisation advocating and defending the interests of European citizens as financial services users at the European level to lawmakers and the public in order to promote research, information and training on investments, savings and personal finances. It is the one and only European-level organisation solely dedicated to the representation of individual investors, savers and other financial services users.

BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Since the BETTER FINANCE constituency includes individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policy holders, borrowers, and other stakeholders who are independent from the financial industry, it has the best interests of all European citizens at heart. As such its activities are supported by the European Union since 2012.

Introduction

The European Insurance and Occupational Pension Authority (EIOPA) launched today a public consultation on open insurance, focused on access to and sharing of insurance-related data. In its Discussion Paper, EIOPA explores questions on whether and how far insurance value chains should be 'opened' up by the sharing of insurance-related and specific policyholder data amongst insurance and non-insurance firms, to protect policyholder rights and to allow for innovation in products and services. The main areas of the consultation paper include:

- *open insurance definition and use cases*
- *risks and benefits of open insurance*
- *regulatory barriers*
- *possible areas to consider for a sound open insurance framework*

A key consideration for possible open insurance solutions is finding a balance between regulatory objectives related to data protection, insurance, and competition while supporting innovation, efficiency, consumer protection and financial stability.¹

1. 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?

- ✓ **Yes**
- No
- I don't know

Please explain

We agree with the definition provided. However, a more accurate and detailed definition on Open Insurance should be provided. At the moment, there is very little research and knowledge on the topic. Therefore, we believe that EIOPA is in the right position to provide a clear overview and a common interpretation of the risks and benefits associated to the Open insurance.

2. In addition to those described in this paper, including in Annex 1, do you see other open insurance use cases or business models in the EU or beyond that might be worth to look at further from supervisory/consumer protection perspective?

- Yes
- No

Please explain

3. 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?

- ✓ **Yes**
- No
- I don't know

Please explain

We support EU wide public comparison tools. It is very well known that financial services users struggle to find and collect information on fees and performance of financial products. The study on "distribution system of retail investment products" ² reveals that financial services users are

¹ As reported from EIOPA consultation webpage: https://www.eiopa.europa.eu/content/eiopa-consults-open-insurance_en

² https://ec.europa.eu/info/sites/default/files/180425-retail-investment-products-distribution-systems_en.pdf

discouraged to look for different financial products or due obstacles and complexity in looking for more suitable products they prefer to remain with their initial financial provider.

Regulators and supervisors should put more focus on independent/public comparison websites allowing financial consumers to easily compare insurance products (and other financial products) in terms of costs and benefits of the services provided. For example, Finansportalen³ is a Norwegian web comparing tool that includes investment funds, life insurance and private pension products.

However, independent comparison tools should not “compare” exclusively price information but should go beyond and to include additional policy features in order to provide a comprehensive picture of the insurance services available.

5. In addition to those described in this paper, do you see other open insurance use cases in RegTech/SupTech that might be worth to look at further from supervisory/ consumer protection perspective?

- Yes
- No

Please explain

6. Please describe your own open insurance use case/business model in RegTech/SupTech and the challenges you have faced in implementing it, if any.

7a. Do you agree the potential benefits for the consumers are accurately described?

- Strongly agree
- ✓ **Somewhat agree**
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

We agree with the potential benefits for the consumer. However, the impact of Open insurance on consumers' needs to be examined further. An open insurance framework could provide higher degree of transparency and benefits in terms of costs for financial consumers. However, these benefits could be overtaken by risks related to the use of data. Data should be treated in a fair and non- discriminatory way. Therefore, any policy implementation on open insurance should be accompanied by safeguards to protect consumer data.

³ <https://www.finansportalen.no/>

7b. Do you agree the potential benefits for the industry are accurately described?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

7c. Do you agree the potential benefits for the supervisors are accurately described?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

8. Are there additional benefits?

- Yes
- No
- I don't know

Please explain

As previously explained, the benefits for consumer related to such framework are mostly related to costs reductions and higher flexibility in the choice of the insurance provider.

9. What can be done to maximise these benefits?

In order to maximise these benefits, it is necessary to create an adequate framework for insurance companies on how to use and manager consumer data in order to guarantee the ownership of the data and the highest level of protection for financial consumers.

10a. Do you agree the potential risks for the consumers are accurately described?

- Strongly agree
- ✓ **Somewhat agree**
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

The risks for consumers depend on the degree of consumer protection envisaged for the implementation of the open insurance framework. In particular, the main issue resides on the

transfer and use of the insured data to third parties. This concerns in particular personal data and sensitive data. In addition, the framework should establish who bear the legal responsibility of the data shared and used. This would help also supervisory authorities to identify risks, violations and data misuse.

10b. Do you agree the potential risks for the industry are accurately described?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

10c. Do you agree the potential risks for the supervisors are accurately described?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

11. Are there additional risks?

- ✓ **Yes**
- No
- I don't know

Please explain

The paper should also take into consideration the ownership and the control of data from financial consumers. Authorities should also consider the possibility of consumer who do not want to share their data with insurers. This situation should not lead to policy holder discriminations because they did not consent to share the data. The risk of discrimination should be also taken into account in the policy paper.

12. 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?

- Yes
- ✓ **No**
- I don't know

Please explain

The fintech wave of innovation introduces and transforms existing business models. The extensive use of third-party providers and outsourcing may lead to both as well as a possible fragmentation of the value chain. For example, several incumbent insurance-related companies and other financial services providers, have become software companies.

The recent scandal involving the star of the German fintech industry – Wirecard – constitutes a good example of the risks posed by the alleged failings in the multidisciplinary cooperation between authorities due to, among others, the blurred lines between financial and non-financial sector. Bafin the German financial regulator did not consider Wirecard as a financial services provider admitting shortcomings in the supervision of the fintech company, in particular how the supervisory authority handled allegations of irregularities at the payments’ provider.

Based on BETTER FINANCE’s research, in many instances European FinTech companies are treated as “technology” companies, rather than financial services providers, even when duly registered as financial intermediaries (e.g. advisors, investment firms) with the competent supervisory authorities

Therefore, regulatory and supervisory frameworks lack of the tools to capture this change thus increasing the risks of regulatory and supervisory failures at detriment of consumers and shareholders (as in WireCard).

A possible solution resides in changing the licensing procedure of insurance services. For example, China Banking and Insurance Regulatory Commission CBIRC is licensing the software solutions of the insurance companies in order to grant their relevance and up-to-date performance.

13. Do you agree with the barriers highlighted in chapter 5?

- Strongly agree
- ✓ **Somewhat agree**
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

14. What additional regulatory barriers do you see?

Another issue lies in the regulatory interpretation of the “insurance of principle only” in Solvency II. The conditions for authorisation in Solvency II were established long time before the uptake of Insuretech. In addition, the implementation of this provision has different interpretation from EU Members States. Therefore, EIOPA should also consider to examine the different interpretations from EU members and to propose possible regulatory changes.

In Article 18 (1) of Solvency II: “*The home Member State shall require every undertaking for which authorisation is sought: (a) in regard to insurance undertakings, to limit their objects to the*

business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business».

This *limitation to the business of insurance and operation* does not capture the technological transformation of insurance companies and their activities.

Another challenge that the Authorities are facing is the lack of a complete understanding of AI, ADM and algorithm mechanisms. Due to the use of extremely complex algorithm and automated decision making, most of the time it is completely impossible to review and challenge the automated decision. This is also true for consumers that do not receive sufficient explanations of the results that the automated decision has provided them thus preventing the possibility to challenge this decision. This increasing complexity reduces the transparency of these technologies preventing an adequate supervision from the authorities.

15. What are your views on possible areas to consider for a sound open insurance framework highlighted by EIOPA in chapter 6? Are there additional underlying aspects or other aspects under concrete areas to consider for a sound open insurance framework?

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

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

18. Do you think open insurance will develop without any regulatory intervention? (e.g. without PSD2 type of compulsory data sharing provisions)

- Yes
- No
- I don't know

Please explain

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

- Driven by private initiatives
- ✓ **Driven by regulation**
- A mix of the two options above

Please explain

Open insurance should be driven by public intervention in order to minimize the risk for financial consumers. EIOPA should also address the legal definition of the Open insurance and to find the right tools to capture the different activities related to InsureTech.

20. Do you have views on how the EU insurance market may develop if some but not all firms (e.g. based on different industry-wide initiatives) open up their data to third parties?

21. 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 nonpersonal data (e.g. IoT devices data, whether data, sustainability-related data, data on cyber incidents etc.).

Please explain your response providing granular examples of datasets.

- Data that should be included
- Data that should be excluded

22. In your opinion, which regulatory/licensing approach would be best for the development of sound open insurance framework (e.g. 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.

- Compulsory data sharing inside the regulated insurance industry
- Compulsory data sharing inside the regulated insurance industry and with third parties with bespoke
- licensing approach
- Compulsory data sharing in certain lines of businesses and/or amongst certain products
- Compulsory data sharing covering only IoT data / sensor data
- Self-regulatory approach to data sharing (no regulatory intervention in addition to the GDPR data
- portability rules)
- A mix of the approaches
- Other

Please explain your response

23. Could you provide information which helps to evaluate the cost of possible compulsory data sharing Framework (e.g. based on your experience on PSD2 adoption)?

24. 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?

25. This Discussion Paper highlighted some of the ethical issues relevant to open insurance (e.g. price Optimisation practices, financial exclusion, discrimination). Do you see additional ethical issues relevant in light of open insurance?

- Yes
- No
- I don't know

If "yes", please explain

26. 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.

27. What existing API/data sharing standards in insurance/finance in the EU or beyond could be taken as a starting point/example for developing common data sharing standards in insurance?

28. 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

- Yes
- No
- I don't know

Please explain

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

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