



Making EU insurance regulation that works and benefits consumers

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. 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 generate premium income of more than €1 300bn, directly employ over 900 000 people and invest over €10 300bn in the economy.

Making EU insurance regulation that works and benefits consumers

Consumer protection is rightly at the core of EU legislation. The insurance industry firmly supports high-quality EU insurance regulation that protects consumers effectively and helps them to buy the right products. Insurance is based on trust, so a firm underpinning of appropriate regulation is essential for a well-functioning industry.

Unfortunately, EU financial services regulation does not always achieve the ultimate aim of benefiting consumers. Indeed, the current regulatory processes themselves do not always lead to good outcomes.

It is encouraging to see that this has been recognised by the new European Commission. The plans presented for its mandate include applying a “one in, one out” principle to new laws and regulations “to make life easier for people and businesses” and they stress that any new legislative proposal must be evidence-based, widely consulted upon and subject to an impact assessment.

While these proposals would be a welcome start, a lot more can be done to address all the shortcomings of the EU regulatory process. So how can policymakers ensure that regulation proposed with the best intentions is not detrimental to consumers?

1

Avoid continual regulatory changes

There is increasing evidence that the design of the EU’s “Lamfalussy” process for creating financial services regulation does not produce the results it should. Currently, basic laws and principles are proposed by the European Commission and adopted by the European Parliament and Council, but the technical details are left to be worked out at “Level 2” by the Commission with input from the European supervisory authorities, as well as via “Level 3” measures developed — at times separately — by the Commission and the same authorities. This process has led to a “trial and error” approach in which legislation that fails to meet its intended objectives frequently has to be revised, complemented and reinterpreted.

In recent years, insurers have been confronted with a significant increase in the quantity of regulation, a decrease in its quality and too frequent reviews and amendments to legislation, sometimes even before they have adjusted to the new rules and before there is sufficient evidence of a need for changes.

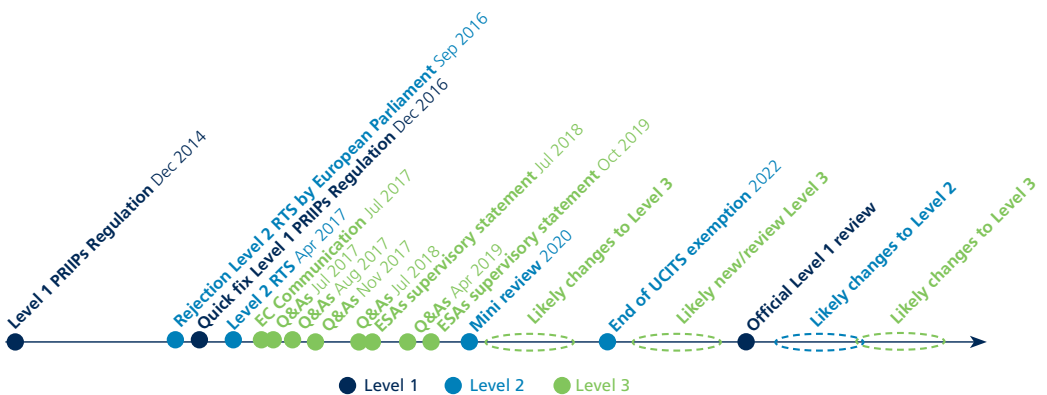
For example:

- The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation was intended to make it easier for consumers to compare products and make better-informed decisions. However, the PRIIPs Key Information Document (KID) is difficult to understand and — at times — even misleading.

To address the flaws in the KID, the PRIIPs Regulation and its delegated regulations were followed by Commission guidelines, several successive batches of Q&As from the European supervisory authorities and two supervisory statements. Now the delegated regulations are subject to a mini-review ahead of a formal review that could result in further changes to both the Regulation and delegated regulations, most likely necessitating new Level 3 measures.

These successive changes to the PRIIPs Regulation and the KID (see Figure 1) not only result in higher compliance costs for the industry, but also further confuse consumers and reduce their trust in the information they receive.

Figure 1: Continuous changes to the PRIIPs framework



DO



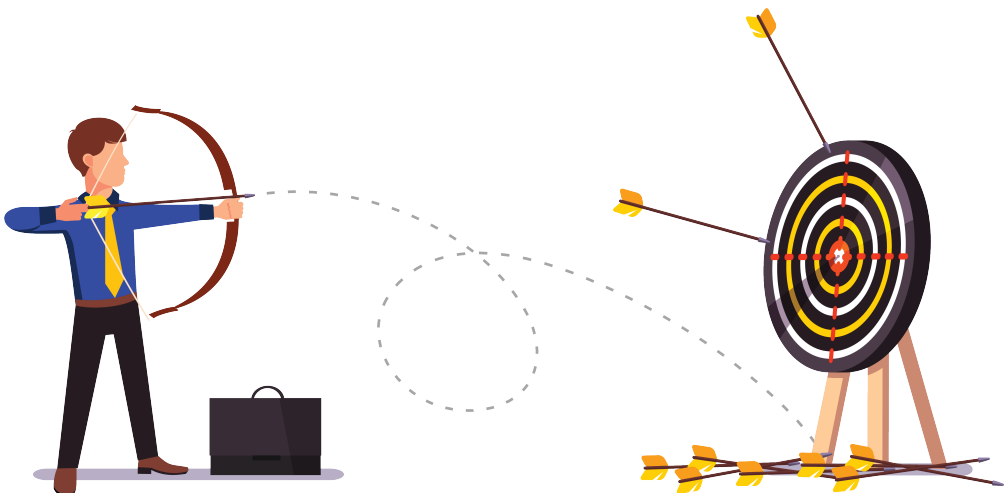
- ✔ Perform in-depth analysis to ensure that any new legislation (Levels 1, 2 and 3) is fit for purpose from the start.
- ✔ Keep the regulatory framework stable and change the rules only if that demonstrably benefits consumers.

DON'T



- ✘ Rely on a “trial and error” approach; the resulting legislation frequently fails to meet its original objectives and leads to unintended consequences that require amendments, complements and interpretations.
- ✘ Use “quick fixes” and other interim solutions that create additional compliance costs for businesses without real benefits to consumers.

“ This process has led to a “trial and error” approach in which legislation that fails to meet its intended objectives frequently has to be revised, complemented and reinterpreted. ”



2

Avoid legal uncertainty

The previous Commission's 2019 Work Plan alone contained 15 new initiatives, 10 reviews of existing legislation and a staggering 45 outstanding priority proposals, many in areas that affect the insurance industry. Meanwhile — and possibly because of the sheer number of initiatives — the quality of recent EU legislation has diminished, leading to a proliferation of outdated and unfit rules as well cases of legal uncertainty, inconsistencies and overlaps.

During the legislative process, policymakers sometimes prioritise quick political achievements over the quality of new rules, assuming that the rules can be improved during future reviews or that the Level 2 or 3 measures can address the Level 1 shortcomings.

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Here are three examples of legal uncertainty:

- The Insurance Distribution Directive (IDD) uses both “customer” and “consumer” in the text, often seemingly interchangeably, despite the terms have different meanings. This has led to issues with implementing its insurance product information document and differences in interpretation between EU member states.
- The use of promising blockchain technology in insurance could be jeopardised due to potential incompatibilities with the General Data Protection Regulation (GDPR). From an insurance perspective, blockchain technology has the potential to reduce costs, increase transparency and increase trust. But how can the GDPR’s “right to be forgotten” and “right to rectification” be reconciled with the fact that blockchain technology is designed to be an immutable and permanent record of all transactions?
- The key pillar of the EC’s legislative package on sustainable finance is a proposal for an EU-wide taxonomy (classification system) for the sustainability of investments. Given that all other proposed transparency measures refer back to this concept, its development should have been prioritised by policymakers to avoid legal uncertainty. This was not, however, the case, as the proposal for a Regulation on sustainability-related disclosures was agreed back in March 2019 and work on the development of the Level 2 measures has already started, even though the classification is not yet available.

DO



- ✔ Allocate the necessary time and resources to meaningful consultations with all stakeholders. The insurance industry’s experience can help the EU to produce high-quality legislation that provides maximum legal clarity.

DONT



- ✘ Rush the legislative process. Many legal inconsistencies the industry has to deal with could have been avoided if policymakers had dedicated more time and attention to aligning texts or at least making them consistent.
- ✘ Prioritise quick wins over proper consultation, evaluation and discussion — and the overall quality — of proposed rules.

3

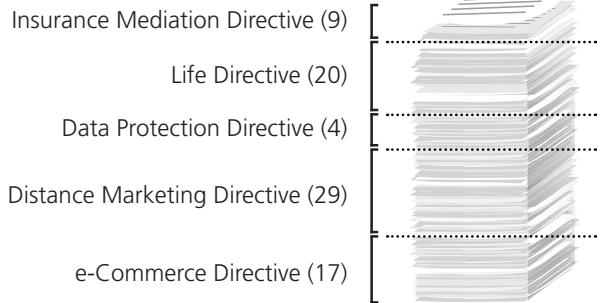
Avoid inconsistencies, overlaps and duplication

When preparing legislation, the cumulative impact of individual rules and the coherence of the entire regulatory framework are frequently not taken into account, resulting in inconsistencies, overlaps and duplication between different pieces of legislation.

Here are two examples:

- The 2016 Solvency II Directive and 2018 PRIIPs Regulation, IDD and GDPR have led to a 250% increase — from 33 to 115 — in the number of individual disclosures that a broker is required to make to a customer at the precontractual stage when selling an insurance-based investment product. And the number of disclosures for an online sale is now an infeasible 161. This number will increase even further with the new Regulation on sustainability-related disclosures (see Figure 2).
- The 2019 Regulation introducing a pan-European pension product (PEPP), combined with legislation such as the GDPR, the Distance Marketing Directive for financial services and the e-Commerce Directive, could result in an insurance broker who sells a PEPP online having to make between 145 and 189 information disclosures at the precontractual stage. Again, this number will increase further with the new Regulation on sustainability-related disclosures.

Figure 2: EU disclosure requirements for consumers buying a sustainable insurance-based investment product (online sale by a broker, including duplications)



Yesterday: 79

DO

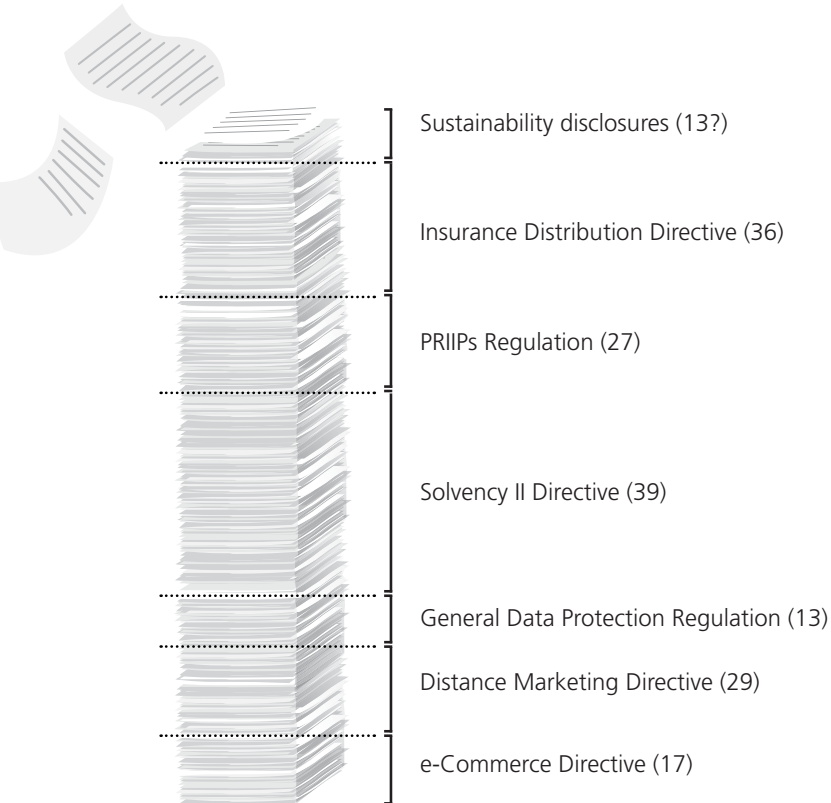


- ✔ Ensure coherence and consistency across EU legislation by assessing the cumulative impact that the proposed rules and existing rules would have on consumers.
- ✔ Conduct thorough consumer-testing that covers both proposed and existing disclosures to ensure that the proposals indeed benefit consumers and match their actual information needs.

DONT



- ✘ Develop legislation in silos without assessing potential inconsistencies, contradictions or duplications with existing rules.
- ✘ Create new information requirements on top of existing ones without considering the potentially detrimental, cumulative effect on consumers.



Tomorrow: 174

4

Avoid unfit rules and disclosures that mislead consumers

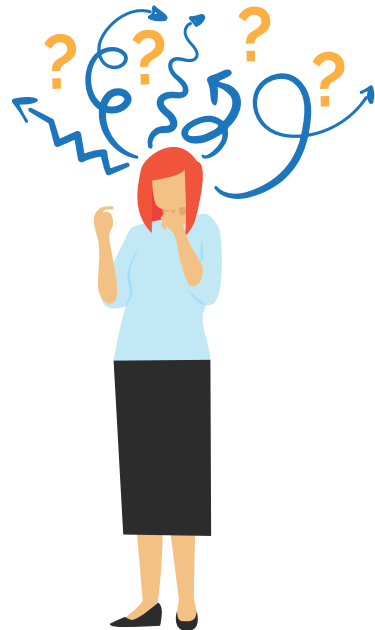
Regulation needs to take full account of the unique features of insurers' products. Unlike other financial service providers, insurers offer risk cover against unforeseen events and have a long-term and stable business model. In addition, insurers operate through a distribution network based on a higher proportion of micro-enterprises and SMEs than other financial sectors and can offer a distinctive value proposition to customers looking for protection, investment and the peace of mind of minimum guarantees.

At times, legislation applied to insurance is copied from other sectors or is developed with products other than insurance in mind, so it fails to recognise and properly regulate insurance specifics. Rules that are unfit for insurance or copied from another sector should be avoided, as they can have unintended negative consequences for consumers and the market as a whole.

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For example:

- The PRIIPs KID applies a one-size-fits-all standard to a wide variety of very different products, (ie short- and long-term products, speculative and guaranteed products, and products with and without insurance benefits). Using the same prescriptive disclosure standard, backed by the exact same methodologies, regardless of the type of product, is doomed to fail. Funds, structured products and insurance-based investment products (IBIPs) differ too much, so the KID does not capture their key features and — by misrepresenting certain features or hiding others — can even mislead consumers.



IBIPs, for example, include unique protection against biometric risks, such as incapacity to work or critical illness, in addition to an investment component. The PRIIPs KID should therefore present prominently the existence or absence of biometric risk cover, as this is a crucial element in consumers' comparison and choice of products.

Furthermore, it is impossible to make a meaningful comparison between the costs of products that contain unique insurance features and those that do not; premiums for protection against biometric risk are not investment costs, but premiums for which the consumer receives an insurance protection or benefit.

DO



- ✔ Adopt rules that are fit for insurance.
- ✔ Ensure that disclosures are clear, meaningful and reflect insurance specifics so that they help consumers understand products.
- ✔ Conduct extensive stakeholder consultation and consumer-testing to ensure that new disclosures have no unintended consequences, are meaningful, meet consumers' information needs and improve their understanding of the products.

DONT



- ✘ Underestimate the profound differences between financial service products and markets. One-size-fits-all legislation or blind copying from one sector to another is likely to result in unintended negative consequences for consumers.

5

Avoid outdated rules and obstacles to pro-consumer innovation

Some regulation is outdated. For example:

- The IDD and the PRIIPs Regulation require pre-contractual information to be provided to consumers by default on paper. It may only be provided another way — such as on a website or in another digital format — “by way of derogation”. This is highly unsuitable in this digital age. Moreover, the additional disclosures that must be provided (from the Solvency II Directive, GDPR, Distance Marketing Directive for financial services, eCommerce Directive, etc.) do not make the disclosures, such as the KID, digital-friendly.

Such paper requirements will prevent further development of the internet as a distribution channel for insurance products. They fail to recognise that consumers are increasingly demanding and using online services.

In contrast to the IDD and PRIIPs, the PEPP Regulation takes a more digital-friendly approach. It allows the electronic distribution of PEPP information from the outset, while still permitting consumers to request the information on another durable medium, such as paper. The PEPP Regulation also permits the layering of information when the PEPP KID is provided in an electronic format, for example through pop-ups or through links to other layers.

- Certain GDPR rules and the guidelines adopted by the European Data Protection Board (EDPB) also appear to be at odds with fast-evolving technology. Automating processes can enable insurers to serve consumers better, faster and at a lower cost — such as real-time insurance offered through mobile phone applications — but EDPB guidelines create legal uncertainty that may discourage insurers from introducing new automated processing and profiling techniques.

DO



- ✔ Design digital-friendly rules to allow consumers to access information or services digitally if they wish and to benefit from the opportunities that digitalisation offers.
- ✔ Make rules future-proof and innovation-friendly so they are fit for the digital age and allow insurers to respond to the evolving needs and expectations of consumers.

DONT



- ✘ Impose paper requirements or other obstacles to digital innovation.

6

Avoid implementation timelines that are too short


Deficiencies in the EU law-making process often leave companies with insufficient time to implement the required changes to their processes and train staff or with unnecessary, increased implementation costs because of frequent changes in legislation. It is unrealistic to expect the industry to begin implementation based on draft texts without the legal certainty of the final regulatory outcome.



Here are three examples:


- Companies would have been left with just two months — once all the Level 2 measures had been developed and adopted — to implement all the changes needed to comply with the IDD and its Level 2 delegated regulations. Only after repeated, strongly argued requests by the insurance industry was a seven-month delay to the implementation date eventually secured.
- With the GDPR, delays in EDPB guidelines created unnecessary legal uncertainty. Several guidelines that affect insurers were not issued by the GDPR implementation deadline. And the guidelines on codes of conduct and monitoring bodies — which would have facilitated insurers' compliance with the GDPR — were adopted more than a year after the GDPR application date. Ideally, all the guidelines should have been made available long before the GDPR's application to allow smooth compliance and avoid rushed implementation.
- The new Regulation on sustainability-related disclosures is very likely to become applicable before its Level 2 measures are even adopted, again raising significant compliance challenges.

DO



- ✔ Have separate timeframes for developing Level 2 and 3 measures and for industry implementation.
- ✔ Provide the industry with at least a year for implementation after Level 2 texts are published in the Official Journal of the EU.

DONT



- ✘ Impose unrealistic implementation deadlines.

Time for a fresh start

Insurers have to deal with the immediate negative consequences of the “trial and error” approach to EU legislation, but the ultimate losers are consumers. The increase in compliance costs and risks has a negative effect on insurers’ ability to provide the variety and quality of services that consumers expect.

As the new European Parliament and Commission take office, Europe’s new legislators have a clear opportunity to take a fresh approach to financial services legislation in which:

- regulation delivers on its intended objective of better protecting consumers;
- insurers can serve their customers fairly; and,
- compliance costs and risks are kept to a minimum.

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