
EUROPE OFFICE

Proposals of the German Insurance Industry for the next Legislative Period (2024-2029)

As the European Parliament elections scheduled for June next year draw near, preparations for the upcoming legislative period are already underway. The German Insurance Association, representing 460 re/insurance companies, is committed to engaging constructively in shaping the agenda and expressing its preferences and priorities for the upcoming term. This document provides a concise overview of the issues we aim to address, along with our preferred solutions. Detailed and technical explanations for each point are also available for those seeking a more in-depth understanding.

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Horizontal issues

Securing Europe's competitiveness

The EU financial services regulation aims at promoting many important aims such as financial stability, consumer protection, environmental protection, and the completion of the European capital markets. However, the current regulatory landscape has become increasingly complex, detailed, and prescriptive. Several recent crises have highlighted the urgent need to consider the concept of European strategic autonomy and to enhance Europe's competitiveness in order to ensure and increase its role globally.

- Implement a "competitiveness check" as a mandatory criterion that must be fulfilled when proposing new legislation.

Ensuring insurance expertise and coordination

Insurance is a multifaceted business that is affected by activities of numerous Directorates General of the EU Commission. While its core regulation falls under the remit of DG FISMA, it is also subject to regulation by DG JUST, GROW, CNECT, COMP, CLIMA, ENVI, SANTE, AGRI, MOVE, EMPL, TAXUD, or impacted by their activities and initiatives. Unfortunately, this impact on the insurance sector is not fully assessed, partly due to a lack of insurance expertise, as well as due to lacking coordination.

- Introduce a horizontal structure, connecting relevant units in different Directorates General. Its objective should be to exchange and coordinate regularly on any issues affecting the insurance business.

Striving for efficient regulation

In October 2023, the EU Commission published its ambitious work program for 2024 alongside proposals aimed at reducing bureaucracy and boosting simplifications. In addition, the Commission launched a Call for Evidence and asked for suggestions on how to reduce the reporting burden for companies by 25% to strengthen the European economy. The German insurance industry explicitly supports this initiative. However, the Commission's proposals so far will not be sufficient to achieve a reduction of the burden by 25%. Hence, further action should be taken. Reducing the regulatory burden will create economic leeway and contribute to innovative capacity.

- Avoid bureaucracy from the outset instead of reducing it later. Reporting requirements should only be introduced if there is a true demand and a clear objective. Risk orientation should be the guiding principle, thus allowing for a differentiated approach to regulation. Double and triple regulation should be eliminated – regulation that worked in the past does not necessarily have to work in the future. A courageous approach that goes beyond the mere streamlining of reporting requirements is needed to reduce bureaucracy (see numerous concrete examples in the chapters below).

Stepping up efforts at international level

Europe is a leading location for the insurance business. European insurers not only provide insurance coverage worldwide – whether through primary insurance or reinsurance – but they also invest globally. Hence not only European regulation, but also international regulation is crucial for insurers. This concerns prudential supervision, i.e., standards of the International Association of Insurance Supervisors (IAIS), and reporting, i.e., standards of the International Accounting Standards Board (IASB) and the International Sustainability Standards Board (ISSB).

- Treat international regulation as a political instrument to ensure a global level-playing field. There are significant benefits of international regulation, especially when it comes to IASB and ISSB standards. Likewise, the International Capital Standard developed by the IAIS has the potential to facilitate insurance business on a global scale, provided that all major jurisdictions comply with it.



Insurance Regulation

Definition of Small and Medium-Sized Enterprises (SMEs) for insurance

Unlike in banking regulation, a SME definition suitable for insurance is lacking at European level. The generic SME definition provided in the Accounting Directive is not adequate for insurers, as the turnover and balance sheet thresholds are far too low. In consequence, even very small insurance companies often qualify as large businesses, such as under the Corporate Sustainability Reporting Directive (CSRD), and thus cannot use the regime for simplified reporting. It is also the definition of Public Interest Entities (PIEs) in the Audit Directive that should be modernized and focused on what constitutes a significant company acting in the public interest. Smaller non-listed insurers with little risk in their accounting should not be classified as Public Interest Entities.

- Adjust the SME definition for insurance and modernize the PIE definition, especially in the context of the European initiative to reduce the reporting burden. Strengthening the SME sector and ensuring competitive variety as well as a level-playing field would contribute to key European objectives.

Solvency II

The implementation of the Solvency II framework in 2016 was a major step towards a harmonized, efficient, and risk-based supervisory approach across Europe. With the extensive review to conclude soon, we consider it fit for purpose and advocate for a period of stability for the framework. However, this review will leave certain challenges unresolved:

While we strongly welcome the new proportionality framework, we expect the definition for eligibility to be too narrow.

- Review the criteria for low risk profile undertakings extensively.

The legislators did not finally decide whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental or social objectives would be justified. However, given the very limited data we do not consider a differentiation in capital requirements adequate.

- Maintain the risk-based approach of Solvency II and only introduce adjustments to prudential treatment of assets when robust data prove the need to do so.

Insurance Distribution

Insurance protects against financial risks. The EU Commission's Retail Investment Strategy and the upcoming review of the Insurance Distribution Directive put the rules on how insurance is offered into debate once again. It is important to take into account insights from behavioral economics since individuals often show reluctance in dealing with financial risks and rarely do so on their own. Scientific studies highlight a certain "inertia" in making financial decisions.

- Optimize the existing rules in such a way that they help people to deal with financial risks, to inform themselves, to evaluate the information and to actually make adequate provisions. Easy access to advice (online or offline) is just as essential as modern rules on information and disclosure requirements.

Financial Markets Regulation and Tax

Intensifying the Capital Markets Union

The European Capital Markets Union should be finalized as increased European integration is required. Encouraging and simplifying cross-border investments would improve financing conditions for EU companies and increase financial resilience and growth.

- Harmonize the insolvency regimes in the EU in order to better protect investor rights in the case of cross-border disputes.

Regulation of Credit Rating Agencies

Credit rating agencies provide important information for the functioning of financial markets. Even regulation relies on information from these agencies. This leads to the concentration of market power in the hands of a few agencies and corresponding excessive costs for those companies using rating information.

- Introduce price regulation for credit ratings. Subsidiaries of the agencies selling credit ratings via license agreements should be included in the existing regulation to increase transparency and reach at-cost pricing.

Value and Supply Chain Regulation

Horizontal due diligence obligations related to the supply and value chain of companies should only apply to insurance companies if they are suitable and proportionate for the insurance sector and its specific business conduct. The consequences for the insured individuals and companies, such as the real economy that takes out insurance, must be carefully considered.

- Consider thoroughly the specific role of insurance and carry out a robust impact assessment before new due diligence obligations regarding, e. g., the Corporate Sustainability Due Diligence Directive (CSDDD) or the Deforestation Regulation, are implemented.
- Assess the availability and quality of data from the value chain before implementing new reporting obligations regarding, e. g., the Corporate Sustainability Reporting Directive (CSRD).

A Taxation System Fit For The Future

A modern tax regime also contributes to improving and deepening the European Single Market. Reducing tax bureaucracy relieves administration and companies from unnecessary burden, thus increasing the EU's international competitiveness.

In the last two decades, there has been a significant trend towards increasingly extensive reporting obligations in the field of taxation. In some cases, the benefits of those new reports for the financial authorities and the tax revenues are not in line with the associated costs for businesses or are even simple duplications. A very good example is the Directive on

Administrative Cooperation (DAC) 8, which among other things expands the reported information while this additional information seems to be very little used by the financial authorities. Important adjustments in tax legislation include:

Adapting ATAD (Anti-Tax-Avoidance-Directive): With the global minimum tax (Pillar 2) a comprehensive and effective anti-avoidance tax regime has been implemented.

- Review previous anti-avoidance measures of the ATAD (the Anti-Tax Avoidance). Where the global minimum tax does already prevent tax avoidance, the ATAD rules should be cut back.

Country-by-Country-Reporting (CbCR): The current Country-by-Country Reporting is based on two processes: Public reporting on the one hand and internal reporting on the other hand. There are only marginal differences between the two processes.

- Streamline the two systems, basing them on the public Country-by-Country Reporting.

Value-Added Taxation of Financial Service Providers: The Directive on the common system of value added tax basically originates from the 1970s. Legal practice and business processes have developed over the last 50 years and legislation should be in line with those developments.

- Carry out the overdue reform, eg by including it in the 2019 package "VAT in the digital age".

Anti-Money Laundering

The risk of insurance companies to be misused for money laundering or terrorist financing (ML/TF) is rather low and limited to certain insurance products. Insurance contracts (as life insurance) are usually based on long-term contracts, furthermore the products are (mostly) based on certain external risks, what makes them not favorable for ML/TF.

- Reflect the low risk of insurance companies being misused for money laundering or terrorist financing in adequate and proportionate requirements.



Digitalisation and Data Protection

Data sharing

Several data sharing initiatives have been started under the current Commission mandate, such as general rules for data sharing under the Data Act, obligatory data sharing among financial services providers under the Financial Data Access Regulation (FIDA), the creation of a European Health Data Space or the planned Mobility Data Space. Insurance is, or could be, part of any of these spaces. However, the data spaces and rules that mandate obligatory data sharing for insurers are created independently from each other, in silos and partially adhering to different rules. This makes participation for insurers difficult if not impossible and prevents them from effectively using the infrastructure (partially mandated by EU law, like in FIDA) for other purposes.

- Create a horizontal structure, connecting relevant units in FISMA, CNECT and other relevant Directorates General, with the aim of coordinating their work affecting data sharing in insurance business and between insurance and other sectors.
- Do not exclude insurers from data access to relevant data sources that could be used to improve products and services for customers.

Artificial Intelligence

As AI-driven use cases are developing rapidly in the global economy, it is crucial that regulation does not hinder but rather encourage the uptake of this strategic technology all while ensuring it remains safe and trustworthy. Encouraging best practices based on existing rules and supervision is preferable in the insurance sector rather than overregulation due to well-intentioned but duplicative horizontal rules.

- Maintain the risk-based approach of AI Act and carefully assess the need to further regulate the use of AI in the insurance sector, in particular considering extensive existing regulations and the global competitive nature of AI.
- Encourage dialogue between policymakers, supervisors, and industry prior to updating the scope of the AI Act via delegated or implementing acts.

Sovereignty requirements on cloud services providers

We welcome the objective of establishing a minimum level of security and trust criteria for cloud services through certification. However, the ongoing process of developing a cybersecurity certification scheme for cloud services (EUCS) has raised serious concerns in the industry. This refers in particular to the intention to introduce the so called “sovereignty requirements”, such as the requirement for the cloud providers to be headquartered in the EU, ownership and governance restrictions.

- Focus the EUCS on purely technical requirements that will strengthen the European internal market, as existing EU policies set out in DORA, GDPR and NIS2 provide the best tools for tackling operational resilience and oversight of ICT critical third-party providers.

Efficient cyber resilience regulation

The Digital Operational Resilience Act (DORA) adopted in 2023 provides for a strong and comprehensive framework for ICT-Risk management of financial entities. DORA covers a wide range of issues, from ICT-Governance & risk-management, to incident reporting and thorough testing. In doing so DORA not only pursues the aim of a robust cybersecurity of insurers but also explicitly the protection of consumers. At the same time, parallel horizontal cyber legislation, such as Cyber Resilience Act, is being developed that partially creates new duplicative requirements on insurers.

- Impose new cyber security requirements only if clear legislative gaps are found in DORA and the corresponding standards. Do not introduce duplicative requirements through horizontal legislation such as CRA.

Barriers to digitalisation in data protection law

The rules of the GDPR and, in particular, their interpretation by the data protection authorities, are a partial obstacle to digitalisation in Europe, thus preventing insurers to meet customers' demands for rapid digital responses (i.a. lack of automated decisions on applications for insurance cover and benefits; difficult development of new IT programmes and AI solutions due to the lack of reliable rules to anonymise data and for checking pseudonymised data; legal uncertain use of cloud solutions due to data transfers to countries outside of the EU). Therefore, GDPR rules should be updated to better reflect industry use cases and customers' wishes:

- Instead of fully banning automated decisions promote transparency and the right to review.
- Introduce legally secure and reliable rules for the anonymisation of data and any necessary use of personal data for testing applications.
- Adopt a risk-based approach on data transfers to third countries in the GDPR.

Clear legal basis for the processing of health data in the insurance industry

Contracts in life, health and accident insurance can only be concluded and performed if health data are processed. In addition, insurance groups delegate and centralise tasks to enhance efficiency in compliance with insurance supervisory legislation. In practice, however, processing of special categories of personal data (such as health data) is hardly possible due to the impractical requirements set by data protection authorities to obtain freely given consent. Moreover, not all processing within the group qualifies as processing on behalf of the controller. Regrettably, only certain European countries have introduced national legal frameworks related to data processing for insurance objectives.

- Introduce clear legal bases for processing of health data for the conclusion and performance of insurance contracts (including reinsurance), and for data processing in enterprise groups.



Liability, Property & Casualty and Motor

Cyber insurance

During the last couple of years, the EU has increasingly started to develop cybersecurity regulation, in order to actively respond to growing cyber threats. GDV applauds this development and emphasizes the importance of the insurance industry as a partner in the mission of raising cybersecurity EU-wide. Still, major challenges remain. Not only is the threat landscape rapidly evolving – with cybercrime rapidly professionalizing and methods of cyberattack becoming more and more refined. Also, the dependency of European economies on digital supply chains and centralized cloud technology makes them potentially more vulnerable to cumulative risks. That raises questions regarding the general insurability of cyber threats.

- Continue present efforts to develop harmonized cybersecurity standards within the EU, while keeping the bureaucratic burden imposed on companies as limited as possible.
- Continue and expand efforts to promote cybersecurity, e.g. by sponsoring awareness campaigns or further developing cyber security standards, in particular for SMEs.
- Engage in discussions with the insurance industry to find solutions to the challenges of cumulative cyber risks, including (but not exclusively) public-private partnerships.

Systemic risks

Climate change continues unabated. The agreed climate targets are not enough to reach the 1.5°C resp. 2°C Paris goal. Natural hazards such as floods, heavy rainfall and drought are increasingly becoming a systemic risk. This systemic risk requires fundamental changes in the protection against and management of natural disasters. At the same time, geopolitical risks are increasing as well. Terror and cyber risks can already reach cumulative magnitudes that can neither be borne by the private insurance industry alone, nor backed by affordable premiums from the insured.

- Extend EU Floods Directive 2007/60/EC to include heavy rainfall and risk of landslides; mapping to be completed across Europe by 2026.
- Create European framework legislation for climate-adapted land use planning and for natural hazard-adapted construction.
- Establish a European backstop for systemic risks (natcat, cyber, terrorism, pandemic) that would overburden the population and the private sector.

Connected and Automated Driving

The rapid development and uptake of autonomous driving systems in the EU poses a long-term problem as traffic rules across the EU are fragmented, especially when it comes to the compensation of victims of traffic accidents regardless of fault.

- Regulate automated and connected driving at EU level and set uniform standards for the whole market.

- Include autonomous driving systems in the scope of the Motor Insurance Directive to protect victims of traffic accident regardless of fault.

Access to in-vehicle data

Access to in-vehicle data is dependent on the goodwill of the vehicle manufacturer, making it difficult for third parties and the aftermarket to offer appropriate consumer services, for example such as telematics tariffs in motor insurance. Insurers and other aftermarket providers have been advocating for a legislative proposal on EU level for several years to end the gatekeeper function of car manufacturers and give consumers control over their data. The Data Act provides a remedy but cannot meet the specific requirements of data from connected motor vehicles.

- Regulate non-discriminatory access to in-vehicle data in sector-specific regulation as soon as possible.

Batteries in electric vehicles

Vehicle repair costs are rising constantly. On the one hand this is due to high price of spare parts, but also to the sharp rise in hourly wages, as a new GDV study shows. For example, hourly rates have risen to 173 euros in 2022, which is above the rate of inflation. In the end, these costs are paid by the insured community.

Not only from an economic point of view, but also from an ecological point of view, a functioning circular economy and the reparability and recyclability of individual parts of a vehicle are essential.

- Include the possibility of replacing/repairing components of the battery in electric vehicles, such as cell modules or the battery casing, in the Type Approval Regulation.

AVAS

The number of electric vehicles is increasing. They are quieter than vehicles with internal combustion engines and may be harder for other road users to perceive. Since 2021, all newly registered electric vehicles in the EU must be equipped with an Acoustic Vehicle Alerting System (AVAS) which emits an acoustic warning sound. However, accelerating electric vehicles do not give pedestrians sufficient auditory information to permit an accurate estimation of vehicle travel, as a recent GDV study shows.

- Amend the AVAS regulation by including the actual acceleration as an indicator of speed change and extending the speed range in which the AVAS operates.