

Resolution of comments

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

2. Context and objective

No	Stakeholder	Response to the public consultation question	EIOPA's comments
1	BIPAR	<p>Par. 2.1 "systemic" risk is inherent in cyber insurance. Therefore "catastrophic" risks may better reflect the challenge of common vulnerabilities in hardware or software, common dependencies on certain vendors (or software products), and the "internet of things" that has magnified the potential scale of loss (i.e. could cause a "systemic" loss). "Catastrophic" losses may be too big to be sustained for the insurance industry and are under increasing focus of insurers (they may not be covered anyway because insurers may not be in a position to be able to pay claims)</p> <p>BIPAR and its members are happy to engage with all stakeholders to understand how we can better understand the "catastrophic" scenarios.</p>	<p>Noted. EIOPA used the definition for "systemic risks" presented in an EIOPA staff paper on measures to improve insurability.</p> <p>EIOPA believes the term "systemic risk" is more accurate than catastrophic risk, given the latter generally refers to natural disasters.</p>
3	Federation of European Risk Management Associations hereinafter "FERMA"	<p>Par. 2.1 "We give EIOPA lots of support for an initiative in the direction of large events and ultimately around the topic of insurance protection gaps. Insurance coverage for large risks is a vital part of overall resilience.</p> <p>The risks defined in here, namely pandemics, climate change or large cyber-attacks are all key concerns for enterprises. For instance, cyber threats are the top concern in the short- and medium- terms and then climate-related risks are the top concern in the</p>	<p>Noted. EIOPA used the definition for "systemic risks" presented in an EIOPA staff paper on measures to improve insurability.</p>

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>long-term as per the findings of FERMA's European Risk Manager Report 2022. (see here: https://www.ferma.eu/risk-managers-in-a-time-of-transition-results-of-the-ferma-european-risk-manager-survey-2022/)</p> <p>Regarding the use of "systemic", it is worth raising the possibility that by framing risks as systemic it may act as an impediment to cover developing. At the same time, some would argue systemic risk is already inherent in cyber insurance. Perhaps the real discussion is therefore about catastrophic events. Moreover, the point here is really about coverage -- if there is demand for some coverage and no supply there is a coverage gap in the perspective of the client!"</p>	<p>EIOPA believes the term "systemic risk" is more accurate than catastrophic risk, given the latter generally refers to natural disasters.</p>
3	Insurance Europe	<p>Par. 2.1 "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).</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>Noted. EIOPA agrees that "systemic events" is a broad term and can include many other types of events. EIOPA refers to the three main type of systemic events listed in the Supervisor Statement as examples of systemic events and not an exhaustive list. These three types have been selected given their current relevance for the sector.</p> <p>EIOPA used the definition for "systemic risks" presented in an EIOPA staff paper on measures to improve insurability. The Supervisory Statement has been further revised to further clarify what is covered by this supervisory statement.</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		objective of addressing the concerns identified by EIOPA in the context of the COVID-19 pandemic and the Russian invasion of Ukraine.	
4	BIPAR	Par. 2.2 "BIPAR agrees with that statement. Insurers need to exactly identify what they want to exclude. An exclusion going beyond what is "intolerable" to cover could destroy the product that "may have been originally" developed to cover that risk.	Noted.
5	FERMA	<p>Par. 2.2 "We agree with this statement and here is some evidence gathered by the risk management community:</p> <p>Regarding evidence on coverage disappearing, AMRAE - FERMA member in France, the French Risk Management Association - found in a survey conducted with Axa Climate in 2021 that some 61% of risk managers believe that some of their business locations or activities may become un-insurable in the future (due to climate factors). See here: https://graces.community/barometre-amrae-de-lengagement-pour-le-climat-en-partenariat-avec-axa-climate-12-2021/</p> <p>FERMA's European Risk Management Report 2022 found that over 40% of risk managers surveyed think their business activities or locations will become uninsurable in the future due to a range of different risks, highest among which being cyber. See here: https://www.ferma.eu/risk-managers-in-a-time-of-transition-results-of-the-ferma-european-risk-manager-survey-2022/</p> <p>Furthermore, based on our European Risk Manager Report, 60% of risk managers saw a reduction in their cyber insurance coverage capacity in 2021 (!) - of this 33% considered it a "large reduction". For coverage of NatCat, 40% of risk managers observed a reduction in their capacity.</p>	Noted.
6	Insurance Europe	<p>Par. 2.2 "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.</p> <p>EIOPA should carefully assess the costs/benefits of this Supervisory Statement if the following aspects are not reviewed:</p>	<p>Thank you for the comment. EIOPA used the definition for "systemic risks" presented in an EIOPA staff paper on measures to improve insurability.</p> <p>The Supervisory Statement does not aim at ensuring the industry insures certain risks they</p>

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<ul style="list-style-type: none"> • 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”. <p>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.</p> <p>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.</p>	<p>may not be able to assume, but rather that when they cannot assume a risk:</p> <p>1) Target market’s needs, objectives and characteristics are taken into account to determine whether the product offers value; and</p> <p>2) It is clear the risk is not assumed.</p> <p>The definition of the target market is under the responsibility of the manufacturer of the insurance product. The target market shall be identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product.</p> <p>EIOPA is of the view that the granularity of the target market should be proportional to the detail of the main exclusions in the cover as these are an element of complexity.</p> <p>EIOPA believes that testing the product disclosures to ensure that exclusions are presented in a clear manner and facilitate understanding is an adequate and proportionate expectation. Article 5.3 of the POG delegated regulation specifies that when assessing whether an insurance is compatible with the target market, manufacturers should take into account the information available – this also includes whether the target market understands the exclusions.</p>

No	Stakeholder	Response to the public consultation question	EIOPA's comments
			<p>The pandemic has revealed issues with expectation gaps between the actual cover provided by the insurance product and the customer's expectations on the level of protection provided. This is why it is important to improve understanding of what is excluded from the insurance cover.</p>
7	Insurance Europe	<p>Par. 2.3 "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.</p> <p>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.</p> <p>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.</p>	<p>Noted. Thank you.</p> <p>EIOPA is aware that the type of coverage varies, hence why the Supervisory Statement touches upon POG requirements and provides some general guiding principles to address the issue whilst allowing flexibility for manufacturers when going through the POG process, taking into account the different products, market practices and requirements at the national level.</p>
8	German Insurance Association – hereinafter "GDV"	<p>Par. 2.3 "With this part of the consultation paper, EIOPA is in our point of view moving outside the European consumer law framework. Consumer means any natural person who is acting for purposes which are outside his trade, business, craft or profession (Directive 2011/83/EU). However, EIOPA comments, among other things, on business interruption insurance (financial consequences of the pandemic) and thus on areas that are clearly outside consumer protection law. We may remind EIOPA that in B2B-relationships, significantly higher demands are placed on entrepreneurs' knowledge of contract law. In case of doubt, an entrepreneur should seek advice from a lawyer when concluding a contract.</p>	<p>With this Supervisory Statement, EIOPA aims at addressing a recurring issue. EIOPA's Founding Regulation explicitly refers to one of EIOPA's main objectives being "customer protection". In addition, it emphasises that this objective must aim at the protection of policyholders, pension scheme members and beneficiaries.</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>The scope of insurance cover against pandemic risks varies in the 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, for example a broken leg, are insured.</p>	<p>Having regard to some EU directives concerning the financial sector (e.g. CRD, AMLD etc.), it is clear that the notion of "customer" has a broader meaning than consumer as it covers all clients of the financial institutions. In this regard, this concept is fully reflected by the terminology used by EIOPA Regulation, since policyholders and beneficiaries are the clients of the insurance companies, regardless of whether they are natural or legal persons.</p> <p>While EIOPA agrees that for some larger undertakings, the imbalances in bargaining power and information asymmetries are not so wide as to require enhanced protection, for some SMEs, this may not be the case. The Supervisory Statement has also been amended to reflect this.</p>
9	BIPAR	<p>Par. 2.4 BIPAR agrees with that statement. We believe that before the wording is drafted, insurers should spend time in identifying what they exactly want to exclude. In this regard, going through potential scenarios could help. Formalising and documenting those scenarios would assist as well in conversations with clients, so a "clear and consistent" message is sent, rather than relying on the interpretation of an individual underwriter /intermediary.</p>	<p>Noted. EIOPA agrees and this is covered by the statement.</p>
10	FERMA	<p>Par. 2.4 FERMA agrees with this statement. What we would add for the avoidance of doubt is that "consumer detriment" can certainly be felt too by corporate insurance buyers - and by extension SME insurance buyers.</p>	<p>Noted. With this Supervisory Statement EIOPA aims at addressing a recurring issue. EIOPA's Founding Regulation explicitly refers to one of EIOPA's main objectives being "customer protection". In addition, it emphasises that this objective must aim at the protection of</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
			<p>policyholders, pension scheme members and beneficiaries. In addition, it emphasises that this objective must aim at the protection of policyholders, pension scheme members and beneficiaries.</p> <p>Having regard to some EU directives concerning the financial sector (e.g. CRD, AMLD etc.), it is clear that the notion of “customer” has a broader meaning than consumer as it covers all clients of the financial institutions. In this regard this concept is fully reflected by the terminology used by EIOPA Regulation, since policyholders and beneficiaries are the clients of the insurance companies, regardless of whether they are natural or legal persons.</p> <p>The Supervisory Statement has also been adjusted accordingly.</p>
11	Insurance Europe	<p>Par. 2.4 Commission Delegated Regulation (EU) 2017/2358 is sufficiently comprehensive and clear.</p> <p>Furthermore, in a call to action issued on 1 April, 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.</p> <p>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.</p>	<p>Noted. EIOPA disagrees with the statement that products should not be reviewed at a specific point in time.</p> <p>The POG Regulation indicates that manufacturers shall continuously monitor and regularly review insurance products they have brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those products.</p>

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>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.</p> <p>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.</p>	<p>This clearly indicates that at any specific point in time an event might require the manufacturer to review its products. This is also in line with previous communication and statement from EIOPA. In fact, with its Statement of 1 April 2020, EIOPA identified the COVID-19 as an event which required to assess whether coverage was clear and/or whether the product remained useful to the target market. The current Supervisory Statement goes beyond the COVID-19 and highlights that the POG review and coverage assessment should be done also in relation to other systemic event, taking into account also the target market's needs, objectives and characteristics.</p>
12	GDV	<p>Par. 2.4 "The conclusion cannot be drawn from the systemic events that consumers are increasingly disadvantaged in the face of - allegedly - unclear contract terms. In this regard, insurers are sufficiently aware of the problem and make great efforts to create clearly understandable and concise terms and conditions – in line with the rules of the Directive 93/13/EEC on unfair terms in consumer contracts (last amended by Directive (EU) 2019/2161). These will additionally be supplemented by the more concise product information sheet IPID - the content of which is prescribed by the IDD.</p> <p>Of course, manufacturers also properly carry out the procedures associated with the POG regulations. Commission Delegated Regulation (EU) 2017/2358 is sufficiently clear and comprehensive in this regard.</p>	<p>Noted. However, the Unfair Contract Terms Directive protects consumers i.e. natural persons, against unfair <u>standard</u> contract terms imposed by traders. It is a Directive for which not all insurance supervisors have direct competences and does not provide protection to legal persons such as SMEs. It also does not address POG rules and whether the terms of exclusions are aligned to the needs, features and characteristics of the target market for which the products are designed (for which all insurance supervisors have competences). If the Delegated Regulation is sufficiently clear and comprehensive, then it should not be an issue for firms to apply POG requirements to exclusions as part of the existing requirements.</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
			<p>As regards the IPID, this has certainly helped to enhance customer comprehension, but not all Member States have implemented the requirement in Article 20, IDD to provide the IPID as applying to commercial customers such as SMEs.</p> <p>Finally, our experience to date with mystery shopping concerning retail customers is that the quality of provision of the IPID “in good time” to the customer by the product manufacturer and ensuring that the customer reads and understands the IPID, is far from optimal, hence the real need to address these issues at the product design phase.</p>
13	FERMA	Par. 2.5 We agree here.	Noted. Thank you.
14	Insurance Europe	<p>Par. 2.5 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.</p> <p>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.</p>	<p>Noted. Thank you for the feedback.</p> <p>The Supervisory Statement does not go beyond existing regulatory framework on disclosures.</p> <p>EIOPA agrees that there can be limits to coverage. This Supervisory Statement aims at ensuring coverage is clear as well as at ensuring the target market's needs, objectives and characteristics are taken into account when there is a need to revise coverage because a risk may have become un-insurable following a systemic event.</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
15	GDV	<p>Par. 2.5 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 the customers – risk-based calculations and risk exclusions are necessary. Without that, many risks would be uninsurable or insurers would become insolvent after major events. The insurance industry experienced something like this after the 1906 San Francisco earthquake, when more than a dozen insurers became insolvent.</p>	<p>Noted. Thank you for the feedback.</p> <p>EIOPA agrees that there can be limits to coverage. This Supervisory Statement aims at ensuring coverage is clear as well as at ensuring the target market's needs, objectives and characteristics are taken into account when there is a need to revise coverage because a risk may have become un-insurable following a systemic event.</p>
16	BIPAR	<p>Par. 2.6 "Addressing systemic risk is complex. Insurers run the risk of drafting language and leave the interpretation to an individual underwriter's / intermediary's understanding. That should not be the case: insurers should publish guidance / scenarios for colleagues to use and for clients to understand, so the message is "clear and consistent". Insurers should also provide examples of scenarios that continue to be covered by the policy.</p>	<p>Noted. The suggestion on guidance/scenarios can be very helpful however this may require additional efforts from manufacturers and may not always be efficient and proportionate. The Supervisory Statement has been revised to strike a balance between adding more guidance in relation to scenarios and avoiding over-burdening the industry.</p> <p>As part of the POG process (Article 8 of POG Delegated Regulation), manufacturers are already expected to provide insurance distributors with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products and if relevant also results of scenario testing (Article 6 of POG Delegated Regulation).</p> <p>Due to the importance of clear communication to distributors in the context of exclusions related to</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
			risk arising from systemic events, the Supervisory Statement incorporates supervisory expectations on the mechanism of communication from manufacturers.
17	FERMA	Par. 2.6 Please also note FERMA's comments to the supervisory statement on non-affirmative cyber coverage. From the point of view of the corporate insurance buyer, we are concerned that by moving more to "affirmative" coverage, it will lead to more exclusions, less coverage and ultimately more risk being held by the enterprise.	<p>Noted. EIOPA agrees with the connection amongst the two Supervisory Statements.</p> <p>While the risk of an increased protection gap may emerge, EIOPA believes that it is highly important to ensure clarity on exclusions that apply and enable customers' understanding of the cover purchased. Moreover, this Supervisory Statement also emphasizes the importance of ensuring that the target market's needs, objective and characteristics are taken into account when determining if a risk is still covered or not following a systemic event.</p> <p>EIOPA overall shares the concerns on the protection gap and the need for some sort of shared resilience solution moving forward.</p>
18	Insurance Europe	<p>Par. 2.6 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.</p> <p>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.</p>	Noted. While EIOPA acknowledges the efforts by the industry to improve clarity in insurance contracts, the pandemic and other work carried out by EIOPA in relation to exclusions unveiled persistent issues ambiguous contractual terms and lack of clarity in the cover provided.
19	GDV	Par. 2.6 The German insurance industry took the Covid-19 pandemic as an opportunity to revise the BI-wordings and clearly rule out pandemics. As mentioned above, these wordings are outside the scope of the consumer law framework. Additionally the	Noted.

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>German consumer protection organizations did not demand to adjust the wording in the areas of terrorism, cyber or natural hazards. Obviously, the problems mentioned by EIOPA do not exist in practice in the German market - at least they cannot be generalized like that.</p> <p>Package holidays are among the most frequently booked holidays. Consumers are very well protected by the so-called EU Package Travel Directive. However, this has been transposed differently into national law in the EU. In Germany, for example, a travel warning issued by the Foreign Office is an indication that "unavoidable and extraordinary circumstances" at or near the holiday destination significantly affect the stay at or the journey to the holiday destination. In this case, package tours can be cancelled free of charge with the tour operator. The consumer does not need extra insurance cover for these cases. This is also clearly co-immunised to the policyholders.</p>	
20	FERMA	<p>Par. 2.7 We reiterate our concern that this work may just lead to more exclusions and a widening of the coverage gap.</p>	<p>Noted. While the risk of an increased protection gap may emerge, EIOPA believes that it is highly important to ensure clarity on exclusions that apply and enable consumer understanding of the cover purchased. EIOPA overall shares the concerns on the protection gap and the need for some sort of shared resilience solution moving forward. Moreover, this Supervisory Statement also emphasizes the importance of ensuring that the target market's needs, objective and characteristics are taken into account when determining if a risk is still covered or not following a systemic event.</p>
21	Insurance Europe	<p>Par. 2.7 Commission Delegated Regulation (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.</p>	<p>Noted. The Supervisory Statement has been amended to avoid negative messaging in relation to reviewing terms and conditions.</p>

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>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.</p> <p>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).</p> <p>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.</p> <p>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.</p>	<p>It is also important to note that as highlighted by COVID-19 and other more systemic events, more guidance may be required to ensure consistent good outcomes for policyholders following these extra-ordinary events.</p> <p>The Supervisory Statement aims to bring further guidance to NCAs on supervision of implementation of the POG requirements by the industry, in particular in relation to exclusions following systemic events which may make some risks un-insurable.</p> <p>In relation to the second bullet point, this presents the risks for policyholders and consumer in the event of product reviews lacking a proper application of POG rules.</p>
22	GDV	<p>Par. 2.7 With respect to the business interruption insurance issues raised in connection with Covid-19, it should be kept in mind that the policyholders are not consumers, but business owners. The standard to be applied is therefore different. Where there were nevertheless ambiguities in the terms and conditions of the BI-wording, the Federal Court of Justice was able to provide clarity (please see BGH, 26.01.2022 – IV ZR 144/21).</p> <ul style="list-style-type: none"> - A regular review of existing products - independent of systemic events - is already provided for by the POG process. This is taken very seriously by insurers and is adhered to. Insofar as new exclusions are included, this is done due to a lack of calculability of the risk and thus to protect the collective of insured persons. - The IPID and other pre-contractual information contain information on the coverage of the respective insurance product. Notwithstanding this, misleading advertising 	<p>Noted. EIOPA is aware that the examples of issues listed in the Supervisory Statement may not be relevant for all European markets, therefore the Supervisory Statement underlines that NCAs are expected to monitor their market from a risk-based perspective.</p> <p>With regard to business interruption policyholders, EIOPA would like to underline that with this Statement EIOPA aims at addressing a recurring issue. EIOPA's Founding Regulation refers to "customer protection" as a main</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>would constitute a violation of the Unfair Competition Act - which is based on the European Directive 2005/29/EC - and could lead to a warning.</p> <p>- This EIOPA Study also addresses travel insurance. However, EIOPA's findings do not match the experience in the German market. Above all, the influence of the European Package Travel Directive (PTD) is not appreciated. For the cases mentioned (p.33), insurance cover is not needed. According to the PTD, travellers can withdraw from the trip free of charge if Acts of war, terrorism, serious disease at the travel destination, natural disasters make it impossible to travel safely or to stay at the destination agreed in the package travel contract.</p>	<p>statutory objective. In addition, it emphasises that this objective must aim at the protection of policyholders, pension scheme members and beneficiaries.</p> <p>Having regard to the context of some EU directives concerning the financial sector (e.g. CRD, AML), it is clear that the notion of customer has a broader meaning than consumer as it covers all clients of the financial institutions. In this regard this concept is fully reflected by the terminology used by EIOPA Regulation, since policyholders and beneficiaries are the clients of the insurance companies, regardless if they are natural or legal persons.</p> <p>The Supervisory Statement has also been adjusted accordingly.</p>
23	FERMA	<p>Par. 2.8 We fully recognise the importance of this work and FERMA has previously highlighted the very real problem around exclusions from insurance coverage. However, we urge at the same time EIOPA to also look at the bigger picture which is a very real mismatch between the demand for coverage and the (lack of) supply.</p>	<p>Noted. EIOPA has been looking into issues with protection gaps and has been carrying out specific work on this topic (e.g. measures to improve the insurability of business interruption risk in light of pandemics, a pilot dashboard on protection gap for natural catastrophes etc.)</p> <p>EIOPA will continue to exchange with stakeholders on protection gaps.</p>
24	Insurance Europe	<p>Par. 2.9 "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</p>	<p>Thank you. Notwithstanding the scope of POG rules and other regulatory requirements in the area of exclusions, EIOPA clarifies that the</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholder	Response to the public consultation question	EIOPA's comments
		<p>approaches could be equally applicable to POG processes or disclosures more generally.</p> <p>In addition, at times the statement seems to seek to include all exclusions, not just those related to “systemic events”.</p> <p>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.</p>	<p>Supervisory Statement solely addresses exclusions in insurance products related to risk arising from systemic events. References to ‘exclusions’ as opposed to ‘exclusions in insurance products related to risk arising from systemic events’ across the Supervisory Statement are made for shortening purposes. EIOPA has clarified this in the Supervisory Statement.</p>

3. Supervisory Expectations

No	Stakeholders	Response to the public consultation question	EIOPA's comments
25	FERMA	<p>Par. 3.1 The only additional point FERMA adds in the context of supervisory expectations is that from the perspective of the corporate insurance buyer the important thing is to seek coverage for the risks they wish to transfer to the private insurance market. While this may seem obvious, we obviously want to do that in the broadest sense possible on behalf of our companies. For the point here, that means that any action should avoid creating gaps in coverage overall while aiming to clarify gaps/language in one specific line. If clarification in one line (let's say cyber, for arguments sake) leads to a particular cover being excluded in that line, and then that particular cover disappearing that is problematic for the corporate purchasing insurance, and for a businesses insurance management strategy overall.</p>	<p>Noted. Thank you. While in some instances the protection gap may ‘become more evident’, EIOPA is of the view that it is important there is clarity in what is covered or not.</p> <p>Moreover, the Supervisory Statement also highlights that when coverage is reviewed/clarified it is important to take into account the target market’s needs, objectives and characteristics and not just business considerations.</p> <p>Finally, EIOPA is also doing other work on protection gaps.</p>
26	Insurance Europe	<p>Par. 3.1 "Based on Article 5 of Commission Delegated Regulation (EU) 2017/2358, providers shall only design and market insurance products that are compatible with</p>	<p>Noted. EIOPA believes the scope and objectives of the Supervisory Statement are clear and well</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>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.</p> <p>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.</p>	<p>defined. Further clarifications have been incorporated into the Supervisory Statement to enhance clarity of its scope.</p> <p>EIOPA agrees on the efforts to further improve financial literacy and does activities in this area as part of its coordination mandate.</p> <p>Finally, EIOPA also agrees exclusions – when properly defined and when products are designed in a customer-centric manner – can be beneficial to consumers as they ensure the solvency of undertakings.</p>
27	BIPAR	Par. 3.2 "It is important not to create gaps in coverage whilst bringing clarity in one line of business without checking if the excluded part will be picked up by another line of business. Eg: excluding physical cyber from property to remove silent cyber is creating a gap because, for example, cyber insurance could only covering “non physical” cyber	Noted. This is why EIOPA with this Supervisory Statement covers all risks relating to systemic events.
28	BIPAR	Par. 3.4 BIPAR agrees with that statement. Because of the various “distribution channels” there can be wrong / different interpretation to the original concept developed. Therefore, clear message to everyone involved in the distribution is essential. Guidance / scenarios is fundamental to avoid misunderstanding, so the interpretation and the concept is controlled from the “product developers” insurers.	Noted.
29	Insurance Europe	Par. 3.4 Sufficient consumer protection — online and offline — is already ensured by the IDD, which applies regardless of the distribution channel.	<p>Noted. However in practice this may not always be ensured.</p> <p>In the context of exclusions, product information provided to consumers - either verbally or in written form - plays a key role. The circumstances</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			surrounding online and offline sales differs considerably and it is important to ensure the same level of consumers protection. Therefore, the reiteration of this key IDD requirement has been deemed important.
30	GDV	<p>Par. 3.4 Sufficient consumer protection - online and offline - is already ensured by various work streams, e.g.</p> <ul style="list-style-type: none"> - The Directive (EU) 2019/2161 was accompanied by amendments to four existing European directives in the areas of consumer protection and competition law. - It was only in May 2022 that the European Commission published its proposal for a Directive amending Directive 2011/83/EU concerning financial services contracts concluded at a distance. This proposal includes new rules, which are to be taken into account in the case of the use of online tools when concluding distance contracts for financial services. Additional protection is also foreseen in relation to online user interfaces. - The European co-legislators only recently agreed on the final texts for the Digital Services Act and the Digital Markets Act, both of which introduce significant safeguards for consumer protection with regard to systemic risks. - The current and forthcoming proposals for data- and digitalisation-related legislation (e. g. Data Act, Data Governance Act, AI Act, Open Finance and the European Data Spaces) further include a plethora of provisions that allow consumers to take control of their data and to freely determine their (re-)use by others for the provision of products and services in their interest. 	<p>Noted. However in practice this may not always be ensured.</p> <p>In the context of exclusions, product information provided to consumers - either verbally or in written form - plays a key role. The circumstances surrounding online and offline sales differs considerably and it is important to ensure the same level of consumers protection. Therefore, the reiteration of this key IDD requirement has been deemed important.</p>
31	Insurance Europe	Par. 3.5 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).	Noted. This paragraph aims to reiterate the supervisory expectations on clear communication.
32	GDV	Par. 3.5 This is already ensured by the legal requirements for general terms and conditions. See also the questions to stakeholders Q2 below.	Noted. This paragraph aims to reiterate the supervisory expectations on clear communication.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
33	FERMA	<p>Par. 3.6 While FERMA absolutely applauds the direction of travel from EIOPA, we are also concerned about some unforeseen consequences related to this action. We are troubled by the possibility that insurers would thereafter add in more exclusions and take away more coverage as a result. This would lead to large exposures and lack of financial protection--a situation which would be especially stark for SMEs. See for instance some of the key numbers in AMRAE's Project LUCY on cyber insurance, where the product is virtually unaffordable for SMEs, citing 325% claim ratios in 2021. (see here https://www.amrae.fr/recherche?search_api_fulltext=lucy)</p>	<p>Noted. Thank you. While in some instances the protection gap may 'become more evident', EIOPA is of the view that it is important there is clarity in what is covered or not. Moreover, the Supervisory Statement also highlights that when coverage is reviewed/clarified it is important to take into account the target market's needs, objectives and characteristics and not just business considerations.</p> <p>Finally, EIOPA is also doing other work on protection gaps.</p>
34	Insurance Europe	<p>Par. 3.6 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.</p> <p>Clarity is also ensured by the legal requirements on general terms and conditions (see Q2).</p>	<p>Noted. However the term "similar events" if not defined can be mis-leading and ambiguous as the interpretation of this term by both the insurer and the consumer can be very different and create confusion as shown by the pandemic.</p>
35	GDV	<p>Par. 3.6 This is already ensured by the legal requirements for general terms and conditions. See also the questions to stakeholders Q2 below.</p>	<p>Noted.</p>
36	Insurance Europe	<p>Par. 3.7 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.</p>	<p>Noted. However, EIOPA believes there is a need for further guidance on the treatment of exclusions as part of the POG process. In addition, during the pandemic, EIOPA observed potential risks for detriment with manufacturers reviewing their terms and conditions to amend exclusions without necessarily assessing whether this would represent a significant adaptation to their products and</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			therefore apply the POG process and/or without taking into account the target market's needs, objectives and characteristics and testing the products to ensure it still offered value.
37	GDV	Par. 3.7 The POG regulations contain specifications for the target market determination of products. In addition, it should be taken into account that the exclusions are based on a lack of calculability of risks and are therefore not arbitrary, but serve to protect the collective of insured persons.	Noted. EIOPA is of the view that it is important to ensure exclusions are clear and also to ensure that exclusions and target market's needs, objectives and characteristics are aligned.
38	Insurance Europe	<p>Par. 3.8 "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.</p> <p>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.</p>	<p>Noted. The paragraph does not make reference to a specific document on purpose but it covers all documentation on the insurance product provided to the future policyholder: IPID, the insurance contract etc.</p> <p>The paragraph clearly states that this applies only <i>"in case that insurance manufacturers and insurance distributors list one or more events to exemplify exclusions related to systemic events"</i> and does not create a requirement for all manufacturers and distributors to do so. Moreover, it has been clarified that the revision of all examples, should be done only when the change is substantial.</p>
39	GDV	Par. 3.8 This is already ensured by the legal requirements for general terms and conditions. See also the questions to stakeholders Q2 below. Furthermore, the following should be considered: Examples provide a way to clarify exclusions. However, this is always accompanied by the legal uncertainty as to what effect this will have for cases that are not explicitly listed as examples.	Noted. With this EIOPA aims at providing more certainty and avoid confusion. Moreover, it has been clarified that the revision of all examples, should be done only when the change is substantial.
40	Insurance Europe	Par 3.10 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	Noted. EIOPA disagrees with this statement. If the insurance product excludes cover for risks arising

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		exclusions, and it clearly states that complete pre-contractual and 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.	from systemic events this should be included in the IPID if this is one of the key coverage aspect/if this is relevant taking into account the target market's needs, objectives and characteristics.
41	Insurance Europe	Par 3.11 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.	Noted. The paragraph addresses this point by stating <i>"unless insurance contract law states otherwise"</i> as it is expected not to be the case for all markets.
42	FERMA	Par 3.12 FERMA supports this statement.	Noted.
43	FERMA	Par 3.13 2 main comments - 1) as mentioned previously, FERMA cautions against the fact this review may lead to some adverse impacts for the insurance buyers; and 2) we are very keen to emphasise the fact that corporate insurance buyers and SMEs also face the same problems as consumers in this area!	Noted.
44	Insurance Europe	<p>Par 3.13 "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.</p> <p>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.</p> <p>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.</p>	Notwithstanding the scope of POG rules and other regulatory requirements in the area of exclusions, EIOPA clarifies that the Supervisory Statement solely addresses exclusions related to risk arising from system events. References to 'exclusions' as opposed to 'exclusions in insurance products related to risk arising from systemic events' across the Supervisory Statement are made for brevity and simplicity. EIOPA has clarified this in the Supervisory Statement.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		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. "	
45	Insurance Europe	Par 3.14 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.	Noted. Notwithstanding the scope of POG rules and other regulatory requirements in the area of exclusions, EIOPA clarifies that the Supervisory Statement solely addresses exclusions in insurance products related to risk arising from systemic events. References to 'exclusions' as opposed to 'exclusions in insurance products related to risk arising from systemic events' across the Supervisory Statement are made for shortening purposes. EIOPA has clarified this in the Supervisory Statement.
46	FERMA	Par 3.18 Again, here while we totally support the aims and intentions of EIOPA, we are concerned that an adverse impact on us as a community of risks managers is simply that it would lead to a withdrawal of coverage	Noted. Thank you. While in some instances the protection gap may 'become more evident', EIOPA is of the view that it is important there is clarity in what is covered or not. Moreover, the Supervisory Statement also highlights that when coverage is reviewed/clarified it is important to take into account the target market's needs, objectives and characteristics and not just business considerations. Finally, EIOPA is also doing other work on protection gaps.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
47	Insurance Europe	<p>Par 3.18 "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.</p> <p>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.</p> <p>In addition, at times the statement seems to seek to include all exclusions, not just those related to "systemic events".</p> <p>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.</p>	<p>Noted. The paragraph uses the term "systemic events-related exclusions" and not "systemic exclusions".</p> <p>On the scope of the Supervisory Statement, notwithstanding the scope of POG rules and other regulatory requirements in the area of exclusions, EIOPA clarifies that the Supervisory Statement solely addresses exclusions in insurance products related to risk arising from systemic events. References to 'exclusions' as opposed to 'exclusions in insurance products related to risk arising from systemic events' across the Supervisory Statement are made for shortening purposes. EIOPA has clarified this in the Supervisory Statement.</p>
48	Insurance Europe)	Par 3.19 It is not clear what is meant by "suspicion of systemic events".	Noted. By suspicion of systemic events EIOPA means in case an event is likely to become systemic or a systemic event is occurring. The Supervisory Statement has been revised to further clarify this.
49	Insurance Europe	Par 3.20 It is not clear what is meant by "risk-based manner".	By "risk-based manner" EIOPA means if the risk is likely to materialise or to have materialised in a market, as this may not apply to all countries.
50	Insurance Europe	Par 3.21 This is a sensible application of existing POG rules but seems to go beyond the scope of this Statement and applies to all exclusions.	Noted. Notwithstanding the scope of POG rules and other regulatory requirements in the area of exclusions, EIOPA clarifies that the Supervisory Statement solely addresses exclusions in insurance products related to risks arising from systemic events. References to exclusions as opposed to exclusions in insurance products related to risk

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			arising from systemic events across the Supervisory Statement are made for the purposes of abbreviation. EIOPA has clarified this in the Supervisory Statement.
51	Insurance Europe	Par 3.22 This is a sensible application of existing POG rules but seems to go beyond the scope of this Statement and applies to all exclusions.	Noted. Notwithstanding the scope of POG rules and other regulatory requirements in the area of exclusions, EIOPA clarifies that the Supervisory Statement solely addresses exclusions in insurance products related to risk arising from systemic events. References to 'exclusions' as opposed to 'exclusions in insurance products related to risk arising from systemic events' across the Supervisory Statement are made for shortening purposes. EIOPA has clarified this in the Supervisory Statement.

4. Questions to stakeholders

No	Stakeholders	Response to the public consultation question	EIOPA's comments
52	Unipol Group	<p>Q1. Unipol Group welcomes the opportunity to comment on the Consultation Paper on Supervisory statement on exclusions in insurance products related to risks arising from systemic events.</p> <p>We believe that the primary purpose of insurance companies is to meet the growing policyholders' need of insurance coverage in light of events like climate change, cyber-attacks and pandemic diseases. In this perspective, insurance companies should undertake the necessary efforts to reduce the protection gap that these systemic events will</p>	Agreed. EIOPA welcomes the support and comments.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>determine at a growing pace in the future. At the same time, systemic events could generate uninsurable risks and, thus, several insurance products could become unaffordable or unavailable. In fact, systemic events make it impossible to correctly diversify the risk among policyholders and therefore require the provision of exclusions in the insurance contracts.</p> <p>As correctly pointed out by the Authority, the risks arising from systemic events may create a consumer protection issue: if the exclusions are not clear, transparent and easy to understand, their application could lead to an expectation gap between the “promised” product coverage and the actual coverage. Therefore, it is essential to avoid this expectation gap in order to better serve the policyholders, to avoid reputational damages for the insurance sector and to limit legal disputes.</p>	
53	BIPAR	<p>Q1. BIPAR agrees with EIOPA point 2.1. BIPAR is however of the opinion that there should be a broad political/ societal debate about the future insurability /possible protection gap, taking obviously into consideration also prudential considerations of systemic risks and about possible solutions that are affordable for the economic operators and consumers/ customers.</p> <p>Re paragraph 2.6 we would suggest to add the wording "and distributors" as follows: “2.6. Clear communication and disclosure to potential policyholders and distributors 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”.</p> <p>BIPAR is of the opinion that contractual and pre-contractual clarity is important for consumers and intermediaries. Intermediaries must be able to rely upon the product information delivered by the insurer or manufacturer. POG is important in this respect.</p> <p>In its draft supervisory statement, EIOPA explains that “But even in the case of a third-party manufacturer, in the end it is the insurer who is ultimately responsible for the cover and the wording. In the end it is also the insurer who decides to accept a risk or not”.</p> <p>We believe this supervisory statement could be more explicit in this respect as it is also the insurer who has to deal with the prudential aspects of systemic risk exclusions or inclusions. Insurers going bankrupt because of unforeseen systemic risk is not in the interest of the</p>	<p>Noted. Regarding the comment on point 2.1 this goes beyond the objectives of this statement, however, EIOPA agrees that addressing protection gaps for systemic events is very important and EIOPA has published papers and is doing other work on protection gaps.</p> <p>The Supervisory Statement aims to address issues with uncertainty around coverage emerging from lack of clarity in the way exclusions are drafted in relation to risks relating to systemic events. With the exception of the role of insurance undertakings and intermediaries in ensuring compliance of ancillary insurance intermediaries who are exempted from the application of IDD (Art 1(4)), it does not go into details regarding the value chain and</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		sector nor in the interest of the consumer. We believe the supervisory statement could possibly include a chapter on this aspect in its introduction.	<p>the split of responsibilities between different players as there are cases of outsourcing or the insurance intermediary acting as co-manufacturer of the insurance product whereby the co-manufacturer may have the responsibility of drafting the terms and conditions.</p> <p>The Statement does not cover whether certain coverage should be provided or/not, hence, why EIOPA agrees with the considerations provided in the comment these are beyond the scope of the statement.</p>
54	FERMA	<p>Q1. The selection of possible risks is to a large extent exhaustive. However, FERMA takes this opportunity to make a broader point that "consumers" here should be taken in a much broader sense than the person on the street. Companies and SMEs are also affected directly and indirectly. That therefore means systemic risks have broader implications than just for the insurance sector. In this regard, FERMA reiterates its support for EIOPA to continue its exploration of insurance-based public-private partnerships for systemic risks. Here FERMA makes the point that we are concerned that notably regarding cyber insurance there is an increasing gap between supply of and demand for cyber coverage. This could arguably be similar in those risks related to climate, for example. It is also worth here mentioning a key finding from AMRAE's Project LUCY where large companies are withdrawing more and more from the cyber insurance market because the coverage is falling whereas the premiums are rising. This problem also is worse and makes it worse for SMEs, which can't afford cyber insurance and many are unaware totally of the cyber insurance product. It is here where FERMA must stress that CYber insurance coverage is an important tool to fight against the cyber threat, alongside cybersecurity measures, cyber awareness and a holistic risk management approach.</p>	<p>Noted. With this Supervisory Statement EIOPA aims at addressing a recurring issue. EIOPA's Founding Regulation refers to "customer protection" as a main statutory objective. In addition, it emphasises that this objective must aim at the protection of policyholders, pension scheme members and beneficiaries.</p> <p>Having regard to some EU directives concerning the financial sector (e.g. CRD, AMLD etc.), it is clear that the notion of customer has a broader meaning than "consumer" as it covers all clients of the financial institutions. In this regard this concept is fully reflected by the</p>

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			<p>terminology used by EIOPA Regulation, since policyholders and beneficiaries are the clients of the insurance companies, regardless if they are natural or legal persons.</p> <p>The Supervisory Statement has also been adjusted accordingly.</p> <p>While in some instances the protection gap may 'become more evident', EIOPA is of the view that it is important there is clarity in what is covered or not. Moreover, the Supervisory Statement also highlights that when coverage is reviewed/clarified it is important to take into account the target market's needs, objectives and characteristics and not just business considerations.</p> <p>Finally, EIOPA is also doing other work on protection gaps.</p>
55	German Association of Insured – hereinafter “BDV”	<p>Q1. Yes, we agree following to the explanations outlined under "context and objective" of this consultation, especially no. 2.1 to 2.3 (CP, p. 6-7). In our contribution to EIOPA's forthcoming Consumer Trends Report for 2022 we already gave several examples for recent natural catastrophes in Germany in 2021 and increasing cyber risks (Comments to Insurance Questionnaire - 31.05.2022). https://www.bunddersicherten.de/stellungnahmen</p> <p>Business Interruption Policies are not in BdV's remit, because following to BdV's statutes only private insurances for individual consumers have to be taken into consideration. But</p>	Noted.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		it is well known by judicial journals and the media that there were a lot of actions taken by SME against insurers caused by refused indemnisations and non-transparent contract clauses. For more detailed information please contact the association of insurance brokers BDVM representing SMEs: https://bdvm.de/en/	
56	Insurance Europe	<p>Q1. 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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Noted. EIOPA is aware and welcomes the efforts undertaken by the insurance sector during the pandemic and during the invasion of Ukraine.</p> <p>This Supervisory Statement does not address the insurability of systemic events but rather aims to address issues with uncertainty in coverage for systemic events, including by providing guidance on how to determine whether a risk is covered or not when there is not clarity and the risk may have become un-insurable because of a given systemic event.</p>
57	GDV	<p>Q1. Exclusions of individual risks are not a new phenomenon but have always existed. As recognized by EIOPA, there are limits to what can be insured. However, this Supervisory Statement erroneously refers unfortunately exclusively to the protection of the individual. It only takes into account the perspective of the person who inquires about an insurance contract and encounters gaps in coverage. In our point of view it fails to recognize that exclusions are by no means arbitrary, but rather that these are incalculable risks whose</p>	<p>Noted. This Supervisory Statement does not address the insurability of systemic events but rather aims to address issues with uncertainty in coverage for systemic events, including by providing guidance on how to determine whether a risk is covered</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>assumption is not possible solely for the protection of the collective of insured persons. That is why protection for business interruption, for example, was never designed for incalculable cases of pandemic proportions - such as Covid-19. And, of course, even if it becomes clear over time that a risk is no longer insurable, there must be an appropriate response. Insurers are then required to revise the coverage and exclusions of their products. This is a necessary measure that does not undermine the value of the insurance cover that can still be provided against everyday risks. Each line of business for itself will find appropriate solutions for this.</p> <p>Without exclusions, private property lines would be uninsurable under Solvency II or would lead to an extreme increase of premiums hence leading to a sharp drop in market penetration.</p>	<p>or not when there is not clarity and the risk may have become in-insurable because of a given systemic event. EIOPA agrees that certain risks may not be covered.</p>
58	BIPAR	<p>Q2. "BIPAR is wondering in how far the statement focuses only on exclusions related to systemic risks. Which aspects are only applicable to systemic risk exclusions? In relation to 3.8 we would suggest including the wording "In the case that examples are given " in the second paragraph: "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. In the case that examples are given, 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 3.9 we suggest to deleting the word "insurance distributors". It is up to the manufacturer to describe the product and the cover. Intermediaries and clients should receive clear information from the manufacturers in order to avoid misunderstandings and confusion re scope and cover. 3.9 should read as follows:</p>	<p>Noted.</p> <p>Regarding par.3.8 we agree to add "in case that examples are given" to further clarify.</p> <p>Regarding par.3.9 we disagree as insurance distributors have an important role during the sales process to make sure consumers understand the level of protection purchased.</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		"3.9. Insurance manufacturers should also clearly state if the scope and the type of coverage provided relates to direct and/or indirect losses caused by systemic events".	
59	BDV	<p>Q2. Yes, we agree following to the explanations outlined under "context and objective" of this consultation, especially no. 2.4 (CP, p. 7).</p> <p>In our contribution to EIOPA's forthcoming Consumer Trends Report for 2022 we outlined the following examples that the product monitoring was not as exact as necessary: With regard to professional disability there were cases following to which insurers refused to accept that symptoms of disability are actually caused by corona infection. The burden of proof is on the side of the insured person. Additionally cases have been reported that persons who have symptoms of Long Covid had to accept an increase of health premiums (loading of risk) or, if they wanted to change the health insurer that the contract conclusion was rejected.</p>	Noted.
60	Insurance Europe	<p>Q2. 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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>Noted. However please note that the Supervisory Statement does not address or challenge the insurability of systemic events but rather aims to address issues with uncertainty in coverage for systemic events and ensure that exclusions are taken into account as part of the POG process. It further provides guidance on how to determine whether a product is aligned with the target market's needs, objectives and characteristics taking into account the relevant exclusions.</p> <p>It finally provides guidance as to how to determine whether a risk is covered or not if, because, of a systemic event it becomes unclear. This without prescribing the event should be covered or not and leaving</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>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”.</p>	<p>insurance product manufacturers to make the assessment taking into account a number of factors, including business and solvency considerations.</p>
61	GDV	<p>Q2. The POG process is only one part of the system that applies to consumer protection. There is a comprehensive legal framework in place that is quite sufficient in itself. In addition to the target market regulations and product testing requirements that go hand in hand with the POG process, the requirements for general terms and conditions – based on Directive 93/13/EEC on unfair terms in consumer contracts (last amended by Directive (EU) 2019/2161). These ensures that insurance coverage is not eroded due to overly broad exclusions and that consumers are not disadvantaged by surprising or ambiguous clauses. Insurance companies adhere to this legal framework. And if disagreements should nevertheless arise, out-of-court complaints systems with the supervisory authority and the insurance ombudsman provide quick and uncomplicated options for resolving conflicts. The interplay of legal requirements and out-of-court complaint options is supplemented by exchanges with the national supervisory authority. This is actively pursued if risks are identified by the supervisory authority, consumer advocates, the association or the insurance companies themselves.</p>	Noted.
62	Unipol Group	<p>Q3. Unipol group believes that the main way to address this issue is by strengthening the transparency of insurance contracts and improving the quality of clients’ advice.</p> <p>It should be essential ensuring clear information and effective disclosure about the scope of the coverages and the level of protection offered by the products. Therefore, we agree with the need to avoid the use of generic terms in the contracts wording and the use of generic systemic risks coverage exclusions. Insurance exclusions must be specified clearly and without misleading terms, and the demand and needs process should be strengthened in order to clarify the real effects of contractual exclusions on the product coverages.</p> <p>In this regard, Unipol Group believes that a high-quality advice is the most effective and viable tool to mitigate the risks linked to the application of exclusions in insurance contracts. An effective advice during the distribution phase is key to meet policyholders’</p>	Noted. However, it is also important to take into account these aspects in the product design process as customers may often not read the terms and conditions and also to help distributors in the advice process.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		expectations and to offer them the most suitable products according to their coverage needs.	
63	BIPAR	<p>Q3. The potential problem with the proposed EIOPA's approach is – as the pandemic has illustrated- that nobody knows what they ignore. In other words a list of systemic related exclusions may well turn out to be irrelevant if the exclusions do not cover the unforeseen. With reference to the impact assessment we wonder if there is not another option that could be considered by EIOPA : To start from the a-priori that all systemic risks are excluded -except if they are explicitly covered. Instead of a “negative” list of exclusions, there could then be built upon a positive list of inclusions. Inclusions could then possibly be better tailored and in the longer term it would offer opportunities for a flexible approach in function of other solutions that may be available in national markets. Such an approach would also result in clarity and would avoid the mismatch between expectations and actual coverage. It would have as extra advantage that there is no non-affirmative cover issue in the long term, specialty markets could develop who focus on specific systemic risk. Specific supervisory approaches to those who include systemic risk or who offer as a separate cover systemic risk related cover could then be developed in accordance with the draft statement. The details of the elements of the exclusion is key. For example the coverage within the policy to which the exclusion applies (liability? first party?cause ?), the trigger of the exclusion (actual, or also alleged?) .</p>	<p>Noted. EIOPA believes that if no coverage for systemic events is provided by the insurance product this should be clearly stated as excluded.</p> <p>Silent coverage can further raise issues with lack of clarity in coverage and disputes between parties, as seen during the pandemic. Moreover, the proposed approach may lead on one hand to significant protection gaps and, on the other hand, increase burden on market participants.</p>
64	FERMA	<p>Q3. Above and beyond this question, there is a real fear in the market that more exclusions will come as a consequence of exercises around making cover more affirmative, and this is overall negative for buyers and businesses since it might (arguably probably) lead to further exclusions and gaps in coverage.</p>	<p>Noted. While in some instances the protection gap may ‘become more evident’, EIOPA is of the view that it is important there is clarity in what is covered or not. Moreover, the Supervisory Statement also highlights that when coverage is reviewed/clarified it is important to take into account the target</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			market's needs, objectives and characteristics and not just business considerations. Finally, EIOPA is also doing other work on protection gaps.
65	BDV	<p>Q3. Yes, we agree (cf. no. 2.6 and 2.7, p. 7, of CP). At the same time we stress that the problem "how to ensure a balance between providing an exhaustive list of exclusions versus making the terms and conditions overly complex", is not limited to "systemic" risks, but to any insurance contracts covering "usual" risks (life and non-life).</p> <p>In our comment for the forthcoming 2022 Consumer Trends Report we gave the following example: Trip cancellation insurances mostly have a clause which includes "unexpected serious illness" ("unerwartet schwere Krankheiten") as reason for trip cancellation. But the insurer did not explain in its terms and conditions which illness could be considered as "unexpected" as well as "serious" (e.g. pneumonia or influenza). That is why BdV considered this clause as non-transparent and therefore not applicable and went to court. After several years the judicial procedures of appeal have reached the highest level of the Federal Court of Justice ("Bundesgerichts-hof"), but a date for the final decision is still not yet fixed.</p> <p>Conclusion: The difficulty is less an "exhausted" versus a "complex" list of exclusions, but the "material" clarity of the exclusions themselves.</p>	Noted. Thank you for the feedback. We agree it is important to strike a balance between the two. Hence why the Supervisory Statement also clarifies it is important to test the disclosure to determine if they are clear enough.
66	Insurance Europe	<p>Q3. 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.</p> <p>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</p>	Noted. EIOPA is also aware insurance contract law is not harmonized, hence why the guidance focuses on POG to allow flexibility for manufacturers to implement POG whilst also taking into account national contract law requirements.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>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.</p>	<p>The IPID is not provided to commercial customers such as SMEs in some Member States. In addition, our experience to date with mystery shopping concerning retail customers is that the quality of provision of the IPID “in good time” to the customer by the product manufacturer and ensuring that the customer reads and understands the IPID, is far from optimal, hence the real need to address these issues at the product design phase.</p>
67	GDV	<p>Q3. As already explained under question Q2, the clarity of the exclusions is already ensured by the comprehensive requirements of the law governing general terms and conditions. Notwithstanding this, attention is always paid to comprehensible wording - in each case tailored to the specific set of terms and conditions - and thus to achieving a balance. More detailed contractual documents - geared to legal certainty - are also supplemented by the information summarized in the IPID, which is already regulated by the Insurance Distribution Directive IDD.</p>	<p>Noted. EIOPA is also aware insurance contract is not harmonized, hence, why the guidance focuses on POG to allow flexibility for manufacturers to implement POG whilst also taking into account national contract law requirements.</p> <p>The IPID is not provided to commercial customers such as SMEs in some Member States. In addition, our experience to date with mystery shopping concerning retail customers is that the quality of provision of the IPID “in good time” to the customer by the product manufacturer and ensuring that the customer reads and understands the IPID, is far from optimal, hence the real need to address these issues at the product design phase.</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
68	BIPAR	Q4. Clarity on how the exclusion applies is key. As previously explained, providing scenarios as to how that exclusion would respond in real practice would be useful. Every word matters and every word should be tested in those scenarios. That way, it can be clearly explained to customers.	Noted. While EIOPA sees the benefit in providing scenarios, it is also important to ensure proportionality.
69	BDV	Q4. As pointed in our comment on Q3, the difficulty is less an "exhausted" versus a "complex" list of exclusions, but the "material" judicial clarity of the exclusions themselves (cf. no. 2.6 and 2.7, p. 7, and no. 3.7, p.9, of CP). Additionally the exact information, which risks are included or excluded, must be part of the advice given by the intermediary following to article 20 (1) of IDD ("personalised recommendation" and its documentation). Even if no "advice" is given, the "personalised recommendation" must include this issue as well, otherwise the omission may become an issue of breach of information duties by the intermediary (obligation of "fair, clear and not-misleading" information following to Article 17 of IDD).	Noted. Thank you for the feedback. EIOPA agrees it is important to strike a balance between the complexity and exhaustiveness. Hence, the Supervisory Statement also clarifies it is important to test the disclosure to determine if they are clear enough. EIOPA also agrees on the importance of advice, however, the Supervisory Statement is focused on POG and disclosure requirements as there may a number of factors influencing the advice process which can be mitigated by improved product design.
70	Insurance Europe	Q4. 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	Noted. EIOPA also is of the view the IPID helps consumers, however, issues persist, hence why EIOPA worked on this Supervisory Statement. The IPID is also not provided to commercial customers such as SMEs in some Member States. In addition, our experience to date with mystery shopping concerning retail customers is that the quality of provision of the IPID "in good time" to the customer by the product manufacturer and ensuring

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>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.</p> <p>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.</p> <p>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.</p>	<p>that the customer reads and understands the IPID, is far from optimal, hence the real need to address these issues at the product design phase.</p> <p>The Supervisory Statement does not challenge insurability of systemic events but it aims to ensure that when exclusions are applied to the coverage provided by the insurance product, these are clear and eliminate a situation of mis-match between policyholder's expectation and the actual cover provided. Similarly, it provides guidance on how to balance different aspects when determining whether a risk is covered or not in cases of uncertainty, allowing manufacturers to make relevant considerations.</p>
71	GDV	<p>Q4. The IPID is intended to summarize the most important coverages and exclusions, and it clearly states that complete pre-contractual and contractual information about the product is contained in other documents.</p> <p>Overall, the German insurance industry believes that the IPID works well in practice because it is a consumer-friendly document with clear headings and simple symbols.</p>	<p>Noted. EIOPA also is of the view the IPID helps consumers, however, issues persist, hence why EIOPA worked on this Supervisory Statement.</p> <p>The IPID is also not provided to commercial customers such as SMEs in some Member States.</p> <p>In addition, our experience to date with mystery shopping concerning retail customers is that the quality of provision of</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			the IPID "in good time" to the customer by the product manufacturer and ensuring that the customer reads and understands the IPID, is far from optimal, hence the real need to address these issues at the product design phase.
72	BIPAR	Q5. Systemic may have to be differentiated from catastrophic. What might make a risk uninsurable ? The industry needs to answer the question : what can be so bad that is intolerable to insure? Defining those concepts without ambiguity is important	Noted. EIOPA used the definition of systemic events provided for in other documents. Cyber-attacks in some instances may also be systemic.
73	BDV	<p>Q5. We fully support EIOPA's position that a balanced and consumer centric product perspective has to be taken, if a risk may become unaffordable or even uninsurable (cf. no. 3.3, p. 8, of CP). But there is "no one size fits for all" solution. Each insurance class in which this may happen has to be analysed separately starting with the question: are the "end-users" of an insurance contract private consumers or retail investors or is it B2B-relationship, because the thresholds of "affordability" are very different depending on the category of "end-users"? Another question should be: are there any solutions which are already implemented which may be used in this special case as well (for ex.: state subsidies from a certain threshold on like for terrorism risks, which may be implemented for natural catastrophes as well)?</p> <p>The core requirement of a "balanced and consumer centric product review" should therefore be the appropriate balance of risk coverage and of the amount of the premium. "Best" consumer protection does not entail the offer neither of the cheapest product nor of the one with the largest risk coverage possible and therefore the most expensive product, but the offer which combines individually basic and necessary risk coverage and the appropriate amount of premiums. There should be neither any protection gaps nor any redundancy of risk coverage. In a market economy insurance follows the "law of the large numbers", i.e. probability calculation of risk events combined with adjusted calculation of premiums.</p>	Noted. Thank you. EIOPA agrees with the need to have a balanced approach, hence why the focus is on POG to ensure flexibility.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
74	Insurance Europe	<p>Q5. 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.</p> <p>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.</p> <p>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.</p>	<p>Noted. The Supervisory Statement does not set requirements for which risks to be excluded or included by the insurance undertakings, this lies solely with the insurance undertaking deciding to provide or not, coverage for such risks.</p> <p>EIOPA also agrees it may be natural to exclude some risks following certain events; hence the Supervisory Statement provides guidance on considerations which should be made when determining if a risk is covered or not following the lack of clarity generated by a systemic event.</p>
75	GDV	<p>Q5. The inclusion of "systemic events" as part of ongoing product reviews is common, necessary and provided for by 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 insurer's proper action is to discontinue coverage for that risk. In addition to that, the monitoring of risks is also part of the risk management functions.</p> <p>Regarding pandemic cover: It is a global consensus that the financial consequences of a pandemic cannot be calculated and are therefore not privately insurable. Please refer to https://www.ncsl.org/documents/econ/APCIA_Hartwig_Gordon_White_Paper.pdf on the issue of uninsurability. On the other hand, cyber, acts of terrorism and natural hazards are insurable by the private sector and / or via a public private partnership (e.g. EXTREMUS in Germany for acts of terrorism above a sum insured auf 25 bn. EUR).</p> <p>It should be noted that in the Consumer Trends Report (29.01.2021) travel insurers were mentioned positively for their goodwill towards the customer. Furthermore, the line was among the top 3 positive measures regarding consumer protection. The changes in the</p>	<p>Noted. The Supervisory Statement does not set requirements for which risks to be excluded or included by the insurance undertakings, this lies solely with the insurance undertaking deciding to provide or not, coverage for such risks.</p> <p>EIOPA also agrees it may be natural to exclude some risks following certain events; hence the Supervisory Statement provides guidance on considerations which should be made when determining if a risk is covered or not following the lack of clarity generated by a systemic event.</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>scope of cover criticised by EIOPA did not occur on the German market. Moreover, the pandemic exclusion has been in place in the German market for almost 15 years.</p> <p>Irrespective of this, in travel insurance some insurance companies also offer coverage or re-exclusion for pandemic for an extra premium. Here the unexpected serious illness of the traveller. Now, this is probably the only line of business where it is possible to insure against pandemics on a larger scale. Consumers gladly accept the additional coverage.</p>	
76	Unipol Group	<p>Q6. Unipol Group suggests to not over-emphasizing the need to take into account the systemic risk coverage exclusions in the identification of each target market and especially with reference to the negative target markets. Indeed, as also pointed out by EIOPA, due to their unpredictable nature, systemic risks are per se unfit to be precisely identified, assessed and defined. Therefore, taking into account such risks in the context of a granular (negative) target market identification – as it seems expected by EIOPA – could be unrealistic and inappropriate.</p> <p>The main role of insurance companies is to meet the policyholders' needs for protection, diversifying risks in the best possible way through mutuality and affordable insurance products. To this end, we believe that the most effective and viable tools are that of high-level of transparency and high-quality advice to the benefit of policyholders, which can be reasonably achieved by the insurance undertakings and intermediaries.</p>	Noted. Thank you. It is important the target market is sufficiently granular if the exclusions relate to a main part of the coverage and/or to key aspects relating to the target market's needs, objectives and characteristics. For example, a product which excludes flooding may have as its negative target market people living in a high risk areas for flooding.
77	FERMA	<p>Q6. Here our response is "it depends". On the one hand, we totally support EIOPA pursuing work in the area of "systemic" risks and catastrophic risks. We also appreciate work done on exclusions, which is an important area where there is some detriment to the insurance buyer. On the other hand, as mentioned elsewhere, we are mindful of the possibility that work in this area may have the unwanted impact that more exclusions will be added in coverage and this may lead to more gaps opening up in coverage.</p>	Noted. While in some instances the protection gap may 'become more evident', EIOPA is of the view that it is important there is clarity in what is covered or not. Moreover, the Supervisory Statement also highlights that when coverage is reviewed/clarified it is important to take into account the target market's needs, objectives and

No	Stakeholders	Response to the public consultation question	EIOPA's comments
			<p>characteristics and not just business considerations.</p> <p>Finally, EIOPA is also doing other work on protection gaps.</p>
78	BDV	<p>Q6. Yes, we fully agree the proposed EIOPA approach with regard to</p> <ul style="list-style-type: none"> • the "communication with consumers in general" (especially no. 3.6, 3.8 and 3.10 of CP), • the "treatment of systemic exclusions in the POG process when new products are developed" (especially no. 3.13, 3.14 and 3.16 of CP), • the "supervision of POG process as regards to the treatment of systemic exclusions" (especially no. 3.18., 3.19 and 3.20 of CP). <p>As already outlined in our comment on Q 3, we stress again that the proposed EIOPA approach to the assessment of the treatment of exclusions on systemic events in insurance contracts should not be limited to "systemic" risks, but applied to any usual insurance contracts (life and non-life).</p>	<p>Noted. Thank you. POG requirements are applicable to all products covering a wide variety of risks. However, systemic events is where uncertainty exists the most and where further guidance is needed, hence the focus on these events with the view of taking a more proportional and risk-based approach.</p>
79	Insurance Europe	<p>Q6. We agree that 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).</p> <p>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 should be considered:</p> <ul style="list-style-type: none"> • 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 	<p>Noted. Thank you. The focus is on those products which may cover/exclude risks relating to systemic event and for which issues have already arisen/are likely to arise.</p> <p>The definition of systemic events is already provided for in other EIOPA's documents and this has been sufficiently tested with stakeholders.</p> <p>Proportionality is applied as the Supervisory Statements refers only to those products which cover/exclude or are</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>different wording, such as “system-wide events, characterised by their exceptional nature, very broad scope and very serious adverse impacts”.</p> <ul style="list-style-type: none"> • 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. 	<p>likely to cover/exclude risks relating to systemic events.</p> <p>Guidance and convergence, in EIOPA's view, are needed given the issues which emerged and continue emerging. The Supervisory Statement does not add new requirements but rather provides further guidance in relation to POG.</p> <p>Finally, EIOPA agrees the assessment of coverage be immediate but also possible detriment needs to be taken into account. EIOPA clarified in the Statement that only when substantial changes are made the re-assessment of all examples needs to be made.</p>
80	GDV	Q6. Of course, producers must assess the terms of existing insurance products in light of Covid-19, the Ukraine conflict, or other extreme events and take remedial action as needed (e.g., by reviewing exclusions when a risk is no longer insurable or reviewing disclosures). However, this is already a result of existing POG requirements.	Noted. However, given existing and possible future issues there is need for proportionality.
81	FERMA	Q7. Assuming this is a supervisory statement, we understand why EIOPA has chosen this approach. Nevertheless, we do need to stress that for insurance buyers we are concerned about how it will impact upon the availability of certain coverage.	Noted.
	BDV	Q7. Yes, we agree (preferable option 2; cf. CP, p. 19). ()	Noted
82	Insurance Europe	Q7. 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.	Noted. The scope of the statement is clear and addresses issues with lack of clarity in exclusions for risks relating systemic events

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		The current approach could centre attention on extreme events, which by their nature are rare and often not the most relevant consideration for customers.	in insurance products, including their treatment during the POG process. It is in line with past guidance on POG and exclusions.
83	GDV	<p>Q7. The German insurance industry is in favor of Policy Option 1 - No action (maintain status quo). Anything else would be a hidden re-regulation of the insurance markets without any legal or factual basis. As already stated, there is a sufficient system of legal provisions, besides explicit explanations on POG contained in various documents. A supervisory statement would call into question the relationship to these existing documents. As a result, action by EIOPA is not only unnecessary, but could even be counterproductive.</p> <p>The current approach also risks focusing attention on extreme events, which by their nature are rare.</p>	Noted.
84	BDV	Q8. Yes, we agree. We particularly stress the important conclusion that if - following to option 1 - no action is undertaken, there are definitely no benefits for the consumers.	Noted.
85	Insurance Europe	<p>Q8. 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.</p> <p>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.</p>	<p>Noted. The Supervisory Statement does not introduce new compliance requirements for insurance manufacturers and insurance distributors.</p> <p>EIOPA expects the industry to comply with the POG requirements and the Supervisory Statement further details on supervisory expectations around implementation and application of the POG process by the sector. Moreover, there are significant costs and risks for the industry also when coverage is uncertain as shown by the COVID-19.</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
86	GDV	<p>Q8. The costs of implementing changes to POG process should not be underestimated. This involves changes to internal processes that involve a large number of internal functions. As made clear in the previous questions to stakeholders (Q1 to Q7), however, there is no need at all to change existing POG processes or otherwise supplement existing systems with regard to the handling of exclusions. In this respect, options 2 and 3 listed in Annex I by EIOPA do not represent benefit that would justify costs, regardless of the amount.</p>	<p>Noted. The Supervisory Statement does not introduce new compliance requirements for insurance manufacturers and insurance distributors.</p> <p>EIOPA expects the industry to comply with the POG requirements and the Supervisory Statement further details the supervisory expectations around implementation and application of the POG process by the sector. Moreover, there are significant costs and risks for the industry also when coverage is uncertain as shown by the COVID-19.</p>
87	BIPAR	<p>BIPAR is promoting contractual certainty and pre-contractual disclosures. The POG rules in the IDD are important in this respect. The responsibilities of intermediaries who are not product manufacturers should not be confused with the responsibilities of intermediaries who are product manufacturers.</p> <p>Wording for potential risks such as cyber, pandemic or natural catastrophes should be clear. From a Solvency perspective, BIPAR agrees that insurers should make sure that they understand to what risks they are exposed.</p> <p>We would like to broaden the discussion to the aspect of sustainability as a possible future systemic risk issue. How for example will insurers be able to design wording (as the minor issue) and in particular solvency related risk wording in relation to D&O responsibility/ Liability for disclosures in relation to sustainability? Discussions about what is war/ what is terrorism are ongoing since years in international institutions.</p> <p>Making insurance intermediaries co-responsible by way of supervisory statements is not correct because no intermediary's business model is built (nor their PI cover) to absorb the</p>	<p>Noted. Thank you for the support. EIOPA also notes the other points for discussion.</p>

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>risk of a systemic issue related to wording or risk in the market. The only answer can be found in a political debate about the responsibility of insurers and / governments (in possible PPP schemes). We therefore cannot agree to "reduce" this problem to POG issues.</p> <p>This issue should not be on the agenda of conduct supervisors until the issue of systemic risk is not cleared from a solvency/ prudential/ political – macro economical international perspective.</p>	
88	FERMA	<p>1) We welcome the work of EIOPA in the area of "systemic" risks generally. FERMA assesses that there is indeed a widening protection gap when it comes to "systemic risks" as we have illustrated with evidence from the risk management community herein.</p> <p>2) At the same time, and as we have mentioned in our feedback on the EIOPA consultation on non-affirmative cyber cover, FERMA and its members are concerned that supervisory action in this area will only lead to further exclusions and reductions in coverage / capacity, which is obviously harmful to insurance buyers and arguably might have the adverse impact of widening the (already considerable) protection gap.</p> <p>3) Here, FERMA is a great supporter of EIOPA's leading role in the search for a real and tangible solution to increasing the private insurance markets coverage to catastrophic events. In particular, FERMA would be keen to support EIOPA's further work that would look into insurance-based public-private partnerships for large risks (such as pandemic, or cyber, for instance).</p> <p>3a) On top of this point, we would be supportive of some further action by EIOPA with regards to non-damage business interruption cover!</p>	Noted.
89	BDV	<p>Additional remark to Q 5: In a market economy insurance follows the "law of the large numbers", i.e. probability calculation of risk events combined with adjusted calculation of premiums. If this rule cannot be applied anymore due to massively adverse macro-economic circumstances (terrorism, natural catastrophes, ransom and cyber crimes, pandemic, etc.), then the private insurance industry is simply not the right partner to solve</p>	Noted.

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		these macro-problems. This fact is already exemplified by "war exclusion clauses" which are applied in case of civil or interstate wars.	
90	Insurance Europe)	<p>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).</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>EIOPA notes the 4 week time period is not the usual timing, however, it was important to strike a balance between the continued need for clarity amidst ongoing crises and the need to consult. EIOPA determined that unlike for COVID-19's statements where no consultation was carried out, in this instance a 4 week deadline would strike the right balance.</p> <p>EIOPA also notes the proposed solutions to address protection gaps and would like to refer to other EIOPA's work in this area.</p> <p>Finally, as stated in previous comments, one of EIOPA's main objective is to ensure "customer protection" which also covers companies such as SMEs for which there may be information asymmetries and imbalances in bargaining power.</p>
91	GDV	EIOPAs investigation should be limited to insurance products whose policyholders are consumers. However, this is not the case with business-interruption-insurances in particular.	As stated in previous comments, one of EIOPA's main objectives is to ensure "customer protection" which also covers companies such as SMEs for which there

Resolution of comments

Public consultation on the Supervisory statement on exclusions

No	Stakeholders	Response to the public consultation question	EIOPA's comments
		<p>Regardless, it would be - in the first line - the task of national regulators to remedy grievances related to exclusions. In the German market, however, it is not known that a corresponding prohibition has ever been issued. In this respect, companies should continue to set up their product testing processes within the existing framework and thus comply with the statutory regulations.</p> <p>Against this background we see no need for a further paper. Unfortunately, a more detailed assessment is not possible due to the short time available. However, we are of course available for discussions on the subject.</p>	<p>may be information asymmetries and imbalances in bargaining power.</p>