

Insurance Europe comments on the General Data Protection Regulation (GDPR), in light of the triologue discussions

The EU Regulation must allow for essential insurance business processes

Data processing lies at the very heart of the insurance business. Insurers collect and process data to analyse risks that individuals wish to cover, to tailor products accordingly, to value and pay claims and benefits, and to detect and prevent insurance fraud.

Protecting policyholders' data is a priority for insurers, who support effective regulation in this area and the EU objective of further harmonisation of the existing EU data protection framework. However, the proposed Regulation must avoid negative unintended consequences for the insurance industry and consumers.

Lawfulness of processing (Articles 6 & 7)

■ Legitimate interests and fraud prevention

Insurance Europe supports **both the Council approach** in Recital 39 and the position of the **Article 29 Working Party**, which acknowledge that fraud prevention falls under the non-exhaustive list of "legitimate interests" in Article 6(1) (f). This would provide the necessary legal basis to allow processes for combatting insurance fraud and thus protecting honest policyholders.

■ Further processing

Insurance Europe welcomes the **Council's approach** in Article 5(1b) and Articles 6(2) and (3a) allowing further processing for compatible purposes. These changes would provide the necessary legal certainty for (re)insurance for claims' management and for statistical purposes as they would allow basing compatible further processing, eg reinsurance or insurers' statistical work, on the initial legal basis.

■ Right to withdraw consent

Insurance Europe supports the **European Parliament approach** to Article 7(3) on the right to withdraw consent. Nevertheless, this right should not be absolute and, the regulation should explicitly state that the right to withdraw consent does not apply when data processing is necessary for the performance of a contract, for complying with a legal obligation and for legitimate interests.

■ Significant imbalance

Insurance Europe supports the deletion of the concept of significant imbalance between the data controller and the data subject, as proposed by the **European Parliament** in Recital 34 and Article 7(4) and by **Council** in Article 7(4). This concept would introduce legal uncertainty and could be interpreted as if there was a "significant imbalance" between insurers and consumers. In this case, the data subject's consent for processing personal data would be invalidated, preventing insurers from offering their services to consumers.

Therefore, Insurance Europe does not support the Council's Recital 34. It is important that consent given by the data subject provides for as much legal certainty as the other legal bases.

■ Consent for third persons

Insurance Europe does not support the changes made by the **European Parliament** to recital 32, which states that "consent cannot be given for the processing of personal data of third persons". Insurance Europe is concerned by the insertion of an outright ban on the ability to consent for the processing of personal data of third persons, without defining the term "third persons" in the recital or in Article 4, and without allowing any flexibility for situations where processing is necessary or is in the interest of the data subject. For example,

recital 32 would potentially make it necessary for all four members of a family (eg a mother, father and two children aged between 13 and 18) to provide consent separately when one parent is purchasing a travel insurance policy online to cover the entire family. All members of the family would benefit from the policy. It should not be necessary for the children and other parent to individually consent to the policy when it is taken out.

Health data: definition and processing (Article 9)

Insurance Europe welcomes the **Council approach** to the definition of health data in Recital 26 and Article 4(12) as it focuses more on the health status and not on administrative information.

Insurance Europe also strongly supports the **European Parliament approach** to the processing of sensitive data in Article 9(2aa) as it allows insurers to process sensitive data when it is necessary for the performance or execution of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

Right to erasure (Article 17)

Insurance Europe also welcomes the **European Parliament approach** to Recital 53 on the right to erasure as it grants data controllers the right to retain the data when necessary for the performance of the contract with the data subject, or when there is a legal obligation.

Moreover, Insurance Europe supports the **Council approach** to Article 17 (3g) as it acknowledges the necessity of retaining data for the establishment, exercise or defence of legal claims.

However, Insurance Europe highlights that the right to erasure is a right that can be exercised upon request and should not be seen as an automatic obligation on the data controller.

Profiling (Article 20)

Insurance Europe supports the **Council approach** to profiling in Article 20 (1a) and Recital 58 as it allows insurers to carry out essential operations, such as risk assessment at pre-contractual stage and while the contract is being performed, and it acknowledges the significance of profiling for fraud prevention purposes.

However, Insurance Europe believes that a further ground for allowing profiling should be if this profiling is in the interests of the data subject or of another person. Looking at the Council text, this would bring Article 20 (1a) in line with Article 6.1 (f).

Insurance Europe welcomes the Council approach where profiling means solely automated processing, and human intervention from the part of the controller only takes place at the request of the data subject.

Therefore, Insurance Europe does not support the **European Parliament's** proposed Article 20(5), which could be interpreted as prohibiting fully automated processing, requesting human intervention for every single insurance contract offered to consumers. This approach would run contrary the consumer trends in favour of digitalisation as it would mean, for instance, that the last minute purchase by consumers of online travel insurance would be delayed or rendered impossible.

Groups of undertakings (Articles 22 & 82)

Insurance Europe welcomes the **European Parliament's approach** in Articles 22 (3a) and 82(1d) and the **Council's** proposed Recital 38a as they explicitly allow the transmission of necessary data within groups of undertakings of companies. For example, insurance undertakings often outsource special tasks and functions, such as risk assessment and claims handling as well as accounting or human resources, to specialised companies.