Key messages on the Greek EU Presidency's consolidated text on the proposed Data Protection Regulation

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Introductory remarks

Insurance Europe supports the European Commission's objective of further harmonising existing EU data protection legislation. However, due to its horizontal approach, the European Commission's proposed General Data Protection Regulation (the Regulation) should be a legally certain, flexible, risk based approach instrument.

The Regulation would benefit from a number of crucial changes to achieve the correct balance between individual's right to privacy and the needs of businesses, for instance by allowing insurers to continue to collect and process personal data and provide the services consumers expect.

Insurers' specific concerns

Insurance Europe would like to provide the following suggestions on the consolidated text of the European Commission's proposal for a General Data Protection Regulation provided by the Greek EU Presidency on 30 June 2014 (the Council text).

Lawfulness of processing

■ *Right to withdraw consent – Article 7(3) and Recital 32 (previously Recital 33)*

Insurance Europe is disappointed that the Council has not dealt with the right to withdraw consent yet. Insurers are concerned that, as it stands, the use of this right in the context of contractual obligations, could hinder the execution of an insurance contract and may lead to its termination. In this case, insurers would be unable to perform their contractual obligations and offer their services to their customers.

Recommendations: Insurance Europe suggests that Article 7(3) takes into account situations where data must be retained for the conclusion and execution of insurance contracts, but also where data must be processed for regulatory and anti-fraud purposes, partially in line with the changes proposed to Article 7(3) of the European Parliament's (EP) report on the Regulation.

> ■ *Significant imbalance – Article 7(4) and Recital 34*

Insurance Europe welcomes the deletion of the term "significant imbalance" from the Council text, bringing the required legal certainty to the legislative proposal.

Recommendations: Insurance Europe suggests deleting the corresponding Recital 34 for consistency reasons.

> ■ *Legitimate interest and fraud prevention - Article 6(f) and Recital 39*

Insurance Europe supports the Council changes in Recital 39 of the Regulation, recognising that the processing of personal data for fraud prevention and detection purposes constitutes legitimate interest. Nevertheless, a Recital alone does not bring the necessary legal certainty.

Recommendations: Insurance Europe recommends including a legal basis in Article 6 of the Regulation, explicitly allowing data controllers (insurers) to process data when necessary for the purposes of preventing and/or detecting fraud. This would be key for the insurance business to function properly, especially considering that detected and undetected fraud is estimated to represent up to 10% of all claims expenditure in Europe.

Such a provision would also help reduce and deter future fraudulent activities. It would facilitate the insurance industry's efforts to protect the honest consumers from paying for fraudsters, through higher premiums.

Right to be forgotten – Article 17 and Recital 53

Insurance Europe notes that this right aims to address internet services, as illustrated by the Italian EU Presidency's note on the right to be forgotten and the Google judgement. Its impact on offline business and customers, in particular, where the data controllers must comply with contractual, legal and regulatory obligations has never been addressed.

Recommendations: Insurance Europe recommends that the Regulation should clearly state that the right to be forgotten is a right that data subjects can exercise on request. Furthermore, this right should not apply where there is a contractual relationship between an organisation and an individual or where a data controller is required to comply with regulatory obligations to retain or where the data is processed to detect and prevent fraudulent activities.

Health data: definition and processing – Articles 4(12), 9 and Recital 26

Insurance Europe considers that changes to the proposed definition and processing of health data are needed.

Firstly, the proposed definition is too broad: treating administrative data as sensitive is disproportionate and will add unnecessary administrative burden on consumers and insurers for all insurance products requiring health data processing, such as health, motor and travel insurance.

Secondly, legal grounds to process sensitive data need to remain proportionate and minimise red tape.

Recommendations: Insurance Europe supports the extension of legal basis in Article 9 as proposed in Article 9(aa) in the EP report, suggesting that data controllers can process sensitive data when necessary for the execution of a contract or for taking steps prior to entering into a contract. Moreover, Insurance Europe suggests narrowing the definition of health data in Recital 26, excluding administrative and technical data from the definition.

Profiling – Article 20 and Recital 58

Insurance Europe welcomes the recognition in the Council text that individuals can be profiled if necessary for entering into, or for the performance of, a contract, or if profiling is expressly authorised by Union or member state law, or if the data subject has given consent.

We also support changes in Recital 58 acknowledging that profiling should be allowed if a Union or member states' law authorises so, including for fraud and tax evasion monitoring and prevention purposes. With these changes, the rules on profiling would benefit consumers by permitting insurers to use data effectively in risk-adequate rating, rate classification and risk-assessments.

Recommendations: Insurance Europe wishes that these positive changes will not be altered in the future versions of the Council text. Additionally, Article 20 should include a legal basis allowing profiling for the monitoring and prevention of fraud and tax evasion purposes, in line with the Council proposed Recital 58 of the Regulation.

Data portability – Article 18 and Recital 55

Insurance Europe welcomes the changes proposed by the Council which try to prevent uncompetitive behaviour by narrowing the scope of Article 18 to only information provided by the data subject.

Insurance Europe believes that insurance companies, in their capacity as data controllers, should not be obliged to disclose commercially sensitive information. Moreover, the data portability right deals with consumer and competition issues and not the protection of data. As such, this right falls outside the scope of the Regulation.

Recommendations: Insurance Europe continues to believe that Article 18 should be deleted from the Regulation. Should this not be an option for discussion, we would support amendments clarifying that the right applies only to data that the data subject provided the controller with, excluding data that are the result of the controller's processing.

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