

## Insurance industry position on proposed EU Data Act ahead of trilogues

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Insurance Europe welcomes the European Commission's proposal for an EU Data Act and its objective of fostering data sharing and creating a single market for data sharing on a cross-sectoral basis.

The insurance industry fully endorses the enhanced data portability rights of users of connected products, including their right to access and control the data generated through the use of their products and to allow access to that data by a third party of their choice (Art. 5). For this to work, connected products should be designed and manufactured in such a way that the data generated by their use is, by default, easily, securely and directly accessible (Art. 3).

### The benefits of telematics-based insurance

Telematics-based insurance policies offer consumers the possibility to customise their insurance policy according to their needs. For example, "pay as you drive" insurance calculates the premium based on the actual mileage driven. It can therefore benefit anyone who wants to take control of their insurance premium. In particular, it can:

- Reward low-risk drivers with lower premiums.
- Reduce insurance premiums for drivers who drive less frequently, thereby both improving road safety and helping to cut greenhouse gas emissions.
- Greatly reduce the length of the claims process and deter fraudulent claims.

Additionally, aggregated and anonymous data obtained from connected vehicles will be of paramount importance in giving insurers a better understanding of any potential new or emerging risks associated with autonomous driving, thus increasing the insurability of autonomous vehicles once they become a reality. It will also be key to establishing the circumstances surrounding an accident involving such vehicles. Finally, data sharing will enhance smart cities and make roads safer. It will allow for real-time communication between vehicles and road infrastructure, thereby creating a better traffic flow in cities.

### Comments on Article 5 (right of users to share data with third parties)

Insurance Europe welcomes the addition to the European Parliament and Council of the EU texts that aims to strengthen the enhanced data-portability rights in Article 5. To ensure that the data shared by the manufacturer is usable by the third party, it is important that it is delivered in a structured, commonly used and machine-readable format and accompanied by the relevant metadata to interpret and use such data.

The insurance industry also welcomes the effort made by the co-legislators to clarify that inferred and derived data should not be part of data-sharing obligations. As a key principle, data-holders should not be obliged to share business-sensitive information or proprietary data that they have generated and analysed/enriched themselves and that is the outcome of their own work.

Trade secrets and business-sensitive information should be excluded from data-sharing obligations. The mere risk of having to disclose this data could hamper innovation, with negative consequences for the development of the European data economy. For this reason, Insurance Europe supports the Council's approach in **Article 5 (8)**, which clarifies that in exceptional cases a data-sharing request can be refused if the data-holder is able to demonstrate that it is highly likely to suffer serious damage from the disclosure of trade secrets. However, in cases where there is a clear imbalance of negotiating power, such as in the case of access to in-vehicle data, it should be possible for the third party to challenge the data-holder's decision to suspend the data-sharing. This possibility should be further specified in dedicated sectoral legislation.

Indeed, the protection of trade secrets should not be used as a loophole by manufacturers to refuse requests for data access. In this regard, Insurance Europe welcomes the European Parliament **Recitals 24 (b) and (d)** indicating the need for sector-specific regulation specifying the minimum available datasets that are essential for the provision of key aftermarket services. While the Data Act is an important step towards the development of the European data economy, it will not be sufficient by itself for the automotive sector. Only a dedicated piece of legislation on access to in-vehicle data will provide the confidence and incentive independent service providers require to invest in the new data-driven services in the automotive sector that will benefit consumers and the whole of society by providing smarter, safer and more sustainable mobility solutions.

### Comments on Article 6 (obligations of third parties)

The EC proposal in Article 6 sets out specific limits to how data received pursuant to Article 5 can be processed. In many cases, the EC proposal is not fully aligned with the General Data Protection Regulation (GDPR) and the interplay between the Data Act and current privacy rules are not fully ensured.

Under **Article 6 (1)** of the proposal, the third party must delete the data made available to it pursuant to Article 5 when it is no longer necessary for the agreed purpose. Insurance Europe supports the European Parliament's amendments to Article 6 (1) specifying that the data must be deleted, unless otherwise agreed with the user. A third party should have the possibility to use the data for a purpose that goes beyond the provision of a service if users give their consent. The GDPR already allows data retention for a limited period if the data controller has a legal basis upon which to rely.

Similarly, **Article 6(2)(b)** sets out a clear obligation for a third party to use the data it receives for the profiling of natural persons only if necessary for the provision of a service. Insurance Europe again supports the European Parliament's amendment to Article 6(2)(b), which clarifies that profiling is allowed as long as it is in compliance with the GDPR.

Finally, the European Parliament amendments to Article 6(2)(c) would allow a third party to share users' data with another third party if it has the contractual permission of the user. While it should be possible to request a consumer's consent for purposes other than the provision of the service, in line with the GDPR, consent should not be the only legal basis for processing data. If it is necessary to provide a service requested by the end-user, data sharing between third parties should also be possible without seeking additional permissions, as long as the user is informed and the additional third parties respect the confidentiality of the information received. For these reasons, Insurance Europe supports the European Parliament amendments to **Article 6(2)(c)** allowing third parties to request the user's consent to share their data. However, an additional legal basis should be added, clarifying, in line with the Council's text, that data sharing between third parties is also possible if it is necessary to provide a service requested by the end-user.

#### Comments on Chapter III and IV (FRAND principles)

Insurance Europe believes that an incentive or reasonable compensation should be the guiding principle for data transactions. As a general rule, the data holder should be able to recover the cost of making the data available and receive a reasonable margin to support innovation and improve infrastructure and services. Only when there is a proven and evidence-based market distortion, such as in the case of access to in-vehicle data, should the data holder's ability to charge for data access be further limited in sectoral legislation, as permitted by Article 9(3).

The insurance industry supports the Council's amendments to **Article 9** recognising the importance of establishing reasonable compensation for the data holder. In order to ensure continued investment and innovation, such compensation should take into account the investments required to make the data available and, to a certain extent, the costs incurred in data collection and production.

It is also vital to ensure fair contractual conditions for all market players in the data-sharing ecosystems. Insurance Europe welcomes the European Parliament and Council decision to extend the "SME fairness tests" in **Article 13(1)** to other companies in situations in which there is a clear imbalance of negotiating power.

In IoT (Internet of Things) technologies, the manufacturer will almost always be the sole source of data for their product or service, giving them a privileged negotiating position. Distortions in price negotiations occur when the data holder can unilaterally impose conditions for data access due to its market-dominant position, and this is not related solely to the size of the data recipient. Therefore, not only SMEs but all companies that are subject to a clear imbalance of negotiating power should be protected against unfair contractual terms.

For this reason, Insurance Europe also supports the European Parliament amendments to **Article 13(2)** recognising a contract as unfair if there is a significant imbalance between the rights and the obligations of the parties in the contract.

#### Comments on Chapter V (business-to-government data sharing)

The proposal sets out an obligation to make data available to public bodies in public emergencies or in situations in which public sector bodies have an exceptional need to use certain data. The reasons for government access, however, still need to be more strictly defined.

In particular, the EC proposal introduced a general concept of "exceptional need" where the "lack of available data prevents a public body from fulfilling a specific task in the public interest" (Art. 15(c)). Such a concept remains too broad, as circumstances leading to a possible lack of data can often occur in the public sector. The result is that the proposal would grant local authorities broad discretion when requesting access to privately



held data, raising questions about the necessity and proportionality of such a data-sharing obligation. In principle, government access to data should rely on a legal basis that is sufficiently clear and foreseeable.

Insurance Europe therefore supports the European Parliament's amendments to **Article 14** limiting the scope of the data sharing to non-personal data, as well as clarifying that B2G data-sharing requests must be duly justified and limited in time and scope. However, the provisions in Article 15 concerning data sharing for cases of "exceptional need" and "non-emergency situations" in the texts of the European Parliament and Council still remain very broad. The exceptional nature of the circumstances justifying B2G data requests still needs to be more narrowly defined to prevent an undue burden on companies that may face frequent and unpredictable data requests.

Finally, Insurance Europe supports the European Parliament's suggestion in Article 15(a) to set up a public sector body to coordinate all the B2G data-sharing requests in the same territory. Such national data coordinators should be able to ensure that data-access requests meet the proportionality requirements defined by the Data Act and that there are not multiple, simultaneous requests by different public sector bodies to the same data holder.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy