

Insurance Europe comments on profiling

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Introduction

Insurance Europe participated in the profiling session of the Fab Lab workshop organised by Article 29 Working Party (WP) in April 2017 and had the opportunity to exchange views on implementation concerns with the WP, as well as with the European Commission (EC) and other stakeholders.

The WP must improve the current dialogue with stakeholders, through the organisation of proper public consultations on its draft guidelines, in line with the European Commission Better Regulation agenda. In order to strengthen the transparency and efficiency of the process, the WP should implement immediately the following improvements:

- The WP should **systematically make all the questions on all topics available to all stakeholders** to be discussed at the workshops **at least six weeks ahead of each workshop**. This would enable stakeholders to get appropriately prepared for the discussions and provide qualitative input on the sector specific implementation issues.
- The WP should **allow stakeholders to participate in several or all sessions of the workshop** as all topics featuring the agendas may be relevant to their sectors. For example, the topics of profiling, consent and breach notification are all key to insurance and an extensive exchange of views on all these topics at the workshop in April would have been mutually beneficial for the WP and the industry. This cannot be achieved only through participation in the plenary session that follows the break.

Insurance is a highly-regulated sector, and the General Data Protection Regulation (GDPR) is one of the many new pieces of EU legislation that insurers will have to comply with by 2018. For example, insurance consumer protection rules will change significantly as a result of the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs) and the Insurance Distribution Directive (IDD), which are both to be completed by additional Level 2 and Level 3 measures in the coming months.

For the new regulatory framework to be successful, it is crucial to ensure that stakeholders have sufficient time to provide input and that the industry has sufficient time to prepare for implementation. The technical work for



new consumer protection rules mentioned above always goes through an appropriate consultation process as part of a dialogue with stakeholders and the European Insurance and Occupational Pensions Authority (EIOPA).

Insurance Europe urgently invites the WP to adopt a similar process when developing the GDPR Level 3 measures. This includes:

- making the consultation schedule publicly available sufficiently in advance;
- consulting stakeholders systematically and at least once on initiatives before they are final, including draft guidelines and results of completed impact assessments;
- ensuring an appropriate consultation period of at least 12 weeks;
- publishing the input of stakeholders, where authorised by the concerned stakeholders;
- providing reasoned feedback on the input received; and
- differentiating clearly the draft documents from the final, adopted documents

As a follow-up to the Fab Lab session on profiling, Insurance Europe would like to provide the WP with additional feedback, ahead of the publication of the guidelines by the end of 2017.

Guidelines should respect Level 1 GDPR text

During the Fab Lab session on profiling, the WP posed the question on whether certain information should be excluded from profiling and automated decision-making, taking into consideration ethical issues when profiling certain data subjects like children.

Insurance Europe would like to reiterate that both the scope and restrictions of profiling and automated-decision making are part of the political agreement of the EU co-legislators and are regulated by the Level 1 GDPR text. Excluding certain information from profiling based on ethical considerations through the WP guidelines, goes beyond the WP's mandate and what has already been agreed and regulated by the EU co-legislators.

Understanding how insurance works

Insurance is the transfer of risks. It transfers the risk of financial losses as a result of specified but unpredictable events from an individual to an insurer in return for a fee or premium. If a specified event occurs, the individual can claim compensation or a service from the insurer.

Insurance is therefore a means of reducing uncertainty. In return for buying an insurance policy for a smaller, known premium, the possibility of a larger loss is removed. By pooling premiums and insured events, the financial impact of an event that could be disastrous for one policyholder is spread among a wider group.

Risk pooling is key as it spreads the cost of losses between a number of policyholders. Take household content insurance against fire, for example. When the risk of a fire is pooled, the large cost to the few who suffer from a fire is spread between all members of the pool. The average cost to members of the pool (the premium) is relatively low, as only a small number of them is likely to suffer a loss.

The price of insurance should be such that the individual is prepared to pay the smaller, known premium in return for not having to pay the unknown – and potentially very large – financial cost should the insured event occur. **Each policyholder should pay a fair premium according to the risk of loss that they bring to the pool. Premium is calculated according to the risk of loss where the risk needs to be ascertained on basis of profiling. Therefore, the proper calculation is in the interest of the whole sector**

Underwriting and profiling

Underwriting is the process by which an insurance company examines, accepts, or rejects risks and classifies those selected, in order to charge the proper premium for each. The underwriting factors that must be evaluated to complete the underwriting process, depend on the insurance product the customer is interested in: for instance, for a life insurance product, the insured could have to provide the insurer with information such as his/her age, financial condition and health data.

In data protection terms, the insurer evaluates certain personal aspects relating to a natural person. As defined in Article 4(4) of GDPR, insurers may analyse data or predict aspects of a natural person's performance at work, economic situation and health data, so as to assess the risk the customer wishes to cover, and charge a fair insurance premium.

This evaluation can be conducted partially or fully by automated means, with limited or no human intervention from the insurer's side. Fully automated evaluations are expected to increase as, with digitalisation, consumers demand more and more on-line insurance services that are simple, efficient and extremely rapid, if not immediate. For example, it is common for the decision on the premium for car, home and travel insurance and the insurance contract offered to a potential customer to be based solely on automated processing, falling under Article 22 of GDPR.

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- Insurers also profile personal data to market insurance products to customers. This profiling allows insurers to identify relevant products and market them to relevant customer bases. Moreover, profiling allows insurance companies to enter new markets or markets at high risk, giving the more detailed information
- In particular, insurance companies use clusters or target markets (see also POG in IDD) to present categories of clients where every single client shall be inserted. It should be clarified if this type of processing results in an "indirect" profiling or not. This consideration is also connected to the DPIA issue.

Profiling and insurance fraud

Fraud affects every type of insurance, whether it is non-life insurance, life and protection cover or health insurance. It may be committed by a policyholder or by a third party claiming against an insurance policy. It can also range from opportunistic claims, through to claims for phantom passengers and fictitious injuries in road accidents and to highly organised crime rings. One of the ways insurers use to identify fraudulent activity is profiling. It benefits honest customers, insurers and wider society by detecting crime and reducing premiums by lowering levels of fraudulent claims.

Recital 71 of GDPR explicitly mentions that automated decision-making processing and profiling "*should be allowed where expressly authorised by Union or Member State law to which the controller is subject, including for fraud and tax-evasion monitoring and prevention purposes conducted in accordance with regulations, standards and recommendations of Union institutions or national oversight bodies*".

Legal obligations

As already mentioned, insurance is a highly-regulated sector, and data protection rules represent only one layer of legal obligations insurers must comply with. For instance, the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs), the Insurance Distribution Directive (IDD) but also the Anti-money laundering Directive (AML) include several provisions that require insurers to know their customer better, evaluate aspects of their personality and ultimate, profile them. Additionally, insurers have to comply with regulations, standards and recommendations of EU institutions such as EIOPA, but also their respective national oversight bodies.

Right to object (Article 22(1)) and right to information (Articles 13 – 14)

Further clarifications are needed from the WP on the interplay between the right to object and automated decision-making. Automated financial advice and innovative online insurance products (such as, today home or travel insurance) make use of automated decision-making technics, to provide consumers with a quick easy access to insurance and efficient advice.

It is of paramount importance that the WP clarifies in the future guidelines on profiling that in the exceptions specified in Article 22(2) of GDPR, the data subject has no right to object to the automated decision-making when the decision is necessary for entering into or for the performance of the contract, to meet legal obligations or where consent was given. The data subject can of course object to the result of that automated decision-making by asking for a human check.

Moreover, clarity is needed when the WP provides guidance on the interpretation of what “meaningful information about the logic involved” in the automated decision-making means. Information about the logic should not mean, under any circumstances, having to disclose information about the algorithm or internal model used for insurance underwriting purposes. Disclosure of logic involved should be restricted to the purposes of profiling.

This information would only be meaningful to competitors but not to consumers as it includes complex mathematical and actuarial methods of calculating and pooling risk. Publishing the risk factors used to make such an assessment, for example age, health status, could give consumers an overall view of the most important criteria that influence insurers’ assessment in an easy to understand way, without revealing complex information about the underlying algorithm.

Transparency and data quality

For insurers, quality of data and fair processing operations are not only covered by the GDPR provisions, but also by sectoral legislation, including the Solvency II Directive and the Insurance Distribution Directive. The current legislative framework in conjunction with the principles of privacy by design and privacy by default provide adequate safeguards for the protection of personal data.

Examples of privacy by design in profiling could be the automatic deletion of data when the retention period is over; the setting up a system that provides the customer with the option to oppose online marketing; or the recording and keeping a record of the consent data subjects provide, including the withdrawal of consent.

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