

Insurance Europe contribution to the Article 29 Working Party guidelines on the right to data portability

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Contact person:	Lamprini Gyftokosta, Policy Advisor, Conduct of Business	E-mail:	gyftokosta@insuranceeurope.eu
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Introduction

Insurance Europe welcomes the Article 29 Working Party's (WP) guidelines on the interpretation and implementation of Article 20 of the General Data Protection Regulation (GDPR) on the protection of individuals with regard to the processing of personal data and the free movement of this data.

The GDPR is one of the many new EU regulations that insurers have to comply with by 2018. For example, insurance consumer protection rules will change 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 following 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 therefore always goes through an appropriate consultation process as part of a dialogue with stakeholders and the European Insurance and Occupational Pensions Authority (EIOPA).

Similarly, it is important for the WP to continue the dialogue with stakeholders on the implementation of GDPR. Consultation periods of at least three months and ongoing opportunities to contribute to the process as part of this dialogue will help to ensure that European insurers and consumers fully benefit from a high-quality new regulatory framework.

Insurers and data processing

Data is at the heart of insurer's relationship with consumers. This means that data protection is a fundamental part of providing insurance. Insurers process data for instance for the calculation of fair premiums, to provide customers with insurance products tailored to their needs and risk profiles and for the payment of claims.

Insurers use most of the six legal grounds under Article 6 of GDPR to lawfully process data:

- *Consent* [Article 6(1a) and Article 9(2a)] for processing sensitive data. For example, health-related data for medical insurance is processed to ensure that the consumer receives appropriate cover at a fair price for the risk that he/she poses or to reimburse all or part of healthcare costs where an individual requires medical treatment covered by the insurance contract.
- *Contract* [Article 6(1b)], to process data both at the pre-contractual stage to give consumers an insurance quote for a requested product and during the performance of the contract, ie for benefits payment in a property insurance contract.
- *Legal obligations* [Article 6(1c)], to process data in compliance with rules imposed by the anti-money laundering directive and Solvency II.
- *Legitimate interests* [Article 6(1f)] to process data for fraud prevention and detection purposes.

Right to data portability and insurers

In order to fall under the scope of data portability under Article 20(1a) of GDPR, processing operations must be based (i) either on the data subject's consent (pursuant to Article 6(1a) or 9(2a) for the processing of special categories of personal data and in the case of insurers, health-related data); or (ii) a contract to which the data subject is a party pursuant to Article 6(1b). Additionally, the processing should be carried out by automated means.

Based on a preliminary analysis of the guidelines and taking into account the data minimisation and purpose limitation principles (Article 5 GDPR), the new rules can be understood to apply to insurers as follows:

- Controllership and data controller (insurer) receiving the data

According to page 6 of the guidelines, the receiving controller is *responsible for ensuring that the portable data provided are relevant and not excessive with regard to the new data processing*.

The guidelines would mean that for the receiving insurers to be compliant with the data minimisation and purpose limitation principles of Article 5 of GDPR, the portable data received and new data processing should be limited to what is required for the new product for which the policyholder wants to switch insurance companies.

In the insurance context, there may be different types of data that are deemed to be relevant and not excessive for the different products.

For example: a policyholder considers changing home insurance from company "A" to company "B" and exercises the right to data portability with company "A". The receiving insurance company "B" would only accept data relevant to the policyholder's quote for home insurance.

This means that even if the policyholder requests company "A" to transfer all the available data it has, including information the policyholder provided to company "A", ie in the context of health insurance, to the receiving company "B", the latter should only process data that are relevant to the home insurance the policyholder is looking for.

Based on this interpretation of Article 20 and the guidance received from the WP, the implementation of the right to data portability would be mutually beneficial:

- for the consumer who would have more control by being aware of the data necessary for the product they are interested in purchasing; and

- for the receiving insurance company, who would be able to mitigate the risk of breaching the data minimisation and purpose limitation principles of Article 5 of GDPR by processing only the portable data that are relevant to the specific insurance product requested.

- Data provided by the data subject

According to page 9 of the guidelines, *any personal data which have been generated by the data controllers as part of the data processing, eg, by a personalisation or recommendation process, by user categorisation or profiling, are data which are derived or inferred from the personal data provided by the data subject and are not covered by the right to data portability.*

Insurers process a variety of personal data for in order to be able to provide insurance cover. Depending on the product, this data could be the name, contact details, age, claims history and other similar information included in the policyholder's application form. This could also include portable personal data generated by devices such as in-vehicle platforms, ie technology used to track the driving behaviour of the policyholder.

This type of personal data is different from the information insurers generate as part of the assessment of the risk to be covered, which makes use of the data provided by the policyholder to the insurance company to create inferred data, which are therefore not covered by the right to data portability.

This means that the switching and sharing of data focusses on relevant and comprehensible information for the consumer. Insurers can then fulfil their obligations as data controllers without disclosing confidential business information such as their underwriting criteria, their risk and pricing tools and structures to their competitors when policyholders exercise the right to data portability.

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