

### Data processing is key for insurers and consumers

#### EU regulation must allow for essential business processes

Insurers recognise the importance of data protection, since data processing lies at the very heart of their business. Insurers collect and process data to analyse the risks that individuals wish to cover and this allows them to tailor products accordingly.

Data processing is also an essential part of evaluating and paying policyholders' claims and benefits, and in the detection and prevention of fraud.

Insurance Europe, therefore, supports the European Commission's objective of further harmonising existing, fragmented EU data protection legislation.

In January 2012, the Commission proposed a data protection reform package adjusting the current EU data protection framework to rapid technological developments and globalisation. The reform package includes a proposal for a Regulation on the protection and free movement of data, to update a 1995 Directive.

The draft Regulation would apply to all businesses processing data across sectors, both off and online. This broad approach resulted in a hugely complex legislative proposal.

Insurers are concerned that the proposed Regulation could introduce unintended consequences for the insurance industry and its policyholders.

It is vital to both insurers and their policyholders that the EU data protection framework allows insurers to collect and process personal data.

Some of the current proposals would, however, prevent insurers from:

- Assessing the needs and risks that consumers wish to transfer to the insurer
- Performing their contractual obligations
- Combatting fraud and protecting honest policyholders

#### Insurers need to profile policyholders to measure risk

One concern is that proposed rules on profiling do not take into consideration the way insurance works. As part of the underwriting process insurers process personal data to assess the risk consumers wish to cover.

In other words, insurers need to be able to profile their potential policyholders in order to evaluate the risks they wish to transfer to the insurer and to then tailor cover to the their needs and demands. For example, if someone wants to take out a car insurance policy, the insurer will need to know how many years they have been driving and how many car accidents they have had in order to calculate the risk they pose to the insurer.

Any restrictions on profiling could, therefore, translate not only into higher insurance prices and less insurance coverage, but also into an inability to provide consumers with appropriate insurance.

The new Regulation should, therefore, be amended to allow insurance-related profiling at pre-contractual stage and during the performance of the contract.

## Insurers need data to fight fraud

Another concern is that the proposed Regulation could restrict insurers' ability to share information in order to combat fraud, which exists in all lines of insurance and is estimated to represent up to 10% of all claims expenditure in Europe.

One of the ways in which insurers detect suspicious activity is by examining policyholders' previous claims history; for example, whether someone has made multiple claims of the same nature. If insurers are not able to share claims history data, their efforts to protect honest consumers against the consequences of insurance fraud would be obstructed.

The proposed Regulation should, therefore, explicitly recognise the need for organisations, including insurers, to process and share information for the purposes of fraud detection and prevention.

## Insurers need to protect their own data

The draft Regulation proposes a new right to "data portability". This would allow policyholders to obtain a copy of any of their data being processed by an insurer.

The concern here is that insurers could be forced to disclose confidential and commercially sensitive information, such as their underwriting criteria, their risk pricing tools and structures, should a policyholder exercise this right. Insurance Europe believes that insurance companies, in their capacity as data controllers, should

not be obliged to disclose commercially sensitive information.

## Insurers need to retain policyholder information

The European Commission's proposal also contained a right to be forgotten. This right would allow policyholders to demand that all their personal data be erased from an insurer's database. Consequently the insurer would be unable to process the policyholder's data, preventing the insurer from performing their contractual obligations and from offering their services to the policyholder. It could also force insurers to delete data that other regulations require them to retain or that they would need to process in order to detect and prevent fraudulent activities.

The Regulation should, therefore, clearly state that the right to be forgotten does not apply where there is a contractual relationship between an organisation and an individual. It should also not apply to data that the insurer is obliged to keep under other regulations, or for the purposes of preventing and detecting fraud.

Protecting their policyholders' data is a priority for insurers, who completely recognise the value of effective regulation in this area. It is, therefore, important that such regulation always avoids negative unintended consequences.

**For any additional information, please contact David Bishop, interim head of communications & PR at Insurance Europe (tel: +32 894 30 70, [bishop@insuranceeurope.eu](mailto:bishop@insuranceeurope.eu)).**

### Parliament recognises need for change

In March 2014 the European Parliament approved its report on the proposed Regulation, which included several points to make the proposed Regulation more effective.

The report suggests that:

- Insurers would be allowed to process health data based on the contract agreed between them and their policyholders, facilitating compensation and benefit payments.
- Profiling at pre-contractual stage is permitted, enabling insurers to offer insurance products that reflect the needs and risks of potential policyholders. The right to withdraw consent is not an absolute one, so if insurers process policyholders' data based on contract or due to legal obligations, they can refuse policyholders' withdrawing of consent.

### Progress achieved, but more work needed

While the Parliament's report made positive changes to the European Commission's original proposal, further changes are still needed to ensure that the Regulation allows insurers to continue providing their services to consumers.

Importantly, the proposed Regulation should explicitly recognise insurers' need to process data for fraud prevention and detection, as well as insurers' obligation to comply not only with legal but also with regulatory requirements.

Likewise, further legal clarity is still needed to ensure that the right to be forgotten should not apply when insurers need to retain or process data.

It is hoped that such vital issues are addressed as the proposal is currently being analysed by the EU Council, before discussions between the European Parliament, Council and Commission start.