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DATA PROTECTION

Too early to amend, not too late to improve

Although in its infancy, the EU's General Data Protection Regulation can still be improved

Without data, insurers could not operate. They would be unable to develop and price their policies, process claims or spot fraud. Insurers have therefore always been strong supporters of the objectives of the EU's General Data Protection Regulation (GDPR).

As data processing lies at the very heart of insurers' business, they are acutely aware of the value of data and the importance of protecting it. So, Insurance Europe wants the Regulation to provide the best protection for insurance customers' data and to drive businesses to compete responsibly in the digital world.

Time for a second look

Implementing one of the EU's most demanding pieces of legislation has been challenging for companies, insurers included, and they have dedicated significant time and resources to become compliant. Now that the GDPR has been in force for over two years, it has become apparent that work is also needed to address problems in some specific areas of the legislation and to ensure it meets its aims, which are to safeguard Europeans' fundamental right to have their privacy and personal data protected — and protected consistently — across the EU.

The first of the problems from an insurance perspective is the impact of the GDPR on innovation, where obstacles have unintentionally been created. The use of new technologies — blockchain technology, artificial intelligence, big data, the internet

What is the GDPR?

The European regulatory framework for data protection — the GDPR — has been in force since May 2018. Arguably the most comprehensive data protection regime in the world, its aims include:

- strengthening individuals' rights to control their personal data;
- introducing a single regulatory framework applicable in all EU member states and ending the patchwork of data privacy laws; and,
- updating privacy rules in the light of technological advances and ensuring their effectiveness in an increasingly data-driven economy.

The GDPR also created a European Data Protection Board and a European Data Protection Supervisor, which have become Europe's data protection watchdogs.

of things — creates significant opportunities for insurers to expand and improve the products they can offer consumers (see insurtech article on p51). However, such innovation could be undermined by provisions in the GDPR or in the European Data Protection Board (EDPB) guidelines because they do not entirely respect the principle of technological neutrality.

Indeed, certain rules are at odds with fast-evolving technology and may slow the pace of insurers' digital innovation. For instance, blockchain technologies have the potential to reduce costs and increase transparency, as well as to reinforce trust. Yet blockchain technology is designed to be an immutable and permanent record of all transactions, so it is hard to reconcile with the GDPR's right to be forgotten and right to rectification under which records may be removed or changed.

Likewise, due to a very narrow interpretation of the "necessity" of carrying out solely automated processes, the guidelines may discourage insurers from introducing

automated processes. This may prevent the development of innovative products, such as real-time insurance offered through mobile phone apps, despite these enabling insurers to serve consumers better, faster and at lower cost. Insurance Europe would therefore like to see the European Commission work closely with the EDPB to provide the necessary legal certainty to permit the development of insurance solutions based on new technologies. Furthermore, it would like to see the legal basis for processing data in the GDPR and the Commission's proposal for an ePrivacy Regulation aligned. In particular, the latter does not currently provide an adequate legal basis for insurers to offer telematics products.

EDPB needs oversight

The role of the EDPB and the impact of its GDPR guidelines on industries also needs to be reviewed. Guidelines can be useful implementation and compliance tools, which can help to clarify GDPR requirements while promoting consistent interpretations across the EU. However, areas exist in which the interpretation of the EDPB has gone beyond the text of the Regulation by, for instance, creating additional requirements or narrowing the interpretation of a GDPR provision. It must be remembered that it is the EC that is the guardian of the Regulation and that the EDPB's mandate is governed by the text of the GDPR, which was the result of a political agreement between EU policymakers.

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Destroy discrepancies

In the interests of consistent, Europe-wide application of the GDPR, there needs to be an examination of the fragmentation in the Regulation's application that has been created by certain national GDPR guidelines.

Discrepancies have clearly arisen between national guidelines in areas such as the consent to use cookies and tracers, data protection impact assessments and legitimate interest. These create legal uncertainty and make it harder for insurers to conduct their business in multiple member states while remaining in compliance with data protection rules. The EC must pursue a unified approach to the interpretation and application of the GDPR across Europe.

Inadequate adequacy decisions

Finally, Insurance Europe would like to see action on the international transfer of personal data to non-EU countries. The GDPR currently provides different tools and solutions for international transfers. Of those, EC adequacy decisions are the most suitable for insurers, as they provide the most appropriate safeguards for both data controllers and data subjects. However, only a very small number of countries are currently covered by such decisions and this is insufficient for a sector as global as insurance. Prompt action is required to address this and make the GDPR fit for the insurance industry.

Don't touch the text

While the Regulation certainly contains challenges for businesses that need to be addressed, it would nevertheless be premature and counterproductive to amend the GDPR text itself just yet.

Like many other sectors, the insurance industry has invested significant resources in understanding the Regulation and its implications, and in implementing the new regime. Such a substantial investment of time and money could be wasted — and new costs would be incurred — if the text were changed after just a few years.

Instead, in areas in which the GDPR is found not to have achieved its objectives, the Commission should consider developing further or different guidance, together with the EDPB where relevant.

The Commission's first evaluation and review report of the GDPR, which was released in June 2020, likewise concluded that a revision of the GDPR text would currently be premature. The EC report touched upon many of the areas raised by Insurance Europe in its contributions to the review, taking stock of the strengths and weaknesses of the legislation as it reaches its second birthday and paving the way for the next evaluation of the text in 2024. ■