insurance europe

Making digital insurance work

Clarifying Article 22 of the GDPR to support innovation while preserving consumer safeguards

Insurance Europe supports the European Commission's Digital Omnibus proposal, in particular the proposed clarification of Article 22 of the GDPR and urges the co-legislators to retain this important clarification in the final text.

Article 22 in practice

A customer wants to buy motor insurance entirely through a smartphone app. They provide the necessary information, the insurer assesses the application automatically, calculates the premium and can activate the policy immediately.

This is the kind of fast and convenient digital service many consumers increasingly expect. Automation can help consumers obtain quotes instantly, secure coverage more quickly and have straightforward claims processed faster.

Article 22 of the GDPR already allows companies to use solely automated decision-making without asking for consent where this is **necessary for entering into or performing a contract.** However, some authorities interpret "necessary" very restrictively.

If a human could theoretically make the same assessment, the automation may not be considered necessary. The insurer may then have to rely on the customer's consent instead. But consent is not straightforward: it can be withdrawn and, according to some authorities, may only be valid if a human alternative is also offered.

The problem

A narrow interpretation creates legal uncertainty for digital services

The issue goes beyond one motor insurance app.

Some authorities take a very restrictive approach to what is considered "necessary". If a human could make the same decision, automation may not be considered necessary for entering into or performing a contract.

This does not reflect how modern digital services operate. It creates **legal uncertainty and risk for companies** operating across the EU, making digital services harder and more costly to develop and discouraging investment in faster, simpler and potentially more affordable innovative technologies that could benefit consumers.

The solution

Clarify when automation can be considered necessary

The Digital Omnibus provides an opportunity to clarify when providers can rely on automated decision-making to deliver a service. The Commission's **proposal recognises that an automated process may be necessary for entering into or performing a contract** even where a human alternative could theoretically exist.

Applied to the motor insurance example, this means that the automated process could still be considered necessary for delivering the digital service, even if a person could theoretically carry out the same assessment manually.

This clarification would:

- increase legal certainty across the EU;
- promote more consistent enforcement;
- support innovation and digital transformation; and
- make it easier to develop consumer-friendly digital services.

Importantly, consumers would continue to benefit from all the safeguards provided under Article 22 of the GDPR, including the right to human intervention, to express their point of view and to contest a decision.

Preserve the clarification

Insurance Europe calls on the **co-legislators to retain Article 3(7) of the Digital Omnibus,** which clarifies Article 22 GDPR.

The principle is simple: the existence of a possible human alternative should not, by itself, prevent automation from being considered necessary for entering into or performing a contract.

Preserving this clarification would help **unlock innovation, support digital transformation and provide businesses with the legal certainty** needed to invest in new technologies, while maintaining the existing safeguards for consumers under Article 22 of the GDPR.

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