

Insurance Europe's comments on transparency under the General Data Protection Regulation (GDPR)

Our reference:	COB-DAT-17-095	Date:	23 November 2017
Referring to:	Third Fab Lab workshop on transparency and international transfers		
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Pages:	3	Transparency Register ID no.:	33213703459-54

Introduction

Insurance Europe participated in the transparency session of the Fab Lab workshop organised by the Article 29 Working Party (WP) in October 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 transparency guidelines will provide insurers with an important tool when implementing and interpreting General Data Protection Regulation (GDPR) provisions.

For implementation of the GDPR provisions to be successful, constant dialogue with stakeholders is crucial. Thus, as a follow-up to the Fab Lab session on transparency, Insurance Europe would like to provide the WP with additional feedback, ahead of publication of the draft guidelines by the end of 2017.

Information fatigue for the data subject (Art. 12-14)

Article 12(1) of the GDPR requires a data controller to take "appropriate measures" to provide the information required under Articles 13 and 14 in a "concise, transparent, intelligible and easily accessible form". Articles 13 and 14 include a long list of disclosures, making it challenging to meet the requirements of Article 12 in practice.

Insurance Europe cautions that such a large number of disclosures could overload the data subject with information, risking information fatigue. Insurance is a highly regulated sector at EU level, with new regulation applying in combination with existing legislation and imposing new disclosures on top of existing ones (eg those in the Insurance Distribution Directive and the PRIIPS Regulation).

To avoid such information fatigue, Insurance Europe suggests that the guidelines do not prescribe or limit the form and means of disclosure that data controllers can use. Instead, the guidelines should give flexibility to data controllers and specify that it is possible to disclose the required information by **any means offered by new technologies** to ensure that the disclosure is in line with the criteria "concise, transparent, intelligible and easily accessible". Data controllers should be able to exploit all the advantages offered by new technologies, taking into consideration what is most appropriate in any given circumstance.

For example, the means of disclosure might depend on the type of business, as some companies operate purely online while others have paper-based operations. The means should also be adaptable to the regulatory environment. In France, for instance, an insurance contract can be provided in electronic format if the insurer wishes and “if it is adapted” as of 1 April 2018.

As an additional measure to prevent or reduce information fatigue, Insurance Europe believes that data controllers should be given the flexibility to adopt a **layered approach** in the provision of information; providing it online, offline or by combining online and offline information. Multi-layered information can be useful, especially in cases where it is not feasible to disclose a long list of information at the point at which data is obtained from the data subject.

For example, it is quite common that a person making a motor third-party liability claim does so by telephone. In such a case, insurance companies cannot fulfil their information duties in a way that is convenient, understandable and useful to the data subject. Reading out over the telephone all the elements included in Art. 13 would not meet this objective. A possible solution would be to grant the data controller the possibility to provide the data subject with a short privacy notice and an indication of how the data subject can access the full list of information at a later stage.

In order to bring clarity on the above criteria and emerging issues, Insurance Europe invites the WP to provide concrete examples of good practices and appropriate ways/means to disclose information.

Standardised icons (Art. 12(7))

Insurance Europe believes that before developing any icons, the WP should first clarify their objectives and then verify and evidence their added-value for data subjects with practical examples and testings.

Data processing varies significantly between sectors. For example, processing sensitive (health) data is necessary for insurers to provide health, long-term care, disability and life insurance, while other sectors do not process sensitive data to this extent. In light of this, Insurance Europe believes that adopting the same set of standardised icons for all sectors would not work in practice and cautions against the adoption of a “one-size-fits-all” approach.

Moreover, standardised icons are already used for disclosure purposes by the insurance sector at EU level (eg the insurance product information document (IPID) for non-life products) and at national level. Despite the fact that the focus of the IPID is different from the GDPR disclosures, Insurance Europe cautions against using similar icons to address different kinds of information. This potential risk should be taken into consideration by the WP and the EC to avoid misleading data subjects or over-using icons in a way that would contradict the transparency requirements.

Finally, the use of standardised icons should remain optional for the data controller and not be obligatory, which would go beyond the Level 1 GDPR text, which states that “the information to be provided to data subjects pursuant to Articles 13 and 14 **may** be provided in combination with standardised icons (...)”.

If the WP and the EC do consider the use of icons, these should be simple, understandable, not misleading and adapted to different sectors and various national cultures. Consumers and the industry should be further consulted before any adoption of standardised icons in order to avoid unintended consequences.

Scope of Articles 13 and 14

Article 13 sets out the information that the data controller must provide to the data subject where personal data “are collected from the data subject”, while Article 14 sets out the information that the data controller must provide to the data subject “where personal data have not been obtained from the data subject”.

Insurance Europe has a question over whether these articles apply to personal data that is inferred, derived or generated by a data controller from a set of personal data that was originally given directly by a data subject to the data controller.

Insurance Europe's position is that inferred, derived or data controller-generated data should not be considered as data provided by the data subject, as it is created by the data controller on the basis of the data provided by the data subject.

The adopted guidelines on data portability support this argument, clearly stating that "the term "provided by the data subject" must be interpreted broadly, and only to exclude "inferred data" and "derived data", which include personal data that are generated by a service provider (for example, algorithmic results)" (p.8). Thus, inferred, derived or data controller-generated data does not fall under the scope of Art. 13.

Furthermore, the forthcoming guidelines should clarify that inferred, derived or data controller-generated data also does not fall under the scope of Art. 14, since this kind of data is not "obtained" but is "generated" by the data controller. Insurance Europe's understanding is that the categories of data that fall under the scope of Art. 14 are data obtained from a third-party, unlike data obtained from the data subject according to Art. 13. This literal interpretation is in line with the wording chosen by the co-legislators, as Art. 14 refers to data "obtained" [ie according to Art. 14(3(a)), "the controller shall provide the information referred to in paragraphs 1 and 2 within a reasonable period **after obtaining the personal data** (...)". This implicitly excludes data "generated" by the data controller.

In any case, when it comes to inferred, derived or data controller-generated data, the data subject has already been provided with the information included in Art. 13 or Art. 14 when the raw personal data was originally obtained either from the data subject or from third parties.

In order to achieve a coherent and literal interpretation of the GDPR provisions, Insurance Europe believes that the transparency guidelines should clarify that inferred, derived or data controller-generated data should be considered as falling outside the scope of Art. 13 and Art 14.

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