

## Insurance Europe contribution to Article 29 Working Party consultation on the notion of legitimate interests

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### Introduction

Insurance Europe supports the Article 29 Working Party's (WP) guidance regarding the correct implementation of the Article 7 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data.

Both the 06/2014 WP's opinion and timely launch of its consultation provides Insurance Europe with an opportunity to share its views on the Article 7 of Directive 95/46 and put forward its recommendations on Article 6 of the European Commission's proposed General Data Protection Regulation (GDPR).

### Insurers and data processing

Insurers recognise the importance of data protection, since data processing lies at the heart of their business. Insurers process data to assess the risks to be covered, in order to can provide customers with insurance products tailored to their needs and risk profiles. Data processing is also an essential part of evaluating consumers' claims, paying compensation and benefits, as well as detecting and preventing fraud.

Insurers use most of the six legal grounds under Article 7 of Directive 95/46 to lawfully process data:

- *Consent* (Article 7(a) and Article 8) for processing sensitive data. By way of 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 health care costs where an individual requires medical treatment covered by the insurance policy.
- *Contract* (Article 7(b)), 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 life insurance contract.
- *Legal obligations* (Article 7(c)), for instance, to process data in compliance with rules imposed by the anti-money laundering directive and Solvency II.
- *Legitimate interests* (Article 7(f)) to process data for fraud prevention and detection purposes; but also to comply with regulatory requirements, decisions and guidelines issued by financial services regulatory authorities.

For insurers, legal clarity and correct interpretation of Article 7(f) is thus a key element of the proper functioning of the insurance business. This is why, insurers are concerned that an incorrect or an overly administratively burdensome implementation of Article 7(f) would restrict insurers' ability to process and use data to properly assess the risk with potentially negative consequences for consumers.

For instance, by restricting the use of data, insurers' ability to process information needed for fraud prevention and detection purposes is also restricted. As a result, the honest consumers will have to pay the price through higher tariffs.

#### Legitimate interests and regulatory obligations: concerns and recommendations

Insurance Europe welcomes the WP's recognition that fraud prevention and anti-money laundering are two characteristic situations that fall under the non-exhaustive list of "legitimate interests".

Insurance Europe also supports the WP's suggestion against detailed or exhaustive lists of situations in which an "interest" would be qualified de facto as "legitimate" neither in the text of the proposed Regulation nor through delegated acts.

#### Concerns

- **Regulatory obligations:** Insurance Europe is encouraged to see that the WP understands the importance of regulatory obligations. We would like to, however, stress that regulatory obligations are also (legally) mandatory. For example, if the relevant supervisory authority in a member state issues a regulatory requirement, insurers have to abide by it. The WP seems to take the view that there is an optional element to a regulatory requirement, and this is not the case.
- **Balancing test:** Insurance Europe is concerned with WP's suggestion that a proper application of the "legitimate interests" ground would require a further application of a "balancing test".
- Insurance Europe understands that in practical terms, a "balancing test" means that the data controller should conduct a prior assessment of the balance between the controllers' interests and the data subjects' rights. Insurers are concerned that this will increase their administrative burden excessively in the future as insurers would have to conduct a data protection impact assessment under Article 33 of the GDPR.
- Finally, Insurance Europe believes that this prior assessment imposed through a balancing test, may not bring the intended positive results, but may lead to further diverse implementation.

#### Recommendations

Insurance Europe strongly believes that several changes are needed in the GDPR to achieve the necessary level of legal clarity to ensure citizens' fundamental rights and businesses interests are protected.

For the reasons above, Insurance Europe is in favour of:

- A legal basis under Article 6 of the proposed GDPR that will explicitly allow data controllers to process data when necessary for the purposes of preventing and/ or detecting fraud.
- Ensuring that both legal and regulatory obligations are of paramount importance, and that they need to be acknowledged as such. Regulatory obligations need to be met (legally) and there is no element of choice on whether the regulated entity follows the regulation or not.

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