

## Two years of the GDPR — what next?



### Insurers' views on the EU's General Data Protection Regulation (GDPR)

Without data, insurers would be unable to create and price products, to process claims or to detect fraud. 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.

Insurance Europe has therefore been a strong supporter of the objectives of the GDPR, which are to safeguard Europeans' fundamental right to have their privacy and personal data protected — and protected consistently across the EU. It wants the Regulation to provide the best protection for insurance customers' data and to drive businesses to compete responsibly in the digital world.

#### What is the GDPR?

The European regulatory framework for data protection — the General Data Protection Regulation — has been in force since May 2018. It is arguably the most comprehensive data protection regime in the world and its aims include:

- Giving individuals more control over their personal data by strengthening their rights.
- Putting an end to the patchwork of different data privacy laws across the EU by introducing a single regulatory framework applicable in all member states.
- Updating privacy rules in the light of technological advances and ensuring their relevance and effectiveness in an increasingly data-driven economy.

#### Investigate innovation

Insurance Europe already sees some specific areas of the GDPR that need to be addressed. The first is the impact of the GDPR on innovation in the insurance industry, where obstacles have unintentionally been created.

The use of new technologies, such as blockchain technology, artificial intelligence, big data and the internet of things, offers significant opportunities for insurers to expand and improve the products they offer consumers. However, this innovation could be undermined by provisions in the GDPR or in the European Data Protection Board (EDPB) guidelines because, despite significant efforts, they do not entirely respect the principle of technological neutrality. Indeed, certain rules seem 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 reinforce trust. But blockchain technology is designed to be an immutable and permanent record of all transactions, so how can it be reconciled with the GDPR's right to be forgotten and right to rectification?

Likewise, the guidelines may discourage insurers from introducing automated processes because of the narrow interpretation they place on the "necessity" of carrying out solely 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 a lower cost.

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The EC needs to work closely with the EDPB to provide the necessary legal certainty to permit the development of insurance solutions based on new technologies. Furthermore, the legal basis for processing data should be aligned between the GDPR and the Commission's proposal for an ePrivacy Regulation. In particular, the latter does not currently provide an adequate legal basis for insurers to offer telematics products.

## Examine the EDPB

The role of the EDPB and the impact of its GDPR guidelines on industries also needs to be looked at. Guidelines can be useful implementation and compliance tools, which can help to clarify and thus meet 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 example, creating additional requirements or narrowing the interpretation of a GDPR provision. It must be remembered that the EC 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 at EU level.

## Consider consistency

Thirdly, in the interests of consistent, Europe-wide application of the GDPR, there needs to be an assessment of whether certain national GDPR guidelines have created fragmentation in its application.

Discrepancies have clearly arisen between national guidelines on, for instance, consent to use cookies and tracers, data protection impact assessments and legitimate interest. This creates legal uncertainty and makes it more difficult for insurers to conduct their business in multiple member states and comply with data protection rules. The EC must pursue a unified approach to the interpretation and application of the GDPR across Europe.

## Tools needed for international data transfers

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 this. 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, the current list of countries covered by such decisions remains very short and is therefore insufficient for such a global sector as insurance. Prompt action is required to address this and make the GDPR fit for the insurance industry.

## Too soon to make changes

While the Regulation certainly contains challenges for businesses, 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. That 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, where the GDPR is found not to have achieved its objectives in certain areas, the European Commission should consider developing further or different guidance, together with the EDPB where relevant.

**For more on Insurance Europe's views on the GDPR, please visit the data protection section of the Insurance Europe website or contact William Vidonja, head of conduct of business ([vidonja@insuranceeurope.eu](mailto:vidonja@insuranceeurope.eu), tel: +32 2 894 30 55).**