

A. *Data protection legislation needs to take into account that processing data is at the core of insurance business*

Processing data enables insurers to assess the risks appropriately and thereby provide consumers with the appropriate insurance cover at a premium reflecting fairly their needs and risks.

Restricting insurers' ability to process data will have negative unintended consequences for consumers and insurers, such as delays for car accidents' compensation or insurers' inability to determine the right amount of medical treatment reimbursements.

- Any changes to the EU data protection legislation should be proportionate, balancing the individual's Right of Privacy with data security and taking into consideration the insurance market realities.

B. *Rules on consent should be mutually beneficial: protecting consumers while permitting insurers to deliver necessary services*

Definition of consent

Based on insurers' experience across member states, consumers do not encounter problems with the current rules on consent in Article 2(h) of Directive 95/46/EC on data protection.

- The Directive 95/46/EC rules on consent should be maintained in the new proposal.

Right to withdraw consent

The proposed data subject's 'right to withdraw consent' will:

- (i) hinder the execution of the insurance contract
- (ii) lead to a cancellation of the contract not foreseen by the parties
- (iii) conflict with other legal instruments, eg the Anti-money Laundering Directive 2005/06/EC

- Article 7par.3 should take into account situations where data must be:

- (i) retained for the conclusion and execution of insurance contracts and
- (ii) processed for regulatory, anti-fraud or legal purposes.

Right to be forgotten

The proposed data subject's 'right to be forgotten' seems to be designed to apply to pure internet services (ie, social networking). However, exercising this right in an insurance contractual relationship will bring unintended consequences. Concretely, insurers will be obliged to delete the consumer's personal data upon her/his request, despite it being vital for insurers to hold consumers' data to fulfil their legal obligations and provide services reflecting consumers' needs and risks.

- Article 17 should clearly state that the right to be forgotten does not apply where:

- (i) there is a contractual relationship between an organisation, such as an insurer, and an individual
- (ii) data is needed for the contract's performance
- (iii) there are regulatory requirements to retain data
- (iv) there is a need to retain data for fraud prevention purposes.

C. *Insurers have to process health related data to provide consumers with certain insurance products and services*

The proposed definition of health data is too broad. Treating administrative data as sensitive is disproportionate and will add administrative burden on consumers and insurers for all insurance products requiring health data processing, such as health, travel or motor insurance.

- The health data definition should be restricted to clinical and medical information, excluding administrative information. Administrative information should be categorised as non-sensitive data. Therefore, the sentence “*or to the provisions of health services*” should be removed from Article 4(12).

Processing data for insurance purposes

Processing sensitive data is imperative for insurers. It is crucial to clarify that the conclusion and execution of insurance contracts, including the management of health care services and settling claims in the health insurance system, is permissible.

- It should be clarified that insurance does fall under either Article 81 or Article 9par.2 (h). Equally it should be clarified that the scope for collecting and processing health data applies to all insurance purposes, for example health, life, accident, third party liabilities insurance and reinsurance.

D. *Preventing and detecting insurance fraud is essential to protect honest consumers*

Restricting the use of data will also restrict insurers’ ability to process information needed for fraud prevention and detection. As a result, the honest consumers will have to pay the price.

- The proposed Regulation should explicitly recognise the need for organisations, including insurers, to process and share information to prevent fraud.