

Insurance Europe comments on the ITRE draft opinion report

1. Consent

Insurance Europe welcomes the Rapporteur's proposed changes (AM 4 and 7) encouraging the appropriate use of consent as equal to the other grounds for lawful processing of personal data. Insurance Europe also supports changes proposed in relation to the withdrawal of consent, as outlined in AM 38.

However, Insurance Europe does not support the (new) Recital 33a (AM 5): This amendment unhelpfully introduces an implied hierarchy in the conditions of processing. It also includes references to terms that are legally uncertain, such as the "right context" and the "inappropriate context". Above all, the recital would restrict the consumers' ability to own their data and be able to give consent freely in order to enter into contracts or access services.

2. Significant imbalance

Insurance Europe believes that a high level of legal uncertainty surrounding the concept of "significant imbalance" remains in the text. Despite the proposed changes, the term could still be open to interpretation. The introduction of this term is not necessary, as existing contract law provides adequate safeguards for consumers.

Therefore, Insurance Europe asks for the deletion of Article 7par.4 of the proposed Regulation.

3. Profiling

Insurance Europe supports the Rapporteur's proposed changes to Article 20 (AM 71) to permit profiling when necessary in order to protect the right of other data subjects, such as for the purposes of fraud detection.

However, Insurance Europe further suggests that profiling should also be allowed when carried out at pre-contractual stage. The ability to access and process personal data through automated processing is central to the ability of insurers to determine at pre-contractual stage the level of cover consumers need, assess the risk and hence propose appropriate and fairly-priced products and services to consumers that reflect their needs.

4. Data Portability

Insurance Europe believes the Rapporteur's proposed amendments (AMs 66, 67 and 68) take into consideration the legitimate interests of businesses to protect their trade secrets. These amendments are a step in the right, giving businesses the flexibility to determine the most appropriate format for the transmission of personal data.

However, Insurance Europe believes that article 18 would have competition implications by unintentionally forcing insurers to disclose commercially sensitive information to competitors. The ability to change providers easily is a consumer and /or competition issue and should be dealt with under other relevant legislation at which point any data protection considerations can be take into account.

5. Administrative sanctions

Insurance Europe welcomes the Rapporteur's proposed changes (AMs 124 to 153) to Article 79 on administrative sanctions, in particular that sanctions are defined as a competence ("may impose") and not as an obligation ("shall impose") of Data Protection Authorities (DPAs).

Insurance Europe believes that sanctions for breaching the regulation as initially proposed by the European Commission are disproportionate. They do not leave any discretion to DPAs in relation to fines. For instance, DPAs are obliged to impose a fine even if the violation has not produced any damage to the data subject, or if it is a first violation without consideration of any other mitigating circumstances.

6. Delegated and implementing acts

Insurance Europe supports the Rapporteur's proposal to reduce the number of delegated and implementing acts in the draft Regulation (AM 20) as this will increase legal certainty.



Insurance Europe believes that a too high number of delegated and implementing acts creates legal uncertainty as it is impossible to predict the final content and interpretation of key provisions. The large number of delegated and implementing acts is even more worrying since the chosen legal instrument, a Regulation, is directly applicable.

7. Data breach notification

Insurance Europe welcomes the abolition of the 24-hours breach notification and the introduction of the notions of "reasonable time period" and "undue delay" when the breach seriously threatens the rights or legitimate interests of the data subject (AMs 14, 88 and 90).

Indeed, Insurance Europe believes that any excessive notification requirements, as proposed in the draft Regulation, could lead to consumer apathy. Excessive notification would also distract data protection authorities from their important role of investigating serious breaches and, where necessary, from taking action. This would not be in the public interest.

8. Additional comments

In addition to these comments, Insurance Europe would like to share again its key messages (see attachment) addressing the issues of fraud, the right to be forgotten, the right to withdraw consent and the definition and processing of health data.