

EU General Data Protection Regulation: one year on

Insurers' views on the GDPR ahead of the EC's May 2020 report

The European data protection regulatory framework — the General Data Protection Regulation (GDPR) — became fully applicable in May 2018.

The GDPR was much needed and Europe's insurers strongly supported its objectives:

- Providing people with 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 to all member states.
- Updating privacy rules in light of technological developments and ensuring their relevance and effectiveness in an increasingly data-driven economy.

Data is at the core of the insurance business

Insurers fully understand the value of data and the importance of protecting it. After all, data processing lies at the very heart of their business.

They process data to analyse the risks that individuals wish to cover in order to tailor products accordingly. Data processing also plays an essential part in detecting and preventing fraud, as well as in evaluating and paying policyholders' claims and benefits.

One year on, the European Commission is taking stock of stakeholders' experiences with GDPR implementation in order to prepare its report on the evaluation and review of the GDPR, due by May 2020.

Has the GDPR delivered?

Complying with the GDPR — one of the EU's most demanding and complex pieces of legislation — has been a challenge for companies throughout the EU, including the insurance industry.

Nevertheless, insurers have embraced the legal framework created by the GDPR because of the numerous benefits it is expected to bring for both consumers and the industry.

So, one year on, has the GDPR achieved its objectives?

Enhanced protection?

The GDPR introduces both new and stronger rights for consumers, such as the right to move or transfer their personal data easily (right to data portability) or the right to have their data erased (right to be forgotten). Indeed, people have started making use of these rights.

It also introduces many new requirements for service providers, including insurers. For example, companies must take a caring and respectful approach towards consumers' personal data and better protect that data from malicious attacks.

The GDPR also strengthens data authorities' powers and establishes high upper limits for fines in cases of non-compliance. The GDPR has thus introduced one of the most comprehensive — if not the most comprehensive — data protection regime in the world.

Regulatory harmonisation?

To a certain degree, the GDPR has secured the same level of protection for consumers in all EU member states. However, the Regulation is not always uniformly applied. For example, the legal bases for processing health data for insurance vary between member states. 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.

Compatibility with innovation?

Despite significant efforts to modernise privacy rules, the GDPR and the guidelines adopted by the European Data Protection Board (EDPB) are not entirely innovation-friendly or fit for a digital age. Certain rules seem at odds with fast-evolving technology and may slow the pace of insurers' digital innovation.

For instance, the use of blockchain technology in insurance could be jeopardised due to potential incompatibilities with the GDPR. From an insurance perspective, blockchain technologies have the potential to reduce costs and increase transparency, as well as reinforce trust. But how can the GDPR's right to be forgotten and right to rectification be reconciled with the fact that blockchain technology is designed to be an immutable and permanent record of all transactions?

Another example is that the EDPB guidelines may discourage insurers from introducing automated processes. This is because the guidelines allow insurers to use such processes only where they demonstrate that they are necessary, which would not be deemed to be the case if other "effective and less intrusive means" to achieve the same goal exist. In other words, the guidelines may prevent the development of innovative products based on solely automated techniques — such as real-time insurance offered through mobile phone applications — despite these enabling insurers to serve consumers better, faster and at a lower cost.

How to improve?

Looking ahead, it will be crucial to ensure that the application of the GDPR and its guidelines do not create unnecessary barriers to insurers offering products across borders or to the introduction of digital innovations that could benefit consumers.

Both the European Commission and the EDPB will have a key role to play to ensure that the GDPR and its guidelines provide an adequate level of legal certainty to allow insurers to conduct their business safely and create a future-proof and innovation-friendly regulatory framework. The Commission's stocktaking exercise and upcoming report provide the perfect opportunity to learn lessons and to improve the GDPR.

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