

REGULATORY RISK UPDATE

Insurance Data Protection Update

Following the publication of the new Data Protection Regulation in 2012, the DLA Piper EU Regulatory team are working closely with insurance and reinsurance clients to identify and mitigate the risk associated with the proposed framework. As the Regulation is being discussed currently at European Parliament level there is still an extensive opportunity to influence and understand the outcome of the policy framework in Europe.

Despite extensive policy discussions prior to the summer recess, there is still little agreement concerning the determination of a compromise position between political groups to the amendment of the European Commission originating text at European Parliament level. Following the tabling of over 3000 amendments by the various Members of the European Parliament ("MEPs"), the lead MEPs for the political groupings are seeking to try and negotiate amendments and condense this list into positions which have a broader political consensus.

The issue to date has been the divergent opinion across political groups as to the "value" of certain provisions, with some groups favouring a very stringent approach and classifying Data Protection as being a fundamental right, on a par with the right to life, whilst others believe the system has to be proportionate and workable. Such divergent views have led to a block of the ability for many MEPs to

find a common position, which has to date delayed the proposals.

In a bid to try and move the discussions forward the secretariat (civil servant) function of the European Parliament Civil Liberties Committee has drafted a number of suggested compromise amendments which are designed to trigger MEPs into forming a position. However there are still major issues for the insurance industry in the compromise amendments which include:

- Restrictions on the ability to use consumer data for automated profiling - such as risk profiling or scoring;
- Restrictions on the use of gender identifiers - which would result in insurers not knowing whether a consumer was male or female (however after the Test Achats ruling gender profiling is now restricted);
- Access requirements to data - ability for consumers to pull data from their insurers database and take in a portable form to another insurer - which may have fraud and commercial consequences;
- Data minimisation provisions - which would result in an insurer being forced to use the minimum necessary data rather than taking a full data cross section of data to evaluate risk;

- Consent mechanisms - there is still a risk of the need for an explicit written consent for each process activity - in addition a consumer is further empowered to request data removal.

Restrictions of the provisions of data transfer between the EU and third countries such as the US for consumer data including server data held in the US for EU consumers and within a cloud system - there is in addition a discussion concerning the reform of the Safe Harbor Agreement to see whether this would still be appropriate as a mechanism, as the EU views the new Regulation as the 'gold standard' which is not matched by the US system.

As the proposed legislation is in the form of a Regulation the provisions would be directly applicable into national law, meaning that national governments would not be able to offer the same flexibility of approach which is currently afforded to companies in certain jurisdictions such as the UK.

To understand more about the developments for insurers and reinsurers at EU level, please contact:



Emma Thomas
Account Director
T +00 (0)20 7796 6271
emma.l.thomas@dlapiper.com

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper UK LLP and DLA Piper SCOTLAND LLP will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please speak to your DLA Piper contact on 08700 111 111.

www.dlapiper.com

DLA Piper UK LLP is authorised and regulated by the Solicitors Regulation Authority. DLA Piper SCOTLAND LLP is regulated by the Law Society of Scotland. Both are part of DLA Piper, a global law firm operating through various separate and distinct legal entities. For further information please refer to www.dlapiper.com

UK switchboard: +44 (0) 8700 111 111

Copyright ©2013 DLA Piper. All rights reserved. | SEPT 2013 | Ref: LDSDP/LON/16536188.1