

BRE-JBZ

From: Kaai, Geran
Sent: vrijdag 3 april 2015 15:57
To: Verweij, Ellen
Subject: FW: Insurance Europe comment on Presidency proposals on profiling (document 5344/1)
Attachments: Insurance Europe's comments on Presidency compromise text on profiling.pdf
Follow Up Flag: Follow up
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From: BRE-JUS
Sent: zaterdag 15 februari 2014 16:35
To: Grave, Martijn-de; Ruiters, Mienke-de; Dam, Caroline-ten; Alink, Marnix; Kaai, Geran; Timmermans, Marieke; Sorel, Alexander; Luijsterburg, Sander; Bos, Nicoline; Zwart, Jan
Subject: FW: Insurance Europe comment on Presidency proposals on profiling (document 5344/1)

Van: [REDACTED]
Verzonden: zaterdag 15 februari 2014 16:34:43 (UTC+01:00) Brussels, Copenhagen, Madrid, Paris

Aan: [REDACTED]
[REDACTED]
[REDACTED] BRE-JUS; [REDACTED]
[REDACTED]
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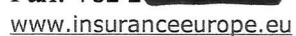
CC: [REDACTED]
Onderwerp: Insurance Europe comment on Presidency proposals on profiling (document 5344/1)

Dear colleagues

Insurance Europe would like to share its views on the latest Presidency compromise text of 16 January 2014 regarding profiling (document 5344/1).

We trust this may prove useful to your upcoming discussions.

Kind regards
[REDACTED]

[illegible]

Insurance Europe comments on the Presidency compromise text on profiling

Council document 5344/14

Insurance Europe supports rules on profiling that would benefit consumers while permitting insurers to use data effectively. For this reason:

- **Recital 58:** Insurance Europe welcomes the inclusion of a specific reference to fraud monitoring and prevention. It is vital that the Regulation recognises the need for organisations to access, process, store and share information in order to monitor and prevent fraud and other financial crime.

Nevertheless, Insurance Europe suggests amending Recital 58 to allow such processing when expressly authorised by regulation in addition to EU or national law, as follows:

*"[...] However, such processing should be allowed when expressly authorised by Union or Member State law or **in compliance with regulatory provisions**, including fraud monitoring [...]"*

- **Article 4 - definition of profiling:** Insurance Europe is concerned that the proposed definition of profiling and particularly Article 4 (12b) is unclear and raises legal uncertainty. For instance, we are concerned about the reference in Article 4 (12b) to "a set of data characterising a category of individuals that is intended to be applied to a natural person".

It is not clear what is meant by this and how the interplay between the reference to an individual natural person and a category of individuals could be interpreted in practice. Moreover, we do not see the need to define "profiling" in relation to "profile" and introduce this new concept in the set of definitions.

For this reason, Insurance Europe supports a definition of profiling that would follow the principles and logic of Directive 95/46/EC.

- **Article 20 (1a) – profiling at pre-contractual stage:** Due to the very large definition of profiling, there is a danger that risk assessment could inadvertently fall into scope of profiling provisions. Risk assessment is at the core of insurance activities. It enables insurers to provide the appropriate cover to consumers based on their needs and their risks. Any restriction to risk assessment would have negative consequences for consumers and insurers, in the form of products' unavailability and higher pricing.

Therefore, Insurance Europe welcomes the recognition that individuals can be profiled if it is necessary for entering into, or performance of, a contract, or if profiling is expressly authorised by Union or member state law, or if data subject has given consent.

- **Article 20 (3) - profiling and sensitive data:** Insurance Europe believes that the Regulation should allow the processing of sensitive and non-sensitive data for profiling purposes where the individual has consented to this or when an individual has chosen to enter into a contractual relationship with the data controller.

Finally, Insurance Europe is concerned about the deletion of the word "solely" from par.3. This has the potential to significantly increase the scope of the paragraph from processing based "solely" on the special categories of personal data referred to in Article 9 to all processing that contains any special categories of personal data referred to in Article 9 but also other categories of data, captured under Article 6.
