



## Insurance Europe Response to EDPB Guidelines on Pseudonymisation

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### Introduction

Insurance Europe welcomes the opportunity to comment on the European Data Protection Board's (EDPB) draft [guidelines](#) on pseudonymisation.

The guidelines on pseudonymisation are step towards the right direction with a view to providing further clarity on when personal data can be considered pseudonymised and on the applicability of pseudonymisation. In its Second [Report](#) on the application of the GDPR, the European Commission stressed "the need for additional guidelines, in particular on anonymisation and pseudonymisation" as necessary to provide further clarity and foster innovation. In this regard, Insurance Europe welcomes the publication of the guidelines and encourages the EDPB to follow up also with new guidelines on anonymisation as stressed by the European Commission.

Insurance Europe welcomes the fact that the EDPB guidelines emphasize the benefits of pseudonymisation as an effective safeguard for controllers to fulfil their data protection obligations and demonstrate compliance with data protection principles. In particular, we welcome that the guidelines recognize pseudonymisation as a valuable security measure for mitigating privacy and security risks, thereby facilitating the reliance on legitimate interest as a legal basis for processing personal data, provided that all other GDPR requirements are met. Additionally, pseudonymisation can support achieving compatibility of further processing with the original purpose by limiting any potential impact on data subjects, in accordance with Article 6(4) GDPR.

However, Insurance Europe draws the EDPB's attention on a number of points that should be considered for the final version of the guidelines.

### ■ Anonymity of Pseudonymised Data Transmitted to a Third Party

The EDPB guidelines state in para 22 that: “*pseudonymised data, which could be attributed to a natural person by the use of additional information, is to be considered information on an identifiable natural person, and is therefore personal. This statement also holds true if pseudonymised data and additional information are not in the hands of the same person*”. The EDPB makes similar statements in other parts of the guidelines. This approach is contrast with the recent opinion of the Advocate General in the case **EDPS v. SRB (C-413/23)**, particularly paragraphs 52-60 of the Opinion, which discuss the anonymity of personal data after the transmission of pseudonymised data to a third party.

In its Opinion, the Advocate General considered the question of whether pseudonymised data can be considered personal data in the hands of a third-party recipient. The Advocate General decided that, if a recipient has “reasonable means” to re-identify data subjects, for example, by obtaining additional information via available legal means, it could be considered processing personal data. On the other hand, the Advocate General concluded that, if the risk of re-identification by reasonable means is “non-existent” or “insignificant” by the recipient, then the data may not be automatically considered personal data. In this case, we note that the concept of “non-existent” was clarified in the case *C-582/14 Patrick Breyer v Bundesrepublik Deutschland*. According to the CJEU, “non-existent” in this context means prohibited by law or practically impossible, because, for example, re-identification requires a disproportionate effort in terms of time, cost and manpower.

The Advocate General’s Opinion offers welcome confirmation for organizations receiving pseudonymised personal data. As long as the data recipient is not provided with any additional information enabling the reidentification of data subjects and lacks any “reasonable” technical, physical, or legal means to obtain such information, the pseudonymised data should not be regarded as personal data in the recipient’s possession. To ensure legal clarity, we encourage the EDPB to revise the Guidelines following the public consultation.

### ■ Quasi-Identifiers

The guidelines address quasi-identifiers as factors that could contribute to re-identification risks. In this case, to prevent attribution based on quasi-identifiers the EDPB suggests, among others, that they are randomised or removed. While this is an important consideration, the examples of quasi-identifiers proposed by the EDPB remain quite broad and do take into account the actual context of the processing. For example, re-identification on the basis of simply age and gender is much less likely with large datasets than smaller ones. The EDPB should therefore add a reference in the guidelines on the importance for the controllers to take into account also the context and the size of the data processing.

### ■ Further Clarifications on the Threshold for Anonymisation

We acknowledge that the EDPB guidelines state that pseudonymisation alone does not constitute anonymisation and that data can only be considered anonymous if all the criteria for anonymisation are fully met. However, the criteria that distinguish pseudonymisation from anonymisation remain open in many places in the guidelines. We anticipate that the forthcoming EDPB guidelines on anonymization will provide further clarity on this matter. Therefore, Insurance Europe recommends that the final guidelines on pseudonymisation are published alongside those on anonymisation, given their thematic connection and the need to ensure legal certainty.