**EDPB Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications**

Deadline 4th of May 2020

Unipol Group S.p.A. (hereinafter the "Unipol Group") welcomes the opportunity to contribute to the EDPB consultation on the Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications. In particular, Unipol Group would like to share its concerns with reference to the **EDPB general recommendations on geolocation data** (2.1.1), **local processing of personal data** (2.4.1), to **the case study on Pay As You Drive (PAYD) insurance** (3.1.1) and **on accidentology studies** (3.3). Unipol Group invites the EDPB to consider the following comments and to clarify the issues highlighted.

## I. *Preliminary remarks: EDPB recommendations and the lack of a clear representation of how telematics insurance works in practice*

As a preliminary remark, Unipol Group would like to point out that the draft guidelines, which in more than one occasion refer to the insurance sector and specifically to the provision of insurance telematics services, do not fully take into account all the practical implications related to the functioning of insurance telematics services and the legal obligations that insurers are subject to when providing this type of insurance services. With this respect, Unipol Group calls on the EDPB to provide more clarity on the issues represented in the present document so to support also national and other European authorities when dealing with the application of data protection and privacy rules with respect to the specificities of the insurance sector.

**Telematics** – the combination of computers and wireless telecommunication technologies to facilitate an efficient transfer of information over vast networks – **is** in fact **the key factor underpinning innovation in the insurance sector and particularly in relation to motor insurance**[1]. Hence, the issuance of guidelines that do not take into account the real functioning of the service could hamper this innovative process, which represents a door opener to many new opportunities for both insurers and customers.

[1] Please see the paper "Unveiling the full potential of telematics. How connected insurance brings value to insurers and consumers: An Italian case study" (2017) available here: https://media.swissre.com/documents/unveiling_the_full_potential_of_telematics_italy_case_study.pdf)

An example is **autonomous driving**, towards which telematics is paving the way. Telematics enables the mobility services and is the instrument for a better, safer, self- and autonomous environment. Next to telematics, there are the so-called semi-autonomous advanced driver assistance systems (ADAS) (e.g. safety enhancing features, such as emergency brake assist (EBA), side-view (blind spot) assistance, forward collision and lane departure warning system), which are accelerating the development towards automated mobility. In this context, the combination of ADAS and telematics has extensive consequences on road safety and consequently on the insurance sector.

As semi-autonomous vehicles cut the frequency and costs of road accidents, telematics – through the collection of data from the vehicles – allows insurers to improve the design of services with higher valued added for consumers and enhance risk segmentation. A more adequate pricing of motor insurance for individuals – which stems from the risk segmentation – could also incentivize consumers to adapt their driving behaviour in order to collect the reward for careful driving.

In addition, there is a wide range of services the consumers can benefit from the development of telematics and semi-autonomous vehicles such as emergency calls, efficient claims handling processes, weather alerts based on geo-localisation, highway and parking area tolling, anti-theft services.

Bearing this in mind, and taking into account that digitalization and data will be an essential component of the upcoming European Commission's '**Smart and Sustainable Transport Strategy**' (Q4 2020), the Unipol Group stresses the importance to ensure a correct understanding of the provision of telematics services to allow the insurance sector to keep innovating and remain competitive.

To support the EDPB in the process aiming at amending the guidelines to better reflect how insurance telematics services work in practice, **Unipol Group would suggest the EDPB to specifically engage with the insurance industry as for example through the creation of an *ad hoc* working group to discuss and agree on possible workable solutions.**

### II. *Geolocation data: incompatibility of the EDPB's principles with insurance telematics*

Geolocation data represent one of the three categories of personal data warranting special attention by vehicle and equipment manufacturers, service providers and other data controllers, including insurance companies[2].

[2] In the draft Guidelines, the EDPB has identified three categories of personal data warranting special attention, by vehicle and equipment manufacturers, service providers and other data controllers: location data, biometric data (and any special category of data as defined in art. 9 GDPR) and data that could reveal offences or traffic violations (please see paragraph 59 of the Guidelines).

The collection of geolocation information – as for example through telematics boxes – is of utmost importance for the insurance sector. This kind of information is indeed essential not only to ensure the safety of the data subject and his/her right of defence, but also to support the important role of insurance companies in the society. By leveraging digital technologies, insurance companies are able to move from a traditional service model that offers only protection to a model that offers protection, prevention and preservation, thus enhancing risk assessment in underwriting, reducing the cost of claims and identifying new sources of sustainable growth.

In this context, Unipol Group is of the opinion that paragraph 61 under section 2.1.1. of the proposed Guidelines, which sets out the principles in compliance with which the collection of geolocation data has to be carried out, raises a number of concerns. The possibility to activate geolocation only when the user launches a functionality that requires the vehicle's location to be known, and not by default and continuously when the car is started, as well as the option to deactivate geolocation at any time, may have a detrimental impact on the effectiveness of the telematics-based insurance service.

Firstly, there is a (i) risk **management issue**, and secondly there is (ii) an issue related to the **fulfilment of the contract** for the supply of the telematics-based insurance service concluded between the provider and the end-user.

As regards the risk **management issue**, it is important to consider it both from a safety perspective and from a strict insurance risk management perspective.

When looking at the safety aspect, the Unipol Group recalls Article 1914, paragraph 1, of the Italian Civil Code which provides that the insured must do everything possible (thus including omissive and/or commissive behaviour) to avoid or decrease the damage. The possibility to activate geolocation only when the user launches a functionality that requires the vehicle's location to be known, and not by default, instead, provides for the opposite result since it may trigger negative effects not only by incentivizing biased behaviours by the end-user but also by hindering the proper functioning of the telematics service. For example, in case of weather storms or other critical situations, not having an active geolocation can undermine the functioning of the telematics service and consequently the insurance company's efforts to provide for preventive measures to reduce the risk of damage or enhance the driver's safety. Worst-case scenario could be the death of the driver.

Another relevant argument related to the safety aspect – and consequently to the need to have geolocation activated by default - concerns the exercise of the right of defence (Article 24 of the Italian Constitution) and the right to a fair trial (Article 6 of the European Convention on Human Rights). Geolocation data can in fact be used as evidence in both civil (according to Article 145a, paragraph 1, of the Law no. 124 of the 4th of August 2017) and criminal trials, as for example in vehicular manslaughter

cases (Article 589a of the Italian Criminal Code). Conversely, should the option to activate geolocation be subject to the user's discretion, such a right of defence could be seriously undermined.

From a strict insurance risk management point of view, instead, Unipol Group would like to point out the fact that telematics devices play an important role both with respect to the possibility to decrease the damage as well as in relation to the fulfilment of the requirements set out by insurance domestic and European legislation to combat fraud and on claim settlement.

Enabling geolocation by default would allow indeed:

- to promptly get in contact with emergency services, and thus to prevent the worsening of consequences and, in parallel, to reduce the damage;
- to facilitate the 'event reconstruction' by using objective parameters that can support at the same time claim settlement activities and the fight against insurance fraud.

On the second issue mentioned above – the **fulfilment of the contract** for the supply of the telematics-based insurance service – Unipol Group would like to refer to civil law principles, which provide that each party of the contract is legally responsible to perform its obligations according to the contract terms. In the case of a telematics-based insurance service, by voluntarily entering into an agreement with the telematics service provider, the end user has agreed to implement the telematics device in an exchange of a number of benefits, including the application of lower insurance premium. Moreover, without continuous geolocation – in the context of telematics and usage-based insurance policies – would not be possible to grant a fair premium for the users since their driving habits would not be continuously observable.

It derives that the option to deactivate geolocation at any time may risk invalidating the contract and the related contractual obligations.[3]

Bearing this in mind, **Unipol Group would suggest the EDPB to amend section 2.1.1 on "*Geolocation data*" by clarifying that disabling data collection may be incompatible with an insurance policy based on telematics and to propose recommendations compatible with national contract law and sectorial mandatory guidance concerning telematics insurance.**

[3] The incompatibility of the EDPB's principles with Italian national contract law has been highlighted also by Insurance Europe in its contribution to the consultation available here: https://www.insuranceeurope.eu/sites/default/files/attachments/Response%20to%20EDPB%20draft%20guidelines%20on%20processing%20personal%20data%20in%20context%20of%20connected%20vehicles%20and%20mobility%20related%20applications.pdf

### III. *Local processing of personal data and Pay As You Drive (PAYD) insurance: the importance to access to raw data*

As already mentioned, telematics is one of the most relevant digital innovations which is having a tremendous impact especially on the motor insurance landscape. Indeed, the adoption of new technologies and data tools does not just represent the result of a modern trend but also a necessity for the industry to maintain the competitive pace.

Actually, the auto insurance sector has established the most successful use case for telematics data so far. It has done this by transforming the collected data into actionable knowledge affecting all components in the insurance value chain and bringing an unprecedented level of innovation to motor insurance. Telematics has enabled insurers to improve risk segmentation and pricing thanks to the data collected from the vehicles, which constitutes a valuable raw material. Moreover, telematics has facilitated claims handling based on crash detection and reconstruction.[4]

However, in order for the insurers to continue benefiting from those advantages from the use of telematics, **access to the raw behavioural data collected by the cars' sensors is key.**

With this respect, the draft EDPB guidelines that **recommend to limit insurers' access to raw data and to resort to "hybrid processing" pose serious challenges**.

Under paragraph 75, the EDPB refers to the case of usage-based insurance (UBI) – which is then further elaborated under Section 3.1.1. that deals with Pay As You Drive Insurance – and recommends that personal data regarding driving behaviour (such as the force exerted on the brake pedal, mileage driven, etc.) could either be processed inside the vehicle (e.g. in telematics boxes) or by the telematics service provider on behalf of the insurance company (the data controller) to generate numerical scores that are transferred to the insurance company on a defined basis (e.g. monthly basis). In this way, the insurance company does not gain access to the raw behavioural data but only to the aggregate score that is the

[4] Those important developments in the insurance sector have been also recently reported by the IAIS (International Association of Insurance Supervisors) in its "Issue Paper on the use of Big Data Analytics in Insurance" (March 2020). While insurers have relied predominantly on historical data for actuarial calculation and risk modelling purposes, the IAIS recognizes that they are now able to rely on data sources that are real time or even forward-looking and may result in loss reduction. Paragraph 68 of the IAIS Paper makes the example of "smart drivers" who continuously produce data while they are driving (e.g. through the use of telematics devices and other "onboard" vehicle computer systems that provide instantaneous feedback on dangerous driving behaviours). The availability of this type of data can reduce the risk of accidents and potential multi-claimants, resulting in claims savings for insurers. In return, customers who use these smart devices may receive better insurance rates and potentially benefit from improved risk behaviours such as better driving.

result of the processing. This ensures that principles of data minimization are satisfied by design, states the EDPB.

**The Unipol Group does not agree with this recommendation and it is of the opinion that the interpretation of the data minimization principle given by the EDPB is too strict**.

Under paragraph 68 of the Guidelines, the EDPB notes that, taking into account the volume and diversity of personal data produced by connected vehicles, the data controllers (e.g. insurance companies) are required to ensure that technologies deployed in the context of connected vehicles are configured to respect the privacy of individuals by applying the obligations of data protection by design and by default as required by art. 25 GDPR. This means that technologies should be designed to minimize the collection of personal data, provide privacy-protective default settings and ensure that data subjects are well informed and have the option to easily modify configurations associated with their personal data.

With this respect, it is important firstly to stress that in usage-based insurance, the customer often must install a telematics device in their car or an app on their phone. Consequently, customers will know if their insurer is collecting data or not.

Secondly, a clarification on UBI policies as well as on why access to raw data is extremely important to ensure fair pricing and design products with higher valued added for consumers is necessary. UBI policies are mostly based on driving behaviour (not only mileage) and rely on telematics devices to collect vehicle-operating data that insurance companies can analyse to price insurance policies more accurately, assess claims, and even recreate accidents for analysis.

The first types of telematics products on the market did not have any variable component linked to usage (telematics information), but only an up-front flat discount[5]. These solutions monitor mileage (distinguishing sometimes between driving during the day, the night, the weekend and/or itineraries) and provide a base premium adjustment to be applied in the following year.

Advanced UBI products are represented by pay-how-you-drive (PHYD) policies, which are based on driving behaviour. Today, these products represent the most common solutions currently available on the market.

**PHYD policies are different from PAYD because they are policies that integrate information gathered on mileage with an analysis of the client's driving style** based on the number and intensity of accelerations and stops, driving timetables, speed, location and other variables, such as weather conditions, the time of day / the weekday. **This is an important difference that should be better**

[5] The so called pay-as-you-drive (PAYD) policies.

**reflected in the final EDPB Guidelines to avoid misunderstandings when reference is made to PAYD (see paragraph 103 of the EDPB draft guidelines).[6]**

Given the steady rise of UBI polices, many insurers in recent years have made significant efforts in terms of investments and resources to develop a thorough expertise and proprietary technology (such as algorithms) aimed at calculating a fair price for their clients or providing better suited services. **The EDPB's view suggests instead a uniform approach to risk scoring.**

**Unipol Group does not agree with this approach**. The envisaged limitations to access raw data would prevent insurance companies to recoup the massive investments they have made during the last years in creating risk models and algorithms to ultimately benefit consumers through better risk segmentation and pricing. As a result there would be negative consequences on the quality of the insurance products as well as an impact on free competition within the insurance market where risk would be viewed exactly the same by all insurers.

Data analytics holds indeed huge potential for generating business value. However, given the transformative strength of big data (of which telematics is a classic application), knowing (*ab origine*) the exact business value of any one big data application is often unclear. The reason is due to the fact that analytics initiatives have several unique features. First, they require an explorative approach: usually the analysis does not start with specific requirements as in other projects but rather with an idea or data set. To assess the relevant contribution, ideation techniques and rapid prototyping are usually applied. This exploration plays a key role in developing a shared understanding and giving a big data initiative a strategic direction. Second, in their early phase analytics projects are characterized by a complex interaction between different stakeholder interests, competencies, and viewpoints. This means that learning is an integral part of these projects since it is essential to build experience and competence with analytics. Third, analytics projects run in parallel to the existing information technology (IT) infrastructure and deliver short scripts or strategic insights, which are then installed in larger IT projects. Due to a missing end-to-end target, data is not only to be extracted, transformed, and loaded, but also needs to be identified, classified, and partly structured. This all means that a **general process for value generation, which needs to be established to guide analytics projects and address the above-mentioned issues, would not be possible without access to the data**.

Moreover, should a scoring algorithm be developed by a third party, the insurer will be required to understand the raw data that has been used to create that score to ensure that it is meeting its obligations from a regulatory, contractual and data protection perspective (e.g., to ensure fair customer

[6] On the same line, the EDPB should clarify that telemetry data, which is necessary for the performance of a telematics insurance contract, can be processed on the grounds of Art. 6(1)(b) GDPR. Otherwise, para.52 of the guidelines may be misunderstood in a way that the processing of telemetry data in the context of driving behaviour-based insurance policies always requires consent.

outcomes). Raw data must be regularly audited and reviewed for accuracy and relevance: this means that the inability to access raw data impedes insurers from complying with legal obligations, including Solvency II requirements. At the heart of the prudential Solvency II regulation, there is indeed the comprehensive assessment of the company's risk profile that the insurer has to conduct as part of a process that can enhance decision-making procedures by developing closer integration between risk and performance management at all levels.

Should the insurance company have limited or no access to raw data, the risk assessment would have to be based on the scoring elaborated by a third party – e.g. the telematics service provider – that *de facto* would be the real "risk assessor".

Another relevant argument related to this aspect – and consequently to the need for insurance companies to access raw behavioural data – concerns the fact that today many companies have developed the internal skills and created such corporate structures so that they act, at the same time, as insurance companies and telematics service providers. Such a circumstance, on the one hand, makes difficult for the companies to properly conduct "hybrid processing" as envisioned by the EDBP, while on the other makes inconsistent the decision to prevent insurers to access and process data collected by their own devices, installed on their own clients' vehicles, for the specific purposes of carrying out their own insurance contracts.

Therefore, Unipol Group does not agree with the EDPB position as reflected in paragraph 75 under section 2.4.1 and paragraphs 108, 112 and 115 under section 3.1.1 of the proposed Guidelines and suggests the introduction of a more flexible approach to data minimization, allowing a better understanding of who can access and process the data collected by the telematics device.

In light of the arguments above explained, **Unipol Group would suggest the EDPB to amend section 2.4.1 on "Local processing of personal data" and section 3.1.1 on "Pay as you drive (PAYD) insurance" to provide for clearer guidance and vision to the insurance industry in the development and functioning of the telematics services.**

### IV. *Accidentology studies: legal basis*

Unipol Group welcomes the provisions whereby the EDPB confirms the possibility to (i) collect data related to instantaneous speed for accidentology studies; (ii) retain technical data from vehicles for five years from the end date of the study and (iii) anonymise data relating to participants/vehicles and technical data from vehicles after the end of the respective retention periods.

However, in paragraph 146 under section 3.3.1 the EDPB provides that consent referred to in Article 6(1)(a) of the GDPR is the only legal basis allowed to process data for accidentology studies related

purposes. The latter approach seems to identify accidentology studies as an activity alien to the achievement of the typical insurance purposes and that is why consent is envisaged as the only proper legal basis.

**Unipol Group does not agree with this approach since accidentology studies must be considered** instead **an essential part of the insurance core activity** and are aimed at continuing maintenance and evolution of the risk management models.

Furthermore, as stated above, Article 1914, paragraph 1, of the Italian Civil Code provides that the insurer must do everything possible (thus including omissive and/or commissive behaviour) to avoid or decrease the damage and thus accidentology studies, aimed at better understanding the causes of road accidents, play a central role even in such activity.

Therefore, Unipol Group is of the opinion that accidentology studies may be qualified, on a case by case basis, as a data processing activity (i) compatible with the purpose for which the personal data were initially collected and thus relying on the same legal basis of the previous data processing operation or (ii) relying on the legitimate interest of Unipol Group or (iii) necessary for compliance with a legal obligation.

In light of the arguments above, **Unipol Group suggests that the EDPB amends paragraph 146 under section 3.3.1 "Legal basis" by providing that data controllers may rely on consent or any other legal basis referred to in article 6(1) of the GDPR as appropriate under the accountability principle to carry out accidentology studies.**

***

**UNIPOL GRUPPO S.p.A.**

**Head of Regulatory Affairs**

Luca Giordano