

Position Paper
of the German Insurance Association
ID number 6437280268-55
on the Digital Single Market Strategy for Europe
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German Insurance Association

Wilhelmstraße 43 / 43 G, 10117 Berlin
PO Box 08 02 64, 10002 Berlin

Contact:

Dr. Axel Wehling

Member of the Executive Board

Phone: +49 30 2020-5400

Fax: +49 30 2020-6603

E-Mail: a.wehling@gdv.de

Contact:

Thomas Ilka

Member of the Executive Board

Phone: +49 30 2020-5700

Fax: +49 30 2020-6700

E-Mail: t.ilka@gdv.de

51, rue Montoyer

B - 1000 Brussels

Phone: +32 2 28247-30

Fax: +32 2 28247-39

ID number 6437280268-55

www.gdv.de



I. Executive summary

The German insurance industry welcomes the European Commission's Digital Single Market Strategy for Europe (DSM Strategy). The social and economic changes brought about by digitalisation require a clear and binding framework that nonetheless encourages innovation. If European companies and customers are to benefit from the opportunities of these changes, the necessary steps towards such a framework need to be taken soon.

To make this possible, it is not only necessary to establish a level playing field, but also to remove existing obstacles in the current legal framework. From the German insurance industry's point of view, the establishment of a European Digital Single Market requires first and foremost:

- implementing the EU data protection reform as soon as possible, while maintaining a flexible legal framework that is open to technological progress and does not impede innovation disproportionately,
- enabling fair competition on a level playing field with regard to digital declarations of intent as well as collection and use of digital data,
- driving forward secure and widely accepted standards for paperless transactions and digital declarations of intent and quickly removing existing legal obstacles impeding their use.

II. Positions of the German insurance industry

The German insurance industry takes the view that the digital economy depends heavily on secure processes without media discontinuity. To unleash the full potential of digitalisation in the European Single Market, seamless digital processes need to be firmly established across all sectors – B2C, B2B and B2G.

Therefore, it is crucial to remove the barriers as simple, customer-friendly and seamless digital processes still meet obstacles in certain areas. Both security and usability should be ensured at all times which requires a more flexible legal framework. The German insurance industry promotes widely accepted standards for secure communication as a means to facilitate the conclusion of insurance contracts by waiving the written form requirement. This would make it more attractive to conclude insurance contracts online as an additional option for the industry. Prerequisite for this are clear, practical and coherent provisions which appropriately take into account customer needs.

1. Information Technology in the Digital Single Market

a) Launching a European Cloud Initiative

The insurance industry welcomes the proposed Cloud Initiative. For globally active companies, not having to depend on separate infrastructures for each country or region on the European level constitutes a vital advantage. A binding and conclusive legal framework regarding establishment and use of cloud services would mitigate the risk that potential benefits are watered down by additional requirements imposed by the Member States.

Technical standards for cloud computing are also a crucial factor. In this field, the German insurance industry has valuable insight to share that was gathered in creating the Trusted German Insurance Cloud (TGIC)¹. The TGIC is a secure IT infrastructure certified by the IT-security standards established in the IT-Grundschutz of the German Federal Office for Information Security. The TGIC includes the Insurance Trust Center (ITC), which is a secure authentication component certified according to the international Common Criteria for Information Technology Security Evalua-

¹ See (in German): <http://www.gdv.de/2015/03/versicherungswirtschaft-setzt-zur-cebit-neue-massstaebe/>.

tion. This makes the TGIC a secure framework for, amongst others, the authentication of distribution partners and for electronic notification procedures between companies and authorities.

Both the legal framework conditions for the providers of cloud services and comprehensible cloud standards are vital for this process. Standardised contracts for cloud computing can help promote the use of clouds.

b) Launching an integrated standardisation plan defining key priorities for standardisation

The German insurance industry supports the European Commission's intention to launch an integrated standardisation plan for the Digital Single Market. The focus should lie on the interoperability and linkage of activities between the EU and its Member States.

Common standards, harmonised processes and structures as well as the interoperability between different data sets are necessary prerequisites for the digital data value chain. Moreover, interoperability and open standards can help prevent data monopolies, which are de facto created by proprietary standards.

Therefore the industry welcomes the extension of the Programme on Interoperability Solutions for European Public Administrations, Businesses and Citizens (ISA programme) until 2020.

However, existing national standards should always be taken into account in the European standardisation efforts. These could serve as examples of best practices. In the area of electronic invoicing, the ZUGFeRD standard developed in Germany is a promising format.²

c) Launching a European 'Free Flow of Data' initiative

Using and processing data is essential to the insurance industry's business model. Therefore, we welcome the European Commission's 'Free Flow of Data' initiative as a part of the DSM Strategy.

However, a single market necessitates fair and equal market entrance and competition regulation, including harmonised provisions on access to data,

² See: http://www.ferd-net.de/front_content.php?idcat=231&lang=3&changelang=4.

clarification on the subject of data ownership as well as standardisation of data formats in order to increase their interoperability.

The access to public sector information (e.g. natural hazard data) is also a relevant issue in this context, since it can be vital for creating added value in the digital economy. The purchase and use of this kind of data should be regulated through clear and harmonised provisions, including on licences and data protection.

Therefore, the German insurance industry supports the European Commission's appeal to the Member States to implement Open Data as soon as possible. The provision on the use of open and interoperable formats included in the Directive on the re-use of public sector information is the right approach in this context.

d) Establishing a Public-Private Partnership on cybersecurity

There is broad consensus that cybersecurity is crucial for the digital economy. Public-Private Partnerships might provide a possible forum for research on technology and solutions required for online net security.

The insurance industry could contribute its expertise in this field. Insurance companies are developing highly efficient cyber security systems for medium-sized companies with respect to insurance coverage for emerging cyber-risks. In addition to that, future risk transfer solutions are being prepared, e.g. regarding the gathering and preservation of evidence in the event of a claim. The envisaged Public-Private Partnership on cybersecurity could build on these approaches and explore what is necessary to safeguard the Digital Single Market against cyber risks.

From the insurance industry's perspective, the Network and Information Security Directive is a vital part of the creation of a safer digital economy in Europe. Therefore, work on the implementation of this Directive should be furthered in order to ensure a Europe-wide minimum level of security regarding critical IT infrastructures as quickly as possible. In this process, it is vital to establish efficient notification systems to tackle the risks caused by the increasing interdependence of networked systems. However, it is important to distinguish between appropriate measures improving IT security and superfluous bureaucratic burdens.

The German insurance industry already has a functioning infrastructure for early crisis detection at its disposal: the Situation and Crisis Response

Centre for IT security of the German Insurance Industry (LKRZVZ).³ In emergency situations, the LKRZVZ can rapidly and effectively ensure the communication between insurance companies and responsible authorities around the clock.

e) Introducing an e-Government Action Plan for 2016-2020

The European Commission's dedication to promote a quick implementation of e-Government services in the Member States is also vital for the development of the Digital Single Market. The more companies and citizens benefit from e-Government services, the more trust they will have in the developed standards, resulting in a more wide-spread implementation and use of these services.

The German insurance industry supports the European Commission's pilot project on the 'Once-Only' principle on the collection of company data by public administrations, as the efficient reusing of data already in the possession of the administration would lead to considerable net savings for companies and increase data quality.

First and foremost, multiple reporting requirements could – and should – be avoided in the fields of supervisory law and economic statistics. Companies should be allowed to report information used for both supervisory and statistical purposes only once. Transfer of the relevant data to further institutions by the authority collecting the data (usually the responsible national supervisory authority) would achieve this goal. In addition, supervisory authorities should intensify collaboration on data collection in order to benefit from increased efficiency and avoid multiple reporting of the same data in different formats.

For these reasons, the insurance industry would very much welcome if the European Commission could extend the 'Once-Only' principle to the level of supervisory authorities and institutions analysing statistical data. Two factors are vital for success: the electronic cooperation between the responsible national and European authorities and the establishment of uniform interfaces and standards for the exchange of data.

³ See (in German): <http://www.gdv.de/2015/05/gut-geruestet-gegen-angriffe-aus-dem-netz/>.

f) Proposal on incentivising investments in high-speed broadband networks

In order to provide all EU citizens with broadband networks, considerable investments are necessary. Being the largest group of institutional investors, the German insurance industry (investment portfolio: 1,450 billion euros as of 31 December 2014) could significantly advance this process. For this reason, the European Commission should always keep the concerns of potential investors in mind when drawing up the supervisory and economic framework conditions.

This holds particularly true for the strict capital requirements that the insurance industry has to follow under Solvency II. Investments in digital infrastructures, such as broadband deployment, require risk-based calibration. Additionally, planning security and legal certainty as well as supervisory and regulatory stability are essential, given that insurers depend on them in their investment decisions in order to fulfil their fiduciary responsibility towards their customers.

For existing investments in infrastructure, grandfathering provisions are needed based on the rules and investment conditions applicable at the time the infrastructure was set up. Another precondition for a stronger role of the insurance industry is an appropriate risk-return ratio, since insurers need to aim at security, liquidity and profitability in their investment decisions in order to be able to offer their customers safe and sound old-age provision.

g) Further suggestions

The insurance industry regrets that the DSM Strategy does not explicitly mention measures to shape the future of connected cars and traffic infrastructures, even though this development is currently gaining momentum. For instance, all new cars have to be equipped with the automatic emergency call system 112 eCall starting 31 December 2018.

Connected cars can offer various value-added services. But it should always be the driver/owner of the vehicle who decides about the transfer of and access to the vehicle data. The insurance industry welcomes the EU's intention to establish a standardised, secure, open and non-discriminatory data interface for the exchange of vehicle data in the context of the introduction of eCall. This will allow customers to freely choose from the multitude of different value-added services. Without the interface, data monop-

olies might emerge in the individual economic sectors, adversely affecting free competition and particularly the interests and rights of consumers.

In order to promote the introduction and implementation of Cooperative Intelligent Transport Systems (C-ITS), the European Commission has also set up a Platform for the Deployment of C-ITS. Considering the promising developments in the field of networked vehicles and infrastructures, it would be an advantage to link these efforts closely to the Digital Single Market Strategy.

2. Consumer Protection in the Digital Single Market

a) Reviewing the Regulation on Consumer Protection Cooperation

The envisaged review of the Regulation on Consumer Protection Cooperation should take into account existing provisions and structures. In the insurance sector, the European and national insurance supervisory law and the existing powers of the European Insurance and Occupational Pensions Authority (EIOPA) usually ensure the harmonisation of standards. In order to avoid overlapping and redundant provisions, this should be taken into account in the review of the Regulation on Consumer Protection Cooperation.

In order to improve legal certainty, the responsibilities of European entities should therefore be clearly defined. This regards enabling provisions and the regulatory powers (and limitations) deriving from them, but also a clear distinction of the individual entities' fields of competence.

b) Establishing an EU-wide Online Dispute Resolution Platform

The insurance industry welcomes the measures aiming at an effective resolution of disputes. It is important that safety and practical relevance are taken into account in the drawing up of the envisaged EU-wide Online Dispute Resolution Platform and the Delegated Acts on the Regulation on Online Dispute Resolution.

However, well-functioning industry-specific dispute resolution mechanisms that are accepted by the consumers – e.g. the German insurance industry's ombudsman system and the complaint-handling system of the German Federal Financial Supervisory Authority (BaFin) – should be favoured over potential new horizontal structures.

Any overlapping of the new dispute resolutions systems with the existing ones just mentioned should be avoided, since the latter are often closer to the subject matter.

3. Distribution in the Digital Single Market

Assessing the role of online platforms

Comparison portals are an increasingly important factor in the German economy, including the insurance industry. For this reason, the European Commission's plan to assess the role of online platforms is expressly welcomed.

The product comparisons of these platforms are based on algorithmic calculations which remain largely incomprehensible to outsiders. Moreover, the pricing policy, origin and use of offered services (products, information offers on websites) are unclear to users. Additionally, the relations between the different platforms and the providers of products and services compared on these platforms are very intransparent. The gathering and use of data by online platforms also requires a thorough assessment.

The European Commission should aim at creating a level playing field, making online platforms that enter a specific industry subject to the same consumer protection rules that apply to traditional companies. For instance, platforms offering the sale of insurance policies should be subject to the common information requirements and the current and future legislation on data protection.

Regarding the insurance industry, the EIOPA has already conducted specific assessments of the role of online platforms such as comparison portals.⁴ This kind of expertise of European institutions should be taken into account in the assessment.

⁴ See: EIOPA "Report on Good Practices on Comparison Websites" (January 2014): https://eiopa.europa.eu/Publications/Reports/Report_on_Good_Practices_on_Comparison_Websites.pdf; and EIOPA "Opinion on sales via the internet of insurance and pension products" (January 2015): [https://eiopa.europa.eu/Publications/Opinions/Opinion_on_sale_%20via_the_internet\(published\).pdf](https://eiopa.europa.eu/Publications/Opinions/Opinion_on_sale_%20via_the_internet(published).pdf).

4. Data protection in the Digital Single Market

a) Reviewing the ePrivacy Directive

In order to contribute to the reduction of bureaucracy and to avoid over-regulation, the review of the ePrivacy Directive should be based on whether there will be any loopholes after the adoption of the EU General Data Protection Regulation that need further regulation by the ePrivacy Directive. Data processing permitted in principle under the EU General Data Protection Regulation should not be restricted under the reviewed ePrivacy Directive. Nevertheless, even after the adoption of the EU General Data Protection Regulation, the ePrivacy Directive could still offer an opportunity to ensure modern and smooth electronic communication in the interest of customers and the competitiveness of European companies.

b) Implementing the EU General Data Protection Regulation

The processing of customer data is an integral part of the insurance business. As a consequence, it is vital to ensure that this data is handled with utmost care. In 2012, German the insurance industry adopted a Code of Conduct⁵, making it one of the first sectors to introduce voluntary self-commitment as provided in the EU General Data Protection Regulation. It is crucial that the insurance industry maintains its ability to develop and implement new technical solutions for its customers while fully respecting data protection standards.

The increasing digitalisation and the related automation enable insurance companies to make their processes more efficient and thus less expensive. As a consequence, often customers can benefit from lower premium-related costs and faster decisions in claims settlement.

It should be possible to carry out currently approved processes automatically, in particular in the case of positive decisions for the policyholder. Automated confirmations of contracts or benefits entail no risks for the policyholder. A mandatory involvement of human beings in the decision-making process would run contrary to the advantages of automation.

Nevertheless, the German insurance industry agrees that the data subject should have the right to demand the reassessment of an automated decision by a human decision-maker. This would allow for a fair balance be-

⁵ See (in German): <http://www.gdv.de/2013/09/versicherungsunternehmen-treten-datenschutzkodex-bei/>.

tween all parties concerned by the automated decision, enabling both customers and companies to benefit from digital innovation.

In view of the – not entirely predictable – consequences of digital progress, the transitional period before the entry into force of the Regulation offers an opportunity to verify whether its provisions, which have mostly been drafted with traditional (non-digital) business models in mind, are too narrow in scope. If that is the case, the EU General Data Protection Regulation or other European or national legal acts should be amended as soon as possible in order to maintain the competitiveness of European companies.

5. Taxation in the Digital Single Market

The insurance industry welcomes the European Commission's intention to address the issue of taxation.

It is crucial for companies that the international exchange of tax data is organised in an economical, unbureaucratic, efficient and consistent manner. Digitalisation provides us with the tools to achieve this. The insurance industry also welcomes the attempts to create uniform and binding standards based on the Common Reporting Standard (CRS) developed by the OECD. However, companies should be granted enough time to prepare the implementation of the new standards.

Efficient standards regarding the collection and use of data for taxation purposes can help prevent multiple reporting standards. The EU Mutual Assistance Directive and other relevant Directives should be used as the basis for these standardisation efforts. In addition, extra-European legislation should also be taken into account: For instance, the implementation of the OECD's Common Reporting Standards should be based on the implementation of the US Foreign Account Tax Compliance Act (FATCA).

6. Policy fields not yet addressed by the DSM Strategy

Track and Trace your Pension in Europe – TTYPE

The European Commission's project Track and Trace your Pension in Europe (TTYPE) is addressing an important issue: taking advantage of the opportunities of digitalisation and allowing people to get a clear picture of the benefits they can expect from all three pillars of their pension at any time. The German insurance industry explicitly welcomes the aim. Howev-

er, national initiatives should have priority. With a view to the situation of cross-border workers, it is particularly important to avoid that new standards developed in the framework of a European TTYPE platform contradict existing national standards.

Berlin/Brussels, 21 December 2015