

Document 1.1.2 - 6

**ANALYSIS OF THE INSURANCE LEGISLATIONS FROM
PERSONAL DATA PROTECTION ASPECTS**

Component 1

Activity 1.1.2

FINAL VERSION



**The content of this report is the sole responsibility of Human Dynamics and
can in no way be taken to reflect the views of the European Union**



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

Contents

I. INTRODUCTION	3
II. ANALYZED LAWS	4
III. ANALYSIS OF THE INSURANCE LEGISLATION	5
1. LAW ON INSURANCE SUPERVISION	5
1.1 General Overview	5
1.2 Analysis of Specific Provisions of the Law on Insurance Supervision	6
1.3.1 Analysis of the bylaws deriving from the Law on Insurance Supervision	14
2. LAW ON COMPULSORY MOTOR TPL INSURANCE.....	20
2.1 General Overview	20
2.2 Analysis of Specific Provisions of the Law on Compulsory Motor TPL Insurance	21



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

I. INTRODUCTION

The insurance sector is a specific sector in which activities of life insurance and non-life insurance are performed. The business relations are established by concluding a contract of insurance, or signing an insurance policy or list of coverage by the contractors.¹

The processing of personal data begins by signing the insurance policy. So, as a mandatory element in the policy of insurance are: contracting parties, the subject of insurance or the insured person, the risk covered by insurance, the duration of insurance and period of cover, the amount of insurance or statement that the amount of insurance is unlimited, premium or contribution, the date of issuance of policy and signatures of the contracting parties.²

Taking into account the characteristics of the insurance contract³, personal data processed by the insurance company for its customers must be always accurate and updated.⁴

The “volume” of processing personal data in the insurance sector should be proportional with the purposes for personal data processing that primary related to the establishment of the business relationship, i.e concluding the insurance policy and recovery of damages in case of occurrence of the insured event.

The collection, processing and storage of personal data by insurance companies is regulated by the Law on Insurance Supervision for all types of insurance, while the Law on Compulsory Motor TPL Insurance regulates the collection, processing and storage of personal data by insurance companies and National Insurance Bureau for all insurance which are compulsory, such as: insurance of passengers in public transport from the consequences of accident; insurance of motor vehicles and trailers, aircraft

¹ Article 957 from the Law on Obligations

² Article 958 from the Law on Obligations

³ First of all the element of aleatory and uncertainty

⁴ In the following text the terms insurance company, company for insurance will have the similar meaning



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International

Project office:
Directorate for Personal Data Protection
ul.Samoilova nr.10, 1000 Skopje
Tel: (+389) 2 3230 635

insurance and insurance of ships, boats or motor facility from liability for damages caused to third parties in traffic and other issues of importance to compulsory insurance in traffic.

II. ANALYZED LAWS

For the purposes of this Analysis, the following Laws were taken into consideration:

1. Law on Insurance Supervision (Official Gazette no. 27/2002, 84/02, 98/02, 33/04, 88/05, 79/07, 8/08, 88/08, 56/09, 67/10 and 44/11) and the respective bylaws; and
2. Law on Compulsory Motor TPL Insurance (Official Gazette no. 88/05, 70/06, 81/08, 47/11 and 135/11).



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

III. ANALYSIS OF THE INSURANCE LEGISLATION

1. LAW ON INSURANCE SUPERVISION

1.1 General Overview

Law on Insurance Supervision⁵ is *lex generalis* in relation to the other laws regarding insurance. But, in terms of legislation governing the issue of data protection, Law on Insurance Supervision represents *lex specialis* regarding Law on Personal Data Protection.

The Law on Insurance Supervision, in the broadest sense, regulates the terms and conditions for carrying out activities related to life insurance, nonlife insurance and reinsurance, activities related to representation in insurance, insurance brokerage activities, establishment, operation, supervision and termination of operation of trade companies for insurance and reinsurance, insurance brokerage companies, and insurance agencies, as well as establishment and operation of the Insurance Supervision Agency.

In the process of performing insurance and reinsurance, insurance companies sign contracts and fulfill life insurance and non-life insurance contracts, as well as co-insurance and reinsurance contracts.

The conclusion of the above contracts itself means obligation for collecting and processing personal data by the insurance companies and the National Insurance Bureau. Namely, the provisions of the Law on Insurance Supervision⁶ prescribe this obligation for the insurance companies, as well as for the National Insurance Bureau. The Law defines as compulsory creating and storing (keeping) a few records (databases) that contain strictly specified personal data required by certain legal provisions.

Hence, it turns out that the collection and processing of personal data by the insurance companies is condition for conducting their core business - conclusion of insurance contracts, co-insurance and reinsurance. But, while collecting and processing personal data the insurance companies should consider the legal restrictions, i.e. should be guided by the principle of fair and lawful processing of personal data. This transferred into practice would mean that insurance companies need to collect and process only those

⁵ Official Gazzete no. 27/02, 84/02, 98/02, 33/04, 88/05, 79/07, 8/08, 88/08, 56/09, 67/10 и 44/11

⁶ Further in the text for the Law on Insurance Supervision the term -the Law- will be used



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

personal data required for establishing of the contractual relation and for the exercise of the rights and obligations thereof, as well as to collect and process personal data only on basis on explicit legal grounds.

Law on Insurance Supervision, as Lex generalis in this field gives the basic grounds for protection of personal data. When applying specific provisions in practice, the provisions for personal data protection should always be interpreted and applied in relation with the Law on Personal Data Protection, as a general law in this field. The Law on Insurance Supervision contains a reference provision for subsidiary application of the Law on Personal Data Protection.

1.2 Analysis of Specific Provisions of the Law on Insurance Supervision

Personal data protection in the Law on Insurance Supervision is regulated in details in Article 109. This article is integral part of Chapter V, which regulates the confidentiality of data in general. The opinion of the author is that, although only Article 109 explicitly refers to personal data, remaining articles from Chapter V are connected to personal data. The Chapter V of the Law that concerns the confidentiality of data, in fact, is a "synonym" for protection of personal data in the insurance sector.

The main reason for terminological noncompliance of the provisions of the Law on Insurance Supervision with the Law on Personal Data Protection, according to the author, is the fact that the Law on Insurance Supervision is enacted before the Law on Personal Data Protection and in its subsequent amendments terminological alignment has not been made.

However, the Law on Personal Data Protection as a lex generalis in the field of protection of personal data will always be applied in correlation with the Law on Insurance Supervision, i.e. for those issues which are not regulated by the Law on Insurance Supervision in the field of personal data protection, the provisions of the Law on Personal Data Protection will apply.

Article 107 "Data confidentiality"

The insurance companies shall be obliged to treat all the data of the insureds and/or of other users of insurance they have acquired during the performance of insurance activities, as confidential data.

Article 107 is actually the first article of Chapter V of the Law that concerns the confidentiality of data. This article provides general obligation for the insurance companies, all the data of the insureds and/or other insurance users that are acquired during the execution of insurance matters to be treated as



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

confidential. Thereby, according to the provisions of this article there is no distinction between the data of the insureds, i.e. other insurance users of legal and natural persons, where from emerges the conclusion that this protection applies to all persons. On the other hand, the fact that this article covers the legal and natural persons means treatment of personal data of individuals as confidential, which certainly is a positive characteristic.

However, the lack of this provision is not providing the definition of the term "confidentiality". Namely, nor in the part relating to the confidentiality of data, neither in the other provisions of the Law is defined what is "confidential". This lack definition can cause confusion in the application of the provision in practice. The question is: what should insurance companies undertake so all the data for the insureds and/or other users of insurance could be treated as confidential?

Answer to this question, in terms of protection of personal data of individuals, can be given only if this provision is interpreted in correlation with the Law on Personal Data Protection, more specifically, with the provisions of Chapter V of the Law on Personal Data Protection related to providing secrecy and protection of personal data by controllers and processors.

Article 108 "Obligation for keeping confidential data", paragraph 1

The members of the bodies of the insurance companies, their stockholders, employees and other persons, who have access to the confidential data referred to in Article 107 of this Law during their operations, must not transfer the same to third parties, themselves or allow third parties to use them.

The provisions of Article 108 paragraph (1) provide a concrete measure for ensuring secrecy and protection of personal data – it is prohibited to transfer data from the previous article, which are treated as confidential data to third parties or to permit the use of such data by third parties.

This provision, although it can be evaluated as a positive step in regulating the protection of personal data in the field of insurance, still, represents only one of the measures which should be undertaken in accordance with the regulations on personal data protection⁷. But, on the other hand, according to the author, it should not be allowed special laws to contain provisions that would regulate

⁷ In general, the measures for providing secrecy and protection of personal data processing are regulated in Chapter V. of the Law on Personal Data Protection, as well as in the Rulebook on providing secrecy and protection of personal data processing



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International

Project office:
Directorate for Personal Data Protection
ul.Samoilova nr.10, 1000 Skopje
Tel: (+389) 2 3230 635

this matter in details, because in that case the existence of a *lex generalis* on personal data protection could be questioned.

Article 108 “Obligation for keeping confidential data”, paragraph 2

The obligation for keeping confidential data shall not apply to the following cases:

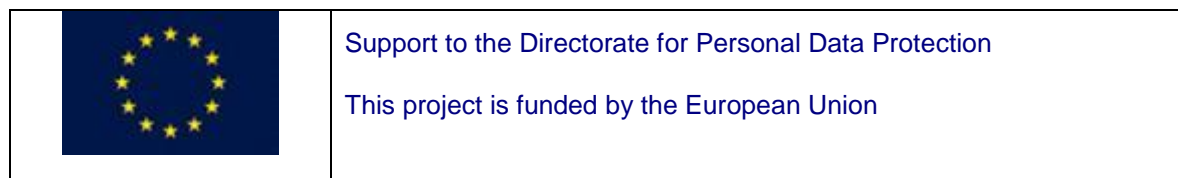
- 1) if the data are necessary for determination of facts in criminal procedures or other court procedure and if they have received written request from the competent court to submit data;*
- 2) in cases anticipated by the Law on Prevention of Money Laundering and other Financial Proceedings from a Crime and Financing Terrorism;*
- 3) if the data are necessary for determination of the legal relations between the insurance company and its insureds and/or other beneficiary of the insurance, in the performance of legal procedures;*
- 4) if the data are necessary for the purpose of performing coercive procedures over immovable property of an insured person or other beneficiary of the insurance, and if they have received written request for the competent court to submit data;*
- 5) if the data are requested from the Insurance Supervision Agency or from another competent supervisory body, and due to conduct of supervision within the framework of the established liabilities;*
- 6) if the data are requested by a tax body, in regard to conducting procedures within its competence and*
- 7) in the cases anticipated by the law regulating the mandatory insurance.*

This paragraph of Article 108 enumerates exceptions when the data, including the personal data of insureds and/or of other users of insurance will not be treated as confidential, i.e. in which cases the members of the managing bodies, shareholders and employees in the insurance companies may disclose the data to third parties.

Article 108 “Obligation for keeping confidential data”, paragraph 3

The Insurance Supervision Agency or another body competent for supervision, the tax bodies and the courts shall only use the data for the anticipated purposes, in accordance with paragraph 2 of this article.

Paragraph 3 of Article 108 provides additional data protection in case when the data of the insureds and/or of other users of insurance are to be disclosed pursuant to paragraph (2) of the same Article. Namely, if the data of the insureds and/or of other users of insurance are disclosed to any of the cited authorities, they should be used only for the envisaged purposes. This article is in line with one of



the basic principles of personal data protection – the data are to be used solely for the purpose for which they are collected, i.e. disclosed.

However, this provision does not regulate the protection "to the very end". Although the intention of the legislator was to provide additional protection in case of disclosure of the data of insureds and/or of other users of insurance, the legislator left a legal gap – he strictly enumerated the authorities which should provide additional protection, such as: the Insurance Supervision Agency, tax authorities and courts. The question that arises is what is the situation with the other authorities to whom the mentioned personal data are disclosed, as it is for example the Office for Prevention of Money Laundering and Financing of Terrorism or the enforcement officials, lawyers etc.. In this case, in order to cover the legal gap, it is necessary for all the cases that are not regulated by paragraph (3) of Article 108, the paragraph (2) of the same article to apply/interpret, along with the Law on Personal Data Protection provisions, in particular the provisions where the principle, that the data are used only for purposes for which they are collected, is established⁸.

Article 109 "Gathering, keeping and using personal data", paragraph 1

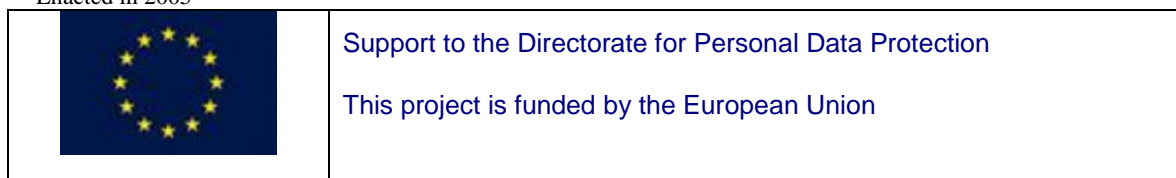
The insurance companies and the National Insurance Bureau shall be obliged to gather, process, keep, use and submit personal data necessary when concluding insurance contracts, in accordance with the Law on Personal Data Protection and with the special regulations pertaining to the database in the field of insurance.

This provision is largely in line with the Law on Personal Data Protection. Namely, the reference provision is both positive and encouraging – the insurance companies and the National Insurance Bureau have an obligation to gather, process, store, use and submit personal data in accordance with the Law on Personal Data Protection.

However, due to the fact that the Law on Insurance Supervision was enacted before the Law on Personal Data Protection⁹ and with the subsequent amendments to the Law a harmonization with the Law on Personal Data Protection was not put in place, the author's assessment is that this provision terminology is not harmonized with the Law on Personal Data Protection. For example, instead of the term "gather" it is necessary to use the term "collect"; instead of the term "database" it is necessary to use

⁸ Article 5 paragraph (2) of the Law on Personal Data Protection

⁹ Enacted in 2005



the term "of personal data collection", and the part "special regulations pertaining to the database in the field of insurance" is a surplus and the author believes that it should be deleted.

Sure, the terminological noncompliance of this provision with the Law on Personal Data Protection is not and should not be a reason for its nonobeyance in the practice, in terms of applying the provisions of the Law on Personal Data Protection in case when insurance companies and the National Insurance Bureau collect and process personal data.

Article 109 "Gathering, keeping and using personal data", paragraph 2

The insurance companies and the National Insurance Bureau shall be obliged to set up and maintain the following databases:

- 1) databases of the insured;*
- 2) databases of the incurred damages and*
- 3) databases for estimation of the insurance security and the level of damage.*

This paragraph lists strictly the databases, i.e. personal data collections that the insurance company may establish in accordance with the Law on Insurance Supervision. But inevitably the question arises, whether only those bases, i.e. personal data collections are enough? Of course, it remains possible to create other personal data collections based on the consent of the personal data subject, as well as to create personal data collections based on other laws, such as employees records or records of employees working hours. Although there are opportunities to create personal data collections based on consent or based on other laws, the author's opinion is that the listing only of certain personal data collections in legal provision is too "tight" and therefore the recommendation is with any subsequent amendments to this provision, it should be corrected by adding of new item that will give general authority to the insurance companies to create other personal data collections, except stated. The recommendation is based on the activity of insurance companies and the large volume of personal data they collect and process during the performance of insurance operations.

Article 109 "Gathering, keeping and using personal data", paragraph 3

The following data shall be collected for the databases referred to in point 1 of paragraph 2 of this article:

- 1) name and surname, date and place of birth, constant or temporary address of the insureds and*



- 2) *name of the insurance company, number of policy, duration of the insurance, insured case and insurance security.*

paragraph 4

The following personal data shall be collected for the database referred to in point 2 of paragraph 2 of this article:

- 1) *name and surname, date and place of birth, constant or temporary address and PIN of the persons involved in the incurred damage, as well as the same data for the witnesses;*
- 2) *crimes and misdemeanors in regard to the incurred damage;*
- 3) *type of harmful event;*
- 4) *place, time and course of the damage incurrence and*
- 5) *description of the damage from the harmful event.*

paragraph 5

The following personal data shall be collected for the databases referred to in point 3 of paragraph 2 of this article:

- 1) *name and surname, date and place of birth, constant or temporary address of the insured to whom the insurance security refers, as well as the same data for the submitter of the request for damage compensation;*
- 2) *shortterm injuries and health condition, type of physical injury, duration of the treatment and consequences for the insured person, as well as for the submitter of the request for damage compensation;*
- 3) *incomes of the insured person and of the submitter of the request for damage compensation;*
- 4) *pension (old age or disability), prequalification and degree of disability of the insured person and of the submitter of the request for damage compensation and*
- 5) *costs for the medical treatment, medicinal products and orthopedic devices for the insured person and the submitter of the request for damage compensation.*

Paragraphs (3), (4) and (5) of Article 109 specifically regulate which personal data are collected and processed for each database defined in the paragraph (2) of the same Article. However, in the provisions of the abovementioned paragraphs are not only personal data defined, but also other data such as data for insurance companies. The positive thing is that this issue is regulated by the Law on Insurance Supervision, but the author's recommendation is within the subsequent amendments to this Law, to make an analytical and systematic regulation of this issue.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

Insurance companies, by then, can directly apply the provisions of the Law on Personal Data Protection in the process of collection and processing of personal data. Thus, insurance companies can collect and process personal data based on the basis of the consent of the personal data subject¹⁰, as well as based on prior approval from the Directorate for Personal Data Protection¹¹.

Article 109 “Gathering, keeping and using personal data”, paragraph 6

The personal data referred to in paragraphs 3, 4 and 5 shall be collected in the following manner:

- 1) as a rule, directly from the person they refer to;*
- 2) from other persons (witnesses of the damage incurrence);*
- 3) the data referred to in paragraph 3 may be as well collected from the databases set up with the insurance companies and the National Insurance Bureau;*
- 4) the data referred to in points 1, 3, 4 and 5 of paragraph 4 of this article may also be collected from the databases set up with the Ministry of Interior;*
- 5) the data referred to in point 2 of paragraph 4 of this article may also be collected from the databases set up with the judicial bodies;*
- 6) the data referred to in paragraph 5 of this article may also be collected in the following manner: the data referred to in points 2 and 5 from the databases set up with the health institutions; the data referred to in point 3 from the databases of the employer, the Fund for Pension and Disability Insurance and the Ministry of Labor and Social Policy and the data referred to in point 4 from the databases of the Fund for Pension and Disability Insurance.*

This paragraph represents derogation from the rule that personal data are collected directly from the personal data subject. Paragraph (6) is in accordance with provisions of Article 11 paragraph (3), which states that if personal data aren't collected directly from the personal data subject, the controller has no obligation to inform¹² him/she if it is provided by law. Hence, it turns out that insurance companies are not obliged to inform the personal data subject when collecting and processing data in accordance with the provisions of this paragraph of Article 109.

¹⁰ Personal data subject in terms of insurance are insureds and/or other insurance users

¹¹ Article 29 of the Law on Personal Data Protection

¹² The obligation to inform according to Article 11 paragraph (1) of the Law on Personal Data Protection means informing on:

- the identity of the controller and of his/her authorized representative in the country, if any;
- the purposes for the processing;
- the data categories;
- the users or categories of users of the personal data and
- the existence of the right to access and the right to correct the data referring to the personal data subject.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International

Project office:
Directorate for Personal Data Protection
ul.Samoilova nr.10, 1000 Skopje
Tel: (+389) 2 3230 635

Article 109 “Gathering, keeping and using personal data”, paragraph 7

The bodies and organizations referred to in paragraph 6 of this article, shall be obliged, upon a written request, to submit the stated data to the insurance companies and/or the National Insurance Bureau.

In practice it often happens, the institutions and organizations that process large number of personal data¹³ in case of existence of legal basis for revealing personal data to use¹⁴ not to allow use of personal data from other institutions and organizations or other legal entities. Motivated by these reasons, the legislator with this provision "imposed" obligation in the cases provided for in Article 109 paragraph (6) for revealing personal data to use.

Article 109 “Gathering, keeping and using personal data”, paragraph 8

The data referred to in point 1 of paragraph 2 of this article shall be kept for a period up to ten years after the expiry of the insurance contract, or in case of damage incurrence, ten years after closing the case. The data referred to in points 2 and 3 of paragraph 2 of this article, shall be kept ten years after closing the case upon the incurred damage. After the expiry of the abovementioned period, the data from the databases referred to in paragraph 2 of this article shall be obliterated.

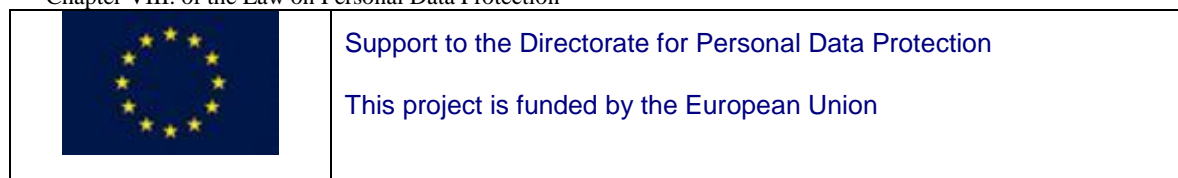
The last paragraph of Article 109 shall determine timeframe for storage of personal data collected and processed by the insurance companies, as well as an obligation to delete personal data after the expiration of the timeframe for their storage. So, for all personal data a timeframe of ten years is determined after the expiry of the insurance contract or after closing the case for the occurrence of the damage.

This provision is in line with the principle of personal data protection that the personal data aren't kept longer than necessary to fulfill the purposes for which data are collected.

According to the author the envisaged timeframe is too long and up until the next amendments to the Law on Insurance Supervision, the recommendation is this lawful timeframe to be interpreted as the longest possible for storage of personal data by the insurance companies.

¹³ For instance Ministry of Interior

¹⁴ Chapter VIII. of the Law on Personal Data Protection



General conclusions of aspect of the analysis' indicators

Taking into consideration the above mentioned, it could be concluded that:

1. A legal base for processing personal data is established, by defining the categories of personal data that should be subject to collection and procession;
2. The Personal Data Collections are also established by the Law, defining the title of Personal Data Collection and specifying the categories of personal data within;
3. The term for storing (or keeping) of personal data is established;
4. The secrecy and protection of personal data are regulated in general manner; and
5. The subsidiary application of the provisions of the Law on Personal Data Protection is directly established.

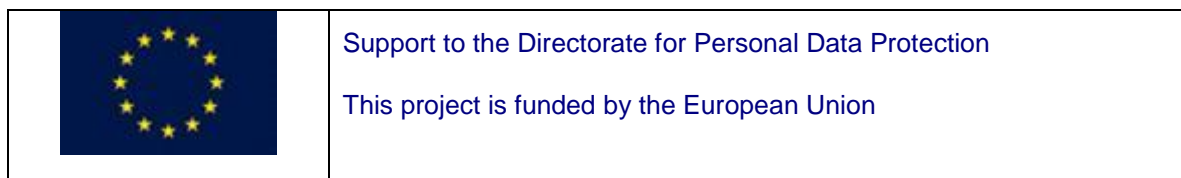
1.3.1 Analysis of the bylaws deriving from the Law on Insurance Supervision

1.3.1 Rulebook on conditions for acquiring and testing of professional readiness required to perform work of insurance agent

Rulebook on conditions for acquiring and testing of professional preparation required to perform work of insurance agent prescribes the conditions for acquiring and testing of professional preparation required for a license to perform the work of insurance agent by the Agency for Insurance Supervision.

It should be noted that despite the provisions governing the procedure for obtaining the license in question, this Rulebook defines the necessary documentation that should be submitted to the Insurance Supervision Agency by the interested persons. Thus, Article 5, paragraph 2 provides that candidates are required to submit the following documents:

- Copy of ID card or copy of passport for foreign nationals;
- Proof of completed secondary education or higher degree (original or notarized) and



- Proof of paid participation fee for the training and examination.

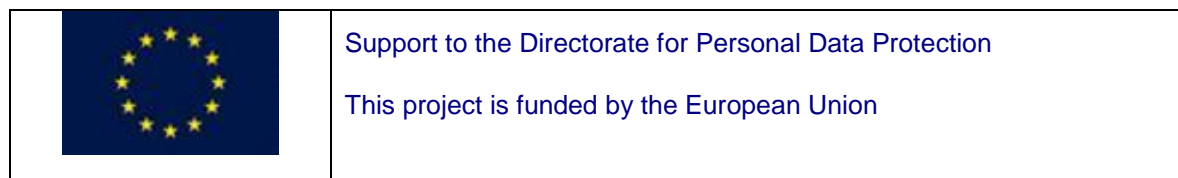
Collecting and processing personal data contained in the ID card is not in accordance with the Law on Personal Data Protection. The ID card contains a number of personal data, including the personal identification number of the citizen, which has special protection under the provisions of Article 9 of the Law on Personal Data Protection. Provisions of Article 9 of the Law on Personal Data Protection have been established that the personal identification number of the citizen can be processed only if there is a legal basis or explicit consent from the subject of personal data. Therefore, because there is no legal basis for collecting and processing the registration number of the citizen by the Insurance Supervision Agency, it is important to note that in accordance with the provisions of Article 29 of Law on Personal Data Protection processing of this category of personal data could be done by the Insurance Supervision Agency only with the prior approval from the Directorate for Personal Data Protection. The opinion of the author is that the collection and processing of personal data contained in the personal ID card (or its copy) is excessive and can not be regulated in the bylaw. The author recommends that the personal identity card should be only presented to the Insurance Supervision Agency.

1.3.2 Rulebook on necessary documentation for obtaining a license for authorized actuary

Rulebook on necessary documentation for obtaining a license for authorized actuary was adopted in 2011 and published in the Official Gazette No.119/2011 year. The provisions of this Rulebook regulate the issue of documentation required for obtaining a license for authorized actuary by the Insurance Supervision Agency in accordance with the Law on Insurance Supervision.

Article 2 of the Rulebook defines that for issuing a license for authorized actuary by the Insurance Supervision Agency, the interested persons should submit an application in an appropriate form prescribed by the Agency, given as Annex 1 of the Rulebook.

Annex 1 of the Rulebook is an ideal example (or so called “school example”) for creating "illegal" base for collection of personal data and also an example for collection of personal data with conditional consent of the personal data subject (in this case personal data subject is the interested persons who wants to acquire a license for authorized actuary).



Namely, in Annex 1 of the Rulebook is stated which personal data should be completed by the person who wants to acquire the license to work as actuaries, thus creating a "quasi" basis for the collection of personal data by the Insurance Supervision Agency, without legal basis for such collection under the Law on Insurance Supervision. Thus, the Insurance Supervision Agency on the basis of this Rulebook is collecting and processing the following personal data, without having the legal basis in the Law on Insurance Supervision for it: name and surname, date and place of birth, number of ID card, citizenship, residence, telephone, fax, e-mail, occupation, level of vocational training and employment.

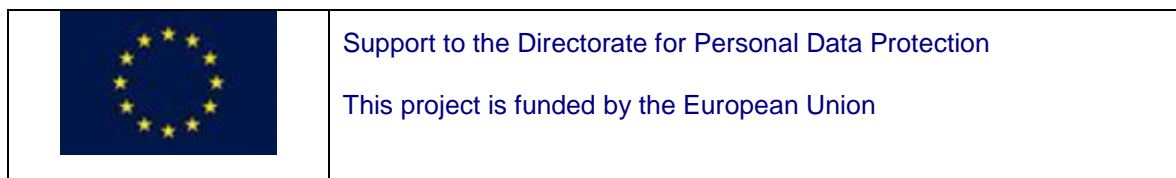
In this bylaw, in particular its Appendix 1, the creator of the bylaw conditioned the consent of the applicants (personal data subjects) with the following statement: *I agree my personal data stated in this request to be registered, processed, updated and published for Agency's purposes*, without giving the opportunity to personal data subject (applicant) to freely express her/his consent, nor to choose what personal data should be processed.

Unlike the Rulebook on conditions for acquiring and testing of professional preparation required to perform work of insurance agent that is analysed in point 1.3.1, under the provisions of the Rulebook on necessary documentation for obtaining a license for authorized actuary the collecting and processing of personal data from a copy of identity card or passport is not required; with the submission of the application, the applicant should only present her/his identity card or passport to the Insurance Supervision Agency, which of course is a positive feature of this act.

1.3.3 Rulebook on necessary documentation for obtaining a license for insurance broker and Rulebook on necessary documentation for obtaining a license for insurance agent

These Rulebooks prescribe the necessary documentation to obtain a license for insurance broker/agent by the Insurance Supervision Agency.

The provisions of these Rulebooks, as in the Rulebook on necessary documentation for obtaining a license for authorized actuary analyzed in item 1.3.2, by Appendix 1 of the Rulebook create a "quasi" basis for collecting personal data on applicants for obtaining a license for insurance broker. Namely, the similar as required by the Rulebook on necessary documentation for obtaining a license for authorized



Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International


Project office:
Directorate for Personal Data Protection
ul.Samoilova nr.10, 1000 Skopje
Tel: (+389) 2 3230 635

actuary, the provisions of Rulebook on necessary documentation for obtaining a license for insurance broker and the the provisions of Rulebook on necessary documentation for obtaining a license for insurance agnet provide basis for collecting and processing of personal data as follows: name and surname, date and place of birth, number of ID card, citizenship, adrsa of residence, phone, fax, email, occupation, level of vocational training and employment, without having a legal basis in the Law on Insurance Supervision for collecting and processing of personal data.

Obviously aware of the fact that the bylaw can not create the basis for collecting and processing personal data, the creator of those bylaws "resorted" to another solution. The creator thought that by inserting the following statement: *I agree my personal data stated in this request to be registered, processed, updated and published for Agency's purpose* in Annex 1 of the both Relebooks will create a basis (the consent of the applicant) for collection and processing of personal data by the Insurance Supervision Agency. In addition, the creator was not aware that given "consent" of the applicant (personal data subject) is conditional and is not and can not be the basis for collecting and processing personal data by the Insurance Supervision Agency.

Pursuant to the provisions of the Rulebook on necessary documentation for obtaining a license for insurance broker and with the provisions of Rulebook on necessary documentation for obtaining a license for insurance agent, together with the application, the applicant is required to submit a copy of identity card and passport. The identity card contains a numerous personal data, including the personal identification number of the citizen, which enjoys special protection under the provisions of Article 9 of the Law on Personal Data Protection. The opinion of the author is that the collection and processing of personal data contained in the personal ID card (or its copy) is excessive and can not be regulated in the bylaw. The author recommends that the identity card should only be presented to the Agency for Insurance Supervision.

1.3.4 Rulebook on the form, content and manner of keeping registers of insurance agents and insurance brokers by insurance companies, insurance brokerage companies and insurance agencies

	<p>Support to the Directorate for Personal Data Protection</p> <p>This project is funded by the European Union</p>
---	--

Rulebook on the form, content and manner of keeping registers of insurance agents and insurance brokers by insurance companies, insurance brokerage companies insurance agencies, actually represents a further elaboration of the provisions of Article 152 of the Law on Insurance Supervision.

Article 152 of the Law on Insurance Supervision represents a legal basis for establishing the following personal data collection: (1) Register of insurance agents and (2) Register of insurance brokers.


Furthermore, Article 152 of the Law on Insurance Supervision defines the Data Controllers that are authorized to maintain the above mention personal data collections: (1) insurance companies, (2) insurance brokerage companies and (3) insurance agencies. Also, the provisions of Article 152 define that the registers are publicly available.

Only, in Article 152 of the Law on Insurance Supervision has not been established the categories of personal data contained in the specific personal data collection. This issue is governed by the provisions of the Rulebook on the form, content and manner of keeping registers of insurance agents and insurance brokers by insurance companies, insurance brokerage companies and insurance agencies.

Specifically, Article 6 from the Rulebook defines contents of registers and among other information they should include: name and address of the insurance broker or insurance agent.

The author's opinion is that although the Law on Insurance Supervision gives a general legal base for collecting and processing of personal data, provisions of the bylaw could not be base for defining the categories of personal data that should be contained in the personal data collection, taking into account provisions of the Personal Data Protection Law.

1.3.5 The Rulebook on the form, content and manner of keeping registers of insurance agents, insurance agencies, insurance brokers, insurance brokerage companies and banks

	<p>Support to the Directorate for Personal Data Protection</p> <p>This project is funded by the European Union</p>
---	--

The Rulebook on the form, content and manner of keeping registers of insurance agents, insurance agencies, insurance brokers, insurance brokerage companies and banks, according to the provisions of Article 152 of the Law on Insurance Supervision is determined the contents of registers, respectively, Personal Data Collections maintained by the Insurance Supervision Agency.

The author's opinion is similar like the opinion given in the previous item 1.3.4; although the Law on Insurance Supervision gives a general legal base for collecting and processing of personal data, provisions of the bylaw could not be base for defining the categories of personal data that should be contained in the Personal Data Collection, taking into account provisions of the Personal Data Protection Law.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

2. LAW ON COMPULSORY MOTOR TPL INSURANCE

2.1 General Overview

The Law on Compulsory Motor TPL Insurance governs the compulsory insurance of the following: passengers against accident in public transportation; owners, i.e. users of motor vehicles and sidecars; owners, i.e. users of aircrafts and owners, i.e. users of ships or engine-powered boats, against third party liability and other issues of significance for the compulsory TPL insurance.

Considering the subject of regulation of this Law, Article 3 provides for strict obligation for all owners of vehicles before putting the vehicle in traffic, "to conclude an insurance contract with insurance company licensed to perform operations regarding compulsory motor TPL insurance". Given the abovementioned, the Law obliges the creation of a contractual relationship between, on the one hand, owners of vehicles (which may be natural and legal persons) and on the other hand, the insurance companies. In this context, the contract on compulsory TPL insurance arises as a legal form on which is based the obligational relation between the contracting parties.

Given the intention of the legislator translated into the Law on Compulsory Motor TPL Insurance, and given the fact that as a party to the contract on compulsory TPL insurance may be a natural person, necessarily, in terms of Article 3, the obligation or authorization arises for collecting and processing of personal data by insurance companies and the National Insurance Bureau.

The Law on Compulsory Motor TPL Insurance provides legal grounds for collecting and processing personal data, and also it prescribes legal grounds for personal data protection. Namely, the Law on Compulsory Motor TPL Insurance does not provide specific rules for personal data protection, but with a general provision, makes reference to the Law on Personal Data Protection and the specific regulations concerning the data collections in the field of insurance. In that manner, in applying the Law on Compulsory Motor TPL Insurance in everyday practice, for the protection of personal data should always apply the principles of personal data protection laid down in the Law on Personal Data Protection as *lex generalis* in the personal data protection field, as well as the the principles of the Law on Insurance Supervision, as *lex specialis* towards the data collections in the field of insurance.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

2.2 Analysis of Specific Provisions of the Law on Compulsory Motor TPL Insurance

Article 7 "Gathering, preservation and usage of personal data"

- (1) Insurance companies and the National Insurance Bureau shall be obliged to gather, process, keep, use and submit personal data necessary to conclude insurance contracts, pursuant to the Law on Personal Data Protection and with the special regulations referring to the insurance database.*
- (2) The insurance companies and the National Insurance Bureau may submit the data referred to in paragraph (1) of this article to a foreign insurance company or foreign insurance bureau in case a foreign physical person was involved in the accident.*
- (3) Insurance companies and the National Insurance Bureau shall cooperate with the internal affairs authority with regard to the submission of data relevant for concluding insurance contracts and for resolving damage compensation claims.*

Article 7 paragraph (1) of this Law provides strict obligation, i.e. authorization for the insurance companies and the National Insurance Bureau "to collect, process, keep, use and submit personal data necessary to conclude insurance contracts." In applying this legal obligation, i.e. authorisation in the practice, the insurance companies and the National Insurance Bureau will be guided by the Law on Personal Data Protection provisions and the specific regulations concerning the personal data collections in the field of insurance, because the Law on Compulsory Motor TPL Insurance does not prescribe specific rules for performing these operations. Therefore, from the aspect of this provision the author can conclude that the legislator created a "safe solution" regarding the processing of personal data by fully referring on the application of the Law on Personal Data Protection. However, Article 7 paragraph (1) of the Law on Compulsory Motor TPL Insurance explicitly covers only the processing of personal data as a set of operations, but not protection of the data in accordance with the Law on Personal Data Protection, because of which the question of the application of this Law regarding the Law on Personal Data Protection in relation to insurance contracts arises. With regard to the stated, the author believes that it is not necessary to explicitly refer to the Law on Personal Data Protection in relation to its application and the protection of the personal data when concluding the insurance contracts. Namely, it can be concluded that given the nature of the reference provision, the provisions of the Law on Personal Data Protection will indirectly apply to the protection of personal data contained in the contracts for compulsory TPL insurance, although the reference refers only to the processing of personal data.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

Paragraph (2) of Article 7 establishes authorization for insurance companies and the National Insurance Bureau to submit personal data to foreign entities - foreign insurance company or a foreign insurance bureau, if any foreign person was involved in the accident. Regarding this authorization, it is important to note, that given the reference provision of paragraph (1) of the same article, that the insurance companies and the National Insurance Bureau in the process of practical implementation of this authorization necessarily must follow the provisions of the Law on Personal Data Protection that govern the issue of transfer of personal data to other countries¹⁵.

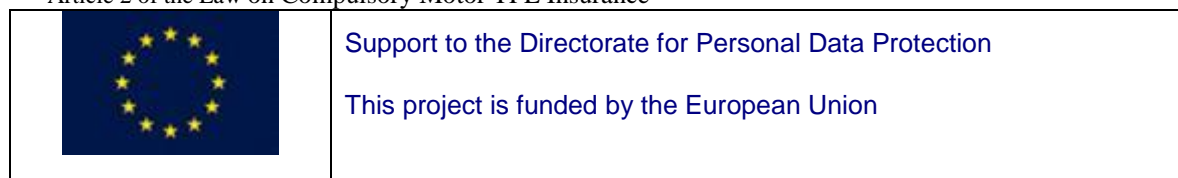
In the paragraph (3) of Article 7 the legislator created a direct legal basis for revealing personal data for use between the insurance companies and the National Insurance Bureau, on one hand and the authority of the interior (Ministry of Interior) on the other hand, in sense of the Law on Personal Data Protection - chapter VIII *Revealing of personal data to users*. The creation of legal basis in the Law on Compulsory Motor TPL Insurance for revealing personal data for use is in accordance with the provisions of Article 34 of Chapter VIII *Revealing personal data to users* of the Law on Personal Data Protection, where it is stipulated that for revealing personal data for use a legal basis is required.

The legislator used the expression "personal data" in the title of Article 7 of this Law, while the provisions of that article operate with the term "data", that might suggest of existence of a terminological noncompliance. On the other hand, the meaning of the term "data" is not defined either in the glossary of this Law¹⁶, whereby the question of the content of this expression arises, i.e. what types of data it incorporates. Considering the fact that it is data necessary for concluding insurance contracts, under which contracting parties are private and legal persons, it can be concluded that the use of the general term "data" in the content of Article 7 is of practical purpose, whereby it in itself does not contain only personal data but also incorporate other data necessary for the conclusion of the insurance contracts, which relate to legal persons as a contracting party. That would mean that the Law on Personal Data Protection is applicable in respect to Article 7 of the Law on Compulsory Motor TPL Insurance in the area of personal data necessary for the conclusion of insurance contracts.

In the context of the use of certain terms in Article 7, there is undoubtedly a terminological noncompliance of the Article 7 with the provisions of the Law on Personal Data Protection. In this regard,

¹⁵ This issue is regulated in Chapter VII. of the Law on Personal Data Protection

¹⁶ Article 2 of the Law on Compulsory Motor TPL Insurance



Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International

Project office:
Directorate for Personal Data Protection
ul.Samoilova nr.10, 1000 Skopje
Tel: (+389) 2 3230 635

the paragraph (1) uses terms such as "gather", "database", "submission of personal data" whose meaning is not questionable, but from the aspect of the Law on Personal Data Protection a terminological noncompliance can be identified. Namely, the respective terms defined in the Law on Personal Data Protection, which should be properly implemented in the Law on Compulsory Motor TPL Insurance are "collect", "personal data collection" and "transfer of personal data to other countries."

Still, the terminological noncompliance of Article 7 of the Law on Compulsory Motor TPL Insurance in regard to the Law on Personal Data Protection is not "brake" for its consistent application in practice in terms of application of the provisions of the Law on Personal Data Protection in case of collection and procession of personal data by the insurance companies and the National Insurance Bureau.

Article 36 "Tasks of the Information Center"

(1) The Information Center referred to in Article 35 of this Law shall conduct the following operations:

- 1) gather data and keep data registry,*
- 2) update the data from the registry referred in item 1 of this paragraph; and*
- 3) offer assistance to claimants in collecting data from the registry referred to in item 1 of this paragraph and in gathering data from the registries of the Information Centers from other EU member states.*

(2) The registry referred to paragraph (1) item 1 of this article shall contain data on:

- 1) registry designations from the license plates, types, numbers of chassis, i.e. bodies of the vehicles registered in the country;*
- 2) number of motor TPL insurance policy for vehicles referred to in item 1 of this paragraph;*
- 3) the date the motor TPL insurance contract ceases to be valid,*
- 4) name and seat of the insurance companies conducting motor TPL insurance activities;*
- 5) name and surname, date and place of birth, permanent or temporary place of residence of the insuree;*
- 6) name and/or seat of the authorized representatives appointed by the insurance companies of other European Union member states in the country,*
- 7) list of motor vehicles for which the provisions of this Law do not apply in the country.*

(3) Data referred to in paragraph (2) of this article shall be gathered from the databases of the insurance companies, as well as from the records of vehicles registered in the internal affairs authority.

(4) Insurance companies shall be obliged to send the data referred to in paragraph (2) of this article to the Information Center on quarterly basis, within seven days upon the expiry of the quarter.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union

(5) Upon the request by the Information Center, the data referred to in paragraph (2) of this article can be obtained from the Information Centers from other European Union member states.

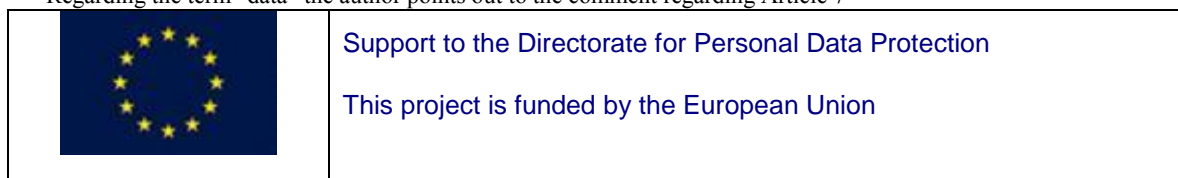
(6) Data referred to in paragraph (2) items 1, 2, 3, 4 and 5 of this article shall be kept at the Information Center for at least seven years after expiry of the registration of the motor vehicle or after the expiry of the insurance contract.

Article 36 paragraph (1) of the Law on Compulsory Motor TPL Insurance presents a direct legal basis according to which within the Information Center of the National Insurance Bureau data are collected. In the same time, it presents a legal basis for creation a registry of data¹⁷. Given this, the author concludes that there is compliance of the provision in question with the Article 5 paragraph (1) item 1 of the Law on Personal Data Protection in which one of the fundamental principles of personal data protection is established - that personal data are processed fairly and in accordance with law. However, given that the data registry within the Information Center, contains certain personal data, it is an adequate personal data collection, so the author points out towards the obligation under Article 27 of the Law on Personal Data Protection, according to which the controller, before beginning with the procession of personal data, is obliged to notify the Directorate for Personal Data Protection, i.e. to report the personal data collection in the Central register of personal data collections, which keeps the Directorate.

Item 2) of paragraph (1) of the abovesited article of the Law on Compulsory Motor TPL Insurance determines authorization for the Information Center to update the data in the data registry. This authorization is intended to supplement and modify data in the data registry, where necessary, for preserving their accuracy and completeness, and in function of their practical use. Given the above, it can be concluded that this provision is in accordance with the data protection principle laid down in Article 5 paragraph (1) item 4 of the Law on Personal Data Protection, in the part under which personal data are accurate, complete and updated as necessary.

With the Article 36 paragraph (1) item 3) the legislator authorizes the Information Center to "offer assistance to claimants" in the process of collecting data from the data registry of the Information

¹⁷ Regarding the term "data" the author points out to the comment regarding Article 7



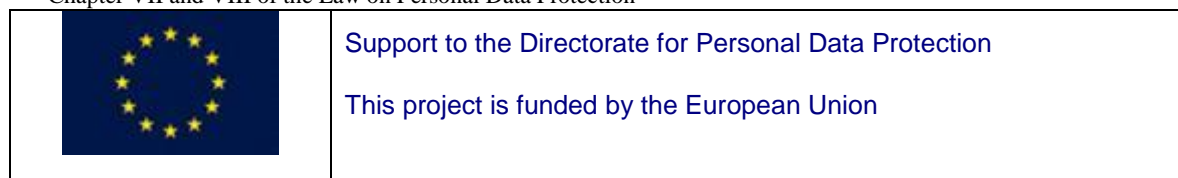
Center of the National Insurance Bureau, but also from the registers of information centers of the European Union member states. Namely, the author believes that the formulation "offer assistance" is not sufficiently clear and precise, particularly if we take into consideration the specificity of the data contained in the Information Center. Because of that, the author suggests to replace the abovementioned formulation by stating the specific operations that are addressed with the formulation itself. On the other hand, if evaluate the meaning of this provision in the context of the processing of personal data is evaluated, it can be concluded that this item provides a legal opportunity to reveal personal data to (when it comes to collecting data from the data registry of the Information Center of the National Insurance Bureau), or transfer of personal data from other states¹⁸ (when it comes to collecting data from the registers of the information centers of the European Union member states). In both cases it is necessary to respect the Law on Personal Data Protection for these operations¹⁹.

Pursuant to Article 36 (2) items 5) and 6) in the data registry of the Information Center are contained, among other data, the following personal data: name and surname, personal identification number, date and place of birth, permanent and temporary place of residence of the insuree and the name and/or the seat of the authorized representatives appointed by the insurance companies of other European Union member states in the country. In this sense, what should be noted is the positive approach of the legislator, who, by this Law, has established the contents of the data registry, i.e. the personal data which will be processed within the data registry. Given the specificity of the personal identification number as specific personal data, it is necessary that the National Insurance Bureau strictly obey the provisions of the Law on Personal Data Protection regarding the processing of the personal identification number.

With the paragraphs (3), (4) and (5) of Article 36, again, a legal basis for revealing personal data to users, i.e. transfer of personal data from other countries, is prescribed. Insurance companies provide personal data to the Information Center of the National Insurance Bureau, as well as the information centers of the European Union member states.

¹⁸ The so called "import" of personal data

¹⁹ Chapter VII and VIII of the Law on Personal Data Protection



The paragraph (6) of Article 36 prescribes deadline for storage of personal data in the data registry. The specified deadline is of at least seven years after expiry of the registration of the motor vehicle or after the expiry of the insurance contract. According to the author, setting the deadline in this Law that refers to data storage represents a step forward in terms of arranging the issues of personal data protection in this area, but the duration and the fact that it is the shortest period of time for storage of data, leaves space to correct it. Namely, if we take into account the principle of Article 5 paragraph (1) item 5 of the Law on Personal Data Protection, under which personal data are stored no longer than necessary to fulfill the purposes for which the data are collected for further processing, it can be concluded that the deadline for data storage in the registry of at least seven years is too long.

Article 38 "Notification upon request for information"

(1) The Information Center shall be obliged, upon the request by the claimant, within a period of seven years after the day the damage occurred, immediately after receiving the request, to submit the following data from its data registry or the data registry of the Information Center of other European Union member state:

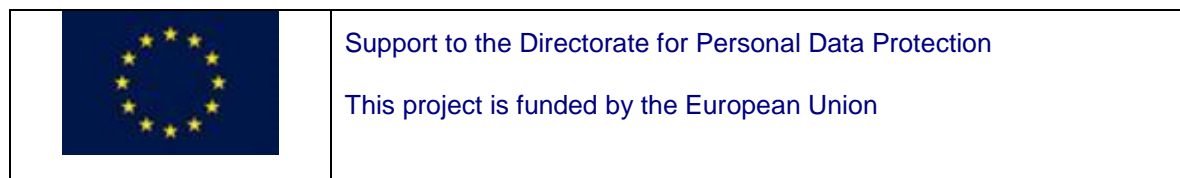
- 1) name and address of the insurance undertaking with which the person causing the accident concluded motor TPL insurance contract;*
- 2) number of insurance policy referred to in item 1 of this paragraph, and*
- 3) name and address of the authorized representative in the country appointed by the insurance undertaking of the EU member state with which the person that caused the accident concluded motor TPL insurance contract;*

(2) The Information Center shall be obliged, upon the request by the claimant, to submit data on the name and the address of the owner, user, i.e. the registered user of the motor vehicle in case the claimant proves that he/she has a legal interest in obtaining such information.

(3) The Information Center shall collect the data referred to in paragraph (2) of this article from an insurance undertaking or from the Ministry of Interior.

(4) The Information Center shall be obliged to also submit to the claimant data on the name of the driver of the motor vehicle that caused the damage, for which the provisions of this Law do not apply.

Article 38 of the Law on Compulsory Motor TPL Insurance is titled "Notification upon request for information" and indeed from the title itself an idea for the content of its provisions, analyzed from aspect of processing and protection of personal data, can be reached. Namely, as in Article 36, as well as



Project implemented by Human Dynamics in association with:
IPS Institute
Almaviva S.p.A.
Czech Office for Personal Data Protection OPDP
Privacy International

Project office:
Directorate for Personal Data Protection
ul.Samoilova nr.10, 1000 Skopje
Tel: (+389) 2 3230 635

in Article 38 of the Law, an obligation can be recognized, i.e. authorization of the Information Center of the National Insurance Bureau (but also for the insurance companies and the Ministry of Interior²⁰), to reveal personal data to use, as well as for "import" of personal data from other countries, upon application of the claimant. The period within which is to meet the stated requirement, i.e. the authorization is seven years from the day when the accident occurred. Opinion of the author is that, as in Article 36, the deadline for revealing of data, including the personal data is oversized and needs to be reduced.

On the other hand, creating legal grounds for revealing of personal data to users and transfer of personal data from other states in case of occurrence of accident and submission of request by the claimant should be evaluated positively, primarily for the National Insurance Bureau and for the claimants, because in this way the legal flow is relieved and it contributes to faster completion of insurance procedures. In this sense, the provisions of Article 38 correspond to Article 5 paragraph (1) item 1 of the Law on Personal Data Protection, according to which personal data are processed fairly and in accordance with law.

Article 52 "Operations of the Bureau"

(1) The Bureau shall carry out the following operations:

- 1) operations in accordance with international insurance agreements on TPL of owners and drivers of motor vehicles (green card) and represent the insurance undertakings in the international organizations of insurance undertakings;*
- 2) issues and prints international green cards for the needs of the members;*
- 3) carries out statistical records and statistical processing of statistical data given by the insurance companies in accordance with the statisticians insurance standards and publishes them on it's web site;*
- 4) establishes and maintains central records system for policies and claims from use of motor vehicles;*
- 5) carries out operations being of mutual interest of the insurance undertakings, set under the Company Law or the Statute of the Bureau, as well as other operations for which it is authorized by its members;*
- 6) keeps registry of insurance brokers and insurance brokerage companies;*
- 7) adopts Code of Conduct for insurance undertakings;*
- 8) cooperates with other authorities on insurance-related matters;*

²⁰ Article 38 paragraph 3 of Law on Compulsory Motor TPL Insurance

9) *carries out other activities stipulated by this Law.*

(2) *Data necessary for conducting the statistical records of paragraph (1) item 4 of this article, the insurance companies are required to submit quarterly.*

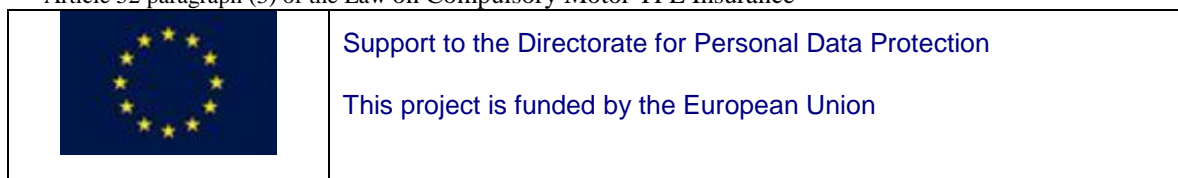
(3) *Data on claims and policies referred to in paragraph (1) item 5 of this article, the insurance companies are obliged to enter into the central system along with their entry in the internal records of the company.*

Article 52 determines the operations of the National Insurance Bureau. Among other, pursuant to paragraph (1) item 4 the Bureau "establishes and maintains central records system for policies and claims from use of motor vehicles". In certain sense, the central records system of item 4 may represent a special personal data collection kept by the National Insurance Bureau. When defining the central system, the legislator opted for a general approach, whereby is determined the content of system on level of policies and damages from use of motor vehicles, without defining precisely the information/data that are part of the policies and damages, within the central system. On the other hand, policies and damages from use of motor vehicles, as essential elements, contain relevant personal data about individuals when being contracting party in the obligational relation with the insurance companies. In that sense, it can be indirectly concluded that the central system, among other data, also contains personal data.

In such a set of legal provisions, while taking into account the obligation of the insurance companies to enter the data on claims and policies in the central system of the Bureau²¹, the author is of opinion that it is necessary to further amend the Law on Compulsory Motor TPL Insurance in order to precisely define the central system of the National Insurance Bureau, particularly in terms of processing and protection of personal data. In that sense, above all, it is necessary to further define the data (including personal data) that should be part of the central system, as well as the deadline up until when personal data shall be stored, in order not to be stored in the central system of the Bureau longer than it is necessary to fulfill the purposes for which they were collected.

Also, since this is a direct legal basis for establishing personal data collection, in this case the author points out to the obligation under Article 27 of the Law on Personal Data Protection according to which the controller before the beginning with the procession of personal data, is obliged to notify the Directorate for Personal Data Protection, i.e. to report the personal data collection in the Central Register of Personal Data Collection.

²¹ Article 52 paragraph (3) of the Law on Compulsory Motor TPL Insurance



General conclusions of aspect of the analysis' indicators

Taking into consideration the above mentioned, it could be concluded that:

1. A legal base for processing personal data is established, by partially defining the categories of personal data that should be subject to collection and procession, but further specification of personal data catogories subject to collection and processing, is necessary;
2. The Personal Data Collections are also established by the Law, in direct and in indirect manner, by establishing the title of the Collection and specifying the personal data categories within, but for certain evidencies a further elaboration from aspect the of identifying of the data they contain, is essential;
3. The term for storing (or keeping) of personal data is established, but only for one of the personal data collections and it is set very high, while for the other personal data collection for which a specific legal base is prescribed, the term for storing personal data should additionally be established;
4. The secrecy and protection of personal data are regulated in general manner; and
5. The subsidiary application of the provisions of the Law on Personal Data Protection is directly established.



Support to the Directorate for Personal Data Protection

This project is funded by the European Union