FRANCE ASSUREURS
MOVE SOCIETY FORWARD CONFIDENTLY

POSITION PAPER

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FRANCE ASSUREURS' RESPONSE TO THE EDPB CONSULTATION ON THE GUIDELINES ON ANONYMISATION

France Assureurs welcomes the work undertaken by the European Data Protection Board (EDPB) to enhance legal certainty regarding anonymisation. Clarifying the conditions under which data may be considered anonymous is essential not only for the protection of personal data, but also for the responsible development of data uses.

France Assureurs therefore fully supports this objective, while advocating a pragmatic, proportionate and risk-based approach that takes into account the operational realities faced by businesses and technological developments.

In particular, the guidelines should not result in anonymisation being assessed against purely theoretical risks or a requirement of zero risk of re-identification, nor should they require businesses to anticipate all potential technological developments or malicious activities that may arise in the future.

A sufficiently clear, predictable and operational framework is essential to ensure that anonymisation remains a tool that can be effectively used, particularly for research, risk prevention and the responsible development of artificial intelligence, while ensuring a high level of protection for individuals.

France Assureurs would like to draw the EDPB's attention to several points requiring further clarification.

I. Framing the consideration of technological developments when assessing whether data are anonymous

The guidelines emphasise that anonymisation is not necessarily permanent, as technological advances and evolving identification capabilities may affect the risk of re-identification. France Assureurs acknowledges the need to take such developments into account. However, this approach should not result in businesses being subject to an obligation to conduct continuous and indiscriminate technological monitoring.
France Assureurs therefore calls on the EDPB to:

- clarify that reassessment of the anonymous nature of data should only be required where there is a significant and identifiable development that is reasonably likely to affect the risk of re-identification;
- recognise that an initial assessment properly conducted in accordance with the state of the art and the information available at the time should not be deemed non-compliant solely on the basis of subsequent technological developments that could not reasonably have been foreseen.

France Assureurs' proposal
The assessment of whether data are anonymous should be based on the means of identification reasonably likely to be used at the time of the assessment. A reassessment may be necessary where a significant and objectively identifiable change in circumstances is likely to substantially affect the risk of re-identification. Purely hypothetical developments or developments that could not reasonably have been anticipated should not, in themselves, call into question the validity of the initial assessment.

About France Assureurs
France Assureurs is the common name of Fédération Française de l'Assurance (French Insurance Federation), which brings together 247 insurance and reinsurance companies representing 99% of companies governed by the French Insurance Code.
We represent the interests of insurers and reinsurers to national, European and international public authorities, to institutions and to administrative or local authorities. We produce and make available statistical data essential to the industry and provide information for the general public and the media. Fédération Française de l'Assurance also contributes in raising the awareness and attractiveness of the industry by promoting insurance and risk management culture. Fédération Française de l'Assurance is a member of Insurance Europe and GFIA. In an ever-changing environment, faced with the emergence of new political, economic, social, technological and environmental risks, the French insurance industry constantly innovates to be more competitive, support the economy and extend the boundaries of insurability.

II. Clarifying the scope of relevant entities and their respective responsibilities

The guidelines provide that the assessment of whether data are personal or anonymous must consider the means of identification available to relevant entities, which may include direct or indirect recipients of the data, including certain unauthorised or malicious actors. France Assureurs acknowledges the need not to systematically limit this assessment to the identification capabilities of the undertaking carrying out the anonymisation. However, the scope of relevant entities remains insufficiently defined, which could require undertakings to assess the identification capabilities of an indeterminate number of actors, particularly in the context of successive data transfers.

France Assureurs therefore calls on the EDPB to:

- define relevant entities on the basis of objective criteria, such as actual or reasonably foreseeable access to the data, existing relationships between the actors involved, and the practical possibilities of combining the data with other information;
- distinguish between identified recipients, third parties reasonably likely to gain access to the data, and actors whose potential involvement remains purely hypothetical;
- clarify that the undertaking carrying out the anonymisation should assess the risks in light of the recipients and data-sharing arrangements known or reasonably foreseeable at the time of the assessment;
- clarify the respective responsibilities of undertakings carrying out the anonymisation and actors subsequently performing further operations on the data;
- recognise that technical, organisational and contractual safeguards effectively implemented to govern access to, disclosure of, and the possibilities of combining data with other information should be taken into account.

France Assureurs' proposal
The relevant entities to be taken into account when assessing whether data are anonymous are those whose access to the data or ability to contribute to the identification of a natural person is reasonably foreseeable, having regard to the arrangements for making the data available, the existing relationships between the actors involved, and the means of identification reasonably likely to be used. The undertaking carrying out the anonymisation should assess the risks of re-identification in light of the recipients, transfers and conditions governing the circulation of data that are reasonably foreseeable at the time of the assessment, taking into account the technical, organisational and contractual safeguards effectively implemented.

III. Clarifying the classification of data in the context of a controller–processor relationship

The guidelines provide that, where an entity processes data on behalf of a controller, the assessment of whether those data constitute personal data must be carried out from the controller's perspective. They conclude that data considered personal data from the controller's perspective must also be classified as such from the processor's perspective, even where the processor does not have the means to identify the data subjects.

While the controller is responsible for assessing whether the data it processes are personal or anonymous, this classification should not automatically extend to the processor solely by virtue of its legal status. Such an approach would make the classification of data dependent on the legal roles of the parties involved rather than on their actual ability to identify individuals.

A case-by-case assessment should therefore be carried out from the processor's perspective, without, however, allowing the processor to unilaterally claim that the data are anonymous. Where the parties reach differing assessments, it is necessary to preserve the controller's control over the processing operations carried out on its behalf, particularly in light of its obligations under the GDPR. Any such divergence should be subject to a documented assessment and discussions between the parties and should not allow the processor to unilaterally challenge the classification of the data as personal data from its own perspective.

France Assureurs therefore calls on the EDPB to:

- confirm that it is for the controller to assess whether data are personal or anonymous, in relation to processing operations it carries out, or which are carried out on its behalf, taking into account the means reasonably likely to be used to identify data subjects;
- clarify that the classification of data as personal data from the controller's perspective does not automatically entail the same classification from the processor's perspective;
- clarify the consequences of differing assessments between the controller and the processor.

France Assureurs' proposal
In the context of a controller–processor relationship, it is for the controller to assess whether data are personal or anonymous, considering the means reasonably likely to be used to identify data subjects. However, the classification of data as personal data from the controller's perspective should not automatically result in their being classified as such from the processor's perspective. Where the parties reach differing assessments, it is necessary to preserve the controller's control over the classification of data that it processes or that are processed on its behalf, particularly considering its obligations under the GDPR. Any such divergence should be discussed between the parties based on a documented assessment of the possibilities of re-identification.

IV. Basing the assessment of re-identification risks on realistic and reasonably foreseeable scenarios

The guidelines envisage considering the means of identification that may be used by different entities, including unauthorised or malicious actors. France Assureurs acknowledges that such risks should be taken into consideration where they are credible. However, it would be neither realistic nor proportionate to require undertakings to anticipate all the methods, intentions and capabilities of every potential malicious actor. The assessment of whether data are anonymous should not be based on purely theoretical possibilities of re-identification, but rather on scenarios that are sufficiently plausible considering the specific circumstances.

France Assureurs therefore calls on the EDPB to:

- clarify that the assessment should focus on realistic, sufficiently substantiated and reasonably foreseeable re-identification scenarios;
- confirm that the mere existence of an abstract possibility of re-identification is not sufficient to preclude data from being considered anonymous where the means required are not reasonably likely to be used;
- provide examples distinguishing credible re-identification scenarios from purely speculative hypotheses, including those involving malicious actors.

France Assureurs' proposal
The assessment of re-identification risks should be based on realistic and reasonably foreseeable scenarios, evaluated in light of the specific circumstances, the technical means available, the costs and effort required, and the additional information reasonably accessible. The mere theoretical possibility of identification, based on speculative assumptions or means that are not reasonably likely to be used, is not sufficient to preclude data from being considered anonymous.

V. Adapting assessment methodologies to large or complex datasets

The guidelines indicate that a dataset cannot be considered anonymous as a whole where certain individuals remain identifiable. France Assureurs acknowledges the need to consider specific risks that may arise in relation to certain records. However, for large or complex datasets, a systematic, individual assessment of each record may prove technically unfeasible or impose disproportionate burdens. It is therefore necessary to recognise assessment methodologies adapted to the nature and volume of the data, while ensuring that situations presenting a particular risk of re-identification are adequately considered.

France Assureurs therefore calls on the EDPB to:

- confirm that an exhaustive assessment of each individual record is not systematically required where appropriate methodologies allow situations presenting particular risks to be reasonably identified;

- clarify the consequences of identifying a risk of re-identification affecting certain records, while recognising the possibility of implementing targeted remedial measures, such as their deletion, exclusion or further anonymisation.

France Assureurs' proposal
For large or complex datasets, the assessment of re-identification risks may rely on statistical methodologies, category-based analyses or representative testing, provided that these methods are appropriate to the characteristics of the dataset and allow situations presenting particular risks to be reasonably identified. Where re-identification risks are identified in relation to certain records, targeted remedial measures may be implemented so that, following reassessment, the remainder of the dataset may be considered anonymous.

VI. Making the contextual and simplified approaches operational in practice

The guidelines acknowledge that the assessment of whether data are anonymous depends on the context and the means of identification available to the different relevant entities. They also envisage a simplified approach allowing undertakings to disregard certain differences in the identification capabilities of the actors involved and to adopt a cautious classification where uncertainty remains. France Assureurs welcomes these approaches but emphasises that their practical implementation remains challenging in the absence of sufficiently precise criteria. In particular, the simplified approach should not, in practice, result in data being systematically classified as personal data merely because a purely theoretical uncertainty remains.

France Assureurs therefore calls on the EDPB to :

- establish an indicative set of criteria for conducting a proportionate contextual assessment, considering, in particular, the conditions of access to the data, the technical means reasonably available, the possibilities of combining the data with other sources, and the protective measures implemented;
- define the conditions under which an undertaking may reasonably conclude that data are anonymous based on a simplified and documented assessment, without having to demonstrate the absolute absence of any possibility of re-identification;
- provide practical examples illustrating the circumstances in which each of these approaches may be applied.

France Assureurs' proposal
The contextual assessment of whether data are anonymous may be carried out on the basis of objective criteria, taking into account the conditions of access to the data, the means of identification reasonably available, the practical possibilities of combining the data with other information, and the technical and organisational safeguards implemented. The level of detail of this assessment should be proportionate to the risks identified. The simplified approach is an optional assessment method and should not be interpreted as requiring proof of the absolute absence of any risk of re-identification.

VII. Providing legal certainty for the use of synthetic data and artificial intelligence

The guidelines emphasise that information relating to an individual may be inferred from aggregated data, synthetic data or artificial intelligence models, particularly when combined with other information. France Assureurs acknowledges the importance of taking into account the re-identification risks associated with these technologies. However, the mere possibility of generating information that is statistically similar to personal data should not give rise to a systematic presumption that such information constitutes personal data. This issue is particularly important for the development of artificial intelligence, as synthetic data can help reduce the use of personal data during the research, development and testing phases of AI models.

France Assureurs therefore calls on the EDPB to:

- confirm that synthetic data should neither be systematically considered personal data nor automatically regarded as anonymous, and that their classification should be based on an assessment of concrete re-identification risks;
- distinguish the risks of memorisation, extraction or disclosure of information relating to identifiable individuals from mere statistical similarities with the original data;

- provide practical examples illustrating the conditions under which synthetic data generated from personal data may be considered anonymous.

France Assureurs' proposal
The assessment of whether synthetic data are anonymous should be based on the actual and reasonably foreseeable risks of identifying individuals, taking into account, in particular, the generation methods used, the characteristics of the original data, the possibilities of combining the data with other information, and the safeguards implemented. Mere statistical similarity to personal data is not, in itself, sufficient to establish that synthetic data constitute personal data.

France Assureurs reiterates its support for the EDPB's work to enhance legal certainty regarding anonymisation. A pragmatic, proportionate and risk-based approach will help reconcile a high level of protection for individuals with the responsible development of data uses.

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