Artykuły RODO, które będą przedmiotem dyskusji w dniu 9 kwietnia 2013 r.:		
Obecne brzmienie	**Proponowana zmiana**	**Komentarze**
Article 4 (3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, or erasure;	Article 4 (3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as **in particular** collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, or erasure;	**This defintion is so broad so it covers all imaginable operations on data. We are not sure whether the closed list of examples (cases) makes sense as it may not cover some future activitities we are not aware of now. So, we suggest treating the listed activities as examples only, and not as the complete closed list.**
Article 4 (3a) **'restriction of processing' means limiting the processing of personal data to their storage**;	**'restriction of processing' means limiting the personal data processing's scope and purposes to the ones necessary to meet legal obligations other than the primary ones used for its collection, this restriction includes archiving and all kinds of electronic security copies which integrity shall be preserved.**	**"Storage" is not the only one applicable reasonable restriction. In isnurance, retention periods may be very long after the insurance contract expired. Restriction in such cases means for us that we cannot use such data to our normal business activities such as promoting our sales, or act in any other way to engage into a new contract from our initiative. Simultaneously, we shall keep this data as we have numerous legal obligations to do this. Having to keep this data for such long time is not a business advantage for us, this is our obligation.** **The term "storage" may be disputed when applied to such activities as e.g. keeping all sorts of security or back-up copies which cannot be handled after being mad as it would undermine their crucial trait:**

		integrity.
Article 4 (7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed [; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients];	Article 4 (7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed [; however, authorities which may receive data ~~in the framework of a particular inquiry~~ shall not be regarded as recipients];	**The term "recipient" shall be limited only to such cases when the receiving party has a right to request data. So, it shall not include any situation in which there is any legal obligation for the controller or processor to disclose some data to an entitled third party – e.g. to a supervisory authority, or another public institution. Such a position is in line with the definition of the "data transfer" which in course results in a series of notification duties.**
Article 4 (13) 'main establishment' means - as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, **(…)** the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place;. - as regards the processor, the place of its central administration in the European Union, and, if it has no central administration in the European Union, the place where the main processing activities take place;		**We support this amendment for the processor.**
Article 4 (14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the		**We are against this amendment, as:** • **It is tautologic: "representative" is the one who "represents"**

controller, **represents** the controller, with regard to the obligations of the controller under this Regulation **and may be addressed, in addition to or instead of the controller, by the supervisory authorities for the purposes of ensuring compliance with this Regulation**;		**The purposes and scope of an interaction between the representative and the supervisory authority may be wider than proposed here, and it is better to regulate it purely on the contarctual basis.**
Article 4 (15) 'enterprise' means any **natural or legal person** engaged in an economic activity, irrespective of its legal form, **(…)** including **(…)** partnerships or associations regularly engaged in an economic activity;		**This definition's amendemnt is flawed as it suggests that an employee may become and "enterprise". A natural person shall be treated as an enterprise only if he/she acts also as a legal person as well, to exclude situation stated above.**
Article 4 (20) 'Information Society service' means any service as defined by Article 1 (2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services.		**No remarks**
Article 5 Personal data must be: (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;		

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible subject to the conditions and safeguards referred to in Article 83;	(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing of data, **in particular** for historical, statistical or scientific purposes shall not be considered as incompatible subject to the conditions and safeguards referred to in Article 83;	**We support the proposed legalisation of further processing, simulatenously we suggest treating the listed activities as examples only, and not as the complete list.** **Allowing for statistical processing means e.g. accepting profiling, and this may be potentially problematic with the GDPR's part devoted to profiling.**
(c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed **(…)**;		
(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;		**We suport intention of this amdenment as it tries to answers questions concerning required mandatory data quality. The scripture should be changed to clarify "necessary" for whom – here may be the clear difference of interests between data controller and data subject?**
(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed (…) for historical, statistical or scientific (…) purposes **pursuant to** Article 83 (…);		
(ee) processed in a manner that ensures appropriate security of the personal data and confidentiality of the	**(ee) processed in a manner that ensures appropriate security of the**	**We suggest using the standard terminology from information security which is expressed in terms**

processing; (f) processed under the responsibility (…) of the controller **(…)**.	**personal data and its processing, guaranteeing integrity, availability and confidentiality for data, and accountability for the processing**;	**of integrity, availability and confidentiality for data, and accountability for the processing**;
PROFILING		
Recital 58 Every **data subject** should have the right not to be subject to a decision which is based on profiling (…). However, such measure should be allowed when expressly authorised by **Union or Member State** law, including for **fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or** carried out in the course of entering or performance of a contract between the data subject and **a** controller, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention (…). **Profiling for direct marketing purposes or based on special categories of personal data should only be allowed under specific conditions**.	Recital 58 Every **data subject** should have the right not to be subject to a decision which is based on profiling (…). However, such measure should be allowed when expressly authorised by **Union or Member State** law, including for **fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or** carried out in the course of entering or performance of a contract between the data subject and **a** controller, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including ~~specific~~ **general** information of the data subject and the right to obtain human intervention (…). **Profiling for direct marketing purposes or based on special categories of personal data should only be allowed under specific conditions**.	**We support adding fraud amendment. In case the term MONITORING were perceived to be to broad, it may be replaced by DETECTION** **Informing data subject on each particular profiling to detect or prevent fraud is inconsistent with the way it shall be conducted. The wording shall be adjusted in a way that data subject shall be informed that such a system based on profiling is operational**
Article 4 (12a) 'profiling' means **any form**	Article 4 (12a) 'profiling' means **any form**	**This definition is tautologic: "profiling" means (…)**

of automated processing of personal data intended to create or use a personal profile by evaluating personal aspects relating to a natural person, in particular the analysis and prediction of aspects concerning performance at work, economic situation, health, personal preferences, **or interests, reliability or behaviour, location or movements**;	**of automated processing of personal data intended to create or use a personal ~~profile~~ generalisation by evaluating personal aspects relating to a natural person, in particular the analysis and prediction of aspects concerning performance at work, economic situation, health,** personal preferences, **or interests, reliability or behaviour, location or movements**;	**personal profile. The definition of profiling is: the use of specific characteristics to make generalizations about a person http://www.ask.com/dictionary?q=profiling&qsrc=8**
Article 20 (1) Every data subject shall have the right not to be subject **to a decision based on** profiling **concerning him or her** which produces legal effects (…) or **adversely affects** (…) him or her **unless such** processing: (a) is carried out in the course of the entering into, or performance of, a contract between the data subject and **a** data controller (…)**and** suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right**s of the data subject** to obtain human intervention **on the part of the controller to express his or her point of view and to contest the decision**; or (b) is (…) authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's legitimate interests; or (c) is based on the data subject's consent,	Article 20 (1) Every data subject shall have the right not to be subject **to a decision based on** profiling **concerning him or her** which produces legal effects (…) or **adversely affects** (…) him or her **unless such** processing: (a) is carried out in the course of the entering into, or performance of, a contract between the data subject and **a** data controller (…), **for fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, and** suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right**s of the data subject** to obtain human intervention **on the part of the controller to express his or her point of view and to contest the decision**; or (b) is (…) authorized by Union or Member State law to which the controller	**This is inconsistent with allowing profiling for anti-fraud activities in the Recital 58. Repetition of this Recital shall be amended here.** (...) **for fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller,** ***Comment:* Being able to access, process and store personal data through automated processing is central to insurers' ability to provide consumers with appropriate products and services at fair prices.** ***There is a direct correlation between the consumers' profiled risk – as derived from multiple data used for risk assessment – and the likely claims history of a policyholder during the policy period, which, combined, determines the fair premium charged to policyholders.*** ***Insurance Europe is concerned the proposed provision on profiling will prohibit insurers from using data effectively. This would be to consumers' detriment in the form of higher prices, lack of product innovation and/or lack of available insurance.*** ***Insurance Europe recommends that the rules on profiling as proposed in the draft Regulation are amended to avoid***

subject to the conditions laid down in Article 7 (…).	is subject and which also lays down suitable measures to safeguard the data subject's legitimate interests; or (c) is based on the data subject's consent, subject to the conditions laid down in Article 7 (…).	***prohibiting or restricting risk-adequate rating, rate classification and risk assessments necessary for premium calculation.***
Article 20 (2) (…)		
Article 20 (3) Profiling shall not be carried out: **(a) for direct marketing purposes unless pseudonymous data are processed and the data subject has not objected to the processing pursuant Article 19(2);** **(b) on special categories of personal data referred to in Article 9(1), unless Article 9(2) applies and subject to suitable measures to safeguard the data subject's legitimate interests.**		The **Article 9(2) shall be correspondigly explicitely amended to allow using data for anti-fraud prposes. This could be done through an exemption for both sensitive and non-sensitive data where processing is necessary for the purposes of preventing, detecting and addressing fraud.** Insurance sector is concerned that changes to the EU data protection framework may have an impact on insurers' ability to share information and prevent fraud1, which benefits honest consumers and is in the interest of the society. Insurance sector is concerned that the proposed Regulation will: restrict insurers' ability to collect, process and use information needed for fraud prevention and detection. One of the ways insurers detect suspicious activity is by considering previous

		claims history (multiple claims of the same nature, multiple claims featuring same parties, etc). If they are prohibited to do so, insurers will not be allowed to protect their customers against insurance fraud whilst the majority of honest consumers will have to pay the price through higher tariffs. For instance, it is estimated that the figure for health care fraud and corruption in the EU is at least €80 million every day2. Lack of clear stand on using profiling for anti-farud may hinder the development and use of systems for the identification of fraudulent policyholders, applicants and claims which already exist in member states. Insurance sector suggests taking into consideration the Council of Europe (CoE) Recommendation (2002)9 on the treatment of personal data for the purposes of fraud prevention and detection as essential for the insurance activity. According to the recommendation, "actuarial activities" and risk rating are allowed; the same applies to preparing and issuing insurance covers, ie risk-based pricing and premium calculation. For this to happen, collecting and using data is indispensable. Insurance sector recommends that the proposed Regulation explicitly recognises the need for organisations, including insurers, to process and share information to prevent and detect fraud.
Article 20 (4) **(…) T**he information to be provided by the controller under Articles 14 and 14a shall include information as to the existence of profiling **referred to in paragraphs 1 and 3** and **information concerning** the logic involved **in the profiling, as well as the significance and**	Article 20 (4) **(…) T**he information to be provided by the controller under Articles 14 and 14a shall include information as to the existence of profiling **referred to in paragraphs 1 and 3** and **information concerning** the **purposes of** ~~logic involved~~ **in the profiling, as well as the**	**Providing the data subject with information concerning logic of the profiling is highly problematic: these are mostly complex applied maths algorithms which are not comprehensible for non-specialists. So, such an information may result in a confusion and anger of the data subject. Our suggestion is to replace the word LOGIC with**

the envisaged consequences of such **profiling** of the data subject.	**significance and** the envisaged consequences of such **profiling** of the data subject.	**PURPOSES – this will make it much more beneficial for the data subject, as LOGIC may tell him/her nothing.**
Article 20 (5) **(…)**		