RISKS AND BENEFITS OF DATA PORTABILITY: THE CASE OF BLACK BOXES IN THE ITALIAN MOTOR INSURANCE MARKET

Donatella Porrini[*], Marta Infantino[†], Paola Monaco[‡]

The recently approved legislative bill of the Italian Annual Competition Law ("Legge annuale per il mercato e la concorrenza") contains a provision to encourage the portability of the black boxes installed on vehicles[1], as required by car insurance policies.

The bill is premised on the assumption that providing the insureds with the possibility of transferring the data collected by the black box installed on their car (such as the distance traveled overall, the type of roads traveled and the travel times) when changing motor insurance company will facilitate the knowledge and transfer of information relating to the insureds between insurance companies. Since, to allow such transfer, the data must be readable from the black boxes of all companies, the bill also provides for a common technological standard to guarantee the possibility of "continuity of service" in the case of subscription with a competing company[2].

The first objective of the provision on data portability in the bill is certainly to increase the diffusion of black boxes in Italy. Currently, the estimated number of black boxes installed on cars for private use is 5.3 million units, which corresponds to only the 18.1% of the entire amount of policies[3].

By increasing the diffusion of black boxes, the bill also aims to facilitate the sharing of data, to encourage contractual mobility[4], as well as to overcome the so-called consumers' 'forced loyalty' and the use of practices that, even in the absence of real technical or economic convenience, convince users to stay with the same company. In the words of the Italian Antitrust Authority, the possibility for policyholders to transfer data acquired from the black box from one insurance company to another would allow consumers to choose the most convenient offer on the market every year without giving up the advantages of their historical tracking, and thus could contribute, in the long term, to a significant reduction in the insurance premiums[5].

Against this framework, our paper aims to go beyond what has so far been stated by institutional bodies and to test the impact of the portability of black boxes on the motor insurance market, both from the legal and the economic point of view.

The primary benefit associated with the portability of the data contained in the black boxes concerns the sharing of information regarding the history of accidents. The black box records data such as vehicle speed, accelerator position, braking force, steering wheel angle and seat belt status. This information is crucial for reconstructing the dynamics of accidents, for determining causes and

[*] Università del Salento
[†] Università di Trieste
[‡] Università di Trieste

[1] Black boxes on cars, also known as 'event data recorders' (EDRs) or 'event recorders', are devices installed in vehicles that record a series of data relating to the operation of the car, especially in the event of accidents.

[2] Under art. 8 of the current version of the bill, insurance customers will have the right to ask their insurance company for the data recorded by the black box installed on their vehicle and to transfer the data to their new insurance company.

[3] IVASS, "IPER: l'andamento dei prezzi effettivi per la garanzia r.c. auto nel secondo trimestre 2024", COMUNICAZIONE STATISTICA n. 6/2024.

[4] Porrini D., La concorrenza? Non è in una scatola nera, 5 September 2017, www.lavoce.info/archives/48504/la-concorrenza-non-scatola-nera/.

[5] AGCM, "Proposte di riforma concorrenziale ai fini della legge annuale per il mercato e la concorrenza, AS1893, 2023 (our translation).

responsibilities for crashes, and for reducing the risk of fraud, thus contributing to limit the problem of moral hazard[6].

In addition there are the advantages deriving from a greater diffusion of 'telematic insurance policies' by which insurance companies use black box data to determine policy premiums, as it happens with the so-called 'pay-as-you-drive' and 'pay-how-you-drive' insurance.

Our paper will therefore analyze the effects of this form of personalization of premiums on the basis of the data collected. With black box data, motor insurance companies will be increasingly able to adopt diversified policies and to offer more convenient premiums and conditions to drivers who drive safely, while increasing premiums or worsening the conditions for risky drivers.

Nevertheless, like all new forms of consumer profiling based on big data and algorithmic technology, insurance personalization may also give rise to side effects and to problems of compliance with legislation on data processing and artificial intelligence[7].

Data portability would indeed allow virtuous insureds to transfer their reputation from one insurance company to another and reduce the possibility for less virtuous insureds to free themselves from the burden of their past. This way, data portability would also benefit Italian insurance companies by reducing the information asymmetry that characterizes their relationship with new policyholders. At the same time, however, data sharing would give insurance companies access to a new trove of personal data. Especially when associated with the ever-increasing ability of emerging technologies to detect and forecast patterns from data, data portability risks stimulating the use and abuse of data in a forward-looking manner and encouraging an excess of customer segmentation, with all the ensuing consequences in terms of consumers' discrimination, exclusion and social control.

This is why we believe it is important to assess, both in legal and economic terms, the costs and benefits associated with the portability of the data contained in the black boxes in the car insurance market, as currently provided for by the bill of the Italian Annual Competition Law. Our analysis will hopefully also allow us to appreciate the adequacy of the bill provision on data portability in light of the reform objectives.

[6] Magazzino C., Porrini D., and Fusco G., Black Boxes and Market Efficiency: A First Estimate in the Italian Motor-Vehicle Insurance Market (2020). European Journal of Law and Economics, 49, 455-472.

[7] Infantino M., Big Data Analytics, Insurtech and Consumer Contracts: A European Appraisal (2002). European Review of Private Law, 30, 613-634.