



Digitalisation - Artificial Intelligence (AI)

■ Why does it matter to intermediaries?

The development of the use of AI systems by more and more sectors prompted the European Commission to propose several pieces of legislation aimed at regulating its use. The developing framework currently includes the **AI Act** and the **EU rules on civil liability for AI**. Insurance and financial intermediaries using AI systems will be affected by the framework.

■ State of play

Artificial Intelligence Act

On 26 January 2024, the EU co-legislators reached an agreement in trilogue on the Regulation laying down harmonized rules on artificial intelligence (the AI Act). On 13 March 2024, the European Parliament formally adopted the agreement. On 21 May 2024, the Council did the same.

The AI Act is part of the EU's digital strategy. It aims at providing AI developers, deployers and other operators with clear requirements and obligations regarding specific uses of AI. It adopts a risk-based approach and regulates AI systems based on the risks they present. It also prohibits certain AI systems deemed to present an unacceptable risk.

The AI Act is cross-sectoral, it applies to both public and private EU and non-EU actors. It applies to professional uses of AI systems and does not apply to AI systems essentially used for national security purposes.

Focus on some provisions that could impact insurance intermediaries

According to BIPAR's understanding, insurance intermediaries using an AI system in their professional practice would be considered to be "deployers" of AI systems. The AI Act would therefore apply to an insurance intermediary using an AI system in the context of his/her activities.

Annex 3 to the Act lists a series of areas in which the use of AI systems for certain purposes should be considered as "high-risk" and therefore be subjected to more stringent requirements for providers (undertakings commercializing AI models) and deployers (entities using AI systems in a professional context). Point 5(ca) of Annex 3 includes in the list of "high-risk" AI systems, "*AI systems intended to be used for risk assessment and pricing in relation to natural persons in the case of life and health insurance*". Intermediaries using AI systems in that context would therefore be required to comply with all requirements for deployers of "high-risk" AI systems (see Title III of the Act).

The Act also contains specific transparency requirements applicable to certain AI systems, including those that interact directly with natural persons (see Article 52) as well as some

requirements regarding fundamental rights that would apply, amongst others, to intermediaries using AI systems for risk assessment and pricing in relation to natural persons when selling life and health insurance (see Article 29a).

More details on the content, scope and procedure regarding the AI Act can be found in the BIPAR working memo that was provided to its members.

EU Liability rules for AI

On 28 September 2022, the Commission issued a **proposal for a Directive on EU non-contractual civil liability rules for AI**. The point of the proposal is to adapt private law to the needs of the transition to the digital economy by laying down harmonised rules for damage caused with the involvement of AI systems. The proposed Directive contains provisions aimed at proportionally easing the burden of proof in case of damage caused with the involvement of AI systems through the use of disclosure and rebuttable presumptions. It also establishes a possibility, for those seeking reparations, to obtain information on high-risk AI systems to be recorded or documented pursuant to the AI Act.

The most relevant provisions are the following:

- Rebuttable presumption of causality between non-compliance with duty of care under EU rules and the output or lack of output of AI systems that gave rise to the damage.
- The claimant still has to prove the AI system gave rise to the damage.
- When the claim is directed against the user of a high-risk AI system, and not the provider of the said system, the claimant has to establish that the user in question did not comply with their obligation to use the AI system in accordance with the instructions of use or used the system in a way that was not intended.

BIPAR responded to the consultation that preceded the Commission's proposal and will continue to follow the developments of this text through the legislative process.



■ BIPAR's position / key messages

On AI, BIPAR holds the position that a consistent, transparent, all-encompassing and clear activity-based, risk-oriented regulatory framework should be maintained. In this respect, BIPAR believes that the development of rules on digitalisation should happen within the existing sectoral framework and should adapt to its structure. BIPAR insists on the necessity of maintaining a **level playing field** between all providers of comparable insurance services.

Any governance measures or regulations linked to the use of AI should be **proportionate** to the potential impact of a specific AI use case on consumers or insurance firms. Such impact should be determined based on the severity of the potential harm and the likelihood of that harm happening. Financial exclusion of customers should be avoided by including, in any framework, rules on the fair use of data, and especially behavioural data.

BIPAR always highlights the fact that insurance and financial intermediaries are already efficiently playing their role through the use of new technologies, including AI. Many of these intermediaries are **micro and SME entities that should be treated fairly and proportionately**.

■ Next steps

AI Act

The AI Act needs to be published in the Official Journal of the EU. It will then enter into force on the twentieth day following its publication.

Article 85 of the provisional agreement contains the following timeline for the application of the provisions of the AI Act: application 24 months after entry into force for all provisions except:

- Titles I and II: application 6 months after entry into force,
- Title III chapter 4 and Titles VI, VIIIa and X: application 12 months after entry into force,
- Article 6(1) and corresponding obligations: application 36 months after entry into force.

EU rules on civil liability for AI

The EU rules on civil liability for AI are still under examination by the EP and the Council. BIPAR will continue to follow the developments of this proposal through the legislative process. Timing remains uncertain.

■ Links

- [Text of the AI Act](#)
- [Proposal for a Directive on EU non-contractual civil liability rules for AI](#)