

■ EIOPA Report on Artificial Intelligence (AI) Governance Principles in Insurance

In June 2021, the Consultative Expert Group on Digital Ethics (GDE) set up by EIOPA published a [Report on "Artificial Intelligence Governance Principles: Towards Ethical and Trustworthy Artificial Intelligence in the European Insurance Sector"](#). BIPAR was represented in the Expert Group.

The principles are addressed to both insurance undertakings and intermediaries when using AI in the respective areas of the insurance value chain where they are involved. It is non-binding and illustrative.

The Report develops six AI governance principles to promote ethical and trustworthy AI taking into account the specificities of the insurance sector:

- 1) principle of proportionality-AI impact assessment
- 2) principle of fairness and non-discrimination
- 3) principle of transparency and explainability
- 4) principle of human oversight
- 5) principle of data governance and record keeping
- 6) principle of robustness and performance.

The Report looked at the challenges to fairness with the emergence of new technologies. Fairness is especially threatened with the treatment of individuals in more or less vulnerable situations. It also outlined tools in transparency and explainability to help identifying areas where fairness is threatened. And it made suggestions on how the governance of the use of AI should be organised to safeguard sound use of AI.

BIPAR is pleased to see that the role of insurance intermediaries to facilitate ethical use of AI or to prevent unethical use of AI is recognised in several places of the GDE Report. For example, the Report states that *"Insurance intermediaries can play an important role in the prevention for the use of poor quality data since, in their advising activities, they would be able to detect such potential poor data usage, in all areas of the value chain where they are involved"*.

EIOPA welcomes the findings from the consultative expert group, and believes they provide a highly valuable starting point for better establishing the boundaries for the appropriate use of AI in insurance. EIOPA will use these findings to identify possible supervisory initiatives in this area taking into account the ongoing developments at EU level related to digitalisation and AI.

■ Artificial Intelligence Act

In April 2021, the European Commission proposed [new rules on Artificial Intelligence \(AI Act\)](#). The proposed Regulation on AI is cross-sectoral and will apply to both public and private actors inside and outside the EU as long as the AI system is placed on the Union market or its use affects people located in the EU. It can concern both providers and users of high-risk AI systems. It does not apply to private, non-professional uses.

The proposed AI Act follows a risk-based approach with **four levels of risk for AI systems**: unacceptable risk, high risk, limited risk and minimal risk AI systems.

Unacceptable risk: a limited set of AI systems considered particularly harmful to the safety, livelihoods and rights of natural persons will be banned.

High risk: AI systems identified as high risk include AI technology used in:

- o Critical infrastructures (e.g. autonomous vehicles);
- o Educational or vocational training;
- o Safety components of products (e.g. AI application in robot-assisted surgery);
- o Employment, workers management and access to self-employment;
- o Essential private and public services (e.g. creditworthiness evaluation, credit scoring denying citizens the opportunity to obtain a loan);
- o Law enforcement that may interfere with people's fundamental rights;
- o Migration, asylum and border control management;
- o Administration of justice and democratic processes.

Limited risk: AI systems with limited risk to fundamental rights will have to comply with specific transparency obligations.

Minimal risk: All other AI systems can be developed and used subject to the existing legislation without additional legal obligations. The vast majority of AI systems fall into this category. No restrictions here, as these AI systems represent only minimal or no risk for people's rights or safety. Providers of those systems may choose to adhere to voluntary codes of conduct.

Insurance and financial intermediaries using AI systems that are considered as high-risk AI systems will be affected by these new AI rules. For instance, the high-risk AI system's operation should be sufficiently transparent to enable users to interpret the system's output and use it appropriately. Additionally, the users will have to meet some obligations, such as use according to the instructions, input data relevant to its intended purpose and logging. **Similarly, insurance and financial intermediaries which "develop an AI system or have an AI system developed with a view to placing it on the market or putting it into service under their own name or trademark" will be covered by the scope of these rules,** i.e. they shall subject the AI system to a conformity assessment to demonstrate that they comply with mandatory requirements. The proposal provides that the needs of "small-scale providers" and users will be taken into account.

BIPAR is following the development of the proposal on AI as it goes through the legislative process and how it impacts the activities of our sector. The Commission proposal makes no reference to insurance and financial services, other than credit institutions as high-risk AI systems. **However, the Council and EP are envisaging including in the list of high risk AI systems intended to be used for insurance purposes (like premium setting, underwritings and claims assessments, eligibility of natural persons for health and life insurance).**

■ EU Liability Rules for AI

In October 2021 the European Commission launched a **public consultation on the rules on compensation for damage caused by defective products**, specifically by the use of Artificial Intelligence (AI) in products and services. The consultation looked into some policy options, among which is the harmonisation of strict liability (without the need to prove negligence) for damage caused by the operation of certain AI-enabled products or the provision of certain AI-enabled services that expose the public to the risk of damage to important values, like life, health and property. This may be combined with (voluntary/mandatory) insurance for damage caused by this type of AI system.

The most relevant issues arising for insurance and financial intermediaries and their clients are:

- 1) *Who will be held liable of any harm or damage suffered as a result of defective AI products/systems. Can intermediaries/their clients who provide their services using an AI system manufactured by a third-party be held liable?*
- 2) *Would mandatory insurance coverage for liability arising out of the use of AI products/services be an option to ensure compensation for such damages?*

BIPAR responded to this Commission consultation. BIPAR and some experts had a further meeting with the Commission services on the topic of AI liability and insurance coverage. The Commission is expected to adopt a legislative proposal on liability rules for AI by Q3 2022.