



Public Consultation on the Opinion on Artificial Intelligence Governance and Risk Management

Fields marked with * are mandatory.

Introduction

The European Insurance and Occupational Pensions Authority (EIOPA) has published a consultation paper on an Opinion on Artificial Intelligence Governance and Risk Management.

Stakeholders are invited to provide their feedback on the consultation paper by Monday 12 May 2025. EIOPA will consider the feedback received, develop the impact assessment based on the answers to the questions included in this consultation paper, as well revise this Opinion accordingly.

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

To submit your comments, please click on the blue “Submit” button in the last part of the survey. Please note that comments submitted after Monday 12 May 2025 or submitted via other means will not be processed. In case you have any questions please contact Aiopinion@eiopa.europa.eu

Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and [EIOPA's rules on public access to documents](#).

Declaration by the contributor

By sending your contribution to EIOPA you consent to publication of all non-confidential information in your contribution, in whole/in part – as indicated in your responses, including to the publication of the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/1725. More information on how personal data are treated can be found in the privacy statement at the end of the public consultation document.

General Information on the Respondent

* Name of the stakeholder

Peter Norwood

* Type of stakeholder

- ☐ Insurance or reinsurance undertaking
- ☐ Industry Association/Federation
- ☒ Consumer Protection Association
- ☐ Academic
- ☐ Other

* Jurisdiction of establishment

Belgium

* Name of Point of Contact

Peter Norwood

* Email address of point of contact

peter.norwood@finance-watch.org

* Please provide your explicit consent for the publication of your response

- ☒ Yes, publish my whole response
- ☐ Yes, publish a part of my response
- ☐ No, do not publish my response

Questions

Context, objective and scope

Q1 - Do you have any comments on the context and objectives of the Opinion?

- ☒ Yes
☐ No

Comments field

The use of AI in the insurance sector undeniably brings with it efficiency gains and cost-reductions for firms and speedier sales processes for consumers. However, it also entails major consumer risks that need to be properly mitigated by appropriate and robust regulation.

A key risk in the insurance sector is that the use of AI by insurers to perform risk assessments and pricing risks leaving huge swathes of vulnerable consumers being denied insurance coverage or being faced with prohibitively high insurance premiums. Since its establishment, the insurance business model has been built on 'solidarity' or 'risk pooling' which has allowed potentially vulnerable consumers with higher risk profiles to still be able to afford insurance (be 'insurable') as the risk is spread out collectively across policyholders. The increasingly powerful algorithms of AI systems, however, enable highly granular risk assessments (highly personalized pricing) which endanger this business model. In addition, there is a risk of errors or biases in the AI model or in the data it relies on that can produce incorrect or discriminatory outcomes.

In addition, the use of AI systems in the insurance sector also facilitates price optimisation practices, i.e. practices where, with the help of algorithmic tools, firms set prices that are not based on justified criteria such as the individual's level of risk with regards to insurance but on their price sensitivity (willingness to pay more).

In the insurance sector, this can mean, for example, assessing whether consumers tend to switch general insurance products, such as home or motor insurance at renewal, or tend to hold them for long periods of time and are therefore unlikely to react to price rises and shop around. It can also mean determining someone's likelihood to pay more based on non-risk based factors such as income, level of studies, and type of device used to purchase the insurance (brand of smartphone, tablet, desktop computer, etc.), location, apps downloaded etc. (for example, see: https://www.eiopa.europa.eu/document/download/30f4502b-3fe9-4fad-b2a3-aa66ea41e863_en?filename=Artificial%20intelligence%20governance%20principles.pdf).

Lastly, errors or biases in AI systems or the data they rely on can lead to the unfair denial of insurance claims or the compensation for a claim being lower than justified. There have been numerous examples of this in recent industry practice. The fatal shooting of UnitedHealthcare CEO Brian Thompson, for example, led to public scrutiny of insurers which reveals that major insurers in the US have used biased AI models that unfairly deny insurance claims. A lawsuit filed against UnitedHealth in 2023 claims that 90% of the recommendations of the algorithm used by the insurer for insurance claims, known as nH Predict, are reversed on judicial appeal. Moreover, US insurer Cigna has faced legal action over its use of a separate biased algorithm to unfairly reject insurance claims. A complaint against it alleges that the insurer relies heavily on the automated system, allowing claims to be denied without any review of individual patient files (see: <https://www.hsgac.senate.gov/wp-content/uploads/2024.10.17-PSI-Majority-Staff-Report-on-Medicare-Advantage.pdf> and <https://qz.com/unitedhealthcare-humana-ai-lawsuits-1851715765>).

Q2 - Do you have any comments on the scope of the Opinion?

- ☒ Yes
☐ No

Comments field

Given the significant risks to consumers outlined in our answer to Q1, we are of the view that the chosen approach to only issue high-level guidance is not sufficient to adequately protect consumers from the considerable risks stemming from the use of AI in the insurance sector.

At a minimum there would be a need for detailed guidance - and preferably even going beyond this and making legislative changes to the relevant sectoral insurance legislation (IDD, Solvency II) so that the measures are legally-binding. In addition, in our view, there is a need to extend the scope of high-risk AI systems in the AI Act by broadening the scope of Annex III of the AI Act to cover all insurance products via adoption of delegated acts as per Article 7 of the AI Act.

Not classifying the application of AI in the provision of all retail insurance products as high-risk makes the EU AI Act inconsistent with its goal to prevent AI systems from posing a risk to consumer access to essential private services and benefits. The unfair denial of essential financial services, which includes all insurance products and bank accounts, entails significant negative impacts on the economic and life prospects of a person. Not having access to essential insurance products can lead to financial ruin of a citizen if they are not insured against unexpected events such as accidents, the loss of employment or damages to their home (and in some Member States, having home insurance is a requirement to be able to rent an apartment). Annex III (5) of the EU AI Act states that AI systems associated with the access to and enjoyment of essential private services and benefits should be classified as high-risk. It correctly includes 1. AI systems intended to be used to evaluate the creditworthiness of natural persons and 2. AI systems intended to be used for risk assessment and pricing in relation to natural persons in the case of life and health insurance under this category. However, the regulation is inconsistent in that it does not include the risk assessment and pricing of other insurance products and customer risk assessments when opening a bank account under this category as well.

AI governance and risk management framework

Q3 - Do you have any comments on the risk-based approach and proportionality section? What other measures should be considered to ensure a risk-based approach and proportionality regarding the use of AI systems?

- ☐ Yes
☒ No

Q4 - Do you have any comments on the risk management system section? What other measures should be considered regarding the risk management system of AI systems?

- ☐ Yes
☒ No

Q5 - Do you have any comments on the fairness and ethics section? What other measures should be considered to ensure a fair and ethical use of AI systems?

- ☒ Yes
☐ No

Comments field

Given the complexity, autonomy and opacity of AI systems, there is a need for redress and liability rules tailored to the unique characteristics and challenges of AI to ensure that consumers are able to seek redress in cases where damages are caused by the use of AI by financial institutions.

The existing EU regulatory regime (including the sectoral legislation covered by the EIOPA Opinion), however, does not contain any liability rules tailored to the deployment of AI in the financial sector, or in any other retail sector. Recognizing this important regulatory gap, in 2022, the European Commission proposed the introduction of a Directive on adapting non-contractual civil liability rules to artificial intelligence (AILD). This proposal had the aim to cover non-contractual civil liability for damages caused by an output of an AI system or by the failure to produce an output. Most importantly, the rules aimed at overcoming the challenges of the black-box nature of AI systems that make it difficult for consumers to bring a successful liability claim when opaque AI systems are involved by introducing a rebuttable 'presumption of causality'. This concept would ease the burden of proof for claimants, meaning that if a victim can show that someone was at fault for not complying with a certain obligation relevant to their harm, and that a causal link with the AI performance is reasonably likely, the court can presume that this non-compliance caused the damage.

While this proposal went in the right direction of addressing an important consumer protection gap, in early 2025, the Commission unfortunately announced the withdrawal of the AILD. To ensure the adequate protection of consumers subjected to automated decisions made by AI systems deployed in the insurance sector, a new EU proposal to establish non-contractual civil liability rules for AI should be introduced. This new proposal, however, should not be a mere copy of the previous proposal but should introduce not merely, as in the last AILD proposal, an easing of the burden of proof but instead a reversal of the burden of proof in favour of the individual claimant. Under the previous proposal, consumers would have to still resort to the disclosure of evidence to obtain relevant documentation that can eventually help them to prove fault of the AI operator. Consumers, however, may not have the expertise and sufficient skills to interpret this information, making it necessary to refer to external technical expertise which in turn could significantly increase the costs and the length of any court proceedings to bring a claim.

Harmonized rules in this area are also needed to avoid legal uncertainty and the risk of increased costs for businesses. Several EU Member States are considering, or even concretely planning to introduce legislative measures on civil liability for AI. Therefore, a lack of EU-level rules will result in fragmentation and increased costs for businesses operating cross-border.

Q6 - Do you have any comments on the data governance section? What other measures should be considered to ensure adequate data governance of AI systems?

- ☒ Yes
☐ No

Comments field

To avoid the risks outlined in our answer to Q1, it is essential that the right type of data is collected and used in automated decision-making and for the training and testing of the AI model. Therefore, there is a need to include in the data governance section a list specifying the kind of data that can be used and collected by AI-assisted decision-making tools and for the purposes of training AI models. Any social media data, for example, should not be collected and used at all as this data is not financially relevant and cannot be checked for its accuracy.

In addition, to address the risk of large segments of vulnerable consumers becoming uninsurable due to the highly granular risk assessments enabled by AI, there is a need for measures that clearly stipulate how data used for risk assessments and pricing of insurance may be used to avoid excessive granularity that undermines the "risk sharing" principle of insurance. For example, the Opinion should stipulate that the use of certain proxy data like shopping behavior (e.g. using data on whether someone buys healthy foods and at

what kinds of shops) to make inferences about an individual's level of risk (e.g. health risk) should be prohibited.

Q7 - Do you have any comments on the documentation and record keeping section? What other measures should be considered to ensure adequate documentation and record keeping of AI systems?

- ☐ Yes
☒ No

Q8 - Do you have any comments on the transparency and explainability section? What other measures should be considered to ensure adequate transparency and explainability of AI systems?

- ☒ Yes
☐ No

Comments field

In addition to providing the consumer with information about the influence of the AI system on the decision using simple, clear and non-technical language, the consumer should also have the right, as pointed out in our answer to Q9, to request human intervention to review decisions (risk assessments and pricing decisions) made by AI systems.

Moreover, the explanations provided to consumers should also include information about the categories of data used by the AI system to make decisions that have a material impact on consumers. Having this information is key to allow consumers to make informed decisions, including the decision whether there is a need to contest the decision with the insurance provider. Having access to this kind of information is also key in case the consumer needs to seek redress in court for any damage caused by an AI system used by the insurer and needs to prove that the AI system was at fault (e.g. prove that the AI system was discriminatory because it used biased data).

Q9 - Do you have any comments on the human oversight section? What other measures should be considered to ensure adequate human oversight of AI systems?

- ☒ Yes
☐ No

Comments field

Another measure that should be considered are human reviews of risk assessments and pricing carried out by AI systems deployed by insurers. Human reviews of automated decisions generated by AI systems can be an important mitigant against inaccurate and biased decisions made by AI systems that can lead to mis-selling and/or financial exclusion. For this reason, a consumer survey conducted by the European Consumer Organisation (BEUC) shows that European consumers agree or strongly agree that AI users should have the right to say “no” to automated decision-making (BEUC, Artificial Intelligence: what consumers say, https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-078_artificial_intelligence_what_consumers_say_report.pdf, 2020).

Thus, the Opinion should also include a right for consumers to request human intervention to review decisions made by AI systems.

Q10 - Do you have any comments on the accuracy, robustness and cybersecurity section? What other measures should be considered to ensure adequate accuracy, robustness and cybersecurity of AI systems?

- ☐ Yes
☒ No

Questions on the Impact Assessment of the Opinion on AI governance and risk management

Q11 - Do you have any comments on the possible risks identified for customers and undertakings?

- ☒ Yes
☐ No

Comments field

We agree with the risks identified but would add the additional risks outlined in our answer to Q1.

Q12 - Do you have any comments on the analysis of costs and benefits?

- ☐ Yes
☒ No

Q13 - Do you have any comments on the policy option chosen?

- ☒ Yes
☐ No

Comments field

We agree with the analysis that there is an urgent need for policy action, however, we disagree with the proposed approach, as outlined in our answer to Q14.

Q14 - Do you have any comments on the proposed approach?

- ☒ Yes
☐ No

Comments field

We disagree with the policy option chosen to only provide high level guidance based on existing legislation. As rightly pointed out in the Impact Assessment, at the time the legislation was approved AI systems did not exist or they were not widely used. Therefore, the existing sectoral legislation (e.g. IDD and SII) that apply to the use of AI in the insurance sector was not drafted with the deployment of AI and its unique risks to consumers in mind. Therefore, high level guidance is not sufficient to adequately protect consumers from the considerable risks AI brings. For the industry, this approach will also result in a lack of legal clarity which in turn could disincentivize investments in AI systems by insurers and cause level-playing field issues. At a bare minimum, detailed guidance on specific use cases or issues (Policy option 2.2) would be required.

Having robust safeguards in place to ensure that AI used in retail financial services does not harm consumers are needed to not only ensure consumer protection but also to meet the EU's competitiveness goals. In order for AI to be taken up and financial institutions to be competitive, societal trust in AI and in the

wider financial system are needed. Therefore, implementing sufficiently robust regulation of AI and promoting its development and uptake in the EU go hand in hand and must be pursued in parallel and not be seen as being in opposition to each other.

Contact

[Contact Form](#)