

Digitalisation, Data and AI

10 Points – What the insurance industry is calling for

1. Making full use of the current legal framework

Current legal provisions on data protection, consumer protection, protection against unfair commercial practices and protection against discrimination also apply to AI since the respective provisions were drafted in a technology-neutral way. There is no need for any additional, special AI regulation in the insurance industry, in particular, given the fact that the insurance industry is already highly regulated.

2. Limiting additional regulation to high-risk AI applications, which are typically not prevalent in the insurance sector

Additional regulation should only be considered with regard to high-risk AI applications, which must be clearly distinguished from low-risk applications. As a result, AI applications will not be disproportionately restricted by unnecessary provisions but will be able to fully realise their innovation potential. AI applications, the results of which are double-checked by a human being, should not be subject to any additional regulation either.

In order to classify individual sectors as high-risk, clear and transparent criteria should be used. Given the already existing regulation in the insurance industry, which of course also applies to AI applications, the insurance industry in our view does not classify as high-risk sector.

3. Avoiding AI definition that is too broad

The definition of AI is crucial for the scope of application of future regulations. Algorithms which do not include any form of machine learning or self-optimization should, by definition, not be subject to AI regulations. Linear models, supporting methods from the field of explainable AI and established statistical methods should not be subject to the scope of application either.

4. Ensuring innovation-friendly and future-proof regulation in Europe

Artificial intelligence and the use of data create opportunities as well as risks. A clear framework is therefore required to enhance the confidence of all stakeholders. Where new provisions are required, they should be adopted at EU level and apply uniformly across the EU.

Regulatory provisions which unnecessarily impede innovation should be eliminated. In order to be fit for the digital age, laws, rules and directives in the financial services sector need to be innovation-friendly, technology-neutral and forward-looking. A risk and principle-based regulatory framework would serve this purpose. The more detailed and strict the regulatory requirements, the sooner they will become obsolete and the more difficult it will be for the financial sector to be innovative. →

5. Using voluntary certifications

Voluntary certifications promote consumer choice and enhance consumer confidence. They enable consumers to identify and choose particularly trustworthy products. Companies also benefit from voluntary certifications since they allow them to demonstrate that they adhere to particularly high ethical standards, thus giving them a competitive edge.

6. Strengthening existing supervisory structures

The German insurance industry is subject to national as well as to European insurance supervision (Federal Financial Supervisory Authority (BaFin) and EIOPA). Both supervisory authorities have significantly increased their expertise with regard to digitalisation and AI over the past few years. There is no need for another supervisory authority to be established with regard to the insurance industry.

What would also be important, however, is that cloud providers, which have not been subject to regulatory supervision so far, will be made subject to direct supervision. Even though cloud technologies are being extensively used across industries, the providers of such services are only indirectly, and inconsistently, supervised via the respective users. It is these regulatory requirements which are imposed unilaterally on the users, in particular, which make it more difficult to adopt the cloud and thus create barriers which hold back considerable potential for innovation.

7. Improving the conditions for data access and data collaboration

The widespread use of innovative AI applications requires improved access to data and an increased use of data. Respective technical and legal framework conditions must be created for this purpose, including the development of standardised data formats and interfaces in order to allow for interoperability and efficient data sharing. In addition, data collaboration and data trustees can be promoted by means of developing standard licences and model terms and conditions for contractual agreements on data sharing.

Under the terms of a regulatory level playing field and fair competition, market participants should be free to choose their data strategies, collaborations and data transactions. The incentives to innovate thus remain fully in place and the market mechanism can serve to identify solutions that are in the customers' best interest. The development of data monopolies, however, should be prevented.

8. Balancing data protection and the use of data

The development of AI applications relies on data protection legislation that promotes innovation. High standards with regard to the protection of personal data and consumers' sovereignty over their data must be balanced with feasible opportunities to link data and use the data for the purpose of AI applications. Past experience with the GDPR has shown that this balance has not yet been successfully created in all areas. The next evaluation of the GDPR should therefore be used as an opportunity to eliminate existing barriers. Focusing too much on the principle of data minimisation and imposing excessive requirements on the anonymisation of data will preclude an effective use of data and the creation of added value. In addition, consumers' data sovereignty might be restricted as a result.

9. Ensuring a level playing field

A level playing field and a business-based regulatory framework are crucial to ensure fair competition and well-functioning, innovative digital markets.

In particular, it should be ensured that the existing regulatory and supervisory framework is uniformly applied to all market participants (principle of "same business, same risks, same rules").

10. Liability and product safety regulations provide adequate protection

The current liability framework is technology-neutral and is therefore suitable and adequate to also cope with liability issues of innovative digital and connected devices such as AI, IoT, automated driving and flying. The EU Product Liability Directive and national liability legislation together represent a balanced system which provides a high level of protection for victims while at the same time protecting the legitimate interests of manufacturers and users of such devices, thus allowing for technical innovation and economic growth.

New liability rules should only be created if there is empirical evidence of actual gaps in protection. This is currently not the case. Instead, priority should be given to reviewing current product safety legislation with regard to AI and other new digital technologies. Product safety legislation as well as technical norms and standards act as a filter for liability while at the same time concretising the abstract liability criteria in relation to individual products and technologies.