

## ACP ADVICE TO EIOPA ON PROPORTIONALITY AREAS IN AWP 2025

### INTRODUCTION

In accordance with Article 1(7) of Regulation (EU) No 1094/2010, EIOPA established the Advisory Committee on Proportionality (the “ACP”). The ACP shall advise EIOPA as to how, in full compliance with applicable rules, EIOPA’s actions and measures should take account of specific differences prevailing in the sector, pertaining to the nature, scale and complexity of risks, to business models and practice as well as to the size of financial institutions and of markets to the extent that such factors are relevant under the rules considered.

The Committee shall assess the proportionality aspects set out in Article 1(7) of Regulation (EU) No 1094/2010 concerning the applicable regulatory framework and shall advise EIOPA in which specific areas proportionality can be improved or prioritised and give advice on possible elements to be explored by EIOPA. Consideration of proportionality will support the reduction of unnecessary operational complexity and burden in EU law.

The Committee may provide ad hoc advice to EIOPA on its own initiative and shall review how EIOPA has taken into account the Committee’s advice.

The ACP has delivered Advices since 2020 covering a number of different areas of the Solvency II Directive, IORP II Directive, IDD Directive and IRRD. The content of these Advices focuses on Level 2 and Level 3 Guidelines and RTS, not on Level 1.

After consideration of EIOPA planned activities for 2025 the ACP decided to address in its Advice proportionality considerations on the Sustainable Finance Disclosure Regulation (SFDR) requirements and the Artificial Intelligence (AI) area. From a governance perspective, a European Artificial Intelligence Board (AI Board) is created which will, among other tasks, develop recommendations and opinions to the European Commission. In addition, the Commission will establish a new European AI Office, within the Commission. The AI Office shall ensure coordination regarding AI policy and collaboration between involved Union institutions, bodies and agencies; EIOPA can collaborate with the AI Board, and more particularly the AI Office, to implement the AI Act, in line with its competences under sectorial legislation such as Solvency II and the Insurance Distribution Directive (IDD), which also apply when insurance undertakings use AI.

The ACP may revise its Advice regarding SFDR and AI in the future considering the ongoing development of the discussions. The present advice is addressed to EIOPA and focuses on those AI use cases not considered as high-risk under the AI Act. The ACP identified the above-mentioned areas to provide advice reflecting on the priorities of EIOPA, as well as resource availability and that regulatory developments are on-going.

### I. SUSTAINABILITY

**SFDR is a transparency regulation on sustainability disclosures.** The regulation highlights the principle of double materiality, which means that undertakings must consider both the impact of the

environment on themselves and their own impact on the environment and ESG factors. Depending on the undertakings' commitment to sustainable development (i.e. Articles 6, 8 or 9), the obligations they face are more or less demanding. Under SFDR, undertakings must disclose ESG information in a clear and consistent manner. The SFDR, the EU Taxonomy Regulation and the Corporate Sustainability Reporting Directive (CSRD) work cohesively to promote sustainable finance.<sup>1</sup> The SFDR focuses on transition towards sustainable finance, but its implementation introduces also challenges for undertakings.

- **Data gaps and quality:** inadequate disclosure from issuers (many of them are not obliged to report ESG data) limits undertakings' possibilities to meet the disclosure requirements;
- **Compliance costs:** due to the data gaps, undertakings rely on estimates which in turn are not sufficient, or on data provided by third parties, which can be very expensive;
- **Uncertainty:** the complexity of the regulation may lead to potential inconsistencies in disclosure practices across undertakings; especially regarding the lack of a market-wide accepted ESG-rating and rating methodology;
- **Resource constraints:** required knowledge of finance and environmental protection should aim to avoid overlap of responsibilities and tasks<sup>2</sup>;
- **Client level:** the client is not able to have a useful discussion with the broker/agent/adviser who lacks the competencies to provide to the client a satisfactory level of explanation on the ESG issues around the products (making the difference between promise, delivery and potential impact).

To remain competitive, proportionality should reduce the burden and requirements especially on undertakings that have an insignificant scale of operation measured by volume of products, which in turn have appetite for being sustainable (in terms of products offered or market share in sale).

Also, in cases of IORPs with mandatory membership (i.e. potential members cannot decide to become a member of the respective IORP because they are obliged to do so by their working contract), guaranteed benefits and no possibility for the members to choose between different investment options (or to take any other decision regarding investments), any kind of extensive ESG reporting does not offer any advantage. It increases cost on the IORP's side and hence makes occupational pensions less attractive to be offered in the future. This would be detrimental from a social political perspective.

#### **Possible areas for proportionality enhancement/review (based on current legislation):**

The areas proposed reflect the priorities identified as well resources availability and the complex regulatory developments on-going that will undoubtedly present financial institutions (e.g. insurance entities and IORPs) with challenges as the legislation itself continues to evolve.

---

<sup>1</sup> SFDR focuses on standardizing ESG disclosures, the EU Taxonomy provides a classification system for sustainable activities, and the CSRD (Corporate Sustainability Reporting Directive) expands reporting requirements for large companies.

<sup>2</sup> As ancillary information the following document "ESG scale for financial products" (published by the Sustainable Finance Advisory Committee of the German Federal Government in February 2024: <https://sustainable-finance-beirat.de/en/publications/>) might be seen.

The final Advice on sustainability covers two topics regarding information layering at product level and SFDR disclosure requirements.<sup>3</sup>

## 1. Information layering at product-level

**Financial product information on sustainability** is a top-up to the pre-contractual, periodic and website disclosures already required for insurance-based investment products, pension products and schemes. However, for financial products with sustainability features (those that are required to disclose under Article 8, 9 (pre-contractual disclosures) and 11 (periodic reports) of the SFDR), the information on sustainability is not proportional to the remaining information disclosed under Solvency II, IORP II or national pension requirements.

**When filled in, the SFDR templates, which are annexed to the underlying disclosures, consist of more than 10 pages.** In order to ensure proportionality of the information disclosed and consistency within the whole document, it is important to ensure that the length of this annex is proportional to the remaining document. Hence, layering and lower granularity of the disclosures could be a solution to simplify them and ensure that only the most relevant information is disclosed at first to the consumer, with links to more information being provided in a layered manner. This would ensure that consumers can focus on the key information on the financial product, including risks, projections, costs, etc..

But on level 2 and 3 of the aforementioned regulations the introduction of proportionality considerations may be justified by referring and applying the approach of information layering.

## 2. SFDR disclosure requirements

**According to the European Sustainability Reporting Standards (ESRS) entities must report on sustainability matters based on the double materiality principle.** Entities must therefore undertake a materiality assessment to identify the impacts, risks and opportunities (IROs) to be reported under ESRS (except for ESRS 2) and this assessment also needs to be subject to an external audit. Although the European Financial Reporting Advisory Group (EFRAG) had intended that the EU SFDR disclosures of principal adverse impacts (PAI) indicators would always be considered material under the ESRS, the Commission made a significant change to the ESRS from the EFRAG recommendations moving away from mandatory disclosure requirements **to an ex-ante materiality assessment**. Furthermore, in terms of overlap Financial Market Participants (FMPs) in scope of both legislations are asked to report on external impacts (regarding the entities they invest in) several times a year, without being directly responsible for the quality, availability and disclosure of such data. EIOPA should focus in its works at entity-level disclosure by giving its view regarding:

- which opt-in PAI indicators should be disclosed, and criteria for their selection (Article 4 of SFDR) to assess the relevance or materiality of the adverse impact; this can however be limited by the data availability and,

---

<sup>3</sup> When developing these topics, the TF followed the steering of the Committee that initially identified the five following areas for proportionality enhancement/review based on the current legislation: product level disclosure, entity level disclosure, identifying a basic set of KPIs reporting requirements for all sectors, cost and benefits of complying with the regime experiencing data difficulties and proportionality versus greenwashing as in Article 8. When drafting was initiated the TF identified to further narrow down the topics to three, i.e. information layering at product level, disclosure requirements at both product and entity level.

- how detailed should be the description of the integration of sustainability risks in the investment decision-making process (Art. 3 SFDR) and the disclosure on remuneration policies in relation to the integration of sustainability risks (Art. 5 SFDR).

### **SFDR related audit**

There is currently uncertainty in the market about how the SFDR related disclosures should be audited under sectoral legislation, including where the SFDR-related disclosures should be included in the periodic reports under Article 11 of the SFDR. This could be the opportunity for the Commission to provide those clarifications in the SFDR text, or where relevant to clarify this under the sectoral legislation. The solution to the problem would be suitable to address this by EIOPA in its view.

### **‘Sustainability claims’**

‘Sustainability claims’ encompass a broad range of statements, declarations, actions, or communications related to sustainability, including any regulatory disclosures (e.g. SFDR, Taxonomy Regulation) and sustainability requirements (e.g. considering sustainability-related objectives of the target market in the manufacturing of an insurance-based investment product (IBIP)). In addition, they include other forms of disclosures such as marketing information, website texts, advertising brochures, social media posts, policies, images, strategies, labels, certificates, ratings, targets, non-regulatory labels, and product names<sup>4</sup>. This means that sustainability claims need to be accurate, substantiated, accessible and up to date. **EIOPA should monitor that NCA’s would have adopted proportional measures bearing in mind costs and benefits of the FMPS’s market conduct in respect of SFDR compliance.**

---

<sup>4</sup> Advice to the European Commission on greenwashing risks and the supervision of sustainable finance policies. EIOPA-BoS-24-159, 04 June 2024

## II. ARTIFICIAL INTELLIGENCE (AI)

On 12 July 2024 the Artificial Intelligence Act was published in the Official Journal of the European Union.<sup>5</sup> It establishes rules for the use of AI across all sectors of the European economy following a risk-based approach. In particular, the AI Act prohibits certain use cases which are deemed to carry unacceptable risks and introduces a harmonised set of governance and risk-management requirements with regard to AI systems classified as high-risk. The AI Act also includes requirements on the providers of the General-Purpose AI systems (including large language models such as ChatGPT).

The AI Act is expected to impact the insurance sector in different ways; pricing and risk assessments in life and health insurance are considered as high-risk AI use cases and therefore they will need to comply with the requirements for high-risk applications in the AI Act. The use of General-Purpose AI systems by insurance undertakings is also expected to increase in the near future and therefore insurers could be indirectly affected by these provisions. The remaining uses of AI in the insurance sector, including in non-life insurance lines of business, would largely be developed and used subject to the existing legislation without additional legal obligations. The Act is expected to have a more limited impact on IORPs but this will depend on national specificities.

The AI Act defines AI systems as *“a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.”* This definition is in line with the one used by other international standard setting bodies such as the OECD or the G20. Moreover, the European Commission’s AI Office is mandated to develop further guidance on the implementation of the definition.

In this regard, the extent to which Generalised Linear Models (GLMs) are captured or not by the AI definition may have a material compliance impact for insurance undertakings since they are commonly used in pricing, reserving, risk management, capital allocation, marketing or product development. GLMs are already regulated by insurance legislation, and undertakings have already established governance and risk management measures around them: GLMs typically do not operate autonomously or have limited autonomy or adaptiveness after deployment – which are key features used in the AI Act to define an AI system. Therefore, both to follow the definitions in the Level 1 legislation and from a proportionality perspective, EIOPA should focus on both insurers’ and IORPs’ activity which falls under the AI Act definition: it is understood that this will not be the case for GLMs. This shall be confirmed by the upcoming Guidance of the AI Office.

It should be noted that EIOPA cannot amend level 1 legislation and needs to contribute to the consistent application of the AI Act. Furthermore, regardless of whether GLMs are considered to be AI or not, EIOPA shall cause National Competent Authorities (NCAs) to ensure that traditional and modern mathematical models used by insurance undertakings are subject to adequate and proportionate governance and risk management measures based on their characteristics and risks.

Notwithstanding the legal requirements included in legislation, Recital 14a of the AI Act recalls the 2019 Ethics Guidelines for Trustworthy AI developed by the independent High-Level Expert Group on AI (HLEG). The Guidelines include six non-binding ethical principles for AI, that should be incorporated,

---

<sup>5</sup> [Regulation - EU - 2024/1689 - EN - EUR-Lex \(europa.eu\)](#)

where possible, in the design and use of all AI models and codes of conduct. These principles are in line with the AI governance principles developed by EIOPA's stakeholder group on digital ethics in insurance<sup>6</sup> which are the following:

1. Proportionality: use case impact assessment
2. Fairness and non-discrimination
3. Transparency and Explainability
4. Human oversight
5. Data governance and record keeping
6. Robustness and performance

EIOPA should take these principles into consideration when assessing the need for and developing any requirements or guidance to support implementation of the AI Act. Given this, the ACP sets out below how EIOPA can bring proportionality considerations to bear in light of these principles, in particular with references to concrete AI use cases, so as to ensure overall the proportionality of EIOPA's future work on AI.

The first principle on the use case impact assessment is embedded in this introductory section since it already covers general proportionality considerations. Moreover, the present ACP advice primarily focuses on the use of AI by insurance undertakings, but when IORPs or insurance intermediaries make similar uses of AI systems as the ones described in the text, they should consequently develop analogous governance and risks management measures, taking into account proportionality considerations.

EIOPA should recognise that not all AI use cases pose the same risks and some may pose no substantial risks. New governance and risk management measures should be applied only where needed and adjusted to the level of risk and impact. This risk-based approach is also followed by the AI Act: Article 7 sets out the criteria under which the list in Annex III of high risk AI systems can be added or removed.<sup>7</sup> The assessment criteria ultimately aim to assess the likelihood and severity of the risks arising from AI use cases, and more particularly whether the introduction of an AI system poses an equivalent or greater risk of harm to health and safety or adverse impact on fundamental rights.

Those AI use cases that meet the criteria of Article 7 (currently risk assessment and pricing in life and health insurance) should be considered as high-risk and need to have the comprehensive governance and risk management measures as defined in Chapter 2 of the AI Act. AI use cases that do not meet

---

<sup>7</sup> The criteria used in Article 7 of the AI Act is the following: the intended purpose of the AI system; (b) the extent to which an AI system has been used or is likely to be used; (be) the nature and amount of the data processed and used by the AI system, in particular whether special categories of personal data are processed; (bb) the extent to which the AI system acts autonomously and the possibility for a human to override a decision or recommendations that may lead to potential harm; (c) the extent to which the use of an AI system has already caused harm to health and safety, has had an adverse impact on fundamental rights or has given rise to significant concerns in relation to the likelihood of such harm or adverse impact, as demonstrated for example by reports or documented allegations submitted to national competent authorities or by other reports, as appropriate; (d) the potential extent of such harm or such adverse impact, in particular in terms of its intensity and its ability to affect a plurality of persons or to disproportionately affect a particular group of persons; (e) the extent to which potentially harmed or adversely impacted persons are dependent on the outcome produced with an AI system, in particular because for practical or legal reasons it is not reasonably possible to opt-out from that outcome; (f) the extent to which there is an imbalance of power, or the potentially harmed or adversely impacted persons are in a vulnerable position in relation to the user of an AI system, in particular due to status, authority, knowledge, economic or social circumstances, or age; (g) the extent to which the outcome produced involving an AI system is easily corrigible or reversible, taking into account the technical solutions available to correct or reverse, whereby outcomes having an adverse impact on health, safety, fundamental rights, shall not be considered as easily corrigible or reversible; (gab) the magnitude and likelihood of benefit of the deployment of the AI system for individuals, groups, or society at large, including possible improvements in product safety; (h) the extent to which existing Union legislation provides for: (i) effective measures of redress in relation to the risks posed by an AI system, with the exclusion of claims for damages; (ii) effective measures to prevent or substantially minimise those risks.

the criteria of Article 7 and are not considered as high risk have varying levels of risks. For example, AI used by an insurance undertaking or IORP to support a human decision may not have any material impact on risks, whereas AI used to fully automate processes materially impacting consumers may create new or increased risks. This is in line with the approach set out in the AI Act 6(2).

In addition to the criteria set out in Article 7, EIOPA should also take into account additional proportionality considerations/criteria to assess the impact of an AI system on consumers (conduct aspects) and insurance and pension undertakings (prudential aspects). For example, specific criteria could be used to take into account sectorial specificities, such as the line of business importance: from a financial inclusion perspective the use of AI in certain lines of business (e.g. home insurance) may be more relevant than when it is used in others (e.g. mobile phone insurance). The extent to which entities (especially IORPS) are regulated by the Social and Labor Law of Member States may also be a relevant criterion to take into account.

### **Possible areas for enhancement/review:**

**Principle of fairness and non-discrimination.** This principle states that undertakings should balance the interests of all the stakeholders involved when assessing the outcomes of AI systems and ensure that those are fair and non-discriminatory.

Certain AI use cases raise greater fairness concerns than others; as highlighted in EIOPA's Supervisory Statement on Differential Pricing Practices, certain "price walking" practices (where AI could be used) may lead to unfair treatment of consumers, for example when they are used to repeatedly increase the price of a non-life insurance product at renewal stage based on the consumer's low propensity to shop around. EIOPA should ensure that those AI use cases that raise higher fairness concerns should be subject to greater governance and risk management measures, and vice versa. These measures should aim to ensure that an AI use case does not lead to unfair consumer outcomes and is aligned with the needs, objectives and characteristics of the target market.

Similarly, EIOPA should ensure that measures to identify and mitigate discriminatory outcomes (e.g. ensuring high quality data, fairness and non-discrimination metrics, human oversight etc.) should be concentrated on those use cases where impacts for consumers could be greatest. In this regard, the risk of discriminatory outcomes may be less relevant when the data used to train the AI algorithm does not use personal data (e.g. an AI system assessing satellite images in Nat Cat). Moreover, certain datasets (e.g. customer's age or disabilities) which are not allowed to be used for pricing products in some sectors of the economy are nonetheless allowed to be used for training AI systems for insurance underwriting purposes. In addition, it is more difficult to detect biases in more complex and less explainable AI systems: if such AI systems are used in high-impact use cases such as pricing and underwriting, they should be subject to additional governance and risk management measures.

**Principle of Transparency and Explainability.** This principle states that insurance firms should strive to use explainable AI models and adapt their explanations to concrete AI systems.

Similar to the other principles, the concrete AI use case would require more or less comprehensive explanations depending on their impact. For example, when AI is used to support internal compliance processes by providing easy access to procedures or documentation, or in chatbots answering non-sensitive questions from customers, transparency and explainability requirements would not need to be as stringent as when AI is used as part of pricing or underwriting.

Moreover, from a proportionality perspective, EIOPA should take into account that in certain use cases the limited model explainability may be combined with other governance measures that taken



together ensure the accountability of firms. For example, when an AI system is used to assess pictures of damaged cars or invoices during the claims management process in motor insurance, such AI systems would typically involve deep learning algorithms which are not explainable. In view of the benefits arising from the use of such AI systems (e.g. expediting claims management process), alternative governance and risk management measures may be available, for example, human oversight or the use of guardrails, and such measures should be applied where appropriate.

Furthermore, different stakeholders require different types of explanations which therefore need to be adapted/proportionate to the stakeholder concerned. For example, if AI is used for underwriting home insurance policies, consumers would need simple and easy to understand explanations that would help them make informed decisions (e.g. which are the main variables that influence the premium). Other stakeholders such as auditors or supervisors would require more comprehensive explanations about the inner functioning of the AI system and the governance and risk management measures put in place.

**Principle of human oversight.** This principle states that insurance firms should establish adequate levels of human oversight throughout the AI system's life cycle.

Firstly, where a human makes the decision and the AI is, for example, used as a more efficient way to prepare information and/or internal/external communication, then there may be no actual increased risk due to the use of AI and little or no need for additional requirements.

It is important to note that actuaries play an important human oversight role of certain AI systems used for pricing and underwriting, which does not exist in other sectors. Other AI use cases such as the above-mentioned chatbots helping customers navigate the website of an insurance undertaking require a lower level of human oversight i.e. higher levels of automation on such low impact AI use cases should be possible. From a proportionality perspective EIOPA should also take into account that the roles and responsibilities of staff members may vary from one AI use case to another. The degree of management oversight required should depend on the AI use case: less sensitive use cases should not be required to have the same degree and seniority of management oversight of a high impact AI system such as one used to accept or reject customer onboarding applications.

**Principle of Data governance and record keeping.** This principle states that insurance undertakings should implement a sound data governance framework throughout the AI system lifecycle adapted to specific AI use cases and should keep appropriate records in order to enable traceability and auditability.

In general, EIOPA should aim to ensure that insurance undertakings use accurate and concrete input to train AI systems so as to ensure high levels of model accuracy/performance, but also to prevent discriminatory outcomes ("garbage in, garbage out"). This is particularly important in those AI use cases with a higher impact on consumers and on insurance undertakings, such as when AI is used in the area of pricing and underwriting.

From an accountability perspective it is also important to keep adequate records of the data management processes, modelling methodologies and data sets used for AI learning. Once again, such records would be particularly important in those AI use cases that have a high impact on consumers and insurance undertakings, while for those with a lower impact the records to be kept should be less detailed. On this aspect it should be noted that due to the adaptive nature of some AI systems it may not be possible to store all the datasets used to train the AI systems; in these cases, alternative governance measures should be implemented, such as documenting how they were processed.



Moreover, when AI systems are trained with highly sensitive data such as health data, for example an AI system used to process claims in the area of life and health insurance, such datasets should be stored in highly secured environments with access restricted only to relevant staff, in contrast to other less sensitive data such as non-personal datasets.

In this regard, it would be important to take into account measures taken already separately under General Data Protection Regulation (GDPR) and DORA (Digital Operational Resilience Act), to ensure a proportionate approach and to avoid duplication.

**Principle of Robustness and performance.** Insurance firms should use robust AI systems, both when developed in-house or outsourced to third parties, taking into account their intended use and the potential to cause harm.

AI systems should be fit for purpose and their performance should be assessed and monitored on an ongoing basis, including the development of relevant performance metrics. It is important that the calibration, validation and reproducibility of AI systems is done in a sound manner that ensures that the AI systems' outcomes are stable over time and/or of a steady nature. AI systems should be deployed in resilient and secured IT infrastructures, including resilience against cyber-attacks.

Once again, resilience and stability need to be proportionate to the impact on consumers and insurance undertakings. For instance, simple 'copilot' systems to guide or support in the gathering of documents, may require little or no new AI related governance and monitoring than systems related to claims handling or pricing and underwriting.

Measures under DORA and GDPR also should be taken into account to ensure proportionality, as these already address resilience and data governance aspects. Eiopa could consider focusing in particular on the data issues that are peculiar or specific to AI. This can include metrics for identifying and monitoring performance *ex ante* and *ex post* in relation to fundamental rights and discrimination.