Erasmus School of Law

Liability Risk Derived from the Use of AI in Insurance Distribution

Dr. Shu Li
Assistant Professor of Law and Artificial Intelligence, Erasmus University Rotterdam

Erasmus University Rotterdam

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AI as a game changer in the insurance value chain

AI has been used for multiple purposes in insurance distribution

- Customer communication – Marketing – Underwriting and risk assessment

Regulation for the risk derived from AI

- Insurance regulation – AI regulation – Data protection law – Consumer law

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AI as a game changer in the insurance value chain

Key questions

- What is the added value of an AI application?
- What is the risk and harm by using such an AI application?
- What are the applicable regulations toward the risks?
- Who is liable for the potential harm caused an AI application?

Three examples

- Chatbots
- Robo-advisers
- Riak-assessment AI

1. The Added Value of AI Applications in Insurance Distribution

Use case	Added value
Chatbot	Improves customer communication by offering 24/7 support, standardised responses, faster form-filling and easier claim notification
Robo-adviser	Improves insurance distribution by offering personalised recommendation, such as product selection, portfolio review, gap/overlap detection, and lower search costs
Risk assessment AI	Improves underwriting by analysing complex datasets, identifying hidden risk correlations and enabling more accurate, cost-efficient premium setting

2. Risk and Harm of AI Applications in Insurance Distribution

Use case	Risk and harm
Chatbot	Risk of misdirection → the customer may be sent to the wrong form, claim channel, product page or support route, causing delay, confusion or loss of procedural access
Robo-adviser	Risk of unsuitable recommendation → under-insurance, over-insurance, unnecessary cover or discriminatory profiling
Risk assessment AI	Risk of unfair classification → it affects whether the consumer can obtain insurance, on what terms and at what price, raising discrimination and exclusion concerns

3. Applicable Regulations for AI Applications in Insurance Distribution

Regulation	Chatbot	Robo-adviser	Risk assessment AI
IDD	Article 17: distributor must act in the customer's best interests; communications must be fair, clear and not misleading.	Article 20: distributor must specify the customer's demands and needs and explain why the recommended product best meets them.	Articles 17, 20 and 25: fair treatment; demands-and-needs where terms are proposed; product governance and target-market review.
AIA	Usually not high-risk; subject to Article 50 transparency obligations for direct AI interaction.	Article 50 transparency; may be high-risk only if used for life/health risk assessment and pricing (Annex III, point 5(c)).	May be high-risk if used for risk assessment and pricing of natural persons in life/health insurance (Annex III, point 5(c)).
GDPR	Lawful basis, transparency, purpose limitation, data minimisation, security, retention and data subject rights.	Profiling rules; Article 22 where solely automated output rejects a claim, refuses cover, cancels a policy or determines a premium.	Profiling rules; Article 22 where solely automated output refuses cover or determines premium; Article 9 where health data are used.
UCPD	Articles 6-8: false or deceptive information, misleading omission, and aggressive or obstructive practice.	Articles 6-8: deceptive recommendation claims, misleading omissions about ranking/suitability, and aggressive practice.	Applies to consumer-trader commercial practices, but does not directly regulate every internal actuarial model.

4.1 Liability for Chatbots

Source	Liability basis	Main challenge
Key question	**Question: Who is liable for misdirection or misinformation resulting from the chatbot, and on what basis?**	
IDD	Applies: Yes, mainly Article 17 Basis: National IDD implementation; may support contract, pre-contractual or tort fault for negligent communication by the insurer/intermediary	Prove the chatbot was an official customer channel, the statement was unfair/unclear/misleading, and it caused reliance and loss
AIA	Applies: Usually only Article 50 transparency Basis: Primarily regulatory; no general standalone damages action → A breach may evidence fault in contract/tort/UCPD claims	A transparency breach alone rarely proves compensation → harm?
GDPR	Applies: Yes, where the bot processes personal data → Article 82 may apply for unlawful processing	Show a GDPR infringement, damage and causation → many chatbot harms are informational rather than data-processing harms
UCPD	Applies: Yes, for misleading action, misleading omission, or aggressive/obstructive design; Article 11a national remedies Basis: contract if a policy exists; pre-contract/tort if no contract	Prove unfair practice, transactional decision, reliance, loss and quantification
PLD	Applies: Usually no Basis: Only if defective chatbot software causes covered damage, such as personal injury, property damage or non-professional data corruption	Pure economic/procedural loss is normally outside PLD → must also prove safety defect, covered damage and causation

4.2 Liability for Robo-advisors

Source	Liability basis	Main challenge
Key question	**Question: Who is liable, and on what basis, when wrong or unsuitable advice is given?**	
IDD	Applies: Article 20 demands-and-needs/personalised recommendation Article 17 best interests/conflicts Basis: Advisory contract, national IDD liability, tort/professional negligence	Advice recommendation or information provision → identify the suitable counterfactual product, prove causation
AIA	Applies: Article 50 if direct interaction → high-risk only if used for life/health risk assessment or pricing	Breach may only evidence fault
GDPR	Applies: Profiling and Article 22 if there is a solely automated significant decision Basis: Article 82	Human-in-the-loop may avoid Article 22 → must show profiling/infringement caused unsuitable advice or loss
UCPD	Applies: Yes, for misleading best/suitable claims, hidden ranking criteria, undisclosed commission or aggressive steering Basis: Article 11a national redress → various methods	Prove the recommendation architecture was unfair and that the consumer would have chosen differently
PLD	Applies: Usually no Basis: Possible only if defective robo-adviser software causes PLD-covered damage.	Bad advice is not automatically a product-safety defect → pure economic loss, overpayment and underinsurance are usually outside PLD.

4.3 Liability for Risk-assessment AI

Source	Liability basis	Main challenge
Key question	**Question: Who is liable for discrimination, refusal, exclusion or overpricing caused by AI risk assessment?**	
IDD	Applies: Article 17 fair treatment, Article 25 product governance, and Article 20 if the output shapes the proposed contract/advice Basis: National IDD liability, contract/pre-contractual liability, or tort fault.	IDD is not a full discrimination damages code → prove unfair pricing/product-governance failure and causation.
AIA	Applies: High-risk for life/health risk assessment and pricing under Annex III, point 5(c); not automatically for all non-life insurance	No standalone compensation regime; non-life insurance gap; prove AIA breach caused adverse exclusion or refusal.
GDPR	Applies: Strongly for profiling, Article 22, Article 9 health data Basis: Article 82	Prove infringement, damage and causal link
UCPD	Applies: Only when the AI use becomes a consumer-facing commercial practice Basis: Article 11a national redress; contract/tort depending on national law	Hidden actuarial modelling is not always directly regulated by UCPD → how to prove unfairness and better terms absent the practice
PLD	Applies: Usually no for premium discrimination, refusal or exclusion Basis: Only where defective AI software causes covered damage	Pure economic loss and equality harm is generally outside PLD → defectiveness is a safety test, not a general fairness test

Thank you !
li@law.eur.nl