



EU-US Insurance Dialogue Project takes up new technologies and cyber threats that have no borders

Regulatory collaboration in a digital world

The EU-US Insurance Dialogue Project (“Project”) began in early 2012 as an initiative by the European Commission, the European Insurance and Occupational Pensions Authority (EIOPA), the Federal Insurance Office (FIO) of the US Department of the Treasury, and the National Association of Insurance Commissioners (NAIC) to enhance mutual understanding and cooperation between the EU and the US for the benefit of insurance consumers, business opportunity and effective supervision. In 2018, the Project’s members began focusing on the use of (1) big data and AI in insurance, (2) cybersecurity risk, and (3) the cyber insurance market. On October 19, 2021, the Project’s Steering Committee hosted a webinar that provided an update on these issues in the EU and the US. What follows are highlights of information presented at the webinar and the written summary reports of each of the three working groups.

1 Update on the EU-US Insurance Dialogue Project’s Big Data and Artificial Intelligence Working Group – (*Big Data and AI Summary Report*) – Doug Ommen, Commissioner, Iowa Division of Insurance

Data analytics has always been the core of the insurance business model. Summary reports of the Project’s Big Data Working Group were published in 2018 and 2020.

In the past 1½ years, the Big Data Working Group has focused on four areas:

- Exchanges relative to **further developments of artificial intelligence (AI) principles** in the US and EU, including ethical aspects. These technologies and their use raise new challenges, such as consumer privacy and the need to protect consumers/the market from intentional unfair discrimination in the use of algorithms and unacceptable outcomes that may result from the use of algorithms. Highlights include:
 - » In the US in August 2020, the NAIC unanimously adopted its Principles on AI to articulate and inform on general expectations for businesses, professionals and stakeholders across the insurance industry as they implement AI tools to facilitate operations.
 - » There is ongoing work in the NAIC’s Big Data and AI Working Group in assessing the industry’s use of big data, AI and machine learning, as well as what governance and risk management controls are being put in place to manage those activities. This working group is also evaluating existing regulatory frameworks for overseeing and monitoring the use of big data and AI.
 - » Also in the US, in May 2021, FIO published a request for information (RFI) to solicit input on FIO’s future work on monitoring the availability and affordability of personal auto insurance. The RFI asked questions on key themes such as the effects of technology and the use of big data.

- » In the EU in June 2021, the European Commission published a cross-sector legislative proposal for a regulation laying down harmonized rules on AI.
- » Further, following the publication of its thematic review on the use of big data and analytics in auto and health insurance in October 2019, EIOPA created a consultative stakeholder group on digital ethics in insurance. This group has developed a set of AI governance principles that aims to help insurance firms implement ethical and trustworthy AI systems in their organizations.
- » In addition, some EU member states have recently developed relevant initiatives in this area on a national level (e.g., in Germany, BaFin published a report on supervisory principles for the use of algorithms in decision-making processes by financial institutions).
- Regulatory review of **predictive models**, including assessing transparency and explainability issues arising from the use of AI, such as machine learning efforts. Highlights include:
 - » In April 2021, the NAIC adopted the four best practices for regulatory review of predictive models identified in a recently published paper titled “Regulatory Review of Predictive Models.”
 - » At the NAIC, regulators continue to examine the question of whether predictive models and the big data underlying them can lead to unfair or unacceptable outcomes.
 - » In the EU, EIOPA reported that in 2020, it launched a work stream on the supervision of AI in insurance. EIOPA also reported on developing a discussion note analyzing the distinct types of AI algorithms, their differences with traditional algorithms and the supervisory risk arising from their use.
- Industry’s **use of big data** for fraud detection and claims settlement. Highlights include:
 - » The NAIC Big Data Working Group also continued its discussion on how supervisors in both the US and EU are looking at the insurance industry’s use of big data to detect fraud and handle claims.
 - » The NAIC finally presented information on how the insurance industry is using geospatial data for faster fraud detection, catastrophe response and claims handling.
 - » EIOPA noted that it is expected that AI will be used in a number of areas, such as for chat box-based first notification of loss and for automated value estimation using picture and video recognition techniques.
 - » European insurers use AI in fraud detection tools such as claims scoring, anomaly detection, social media analytics, social network analytics and behavior modeling.
- New developments on **third-party vendors and consumer disclosure** issues. Highlights include:
 - » The NAIC described state regulatory standards that require insurers to maintain oversight of third-party vendors, with particular attention to those situations where a third-party vendor may have direct interaction with an insurance consumer.
 - » The NAIC also explained the traditional role of advisory organizations that collect data and prepare loss costs and the potential for new data vendors to become subject to state laws and regulations that apply specifically to advisory organizations.
 - » With the increasing number of third-party vendors using new data and modeling, the NAIC noted the potential regulatory approach to focus on testing and consumer outcomes of the models.

2 Update on the EU-US Insurance Dialogue Project’s Cybersecurity Working Group – (Cybersecurity Summary Report) – Steven Seitz, Director, FIO

The Project has devoted considerable time over the past several years to exchanging views and information on the critical issue of insurer cybersecurity and the role of supervision in cybersecurity. Observations shared with the Project since the working group’s last public report in February 2020 fall under two general topics: (1) information sharing on cybersecurity and cyber resilience, and (2) discussion relating to a proposed cross-border, supervisor-only cybersecurity exercise. Some of the highlights include:

- In July 2020, the New York State Department of Financial Services (NYS DFS) filed its first enforcement action under its cybersecurity regulation.
- The NYS DFS cybersecurity regulation helped inform the NAIC’s Data Security Model Law. As of this year, at least 18 states have adopted, in a substantially similar form, this model law.
- In September 2020, FIO published its 2020 *Annual Report on the Insurance Industry*, which discussed the importance of insurer cybersecurity, particularly in the context of the COVID-19 pandemic.
- In October 2020, EIOPA published *Guidelines on Information and Communication Technology (ICT) Governance for Security Requirements*, which came into force in July 2021. The objective of these guidelines is to promote the increase of operational resilience in the digital operations of insurance and reinsurance companies against the risk they may face.
- Earlier this year, the NYS DFS issued a cyber insurance risk framework that requires all insurers to, among other things, establish a formal cyber risk strategy, evaluate and measure systemic risk, and mandate that victims report cyberattacks to law enforcement. This framework was accompanied by a letter to the financial services sector, including the insurance sector, that addressed the increasing threats of ransomware.
- This summer, the US government issued additional cybersecurity measures that are applicable to insurers.

- In July 2021, the US Department of Homeland Security and the US Department of Justice launched stopransomware.gov, which is a website with advice and resources for combating ransomware threats.
- In August 2021, President Biden hosted a summit with the private sector to discuss opportunities to bolster the nation’s cybersecurity capabilities, including how the cyber insurance market could be leveraged to combat these threats.
- Additionally, the US Department of the Treasury has taken actions to counter ransomware, among other things, through its Office of Foreign Assets Control and an advisory on the potential sanctions risk for facilitating ransom.
- FIO has highlighted the importance of insurer cybersecurity in its 2021 *Annual Report on the Insurance Industry*.
- The NAIC will be creating a new standing committee focused on innovation, AI and cybersecurity by the end of this year.
- The NAIC is also working with state regulators to host a ransomware-themed tabletop exercise in November in Connecticut.

3 Update on the EU-US Insurance Dialogue Project’s Cyber Insurance Working Group – (Cyber Insurance Summary Report) – Petra Hielkema, Chair, EIOPA

The Cyber Insurance Working Group was established to allow both EU and US supervisors to discuss developments from risk and opportunity perspectives and the development of the market itself. This is highly supported by EIOPA because this topic is key in Europe. EIOPA drafted a strategy on cyber insurance in 2020 and published it on its website. These risks require consolidated collection, validation and assessment of potential risks; an understanding of how industry engages in underwriting cyber risks; and an understanding of the role and possible use of risk pools that provide additional capacity to tackle the potential systemic nature of cyber risk. The overall conclusion from the working group is that the limited data available to properly assess and quantify cyber risk exposure is one of the main challenges on both sides of the ocean to further develop the cyber insurance market.

- **Data collection** highlights include:
 - » EIOPA worked on data collection and a reporting template for cyber risk and introduced such collection and reporting as part of its “Solvency II Review.”
 - » US state regulators already require all admitted insurers that write either cyber insurance or identity theft insurance coverage to report data on such coverage in their annual reports to the NAIC. The NAIC also collects cyber insurance data.
 - » In January 2021, the US Congress required the US Government Accountability Office (GAO) to conduct a study to assess cyber insurance markets.
- **Cyber underwriting** highlights include:
 - » EIOPA has shared information about its strategy on cyber underwriting, which guides works on both underwriting and risk management practices for adequate assessment and mitigation tools, as well as contractual definitions, conditions and terms.
 - » The NYS DFS issued a new cyber insurance risk framework that outlines industry’s best practices for property and casualty insurers that underwrite cyber insurance. An important element of this framework—and one that is emphasized in Europe as well—is that insurers’ strategy for measuring cyber insurance risk should be directed and approved by their boards or a governing entity.
- **Role and use of risk pools** highlights include:
 - » Use of risk pools for cyber risk does not seem likely in the EU or US.

Contacts

John Pruitt, *Partner and Practice Group Leader, Insurance, New York*

T: +1 212 389 5053

johnpruitt@eversheds-sutherland.com

Daren Moreira, *Partner, New York*

T: +1 212 389 5039

darenmoreira@eversheds-sutherland.com

Alexander Sand, *Associate, Austin*

T: +1 512 721 2721

alexandersand@eversheds-sutherland.com

Maureen Adolf, *Senior Policy Adviser/Insurance, New York*

T: +1 212 389 5028

maureenadolff@eversheds-sutherland.com

Mary Jane Wilson-Bilik, *Partner, Washington DC*

T: +1 202 383 0660

mjwilson-bilik@eversheds-sutherland.co

eversheds-sutherland.com

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