

POSITION PAPER

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FEEDBACK OF THE FFA ON THE EUROPEAN COMMISSION'S AI ACT PROPOSAL

The use of AI offers key economic, societal, and competitive advantages to European citizens and businesses. An appropriate ethical and legal framework based on European values, and which is in line with the EU Charter of Fundamental Rights, will allow the roll out of a trustworthy and useful European and non-European AI uses in the EU. This framework must be created at European level to avoid fragmentation in the single market, ensure fair competition and protect European citizens and businesses from unreliable AI.

The use of algorithms is essential in insurance. Algorithms are at the heart of the actuarial science supporting the calculation of premiums, the determination of claims or the computation of reserves and AI can significantly improve operational efficiency and customer experience. The use of artificial intelligence in insurance is not new. For a very long time, insurers have been using algorithms for a wide range of purposes: from marketing or email classification to risk assessment. Each use relies on very different forms of AI: AI for automatic character recognition; internal automation processes; consumer relationship and assisting system such as chatbots. Insurance is a large industry with a variety of activities, AI fits at various parts of the insurance value chain. Innovation represents an opportunity for insurers and policyholders to strengthen their relationship thanks to faster, more efficient, and better suited services. In accordance with EU values and rules, insurers can use AI to go further in services personalization to the benefit of policyholders.

As early adopters, insurers are keen to ensure a high level of protection in the use of AI. They are already ensuring that European fundamental rights are respected while applying the numerous rules governing insurance (insurance regulations, GDPR, etc.) and industry initiatives on ethics and on bias management, the explicability of AI results, transparency of algorithms, etc.

Therefore, the French Insurance Federation (FFA) supports the implementation of a framework for an ethical use of AI: human-centric, unbiased, transparent, explainable, and secure. French insurers welcome the Commission's proposal for a risk-based regulatory framework with differentiated rules according to the risks presented by AI uses that makes it possible to encourage technological innovation, while guaranteeing European values. However, FFA believes that the introduction of a

About the FFA

The French Insurance Federation (FFA) represents 280 insurance and reinsurance companies operating in France, accounting for over 99% of the French insurance market. We represent the interests of insurers to national, European and international public authorities; to institutions and to administrative or local authorities. We produce and make available statistical data essential to the industry and provide information for the general public and the media. The French Insurance Federation also contributes in raising the awareness and attractiveness of the industry by promoting insurance and risk management culture. FFA is a member of Insurance Europe and GFIA. In an ever-changing environment, faced with the emergence of new political, economic, social, technological and environmental risks, the French insurance industry constantly innovates to be more competitive, support the economy and extend the boundaries of insurability.

regulation establishing harmonized rules on AI requires a very clear and precise definition of several notions: the definition of an AI system, the notion of negative impact and the difference from the concept of fundamental rights infringement as well as a precise definition of the actors of AI. Indeed, on this last point, insurers insist on the need to clearly define the role of each actor in the AI value chain in order to better identify responsibilities of each one of them.

French insurers are grateful for the opportunity to share their views and contribute to the European Commission consultation.

On the classification of high-risk AI systems

Access to and enjoyment of essential private services and public services and benefits

FFA agrees with the objective of ensuring access to and use of public and private services. A relevant classification of high-risk AIs is essential to ensure that the activities of private companies providing essential services are not inappropriately impaired. Insurers call for a commitment from the EC to ensure that the list of high-risk AIs always shows a correct balance between consumer protection and a framework conducive to innovation.

The criteria for updating the list of high-risk AI areas

The FFA welcomes the possibility to update the list of high-risk AI areas according to different criteria in order to keep the text evolving. However, the FFA stresses the need to clearly define the notion of impact on fundamental rights and to distinguish it from other impacts (e.g. economic) which may constitute a negative impact without affecting fundamental rights. As a reminder, and as underlined in the report of the High-Level Expert Group on AI, various aspects related to innovation such as AI are already strongly regulated in Europe (e.g. GDPR, non-discrimination rules). Moreover, according to core principles of insurance such as non-discrimination and mutualization, we believe policyholders are already protected adequately from fundamental rights violations such as exclusion.

On the obligations of AI operators

Transparency

FFA believes that companies should use the concept of explainable AI which presents the decision-making process of an AI to users in a transparent way. According to the EU High Level Experts Group and the OECD, explicability is one of the principles that underpin a responsible approach to trustworthy AI. When talking about the explicability of an AI system, all components are concerned: the input data (the training data), the model and the output data (the results, the predictions). The criteria for transparency introduced in Art. 52 of the proposal should perhaps be defined more precisely. The notion of explicability should be given priority in the regulation. (cf. "Transparency and information of users", Art 13)

Human focused

Human control must be adapted, *i.e.* carried out by technical profiles (data scientists) but also business profiles or a new specialized professionals (e.g. an expert). Human control must be done in a proportionate way (e.g. by sampling) so as not to lose the benefits of automation, obtained through AI. Moreover, in a logic of continuous improvement of quality, AI use in real situation must be supervised (model monitoring). Therefore, FFA welcomes rules on technical documentation (Art.11) and the need of human control (Art.14). The need for human control has already been noted by many French bodies (e.g. the French High Authority for Health).

Quality datasets

Regarding the requirement to use quality datasets, the proposal foresees the use of error-free datasets, which is disproportionate and unworkable in practice. The requirement for an error-free dataset is even contrary to the notion of AI, which conceptually incorporates this ability to replicate human analysis. The notion of reliability and long-term control of a dataset should be privileged.

Recording keeping

Article 12 of the proposal provides for an obligation to automatically record events during the operation of high-risk AIs. Although relevant, this obligation needs to be clarified (terms, duration, *etc.*) and to consider practical impossibilities: the difficulty of versioning data, the storage of heavy data which can be too voluminous.

Access to the source code of AI systems & Information

For high-risk AI, Art. 64 of the proposal provides the possibility for supervisory authorities to require access to the source code of AI systems for compliance monitoring. This requirement should be reviewed for cyber security reasons, a traceability or explicability requirement seems more proportionate and relevant.

Beyond access to the source code, in a logic of transparency, it seems important that the user is informed that he interacts with an AI as a chatbot. Of course, they must also have the choice and the possibility to be redirected to a human if they wish.

Other comments

The articulation with other texts and existing supervisory bodies

Insofar as data are very important for the development of AI, it is necessary to articulate the proposal for a regulation on AI with European texts relating to data already in force or under discussion (GDPR, Data Governance Act, Data Act, *etc.*) as well as with the competence of supervisory bodies in order to ensure the complementarity of legislative environment. A proper interplay between all legal tools is crucial to ensure that there are no inconsistencies or overlapping obligations (accessing to, processing and sharing of data, obligations regarding its reliability, sanctions, *etc.*). Indeed, FFA wonders about the impact that the creation of a new supervisory body would lead to, especially regarding the risk of significant legal uncertainty for all users due to associate political prerogatives and potentially conflicting conclusions with those of other European bodies.

The European Community labelling

FFA is in favor of the labelling of AI systems and its harmonization at EU level but expresses concerns about the articulation of these new certification requirements with the standardization tools already in place (ISO standards, EC marking, Machinery Directive, *etc.*) in order to not confuse users and for small player to remain competitive. FFA which underlines that the implementation of labels AI raises the issue of developing a costly and hard to fit label for small actors. Such system would then only benefit to well-established companies or large companies active in other market sectors. Moreover, with the increasing development of AI systems, a labelling of each AI system would represent a huge labelling task. A solution could be for the EU to encourage labelling by providing a clear, simple and inexpensive model of label. As an example, the French National Institute of Intellectual Property (INPI) has launched a labelling and recognition mechanism easy to process and at extremely limited costs. Furthermore, the European Union could propose a system of labelling of companies' processes which allow an AI to be labelled if it responds to the labelled process.

The conformity assessment

FFA welcomes self-assessment compliance and third-party compliance schemes for certain types of AI. AI is used in many fields for general use cases (*e.g.* office automation) or very specialized ones (*e.g.* automotive expertise through AI). The use of AI systems differs according to the type of

activity. Each sector ultimately has its own field of activity, which puts it in a position where it has the tools and knowledge to assess the compliance of the AI system it is about to use for its activities with horizontal legislation. Indeed, among the various advantages of a self-assessment system is its adaptation to the entity's activity. However, to ensure a uniform assessment at European level, self-assessment should be based on common basic criteria.

The liability insurance for conformity assessment bodies

Insurers call for clarification of the meaning and implications of the term "appropriate" in order to avoid the consequences of scenario where liability turns out not to be "appropriate".

In conclusion, FFA believes that AI solutions offer opportunities that must be seized in order to provide useful, safe and innovative products and services to policyholders. The development of AI must be done in compliance with European values. Insurers are convinced that a certain number of existing rules already frames the use of AI but that the Artificial Intelligence Act can give more clarification, provided that it does not slow down innovation and the adoption of AI by European companies as well as not add any disproportionate layer of regulation introducing irrelevant obligations. It is, thus, necessary to consider the extensive legislative framework already regulating to the insurance sector (GDPR, IDD, legislation specific to different types of insurance contracts, etc.). Finally, EU must pay attention to maintain a proportionality in the regulation in order to make Europe a pole of excellence and trust in AI (e.g. risk of becoming less efficient than outside the EU).

Contacts

Jérôme BALMES

Director for Digital and Innovation

26 Boulevard Haussmann
75311 Paris Cedex 09
France
Phone: +33 1 42 47 93 30

Stéphane de MAUPEOU

Head of European Office

Rue du Champ de Mars 23
1050 Brussels
Belgium
Phone: +33 1 42 46 92 24