POSITION PAPER

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Referring to: European Commission's consultation on the White Paper on Artificial Intelligence

COMMENTS OF THE FRENCH INSURANCE FEDERATION (FFA)

French insurers welcome the Commission's determination to strengthen the European digital policy and more specifically to address the importance of developing artificial intelligence (AI).

We believe the two characteristics on which the consultation focuses, namely excellence and trust, are the pillars of the policy to be pursued. The European excellence in AI is essential to better meet evolving consumer expectations while ensuring the EU's technological sovereignty. Policyholders' reliability towards insurers is the very basis of our mission so that only a trustworthy AI could guarantee the respect of our members' values.

By its contribution, FFA aims to help the Commission in developing an AI strategy that can meet the reality of the insurance sector and thus respond to policyholders' needs.

An ecosystem of excellence with European libraries of open source codes for AI algorithms

Europe's digital sovereignty is undoubtedly a focal point of the policy desired by the European Union. Europe's current deficit in research and development of AI applications accentuates its dependence on non-EU Giant Tech.

First of all, the European Union must adopt a framework favourable to innovation and development of AI. The emergence of an ecosystem of excellence implies the need to firstly acquire its necessary tools by promoting data sharing and harmonisation, public-private partnerships and the creation of data spaces. US and Chinese players have a dominant position in the artificial intelligence market. Confronted to this, European actors are constrained to call on their services when using AI-based technology (data or algorithm source codes). French insurers would like to raise the Commission's awareness on the significant dependence risk towards non-EU States or private actors. The latter could take advantage of this situation, for instance, by monetising or cutting such access.

Therefore, to provide the single market's stakeholders with a European strong alternative, the development of an ecosystem of excellence must be carried out at all levels, including the creation of an EU algorithms' library for AI.

A regulatory framework limited to high-risk AI and high-risks sectors

To ensure the use of trusted AI while promoting its development, the scope of this framework should be limited to high-risk activities.

Insurers request further elaboration of high-risk AI definition, it seems essential to quickly define accurately and thoroughly this notion. On the basis of a clear and precise definition, care should be taken to avoid over-regulating a large number of activities and hindering their development. Indeed, AI is currently deployed in many insurance activities that do not present any risks for the users such as process automation (*e.g.* document reading), customer relationship tasks (*e.g.* chatbot, image recognition, *etc.*).

Furthermore, insurance should not be seen as a high-risk sector as a whole. Insurers assist their policy holders at every important stages of their lives as well as on their daily routine. Certain insurers' activities may be related to sectors that could raise risks (*e.g.* transport or health) and which should be qualified as such, so that the risk associated by the related AI applications will then be assessed. It would, however, not make any sense to individualize the insurance sector and to categorize the great variety of its activities as a sole high-risk sector.

Proposition of the French insurers on the labelling for low-risk AI

French insurers understand the potential benefit of label for low-risk AI. Nevertheless, the implementation of these labels for low-risk or low-complexity AI raises the issue of developing a costly and hard to fit label for small actors. The latter would then only benefit to well-established companies or large companies active in other market sectors.

A solution could be for the EU to encourage labelling by providing a clear, simple and inexpensive model. This would allow the emergence of a European reference system within a facilitating European framework. 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.

This would prevent a fragmentation of labelling and, more generally, of the internal market.

Insurers' position on the EU legislative framework

Many specific texts such as the Product Liability Directive apply to AI applications context. Thus, the existing EU legislative framework is currently adequate to cover the needed civil liability regime.
For innovation and better regulation purposes, this dynamic of re-using existing rules so as not to hinder the use of new technologies while guaranteeing users' protection and legal certainty remains the most appropriate approach.

However, in the framework of international law, rules on liability in relation to new technological challenges could be studied at a future stage.

> *The French insurance industry remains highly involved in the matter of artificial intelligence framework. In this respect, French insurers have already introduced ethical requirements into their models and FFA is currently working on the best way to promote good practices in the use of AI in insurance.*

Annexe: Further considerations

Section 2 - An ecosystem of trust
Chapter 5 of the White Paper sets out options for a regulatory framework for AI.

Do you have any other concerns about AI that are not mentioned above? Please specify:
Insurers point out as important the following concerns about AI:

- Responsibility: More responsibility should be placed on developers to make them more aware of the risks associated with AI application. Compliance with this responsibility could be achieved through a double check upstream and downstream;
- Acculturation: appropriate sharing of knowledge among citizens, customers and employees is needed to allow everyone involved to have an appropriate understanding of the technology and its processes;
- Need for transparency throughout the entire AI manufacturing chain: from design to availability
- Data: centralise training and reference data and make them available / public;
- Human factor: the human remains the principal decision-maker for critical tasks;
- Bias: they must be minimized (acculturation and training of developers and stakeholders to develop an ethic by design reflex, ongoing supervision of AI, *etc.*);
- Not to promote the AI singularity.

Do you think that the concerns expressed above can be addressed by applicable EU legislation? If not, do you think that there should be specific new rules for AI systems?

Insurers point out that new rules for AI systems must not hamper future innovation. Indeed, AI is a fast-developing technology, prediction of future developments is difficult.
A certification of the organization which develops, produces, offers or uses AI codes may be considered instead of a certification for each AI-Use-case or algorithm.
About the AI rationale, transparency is expected for critical systems or when fundamental human rights are involved, the higher the level of decisions taken by computers, the stronger is the expectation for transparency.

If you think that new rules are necessary for AI system, do you agree that the introduction of new compulsory requirements should be limited to high-risk applications (where the possible harm caused by the AI system is particularly high)?

AI can produce different type of effects and having a risk assessment scale for autonomous system should provide a means of grouping the different type of risks. An entire sector such as finance should not be considered at risk: this would wrongly establish a special status for all models in the same sector. New rules would be pertinent if and only if the current regulations are not sufficient. Indeed, an unnecessary overlapping of texts must be avoided by all means. In addition, those new rules should be limited to high-risk claims, since broader legal requirements specific to the EU could hinder innovation and hamper European competitiveness.

However, according to some members, the risk is a gradual concept to which a two-tier approach could be inappropriate. Supervising only "high-risk" AI would then cover very few cases. It could be more effective to require from companies to implement internal governance of AI risk management.

Do you agree with the approach to determine "high-risk" AI applications proposed in Section 5.B of the White Paper?

The risk-based approach proposed by the Commission is difficult to apply, particularly in the insurance sector. AI (machine learning) is currently being introduced at different levels of the value chain (document reading, marketing, *etc.*). Regulation of AI according to the proposed model would tend towards regulation in many areas of insurance. However, regulation must be limited to uses that may lead to prejudicial decisions such as pricing that may be discriminatory.

In your opinion, how important are the following mandatory requirements of a possible future regulatory framework for AI (as section 5.D of the White Paper) (1-5: 1 is not important at all, 5 is very important)?

Since AI operates with data and bias can have discriminatory consequences, the quality of training data sets is very important along with a human oversight to correct eventual AI failures. According to the French insurance sector these would be the most important requirements. Regarding the keeping of records and data, new rules have to be compatible with the GDPR principle relative to data retention in order to avoid regulatory overlapping for the sake of legal certainty.

Do you believe that a voluntary labelling system (Section 5.G of the White Paper) would be useful for AI systems that are not considered high-risk in addition to existing legislation?

Yes, the label should be legible, easy to use and recognized in the whole EU Market.
However, for some of our members, an internal policy and governance would have more value than this label, which could suggest that other AI systems are dangerous or unreliable.
The introduction of voluntary labelling could discriminate between labelled and non-labelled low-risk AI systems.
Finally, the Commission's twofold proposal (regulation of high-risk AIs and labelling of low-risk AIs) could be seen as a desire to reduce risks in the insurance sector, but the insurance sector should not be perceived as being at risk.