ASOCIACIÓN ESPAÑOLA DE BANCA

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AEB response to the European Commission AI White Paper

The Spanish Banking Association (AEB) welcomes the European Commission's White Paper on "Artificial Intelligence – A European Approach to Excellence and Trust" and the opportunity to comment on its proposals. This document complements our response to the European Commission's survey on the AI White Paper.

Comments on the Ecosystem of Trust

As a general principle, we believe that regulation should remain technology neutral. Legal requirements or ethical principles should not apply to the underlying technology but to its application. Citizens and customers do not need to trust AI or any other technology, but the specific applications and services they use, and the firms and organisations that provide them.

We think that in the financial sector the current regulation (both financial regulation as well as cross-sectorial regulation such as GDPR) is already sufficient to guarantee consumer protection, financial stability and data protection, and to cover the risks generated by the application of AI.

However, some adjustments are likely to be needed to address the barriers to its use.

In this regard, consideration could be given to the possibility of EU authorities working with industry to develop guidance on how to comply with existing rules in order to provide certainty to the industry e.g. on the supervisors' expectations as to appropriate levels of explicability and transparency, or as to the measures applied by firms to avoid unfair bias and prevent discrimination. This guidance would help also to avoid fragmentation in AI supervision.

On the Scope of a future EU regulatory framework

If the Commission decides to introduce new regulation, we support the risk-based approach taken by the Commission to focus on **high-risk applications**. We believe that this should not be a question of how AI technology is being used, but to set the appropriate framework for those high-risk applications which, as mentioned by the Commission, may put citizen's safety or even their own lives at risk.

However, while the Commission's proposal may be consistent for very high-risk applications, it should not be taken as a baseline for many other activities or applications with a significant lower risk, which do not jeopardise the life or fundamental rights of citizens. Any requirement should consider the magnitude of the risks and the impact of the use on the customer, and therefore it would not be consistent to apply the same requirements to applications that present different risk levels.

We welcome that the Commission has balanced the sound purpose of its proposal (preserving the security of individuals) with the need to ensure that Europe remains competitive and that European companies are not submitted to a regulatory framework too burdensome and can continue to be encouraged to invest in IA.

On the criteria to determine "high-risk" AI applications

Given that it is in the spirit of the proposal to focus these new requirements on high-risk applications, we understand that including **the sector** in the general definition helps to focus the identification of those high-risk applications, leveraging on sectors where applications are more likely to pose high-risks to citizens and businesses.

However, it must be considered that this approach may leave outside of the scope situations where regulatory arbitrage is possible in case an activity can be carried out by companies that do not belong to a designated sector.

Therefore, in those sectors where activities can be performed subject to different regulatory regimes, the Commission should ensure that the exception foreseen in the White Paper (application regardless the sector) should be applied to guarantee that high-risk applications are fully captured and that **citizens safety and their fundamental rights are well protected**. This would also avoid the risk of creating an **unlevel playing field** among companies from different sectors that provide the same services.

The Commission should develop clear and objective criteria to ensure that **only high-risk** applications are captured and ensure that the proposed requirements are consistently applied to use cases that pose the same level of high risk to security and citizens' rights, regardless of the type of provider.

As we have mentioned before, it is very relevant to define from the beginning the scope or perimeter of the risks, so that this proposal does not end up being extended to other activities or use cases with significantly lower risks.

On the governance and enforcement framework

Citizens do not trust AI, but the firms using it. Therefore, it is essential that clear and technology-agnostic governance exist.

Enforcement and oversight tasks should be undertaken by current supervisors to avoid overlapping or contradictory practices. Adequate ex-post enforcement mechanisms should be required for firms providing high risk apps not submitted to specific supervision. On the contrary, strict ex-ante oversight mechanism should be carefully considered as they would definitely delay the launch of products leveraging AI to the market.

In practice ex-ante oversight mechanisms could become a challenge for the competent authorities responsible of implementing the assessment for such applications, which will have to respond to demand from individual companies and public organisations before these applications are marketed. If the Commission finally chooses to establish such requirements, they should be limited to only those applications where the risk to citizens justifies such "preventive" controls, and in any case set maximum response times and provide enough flexibility for companies in the process (e.g. to present new applications; or to implement the adjustments required) to avoid the risk of creating a bottleneck for the use of AI in Europe.

Voluntary labelling for no-high risk applications

From the point of view of its usefulness the proposal raises many questions. How consumers would know when a particular product or service does not have the label whether it has not applied to have it or whether it does not comply with the requirements? In addition, how this seal would be presented to the consumer e.g. when offering a particular service?

From the point of view of the companies that would take the decision to certify certain products or services (and not necessarily all of them), this label would increase the cost

and time to market, so it would need to be clearly profitable to invest on having this seal and be able to present it to consumers.

In addition, we believe that consumers need to have access to trustworthy products or services, regardless the technologies behind. Why certifying only how the AI is being used?

Finally, a voluntary labelling scheme once again cuts across the principle that AI in itself is not trustworthy, but that trust should be placed in the firm using the AI application.

We believe that in order to enhance the trust on AI it is key to keep investing on educating consumers on the use of AI and its real capabilities, in order to solve doubts, eliminate possible myths and preconceived ideas that may exist. We believe this would be more effective than developing a labelling scheme.

If a voluntary labelling scheme is finally developed, we would recommend that the framework be simpler and follow a risk-based approach. A labelling scheme that adopts the same requirements as those in the regulation for high-risk applications could discourage companies of all sizes from applying for the label, also to the detriment of consumers.

In any case, this labelling system should be oriented to the certification of activities and not firms as a whole, requirements should be proportionate to the actual risk posed by the particular application for the consumers.

The scheme could be based on standards, certificates and codes of conduct agreed between the public and private sectors in a harmonised way at European level, involving all relevant regulators and supervisors (sectoral and cross-sectoral)

Other considerations

When designing an AI approach based on European values, the European Commission needs to find the right balance to protect such values, whilst encouraging innovation considering the competitive environment in which companies operate and the existence of regulatory hindrances preventing the take-off of this technology.

One of the industries that has made most use of the advances in AI has been the banking sector. This technology offers great opportunities to improve the customer experience by providing the most suitable products and services, to increase the efficiency of internal processes and to strengthen security and risk management. However, when using AI, banks face several **important challenges** that slow down its adoption:

- Firstly, AI technology is often offered as a service (via the cloud) by third party providers and is therefore subject to outsourcing regulations, which impose due diligence and pre-contractual requirements that may delay the adoption of such technology or even restrict its adoption in cases of critical use.
- Secondly, the adoption of AI faces several regulatory hindrances. All companies face the challenge of applying GDPR and understanding how to make some of its principles compatible with the development of AI. However, in the case of the banking industry, there are additional layers of restrictions imposed by sectoral regulations, such as the Mortgage Credit Directive and the EBA guidelines on loan origination, or by the supervisory expectations on matters such as their auditability, the ability to explain their results or their evolution over time.
- Thirdly, as the Commission states in the White Paper, "*without data, there is no AI*". Access to a greater variety of data to train models and test results could contribute to the ethical and effective use of AI. The Commission's Data strategy is a first step to promote an European Data Economy and to boost its potential benefits, but it may not be ambitious enough if it focuses only on the establishment of voluntary, sector-specific data spaces.

The approach should be cross-sectoral, organised around data ecosystems and not sectors to ensure the development of successful and competitive data-driven businesses in Europe. In our opinion, a **cross-sector user data sharing** framework would help to solve some of the current imbalances in market power (where a few companies hold a vast amount of the data) and empower individuals and firms to take control over their data in the digital environment.

We support work to encourage data exchange and reuse, but it must always keep in mind that data is especially valuable across sectors, particularly to create disruptive, not just incremental, innovation. Data Spaces initiatives should therefore start from the principle of making all data available on a cross-sectoral basis and include a Data space for the Bigtech platform sector, currently not foreseen in the Data Strategy.

In our view, it is key that European authorities work with industry to develop guidance on how to comply with existing rules not only to avoid potential risks linked to the use of IA, but also to promote the adoption of this technology by providing clarity to firms about supervisors' expectations as well as to avoid fragmentation in AI supervision across Europe.

Regulators and supervisors' expectations and practices should be harmonized to ensure a common approach to that technology by each EU Member State and by sectoral and cross-sectoral authorities.

Therefore, in addition to pursuing a framework for AI that respects European values, the Commission should also give priority to removing all barriers that exist today to the use of AI, such as access to data, doubts about how to comply with existing regulatory requirements, as well as different approaches to AI between jurisdictions and sectorial supervisors.