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POSITION PAPER

Consultation on the White Paper on Artificial Intelligence - A European Approach

ESBG (European Savings and Retail Banking Group)

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ESBG

Introduction

Artificial intelligence (AI) is a strategic technology that offers many benefits for citizens and the economy. It will change our lives by improving healthcare (e.g. making diagnosis more precise, enabling better prevention of diseases), increasing the efficiency of farming, contributing to climate change mitigation and adaptation, improving the efficiency of production systems through predictive maintenance, increasing the security of Europeans and the protection of workers, and in many other ways that we can only begin to imagine.

At the same time, AI entails a number of potential risks, such as risks to safety, gender-based or other kinds of discrimination, opaque decision-making, or intrusion in our private lives.

The European approach for AI aims to promote Europe's innovation capacity in the area of AI while supporting the development and uptake of ethical and trustworthy AI across the EU. According to this approach, AI should work for people and be a force for good in society.

For Europe to seize fully the opportunities that AI offers, it must develop and reinforce the necessary industrial and technological capacities. As set out in the accompanying European strategy for data, this also requires measures that will enable the EU to become a global hub for data.

The current public consultation comes along with the White Paper on Artificial Intelligence - A European Approach aimed to foster a European ecosystem of excellence and trust in AI and a Report on the safety and liability aspects of AI. The White Paper proposes:

- Measures that will streamline research, foster collaboration between Member States and increase investment into AI development and deployment;
- Policy options for a future EU regulatory framework that would determine the types of legal requirements that would apply to relevant actors, with a particular focus on high-risk applications.

This consultation enables all European citizens, Member States and relevant stakeholders (including civil society, industry and academics) to provide their opinion on the White Paper and contribute to a European approach for AI. To this end, the following questionnaire is divided in three sections:

- **Section 1** refers to the specific actions, proposed in the White Paper's Chapter 4 for the building of an ecosystem of excellence that can support the development and uptake of AI across the EU economy and public administration;
- **Section 2** refers to a series of options for a regulatory framework for AI, set up in the White Paper's Chapter 5;
- **Section 3** refers to the Report on the safety and liability aspects of AI.

Respondents can provide their opinion by choosing the most appropriate answer among the ones suggested for each question or suggesting their own ideas in dedicated text boxes. Feedback can also be provided in a document format (e.g. position paper) that can be uploaded through the button made available at the end of the questionnaire.

General comments

ESBG's core position

This document aims at elaborating further on ESBG's answers to the questionnaire and our position regarding the European Commission White Paper on Artificial Intelligence. ESBG's core position is summarised in the following paragraphs.

Regarding section 1 'An ecosystem of excellence', ESBG would like to add:

Regarding the **ecosystem that would support the development and uptake of AI across the EU**, ESBG would like to stress its position in the following areas:

- Research and innovation community: in order to support the development of innovative companies and projects, the EU should provide some sort of back-up to private investments in R&D in favour of European companies and start-ups. For example, through the EIB, the EU could provide public financial guarantees of those loans. This is a mechanism that has proved to be efficient to respond to the COVID-19 pandemic crisis. Concerning skills, it is important to capitalize on the very good training courses that exist in Europe;

- SMEs: any action coming from EU institutions should take into account that SMEs are at the origin of a large part of innovative projects in the EU, especially in areas such as biotech or advanced analytics.;

- Private sector: The partnership with the private sector is important in order to avoid deploying solutions producing unintended consequences in current business models. The adoption of AI across all European industries is necessary to enable Europe to preserve its technological sovereignty while releasing the full potential of AI. To this end, and in order to promote European competitiveness, the European Commission should give incentives for companies adopting and promoting the uptake of AI; (in particular, helping them retain current and future talent);

- Public sector: the public sector should be encouraged to adopt AI to improve the efficiency of the administration, but with due respect for individual rights.

- Impacts of covid-19: The revision of the AI coordinated plan will have to take into account the economic impact of the crisis resulting from the current COVID-19 pandemic. The increase of Member States' debt will inevitably have an impact on Europe's investment capacity which, once the crisis is "over", will require a thorough review of expected investment plans, as well as the general economic ambition and capacity. In this new context, if the objective to attract over €20 billion of total investment in the EU per year in AI over the next decade, to catch up with the USA and China, turns out to be unreachable, European players will have to suffer from an even more uncompetitive situation against their non-European competitors. If we add to this the potential cost of complying with a stringent European regulatory framework, the EU's lack of competitiveness will leave it out of the AI race;

- Establish testing centres: We support the creation of world reference testing centres in the EU because, as the Commission points out, national policies for AI make it difficult to have centres with an international dimension. It is desirable to have projects with a European dimension and coordinated at EU level;

- Increasing funding for Start-ups: There is a need to help start-ups have critical funds available so that they can manage risk;

- Skills**:** The development of skills represents a very important issue in the context of a shortage of engineers trained in Artificial Intelligence. Already in 2011, a McKinsey Global Institute report stated that there would be a shortage of 190,000 Data Scientists in 2018, as well as 1.5 million managers and analysts who could simply understand the issues and make decisions in the context of AI. The study by Burning Glass Technologies, BHEF and IBM, published in early 2017, predicted that the number of jobs worldwide for Data Scientists and Data Analysts will increase by 28% over the next five years to 2,720,000, and that 39% of these jobs require a master's or doctorate level qualification. Finally, a study compiled by the Tencent Research Institute in December 2017 showed that there are only 300,000 "AI researchers and practitioners" in the world today, while market demand is estimated to be in the millions.
- In this context, we consider it important to support the development of skills benefiting European industry. To that extent, on a European scale, the involvement of the private sector in training programs aimed at developing AI-related skills is a crucial issue allowing all at once for students to acquire professional skills and experience, and European companies to recruit young graduates;

- **Support for the set-up of a public-private partnership for industrial research**: Linking the public and private sectors is essential to improve European industrial research. This partnership will ensure consistency with real societal needs. Through this initiative, the setting up of platforms facilitating collaboration and interaction between the various players would be highly desirable (open-source work, sharing of good practices, etc.).

Regarding to the section 2 'An ecosystem of trust', ESBG would like to add:

General observations:

As recalled in the White Paper, AI can relate to a wide variety of risks (security, privacy, discrimination, etc.). In our perception, these risks are more often directly related to the service or use given to it as such than to AI itself. In addition, some risks (bias...) related to the (involuntary) partiality of human judgment were pre-existing at the adoption of AI;

Furthermore, some specific processes can already contribute to the prevention and minimization of risks caused by algorithms.

- According to a Deloitte study (May 2019), in terms of algorithmic risk management, several tools and algorithms have been put on the market in order to identify and control biases induced by data or algorithms, but also to better visualize the functioning of some deep neural network algorithms. These algorithms, mainly open source and developed by a community of researchers, analyse data in the form of different classifications.
- Moreover, the models are monitored over time (during back-testing exercises), which minimizes the risk of "abnormal behaviour".

Actions for which the rationale cannot be explained: The need for explainability is specific to each sector and to each use-case. On the issue of transparency it is important to define precisely whether transparency should be considered at the model level, or the component level. Also, it is important to notice that there is a need to clarify what is to be understood by terms such as 'explainability' or 'interpretability', as they can have different meanings and understandings.

No new regulations are needed: In our view a regulation could hinder the development of AI in the banking sector. AI is in a phase of appropriation and exploration by the banking sector. In addition, the use of human expertise (data scientist, compliance and legal officer, client managers, etc.) remains essential to guarantee the quality and security of AI-related processing. ESBG advocates that no additional regulation is needed. Regulators and NCAs should work together with the industry in a close dialogue to elaborate some guidelines on the interpretation of how the current framework applies.

The applicable EU legislation already allows for risks to be addressed: AI should comply with the rules in force, in particular the GDPR (any processing of personal data through an algorithm falls within the scope of the GDPR). This has been recalled by the European Data Protection Board in an answer to MEP Sophie in't Veld (01/2020): *"Any processing of personal data through an algorithm falls within the scope of the GDPR. This means that the GDPR covers the creation and use of most algorithms. Thanks to - inter alia - the risk-based approach, the data minimisation principle and the requirement of data protection by design and by default, the current legal framework addresses many of the potential risks and challenges associated with the processing of personal data through algorithms."*

Moreover, the banking industry is already subject to legal and regulatory obligations that address the risks mentioned, for example, with consumer law, national banking laws, national liability laws, civil rights, European supervision regulations... As a result, banks have already developed and continue to adapt their risk models when implementing AI applications into their processes and services.

AI is deployed in thousands of applications in almost every sector of the economy and society. Therefore, making a list of AI uses that are high-risk or low-risk does not make much sense. Differentiating AI rules depending on high-risk or low-risk sectors (health, security, and transport) does not help either. ESBG would, in turn, propose a system similar to the one established by the GDPR, under which the person or organisation responsible for the application of an algorithmic system (say, AI use) should assess the requirements that the system should comply with under a risk-based approach.

Support for risk-based approach with conditions: Today, AI is at the origin of an international competition that pits Europe against other innovative players such as China and the United States. ESBG does not agree with the first of both criteria proposed by the EC in the White Paper to determine "high risk" AI applications: we do not support establishing a list of "high risk" sectors, as regulation would lose any sort of flexibility that AI requires. As regards the second criterion, the current regulatory framework (GDPR and EBA outsourcing guidelines for the financial sector) already allows for a good coverage of AI risks, so we do not think it is necessary to introduce new compulsory requirements on the basis of the "high risk" of the specific use of an AI system.

Therefore, we support a risk-based approach towards AI, and hence the call of the European Parliament (resolution on AI of February 2020) to develop a risk-assessment scheme, but we consider that:

- it should not come from new compulsory requirements, but from providing guidelines on the existing regulatory framework;
- it is important that any future guidance is very precise about the criteria to determine what it considers high-risk and low-risk;
- the European Commission should remain vigilant to ensure that European players are not more constrained than other international players;
- a risk-based approach must not lead to a proportionality of the approach to AI (all players in a sector must be subject to the same rules: principle of "same risk, same rules").

ESBG would like to underline the importance of voluntary commitment: The voluntary commitment of stakeholders to adopt an ethical attitude towards AI is just as important as regulation to ensure the trust of individuals.

Self-assessment mechanism: It could be appropriate to make available to stakeholders a self-assessment mechanism of algorithms to determine the level of risk of each AI application according to criteria defined by the Commission, and whether their AI application is subject to the mandatory requirements to be implemented by the Commission or not.

Regarding the question of the use of remote biometric identification, ESBG believes that a broader debate is necessary: We support the gradual approach proposed by Commissioner Thierry BRETON, who wishes to give himself a few months to study, anticipate and segment the issue properly.

ESBG could support the principle of a **labelling scheme,** having in mind that it could be difficult to set up and is likely to complicate the development and implementation of AI systems. To establish it, the Commission envisages the creation of a new legal instrument. We believe that this framework should provide for lighter requirements than the regulatory framework for high-risk applications, as the labelling scheme will only cover AI systems that are not considered as high-risk. In a nutshell, the labelling scheme should be easy to implement and to update as it is an evolving technology and it should not be too costly. ESBG encourages the involvement and dialogue with the private sectors regarding the design and implementation of such a scheme.

In a voluntary labelling system, private companies could end up competing for obtaining the label, which in practice would mean they would increase their efforts on being accountable and ethical in their application of AI. The system should be based on standards, certificates and codes of conduct agreed between the private and the public sectors, in a harmonized way at European level, involving regulators and supervisors from the finance area, but also from others such as data protection and information security.

Regarding **the question of conformity**, most ESBG Members already carry out some ex-ante conformity assessment and ex-post enforcement mechanism.

Regarding Section 3 Safety and liability implications of AI, IoT and robotics, ESBG would like to add:

From the banking sector's perspective, we are aware of the consideration to be given to the risk assessment procedure for services which would undergo significant changes during their lifetime. However, our services based on AI should not be submitted to a new horizontal legislative framework for security (as considered by the European Commission with the new adjustment legal frame on EU product safety and liability legislations) to cover this risk. Therefore, we have no opinion on the question raised regarding non-banking business sectors.

The banking industry is an extremely supervised sector at European and National level, to which is added consumer law, national banking laws, national liability laws, civils rights, GDPR (etc…) and this sector is originally driven by a permanent risk control governance to ensure the safety of services they

provide, based on AI or any other kind of technology. In order to cover the whole of potential issues raised by the EC related to AI, we strongly support the cooperation between Authorities and the banking sectors, through notably the experimentation on specific AI applications under the control of competent authorities instead of any new irrelevant additional regulations."

In addition, the services based on AI provided by the banking industry should not be submitted also to a new horizontal legislative framework for liability (as considered by the EC with the new adjustment legal frame on EU product safety and liability legislations). In this regard, we have also no opinion on this matter regarding non-banking business sectors.

The banking sector is subject to multiple levels of liability regimes: linked notably to the supervision by National or European authorities, GDPR, national civil liability laws, all specific banking liability rules as for instance the consumers' protection framework... The multiple current legal regimes of responsibility already cover the issues of responsibility in terms of services based on AI provided by the banking sector. Therefore, the Commission's concern about the risk of liability generated by certain services based on the AI application should focus on the sectors which are not yet covered by a specific liability regime other than only national civil liability.

Section 1. An ecosystem of excellence

To build an ecosystem of excellence that can support the development and uptake of AI across the EU economy, the White Paper proposes a series of actions.

Q1: In your opinion, how important are the six actions proposed in section 4 of the White Paper on AI (1-5: 1 is not important at all, 5 is very important)?

	1 – Not important at all	2 – Not important	3 – Neutral	4 – Important	5 – Very important	No opinion
Working with Member states					X	
Focussing the efforts of the research and innovation community					X	
Skills					X	
Focus on SMEs					X	
Partnership with the private sector					X	
Promoting the adoption of AI by the public sector					X	

Are there other actions that should be considered?
500 character(s) maximum.

Revising the Coordinated Plan on AI (Action 1)

The Commission, taking into account the results of the public consultation on the White Paper, will propose to Member States a revision of the Coordinated Plan to be adopted by end 2020.

Q2: In your opinion, how important is it in each of these areas to align policies and strengthen coordination as described in section 4.A of the White Paper (1-5: 1 is not important at all, 5 is very important)?

	1 – Not important at all	2 – Not important	3 – Neutral	4 – Important	5 – Very important	No opinion
Strengthen excellence in research					X	
Establish world-reference testing facilities for AI				X		
Promote the uptake of AI by business and the public sector					X	
Increase the financing for start-ups innovating in AI				X		
Develop skills for AI and adapt existing training programmes					X	
Build up the European data space			X			

Are there other areas that that should be considered?
500 character(s) maximum.

A united and strengthened research and innovation community striving for excellence
Joining forces at all levels, from basic research to deployment, will be key to overcome fragmentation and create synergies between the existing networks of excellence.

Q3: In your opinion how important are the three actions proposed in sections 4.B, 4.C and 4.E of the White Paper on AI (1-5: 1 is not important at all, 5 is very important)?

	1 – Not important at all	2 – Not important	3 – Neutral	4 – Important	5 – Very important	No opinion
Support the establishment of a lighthouse research centre that is world class and able to attract the best minds				X		
Network of existing AI research excellence centres				X		
Set up a public-private partnership for industrial research					X	

Are there any other actions to strengthen the research and innovation community that should be given a priority?
500 character(s) maximum.

Focusing on Small and Medium Enterprises (SMEs)
The Commission will work with Member States to ensure that at least one digital innovation hub per Member State has a high degree of specialisation on AI.

Q4: In your opinion, how important are each of these tasks of the specialised Digital Innovation Hubs mentioned in section 4.D of the White Paper in relation to SMEs (1-5: 1 is not important at all, 5 is very important)?

	1 – Not important at all	2 – Not important	3 – Neutral	4 – Important	5 – Very important	No opinion
Help to raise SME's awareness about potential benefits of AI					X	
Provide access to testing and reference facilities				X		
Promote knowledge transfer and support the development of AI expertise for SMEs					X	
Support partnerships between SMEs, larger enterprises and academia around AI projects					X	
Provide information about equity financing for AI startups				X		

Are there any other tasks that you consider important for specialised Digital Innovations Hubs?

500 character(s) maximum.

In a post-Covid context, helping to raise awareness among SMEs of the potential benefits of AI can be particularly relevant, especially in the field of automation.

Section 2. An ecosystem of trust

Chapter 5 of the White Paper sets out options for a regulatory framework for AI.

Q5: In your opinion, how important are the following concerns about AI (1-5: 1 is not important at all, 5 is very important)?

	1 – Not important at all	2 – Not important	3 – Neutral	4 – Important	5 – Very important	No opinion
AI may endanger safety			X			
AI may breach fundamental rights (such as human dignity, privacy, data protection, freedom of expression, workers' rights etc.)			X			

The use of AI may lead to discriminatory outcomes			X			
AI may take actions for which the rationale cannot be explained			X			
AI may make it more difficult for persons having suffered harm to obtain compensation			X			
AI is not always accurate			X			

Do you have any other concerns about AI that are not mentioned above? Please specify:
500 character(s) maximum.

Q6: 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?

X	Current legislation is fully sufficient
	Current legislation may have some gaps
	There is a need for a new legislation
	Other
	No opinion

Other, please specify:
500 character(s) maximum.

Q7: 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)?

	Yes
	No
X	Other
	No opinion

Other, please specify:

500 character(s) maximum.

We consider that new rules are not necessary for AI systems, but if there were to be new ones, they should be restricted to high-risk applications. Worth taking into account here is the differentiation between applications and sectors. We do not support the specific regulation of AI, but if it is regulated, then it should be done by applications, not by sectors, which are too broad categories for regulation to be efficient.

Q8: Do you agree with the approach to determine "high-risk" AI applications proposed in Section 5.B of the White Paper?

	Yes
	No
X	Other
	No opinion

Other, please specify:

500 character(s) maximum.

ESBG does not agree with the first of both criteria proposed by the EC in the White Paper to determine "high risk" AI applications: we do not support establishing a list of "high risk" sectors, as regulation would lose any sort of flexibility that AI requires. As regards the second criterion, the current regulatory framework (GDPR and EBA outsourcing guidelines for the financial sector) already allows for a good coverage of AI risks, so we do not think it is necessary to introduce new compulsory requirements on the basis of the "high risk" of the specific use of an AI system. Therefore, we support a risk-based approach towards AI, and hence the call of the European Parliament (resolution on AI of February 2020) to develop a risk-assessment scheme, but we consider that: • it should not come from new compulsory requirements, but from providing guidelines on the existing regulatory framework; • it is important any future guidance is very precise about the criteria to determine what it considers high-risk and low-risk; • the European Commission should remain vigilant to ensure that European players are not more constrained than other international players; • a risk-based approach must not lead to a proportionality of the approach to AI (all players in a sector must be subject to the same rules: principle of "same risk, same rules");

Q9: If you wish, please indicate the AI application or use that is most concerning ("high-risk") from your perspective:

500 character(s) maximum.

Q10: 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) (1-6: 1 is not important at all, 6 is very important)?

	1 – Not important at all	2 – Not important	3 – Neutral	4 – Important	5 – Very important	No opinion
The quality of training data sets			X			
The keeping of records and data			X			
Information on the purpose and the nature of AI systems			X			
Robustness and accuracy of AI systems			X			
Human oversight			X			
Clear liability and safety rules			X			

Q11: In addition to the existing EU legislation, in particular the data protection framework, including the General Data Protection Regulation and the Law Enforcement Directive, or, where relevant, the new possibly mandatory requirements foreseen above (see question above), do you think that the use of remote biometric identification systems (e.g. face recognition) and other technologies which may be used in public spaces need to be subject to further EU-level guidelines or regulation:

	No further guidelines or regulations are needed
	Biometric identification systems should be allowed in publicly accessible spaces only in certain cases or if certain conditions are fulfilled (please specify)
	Other special requirements in addition to those mentioned in the question above should be imposed (please specify)
	Use of Biometric identification systems in publicly accessible spaces, by way of exception to the current general prohibition, should not take place until a specific guideline or legislation at EU level is in place
	Biometric identification systems should never be allowed in publicly accessible spaces
X	No opinion

Please specify your answer:

Q12: 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?

	Very much
X	Much
	Rather not
	Not at all
	No opinion

Do you have any further suggestion on a voluntary labelling system?
500 character(s) maximum.

We could support the principle of a labelling scheme, keeping in mind that it could be difficult to set up and is likely to complicate the development and implementation of AI systems. To establish it, the Commission envisages the creation of a new legal instrument. We believe that this framework should provide for lighter requirements than the regulatory framework for high-risk applications, as the labelling scheme will only cover AI systems that are not considered as high-risk. In a nutshell, the labelling scheme should be easy to implement and to update as it is an evolving technology and it should not be too costly. ESBG encourages the involvement and dialogue with the private sectors regarding the design and implementation of such a scheme.

Q13: What is the best way to ensure that AI is trustworthy, secure and in respect of European values and rules?

	Compliance of high-risk applications with the identified requirements should be self-assessed ex-ante (prior to putting the system on the market)
	Compliance of high-risk applications should be assessed ex-ante by means of an external conformity assessment procedure
	Ex-post market surveillance after the AI-enabled high-risk product or service has been put on the market and, where needed, enforcement by relevant competent authorities
X	A combination of ex-ante compliance and ex-post enforcement mechanisms
	Other enforcement system
	No opinion

Please specify any other enforcement system:
500 character(s) maximum.

Q14: Do you have any further suggestion on the assessment of compliance?
500 character(s) maximum.

Section 3. Safety and liability implications of AI, IoT and robotics

The overall objective of the safety and liability legal frameworks is to ensure that all products and services, including those integrating emerging digital technologies, operate safely, reliably and consistently and that damage having occurred is remedied efficiently.

Q15: The current product safety legislation already supports an extended concept of safety protecting against all kind of risks arising from the product according to its use. However, which particular risks stemming from the use of artificial intelligence do you think should be further spelled out to provide more legal certainty?

	Cyber risks
	Personal security risks
	Risks related to the loss of connectivity
	Mental health risks

In your opinion, are there any further risks to be expanded on to provide more legal certainty?
500 character(s) maximum.

Q16: Do you think that the safety legislative framework should consider new risk assessment procedures for products subject to important changes during their lifetime?

	Yes
	No
X	No opinion

Do you have any further considerations regarding risk assessment procedures?
500 character(s) maximum.

Q17: Do you think that the current EU legislative framework for liability (Product Liability Directive) should be amended to better cover the risks engendered by certain AI applications?

	Yes
	No
X	No opinion

Do you have any further considerations regarding the question above?
500 character(s) maximum.

Q18: Do you think that the current national liability rules should be adapted for the operation of AI to better ensure proper compensation for damage and a fair allocation of liability?

	Yes, for all AI applications
	Yes, for specific AI applications
	No
X	No opinion

Please specify the AI applications:

As a European association, ESBG does not take a specific position on national rules.

Do you have any further considerations regarding the question above?
500 character(s) maximum.

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