

Additional comments

1/It is true that the speed of technological developments is such that it is difficult for the regulatory responses to always keep pace with it. It means that existing regulations can sometimes be mis-calibrated and there may be an imbalance between those who manage algorithms and data, and the data subjects.

However, it must be underlined that AI systems do not operate in a lawless framework in the EU. Existing and binding EU texts apply to them and their development, such as the General Data Protection Regulation, the Product Liability Directive and various consumers protection Directives.

BIPAR is of the view that in general, the existing EU financial regulatory framework, as it has been recently revised, is mostly fit to deal with emerging technologies, promote innovation and safeguard financial stability.

For BIPAR, the rules applicable to AI systems should:

- 1) be technology - neutral.
- 2) be activity-based in the sense that same activity and same risks should be required to comply with the same rules.
- 3) allow for a level-playing field. In this respect, potential competition issues arising in relation to BigTech companies should be the object of a further study to ensure fair access to data/technology/infrastructures for all market players.

We believe that the existing EU rules on insurance and financial intermediation meet the above-mentioned criteria. However, some of them may need to be slightly revised so that they can adequately capture the growing digital trend and the provision of information in a paperless electronic and responsive form. These issues should however not be considered in a “pure” AI context.

For example, the Insurance Distribution Directive requires pre-contractual information to be provided to consumers by default on paper. It may only be provided another way — such as on a website or in another digital format — “by way of derogation” (Article 23). A more digital-friendly approach is may be needed not only for digital systems but also for the hybrid systems (where there is human interaction).

In addition, the GDPR has introduced new requirements around accountability, documentation, privacy design and reviews, and it imposes substantial fines for non-compliance. It is essential that data be accurate, up-to-date and processed fairly and lawfully, especially when processed by algorithms (AI).

2/It is important to clarify how obligations are to be distributed among the economic operators involved as many actors are involved in the lifecycle of an AI system. For example, who would be held liable, in the case where insurance intermediaries use the AI system employed by the company they work for? It is necessary to introduce clear definitions of the terms “producer/developer”, “operator/deployer” and “user”. A GDPR-like solution could be that the parties involved have the option to agree on

who is the operator/deployer. Operators and producers should have the right to resource proportionally against each other. Another useful point would be to make a distinction between the “front-end” operator who makes of the AI and the “back-end” operator who can actually influence the algorithm.

In this respect, a consistent approach to the application of any new AI rules will need to be ensured across the EU, particularly where sector specific rules differ between Member States. In the data context, the current COVID-19 pandemic has highlighted some of the existing challenges regarding consistency, whereby Member States have adopted differing approaches to how special category data may be processed, and even take a different view from EDPB guidance on how to address key issues around processing of special category data.