American Express response to the European Commission consultation on the White Paper on Artificial Intelligence

American Express welcomes the opportunity to provide comments to the European Commission consultation on the Artificial Intelligence whitepaper.

Artificial Intelligence (AI) is an essential and increasingly used technology at American Express. AI enables us to provide improved products and services to our customers, protect our customers from financial crime and fraud and strengthen cybersecurity. More specifically, we have been using AI and machine learning to analyse payment transactions in real time to mitigate fraud, use intelligent call routing to provide the best available service to customers and use automated chatbots to answer simple queries online.

American Express understands the necessity to create a new regulatory framework that specifically considers the unique characteristics of AI but urges the European Commission to approach new regulation in a manner that would not create legal uncertainty (between the new and existing legal framework) nor hamper innovation and usage of AI.

We believe there are three areas where the European Commission can add value:

- Facilitating regulatory alignment and harmonisation
- Facilitating the creation of industry specific guidelines in partnership with industry
- Defining what constitutes a high-risk application, and creating guidelines using risk-based approach

1. Facilitating regulatory alignment and harmonisation

To support the development of AI, any new AI regulatory initiative should be principles based, and harmonize the requirements across Member States with only minor derogations, so that companies and consumers have a common set of rules. Moreover, as data and innovation span multiple geographies, the European Commission should support cooperation with other non-EU frameworks, such as the OCED framework.

The whitepaper stresses that this new regulatory regime would apply to all relevant economic operators providing AI-enabled products or services in the EU, irrespective of their country of origin. We believe that extraterritorial enforcement of EU standards without agreement from other countries outside Europe would be difficult to manage. Without an agreement, this will be a challenge to companies operating globally who may want to standardize their operations but may need to apply the most stringent approach to ensure compliance across the board. This in turn may put them at a competitive disadvantage in regions with a less stringent approach. Alternatively, companies may need to apply bespoke solutions for certain jurisdictions. Depending on the nature of these increased operational and compliance costs, companies may decide to forego engaging in markets with stricter laws. As such, we seek clarification on how this situation would be addressed in practice.

Not only should new regulation harmonize with other global frameworks, it should also harmonize with

existing EU regulations. We agree with the European Commission that existing European regulations may leave some gaps brought on by the unique attributes of AI systems. We think that the European Commission should first determine what those gaps are, before establishing a new regulation that may create conflict, inconsistencies or duplication with current regulation.

For instance, the GDPR already regulates processing of personal data – including provisions applicable to AI systems such as automated decision making, using a risk-based approach, data minimisation, data protection by design and by default. The European Commission should examine how those principles ought to be adjusted to support the development of AI while continuing to protect privacy.

2. Facilitating the creation of industry specific guidelines in partnership with industry

The whitepaper promotes the idea of creating testing facilities and developing centres of excellence in all Member States to provide better subject matter expertise to SMEs. We believe that needs could be quite different per industry, as well as the size and complexity of industry participants. As such, the European Commission should encourage the private sector to collaborate to create technical standards which meet those regulatory principles, where needed. The centres of excellence that are specialized per industry should also involve a wide cross section of industry players themselves.

There are multiple benefits to involve the private sector in this dialogue and create industry specific standards. The companies engaging in AI know the nature of the applications, and how-to best deal with operational issues, and should be invested in creating workable standards. Having such standards (which could be revised over time) would also allow for flexibility as innovation continues, compliance by design, and potentially allows fast-tracking certification and deployment.

3. Defining what constitutes a high-risk application and creating guidelines using risk-based approach

We support a risk-based approach to determine the level of oversight including the application of compulsory requirements, with certain sectors being inherently riskier than others, and certain activities within those sectors being the highest risk. However, the approach to determine "high risk" AI applications is unclear, and clarification (including specific factors to be taken into consideration) would be welcome.

Compulsory Requirements

We agree that the introduction of new compulsory requirements (e.g., data and record keeping, robustness and accuracy, human oversight) should be limited to high risk applications (where the possible harm caused by AI systems is particularly high). Not all AI applications generate risks, and it would be a better use of resources to give more attention to AI applications that pose greatest risks to society or individuals. The risk evaluation criteria for AI applications could reflect the ethics guidelines prepared by the high-level expert group on AI.

In addition, the European Commission explains that the requirements fall both on the actor(s) who is (are) "*the best placed to address any potential risks*". This statement leaves room for interpretation and may create issues when contractually assigning responsibilities. We would like to seek clarification on the manner to determine which actor (e.g. developer and/or end-user of high-risk AI application) is responsible for implementing these requirements.

Voluntary labelling system

We believe that a new voluntary labelling system would be useful for AI systems that are not considered high risk. Standardization of what such labels should contain would provide greater ease of use by individuals. Just like the development of a new regulatory initiative, this framework would need to be harmonised in all Member States. With countries like Germany, Denmark, Malta having deployed their own labelling / ethics seal, there is a need to have a harmonized regulatory framework that applies across all the EU to ensure there is no confusion.

More clarification on how this labelling system would work in practice (e.g. how it would be monitored, where the labels would be placed) would be welcome. For example, more clarity should be provided about how to apply labels when different AI applications are used in different ways during a product lifecycle.

Conclusion

The Commission has the unique opportunity to foster an environment for innovation and develop a sound regulatory landscape that contributes to the development of leading-edge AI. With strong partnerships with the private sector, this framework could lead to ethical AI applications that contribute to Europe's digital development.