

Comment to EC Consultation: AI White paper from WKO – Division Bank & Insurance
(not necessarily equal to position of Austrian Economy as a whole)

European Commission - Consultation / White Paper on Artificial Intelligence

The Division Bank and Insurance of the Austrian Federal Economic Chamber appreciates the possibility to comment on the above cited Consultative Document. We would like to note the following comments and remarks.

Section 1 “An ecosystem of Excellence” refers to the **specific actions proposed in the White Paper’s Chapter 4 (pages 5-9) for the building of an ecosystem of excellence** that can support the development and uptake of AI across the EU economy and public administration

The White Paper on AI outlines the need to establish an ecosystem of excellence with, among others, the vision for a close co-operation between Member States, resulting in PPPs and significant investment by both Member States and EU. The same vision has been already communicated within the Coordinated Plan on Artificial Intelligence (2018), the latter including concrete planned measures for 2019 and 2020.

These measures are again listed as “planned” within the underlying White Paper. While we welcome the measures as such, we are not aware of the progress being made so far and up to what extent we, on the one hand, could contribute to gain momentum in this initiative, especially with regard to PPPs, and on the other hand, we are not in the position to estimate the impact of the initiative on a bank.

- Therefore, **we ask to further detail the White Paper on AI, moving from an approach on AI to a detailed plan of all corresponding measures with implementation deadlines.**
- **Further, we ask to reconcile planned measures for AI with those outlined within the Coordinated Plan on Artificial Intelligence (2018).**
- **Based on a detailed plan for AI, with measures and implementation deadlines, we would be glad to contribute to further consultation.**

Section 2 “An ecosystem of trust” refers to a series of **options for a regulatory framework for AI**, set up in the White Paper’s Chapter 5 (pages 9-25)

By establishing a regulatory framework especially for AI (thus being a regulatory framework for a special technology) as announced in this section, the use of AI is intended to be intensified as the uptake of the technology is being deemed dependable on building trust among consumers.

In fact, the GDPR already covers a big part of the possible issues and impact on natural persons that could derive from the use of AI, with the substantial advantage of being not technology-based and thus being valid for all technologies that have impact on the rights and freedoms of natural persons. The GDPR moreover, already includes an extensive set of instruments to defend these rights and freedoms, thus would an additional regulatory framework probably not have the effect to produce an AI technology uptake, but quite the opposite one. Fragmented regulation, overburdening the

economy and individuals, will likely not lead to strengthening the EU position in the global perspective. Instead, given the solution-oriented approach of other players, especially the U.S. tech giants, such a framework in the EU, including ex ante regulation of AI would inevitably create an even more substantial competitive disadvantage and not help European providers to catch up with US, China and Russia.

Further, the outlined risk-based approach in a possible future regulation needs an update. As outlined above, the GDPR and related national law enhancements do provide for an extensive application of risk-based approaches and corresponding remedial action for any personal data processing activity that may have an impact on natural persons.

Creating additional lists with industries and data processing activities that are deemed risky is not deemed supportive for neither the industries at stake nor for the natural persons involved.

Moreover, over-regulation in this context seems to put at stake whole industries (e.g. financial sector) who could e.g. use AI to perform risk calculations with regard to loans that they are obliged to do by extensive risk-related regulation where the GDPR and thus also the financial sector already covers possible impact on rights and freedoms at stake. More generally, this perceived proposed over-regulation poses the danger in a field that needs the fostering of innovation – not the bureaucratization of it. As the rapid development of AI application stems from market mechanisms and competition, regulatory rigor does not seem appropriate, unless markets fail to provide the necessary innovation.

- Therefore, **we ask to examine up to which extent already existing regulation (EU GDPR, etc.) would not cover AI as well, also with regard to risk-based approaches, state gaps (if any) and only adopt new regulation, if the existing one would lead to legal deficiencies with regard to AI.**

In Section 2, on the first question, “How significant do you think the following concerns are in relation to AI?”, we believe that the use of AI can lead to discriminatory results if the ethical framework in the creation of the AI is not given due consideration. When asked whether AI can make it harder for injured parties to receive damages, we would answer from today's perspective with "substantial", since the product liability directive at AI (and software products in general) does not yet apply. The Commission should clarify this, otherwise AI producers, just like consumers' lives are complicated. Especially for AI producers it is difficult to plan for any damage and to sign insurance contracts if the legal framework does not provide clarity.

In the subsequent question we would therefore ask not to call for new legislation, but for the Commission to clarify the current legal framework and how AI fits in.

The approach to identifying high-risk AI in section 5.B of the White Paper seems unrealistic as it does not differentiate between different forms of AI (namely Virtual Intelligence and Artificial Intelligence) and application areas, but assigns AI in certain economic sectors. Many harmless, simple machine-learning applications could end up over-regulated and other, highly risky and complex systems could be excluded. That being said, there is a material probability that most AI systems will operate cross-sectoral.

When asked “How important do you think the following binding requirements are, which may be a future legal framework for AI (Section 5.D of the White Paper)?” the point “human supervision” seems important. AI should not replace human expertise, but complement it. We also see the point "Clear liability and safety regulations" as important.

Digital technologies, such as AI, are always used cross-border and accordingly, there should be a common legal framework and a level playing field within the EU.

Yours sincerely,

Dr. Franz Rudorfer
Managing Director
Division Bank and Insurance