

Referring to: *“OECD FRAMEWORK FOR THE CLASSIFICATION OF AI SYSTEMS – PUBLIC CONSULTATION ON PRELIMINARY FINDINGS”.*

COMMENTS OF THE FRENCH INSURANCE FEDERATION (FFA)

Innovation represents an opportunity for insurers and policyholders to strengthen their relationship through faster, more efficient, and better tailored services. The FFA welcomes and follows initiatives to encourage the ethical and responsible development of artificial intelligence (AI) in the European Union and supports the creation of a trust-based ecosystem to stimulate the adoption of AI in the single market.

Regulating the use of AI according to a specific classification is a good way for insurers to ensure a high level of protection without stifling innovation. The classification chosen must therefore be relevant.

The FFA welcomes the OECD's work on the general classification of AI systems and the risk classification published by the OECD AI Observatory Expert Group.

As announced in the Artificial Intelligence Act Proposal, the regulation of the use of AI in the EU will be based on a risk-based approach. To apply this approach, which is welcomed by many players including the insurance industry, the notion of risk must be clearly defined to identify high-risk AI systems. AI can produce different type of effects and having a risk assessment scale for autonomous system should provide a means of grouping the different type of risks. A “high-risk” IA application should be considered in the light of significant risks that may arise “in particular from the viewpoint of protection of safety consumer rights and fundamental rights” as defined by the European Commission in its White Paper on Artificial Intelligence - A European approach to excellence and trust (February 2020).

The OECD framework for the classification of AI systems consisting of 4 dimensions and 20 criteria is an interesting solution to inform decision makers on the classification of high-risk AI.

The FFA would like to take the opportunity to share its views on one of the proposed criteria for the context of AI systems.

As mentioned earlier, AI applications cover a wide range of use cases and in forms from the simplest to the most complex. The sectoral criterion does not seem to be relevant. Insurance is an example, as insurance comprises a wide range of activities and for the exercise of these different activities AI can be used at different levels. The main criterion should be the use case before the sector of activity. Thus, this criterion could be an optional or modified criterion.

Attachment: *FFA Position Paper on AI – AN ARTIFICIAL INTELLIGENCE APPROACH FOR INNOVATION IN PREVENTION AND PROTECTION*

AN ARTIFICIAL INTELLIGENCE APPROACH FOR INNOVATION IN PREVENTION AND PROTECTION



The French Insurance Federation (FFA) is fully committed to support the development of artificial intelligence (AI) for the benefit of policyholders, companies and citizens, as well as to ensure a high-level of protection in its use. In this respect, it should be stressed that:

FFA supports the implementation of a framework for an ethical use of AI: human-centric, unbiased, transparent and explainable.

Insurance should not be categorised as a high-risk sector, since classification of a high-risk AI should only be determined based on the case-by-case impact assessment of each application. The classification of a whole activity as diverse as insurance would thus be inappropriate.

Extensive national and European regulatory frameworks governing the use of data and the protection of consumers already exist.

With regard to the insurance sector as provider of insurance covers, the current European liability regime is fit-for-purpose in providing sufficient protection for AI end-users and third parties. Some adaptations, however, may facilitate this framework to be future-proofed.



In an increasingly connected society, technological innovations are continuously transforming policyholders' habits.

77% of policyholders support the development of online and digital services in insurance

Big data processing, which has become more efficient with the emergence of new technologies, has given rise to new possibilities.

71% of policyholders are in favour of the development of connected solutions for personalised insurance

92% of customers ask for products that they can adapt according to their needs¹

Innovation represents an opportunity for insurers and policyholders to strengthen their relationship thanks to faster, more efficient, and better suited personalised services.

The FFA welcomes initiatives to encourage the ethical and responsible development of artificial intelligence (AI) in the European union and supports the creation of an ecosystem built on trust to stimulate the uptake of AI in the Single Market.

The use of AI offers key economic, societal and competitive advantages to European businesses and citizens. **An appropriate ethical and legal framework based on European values**, and which is in line with the EU Charter of Fundamental Rights, will allow the roll out of a trustworthy AI in Europe. This framework must be created at a European level to **avoid fragmentation of the single market, ensure fair competition and protect European citizens and businesses** from unreliable AI.



¹ OpinionWay Barometer for l'Argus de l'Assurance "10 ans, 10 enseignements", 2019

Seizing AI opportunity for the insurance sector

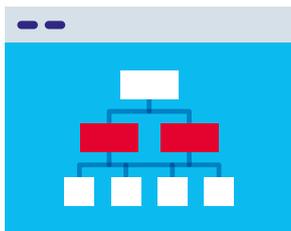
AI: An opportunity for insurers and policyholders

Better protection is achieved through better assessment of risk. The use of algorithms is essential in insurance. Algorithms lay at the heart of the actuarial science supporting the calculation of premiums, the determination of claims or the computation of reserves and **AI can significantly improve operational efficiency and customer experience.**

The digital transformation leads to a faster processing of files and an improved claims management as well as cost optimisation. The processing by AI of policyholders' data, while **respecting their privacy and other fundamental rights**, enables insurers to **improve the assessment of risks specific to each individual and to develop appropriate prevention measures.**

When using AI, in accordance with EU values and rules, insurers can go further in product personalisation to the benefit of policyholders. An appropriate personalisation allows them to:

- **Anticipate claims by recommending preventive measures at the right time**
- **Streamline exchanges and procedures between insurers and policyholders**
- **Simplify and accelerate the compensation procedures**



This application of new technologies is benefiting society and will not question the very foundation of insurance: risks pooling. This key principle enables insurers to diversify risks and therefore to make **risk coverage affordable for the society.**

What is risk pooling?

Risk pooling is the core principle of insurance. Since risk is by nature uncertain, spreading it among a large group of people makes it possible to spread the burden of its consequence when it occurs. Risk pooling allows to group policyholders based on their risk profile which offset each other over time and space. By doing so, insurers are able to guarantee the protection of the ones experiencing losses.

Thanks to the use of algorithms, policyholders can benefit from a better prevention reducing the risk. However, algorithms cannot predict risk occurrence so that uncertainty and, thus, risk pooling will always be at the heart of insurance.

This principle does not result in an obligation for insurers to cover all risks. Insurers can beforehand and in a comprehensive manner exclude from their policies risks which are not spreadable to avoid endangering the financial status of policyholders from other pools.

Thus, the **use of sound AI allows insurers to play their role at best, to the benefit of policyholders who are better served by tailor-made products.**

An ethical regulatory framework that fosters innovation

We believe it is essential to tackle any bias, discrimination, or any form of exclusion that would be the consequence of an inappropriate use of AI and algorithms.

Since AI operates with data, biases may have discriminatory consequences. **Training data sets quality and human oversight are critical to identify and fix possible failures in algorithms.** The development of AI can only be envisaged if **ethical principles are shared and respected by all.** The French insurance industry is committed to adopting an ethical approach in the governance processes of AI algorithms to ensure that fundamental rights are adequately adhered to. **For French insurers, the respect of European values is a governing principle** which guides every action of the sector.

The human being must remain in control of AI assisted decision-making. It is necessary to ensure that AI processes and assisting operations are explainable and properly structured, to ensure a regular monitoring of their reliability with a hand over to the human when the limits of the machine are reached.



Explainability of AI

AI explainability is a legitimate concern, the complexity of algorithm is not. Whether an algorithm is simple or complex has no direct impact on the outcome for end-users and third parties. Tackling AI explainability from the angle of complexity would only stifle innovation.

The expectations around explainability of AI technology should be proportionate to the use cases and the implications for end-users.

An AI model should be explainable in a comprehensive way for any end-user and in a way that protects intellectual property, proprietary technology and trade secret.

The French insurance industry is constantly monitoring the development of AI solutions within companies and the underlying risks as well as solutions to address them. In this context, **FFA welcomes the High-Level Expert Group's trustworthy AI assessment list².** Those kind of assessment tools should be tailored to specific use cases in a proportionate way. The insurance sector is best placed to understand the deployment of AI in accordance with the realities of its daily activities and the interests of policyholders. Therefore, **a soft-law approach** to facilitate and to spur industry-led initiatives would be relevant in order to encourage the coordination on a set of AI principles while enhancing the enforcement of appropriate existing rules.

² *Ethics Guidelines for Trustworthy Artificial Intelligence (AI)*, 8 April 2019.

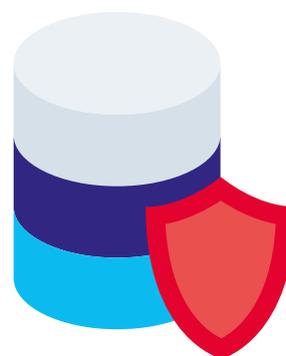
Another way to address the risks associated with the use of AI could be to establish a European labelling scheme. For French insurers, such a tool should be clear, simple, inexpensive and supported by a European reference system. This would prevent a fragmentation of labelling and, more generally, of the single market. As an example, the French National Institute of Intellectual Property (INPI) has launched a labelling and recognition mechanism accessible to all stakeholders, easy to process and at extremely limited costs.

As outlined in the High-Level Expert Group on AI's report, the different aspects related to innovation are already highly regulated in Europe (e.g. GDPR, rules on non-discrimination). So is insurance with additional sectoral legislation (Solvency II Directive, Insurance Distribution Directive, etc). An excessively prescriptive approach would have adverse consequences on progress in Europe because of inability to anticipate tomorrow's innovations. **The EU must strive to be the leading global innovator; which requires a future-proofed regulatory framework.**

Such a framework should follow a technology-neutral approach to stimulate European investment and innovation while maintaining an adequate protection for users' rights. Hence, EU policies will always remain relevant in a fast-evolving environment.

On the one hand, this approach would promote the development of innovators enhancing competition. On the other hand, a sound competition fosters innovation. Therefore, the EU must ensure a **level playing field between all actors**, both inside and outside Europe, following the principle of **"same activity, same risks, same rules"**³. The EU must also strengthen its own capabilities and its **technological sovereignty** by making it possible for specialised European service providers to emerge at international level.

To guarantee a level playing field and an adequate protection for policyholders at global level, standards, such as safety certificates or contractual clauses should also be imposed on international trade relations. This would enable European companies to ensure that their obligations are met when dealing with non-EU actors and allow for a clearer and more efficient supervision. The clarification of the role of existing European and national bodies is essential to achieve this supervisory objective. In that regard, the creation of European authority for AI would be unnecessary as it could trigger **overlapping of competences between the EU and national levels** as well as legal uncertainty.



³ European Commission, Communication on a Digital Finance Strategy, September 2020.

Ensuring the adequate coverage and protection of citizens

A harmonised and clear definition of risk induced by AI

As a rule, each change to the existing regulatory framework should be **proportionate and sufficiently flexible** to avoid being excessively prescriptive and burdensome for all AI users. Such a framework should follow a **risk-based approach** based on the applications' potential to cause harm.

FFA believes that **further debate with all stakeholders is necessary to quickly and thoroughly elaborate a clear and realistic definition of high-risk AI**⁴. AI can produce different type of effects and having a risk assessment scale for autonomous system should provide a means of grouping the different type of risks.

Once "high-risk" is clearly defined, **an AI-specific regime could be explored avoiding the need for a mandatory insurance scheme**. AI applications cover a wide range of use cases, and effective insurance protection must be proportionate to the risk stemming from each of them. In order to cover risks that by their nature are very different, complex or evolving rapidly, **insurers need flexibility to tailor their underwriting policies to specific risks**. In this context, insurance as such should not be categorised as a high-risk sector.

FFA fully acknowledges the necessity to protect the safety and fundamental rights of users and third parties. In that regard, and as previously mentioned, a human-centric, controlled and non-fully autonomous AI technology is needed. **Legal certainty is essential for businesses to develop innovative products and services that protect users and respect their rights**.

⁴ A "high-risk" IA application should be considered in the light of significant risks that may arise "in particular from the viewpoint of protection of safety consumer rights and fundamental rights" as defined by the European Commission in its *White Paper on Artificial Intelligence - A European approach to excellence and trust* (February 2020).

Promoting a Europe that protects

FFA welcomes the Commission's continued efforts in assessing the suitability of the Product Liability Directive (PLD) with regard to new and emerging technologies. Nevertheless, it is important to note that **existing liability regimes are adequate to cover risks arising from new digital technologies**. This Directive has allowed for a balanced distribution of liability among the actors in the chain of responsibility.

Additional guidance on the Product Liability Directive?

PLD may be strengthened by additional guidance on the interpretation of certain key concepts in the context of emerging technologies:

- **The notion of 'product' could include the concept of software**
- **The definition of 'producer' could be clarified** so as to improve the structure of the PLD with regard to new concept (*for instance, the 'operator'*)
- **As AI constantly evolves, the notion of "putting a product into circulation" as concept in the liability scheme could be adapted to better reflect the reality of this technology** and the products equipped with it.

However, it is **important not to jeopardize the balance that the Directive has achieved** with regard to the chain of responsibility provided for by national and European laws.

Firstly, **reversing the burden of proof where a strict liability regime exist would create automatic liability** for companies. It would **hinder innovation and insurability of emerging technologies**. Given the recognition of serious, specific and consistent presumptions by the Court of Justice of the European Union, **reversing the burden of proof is unnecessary. Traceability of data should be set by-**

design in any AI application. Producers and other accountable actors that are to be defined should provide sufficient clarity to any AI application, improving user's accessibility.

Secondly, **the producer would not be able to transfer the risk to its insurer if defence mechanisms (article 7 PLD) are removed.** For example, the risk of development mentioned in article 7(e) is impossible to predict for the producer, and therefore not insurable. If such mechanism was to be removed, the producer would have to self-insure at a cost which would stifle innovation.

Should there be a need in the future to create a new framework for AI, **it shall be risk-based.** However, artificial intelligence is a set of technologies still at an early stage, legislating on liability for such highly advanced systems should therefore be deferred until their specific risk can be better understood in the context of their use in different lines of business and the appropriate needs of such sectors.

In addition, for vehicles and especially for autonomous vehicles which could be subject to a high-risk categorisation, the existing legislation is fit for purpose and effectively enables victims to be compensated. Road accident victims in Europe are highly protected under the Motor Insurance Directive which already provides a framework regardless of the type of vehicle, autonomous or not.

French insurers are committed to support emerging technologies in their development.

To do so, legal certainty is key. Two important dimensions can be drawn:

- **Clear definitions** that must be accessible to all are necessary so that everyone can understand their rights.
- Legal certainty requires **avoiding overlapping legislations.** The insurance sector needs a clear framework so as not to risk having cumulative requirements for the insurer.

The role of the product liability insurance consists in preventing risks, increasing companies' awareness of their liabilities and compensating victims. Carrying out this mission, especially in the context of emerging technologies, requires **a free and voluntary insurance market**, taking into account the current lack of data. **Technologies such as AI are still at an early stage of their development**, and insurers must be able to tailor their insurance policies depending on a risk analysis for each product.



In conclusion, FFA believes that AI solutions bring opportunities. French insurers are dedicated to develop ethical AI systems that let human being in control of every automated decision-making processes and protect the fundamental rights promoted by the EU. This development can take place within the existing European and national regulatory framework which already provide for the safety and protection of all citizens. The current liability regimes allow insurance companies to deliver on their mission: prevention, awareness and compensation.





Do's and Don'ts

Do:

- 1 Promote an AI in line with fundamental rights and data privacy
- 2 Promote a technology-neutral regulation that can evolve along with innovation
- 3 Promote a risk-based framework to tackle risks stemming from each use case in a proportionate manner
- 4 Promote a rulebook based on the “same activity, same risks, same rules” principle to foster competition and ensure European technological sovereignty
- 5 Develop a clear, simple and inexpensive European labelling tool

Don't:

- 1 Stifle innovation by overregulating in an area already well covered by GDPR, Solvency II, liability regimes, and many other regulations at European and national levels
- 2 Address explainability through the angle of complexity and in a way that would jeopardise intellectual property and innovation
- 3 Classify the insurance activity as a high-risk sector for the use of AI
- 4 Create a rigid mandatory insurance scheme for AI users
- 5 Unravel the balance achieved by the PLD and which proved to work well

About the FFA

The French Insurance Federation (FFA) represents 247 insurance and reinsurance companies operating in France, accounting for over 99% of the French insurance market. We represent the interests of insurers to national, European and international public authorities; to institutions and to administrative or local authorities. We produce and make available statistical data essential to the industry and provide information for the general public and the media. The French Insurance Federation also contributes in raising the awareness and attractiveness of the industry by promoting insurance and risk management culture. FFA is a member of Insurance Europe and GFIA.

In an ever-changing environment, faced with the emergence of new political, economic, social, technological and environmental risks, the French insurance industry constantly innovates to be more competitive, support the economy and extend the boundaries of insurability.



CONTACTS



Jérôme BARMES

Director, Digital and Innovation

j.balmes@ffa-assurance.fr

Phone: +33 1 42 47 93 30



Stéphane de MAUPEOU

Head of European Office

s.demaupeou@ffa-assurance.fr

Phone: +32 4 924 611 22



26, boulevard Haussmann
75311 Paris Cedex 09
Rue du Champ de Mars 23
1050 Ixelles

ffa-assurance.fr

 @FFA_assurance