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Final

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Key messages regarding the consultation on the White Paper on Artificial Intelligence

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Q1 Importance of the six actions proposed in section 4 of the white paper

We agree on the importance of each of the 6 actions. In principle, Europe do not lack AI expertise and world-class research, but it is important to retain talent in Europe through remuneration and attractive projects. Concerning skills, it is important to capitalize on the excellent educations that exist in Europe and, for the financial sector, to attract staff with technical and business expertise. Additionally, the public sector should be encouraged to adopt AI to improve the efficiency of the administration but with respect for individual rights.

- **Research and innovation community:** It is indeed necessary to strengthen the capabilities of the European research and innovation community in order to retain talent in Europe through remuneration and attractive projects. Concerning skills, it is important to capitalize on the good education and research that exist in Europe; however, talents are paid much better in USA and China.
- **SMEs**: It's important to target SMEs because they are at the origin of an important part of innovation.
- **Private sector**: The partnership with the private sector is important in order to avoid deployed solutions conflicting with the business stakes. The adoption of AI in the European industry is necessary to enable Europe to preserve its technological sovereignty while releasing the full potential of this strategic technology. 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 in the recruitment of future talent and young graduates or in support of open-source work).
- **Public sector:** Yes, the public sector should be encouraged to adopt AI to improve the efficiency of the administration but with respect for individual rights.

Q2 A revision of the coordinated plan in the domain of AI (action 1)

Impacts of covid-19: The revision of the coordinated plan will have to take into account the impacts of the economic crisis resulting from the current health crisis. Even if the coronavirus emergency has underscored the importance of innovations in digital financial products services and of the digital transformation in companies, which will undoubtedly help to mobilize investments in the future, the increase of Member States' debt (general derogation clause of the Stability and Growth Pact) will inevitably have an impact on Europe's investment capacity. After crisis EU will have to review its investment plans and a difference will have to be made between ambition and capacity ... 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 not only from the lack of investment but also from the cost of setting up a more stringent European framework (regulatory framework on high-risk applications);

- **Establish testing centres:** We supports the creation of world reference testing centres in Europe 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 European level.
- **Increasing funding for Start-ups:** There is a need to help startups have critical funds available so that they can manage risk.
- **Skills**: We consider very important to support the development of skills benefiting European industry and to avoid the braindrain of European talent towards private companies in other jurisdictions. 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 students to acquire professional skills and experience and European companies to recruit young graduates; In addition, AI-relevant basic education in colleges and universities should be promoted. However, the strengthening of AI-specific competencies must not be at the expense of training in basic disciplines (MINT). In practice, it often

turns out that there is a much higher demand and a supply deficit for specialists with a sound mathematical/statistical education than for highly specialised AI experts.

- **Building a European Data Space**: We supports this objective in order to reduce the regulatory fragmentation of Member States. Public authorities should assist in the coordination of private actors based on freedom of contract and voluntarily data sharing. Adopting a European dimension will also increase the volume of accessible and processable data but this space must remain human-centric and data security must be guaranteed. For more detailed comments we refer to the EACB submission on the consultation regarding European data strategy.

Q3 A united and strengthened research and innovation community striving for excellence

Generally, the proposed actions would benefit from a better distinction between research and innovation. Cooperation on research on a European level makes sense. For most companies and less developed regions, help on innovation with existing AI techniques is more helpful than research on even better techniques. While both are important, research needs more European coordination on core AI techniques, innovation needs local help in for instance more multi-disciplinary teams.

- **Support for the set-up of a public-private partnership for industrial research**: Linking the public and private sectors is very important 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.
- **Additionally:** Funding of EU data privacy technology at world-class level (data synthetization, anonymization, pseudonymization) and according certifications to offset the complications and lack of speed (decisions, interpretations across national legislations and within companies) introduced with GDPR.

Q4 Focusing on Small and Medium Enterprises (SMEs)

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. Generally, an open market economy, also SMEs should be aware what the need to be and stay competitive. And, even though not easy, some already do by working together with universities. But it would help to if European competence centres could develop solutions in partnership with companies and also offer their development competence to companies as a service. Having said that Big AI is developed by Big Tech

Section 2 - An ecosystem of trust

Q5 AI risks

As recalled in the White Paper, AI can relate to a wide variety of possible risks. In our perception, these risks are more often directly related to the service as such than to AI itself. Overall, we would advocate an open multidisciplinary discussion different topics.

- **General observations:** Especially in bank, it is an established practice that models are monitored over time (during backtesting exercises), which minimizes the risk of "abnormal behaviour". This procedures together with Operational Risk Management and ITC Risk Management allow banks to implement AI in a well-controlled manner. Additionally, tools are available for “Explainable AI” (XAI), which help (i) to avoid hidden correlations and (ii) to monitor the behaviour of AI systems.
- **Risks for fundamental rights:** There is a risk for fundamental rights especially in the case of automatic decisions is already covered by GDPR and anti-discriminations legislation (see the White Paper for a good summary of applicable law in Europe). Therefore, AI does not add a new quality to this general issue)
- **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 model level, or for an individual decision. Also important to notice that there is a need of clarification as explainability, interpretability can have different meanings and understandings.

Q6 Concerns addressed by the applicable EU legislation

According to our opinion, no additional regulations for AI is needed, as this would cause an overlapping framework of (i) general regulations (e.g. GDPR), (ii) sector-specific regulations (e.g. for Operational Risk Management in financial services or safety regulations in other industries) plus technology-specific regulations. The applicable EU legislation already allows for risks to be addressed with especially GDPR and anti-discrimination regulations (see e.g. White Paper 5.b) in place. Additional regulation would cause silos, but no better management of technological risks.

- **No new regulations 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.
- **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 of 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. As a result, banks have already developed and continue to adapt their risk models when implementing AI applications into their processes and services.

- **Danger of overregulation or "over-interpretation"**: Considering the competitiveness of European companies, it is crucial to be able to use all data-sets that are generated from own business activities / processes. In this context, we see too strict interpretations of the current data privacy legislation and especially a fragmented interpretation by the different national data protection authorities. At present, companies may not be able to fully take advantage of customer-related information and use it to teach AI. Regarding the above, we see that in the context of this legislative process of AI, the Commission should reconsider clarification relating to existing data protection legislation if the Commission intends to achieve its objective of making the EU a viable player of AI. At present, the Commission's ambitious targets and the interpretation of the GDPR are partly in contradiction.

Q7 Limitation of new requirements to high-risk applications

As elaborated in question 6, we do not recommend new rules, as existing regulation is sufficient. For "high-risk" industries rules and regulations exist: from oil-drilling and nuclear power (with general risks for the environment) to pharmaceutical products and part of automotive industry (with risks to individual citizens). For other industries such as financial services, regulations for ITC and/or Operational Risk Management exist, which cover the whole scope of ITC and processes. Additionally, consumer protection regulation exists, which protects consumer rights in principle.

Q8 Approach to determine « high risk » application

As elaborated in our answer to Q7, we do not recommend new rules, as existing regulation is sufficient. For real "high-risk" industries rules and regulations exist: from oil-drilling and nuclear power (with general risks for the environment). For any other industry, we are in favors of a risk-based approach concerning products or services, as no industry by itself is "high-risk" at all. Today, AI is a question of international competition especially with innovative players such as China and the United States. Therefore, we support the Commission's risk-based approach (for products) on the basis of a level playing field and proportionality, but point out that the European Commission should remain vigilant to ensure that European players are not more regulated than other international players.

- **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. We support the Commission's risk-based approach and the call of the European Parliament (resolution on AI of February 2020) to develop a risk assessment scheme but we consider :
    - That the European Commission should remain vigilant to ensure that European players are not more constrained than other international players.
    - It is important for the Commission to be very precise about the criteria it intends to use to determine "high-risk".
    - That this risk-based approach must not lead to a proportionality of the approach (all players in a sector must be subject to the same rules: principle of "same risk same rules").
    - As regards the second criterion, the current regulatory framework (GDPR and EBA outsourcing guidelines for the financial sector) allows a good coverage of AI risks.

  The risk-based approach is also the core business of the banking industry.
- **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.

Q9 Importance of the mandatory requirements of a possible regulatory framework

We believe that the first three issues are already regulated by the GDPR, as far as personal data is concerned. We do not believe there is any need for further. We do consider it important to inform customers, but it is already regulated by the GDPR in relation to personal data. The latter three issue are typically covered by Operational Risk Management as required in financial services and Consumer Protection regulation. While there could be some gaps concerning liability e.g. in the case of self-driving cars, all products in financial services are regulated in a technology agnostic way.

Q10 Framework at EU-level to biometric identification system

This issue calls for political choices and deserves a lucid and in-depth debate. We support the gradual approach proposed by Thierry Breton, who wishes to give himself a few months to study, anticipate and segment the issue properly. For the time being, no further guidelines or regulations are needed from our perspective. As an example, for the complexity, we want to point out that biometrical identification (including face recognition!) is already tested for payment authorisation around the world! Therefore, it depends on the definition of a “public space”: Is a shop / a café on an open plaza or a pizza service at a door a public space?

Q11 Usefulness of a voluntary labelling system

Based on the experience with existing labelling systems - from food with nutrition factors to PRIIPs in financial services, we want to point to the complexity and time consuming process to derive labels for PRODUCTS. For a technology, it would be even harder to agree on what AI means, as there is nor a common definition of AI, neither is AI the core of typical risks. If a product is “high-risk” (e.g. due a high probability of a financial loss), this is independent of the technology used.

- **In case of an implementation of a voluntary label:** If the Commission envisages the creation of a new legal instrument, then 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. Companies should be encouraged to choose to adopt it.

Q12 Best way to ensure that AI is trustworthy, secure and in respect of European values

We believe that the - traditional - combination of ex-ante compliance and ex-post enforcement mechanisms as defined in existing regulations would be sufficient.

Section 3 - Implications de l'intelligence artificielle, de l'internet des objets et de la robotique en matière de sécurité et de responsabilité

Q 14 Amendments to the safety legislative framework to consider new risk assessment procedures for products subject to important changes during their lifetime

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 EC 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 the content of the new security product and services legal framework as planned.

The banking industry is an extremely supervised sector at European and National level, to which is added consumers laws, banking national laws, national liability laws, civils rights, GDPR (et cetera) 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 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 non relevant additional regulations.

Q16 Adaptation of 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

Concerning "national liability rules", the national communities are asked to evaluate the current status and potential concerns (European principle of subsidiarity).

Contact:

The EACB trusts that its comments will be taken into account.

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