# FESE Response to the Commission consultation on Artificial Intelligence

12ᵗʰ June

## 1. Section 1: An ecosystem of excellence

In your opinion, how important are the six actions proposed in section 4 of the White Paper on AI (1-5: 1 is not important at all, 5 is very important)?

|  | 1 - Not important at all | 2 - Not important | 3 - Neutral | 4 - Important | 5 - Very important | No opinion |
|---|---|---|---|---|---|---|
| Working with Member states |  |  |  |  | X |  |
| Focusing the efforts of the research and innovation community |  |  |  |  | X |  |
| Skills |  |  |  |  | X |  |
| Focus on SMEs |  |  |  |  | X |  |
| Partnership with the private sector |  |  |  |  | X |  |
| Promoting the adoption of AI by the public sector |  |  |  |  | X |  |

Are there other actions that should be considered?

FESE believes that the cooperation between authorities and market participants has the potential to bring valuable outcomes. This includes mutual understanding of benefits and risks associated with the technology and lays the ground for a wider ecosystem. These should be promoted and supported.

Furthermore, training in Artificial Intelligence for market members and regulators should be a priority.

In your opinion, how important is it in each of these areas to align policies and strengthen coordination as described in section 4.A of the White Paper (1-5: 1 is not important at all, 5 is very important)?

|  | 1 - Not important at all | 2 - Not important | 3 - Neutral | 4 - Important | 5 - Very important | No opinion |
|---|---|---|---|---|---|---|
| Strengthen excellence in research |  |  |  |  | X |  |
| Establish world-reference testing facilities for AI |  |  |  |  | X |  |
| Promote the uptake of AI by business and the public sector |  |  |  |  | X |  |
| Increase the financing for start-ups innovating in AI |  |  |  |  | X |  |
| Develop skills for AI and adapt existing training programs |  |  |  |  | X |  |
| Build up the European data space |  |  |  |  | X |  |

**Are there other areas that that should be considered?**

The creation of training and professional centres of excellence, along with the European Data Space are two key elements for a meaningful adoption of AI in the financial and stock markets sectors.

**In your opinion how important are the three actions proposed in sections 4.B, 4.C and 4.E of the White Paper on AI (1-5: 1 is not important at all, 5 is very important)?**

|  | 1 - Not important at all | 2 - Not important | 3 - Neutral | 4 - Important | 5 - Very important | No opinion |
|---|---|---|---|---|---|---|
| Support the establishment of a lighthouse research center that is world class and able to attract the best minds |  |  |  |  | X |  |
| Network of existing AI research excellence centers |  |  |  |  | X |  |

| | | | | | X | |
|---|---|---|---|---|---|---|
| Set up a public-private partnership for industrial research | | | | | X | |

Are there any other actions to strengthen the research and innovation community that should be given a priority?

The establishment of benchmark training and research centres in constant communication with regulators of each sector could foster and strengthen innovation.

In your opinion, how important are each of these tasks of the specialised Digital Innovation Hubs mentioned in section 4.D of the White Paper in relation to SMEs (1-5: 1 is not important at all, 5 is very important)?

| | 1 - Not important at all | 2 - Not important | 3 - Neutral | 4 - Important | 5 - Very important | No opinion |
|---|---|---|---|---|---|---|
| Help to raise SME's awareness about potential benefits of AI | | | | X | | |
| Provide access to testing and reference facilities | | | | | X | |
| Promote knowledge transfer and support the development of AI expertise for SMEs | | | | X | | |
| Support partnerships between SMEs, larger enterprises and academia around AI projects | | | | X | | |
| Provide information about equity financing for AI startups | | | | | X | |

Are there any other tasks that you consider important for specialised Digital Innovations Hubs?

Digital Innovation Hubs could benefit from a homogeneous development of AI tools. Acknowledging the existence of biases and addressing them, as well as working with

common data sets for development should be amongst the main tasks of specialised Digital Innovation Centres.

## 2. Section 2: An ecosystem of trust

In your opinion, how important are the following concerns about AI (1-5: 1 is not important at all, 5 is very important)?

| | 1 - Not important at all | 2 - Not important | 3 - Neutral | 4 - Important | 5 - Very important | No opinion |
|---|---|---|---|---|---|---|
| AI may endanger safety | | | | X | | |
| AI may breach fundamental rights (such as human dignity, privacy, data protection, freedom of expression, workers' rights etc.) | | | | | X | |
| The use of AI may lead to discriminatory outcomes | | | | | X | |
| AI may take actions for which the rationale cannot be explained | | | | X | | |
| AI may make it more difficult for persons having suffered harm to obtain compensation | | | | X | | |
| AI is not always accurate | | | | X | | |

Do you have any other concerns about AI that are not mentioned above? Please specify:

Any AI application must have clear rules/objectives (AI assessment) to minimize the risks. Given AI's low capacity for explanation, it is crucial that the original data sets are unbiased. Most activities performed by AI in the financial sector would be regulated by already existing harmonized rules, leading to a minimal risk of violation of fundamental rights. Sandboxes are a possible solution in the technical testing phase. However, where services are offered to retail clear rules need to apply.

Do you think that the concerns expressed above can be addressed by applicable EU legislation? If not, do you think that there should be specific new rules for AI systems?

☐ Current legislation is fully sufficient

☐ Current legislation may have some gaps

☐ There is a need for a new legislation

☒ Other

☐ No opinion

Other, please specify

Current legislation may have some gaps in the application of AI in the financial sector, there are no accessible and unbiased data sets. There are no consistent backtesting, each entity having its own. The development of AI tools in this type of environment make it difficult to guarantee the reliability of products that emerge.

If you think that new rules are necessary for AI system, do you agree that the introduction of new compulsory requirements should be limited to high-risk applications (where the possible harm caused by the AI system is particularly high)?

☐ Yes

☐ No

☒ Other

☐ No opinion

Other, please specify:

Yes, FESE agrees with the proposal. For high-risk AI applications, a combination of ex-ante assessments, based on an auditable external conformity procedure (backtesting with homogeneous requirements), as well as ex-post market surveillance would be necessary. Care should be given as labelling high-risk application could be a barrier to entry (e.g. SMEs).

If you wish, please indicate the AI application or use that is most concerning ("high-risk") from your perspective:

N/A

In your opinion, how important are the following mandatory requirements of a possible future regulatory framework for AI (as section 5.D of the White Paper) (1-5: 1 is not important at all, 5 is very important)?

|  | 1 - Not important at all | 2 - Not important | 3 - Neutral | 4 - Important | 5 - Very important | No opinion |
|---|---|---|---|---|---|---|
| The quality of training data sets |  |  |  |  | X |  |

| | | | | | | |
|---|---|---|---|---|---|---|
| The keeping of records and data | | | | | X | |
| Information on the purpose and the nature of AI systems | | | | X | | |
| Robustness and accuracy of AI systems | | | | | X | |
| Human oversight | | | | X | | |
| Clear liability and safety rules | | | | | X | |

In addition to the existing EU legislation, in particular the data protection framework, including the General Data Protection Regulation and the Law Enforcement Directive, or, where relevant, the new possibly mandatory requirements foreseen above (see question above), do you think that the use of remote biometric identification systems (e.g. face recognition) and other technologies which may be used in public spaces need to be subject to further EU-level guidelines or regulation:

☐No further guidelines or regulations are needed

☐Biometric identification systems should be allowed in publicly accessible spaces only in certain cases or if certain conditions are fulfilled (please specify)

☐Other special requirements in addition to those mentioned in the question above should be imposed (please specify)

☒Use of Biometric identification systems in publicly accessible spaces, by way of exception to the current general prohibition, should not take place until a specific guideline or legislation at EU level is in place.

☐Biometric identification systems should never be allowed in publicly accessible spaces

☐No opinion

Please specify your answer:

N/A

Do you believe that a voluntary labelling system (Section 5.G of the White Paper) would be useful for AI systems that are not considered high-risk in addition to existing legislation?

☐Very much

☒Much

☐Rather not

☐Not at all

☐No opinion

Do you have any further suggestion on a voluntary labelling system?

For non-high-risk AI applications it should be allowed for companies to receive a voluntary certification (similar to 'quality labels'). This labelling system, if any, should follow and implement general guidelines stemming from industry standards and practices. Moreover, FESE does not support "self-certification".

What is the best way to ensure that AI is trustworthy, secure and in respect of European values and rules?

☐Compliance of high-risk applications with the identified requirements should be self-assessed ex-ante (prior to putting the system on the market)

☐Compliance of high-risk applications should be assessed ex-ante by means of an external conformity assessment procedure

☐Ex-post market surveillance after the AI-enabled high-risk product or service has been put on the market and, where needed, enforcement by relevant competent authorities

☒A combination of ex-ante compliance and ex-post enforcement mechanisms

☒Other enforcement system

☐No opinion

Please specify any other enforcement system:

Combination of ex-ante and ex-post mechanisms, with public data sets, clear and homogeneous rules, periodic audits and a voluntary certification system (quality seal).

Clear identification of high-risk applications and the requirements that will be asked of them.

Do you have any further suggestion on the assessment of compliance?

The list of requirements for (high-risk) AI applications should be reviewed and updated timely and frequently (e.g. without the requirement for a Level 1 change of the regulatory framework) to keep up with technological innovation. The review of the criteria should take the form of guidelines published by supervisory authorities and could be updated on a more regular basis.

It is crucial that the necessary capacities are in place to assess the AI.

3. **Section 3 – Safety and liability implications of AI, Internet of Things, and robotic**

The current product safety legislation already supports an extended concept of safety protecting against all kind of risks arising from the product according to its use. However, which particular risks stemming from the use of artificial intelligence do you think should be further spelled out to provide more legal certainty?

☐Cyber risks

☐Personal security risks

☐Risks related to the loss of connectivity

☐Mental health risks

In your opinion, are there any further risks to be expanded on to provide more legal certainty?

Every AI provider needs to put in place sound internal processes (i.e. modelling, training of data, handling of critical/sensitive situations, handbooks, documentation, …). A voluntary certification system for non-high-risk systems and a correct auditing system in the case of high-risk systems would be adequate to guarantee legal certainty. Internal processes should be reviewed every 5 years, if deemed necessary. Adaptation in the sectorial law in which AI has an impact could also be necessary.

Do you think that the safety legislative framework should consider new risk assessment procedures for products subject to important changes during their lifetime?

☒Yes

☐No

☐No opinion

Do you have any further considerations regarding risk assessment procedures?

Need to highlight the differences between AI applications operating in "open" or "closed" systems. In open systems, the AI does not possess the required ability to cover all eventualities, as training data is limited. Therefore, humans should be required as final decision-making actors. This is also true for high-risk applications in closed systems. However, reinforcement learning is designed to work in open systems, leading to an increased number of eventualities covered by AI.

Do you think that the current EU legislative framework for liability (Product Liability Directive) should be amended to better cover the risks engendered by certain AI applications?

☒Yes

☐No

☐No opinion

Do you have any further considerations regarding the question above?

N/A

Do you think that the 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?

☒Yes, for all AI applications

☐Yes, for specific AI applications

☐No

☐No opinion

Please specify the AI applications:

N/A

**Do you have any further considerations regarding the question above?**

A revision of the regulatory framework is necessary, taking into account the impacted sectors, in order to review/regulate, inter alia, the responsibility that would be required for the use of these systems, their imputation (to which multiple agents involved in the design, release, use), during what phases (release of the product on the market and afterwards), any new risks derive from learning which were not foreseen in the marketing moment and they appear a posteriori.