

Insurance Europe response to the consultation on draft guidelines for trustworthy artificial intelligence (AI)

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Referring to:	Stakeholder consultation by the European Commission's High-Level Expert Group on Artificial Intelligence on draft guidelines for trustworthy artificial intelligence (AI)		
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Introduction: Rationale and Foresight of the Guidelines

Insurance Europe acknowledges the importance of developing, designing and deploying a human centric and ethical artificial intelligence (AI) and, therefore, we welcome the efforts by the European Commission's High-Level Expert Group on Artificial Intelligence (AI HLEG) in setting up a draft guidelines for trustworthy AI. Moreover, we welcome the opportunity to react to the draft guidelines. However, we regret the consultation period, which, even if extended by two weeks remain much too-short, and we urge the European Commission and its expert groups to ensure that a reasonable consultation period (for example 8 weeks) is set for the next steps.

Importantly, Insurance Europe would kindly request the AI HLEG to hold a **second consultation** on the final draft guidelines, which is expected to be published in March. This would allow relevant stakeholders to comment on the three use cases related to the insurance industry that the expert group plans to include into the final guidelines (reference in page 27 of the draft guidelines).

While Insurance Europe is fully aligned with the proposed ethical approach grounded on fundamental rights, we would like to put forward the following preliminary comments:

- We appreciate that the HLEG' s recognises that there is currently no legal vacuum in Europe given the existing many regulations that apply to AI and its use (page 2). The insurance industry is a highly regulated and supervised sector at national and European level and, consequently, we believe that a responsible and Trustworthy AI is already ensured in our industry. Moreover, the insurance sector is very experienced in using data and new technologies in a responsible and secure manner. For further details on the insurance regulatory framework, please consult our Q&As paper on the use of big data analytics in insurance (see [link](#)).

Therefore, we recommend that the existing regulatory framework is duly considered when developing the use cases related to insurance premiums.

- Insurance Europe agrees with the HLEG's assessment of the potential benefits of AI for society and human well-being. However, to exploit these benefits, it is crucial that any framework regulating and/or providing guidance for AI design, development and deployment not only aims to prevent potential prejudices to fundamental rights and their safeguards but also provides a future-proof and innovation-friendly framework. Any such framework should not hamper effective competition and companies' efforts to serve their customers fairly.

We also call on the HLEG to integrate the principles of *technology neutrality* and *proportionality* in its future guidelines for Trustworthy AI in order to guarantee the effectiveness of these principles while protecting fundamental rights and promote Europe as a global technological competitor. In other words, the ten requirements in the draft guidelines and which Insurance Europe supports should be proportionately applied, irrespective of the technology used. These principles are also outlined in the Commission's [FinTech action plan](#).

- Overall, the draft guidelines mainly focus on the perspective of individuals/citizens and how they could be affected by AI. While Insurance Europe agrees that this should be the primary focus, it should be noted that many companies in a business to business context (B2B) do not have direct contact with individuals/ citizens. Nevertheless, Trustworthy AI remains extremely important in a B2B context. What changes is the focus on the different requirements. For example, in a B2B environment, accuracy of algorithms, robustness and transparency become more relevant than the ethics related to individuals. Insurance Europe recommends that the expert group acknowledges the B2B context in the draft guidelines as this is currently missing.

The expert group should also consider how the focus of the different requirements should change as regards secondary applications of AI. (e.g. the use of AI to expedite the payment of insurance claims) since these are not currently considered.

- Insurance Europe supports the proposed framework for a Trustworthy AI, as illustrated in figure 1 in page 4. However, we believe that the proposed structure lacks the adequate level of connection between the different layers. In other words, the ethical principles described in Chapter I are not always sufficiently linked to the ten requirements for Trustworthy AI in Chapter II, and finally the connection between these two layers is not linked enough to the final layer concerning the technical and non-technical methods that should enable a Trustworthy AI.

For example, the connection between the principle of justice (be fair) and its link with the requirements for Trustworthy AI is unclear. We presume that this principle is related to the requirement of non-discrimination and the requirement for accountability. However, the explanation that provides the connection between the different layers is not sufficiently exhaustive.

Therefore, Insurance Europe recommends the expert group to revise the connections between the different layers and where needed to provide further clarifications allowing a clearer interpretation.

- The guidelines can be a helpful instrument in centralizing a human-centric approach, when considered together with the existing laws that protect citizens from potential harm caused by the use of technology (e.g. GDPR). Insurance Europe would welcome further information on how the guidelines will be enforced and its principles upheld among businesses operating in Europe. However, Insurance Europe wonders how European Institutions are going to ensure that the guidelines are adhered to and effectively applied not only by EU based companies but especially by non-EU businesses that offer their products and services in Europe. We would very much welcome further information in this regard.

Chapter I: Respecting Fundamental Rights, Principles and Values - Ethical Purpose

Insurance Europe believes that the premise for a responsible use of AI and technology is not only full compliance with fundamental rights as recognised in the European Charter of Fundamental Rights, the European Convention on Human Rights and any Human Rights Convention signed within the framework of the United Nations, but also fundamental rights assimilation across industry corporate governance and within any department involved in the design, development and deployment of AI.

However, in the development of a sound Trustworthy AI, it may be necessary to consider some challenging trade-offs. In this regard, Insurance Europe would like to draw the expert group's attention to an article published by the International Association of Privacy Professionals (IAPP), which explains how algorithms can reduce discrimination through the processing of "proper data" ([link](#)). It is the author's view that making biases transparent by the processing of sensitive data can be key in eliminating biases and thus discrimination of vulnerable groups. The expert group could consider whether discrimination and inequality could be better addressed and avoided, if their mapping were possible through the assessment of "proper data", including the categories of data identified in the GDPR as sensitive data (e.g. race, gender or religion).

However, if this approach were to be considered, it should always be combined with a reasonable analysis of the results. In this regard, sensitive categories of data can sometimes be correlated with other categories of data that may have an impact on the decision. For example, there are some professions that are highly dominated by one gender, while at the same time a person's profession may be an essential risk factor, e.g. in the case of disability insurance, because of its potential impact on the individual's health (e.g. miners). This correlation may seem to show a gender effect, however a reasonable analysis would show as not being unfair discrimination but based on risk analysis, and therefore it should not be automatically eliminated.

Regarding the principle of explicability ("operate transparently") the draft guidelines include the following statement in page 10: "*Individuals and groups may request evidence of the baseline parameters and instructions given as inputs for AI decision making (the discovery or prediction sought by an AI system or the factors involved in the discovery or prediction made) by the organizations and developers of an AI system, the technology implementers, or another party in the supply chain*". Insurance Europe would like to highlight that while providing *meaningful information* is part of the transparency obligations of data controllers (Articles 13 and 14 of the GDPR), and a prerequisite for obtaining valid consent (Article 4(11) of the GDPR) as well as a well-established right of the data subject, this should not adversely affect the rights of other parties, including protection of trade secrets, intellectual property rights or for example, the processes developed by an insurer to detect fraud or the company's *know-how*. Insurance Europe believes that the right balance between citizens' rights and companies' rights should be found when assessing what exactly the provision of "meaningful information" entails.

Regarding the section on "*normative & mass citizen scoring without consent in deviation of Fundamental Rights*" the draft guideline state in page 12 that "*whenever citizen scoring is applied in a limited social domain, a fully transparent procedure should be available to citizens, providing them with information on the process, purpose and methodology of the scoring, and ideally providing them with the possibility to opt-out of the scoring mechanism. This is particularly important in situations where an asymmetry of power exists between the parties. Developers and deployers should therefore ensure such opt-out option in the technology's design, and make the necessary resources available for this purpose.*" From an insurance perspective, it is very relevant that the risk ratings of individuals are not considered a form of scoring as described in the draft guidelines. This is because the basic principle behind the insurance business model is the accurate assessment of risk and risk differentiation, which is later reflected in the price (further details in [Insurance Europe's big data Q&As](#)).

It would be challenging to achieve full transparency as proposed by the draft guidelines in the insurance sector, due to commercial sensitivity and conflicts with Intellectual Property laws. Equally, providing opt-outs could lead to situations of moral hazard where individuals with higher than average risk profiles would opt out of any risk-rating mechanism. Similarly, this principle would limit the use of credit scores for loans and other financial services that have been long used before the development of AI capabilities.

Therefore, Insurance Europe urges the expert group to carefully reconsider the section on "*normative & mass citizen scoring without consent in deviation of Fundamental Rights*" with the view on the possible impacts on established and respected methodologies in use in the financial sector.

Finally, the expert group expresses their fear for potential longer-term concerns, which today are not yet identifiable. Insurance Europe would support the setting up of a monitoring system that could on a yearly basis identify and warn of any possible risks or dangers related to the use of AI. The HLEG could have the lead on this monitoring system.

Chapter II: Realising Trustworthy AI

Insurance Europe welcomes the expert group's selection of the ten requirements for a Trustworthy AI, as we understand these requirements can play a key role in providing guidance for a responsible use of AI. We would like to put forward our thoughts on some of the requirements from an insurance-specific point of view and to share with the expert group a few general comments:

- **Governance of AI Autonomy (human oversight):** The draft guidelines rightfully point out in page 15 that "*the greater degree of autonomy that is given to an AI system, the more extensive testing and stricter governance is required*". Moreover, they provide in footnote 24 the different layers that AI autonomy can present. Insurance Europe supports the footnote, and suggests that it should be part of the main text in the section for requirement 4 "governance of AI autonomy". Moreover, and considering the different levels of AI autonomy, we believe that the expert group should further emphasise a "risk-based approach" throughout the draft guidelines. In this regard, the amount of measures that an organisation should put into place to prevent any potential risks should depend on the level of autonomy of the AI device.

For example, the decision process reevaluating the continued operation of a life-support-machine has significantly different consequences than an advertisement shown on a social media timeline (e.g. add shown in the Facebook application). Consequently, the AI governance processes behind these two examples would necessarily be different.

- **Non-discrimination:** Insurance Europe would like to highlight that the basic principle of insurance is the accurate assessment of risk and would encourage the expert group to distinguish between fair risk assessment and unfair discrimination. Industries, including insurance, should be able to use machine learning methods to perform dynamic pricing provided that they have data governance processes in place to ensure that factors which are legally prohibited (e.g. discriminatory factors) are removed from the decision-making process.
- **Respect for and enhancement of human autonomy:** The draft guidelines state in page 16 that "AI products and services, possibly through "extreme" personalisation approaches, may steer individual choice by potentially manipulative "nudging". At the same time, people are increasingly willing and expected to delegate decisions and actions to machines (e.g. recommender systems, search engines, navigation systems, virtual coaches and personal assistants). Systems that are tasked to help the user, must provide explicit support to the user to promote her/his own preferences, and set the limits for system intervention, ensuring that the overall wellbeing of the user as explicitly defined by the

user her/himself is central to system functionality." Insurance Europe understands the expert group's concerns to preserve human autonomy in an AI environment, however, we believe that this section presents an unnecessarily negative view on nudging.

Insurance Europe notes that the concept of positive nudging is not considered in the draft guidelines (e.g. helping customers reach their personal goals such as exercising more, improving their health etc.). The insurance industry sees a mutual benefit in encouraging people to behave in a way that improves their health: from an individual's perspective, positive nudging helps individuals achieve their human right to health, and from the insurers' perspective, healthier individuals contribute to better risk pools. Moreover, nudging is already widely used in advertising, retail, and many other business areas – both in the online sphere as well as in traditional commerce. Therefore, the expert group's statement seems to unfairly disadvantage AI development. Insurance Europe recommends the expert group to review the paragraphs on page 16 to present a more balanced and realistic approach on nudging.

Finally, Insurance Europe would like to briefly comment on the proposed technical and non-technical methods to achieve a Trustworthy AI:

- **General remarks:** It is our view that non-technical methods should be introduced in first place in the draft guidelines and followed by the technical methods as non-technical methods are more important in achieving a Trustworthy AI. An organisation firstly needs to assimilate the ethical principles, for instance, via a code of conduct, education and awareness campaigns, to allow for the technical methods to be a success. In other words, the non-technical methods shall drive the technical methods.
- **Additional non-technical methods to achieve a Trustworthy AI:** Insurance Europe is of the view that, although effective competition in a market economy does not have an answer to every problem, it can be of great assistance for achieving Trustworthy AI. Even today, the reputation of a company and company ratings by market intermediaries are important drivers of customer decisions. For example, a company that complies with laws, but does not act ethically, will face reputation issues and many customers will most likely choose another provider. Therefore, these tools can act as powerful non-technical methods in achieving a Trustworthy AI. However, the trade-off caused by the use of these tools is the risk of facing the effects of "misinformation". Unjust and untrue publicity could slow down the development of innovative products in Europe, due to fear of being subjected to these sorts of negative and unfair campaigns.

The ideal scenario would be one, where high quality ratings and reliable information on insurers' offers are available and place companies behaving unethically in the public spotlight, while authorities can control the spread of "misinformation" and its negative effects.

- **Technical methods- testing and validating:** Organisations should not only include security tests as described in the draft guidelines but also testing to avoid non-discrimination and bias.

Technical methods-traceability and auditability: Insurance Europe agrees that modelling techniques should allow companies to at least extract the major factors that influence decision-making processes. However, it may be too restrictive and burdensome to suggest that companies should make the causality of decision making comprehensible to a layperson.

Chapter III: Assessing Trustworthy AI

Insurance Europe's thoughts on the case studies are reflected in the section below (general comments).

General Comments

Insurance Europe acknowledges the importance of developing, designing and deploying a human centric and ethical AI and, therefore, we welcome the AI HLEG efforts in setting up a draft guidelines for Trustworthy AI. Moreover, we welcome the opportunity to react to the draft guidelines. However, we regret the consultation period, which, even extended by two weeks remain much too-short, and we urge the European Commission and its expert groups to ensure a reasonable consultation period (for example 8 weeks) is set for the next steps.

Importantly, Insurance Europe would kindly request the AI HLEG to hold a second consultation on the final draft, which is expected to be published in March. This would allow us to provide our views on the three use cases related to the insurance industry (out a total of four cases) that the expert group plans to include into the final guidelines. These use cases are (page 27 in the present draft guidelines): autonomous driving/moving, insurance premiums and healthcare diagnosis and treatment.

Notwithstanding the above, and as requested by the expert group on page 27, we would like to put forward our preliminary thoughts on the assessment of the use case related to insurance premiums. It is crucial that the expert group considers the specific nature of insurance and adequately interprets and adapts the ten requirements for Trustworthy AI to the insurance business model and insurance products. Therefore, the interpretation of *fairness* should closely consider the principle of risk-based pricing, which is fundamental for effective insurance markets, reliable insurance cover for customers, and insurers' financial stability. For further details on how the insurance business model and the insurance principle of risk sharing work, please refer to Insurance Europe's Q&As paper on the use of big data in insurance (see [link](#)).

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of more than €1 200bn, directly employ over 950 000 people and invest over €10 100bn in the economy.