Committed to Europe

Orange contribution to the EC consultation on the Artificial Intelligence White Paper

Executive summary

Orange welcomes the European Commission's White Paper on Artificial Intelligence, which is based on a sound general approach where AI should not be subject to a specific framework and where existing regulations and frameworks should be adapted. Orange supports the proposed risk based approach to address new AI liabilities and endorses the fact that only some high risk AI systems may need specific regulatory intervention.

The following issues are further developed in this paper:

- the definition of AI needs to be narrowed, to avoid legal uncertainty, or unjustified extensions of the scope of regulation;
- new liabilities should be assigned to AI developers as they would be at the root cause of possible issues that would impact clients and users down the AI value chain. AI developers are also in a better position to detect and fix problems than AI distributors;
- new ex-ante conformity assessments should target high-risk applications, and the EC should clarify how conformity assessments should be carried out. The EC should provide legal certainty to stakeholders through a clear definition of sectors and use cases that are deemed high-risk;
- labelling for non-high risk applications should remain voluntary and the suggested approach should not blur the lines with the regulatory approach to high-risk applications;

General remarks

Orange welcomes the publication of the European Commission (EC)'s White Paper on Artificial Intelligence (AI) "A European approach to excellence and trust" (the "White Paper"). The White Paper goes together with the broader EC communications on digital and on the data strategy. As stated in its contribution to the EC's consultation on data, Orange is supportive of the broader vision developed by the Commission on data.

Regarding AI, Orange also supports the approach of the EC based on ensuring both an "ecosystem of excellence" and an "ecosystem of trust" conforming to European ethical and legal rules. In particular, the six proposed actions in the White Paper to build the "Ecosystem of Excellence" are of utmost importance: Europe needs to attract a larger pool of investments, both public and private, into AI technology development and deployment; the training and retention of relevant skills, as well as the collaboration between Member States, and between public and private partners are crucial.

The role of telecom operators is key in the European digital economy as we are the enablers of the increasing digitisation of services and the industrialisation of processes. 5G will enable the rapid growth of IoT connections and devices creating opportunities for data analytics and AI creating new opportunity that Europe should seize to be a real player in the data economy, and not only a consumer of data-lead innovative services. This is essential to ensure our future global competitiveness.

Orange & Artificial Intelligence

Orange, as a provider of world-class connectivity in mobile and fixed networks through the fast deployment of 4G/5G and fibre, has been investing in AI for years with a focus on making Orange networks smarter, more secure for instance to improve cybersecurity, more energy efficient and reliable thanks to the prediction of networks' problems before customers even realize. Our strategic plan "Engage 2025" places data and AI at the heart of Orange innovation.

At Orange, in line with our Purpose to be a trusted partner, we develop our AI strategy following a "Human Inside" approach, ensuring innovation benefits individuals and society, and that people are at the centre of all our activities. We have encouraged and contributed to the work launched by the European Commission with the High-Level Expert Group on AI that delivered "Ethics Guidelines for Trustworthy Artificial Intelligence". In April 2020, Orange and Arborus also revealed the first International Charter for inclusive AI whose aim is to ensure AI is designed, deployed and operated in a responsible and inclusive way. This International Charter is based on seven commitments and will create a framework of trust concerning the design and use of AI systems.

Detailed comments on the AI White Paper

The AI definition should be narrowed

Both the AI definitions proposed in the White Paper and by the AI High Level Expert Group are too broad. If adopted, they would cause legal uncertainty and trigger unjustified obligations for some developments. The AI definition should focus on data-driven algorithms based on machine learning and exclude all other software. The AI definition should exclude software systems based on determined algorithms and capture the fact that the AI-algorithm takes decisions as a consequence of the application of advanced analytical techniques (machine learning, deep learning and natural language processing) in combination with automation advanced feedback loops to solve problems.

Risk-based approach

Orange supports the EC proposed risk-based approach to AI that includes an ex-ante conformity assessment targeted exclusively to potential high-risk applications.
However, some clarifications regarding the assessment of these applications are needed. The risk-based approach should not hinder the great benefits of AI applications, and hamper research and investments.
Moreover, the proposed double criterion consisting in a combination of relevant sectors and use-cases within a specific sector for defining high-risk AI systems should be further detailed. In particular, the periodical review by the EC of the list of 'high-risk' sectors may lead to legal uncertainty. It should be based on complementary criterion targeting the eventual impact on affected parties. Finally, the liabilities of providers (producers, integrators operating the AI run, traders) of AI-enabled B2B solutions to high risk sectors should be better clarified.

Transparency on who is liable for claims

Consumers will use AI systems in complex digital ecosystems where services from multiple suppliers will be provided. The EC recognises that the complexity of the value chain could make it difficult to establish liabilities, hence efficiently protect consumers. Transparency on who is liable is crucial: consumers should be properly informed about whom to approach in case of liability claims.

AI developers should bear liabilities for their products

Orange shares the EC's view that AI should not be subject to a new specific framework since existing laws already apply to AI systems: the GDPR is a technologically neutral cross sector regulation, the Product Safety Directive (PSD) ensures ex-ante conformity and the Product Liability Directive (PLD) establishes ex-post liabilities.

However, new AI products will have the ability to progress while in the consumers' hands with potential unpredictable impacts and putting at stake the current liability rules. The PSD and the PLD may need adapting to such new challenges with a focus on the liabilities of the developers of AI technology as they are the best placed to take direct action on the functioning of AI systems. High risk products should fall under ad hoc "ex ante" product safety rules, rather than primarily under liability ("ex post") in case of damage.

The current PSD establishes the safety requirements for getting access to the EU market. This text should directly address AI developers responsible for possible unsafe products. The current scope of the PLD should be expanded to cover integrated software when critical for the running of a product. The combination of such reviewed ex-ante and ex-post mechanism will ensure trustworthiness granting the technological neutrality of the proposed obligations.

Conformity assessments for high-risk AI

Orange supports conformity assessments for high risks AI systems. The main focus should be the AI system performance (accuracy, robustness to the change of conditions of use and life cycle), reliability and security (resilience to attack and general safety). Orange is in favour of the introduction of normalised procedures to test high-risk AI-based products and systems, similar to the ones already in force for health or vehicles which could be tailored for self-learning/life-long learning systems. Common standards should be defined on different applications and for each sector. However, the White Paper lacks specifications on how such assessment would be practically carried out.

Voluntary labelling for non-high risk AI

The voluntary labelling as proposed in the White Paper can be interesting in principle. However, it is important to ensure that the voluntary nature of such labelling system does not become a de facto standard for market access, and that the distinction between high and low risks is clearly stated and gives legal certainty.

Connectivity should not be a special focus

We consider that potential defects in a supplier's products and services should be the main focus of liability, rather than connectivity. Any risks linked to connectivity, such as data loss, are taken into account through B2C contractual agreements. Liability remains unclear regarding indirect risks for telecom operators, for instance the proposed "loss of connectivity" which is already addressed in the current PLD and is not directly linked to AI. In addition, connectivity Quality of Service is regulated in the Code.

Information provision

Regarding information provision, Orange supports the EC's concern for transparency, and its suggestion to grant competent authorities' access to data and results/decisions of the AI. On the

other hand, granting access to and review of algorithms and data models to these authorities (other than for risks linked to public health or national security) may harm competition by interfering with business secrets, and would require complex, expert resources. Keeping of records and data, in compliance with GDPR, should be encouraged, as it can help users prove the mistake and harm in the context of liability claims. Orange is in favour of new EU guidelines on GDPR application focused on AI to clarify how the existing data protection and privacy framework applies.

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