

## **Position paper on ethical and legal aspects of using artificial intelligence**

### **European Forum of the insurance against accidents at work and occupational diseases**

**The European Forum was founded in 1992 in the form of an association to promote and safeguard the principle of such a specific insurance within social security in Europe. The European Forum is composed of accident insurance institutions from 21 countries. The Forum contributes to the convergence process on European level by promoting and facilitating the exchange of knowledge and experience. It aims to improve the situation of workers in Europe who have suffered an accident at work or an occupational disease. The European Forum adopts statements and positions on topics relevant to accident insurance in Europe.**

The use of artificial intelligence (AI) shows a great deal of potential in the field of social insurance, particularly accident insurance.

It presents opportunities in the improvement of the benefits and quality of decisions and prognoses, also in terms of costs. There are risks in that AI could effectively take on a responsibility that only humans can, and should, bear themselves. In particular, the members of the European Forum are of the opinion that the faith of affected parties in the new technology, the reliability of using AI as well as ongoing technological and societal developments must be given due consideration in the matter.

There are already promising AI projects underway at social and accident insurance institutions in several EU member states, as demonstrated at the annual conference of the European Forum in June 2021 in Berlin. With the use of AI, there is also a great deal of potential in the exchange of best practices as well as good and bad experiences. Furthermore, the European Forum of the insurance against accidents at work and occupational diseases has also looked into the ethical and legal aspects of using AI in the public administration sector.

The European Forum is stipulating that the safeguarding of fundamental rights and dictates such as non-discrimination and transparency, as well as of humans having the final decision, should form the basis of any framework. At the same time, the ethical and legal framework should neither inhibit development nor be hostile towards technology and should promote the responsible use of AI both in the EU member states and by the European Union itself.

However, the European Forum is of the view that, when using AI in the field of social security, it must be ensured that decisions on individual social benefits claims of insured persons are not dependent on AI. It must not be permitted that AI acts officially in place of a human, for instance when making official decisions on claims. The final responsibility for decisions on individual social security claims of insured persons should remain a matter for human decision. In such cases, AI can only take on a preparatory and assistive role.

Not every decision that an AI system makes can be explained. Particularly decisions made through self-learning systems evolving the black box effect cannot be explained at all. The members of the European Forum agree it must be ensured that, when using AI, the same

rules should apply for it as would apply without it. The results reached by AI must be able to be explained at least in the same way as results reached by humans.

When using AI, it is conceivable that discrimination may take place. The data used might have discriminatory elements or lead to bias. Combinations of data not taken into account in its selection may also lead to discrimination. It is problematic that social and accident insurance institutions will not recognise AI discrimination in one individual case, they will only become aware of it after a number of cases. This means that a human correction would not be possible immediately and without further action. The members of the European Forum are aware of this factor; however, according to them, in this context there should be a clear distinction between (unintended) discrimination and (intended) differentiation.

The European Forum of the insurance against accidents at work and occupational diseases stipulates that the final decision must remain the responsibility of humans. In societal and political debates on the use of AI, it is likewise the consensus that the responsibility must be able to be traced back to human decisions and actions. AI should only represent an aid to assist decision-making and activities. It is, however, unclear where the assistive function of AI ends and where it effectively starts making its own decisions. The consensus that the responsibility must be able to be traced back to human decisions and actions leads to the initial conclusion that AI on its own should not be able to act autonomously with official power. This consensus also means that functioning control mechanisms are required, particularly where the decisions made involve a high level of risk. Examples of high levels of risk in social and accident insurance include where personal rights are encroached on or where AI declines a benefit that has been claimed. Without doubt, there must be the possibility of review and appeal in administrative acts, which involve a burden. The use of AI in the public administration sector must not lead to a reduction in the number of remedies that can be used to fight an administrative decision.

The European Forum expects that, when using AI-assisted products or systems at work, the safety of workers and their rights are safeguarded in the same way as without the use of AI-based products and systems. Fundamentally, as with all other products and services, the use of AI does not come with “zero risk”. Which risks are to be tolerated when using AI is a question for society which, from the perspective of the social and accident insurance sector, can only be answered on the basis of strict criteria. In any case, it would be of benefit to define different risk levels.

Alongside ethical and legal aspects in the use of AI, there is also the question of whether the existing general legal framework is sufficient or whether an AI-specific legal framework is required. There should be no new regulations without reason, but the members of the European Forum welcome the fact that the European Commission has launched a consultation on the digital principles of the EU.

The focus of this consultation is on the formulation of a set of principles to promote and uphold EU values in the digital space and on opening a wide societal debate on this topic in Europe. Among other things, the consultation process aims at creating a secure and trusted online environment as well as human-centric digital public services and administration. The focus is also on accessible, human-centric digital public services and administration, ethical principles for human-centric algorithms, as come into consideration in the use of AI, as well as access to digital health services.

The European Forum welcomes these goals and is participating in the consultation in addition to this position paper on ethical and legal aspects of using AI. The completed consultation form is attached as an annex.

## Annex

Participation of the European Forum in the Public consultation on a set of European Digital Principles