

# European Commission Unveils Bold European Approach to AI Regulation

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The European Commission has published a [White Paper](#) entitled "Artificial Intelligence - A European approach to excellence and trust", unveiling ambitious proposals for a European wide approach to both AI policy and regulation. The proposals include using and amending existing legislation to better address AI but also - most ambitiously of all - put the possibility of AI specific legislation firmly on the table.

In the White Paper, published on 19 February 2020, the European Commission unveils an AI deployment and development strategy based on European values, and confirms its intention to attract more than €20 billion per year of total investment in the EU in AI over the next decade. The building blocks of the White Paper are a policy framework aimed at achieving an "ecosystem of excellence" along the value chain, and the key elements of a regulatory framework for AI in Europe that will create an "ecosystem of trust". A [factsheet](#) has also been published, which gives a high-level overview of some key points from the White Paper.

The [European strategy for data](#), which accompanies the White Paper, aims to "enable Europe to become the most attractive, secure and data-agile economy in the world". The [Commission Report](#) published alongside the White Paper analyses the implications of AI, the Internet of Things and other digital technologies for safety and liability legislation. Together these publications set the groundwork for how the European Commission envisages delivering the "Europe fit for the digital age" that was promised by President Ursula von der Leyen in the publication entitled "[My Agenda for Europe](#)".

The policy options proposed in the White Paper aim to "enable a trustworthy and secure development of AI in Europe, in full respect of the values and rights of EU citizens". The policies include action to:

1. work with member states;
2. focus the efforts of the research and innovation community;
3. develop the skills of the workforce;
4. increase focus on SMEs;
5. ensure partnership with the private sector;
- (6) promote the adoption of AI by the public sector;
6. secure access to data, and
7. co-operate internationally.

### A new legislative framework?

Regarding the legislative framework, the White Paper recognises that existing EU legislation, including that relating to product safety and liability, consumer rights, and fundamental rights, is relevant and applicable to AI. However it also recognises that it is important to assess whether such legislation can be adequately enforced to address the risks that are created by AI systems, or whether legislative adjustments must be made to do this.

Five key risks and situations which the legislative framework could be improved in order to address are identified in the White Paper. These are (1) effective application and enforcement of existing EU and national legislation; (2) limitations of the scope of existing EU legislation; (3) changing functionality of AI systems; (4) uncertainty regarding the allocation of responsibilities between different economic operators in the

supply chain; and (5) changes to the concept of safety.

The White Paper acknowledges that several Member States are already exploring how national legislation can address the challenges created by AI and expresses concern that this raises a risk of the single market becoming fragmented. The European Commission is clear that its view is that that a common EU wide approach is preferable and "would enable European companies to benefit from smooth access to the single market and support their competitiveness on global markets".

The White Paper also envisages that, as well as possible adjustments to existing legislation, "new legislation specifically on AI may be needed in order to make the EU legal framework fit for the current and anticipated technological and commercial developments." A risk-based approach is suggested for a new regulatory framework. Under the proposed approach, the mandatory requirements of the new framework would apply only to applications of AI identified as high-risk.

An AI application would be considered high-risk where it meets two cumulative criteria: (1) the application is used in a sector where significant risks can be expected to occur e.g. healthcare; and (2) the application is used in the sector in such a manner that significant risks are likely to arise. However the White Paper recognises that there may also be circumstances where the use of certain AI applications for certain purposes is considered high-risk irrespective of the sectors concerned. Two examples are employment screening and remote biometric identification.

## Facial recognition technology

Although remote biometric identification, which includes facial recognition technology, is flagged as a potentially high-risk AI application, it is notable that the White Paper makes no suggestion of a ban or moratorium on the use of facial recognition in public spaces. This had been considered in a [previous draft](#) of the White Paper that was leaked in January 2020. In that draft, it was suggested that the new regulatory framework for AI could include "a time-limited ban on the use of facial recognition technology in public spaces". A three to five year period was suggested as the duration for such a ban, "during which a sound methodology for assessing the impacts of this technology and possible risk management measures could be identified and developed."

However this previous draft did also recognise that such a ban might hamper the development of this technology, and that the European Commission's view was that it would be preferable at this stage to focus on full implementation of the provisions of the GDPR. The White Paper also highlights the limited grounds available under the GDPR for processing biometric data and makes the point that "in accordance with the current EU data protection rules and the Charter of Fundamental Rights, AI can only be used for remote biometric identification purposes where such use is duly justified, proportionate and subject to adequate safeguards."

Rather than proposing any prohibition on such technology, the White Paper instead states that the European Commission will launch a broad European debate on the circumstances, if any, which might justify such use, and on common safeguards. It is suggested in the White Paper that the purpose of such debate will be to both address societal

concerns arising from such use of AI, and to avoid fragmentation in the internal market.

## Compliance and enforcement

To ensure that high-risk AI applications comply with the mandatory requirements of the new legal framework, the White Paper proposes that a conformity assessment would be necessary prior to such applications being rolled out. The suggestion is that such conformity assessments should be part of the conformity assessment mechanisms that already exist for a large number of products being placed on the EU's internal market.

However where no such existing mechanisms can be relied on, the White Paper acknowledges that new similar mechanisms may need to be established. The White Paper also notes that in order to reduce the burden on SMEs, some support structure might be envisaged, including through the Digital Innovation Hubs.

In addition, the White Paper suggests a voluntary labelling regime. This would allow operators who are not covered by the mandatory requirements, because their AI application is not classified as high-risk, to voluntarily make themselves subject to the regulatory requirements and, as a result, to be awarded a quality label for their AI applications.

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## Comment

The European Commission's strategy is an unreservedly ambitious one, and the White Paper leaves no doubt that a co-ordinated European-wide approach to AI is high on their agenda. The strategy put forward to regulation would distinguish Europe from other jurisdictions, including the US where a light-touch approach has been favoured. A move to regulate AI as set out in the White Paper can be likened to the introduction of the GDPR, where Europe set a bold new standard for data protection regulation. In this scenario, however, the difference is that Europe looks set to take an AI specific approach, as opposed to the technology-neutral GDPR and other past regulation. As with the introduction of GDPR, there is also much in this approach to AI regulation that is likely to cause concern in big tech and amongst other industry players.

A [consultation](#) on the proposals set out in the White Paper is open for comments until 19 May 2020.



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