

12 March 2020

**Commission Publishes White Paper on Artificial Intelligence**

On 19 February 2020, the European Commission published its white paper on artificial intelligence (**AI**) – “A European approach to excellence and trust” (the **White Paper**). According to the White Paper, in simple terms, AI is a collection of technologies that combine data, algorithms and computing power for the benefit of citizens, businesses and the public interest in general. In essence, the White Paper sets out policy options on how to achieve a balance between encouraging the uptake of AI while addressing the associated risks through potential regulation.

First, the White Paper recognises the importance of encouraging the uptake of AI in the EU. The Commission notes that in order to optimise the opportunities presented by AI, Europe will have to “align efforts at European, national and regional level” and mobilise to create an “ecosystem of excellence” along the entire value chain, starting with research and innovation, and to create the right incentives to accelerate the adoption of solutions based on AI, including by small and medium-sized enterprises. The Commission proposes to achieve this through, *inter alia*:

- Working with Member States and delivering on its strategy on AI adopted in April 2018.
- The creation of excellence and testing centres that can combine European, national and private investments.
- Establishing and supporting through the advanced skills pillar of the Digital Europe Programme network of leading universities.
- Setting up a new public-private partnership in AI, data and robotics.
- Promoting the adoption of AI by the public sector.

Second, the White Paper states that while AI uptake brings opportunities, the associated risks, however, cannot be disregarded. AI can also be harmful, both in material (safety and health of individuals, damage to property) and immaterial (loss of privacy, limitations to the right of freedom of expression) terms. Furthermore, the use of AI can affect the values on which the EU is founded and lead to breaches of fundamental rights. To address these risks, the uptake must necessarily be accompanied by a regulatory framework addressing the associated risks through the creation of an “ecosystem of trust”. While the parameters of a framework for new AI legislation are not clearly defined, the Commission highlights the importance of setting up a liability regime.

Other suggestions include the introduction of a mandatory pre-marketing conformity assessment requirement for “high-risk” AI applications. The Commission considers that “high-

**CLIENT ALERT MEMORANDUM**

risk” should be defined in light of what is at stake. The following criteria are set out to define a “high-risk” AI application:

- The AI application is employed in a sector where, given the characteristics of the activities typically undertaken, significant risks can be expected to occur. Any future legislation should “specifically and exhaustively” list the sectors concerned.
- The AI application in the sector in question is used in such a manner that significant risks are likely to arise.

In addition, the Commission considers that there may be exceptional instances (e.g., remote biometric identification and other intrusive surveillance technologies) where, due to the risks at stake, the use of AI applications for certain purposes is to be considered as high-risk as such, irrespective of the sector concerned.

When designing the future regulatory framework for AI, certain requirements will be assessed under the mandatory pre-marketing conformity assessment, including:

- Training data
- Data and record keeping
- Information to be provided
- Robustness and accuracy
- Human oversight.

In relation to the addressees of the legal requirements that would apply in relation to the “high-risk” AI applications, the Commission considers that the obligations are to be distributed among the actors who are “best placed to address risks arising from the development phase, [as] their ability to control risks during the use phase may be more limited”, and so, in the latter case, the “deployer should be subject to the relevant obligation”. From a geographic scope, the Commission considers it paramount that “the requirements are applicable to all relevant economic operators providing AI-enabled products or services in the EU, regardless of whether they are established in the EU or not”.

In addition to the mandatory pre-marketing conformity assessment, the Commission also envisages a “voluntary labelling for non-high risk AI applications” for interested economic operators not covered by the mandatory requirements. Such voluntary labelling would signal that their “AI-enabled products and services are trustworthy”, thereby enhancing the trust of users in AI systems and promoting the overall uptake of technology.

The White Paper can be consulted [here](#) and is open for public consultation until 19 May 2020.

## Authors

---

Thibaut D'hulst [tdhulst@vbb.com](mailto:tdhulst@vbb.com)  
Victoria Ciudin [vcitudin@vbb.com](mailto:vcitudin@vbb.com)

## Get in touch

---

If you have any questions concerning this memorandum, please call us at +32 2 647 73 50

or send us an e-mail at [brussels@vbb.com](mailto:brussels@vbb.com)