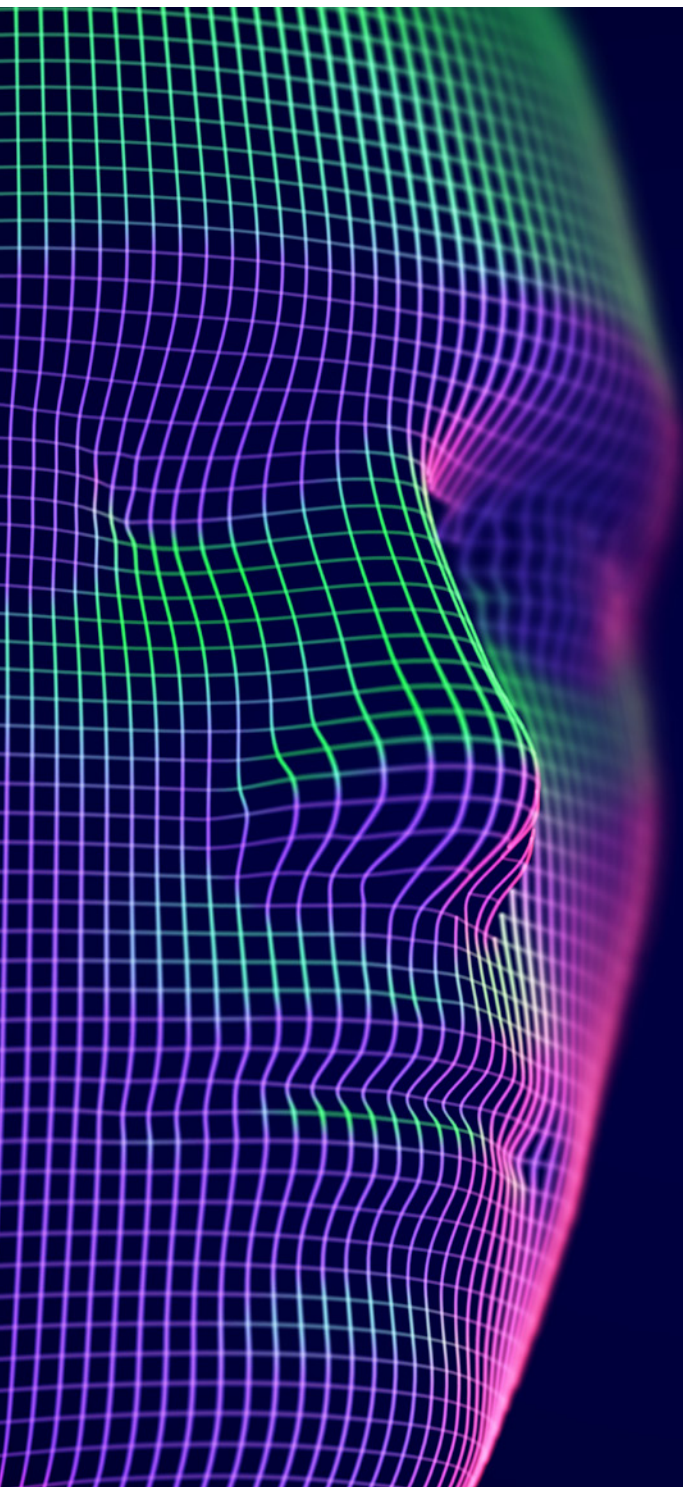


# Insights from the European Commission's White Paper on AI



The European Commission (EC) released a White Paper entitled "On Artificial Intelligence — A European approach to excellence and trust" in February 2020, detailing policy options and calling for debate on issues pertinent to Artificial Intelligence (AI) and data. It explores the strong human element involved in understanding how best to manage the rise of the data economy and proposes that trust and excellence are key tenets of future data regulation policy.

This report explores insights gleaned from the White Paper as they relate to data regulation, data use, data sharing, data privacy and more. Hear from our experts on what the EC's White Paper says about the future of business in the data economy and what the outlook is like for the EU, UK and beyond.

---

*"With its White Paper, the European Commission aims to set the path forward for regulating AI, which it rightly describes as one of the most important applications of the data economy"*

**Raffaele Giarda, Global Chair, Technology,  
Media & Telecommunications, Rome**

# Charting the Course

## EC proposes legal requirements and regulation



### **Raffaele Giarda,** Global Chair, Technology, Media & Telecommunications, Rome

#### ***Spotlight on "high risk" AI***

One key area that businesses may want to pay attention to is the types of mandatory legal requirements that would apply to "high risk" AI applications.

The EC proposes two cumulative criteria for determining whether an AI application is "high risk": namely the sector in which the AI application is employed and the actual use case. Interestingly, high-risk sectors preliminarily mentioned are healthcare, transport, energy and parts of the public sector. As a result, it seems that many AI applications would fall outside the scope of the framework

The framework would prescribe a number of mandatory legal requirements for so-called "high risk" AI applications in order to ensure the regulatory intervention is proportionate.

Such requirements are the "usual suspects", covering an appropriate degree of human oversight, adequate training data, record keeping requirements, transparency, robustness and accuracy.



### **Yann Padova,** IT & Communications Partner, Paris

#### ***Europe's next step after GDPR***

The EC's White Paper is flexible and adaptable. And Europe already has a sound legal framework to build on; the GDPR. In May, the commission's report on GDPR will be of critical importance. Indeed, it will have to be well articulated with this new initiative and its ambition in order to provide visibility and clarity to all stakeholders and to European citizens. Europe can lead the way towards a genuine and accountable regulation of AI, innovation and data sharing with robust safeguards.



### **Sue McLean,** Global Tech Lead for FinTech and Blockchain, London

#### ***A wait and see mode***

The EC points out the risks posed by AI, the existing laws that apply to AI, plus its intention to update laws to fix any gaps which may exist, saying that it would like strict rules for high-risk systems such as in health, policing and transport, and a voluntary labelling scheme for low-risk applications. We remain in wait and see mode in terms of what new regulation the EU will actually seek to introduce on AI.

# An Open Conversation

## Unpacking the complexity of data collection, use and sharing



**Raffaele Giarda,**  
Global Chair, Technology, Media & Telecommunications, Rome

### *All eyes on use and management of facial recognition*

The White Paper specifically addresses the use of facial recognition technology in public spaces — a topic which has attracted much attention by the media, governments, regulators and the general public as a result of new uses of the technology proliferating with limited oversight.

The EC recognizes that numerous socially beneficial use cases exist for this technology — think of its potential to increase security in public spaces through responsible use by law enforcement. Hence, it categorically considers such use of AI as being high-risk because of the significant risk it poses to human rights and civil liberties.

This White Paper has no mention of the previously discussed policy measure of a temporary moratorium. With this, the EC foreshadows a broad European debate on two main things. Firstly, the specific circumstances, if any, which might justify the technology's use in public spaces, and secondly, common safeguards. This does not come as a surprise — the debate ultimately intends to build public trust in, and acceptance of, this potentially intrusive technology before allowing its use more widely. This approach might also help build a European consensus, rather than a fragmented member state approach, on whether this technology should be permitted at all and, if so, how to impose responsible limits on its use.



**Raul Rubio,**  
IT & Communications Partner, Madrid

### *Enhancing trust in the age of data and AI*

In the AI strategy, the EC highlights the human centric approach based on establishing rules and requirements for the purpose of enhancing the trust of users in AI. The distinction between high-risk and no-high risk AI applications also serves as useful guidance for companies when implementing AI and allows them to deal in a proper way with the risks associated with the implementation of AI.



**Magdalena Kogut-Czarkowska,**  
Counsel, IP and Technology, Warsaw

### *Balancing data and fundamental rights*

The European strategy for data sets a challenging task before the European lawmakers. Finding the right balance between such fundamental rights as the protection of ownership and investment, right to privacy and the right to information is key.

---

# The Data Economy

## How data and tech fuel the state of business



**Raffaele Giarda,**  
Global Chair, Technology, Media & Telecommunications, Rome

***AI and Tech can lead to global solutions***

It is good news for business that the European Commission frequently highlights the fact that AI, and technology in general, is a force for good and critical enabler in solving some of the world's most pressing challenges, such as the fight against climate change.



**Magdalena Kogut-Czarkowska,**  
Counsel, IP and Technology, Warsaw

***Development of the AI and data strategies will impact global business***

The outcome of the proposals and developments in this White Paper will decisively impact the existing business models. Those discussions are likely to be hard, as proved by the still ongoing works on E-privacy Regulation, where similar underlying issues were encountered.



**Raul Rubio,**  
IT & Communications Partner, Madrid

***A broader approach to the data economy***

The recent publication of EU Commission's Data and AI strategies stands out for its holistic approach. Both sets of documents are part of the digital strategy of the EU and they do not address the different issues in an isolated way, but within a strategy to promote digital transformation along with other EU objectives such as climate-neutrality.

For example, the data strategy does not only focus on the regulatory framework of data. It also highlights the need of having and developing next-generation technologies and infrastructures as well as digital skills. Particularly, the sectorial approach, i.e. promoting the development of common data spaces in strategic economic sectors (health, mobility, etc.), is interesting.





**Joanna de Fonseca,**  
**Senior Associate, Technology, London**

***Business first: how data enables competition***

The EU's new data strategy seeks to position the EU as a competitive market to commercialize data, while preserving high privacy, security, safety and ethical standards. One of the key proposals is to create European-level and sectoral data pools, or "data spaces", to facilitate data sharing across organisations, based on a set of data sharing standards, tools and governance mechanisms. The Commission is also proposing a new "Data Act", which would be designed to facilitate business-to-business and business-to-government data sharing, as well as creating an "enhanced data portability right" to give individuals more control over who can access and use their data.

Fundamentally, this is about making data an enabler of competition rather than a barrier to it. The Commission's view is that currently, the "data advantage" enjoyed by larger players can create barriers to entry for SMEs and start-ups.

Much in these proposals is essentially about levelling the playing field and persuading larger companies to share their data with start-ups, the public sector or other businesses — the logic being that this will promote competition and ultimately benefit consumers.



# A Global Game

## Exploring the impact across various regions



### **Raffaele Giarda,** Global Chair, Technology, Media & Telecommunications, Rome

#### ***A turning point for Europe***

The EC's White Paper states the need to promote and accelerate the uptake of AI in Europe and makes the point that Europe is way behind North America and Asia when it comes to investment in research and innovation. It pledges to significantly increase investment in these areas and to facilitate the creation of European excellence and testing centers that attract best-in-class researchers.

Finding the right balance between creating an ecosystem in which AI can flourish and ensuring Europe becomes a global leader in technology, on the one hand, and protecting society from the risks such technology may bring, on the other hand, is the challenge.

#### ***Global variance in impetus for facial recognition regulation***

Looking beyond Europe, different regions are at different stages of the debate around facial recognition technology. Notably, cultural norms seem to heavily influence the direction of travel across continents. While in the US various technology-specific laws are being introduced, across Asia Pacific the use of this technology seems to be more accepted and calls for regulation seem less pressing.



### **Jason Raeburn,** Senior Associate, Intellectual Property, London

#### ***Human-centricity and trust at the center of AI and data***

The Commission's recent announcements on its strategy for data and AI have a clear foundation in fostering an "eco-system of trust" and keeping humans at the center of AI growth.

The "real-world" global impact of these plans will very much depend on where the eventual balance is struck between protecting rights through stringent rules and the need to foster rapid innovation.



### **Sue McLean,** Global Tech Lead for FinTech and Blockchain, London

#### ***Post-Brexit implications for the UK***

Interestingly, the Commission indicates it may introduce new rules which would mandate a data portability right where a market failure is identified in a particular sector. This would appear similar to the UK government's smart data proposals which involve extending open banking principles to other markets including energy and telecoms and digital platforms.

Post Brexit, the UK won't need to follow EU rules. So, if the EU are too heavy handed in regulating AI and data, this could provide a good opportunity for the UK tech sector.

## Conclusion

Raffaele Giarda sums up the broad strokes of the EC's White Paper, noting that "while the European Commission undoubtedly aims to build a clear European regulatory framework for AI (rather than a fragmented country-by-country approach), it takes the view that it is premature to propose specific rules at this stage and instead opens a public consultation giving business and other stakeholders the opportunity to help shape a future AI governance framework." This is in line with the White Paper's two pillars of emphasis — trust and excellence.

*"Moving forward, Europe will need to find a way to create its own tech giants and really compete in the global data economy, bearing in mind that rivals in the US and China don't have the EU's strict data privacy laws to navigate."*

**Sue McLean, Global Tech lead for FinTech and Blockchain, London**

### ***Europe's future in the era of digital technology***

Yann Padova notes that Europe has a key role to play "in both permanent innovation and international competition between the legal systems". Padova believes Europe can become a "genuine third player in the digital world alongside North America and Asia, notably on the ethical issues raised by AI and innovation. To that end, Europe has to design a path that would favor more data usage and data sharing (both personal and non-personal) but in a responsible, accountable and transparent way."

In summary, the White Paper has also raised pressing and complex questions such as who should be responsible for harm caused through AI and how to ensure the regulatory framework is sufficiently flexible to accommodate further technological progress while providing the much needed legal certainty. Giarda states that, "it is clear that fundamental human rights, such as the right to privacy, human dignity, freedom of expression and non-discrimination are at stake."

## Key Contacts



**Raffaele Giarda**

Global Chair, Technology, Media & Telecommunications, Rome

+39 06 4406 3224  
raffaele.giarda@bakermckenzie.com



**Sue McLean**

Global Tech Lead for FinTech and Blockchain, London

+44 20 7919 1998  
sue.mclean@bakermckenzie.com



**Yann Padova**

IT & Communications Partner, Paris

+33 1 4417 5923  
yann.padova@bakermckenzie.com



**Raul Rubio**

IT & Communications Partner, Madrid

+34 9 1436 6639  
raul.rubio@bakermckenzie.com



**Jason Raeburn**

Senior Associate, Intellectual Property, London

+44 20 7919 1401  
jason.raeburn@bakermckenzie.com



**Joanna de Fonseca**

Senior Associate, Technology, London

+44 20 7919 1821  
joanna.defonseca@bakermckenzie.com



**Magdalena Kogut-Czarkowska**

Counsel, IP and Technology, Warsaw

+48 2 2445 3452  
magdalena.kogut-czarkowska@bakermckenzie.com