

Comments on Impact Assessment

Bitkom comments on Inception Impact Assessment

I. General Remarks

Bitkom welcomes the open consultation approach of the AI Inception Impact Assessment of Assessment of the European Commission for a proposal for a legal act of the European Parliament and the European Council regarding the „requirements for Artificial Intelligence“ (Future regulatory framework for AI in the European Union). The main basis for discussion on the future regulatory framework for AI is the White Paper on AI which Bitkom commented in detail ([Link](#)).

At the outset, we would like to stress that we welcome the objectives of the European Commission in general: Support the EU in becoming leader in AI (chapter 4: ecosystem of excellence) complemented by introducing new safeguards for citizens (chapter 5: ecosystem of trust). In principle, we do not see the need for a specific AI-regulation throughout Europe. Before such regulation is introduced, it should be examined in detail from a legal point of view where there are blank spots on the EU regulation map and where significant restrictions of the digital single market are imposed by regulations in member states. This applies in particular to potential regulation that is explicitly introduced as a consequence of the increased use and dissemination of artificial intelligence in the economy and society. In our view, it has not yet been proven that the considerations made in the paper give rise to a general need for additional and especially horizontal regulation of AI. Furthermore the regulatory framework must be designed as technology neutral as possible.

II. Conclusion

We would like to underline again as Bitkom that we reject all proposals that would mandate specific requirements on all AI applications (i.e. Option 3c). This would simply not be proportionate or effective towards the Commission's intended goal.

We favour a combination of policy options 1 and 3b: The basis should be a "soft law"-approach. This will leave enough room for innovation and the development of AI-solutions, but also allow a precise assessment of the real risks of certain AI applications and potential regulatory gaps.

If the mapping of existing regulatory frameworks in the sectors considered to be high-risk in the White Paper lead to the detection of blanks spots we recommend a further development of these existing regulatory frameworks and also of the enforcement regimes in these sectors. Therefore we support the introduction of a high-risk scheme

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as described in the whitepaper in this case in the respective sectors (evolutionary development from scenario 3a scenario 3b regarding the impact assessment scenarios). Regulatory sandboxes as a lean and agile approach complement this framework and create a framework in which the promotion of innovation is in the foreground.

At least as important as the choice of scenario are the following questions. We have explained this in detail in our statement on the White paper

- Consideration and systematic mapping of existing sectoral regulatory frameworks and existing control, audit and enforcement authorities in the potential high-risk areas. All activities regarding future regulatory frameworks and enforcement authorities must be linked to the existing frameworks.
- There is no agreed mechanism for classifying AI applications as such. If a future regulatory framework plans to regulate AI, the concepts of AI and algorithmic systems must be defined in a way which makes them easy to handle for the economic operators involved to determine, if a specific data-driven application meets the criteria AI/algorithmic system. Furthermore clear and legally compliant processes that define which applications are high-risk AI applications are needed.
- Clarification of the question and provision of criteria where conformity assessments (ex-ante or ex-post) are needed and where self-assessments and self-regulation, for example through Code of Conducts, are sufficient.
- Consideration of the legal conflicts with GDPR. Overall the future regulatory framework, together with the evolving European dataspace and the existing regulatory framework like GDPR should be characterised by data sovereignty and data availability rather than the existing principles of data thrift and data avoidance to enable a innovative European data economy.

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