Visa Response to the European Commission IIA on Requirements for Artificial Intelligence

September 2020

About Visa

Visa welcomes the opportunity to respond to the European Commission's Artificial Intelligence White Paper. Our mission is to connect the world through the most innovative, reliable, and secure payments network – enabling individuals, businesses, and economies to thrive. Visa's relentless focus on innovation is a catalyst for the rapid growth of connected commerce on any device, a driving force for increased digital acceptance, and a cornerstone of safety and security across the digital economy.

Visa currently facilitates commerce across more than 200 countries and territories. As a leading global payments technology company, Visa understands what it means to function, innovate, and invest in a continuously evolving and interconnected digital world. The global nature of our business also gives us a holistic perspective on regulation, which is particularly useful when considering regulatory approaches to 'borderless' markets and technologies, such as data and artificial intelligence ('AI').

Our 'north star' for data use (including data-driven technologies such as AI) is that it should first, and foremost, benefit individuals, businesses, and economies. This overarching approach is underpinned by our commitment to those who use our products and services that we will be accountable stewards of their data, will uphold their privacy, and will promote high standards of responsible, ethical practice in every market in which we operate.

Visa pioneered the use of AI in payments in 1993, becoming the first payments network to use neural networks for real-time, risk-based fraud analytics. Visa Advanced Authorisation ('VAA') now prevents approximately USD 25 billion of fraud annually. Today, we are increasingly leveraging the power of data and data-driven technologies, such as AI, for a wide variety of purposes across our business, including security, product and service delivery, operational efficiency, and network reliability. We are confident the next generation of payments experiences (such as 'conversational payments', behavioural biometrics, and automation of bespoke 'point of sale' shopping experiences) will be powered by AI.

1. Views on the impact assessment

Visa is keen to engage with the European Commission in supporting its vision to create a human-centric and trustworthy digital environment in Europe for the use of data and data-driven technologies, such as Artificial Intelligence (AI). Visa is also aligned with the Commission's aim to create a common regulatory framework in Europe, and we are encouraged by the AI White Paper's measured approach to regulation. We welcome the publication of the Inception Impact Assessment (IIA) on the requirements for AI and appreciate the opportunity to provide comments, building on our contribution to the Commission's EU AI White Paper public consultation.

Visa agrees with the Commission's stance that there are potential ethical and legal clarifications needed to safely develop AI powered services and applications. However, we would highlight the Commission's own assessment noting that developers and deployers of AI are already subject to a wide body of EU legislation on fundamental rights, consumer protection, unfair commercial practices, competition law, and product and safety liability and would urge the Commission to avoid over-prescriptive regulation which would place the EU at a competitive disadvantage in the development and innovation of AI.

2. Policy options

A holistic review of sectoral regulation should be prioritised before the introduction of any new rules, in full and open consultation with industry, and close co-ordination between vertical and horizontal regulators, to ensure consistency of approaches and avoid unnecessary cumulative or duplicative regulation. Industry and private-sector alignment will be critical to the success of the European AI strategy and any efforts to facilitate and spur industry-led action (Option 1 of the IIA) should be done in close alignment with international standards and best-practices.

This approach would provide the most efficient route to effective outcomes in many cases, supporting European competitiveness by avoiding the imposition of undue regulatory burden for businesses investing and innovating in Europe.

There are two critical elements that must be outlined by the Commission in order to deliver a practical and effective framework for the application of AI, namely, providing a clear criteria for the classification of high-risk and low-risk AI applications, and the definition of high-risk AI applications. Under the current iteration, high-risk AI applications could include any AI application and is very open to interpretation. We would urge the EC to further engage with industry and stakeholders to ensure a workable and practical definition.

Visa agrees that risk should be a critical delineator for regulators in defining the scope of new regulation and that high-risk applications merit a higher degree of scrutiny than low-risk use cases. We believe the proposals in the White Paper, which are further fleshed out in the IIA, go some way toward establishing a sensible approach in this respect; however, we would urge caution in several respects, namely on the ability to assign risk in an accurate and effective manner, and the broad

categorisation of high-risk applications. As noted in Visa's response to the AI White Paper consultation, we would submit to consideration the addition of a third criteria to evaluate the 'likelihood' of risk. The three criteria would thus be: a) sector; b) significance or severity; c) likelihood of risk. It should be noted that there are several categories of risk used by risk professionals and it will be significantly easier for both companies are regulators if there is alignment between new legal language and established industry terminology

Setting an overly rigid and onerous new requirements, could act as a headwind to investment and innovation, and potentially place the EU at a global disadvantage. This is particularly the case with a stringent ex-ante oversight and approval mechanism such as that proposed in [Option 3 and 4 of] the IIA, which would consume significant time and resources for both regulators and businesses, and could be especially detrimental for the competitiveness of SMEs in particular, jeopardising potential business models and possibly having a significant business impact on existing ones, ranging from additional costs, less revenue to reliance upon third parties for product launches and potentially undermining copyright, and trade secrets, infringe on IP rights, and heighten cybersecurity risks. Visa is optimistic about the potential of a voluntary certification and labelling scheme for AI applications (suggested in Option 2 of the IIA). Such a scheme (applied in the appropriate cases) could help drive best practice, enhance consumer trust in new products in the marketplace, and familiarize organisations with the sorts of principles and processes required to build trustworthy AI. However, such scheme would require further clarification on how it would apply to the myriad of AI use cases and application areas. A balance must be struck between a regime robust enough to merit accreditation (and thus trust) and the commensurate level of risk attributed to these applications. It would be useful to explore similar industry-driven certification schemes, for example those available for IoT device security. These schemes exist to serve different industry needs, depending on the respective risk level and risk appetite. This could potentially be an alternative to one single scheme.

As noted in the IIA, the HLEG Trustworthy AI Guidelines may serve as a template, as they address the potential for harm through establishing strong ethical foundations for AI, anchored in good governance, best practice and international standards, embedding of principles and practices which go beyond legal compliance.

3. Enforcement mechanisms

The IIA introduces the discussion on enforcement mechanisms to ensure effective compliance with any applicable requirements for AI applications, which could be ex-ante or/and ex-post. Again, we would reiterate that although Visa supports the need for new governance to mitigate risks posed by AI, this is appropriate only where other existing regulation cannot adequately do so.

The Commission must ensure that any proposed process of prior conformity assessment does not duplicate existing self-assessment frameworks and is designed in a way that is practical and effective for both regulators and industry participants, without restricting and slowing down innovation in Europe and whilst being compliant with existing use-case and industry specific laws. Furthermore, we

would strongly encourage that any suggested framework be closely aligned with internationally recognised, voluntary industry-driven standards and best practices.

Addressing potential ex post controls, these mechanisms (such as scrutiny or auditing of risk impact assessments) could potentially limit the possibility of bottlenecks in the prior-conformity process, ensuring resources are spent where need for prior conformity assessments to the most high-risk cases. This could reinforce the expectation of reasonable scrutiny across the wider market, while avoiding impeding fast-moving development where this is not strictly necessary. We would urge the Commission to stride for a proportionate, non-discriminatory, transparent objective criteria in compliance with international obligations.

4. Clarifications needed

We would encourage the European Commission to provide further clarity on the definition of what constitutes a "remote AI biometric identification". It is important to 1) target applications that are of concern, 2) specifying what applications are out of scope, if possible and as already seen in other existing legislation, to help provide certainty to industry and consumers.

We would refer to Visa's response to the AI White Paper consultation where we elaborate on many of these aspects and considerations in more detail.