



CK Hutchison Group Telecom's position paper on Artificial intelligence

The European Commission's White Paper on Artificial Intelligence (AI) describes proposed steps to encourage the use of AI in Europe and to define a framework for regulating AI applications.

The proposed framework for regulating AI distinguishes between "high risk" applications and all others. High risk applications are those in high risk sectors that are likely to give rise to significant risks. These would be subject to mandatory legal obligations and the Commission paper identifies six potential obligations. For AI applications not identified as high risk a voluntary labelling scheme would be available.

CKH believes the Commission's proposed approach creates certain difficulties. First amongst these is the binary nature of the Commission's proposal, whereby AI applications are either high risk or not. This is unlikely to reflect the range and different degrees of risk arising from AI. It is also likely to be difficult to allocate, with any degree of accuracy, applications to one or other categories in advance. In addition, the full range of regulatory obligations seem to fall on high risk applications, whereas applications not considered high risk get none.

The second difficulty with the Commission's proposed approach is that it will establish categories of risk and regulatory obligations that are rigidly set in legislation. The approach defines criteria for identifying high risk AI applications and determines in advance what obligations should apply. This will fix a framework in a sector that is still at an early stage of development and which is likely to adapt more rapidly than can the legislation. The criteria and obligations may quickly become obsolete.

A third difficulty is that AI is likely to be integrated into other products and services, which will be subject to their own regulatory obligations. The Commission's approach could lead to a single product being subject to both product regulation and separate, and potentially contradictory, AI regulation.

CKH, instead, proposes an alternative approach that already exists in EU law; the approach taken by the GDPR. This would require enterprises using AI to undertake a risk assessment and apply mitigating measures appropriate to any risks identified. In practice, many enterprises deploying AI will have those processes already in place through the ISO 27001 specification for information security management systems. This approach would lead to a graduation of mitigating measures, appropriate to the level of risk, rather than the binary approach in the Commission's paper. Enterprises would also undertake their assessments taking account both of the AI application and the underlying product or service.

An approach following GDPR principles would require a body, such as the EDPB, to adopt recommendations and promulgate guidance. A specific aspect of best practice guidance should be to define a quantitative means of assessing the voracity of an AI application's output against an agreed benchmark dataset used to train AI models. In general, recommendations and best practice guidelines could respond more rapidly to new developments.

CKH would like to make two further comments on the Commission's White Paper.

First, the Commission's proposed regulatory framework seeks to protect end-users of AI applications. However, the White Paper is also concerned with fostering an environment in which AI applications are widely adopted. This will only happen if the regulatory framework also provides confidence that AI applications can be adopted without exposing enterprises to disproportionate risk. The Commission's AI framework should also address the risks faced by enterprises, such as liability, and



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create an appropriate and proportionate framework. We trust the Commission will consider this in its forthcoming review of the General Product Safety Directive as well as considering other legislation, as necessary.

Second, the Commission proposes that one of the obligations for high risk AI applications is human oversight. CKH believes that human oversight should not mean human intervention is required for each output since this will defeat the purpose of AI applications that can take decisions faster than humans. Complex problems tend to require complex solutions, which inevitably leads to the creation of black boxes. There is already ongoing work to build tools to help humans understand and explain the black boxes created by AI.

Further, human intelligence is unable to comprehend the nuances of complex deep learning models. Having "explainability" as a requirement for AI applications will inevitably stifle their power. One solution is to include diagnostic reporting of the decisions made by AI, by design.

Nevertheless, some form of human oversight of the methods (but not human intervention) is important. Given that AI models will develop complex solutions and continual deep learning, the models themselves will evolve. Therefore, there is the risk of drift in an AI model that may have passed a test (for security, outcome, GDPR compliance, functionality, etc.) at one time and later begin to provide alternative outputs to what was expected.