



## FEDMA answer to the Inception Impact Assessment on Artificial Intelligence

FEDMA previously answered the consultation on the white paper on AI.

We would like to share the below insights:

- The **work of the High-Level Expert Group** on criteria for risk assessment and the feedback that they are receiving from the industry should be considered.
- Self-learning systems are not new nor is information gathering for a better more objective decision process (e.g. bank loan; better information might often help to get the loan). AI is simply an optimization of both.
- If personal data is involved, Art 22 GDPR covers the data protection issues.
- **It is of the utmost importance that the GDPR be implemented in a fair and balanced manner.** Indeed, **legitimate interest and pseudonymization** are key GDPR tools for companies to use AI (e.g. cleaning a contact list with a Robinson list). When the industry relies on legitimate interest for processing of personal data, the controller must do a legitimate interest assessment test in 3 steps: (a) is the purpose of the processing legitimate? (b) is the processing necessary? (c) do the interests of the controller override the rights and freedoms of the individual? Currently, legitimate interest is a legal basis which is under growing pressure and the EDPB has started the discussions on guidelines for LI. If the right balance is not met between consent and LI, then many industry sectors, such as data marketing, will disappear or will not be able to use AI, leaving behind a less competitive market dominant by large tech intermediaries.
- FEDMA previously referred to the [EUTA High Level Principles on AI](#). In line with those principles, **we have strong reservations about extending legal requirements to all AI applications.** As the majority of AI day-to-day applications today are low risk, we urge the EU institutions to conduct a thorough assessment of the existing legislation, especially the civil liability regime, before introducing any new proposals specifically targeting AI-driven technologies and applications. Regarding the possibility of new risk assessment being imposed upon businesses to define whether they are using low or high risk AI applications, we encourage the European Commission to provide a framework for internal risks assessments for low-risk applications, and thoroughly assess who would be responsible for leading external risk assessments for high-risks applications. Indeed, it is likely that external auditors or agencies will need to gain access to sensitive personal data under GDPR to assess the fairness or degree of risk carried out by one AI system. Checking the fairness or risks level in any algorithm will necessarily require the use of particularly sensitive data under GDPR, such as those related to sex, ethnicity, age, religion, etc. **Soft law and voluntary labelling should be preferred to new regulations where feasible,** as they create only marginal administrative burden where binding requirements could create further red tape for EU businesses. At the same time, providing a harmonised EU framework would reduce compliance costs for businesses operating across the EU and avoid a plethora of conflicting



AI rules. We need to ensure that the future EU framework is sufficiently flexible so that it is not outdated in a short span of time. **We disagree with the Commission's assessment that the social impact of the future AI framework will be limited, AI will have an extensive positive social impact.**