**Japan
Business
Council in
Europe**

JBCE Position Paper

**The White Paper on Artificial Intelligence
A European Approach**

14/June/2020

1. FOREWORD

(1) In light of the COVID-19 pandemic, the European Union (EU) must succeed in moving towards economic recovery and building a resilient society by working with international partners and placing a continued emphasis on an ambitious digital transformation.

(2) The Japan Business Council in Europe (JBCE) is committed to supporting the EU's digital transformation as highlighted in the public consultation. In this regard, JBCE would like to stress the importance of developing a framework capable of balancing innovation and governance to realise the benefits of an advanced and reliable data-driven society, while also ensuring global regulatory harmonization that avoids unnecessary fragmentation.

(3) In taking the opportunity to respond to this public consultation on the "White Paper on Artificial Intelligence", JBCE would like to provide the following recommendations to policy makers.

2. RECOMMENDATIONS

(1) GENERAL

① JBCE welcomes the European Commission's efforts to establish a common European approach to Artificial Intelligence ("AI"). This will help the EU's AI market reach scale and avoid fragmentation. We also support the Commission's view that regulatory intervention on AI should be proportionate and that a horizontal framework should aim at not being excessively prescriptive to avoid creating a disproportionate burden on companies.

② There are many synergies between the White Paper on AI and the European Strategy for Data. The main reason why AI solutions can fail to deliver their full potential or not work at all is due to challenges related to data access and quality of data. JBCE would welcome complementary initiatives to be put forward in this area with the support of Member States and in cooperation with the private sector. We do welcome the initiatives mentioned on pages 3 and 4 of the White Paper, intended to foster a better use of public and industrial data as well as infrastructures supporting the creation of "European data pools".

③ For the EU's AI framework to succeed, JBCE believes that any new rules on AI must be clear, concise, well-justified and feasible for companies to implement.

④ We recognize that the White Paper frequently mentions, "AI based on European rules and values" as highlighted in Chapter 4, Section H, International Aspects. AI is used internationally, in countries and regions of different cultures, rules, and values. We expect the European Commission to become one of the key institutional stakeholders in playing a leading role in developing a holistic approach towards AI.

⑤ JBCE agrees with the European Commission that the "lack of trust is a main factor holding back a broader uptake of AI" as mentioned in the AI White Paper, and we support its aim towards the realization of trustworthy AI. The European institutions, Member States and all stakeholders should work together to create "An Ecosystem of Trust" where AI & ethics can have a key guiding role in the development of new solutions.

(2) DEFINITION

⑥ Any proposed legal framework for high-risk AI applications that considers the training of data, robustness and accuracy, or human oversight should provide legally sound, harmonised, and enforceable rules that take full account of existing research and data. As such, we agree with the Commission that in any new legal instrument the definition of AI will need to be "sufficiently flexible to accommodate technical progress while being precise enough to provide the necessary legal certainty". It will also be crucial to define a clear assessment-method for high-risk applications.

(3) RISK-BASED APPROACH

⑦ While AI has a wide range of benefits, AI applications can also be associated to a set of risks, associated to fundamental rights, personal data and privacy protection, safety, and liability-related issues. Consequently, we welcome the Commission's decision to follow a risk-based approach that is rooted in existing EU law. As stated in the White Paper, this approach will necessitate "clear criteria to differentiate between the different AI applications, in particular in relation to the question whether or not they are 'high-risk'".

It is important to remember that a vast range of AI technologies, deemed as "narrow" or "weak" AI, do not pose any significant risk. We support the White Paper's approach to look at both the sector in which a potential high-risk AI application will be used as well as its intended use. Further work will have to be done to ensure that a proper definition of high-risk AI application is found.

⑧ To regulate high-risk AI applications, the EU should impose a combination of ex-ante rules for liability issues, and ex-post requirements to test the outcomes of applications. This will give enough flexibility to companies that wish to innovate, while allowing for the scaling of AI applications across the EU. It is important to ensure that there is no duplication between the future regulatory framework for high-risk AI and existing EU legislation. In fact, some of the potentially high-risk sectors (e.g. transport) or AI uses (e.g. automated driving vehicles) are already subject to strict ex-ante rules. Finally, we believe that requirements for high-risk applications need to be sector specific. It will be crucial to thoroughly assess whether new sets of requirements for certain sectors should be included into any existing framework.

(4) VOLUNTARY LABEL

⑨ For low-risk applications, we welcome the European Commission's proposal of introducing, in addition to applicable legislation, a voluntary labelling scheme for AI applications. This would allow companies to signal that their AI-enabled products and services are trustworthy. However, the current proposal does not provide sufficient details in terms of how this label could be applied in a manner that achieves the objective of facilitating information

to consumers. It is also unclear what requirements will be needed for companies to obtain this label. Finally, any voluntary labelling approach should not become a de-facto market entry requirement for AI products and services in Europe. For this labelling system to properly function and be widely used in the market, it must be aligned with international AI standards.

(5) ALGORITHMS and DATA SETS

⑩ To develop a competitive market for AI in Europe, the EU should avoid setting rules that would require companies to be overly transparent about how they use or train data-sets. This could lead to the loss of confidential information and severely affect the company's competitiveness on the market. In addition, we would emphasise that, as private companies, we could not require the completeness of data-sets in dealing with problems attributable to AI, such as issues related to AI bias, because those issues would be managed by the whole AI application system.

⑪ Companies should not be required to keep records of their data-sets used to test and train AI systems, or the data-sets themselves, as this would prove to be burdensome for companies and ineffective. Nevertheless, all processing of data should be fully compliant with the EU's GDPR.

⑫ When considering the training data as one of the key requirements for high-risk AI applications, the EU should also consider unsupervised learning and reinforcement learning methods in addition to supervised learning. Given that additional methods of AI learning that are not reliant on data-sets may be developed in the future, such as Input-Output data to map an input to an output, the EU should carefully assess whether it is appropriate to require companies to keep records of the data-sets themselves.

⑬ JBCE agrees that human oversight is needed to avoid adverse effects that could be caused by AI, but excessive oversight could hinder innovation and diminish the benefits of AI.

⑭ JBCE is concerned by the idea raised in the White Paper around requiring AI systems to be retrained using European data should developers be unable to prove that the original dataset meet European standards.

⑮ Indeed, it is very common in certain fields for training datasets to include third party and open source data. In such instances, the provenance of the training data is often a "known unknown". Requiring that high-risk products forgo the

use of such fundamental and widely adopted data-sets and the models that derive from them could lead to a serious degradation in the quality of AI systems that are subsequently released in the EU, particularly in instances where suitable European data-sets do not exist.

(6) EUROPEAN/INTERNATIONAL DATA

⑯ From a technical perspective, it is overly simplistic to expect that retraining data sets in the EU will solve AI performance issues. It is just as possible to have significant fairness and diversity issues with models trained in the EU, on data collected in Europe and compliant with European laws and ethics, as with data collected and trained elsewhere. In fact, restricting AI models so they only use limited data-sets, could lead to discrimination and lower quality systems.

⑰ If a model is found to fail in a European context, it is important that the model be fixed. But the manner in which that fix is made should not be prescribed by regulation, as currently envisioned. In some instances, failures may not even be due to issues related to the data; and even in instances where the data is at fault there are often techniques for addressing such problems other than retraining on fresh data.

(7) LIABILITY

⑱ We would welcome legal clarity on the extent to which companies should have responsibility for the risk assessment obligations for the product and/or service after its release. As there can be many actors involved in the supply chain of the creation of AI products or services, it can become very difficult to ascribe the extent of liabilities for each party. At the same time, certain AI products will be subject to important changes in their lifetime due to their self-learning capabilities after they have been placed on the market. Any risks posed by self-learning should be addressed through the New Legislative Framework (NLF). Moreover, NLF procedures that take place prior to placing products on the market could be broadened through the adoption of new standards to cover important and foreseeable changes.

(8) BIOMETRICS

⑲ Legal uncertainty exists today amongst local regulations defining the use of biometric identification for country safety (incl. against pandemics) and security purposes. Harmonisation would be beneficial. By complying with the future EU regulatory framework, we would expect that remote biometric identification solutions would benefit from:

    A) Increased trust and acceptance by users, customers, and society at large.

    B) Legal certainty.

    C) A level playing field to provide competitive and innovative solutions on the EU market.

    D) Harmonisation across the EU.

    E) Market access.

It would be useful to clarify the conditions to use remote biometric identifications and the measures to be taken during their operation by providing reader-friendly guidelines

⑳ As it is almost impossible for subjects to provide their consent to the use of face recognition technology in public spaces, we oppose any regulatory framework on biometric identification which would go against the rules laid out in the EUs General Data Protection Regulation (GDPR).

3. Conclusions

JBCE would like to reaffirm its support once again to the EU's ambitious digital agenda. AI technology will continue to evolve rapidly and its risks will vary depending on the context, the purpose and the application of AI systems. JBCE would welcome further consultation between the European Commission and industry before any regulation on AI becomes effective, and we urge the Commission to continuously review and amend AI regulation to ensure that the rules reflect market developments and the industry's concerns. We encourage stakeholders to continue working together to ensure the quick adoption of an EU-Japan cooperation and harmonization scheme on AI. As a final point, JBCE encourages the quick adoption of the EU-JPN mutual recognition scheme on AI – an effective way to strengthen international cooperation in a domain of strategic importance for our future.