AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Consultation response

AmCham EU's roadmap response on the proposal for artificial intelligence – ethical and legal requirements

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

American Chamber of Commerce to the European Union
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The American Chamber of Commerce to the European Union (AmCham EU) has long called for a **risk-based approach** to artificial intelligence (AI) regulation, and fully supports the view that AI legislation must be targeted and focused on problems which are not already covered by existing legislation.

Any risk assessment (or indeed rules/prohibitions) must take into account the context when assessing risk, since an AI application used for the same purpose will pose different risks depending on the way it is integrated into business operations. While similar AI technologies in different use cases may present very different risk profiles. The focus should always be on the specific use case, not on the broad class of application or technology. As such, risk assessments must reflect the probability and severity of potential harm. We therefore agree with the Commission that any additional regulation should be focused on high-risk applications, and we encourage the Commission to propose a narrow definition of AI systems which would **focus strictly on AI high-risk applications**.

The appropriate requirements for training data, record keeping, transparency, accuracy, and human oversight vary depending on the nature and use of an AI system. Outcomes of an AI-application are often only as good as the data they are fed, so high-quality, curated data carries benefits on several levels, such as safety and accuracy. The Commission should therefore avoid imposing one-size-fits-all requirements around these categories. The Commission should rather encourage companies to strive for high data quality and bias mitigation by making reasonable efforts, rather than imposing overly prescriptive requirements based on unattainable objectives. The emphasis should be on testing output, not on training data quality. Rather than putting requirements on training data, it would be better to have requirements based on testing model performance using benchmark datasets, to make sure that the outputs are within an acceptable range, since it is the model output that ultimately determines the real-world impact of an AI system.

Minimising the potential for businesses in Europe to choose different data sets around the globe or force them to 'retrain' AI systems on European data would produce lower quality AI outcomes. Moreover, AI systems become customised and evolve as a result of continuous training serving particular customers and markets. The training would be based on the specific business needs, location and business model. Consequently, any legal obligations concerning an operational AI system should apply to the operator of the system that has further trained and evolved the AI as opposed to the original producer.

We support the need for a public dialogue on the use of **facial recognition** technologies, which could lead to targeted legislation and specific requirements applying to high-risk applications. We would welcome further consultation with industry on this point.

While **voluntary labelling** schemes can be helpful to consumers or end-users in some markets, we do not believe it would be effective across such a broad field as AI, given the hugely diverse range of products and services that will be developed and deployed across all sectors in the coming years.

The Commission should not impose **ex-ante conformity assessment** for AI systems, as these could turn into barriers to enter the market. We would instead support a combination of ex-ante self-assessment by entities using high-risk applications, followed by ex-post market surveillance. In order to demonstrate compliance with potential ex-ante requirements, the availability and use of relevant technical standards, testing protocols and the availability of notifies bodies with adequate expertise and bandwidth are crucial for AI developers wishing to enter the market. A potential regulatory framework should take into consideration such availability, or risk undermining the potential of AI powered solutions. AmCham EU would also like to underline the existence of a sector-specific product safety framework, and the upcoming review of the General Product Safety Directive, and calls on the Commission to ensure close coordination and avoid duplication in order to ensure legal certainty for all players.

The use of AI systems, and therefore any resulting **liability, is context-specific**. Therefore, the focus of risk should lie on a specific application and the context of its use. There is often a complex chain of various producers and

intermediaries involved, legal requirements for high-risk AI applications should therefore be addressed to the actors best placed to address potential risks. This is also why having more than a single operator who is liable or introducing joint liability would not be workable.