

Poland's position in the consultations on the White Paper on Artificial Intelligence - a European approach to excellence and trust

Poland welcomes the initiative of the European Commission presented in the Communication from the Commission to the European Parliament and the Council: White Paper “Artificial Intelligence – a European approach to excellence and trust”. We are witnessing global competition for digital leadership and, therefore, it is necessary to undertake coordinated, horizontal action to boost the safe development of a trustworthy, human-centric artificial intelligence in Europe, in full respect of values and fundamental rights, such as human dignity and privacy protection of EU citizens. Poland recognizes that the success of these actions depends on the involvement and cooperation of all social, business, scientific, financial, and public partners.

Coordinated Plan on Artificial Intelligence

Poland supports the Commission's proposal that, based on the results of the public consultations of the *White Paper* and following the adoption of national strategies, a review of the *Coordinated Plan on Artificial Intelligence* would be carried out by the end of 2020.

Taking into account the economy of scale of the challenge of competing with non-EU economies, it is of the utmost **importance that European regulatory and investment framework** is properly structured so that national institutions and businesses can work to the benefit of both the whole European ecosystem and the national economies. It should **minimize the risk of building internal industrial, research and development, or financial monopolies and create the conditions for the creation of regional and cross-border ecosystems**, which will boost the achievement of the overall objectives of the *Coordinated Plan on Artificial Intelligence*, for the benefit of the EU as a whole and each of its Member States.

Poland shares the Commission's view that **the EU should strengthen its position in ecosystems and along value chains**, from some hardware manufacturing sectors, through software, to services. Moreover, Poland is of the opinion that the EU should create a new quality or support the **creation of models of cooperative stakeholders of Member States, especially in the region of Central and Eastern Europe.**

Funding of AI research and development, including support to SME's and MSME's

Poland welcomes the Commission's proposal to launch a pilot scheme in 2020, with a budget of EUR 100 million, to provide equity funding for the innovative development of AI and a significant increase in funding from 2021 onwards through the InvestEU Programme. At the same time, Poland expects the European Investment Fund programme to define investment directions in a way that ensures the geographical cohesion of EU's regions.

In our opinion, the desired effect of maximizing the impact of investment in research, innovation and deployment, as well as **attracting over EUR 20 billion of total investment in AI in the next decade across the EU annually requires more public funding.**

At the same time, Poland reiterates its strong call for including in "Action 4" of the *White Paper* the recommendation for the Commission to create, based on the experience of Member States, including Poland¹, a European platform (EU GovTech) enabling the aggregation of public institutions' (EU and national) demand for modern technologies in a way that enables companies from the micro-enterprises sector (MSME) to apply for contracts for these technologies delivery on transparent terms. In Poland's opinion, this will allow for increasing access of EU's innovative companies to the public procurement market that is worth the equivalent of several percent of the EU's GDP. Poland notes that the "govtech" market, which is underpinned by the use of AI in the public sector, is worth around EUR 400 billion globally and is expected to reach EUR 1.5 trillion by 2025. In Poland's opinion, indicating directly the key role of the "govtech" sector, in particular in the area of support for MSMEs and public administration, would fill an important gap in the current legislation and content of EU documents. This is particularly important during the coronavirus pandemic and fits perfectly with the Commission's current priorities - both the EU Recovery Plan and the Green Deal.

We support the Commission's plans to make it easier for SMEs and start-ups to access, use, and finance AI in order to adapt their procedures or implement innovations using AI. To this end, the Commission wants to strengthen digital innovation hubs² and an on-demand artificial intelligence services platform³, and to promote cooperation between SMEs. **Poland is convinced that it is necessary to focus not only on cooperation between SMEs, or even MSMEs, but also on their cooperation with the big industry, the agricultural sector, and public service providers, which will significantly affect the demand for AI solutions and the possibility of their scaling-up in the available markets. Also, it is necessary to provide *start-ups* access to the widest possible range of data and algorithm libraries as without this possibility their development will not be fast enough.**

In the process of establishing the regulatory framework for the control procedures for AI systems, particularly "high risk" ones, **account should be taken of support for MSMEs**, which could in fact be provided through *Digital Innovation Hubs* (DIH) and AI testing facilities.

¹In Poland, such a solution functions as the GovTech Polska Competition Platform (<https://konkursy.govtech.gov.pl>).

² ec.europa.eu/digital-single-market/en/news/digital-innovation-hubs-helping-companies-across-economy-make-most-digital-opportunities

³ www.Ai4eu.eu

Partnership with the private sector

Poland supports the Commission's proposal to establish a new public-private partnership in the fields of AI, data, and robotics, in the framework of the Horizon Europe programme, and cooperation with research centres and digital innovation hubs.

Likewise, we support the Commission's plan to launch open and transparent sectoral dialogues, with priorities in the areas of health care, rural administrations, and public service operators, so as to present an action plan to facilitate the development, testing, and implementation of AI. **At the same time, in Poland's opinion, priority areas should be extended to include agriculture, as well as transport and logistics.**

In this respect, we prefer an approach that encourages businesses to test the target solutions, so that administration and public service providers (healthcare, education, and public transport) can use mature solutions that can be applied effectively on the widest possible scale and in various conditions. **Promotion of innovative AI solutions in the public sector involves the risk of not being sufficiently prepared to assess the quality and effectiveness of such solutions.**

Concept for building digital innovation hubs and centres of excellence

Based on cooperation with Member States, the Commission wants to ensure a high degree of specialization in AI in at least one digital innovation hub (DIH) in each Member State, which can be supported under the Digital Europe Programme. **In principle we welcome the proposal for such an action, assuming that the EU will not a priori go in the direction of geographical distribution of highly specialized centres, but instead will allow such centres and their specialisation to develop spontaneously in each Member State, thereby also promoting a competitive culture.**

Furthermore, Poland is strongly opposed to establishing a "flagship research centre" and calls for the development in the EU of a network of excellence including various research centres located in different Member States. This way, we will avoid the risk of neglecting financial support for smaller research centres, especially in Central and Eastern Europe, which could not sufficiently develop and establish themselves globally - due to the asymmetry in the allocation of funds so far.

Provision of access to data and computing infrastructure

Poland appreciates the ambition to make EU a data centre but believes that **making the EU a trusted data space will be much more effective, will have a much more positive impact on the productivity of the EU, and will prevent it from incurring an "innovation debt"**. Such data space should be based on a decentralised federal model with an intelligent architecture and security protocols - the "virtual data warehouse" model. **The priority should be to support the development of an environment of decentralised and federalised computing centres** to support research centres that use data to "train" AI models for the production and construction of AI systems before they are used in large computing networks.

Poland believes that **one of the priorities for AI is to support the development of and access to computing technologies.** However, the priority of high-performance computing technology should not be reduced to the cloud, as it is not the only source of computing power for AI. Cloud computing

environment is not indispensable for the development of AI, but rather good quality data, which is the basis for machine learning and development of neural networks and the ability to build operational logic models.

Poland does not share the Commission's assumption that data processing for AI purposes currently takes place in a central cloud architecture. Today, cloud architecture is predominantly a hybrid and distributed system, where EDGE computing plays main role. **Poland sees particular potential in exploiting the trend of development of edge computer networks for the protection of privacy by end-users and for building trusted data spaces by the industry.**

In Poland's opinion, a stronger emphasis should also be placed on **data quality**, which is crucial for artificial intelligence technologies embedded in products and services, as **poor data quality may create new security risks for AI users, reduce their trust in AI, maintain prejudices, and generate bias in data-based policies.**

Poland also points to the need to supplement the document with issues related to the very high-capacity networks infrastructure, including **the need to create digital highways**, both cross-border and domestic, implemented using fibre optic cables connecting centres responsible for the development and implementation of AI technology in the EU. The document should also **indicate the link between the development of the AI and the opportunities offered by 5G networks**, and thus the need to implement this network in the EU as soon as possible and to gradually develop it.

Poland welcomes the Commission's efforts to take into account the role of **IoT and automation and the use of edge computer functionality in the debate on AI**. It is also important to **give more weight to the use of high-performance computers and quantum computers** and to incorporate them into the architecture of the excellence and trust ecosystem, for example by creating computing competence centres.

Legal framework for responsibility for the design and use of AI systems

We share the Commission's view on the need to define a clear European regulatory framework that would contribute to building confidence in the AI among consumers and businesses, thereby accelerating the spread of this technology, while ensuring socially, environmentally, and economically optimal results and compliance with EU's laws, principles, and values.

The Commission supports a regulatory and investment approach with the dual purpose of promoting the use of artificial intelligence and addressing the risks associated with certain applications of this new technology. **Poland suggests to make the investment approach a priority and to limit the regulatory approach only to the areas of necessary intervention that promote legal certainty and relations, ensure coordination within the EU, and limit the negative social impact.** The regulatory framework should focus on how to minimise the various risks of potential damage, especially the most serious ones. In principle, the regulations should be sufficiently effective to achieve their objectives, but should not be overly prescriptive, as this could lead to disproportionate burdens, especially for SMEs and MSMEs.

The future regulatory framework should provide incentives for voluntary *ex ante* control or even voluntary certification rather than imposing mandatory certification. If mandatory certification is imposed, it should be approached with great caution because of the risk of over-regulation and inhibition of innovation, and the principle of mutual recognition of certificates issued by centres or institutions located in Member States should be provided for in order to ensure an open environment for AI innovation in full respect of the needs associated with productivity of national economies.

Human oversight of AI systems, especially at the level of protection of human autonomy, should be the guiding principle for each type of trustworthy AI, not just for high-risk applications. This rule should apply not only to the design of AI systems but also to their entire life cycle.

Poland supports the proposition expressed in the *White Paper* that introduction of any prohibitions on biometrics and specification of requirements for admissibility of remote biometrics should be preceded by a European debate. In any case, however, such debate must be based on the premise that fundamental rights must be preserved and implemented, which, if the trustworthy AI requirements are properly applied, can strengthen these rights to ensure the continuity of European values in the era of digital transition and algorithmic economy.

It is important that there should be uniform rules across the EU without the risk of regulatory fragmentation in national systems. **The key to future regulation is a balanced approach that ensures that risks (e.g. to fundamental rights or lack of responsibility) are minimised but at the same time that the opportunities offered by the creation and application of AI are maximised.** Poland is of the opinion that, as a first step towards building a common, horizontal legal framework for artificial intelligence, the Commission should recommend **European regulations that are necessary for the creation of “regulatory sandboxes,”** especially in harmonised areas. Creating a single environment for developing and testing technologies that use artificial intelligence would overcome the single market fragmentation barrier, thus facilitating the operations, in particular, of highly innovative start-ups.

Classification of “high-risk” areas and “high-risk” applications

Poland welcomes the *White Paper’s* proposition that a regulatory balance can be achieved through a risk-based approach. However, we suggest that the term “risk assessment” is understood broadly and includes risk identification and evaluation, which would also correspond to the predictive function of AI. The risk-based approach proposed by the Commission is important to ensure proportionality of regulatory intervention. **However, this requires clear criteria to distinguish between artificial intelligence applications, in particular as to whether they are “high-risk”.**

Poland agrees with the approach presented in the *White Paper*, which is to qualify AI system applications as “high-risk” if they meet both of the following two criteria: they are in a “high-risk” sector and the use of the AI system in a given sector results in occurrence of “high-risk”. The Commission's proposal to find a horizontal, sector-independent approach to the use of AI for “high-risk” purposes, such as recruitment of personnel, identification with biometric methods, and military purposes, is also appropriate. **However, this list should be extended to include justice and advanced forms of education using AI. The draft list of “high-risk” sectors should also include critical**

elements of telecommunications and ICT networks as an environment where AI can work remotely with other AI systems or peripheral devices such as IoT.⁴

In the *White Paper*, the Commission points out that clear rules must apply to “high-risk” AI systems, such as those used in healthcare, by the police, and in the transport sector. **This does not, however, take into account the entire state security sector or the law enforcement sector.** In these sectors, AI systems should be transparent and traceable, and should guarantee human supervision. Member States should be able to test and certify AI solutions before they are implemented and used.

Poland supports the Commission's proposal to **introduce an *ex ante* conformity assessment procedure for certain “high-risk” AI applications, with due protection of confidential information, such as trade or industrial secrets.**

Voluntary labelling for “no-high-risk” applications

Poland supports the Commission's proposal to introduce voluntary labelling for “no-high-risk” applications and to exclude AI systems that do not qualify as “high-risk” applications from the mandatory *ex ante* control procedure. Irrespective of the voluntary labelling, the control of compliance with the legal requirements should also be ensured *ex post*.

Poland **appreciates the concept of voluntary labelling, which can support the creation of a system for shaping the quality of AI systems as systems made in the EU or operating in its market and where manufacturers or operators would be entitled to present such a dedicated EU quality label.**

Voluntary labelling should be supported by a new legal instrument for enforcement of the requirements applicable to the legal framework for AI specified in the *White Paper*, but this instrument should not rely on the need to meet the requirements for “high-risk” applications, as this would in practice become an *ex ante* control procedure.

Compliance and enforcement

If the EU aims to be the frontrunner of AI and to coordinate its internal market, it is necessary to create uniform rules for liability for damage caused by AI and affecting AI systems due to the provision of incorrect or poor-quality data or even cyberattacks, or to the design the AI model made in violation of the state of the art and the science of AI, while providing a legal framework allowing for new discoveries and innovative applications.

At the same time, the Polish government welcomes the Commission's communication⁵, in which it approved the seven key requirements set out in the guidelines of the high-level expert group⁶ and considers them as a foundation for future regulatory work and for shaping ethical practice in the

⁴ This aspect is the subject of an ongoing study by the International Telecommunication Union (ITU).

⁵ COM(2019) 168.

⁶ human agency or oversight; technical robustness and safety; privacy and data governance; transparency; diversity, non-discrimination and fairness; societal and environmental well-being; and accountability

AI area, including the non-European dimension, as also confirmed by the OECD in its position expressed at the time of adoption of its recommendation in the document *Stewardship of Trustworthy AI*.

The Commission notes in the *White Paper* the results of the work of the aforementioned expert group on a checklist (compliance assessment) for Trustworthy Artificial Intelligence and the fact that many of these requirements are already included in existing legal or regulatory systems. **However, regulations on transparency, traceability, and human oversight are not yet included in current legislation for many sectors of the economy.**

Poland pays particular attention to the need for a sufficiently precise definition of artificial intelligence to ensure legal certainty for both EU and national law. **We do not agree with the proposition of the *White Paper* that the definition of AI should be limited to software only⁷.** Such an approach does not take into account the essence of AI which is to model knowledge and influence the environment. **Poland supports the use of the definition recommended by the OECD as the most appropriate given the essence of AI technology, which has been adapted by the high-level experts of the AIHLEG.** Artificial intelligence should be clearly defined for the purposes of the *White Paper* and any future policy initiatives.

Poland is of the opinion that the existing EU legal framework addresses many of the issues posed by AI, but emphasises that the existing legal framework is not fully applied to AI, but instead either applies partly, or requires review and adaptation. This applies even to product liability rules, which by their very nature apply to physical products, and the current legal regime covers only the manufacturer-consumer relationship, leaving other business models unregulated. This applies to the P2C (platform-to-consumer), B2P (business-to-platform), and B2G (business-to government) models.

It is necessary to review in parallel the existing legislation to ensure that it does not constitute a barrier to the development of innovation in the area of AI, even for “high-risk” AI applications, and with a view to introducing new instruments to support innovation, such as the so-called “regulatory sandboxes.”

At the same time, the list of existing AI regulations mentioned in the *White Paper* should be complemented by adding the already effective Regulation 2018/1807 on a framework for the free flow of non-personal data in the European Union⁸, which is of key importance today for building the data economy and development of AI in the EU. Poland shares the view expressed in the *White Paper* that the EU should make full use of the tools at its disposal to increase the evidence base on potential risks associated with AI applications, including the experience of the European Union Agency for Cyber Security (ENISA) to assess the landscape of artificial intelligence threats.

⁷It should be noted that AI systems are not just software, but instead they incorporate software into an organisational and operational model that enables analysis and processing of, and inference from, the data entered and the analytical methods used, or the technologies that make up the AI conglomerate, such as neural networks, deep learning, computer vision, or machine reasoning, e.g. using fuzzy logic. Acknowledgement of these facts is crucial as existing legislation may become unclear, for example when an entity that is not the manufacturer adds artificial intelligence after a product is placed on the market.

⁸[Regulation \(EU\) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union](#)

Ensuring the effective functioning of the liability system

Poland is of the opinion that **it is of paramount importance to establish in the EU a jointly recognised liability framework, both for the design of AI during its life cycle and for its application.** In an attempt to exclude any risk, a liability regime should rather be created in the AI design layer, in its entire life cycle, as well as for the stage of application and use of the AI, **in the same way as the rules on the risks of operation of energy companies are applied.** Moreover, Poland points out that the call of the *White Paper* to ensure effective judicial redress for damage caused by an AI system must first be addressed within the scope of the framework of liability on this account.

Poland's position is in line with the propositions of the *White Paper* to distribute the responsibilities designed in the regulatory framework among the different actors of the AI life cycle and its application: separately for the creators, the developers, and the operators, according to the measure of their different ability to control risks and maintain compliance with ethical guidelines for trustworthy artificial intelligence. At the same time, it should be noted that the product liability regime in its current state does not address the challenges of AI to an extent that would ensure safety and certainty of transactions and takes into account other stakeholders in the value chain than consumers alone.

It should be emphasized that in the current state of knowledge and technology, there are types of AI that cannot be fully explained. It can be difficult to follow the decisions made by AI, especially if the AI system does not rely on human supervision. However, this does not mean that difficulties with the "black box" translate directly into difficulties in defining safety and liability rules⁹. For such cases, it is necessary to provide non-technical rules of robustness and accuracy, the fulfilment of which may be supported by a checklist for ethical or legal assessments of the preparation and use of a trustworthy artificial intelligence system, including accountability and auditability. The robustness and accuracy requirements that can be imposed on AI systems would enable referring to the obligation to apply four of the requirements suggested in this regard in the *White Paper*.¹⁰

An ecosystem of excellence - skills

The development of the EU on the basis of the opportunities provided by AI can no longer rely solely on strengthening industrial or technological capacities, but should promote cooperation in fundamental research, education of citizens, and flexible development of the information society. It is necessary to recognise the need to redefine formal education programmes and to improve digital skills or retraining at work.

⁹By shifting to the manufacturer the burden of proof that it has exercised due diligence in the design according to the state of science and technology, or to the operator that he has complied with the rules applicable to a trustworthy artificial intelligence or with other compliance protocols and laws.

¹⁰ 1) robustness and accuracy throughout the life cycle; 2) ensuring reproducibility; 3) dealing with errors and inconsistencies throughout the life cycle; 4) resilience against overt attacks and attempts to manipulate data or algorithms [p. 24].

International cooperation with non-EU countries and organisations

Poland strongly supports the actions of Europe taking a leading role in building alliances based on common values and in promoting ethical use of artificial intelligence. We welcome the Commission's declaration that it intends to cooperate with non-EU countries that share EU's views on AI. This is extremely important for building an international space of trust not only in the AI area, but in the digital economy in general and its trends.

Poland expects that the EU will also undertake to eliminate restrictions on trade in FTAs, **in favour of cooperation clauses promoting access to data in the trusted data space, including those collected by cross-border platforms.**

Establishment of the European governance structure

Poland appreciates the proposal set out in the *White Paper* to create a European governance structure for AI as a forum for cooperation between competent national authorities so as to gradually ensure the ability to test products and services based on artificial intelligence and possibly certify on a reciprocal basis those that will be used in "high-risk" areas. It is important that such a structure should be supported by AI expertise and participation of all stakeholders, and that it should not duplicate, but instead should complement the competences of the existing specialised bodies.

Poland supports a model where the Member State concerned has its own competence to notify independent conformity assessment bodies in accordance with the requirements of the legal and ethical frameworks.

Poland fully agrees with the demand for artificial intelligence to work for people and the society. It can also ensure confidence in public services and provide a basis for building a new space for cooperation in value chains between companies, the academia, and social organisations, as well as internationally, between likeminded states and supranational organisations.