

Proposals for regulating AI in the UK

TMT analysis: Mark Prinsley, partner, Oliver Yaros, partner, and Ondrej Hajda, associate, at Mayer Brown International LLP, consider the government's recent proposals for regulating artificial intelligence (AI) in the UK, including cross-sectoral principles for governance, amendments to current legislation and the anticipated AI White Paper.

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The UK government's [artificial intelligence \(AI\) regulation policy paper](#) published on 18 July 2022, '[Establishing a pro-innovation approach to regulating AI](#)' sets out the government's vision for a future 'pro-innovation' and 'context-specific' AI regulatory regime in the UK (see: [LNB News 18/07/2022 71](#)). It forms part of the government's ten-year [National AI Strategy](#) which was announced in September 2021 and which seeks to make Britain a 'global AI superpower' (see: [LNB News 22/09/2021 90](#)).

The July 2022 policy paper proposed six cross-sectoral principles for AI governance. The draft principles cover AI systems':

- safety
- security
- transparency and explainability
- fairness
- accountability
- the right to redress or contestability

The proposed principles build on the five [OECD AI Principles](#) adopted in May 2019 (and previously endorsed by the UK) and highlight the areas where the government sees the most risks associated with the use of AI.

Businesses that use or sell AI in the UK should identify who within their organisation is responsible for an AI governance and risk management strategy and consider what steps they will need to take to align their internal strategy with the proposed cross-sectoral principles, as well as other AI regulatory frameworks emerging in the EU and elsewhere.

The government proposes to initially put the cross-sectoral principles on a non-statutory footing without introducing new legislation, for example, by issuing executive guidance or a specific mandate to regulators. Existing regulators, such as the Information Commissioner's Office, Competition and Markets Authority, Medicine and Healthcare Regulatory Authority and Ofcom, will be asked to interpret and implement these cross-sectoral principles within their sector or domain. The government will also encourage regulators to focus on high-risk concerns (rather than hypothetical or low risks associated with the use of AI) and to consider lighter touch options for regulation (such as issuing guidance or encouraging voluntary measures). However, the government has not ruled out proposing new legislation where and when needed to ensure effectiveness of the new AI regulatory framework.

Alongside the policy paper, the government proposed changes to existing UK legislation to encourage a responsible use of AI in the UK. The two most notable proposals for changing current legislation are:

- the Data Protection and Digital Information Bill which would, among others, amend the requirements in Article 22 of the UK General Data Protection Regulation, [Retained Regulation \(EU\) 2016/679](#) (UK GDPR) relating to automated decision-making to give businesses greater clarity on when they can use personal data to make automatic decisions (ie those without a meaningful involvement of a human in taking the decision) about individuals (see Practice Note: [The Data Protection and Digital Information Bill](#))
- an amendment to the [Copyright, Designs and Patents Act 1988](#) to introduce a new statutory exemption to the UK copyright and *sui generis* database right to allow text and data mining

(used, among other things, in the training of AI systems) for any purpose (see [News Analysis: What does the future hold for AI and IP – the UK government responds to key consultation](#))

However, the future of the legislative amendments is currently unclear with the appointment of a new UK Prime Minister, Elizabeth Truss, and their stated intention to review the proposals before they progress in the UK Parliament.

In comparison with the [European Commission's proposal for an AI Act](#) published in April 2021, the government's policy paper sets out an alternative view for regulating AI, indicating a likely divergence in regulatory approach between the EU and the UK.

Unlike the EU's AI Act proposal, the UK's policy paper does not seek to ban specific uses of AI but takes a principles-based approach. Sector specific, existing regulators will then decide whether the use of AI in a specific scenario should be prohibited or subject to a higher regulatory burden.

The government hopes that this de-centralised approach will encourage innovation and be more adaptable to technological change.

The government specifically rejected the European Commission's idea of creating a single regulator with a new mandate and enforcement powers responsible for regulating AI across all sectors. Instead, the government plans to leverage the experience and expertise of existing regulators and ask them to issue guidance to highlight the relevant regulatory requirements applicable to the businesses and sectors that they regulate (eg to obtain sector-specific licences, meet sector-specific standards or appoint named individuals to assume particular responsibilities).

While a more light-touch, de-centralised approach to AI regulation in the UK may be welcomed by some UK organisations, businesses that use or sell AI in both the UK and the EU will likely have to navigate two separate regulatory regimes. As with the data protection compliance programmes implemented following the introduction of the EU's General Data Protection Regulation, [Regulation \(EU\) 2016/679](#) (EU GDPR) some international businesses may decide to follow the stricter, EU requirements throughout Europe (or even globally) to reduce the costs associated with having to comply with two different regulatory regimes in what they effectively consider to be one market.

The government is seeking initial views from stakeholders on the proposals set out in the policy paper. The call for views is open until 26 September 2022. Following review of the responses to this call for views, the government has suggested that it would publish an AI White Paper in late 2022 with more concrete proposals for AI regulation in the UK. However, it is possible that the recent appointment of a new Prime Minister may delay these plans.

Interviewed by Vino Sam and Diego Salinas



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