

# Enable trusted AI to thrive in Europe for enhanced services and economic opportunity

## *Business priorities for EDPB opinion on AI models*

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13 December 2024

### *Digital leadership isn't a luxury for Europe; it's a necessity*

Digital leadership isn't just a luxury for Europe; it's a necessity. Our future economic success and societal well-being hinge on our ability to harness the transformative power of trusted digital innovation. As the EU prepares for a new legislative cycle, there is a clear imperative: Europe must prioritise work to deliver a robust and complete digital single market, underpinned by decisive regulatory harmonisation, which will allow trusted innovation to thrive.

The *Draghi report*<sup>1</sup> is clear: to unlock Europe's innovative potential and ensure its industries stay competitive, we must integrate AI into existing sectors and lead in new ones. While some progress has been made the numbers tell a troubling story. In 2023, the US led private investment in AI (€62.5 billion), followed by China (€7.3 billion). The EU attracted €5.5 billion worth of private investment in 2023<sup>2</sup>. In 2023, 61 notable AI models originated from U.S.-based institutions, far outpacing the European Union's 21 and China's 15<sup>3</sup>. To counter this disparity, there must be a focus on the practical implementation of the digital rulebook, as well as steep innovation. A joint public-private effort is required to create a working European eco-system. The current sheer volume and complexity of Europe's legal framework, coupled with fragmented national legal frameworks, calls for a harmonised, European, multidisciplinary approach to bring clarity and practical guidance to European businesses to help them to implement and adopt new technologies. On average, nearly one in five European SMEs trade online, however less than one in ten trades online cross-border; and only 8% of EU enterprise has adopted AI; illustrating challenges to startups, scaling digitalised enterprise and AI adoption<sup>4</sup>. This is more than a missed opportunity; it's a long-term threat to Europe's economic future.

Over the last five years, the EU has developed a complex rulebook across the digital value chain, including a new AI Act. Much of this rulebook will have to be clarified and implemented soon. The B9+ group<sup>5</sup> and other stakeholders including the D9+ Ministerial Group<sup>6</sup> and Dr Draghi have all stressed the need to ensure that this new rulebook is coherent in practice, predictable and works with, not against European competitiveness in implementation. A debate also needs to be had on whether all rights are being balanced properly in the implementation of digital regulations.

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<sup>1</sup> [The future of European competitiveness – A competitiveness strategy for Europe](#) September 2024 (the 'Draghi Report').

<sup>2</sup> [https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760392/EPRS\\_ATA\(2024\)760392\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760392/EPRS_ATA(2024)760392_EN.pdf)

<sup>3</sup> [https://aiindex.stanford.edu/wp-content/uploads/2024/04/HAI\\_2024\\_AI-Index-Report.pdf](https://aiindex.stanford.edu/wp-content/uploads/2024/04/HAI_2024_AI-Index-Report.pdf)

<sup>4</sup> [European Commission DESI Indicators \(2023-2024\)](#)

<sup>5</sup> [A Digital Europe: Open, Competitive & Resilient. B9+ vision & priorities for D9+ & EU policymakers for a Digital Europe, 2024-2029](#), April, 2024

<sup>6</sup> [D9+ Ministerial Meeting in Dublin, 19 April 2024 Ministerial Declaration Effective and coherent digital regulation as a foundation for innovation and growth in the EU](#), April 2024

Without decisive and coherent regulatory harmonisation, the EU risks sidelining itself in the AI revolution, leaving the region dependent on technologies developed elsewhere and losing out on transformative opportunities for growth, innovation, and influence.

Acknowledging the dual objectives of the AI Act<sup>7</sup> <sup>8</sup>, the can-do approach of developing and deploying responsible AI; the importance of the GDPR and EDPB role; the Irish Data Protection Commission (DPC) request to the European Data Protection Board (the EDPB) for an opinion pursuant to Article 64(2) GDPR<sup>9</sup> and the EDPB stakeholder event on 5 November<sup>10</sup>, we, the undersigned<sup>11</sup>, would like to formally outline some considerations for the EDPB opinion on AI models and the shared need to bring some clarity to this area.

#### *Considerations for the EDPB opinion on AI models expected by the end of 2024*

1. **Business needs a balanced, pragmatic approach to data processing, in the context of AI model training, that enables the development and deployment of AI “made in Europe”, while respecting European values and privacy standards.**
  - a. The scope should focus on the processing of personal data for developing and training generative AI models. The scope must be consistent with and not stray beyond requirements in both the GDPR and AI Act. The opinion should be delimited and as short as possible.
  - b. The approach should be pragmatic, uphold fair competition and be technologically neutral to safeguard rights and enable compliance and flexibility as the technology evolves. It should provide practical answers to the question of how data processing can be done, and which kind of safeguards need to be in place.
  
2. **Responsible AI, a way forward.** To make responsible AI possible, it is clear a way has to be found to, step by step, come to an acceptable method of filtering GDPR sensitive data in training content and output. A clear way forward, with standardized filtering methods will help solve the problems and provide a clear framework to keep the progress that AI-models offer our economies, and in the future safeguard an ecosystem where filtering is deployed in line with a set of common ground rules.

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<sup>7</sup> See [European approach to AI](#). **Trustworthy AI** is defined as lawful, ethical and robust throughout its lifecycle. **Excellence in AI** refers to boosting the national and EU technological capacities and AI uptake across the economy in both the private and public sectors.

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<sup>9</sup> <https://www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-welcomes-conclusion-proceedings-relating-xs-ai-tool-grok>

<sup>10</sup> [https://www.edpb.europa.eu/news/news/2024/stakeholder-event-ai-models-express-your-interest-participate\\_en](https://www.edpb.europa.eu/news/news/2024/stakeholder-event-ai-models-express-your-interest-participate_en)

<sup>11</sup> The business confederations in the following EU Member States: CEOE (Spain), SPCR (Czech Republic), DI-Digital (Denmark), EK (Finland), Ibec (Ireland), VNO-NCW (Netherlands), LEWIATAN (Poland) and Confederation of Swedish Enterprise (Sweden).

- a. However, in the context of ongoing discussions<sup>12</sup> surrounding whether personal data may be inferred by using a generative AI model, clarity is needed on the safeguards that must be in place to adhere to the principles of the GDPR (article 5). The Google vs CNIL case of the ECJ<sup>13</sup> may shed some light on this. With regard to inferred special categories of personal data, a distinction must be made between public figures and regular persons.<sup>14 15</sup>
- 3. The appropriate safeguards applicable to any AI project will depend on the nature of the model and the nature of the data being processed – no ‘one size fits all’ solution.**
- a. Mitigation measures can ensure data processing adheres to GDPR principles, balancing the interests of data subjects and data controllers. Privacy may be considered in the development of the model and/or its deployment in consumer-facing applications. At the training stage, data minimisation measures such as putting pre-training filters in place: defining collection criteria, excluding certain data categories and excluding certain data sources pre-training filters<sup>16</sup>, the use of differential privacy, (homomorphic) encryption, transfer learning, generative adversarial networks and de-duplication may be used, along with output-level measures like output filters.
  - b. Consider impacts in relation to start-ups and SMEs.
  - c. Appropriate transparency (e.g., public notice on how models work and are trained) towards individual data subjects is important; but no one size fits all solution exists: direct notification may not always be practical in cases where it would prove disproportionate<sup>17</sup> and additional personal data should not be collected to identify data subjects solely to fulfil data subject rights<sup>18</sup>.

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<sup>12</sup> The model statistically predicts which word (token) is most likely to follow another word (token) which could lead to a sentence which indirectly identifies a person (for instance, the King of the Netherlands has gone skiing).

<sup>13</sup> <https://curia.europa.eu/juris/document/document.jsf?text=&docid=209686&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6951782>

<sup>14</sup> Based on article 9.2.g GDPR and article 11 ECHR (freedom of expression and information); see also in this context: <https://iapp.org/news/a/do-llms-store-personal-data-this-is-asking-the-wrong-question;> <https://iapp.org/news/a/using-special-categories-of-data-for-training-llms-never-allowed-;> [https://www.edpb.europa.eu/our-work-tools/our-documents/other/report-work-undertaken-chatgpt-taskforce\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/other/report-work-undertaken-chatgpt-taskforce_en)

<sup>15</sup> For instance, special categories of personal data and criminal data may be excluded, but<sup>15</sup> special categories of personal data and criminal data about public persons may be included based on article 9.2.g or article 11 ECHR (freedom of information). For instance, religious beliefs of the pope and political opinions of parliament members.

<sup>16</sup> See within this context also the report of the EDPB ChatGPT-Taskforce of May: [https://www.edpb.europa.eu/our-work-tools/our-documents/other/report-work-undertaken-chatgpt-taskforce\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/other/report-work-undertaken-chatgpt-taskforce_en)

<sup>17</sup> See Article 14(5)(b) GDPR and [Article 29 Working Party - Guidelines on transparency under Regulation 2016/679](#) p30

<sup>18</sup> Article 11 GDPR

4. **The shared ambition to develop and adopt trusted and high-performance AI ‘made in Europe’ that benefits Europe through enhanced services and economic opportunity would realistically require significant amounts of high-quality European data:**
- The use of (special categories of) personal data may be needed (depending on the specific case at hand) to detect and mitigate bias is also acknowledged in the AI Act.<sup>19</sup>
  - There are different legal bases for the processing of personal data, but not all are suitable for the development or deployment of AI models<sup>20</sup>. Compliant and practical approaches such as the use of ‘legitimate interest’<sup>21</sup> must be enabled. There is no ‘one size fits all’ solution. Distinction should be made between the different types of AI and the phases of developing and deployment of AI.<sup>22</sup> The balancing of interests should take into account the societal interests arising from the responsible development and deployment of AI. A principle based road-map which takes such differences into account would be much appreciated.
5. **Responsible AI is a shared journey.** It involves serious expertise building and requires a variety of several legal and technical perspectives. We welcome the EDPB invitation to the AI Office to engage on guidelines on the interplay between the GDPR and AI Act and the establishment of appropriate co-operation mechanisms<sup>23</sup>. Looking ahead, the development of EDPB guidance should also involve further structured and more regular consultation with industry stakeholders to take into consideration the multiple actors involved in AI systems, each with different levels of control over data and decision-making processes. The EDPB workshop held on November 5, 2024, was a step in the right direction. Continuous and open dialogue is essential to provide for a common baseline of understanding of the issues and solutions.



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<sup>19</sup> Article 10 AI Act

<sup>20</sup> Consent requirements (Article 6 (1)(a) GDPR) are difficult to implement in practice when developing AI models.

<sup>21</sup> Article 6 (1)(f) GDPR.

<sup>22</sup> For instance, consent might work in some instances for first party prompting but not for third party prompting. Legitimate interest seems to be the only feasible legal ground in this respect. Legitimate interest is also the most feasible legal ground for training generative AI models.

<sup>23</sup> [EDPB Reply to the letter from the AI Office on the EDPB statement on the role of data protection authorities \(DPAs\) in the Artificial Intelligence Act Framework](#)