CIPL Response to the DSIT Consultation on the Policy Paper *"A pro-innovation approach to AI regulation"*

Centre for Information Policy Leadership
HUNTON ANDREWS KURTH

21 June 2023

CENTRE FOR INFORMATION POLICY LEADERSHIP RESPONSE TO THE DEPARTMENT FOR SCIENCE, INNOVATION AND TECHNOLOGY CONSULTATION ON THE POLICY PAPER *"A PRO-INNOVATION APPROACH TO AI REGULATION."*

The Centre for Information Policy Leadership (CIPL) [1] appreciates the opportunity to comment on the proposed framework presented in the Department for Science, Innovation and Technology (DSIT) Policy Paper, "A pro-innovation approach to AI regulation." We commend the Government's efforts to establish a clear, principles-based, and proportionate framework focussed on the risk of case-by-case use of AI rather than the technology itself. CIPL has actively participated in the initial consultation on the White Paper, "Establishing a pro-innovation approach to regulating AI"[2], and we are pleased to see that many of our suggestions and key inputs have been taken into account in the DSIT Policy Paper.

As a thought leader in the field of Artificial Intelligence, CIPL has a continued commitment to promoting responsible and accountable AI practices.[3] We are dedicated to supporting a regulatory framework that strikes the right balance between enabling AI innovation and safeguarding individual rights and societal interests.

To contribute to this public consultation, we have compared our previous input to the initial public consultation on the DCMS White Paper with the current DSIT Policy Paper. We have compiled a list of observations that can serve as a reference point for further consideration, and we offer additional suggestions to address recent developments in the field of AI.

1. CIPL comments on DSIT Policy Paper "A pro-innovation approach to AI regulation"

- **Regulatory cooperation and coordination**: CIPL notes that regulatory cooperation and coordination will be key to preventing divergence and that regulatory hubs and cooperation forums will be critical in ensuring consistent interpretation of AI principles, oversight and enforcement. We are encouraged to see that the Policy Paper recognises the crucial role of regulatory cooperation mechanisms, such as the Digital Regulation Cooperation Forum

[1] CIPL is a global privacy and data policy think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 90+ member companies that are leaders in key sectors of the global economy. CIPL's mission is to engage in thought leadership and develop best practices that ensure both effective privacy protections and the responsible use of personal information in the modern information age. CIPL's work facilitates constructive engagement between business leaders, privacy and security professionals, regulators, and policymakers around the world. For more information, please see CIPL's website at http://www.informationpolicycentre.com/. Nothing in this submission should be construed as representing the views of any individual CIPL member company or of the law firm of Hunton Andrews Kurth.

[2] Centre for Information Policy Leadership Response to the UK Department for Digital, Culture, Media and Sport White Paper on Establishing a Pro-innovation Approach to Regulating AI, 2022, available at https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_response_to_uk_dcms_proposed_approach_to_regulating_ai_23_09_22.pdf.

[3] Please consider our global responses on AI regulation. For example, CIPL response to NTIA AI Accountability Policy - https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_response_to_ntia_ai_accountability_policy_june2023.pdf; CIPL response to EU Commission's Consultation on the Draft AI Act - https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_response_to_the_consultation_on_the_draft_ai_act__29_july_2021_.pdf; CIPL comments on regulating AI in Brazil - https://www.informationpolicycentre.com/brazil-ai-project.html; as well as our reports on AI, CIPL First AI Report - https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_first_ai_report_-_ai_and_data_protection_in_tension__2_.pdf; CIPL Second AI Report https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_second_report_-_artificial_intelligence_and_data_protection_-_hard_issues_and_practical_solutions__27_february_2020_.pdf.

(DRCF), and their vital role in ensuring regulatory alignment and legal certainty across regulators and sectors.

- **Risk-based AI framework**: CIPL has long advocated for a risk-based AI framework grounded in impact assessments, which we see reflected in the Policy Paper. This approach allows for a contextualised assessment of the likelihood and severity of harm, the probability of occurrence, and mitigation measures. The focus should be on assessing the risk of AI technology in specific uses and applications rather than in the abstract. The assessment should also consider the benefits of AI applications to society, individuals, the public sector, and organisations for research and development.
- **Appropriate Transparency and Explainability**: Effective transparency and explainability in AI require organisations to consider the specific risk of the AI system as well as the sophistication level of the audience involved. The Policy Paper rightly recognises that explainability depends on the context, level of risk, and possible outcomes.
- **Fairness**: CIPL is pleased to see the acknowledgement of the requirements of Article 22 of the UK GDPR on automated decision-making as it pertains to AI systems. The principle of contestability and redress reflects the need for appropriate rights of review when individuals believe highly impactful decisions were made erroneously.
- **Accountability and Governance**: CIPL strongly supports the inclusion of accountability as an overarching principle in the UK's AI regime. Accountability requires organisations to operationalise and translate principles-based rules into tangible policies, procedures, controls, and governance to ensure compliance. Regulators are key in incentivising accountability and encouraging organisations to adopt cross-sectoral principles. Cooperation with and guidance from regulators is crucial to successful implementation.
- **Competence of ICO:** CIPL suggested clarifying the Information Commissioner's Office (ICO) competence in overseeing AI applications involving personal data processing. The recognition of this issue in the Policy Paper is appreciated, emphasising that regulators should apply the principles to AI use cases falling within their remits.
- **Challenges in Classifying AI Stakeholders**: CIPL acknowledges the challenges of transposing traditional concepts of data controllers and processors under UK data protection law to the context of AI. The Policy Paper now recognises the difficulty in classifying AI developers, producers, suppliers, deployers, and users as controllers or processors. Certain of these traditional concepts may have to be understood more broadly in light of evolving technologies.
- **Regulatory Sandboxes**: CIPL is pleased to see its recommendation to promote the creation of modern and agile regulatory oversight tools, such as regulatory sandboxes, reflected in the Paper. Regulatory sandboxes provide supervised environments for innovative AI development and collaboration with regulators. The intention to establish cross-sectoral AI sandboxes and focus on an initial pilot in a single sector involving multiple regulators is supported.

2. Additional Considerations

Furthermore, CIPL would like to stress the importance of transparency, safeguards, and the use of tools such as model cards for generative or general-purpose AI systems.

Users have the flexibility to employ general-purpose AI systems beyond the developers' intention, which highlights the significance of ensuring transparency regarding, for instance, the composition of the data sets used for training the model. In addition to publishing system cards, developers of general-purpose AI should clearly communicate the capabilities and limitations of the system. In the

case of generative AI, it is crucial to ensure that the end user is aware at any point in time that they are interacting with a generative tool and that output was generated by generative AI. Finally, it is essential that users of generative AI tools understand the limitations, features, and possible use cases of the generative AI tool in question.

***

We look forward to providing additional input as the White Paper is finalised.

If you would like to discuss any of these comments or require additional information, please contact Bojana Bellamy, bbellamy@HuntonAK.com, Markus Heyder, mheyder@HuntonAK.com, Natascha Gerlach, ngerlach@HuntonAK.com or Lukas Adomavicius, ladomavicius@HuntonAK.com.