



## BSA Comments on AI Governance in Japan Ver. 1.0 (Interim Report)

February 12, 2021

BSA | The Software Alliance (**BSA**)<sup>1</sup> appreciates the opportunity to submit the following comments to the Ministry of Economy, Trade and Industry (**METI**) regarding the Interim Report on AI Governance in Japan Ver. 1.0 (**Interim Report**)<sup>2</sup> compiled by the Expert Group on Architecture for AI Principles to be Practiced (**Expert Group**).

### General Comments

BSA is the leading advocate for the global software industry before governments and in the international marketplace. Our members are at the forefront of software-enabled innovation that is fueling global economic growth, including cloud computing and AI products and services. BSA members include many of the world's leading suppliers of software, hardware, and online services to organizations of all sizes and across all industries and sectors. BSA members have made significant investments in developing innovative AI solutions for use across a range of applications. As leaders in AI development, BSA members have unique insights into both the tremendous potential that AI holds to address a variety of social challenges and the governmental policies that can best support the responsible use of AI and ensure continued innovation.

To that end, BSA has identified five pillars<sup>3</sup> that are crucial to the development of responsible AI and other emerging technologies. These pillars reflect how both industry and government have important roles to play in promoting the benefits and mitigating the potential risks involved in the development, deployment, and use of such new technologies:

**1. Building Confidence and Trust in AI Systems:** Highlighting industry efforts to ensure AI systems are developed in ways that maximize fairness, accuracy, data provenance, explainability, and responsibility.

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<sup>1</sup> BSA's members include: Adobe, Amazon Web Services, Atlassian, Autodesk, AVEVA, Bentley Systems, Box, Cisco, CNC/Mastercam, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

<sup>2</sup> <https://www.meti.go.jp/press/2020/01/20210115003/20210115003-3.pdf>

<sup>3</sup> BSA Artificial Intelligence Policy Overview: <https://ai.bsa.org/>

**2. Sound Data Innovation Policy:** Promoting data policies that are conducive to the development of AI and other new data-driven technologies including reliable legal mechanisms that facilitate cross-border data transfers, legal certainty for value-added services (e.g., text and data mining, automation, and machine learning), and enhanced access to non-sensitive government data.

**3. Cybersecurity and Privacy Protection:** Advocating for policies that strengthen enhanced security measures and respect informed consumer choices while ensuring the ability to deliver valuable tailored products and services.

**4. Research and Development:** Supporting investment in efforts that foster confidence and trust in AI systems, promote coordination and collaboration between industry and government, and help grow the AI workforce pipeline.

**5. Workforce Development:** Identifying opportunities for government and industry to collaborate on initiatives to prepare the workforce for the jobs of the future.

There is significant overlap between BSA's pillars for the responsible development of AI and areas of importance identified in the Interim Report. We welcome efforts to give companies the tools needed to design AI governance structures that fit their needs as detailed in the Governance Innovation Report<sup>4</sup> released earlier from METI. We also support adoption of "goal-based regulation" that is focused on outcomes, shifting away from conventional rule-based regulations specifying detailed duties of conduct.

Governance-based approaches to AI regulation are the best way to manage the risks associated with AI while maximizing its benefits, enabling innovation, and avoiding prescriptive requirements.

The Interim Report builds on the above approach, and we are grateful for the Expert Group conducting an in-depth study on the AI governance discussions around the world.

In addition to the above, we provide specific observations and suggestions below regarding the Interim Report:

## Observations and Recommendations

### C. Ideal approaches to AI governance in Japan

#### (1) Non-binding corporate governance guidelines

BSA welcomes the considered approach to develop non-binding guidelines engaging a wide range of stakeholders in the discussion including AI users, engineers, academics, and law/audit experts. We recommend including interested private sector stakeholders, like BSA and our members, as part of a meaningful consultation to provide insights based on our long-standing experience in AI development and working with governments around the world.

We also support the proposals in the Interim Report that take the following into consideration:

- avoiding prescriptive, one-size-fits-all requirements;
- understanding the impact of proposals on innovation and governance within companies;
- supporting the improvement of AI risk management and benchmarks of trustworthiness of AI systems in inter-company transactions;
- including useful best practices for companies that have just started using AI; and
- facilitating the provision of explanations to consumers.

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<sup>4</sup> [https://www.meti.go.jp/english/press/2020/0713\\_001.html](https://www.meti.go.jp/english/press/2020/0713_001.html)

We commend the Expert Group for proposing a balanced approach that encourages innovation while considering the most useful approaches proposed as part of international developments on AI governance.

Recognizing that the level of risk varies widely across AI applications, the Interim Report endorses risk-based approaches to AI governance and recommends creating a multi-stakeholder process to begin developing non-binding intermediate goal-based guidelines to promote AI innovation and deployment. BSA supports and appreciates the Expert Group's recognition of the benefits of a risk-based approach to AI governance. Consistent with this approach, any proposed guidelines for AI should: (1) be based on the level of risk involved with a system and the extent of its potential harms; and (2) avoid one-size-fits-all mandates. A risk-based, outcome-oriented approach based on the nature of AI application and the context in which it is deployed is necessary because the AI ecosystem includes a diverse range of technologies and use cases with applications across different industry sectors and involve a wide array of stakeholders. Because both the risks and the appropriate mechanisms for mitigating those risks will vary based on the nature of the AI application and the context in which it is deployed, we agree that prescriptive, one-size-fits-all compliance requirements are ill advised.

As the Government of Japan considers possible non-binding guidelines, it will be important to distinguish between the stakeholders that may be involved in the development and use of an AI system and the unique contextual considerations that will dictate which entity is best positioned to mitigate risks as they arise. In many instances, organizations that develop AI systems (i.e., AI Developers) will be better placed to assess the capabilities and limitations of an AI system, whereas organizations that adopt and use AI systems (i.e., AI Deployers) will have better insight into the use-case specific harms that may arise. However, just as there is no one-size-fits-all solution for regulating AI, there is no one-size-fits-all solution for assigning responsibilities to the various actors in the AI ecosystem. Accordingly, a vital consideration for the development of non-binding guidelines will be to ensure they are flexible enough to accommodate the diverse range of development and deployment scenarios that may arise.

The Interim Report also outlines potential issues that might be addressed by the proposed non-binding guidelines, including broader goals for integrating AI into business processes and considerations around its use in the operations of a business as a whole, from raising awareness of AI and improving AI literacy to establishing internal principles and risk management processes. This approach will make AI adoption an integral part of business processes in a way that will help companies leverage and sustain its benefits.

## **(2) International Standards**

BSA appreciates Japan's efforts to lead discussions in international standards development and the Interim Report's recommendation that the technical committee for ISO/IEC JTC1 SC 42 work closely with the Government. In addition to the efforts mentioned<sup>5</sup> in the Interim Report, we would like to also draw attention to NISTIR 8312<sup>6</sup> as a useful reference. There are many benefits to continued international collaboration around standards — in addition to promoting trust, confidence, and marketplace efficiencies, internationally recognized standards have the added benefit of mitigating the risks that can accompany country-specific standards. We commend the Interim Report's focus on harmonizing AI policies in Japan with international efforts.

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<sup>5</sup> Discussions under ISO/IEC JTC1, CEN/CENELEC, IEEE (pp 12-13 of Interim Report)

<sup>6</sup><https://www.nist.gov/system/files/documents/2020/08/17/NIST%20Explainable%20AI%20Draft%20NISTIR8312%20%2081%29.pdf>

### **(3) Legally binding horizontal regulation**

We support the Interim Report's observation that legally binding horizontal requirements for AI systems are unnecessary at this stage. Because the risks of AI are inherently use-case specific, new regulations, if needed, should focus on specific applications of the technology that pose high risks to the public. Many AI systems pose extremely low risk to individuals or society. If new regulations are needed, they should account for the unique roles and capabilities of the range of actors that may be involved in an AI system's supply chain, with obligations assigned to the actor that is best positioned to both identify and efficiently mitigate the risk of harm that gives rise to the need for regulation. Future legislative proposals should focus on high-risk scenarios where the deployment of AI-based technologies poses a threat to the rights and interests of individuals. The areas where laws and regulations already exist deserve particular care when it comes to AI, including areas that have a large impact on people's lives, such as credit, housing, employment, and health. It is important for fostering public trust in AI that existing laws should continue to protect consumers. As indicated earlier, the scope of any regulatory obligations should be based on the level of risk involved and the potential scope and severity of harm, and efforts to develop such regulations should ensure a meaningful public consultation with all interested stakeholders, including the private sector.

## **D. Future Issues**

### **(3) Harmonization with other countries' governance**

The Expert Group rightfully acknowledges the importance of international interoperability in AI governance frameworks. To minimize the risk of fragmentation, we support the commitment described in the Interim Report for Japan to continue taking an active role in multilateral and bilateral discussions to ensure that Japan's AI governance is consistent with international AI governance approaches. Such engagement across the international community has already yielded important successes. For instance, the Organization for Economic Cooperation and Development (OECD) Recommendation on AI<sup>7</sup> represents an important first step toward establishing global norms around the governance of AI. Those norms are predicated on a risk management-based approach for enhancing the benefits of AI and safeguarding against unintended harms. Maintaining this momentum will help ensure that Japanese companies can continue to develop and sell AI products in the global marketplace with confidence. METI can lend momentum to these positive developments by ensuring that Japan's approach to AI governance remains interoperable with the international regulatory and standards landscape. To minimize the risk of international fragmentation, METI should ensure that its recommendations are not in conflict with risk-based approaches implemented by Japan's key trading partners and allies, including the EU and the US.

## **Conclusion**

BSA appreciates the opportunity to comment on the Interim Report. We hope this submission is useful to the consultation process. Please let us know if you have any questions or would like to discuss comments in more details.

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<sup>7</sup> OECD Recommendation of the Council on Artificial Intelligence at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>