

# **A Manifesto on Enforcing Law in the Age of “Artificial Intelligence”**

Transatlantic Reflection Group on Democracy and the Rule of Law  
in the Age of “Artificial Intelligence”

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Building upon *A Manifesto In Defense of Democracy and the Rule of Law in the Age of “Artificial Intelligence,”* we, the Transatlantic Reflection Group on Democracy and the Rule of Law in the Age of “Artificial Intelligence,” have reconvened to draft a second consensus manifesto that calls for the effective and legitimate enforcement of laws concerning AI systems. In doing so, we recognizes the important and complementary role of standards and compliance practices.

Whereas the first manifesto focused on the relationship between democratic law-making and technology, this second manifesto shifts focus from the design of law in the age of AI to the enforcement of law.

Concretely, we offer 10 recommendations for addressing the key enforcement challenges shared across transatlantic stakeholders. We call on those who support these recommendations to sign this manifesto.

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## Recommendations Towards Enforcement of Law in the Age of “Artificial Intelligence”

1. **Implement international agreements on AI and translate them into national laws and standards.** The international agreements that have established global norms for the governance of AI—including the OECD AI Principles, UNESCO Recommendation on the Ethics of AI, and the Council of Europe’s proposal for an international AI convention—must now be implemented, transposed into national law, and enforced by governments. These global norms for AI are the basis for the enactment of laws and policies, the implementation of standards, and the allocation of resources to support the enforcement of such laws and standards. To be effective, global norms for AI must also be transposed into trade agreements and international standards. This requires a level of international and institutional commitment that does not yet exist.
2. **Establish new laws and governance mechanisms for AI.** In the US, there is now an opportunity to implement the guidelines and recommendations set out in the Blueprint for An AI Bill of Rights. Congress should move forward with legislation to address the key challenges of “Safe and Effective Systems, Algorithmic Fairness and Equity, Data Privacy, Algorithmic Transparency and Explainability, and Accountability.” Congress should furthermore enact the Algorithmic Accountability Act, while states should continue to develop innovative legislative responses to the challenges AI presents. In the European Union, a legal basis for cross-sectoral and cross-border collaboration of regulators should be developed. Given the cross-sectoral and transnational nature of the AI industry, cooperation between regulators ought to be organized cross-sectorally and transnationally as well. Regulators must not only be able to investigate business conduct and demand requisite information but must also be able to share their findings with other regulators. The circumstances demand a common legal framework for such coordinated information-sharing between EU and Member State regulators, which covers all sectors relevant to AI and the platform economy. For both the EU and US, the decisions and rationales for all regulatory actions should be made available to the public via a central access point.
3. **Establish and enforce clear prohibitions for deployments of AI systems that violate fundamental human rights.** The UNESCO Recommendation on AI Ethics calls for prohibitions on social scoring and the use of AI techniques for mass surveillance. The UN High Commissioner for Human Rights has urged a moratorium on AI techniques that fail to safeguard fundamental human rights. We recommend that AI policymakers carry forward these recommendations and others in the development of enforcement procedures. The EU Court of Justice has indicated that machine learning techniques may be incompatible with the protection of fundamental rights. As a consequence, companies may be required to redesign automated systems to safeguard fundamental rights.
4. **Support coordinated efforts for technical standards, benchmarking, and certifications of compliance.** Standards, benchmarks, and certifications are powerful instruments of soft law that can incentivize developers to create AI systems that are more robust, interpretable, and trustworthy, provided that they comport with applicable legal

requirements and further the goal of compliance with those requirements. Executive agencies should allocate funding toward the creation of publicly available datasets and public evaluation infrastructure to measure the performance of AI systems, whether trained on public or private datasets, and determine the risks that they may pose in deployment. Executive agencies should develop standards for curating datasets and protocols that are interoperable (operative within any jurisdiction regardless of specific goals or priorities). Furthermore, executive agencies should require consultation with human rights experts and civil society organizations in such efforts. The EU-U.S. Trade and Technology Council should continue to seek alignment of organizations, such as NIST, CEN-CENELEC, IEEE, ISO, and others, to develop standards and evaluative tools.

5. ***Build capacities across institutions to effectively enforce laws.*** Developing an effective enforcement regime will require enhancing the capacities of existing institutions. Enhancements should include strategic shifts in priorities, clarification of roles and responsibilities across agencies, the hiring of additional clerks and technical experts, and investment in digital upskilling and AI literacy. In other cases, entirely new regulatory approaches should be established. Such approaches will include new oversight capacities, such as public audit capabilities designed to ensure operational accountability; new disclosure regimes, such as requirements for publication of information about data sources and algorithmic techniques; and new remedies, such as the disgorgement of data wrongfully obtained. Enforcement agencies should develop mechanisms to share tools and resources across borders and sectors and should work to jointly develop the necessary enforcement technologies and partnerships with independent technical communities, academia, and civil society.
6. ***Ensure that public interest supersedes countervailing assertions of intellectual property rights.*** IP concerns cannot be a shield against legitimate public scrutiny and accountability. Overly broad invocations of “trade secrets” ought to be resisted. When enforcement activity encounters genuine trade secrets—confidential business information not generally known to the public—regulators can safeguard legally recognized commercial interests without jeopardizing enforcement in the public interest, for example, by designating a “public interest steward” who is granted access to proprietary information. Infrastructures for cross-sectoral and cross-regulatory information (see recommendation 2) need to be designed in line with these principles.
7. ***Launch a transatlantic observatory for reporting AI incidents to help hold developers and deployers of AI systems accountable.*** Under a coordinated observatory, executive agencies should establish portals enabling citizens to report suspected violations of international and national law, including safety incidents and human rights violations. Such an observatory could build upon initiatives such as the AI Incident Database. Ultimately, it would help to ensure that developers and deployers of AI systems are held accountable for their actions throughout the lifecycle of an AI system. Furthermore, such an observatory would enable researchers, policymakers, and civil society organizations to monitor the compliance of AI systems with existing legal frameworks. Lastly, such an observatory would help defend citizens who nowadays lack authoritative mechanisms of support and can hence easily fall victim to security or human rights violations by AI systems. The institutionalization of such an observatory will encourage corporations to

act in accordance with applicable regulatory frameworks and to adopt transparent mechanisms to communicate their actions and decision-making process to the public, for example, by providing documentation and conducting external audits.

8. ***Empower academia, civil society, and the public to participate meaningfully in oversight and enforcement.*** Executive agencies must recognize that it is within their democratic duty to ensure that academia and civil society actors are engaged in enforcement and are able to hold executive agencies accountable. This involves ongoing consultation with these actors as enforcement mechanisms are operationalized and providing access to information necessary for such actors to meaningfully engage with these issues. For example (as described in the UNESCO Recommendation on AI Ethics, the AI Guidelines of the European Law Institute, and the draft EU AI Act, as proposed) impact assessments should be publicly accessible, and enforcement frameworks should support public research, audit, and benchmarking capabilities. Executive agencies should also create processes for inclusive public participation in the oversight of AI implementations beyond simply affording an opportunity for public comment and review of proposed remedies. Additionally, they should recognize and afford effective protection for a public right to refuse particular implementations of AI systems.
9. ***Invest in the development of trustworthy AI tools to assist in the enforcement of regulatory law.*** To address the mounting needs of legal enforcement, public investment is needed to support the development of trustworthy and interpretable AI systems that serve the public interest of enforcing the law, including competition law, tax law, labor law, consumer protection law, data protection, privacy law, and laws related to the integrity of elections and public discourse. The executive administration should consider the adoption of AI systems designed to hold corporations accountable for sustainability reporting, empower citizens seeking due process, identify tax violations, and make agencies under its control more responsive and transparent to inquiries made by citizens and their representatives. It is vitally important that these AI systems meet the highest standards for fairness, accountability, and transparency, and comply with all legal obligations. If AI systems do not meet such standards, they should not be deployed. Executive agencies should adopt procurement policies that require providers of these AI systems to adhere to such standards, and executive agencies should participate in the development of standards so that they are aligned with the conditions and requirements of executive functions.
10. ***Sanction corporations that violate laws or use AI to undermine the rule of law.*** Enforcement measures should ensure meaningful changes in business practices extending throughout the AI lifecycle and deter future violations. Such sanctions may include the erasure of datasets or termination of AI systems entirely, the payment of fines, compensation to users, transparency reporting, the split-up of a company, or the takedown of an internet domain. Multiple remedies often will be necessary. For example, dissuasive monetary sanctions combined with directives to alter business practices. Criminal sanctions on executives are appropriate when AI is developed or deployed with the clear intent to deceive or harm individuals or to break the law or with reckless indifference to the likelihood of such effects.

## Background

“Artificial intelligence” (AI) systems and data-driven business models are increasingly pervasive, affecting how we work, buy, sell, communicate, meet, navigate, and build relationships. In doing so, they impact our individual rights, social relationships, the economy, and politics, and pose new threats to democratic institutions and processes, individual dignity, autonomy, and human well-being.

While technological innovation can be a driver of economic prosperity, it can also propagate harm and negative societal consequences, both deliberate and unintended. AI systems’ intrinsically opaque behavior and frequent use to circumvent human agency pose direct threats to fair decision-making and democratic accountability. Thus, careful consideration must be taken to determine when, where, and how to deploy them, and to decide whether certain classes of systems should be developed at all. Where meaningful human control of complex socio-technical systems cannot be guaranteed, and therefore compliance with the law cannot be ensured, systems should not be deployed.

The rule of law is not reducible to the simple production and passing of legislation. Rather, democracy requires widespread respect for and observance of the law. To earn respect and command observance, the law must meaningfully and positively impact the lives of the people it governs, protect their interests against overreach and abuse by the most powerful in society, restrain its own overreach, and resist circumvention. Achieving effective democratic governance through law hence requires effective and legitimate enforcement of the law.

In real-world deployments of AI systems, complementary mechanisms, including standards and compliance practices, are needed to provide support for the enforcement of laws, but—critically—are not a viable substitute for binding law, overseen by democratic institutions, including an independent judiciary. Furthermore, to be effective, laws concerning AI systems must be enforced where most development and deployment takes place: industry. Hence, democratic AI governance necessitates aligning the activities of standard-setting bodies, who influence industrial processes and products, with the societal objectives and the requirements of public accountability enshrined in law. This implies that standard-setting bodies must be critically monitored as to their role when empowered with the purpose of translating normative value principles into industrial and technical practice. Civil society, in its own right, has a key role in stewarding the implementation of AI regulation in the public interest. For civil society to fulfill this function, political institutions must take the necessary steps to empower their participation in standard-setting, compliance, and enforcement activities.

## Challenges

- ***AI’s potential to undermine existing law and fundamental rights.*** The deployment of AI systems has come at great costs to society and to fundamental rights. AI systems possess distinct characteristics that set them apart from preexisting technologies.

First, they are opaque in several respects: outputs are based on vast quantities of data, often from unknown sources; the algorithms and computational techniques they embody (e.g. neural networks) conceal processes in layers of complexity that are not well understood; and their results can be difficult, if not impossible, to replicate. These

factors make accountability uniquely difficult. For example, we have witnessed the use of AI systems, enabled by targeted advertising, to manipulate the outcomes of elections, through automated harvesting and exploitation of personal data, the production of synthetic media, and the amplification of fake news, radicalizing content, and incitements to violence.

Second, AI systems reproduce existing patterns of social bias and inequity while presenting those patterns as natural. Large language models, for example, have been characterized as “stochastic parrots,” denoting a tendency to replicate societal biases in the training data. AI systems have rationalized both the provision of lower-quality health care to minority populations and the imposition of racially-disparate treatment in criminal sentencing. Generative AI models are becoming capable of producing synthetic content indistinguishable from that of a human at an unprecedented scale with meager restrictions (if any) over the production of hateful, deceptive, or harmful content.

Finally, the environmental impacts of AI systems are significant. The race to develop large models, for example, large language models, has involved energy consumption at a vast and unsustainable scale. Continuing along the present path undermines the fundamental right to sustainable development and threatens human survival.

- ***A growing gap between AI development and our institutions’ capabilities to properly govern them.*** The complexity and opacity of AI systems increase the difficulty of governance under the rule of law and underscore the need to develop new enforcement mechanisms.

The speed and scale at which computational systems perform complex tasks present novel challenges to the proper functioning of existing governance and legal institutions. AI systems can systematically undermine and circumvent the law. For example, AI systems have modeled tax avoidance, replicated bias in financial lending (using data that are effectively proxies of protected characteristics), and enabled anti-competitive product pricing.

Governments have already fallen behind in their public responsibility to regulate AI systems, with current institutions lacking the capabilities to effectively monitor, evaluate, and address the wide-scale effects that these systems have on our societies. Meanwhile, some tech leaders, industry lobbyists, and self-interested investors have worked in direct (and at times covert) opposition to efforts to strengthen democratic institutions, fearing this would diminish their influence and business prospects.

As these systems become more advanced, they are bound to present more formidable challenges to enforcement. At this very moment, leading AI labs are pursuing the development of “general-purpose AI systems” (GPAIS) capable of functioning across different modalities (text, audio, image, and video) to perform a wide range of functions, including image and speech recognition, audio and video generation, pattern detection, question answering, and translation, among others. It is difficult to overstate the ways in which the automation of these functions will reshape not only our economies, but also the ways in which we communicate, make decisions, and relate to one another.

- ***Increasing power asymmetries between dominant technology corporations and states.*** Today's most sophisticated AI systems are developed by a small number of increasingly powerful, global corporations, many of which have demonstrated a disdain for public accountability. We have witnessed their disregard for public concern in the ineffectual self-regulatory initiatives they promote and the court rulings they ignore. We have also observed the asymmetrical benefits reaped by corporate hegemony operating seamlessly across borders and sectors. The enforcement of law towards these dominant technology corporations, on the other hand, tends to be fragmented across numerous small and under-resourced actors, responsible for discrete functions, operating within separate sectors and siloed by geographical jurisdictions. Lacking the ability to compel information across their different sectors of responsibility, these fragmented authorities cannot exchange the information they obtain in their investigations. These dominant technology corporations, in contrast, are capable of optimizing their positioning towards regulators, including through "forum shopping" and selective "good behavior," such as cooperating with certain regulators while stalling others. Certain corporate governance structures, such as dual-tier stock ownership, serve to consolidate power within corporations, protecting an entrenched class from the consequences of their destructive and rapacious behavior. These accumulated systemic obstacles have resulted in dramatically inadequate enforcement against the largest and most powerful developers of AI systems.
- ***Unfair and unaccountable deployment of AI systems by government agencies.*** Law enforcement agencies have already deployed a variety of AI systems, including facial and audio recognition technology, crowd management tools, and Internet threat detection software, even when there are substantial concerns about the performance, fairness, and accountability of these systems. Technology procurement decisions by enforcement agencies often are not subject to meaningful public review. Once procured, privately sourced AI systems used by law enforcement agencies are shielded from meaningful public review by laws protecting trade secrets and establishing investigative privileges.

In response to the challenges we have described, we publish these recommendations as a set of practically feasible steps that policymakers and regulators can take to create enforcement regimes that, in the age of AI, are both effective throughout the lifecycle of AI systems, and consistent with democratic values. We call on those who support these recommendations to [sign this manifesto](#).



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Contributors participated in their personal capacity, and the views expressed in the manifesto do not necessarily reflect the views of their employers or organizations they might be associated with. The signatories support the general gist of the statement, without necessarily agreeing to the details of every formulation.