



Workshop on Data Ethics Commission Guidelines with Paul Nemitz

On 31 January, the IEAI hosted a workshop to discuss the new guidelines issued by the Data Ethics Commission in October 2019. Paul Nemitz, Principal Adviser to the Directorate-General for Justice and Consumers of the European Commission in Brussels, spoke at length about his close involvement in drafting the new guidelines and what he sees as the most important challenges and considerations in governing AI today.



About the speaker

Paul F. Nemitz has published widely on EU law. He acted as the Director for Fundamental Rights and Union Citizenship in the Directorate-General for Justice and Consumers before becoming the Principal Advisor to the same DG. This Directorate focuses on the free movement of people in Europe, data protection, the fight against hate speech and racism and rights of the child. Before joining the Directorate-General for Justice, Nemitz held posts in the Legal Service of the European Commission, the Cabinet of the Commissioner for Development Cooperation and in the Directorate General for Trade, Transport and Maritime Affairs.

At the EU level, they took two strategies: promote the creation of commissions within member states (i.e. the German Data Ethics Commission) and set up the High-Level Expert Group on AI.

He suggested that a **strategy for Europe** needs to encompass three things:

1. **Bringing industrial policy up to speed**
2. **Preparing the labor market**
3. **Devising laws and ethical frameworks to ensure the protection of fundamental and democratic rights.**

On data protection, AI and the crisis of democracy

Nemitz spoke for about 30 minutes, first discussing his involvement in the process of developing and implementing the European General Data Protection Regulation (GDPR). The pressing question that then followed from the GDPR was: **how to regulate AI**.

Nemitz argued that the current challenges and discussions surrounding creating *legal, ethical and robust AI* are occurring in the context of a crisis of democracy. In the US in particular, we are facing regulatory fragmentation at the state level, and a congress overwhelmed with inaction. In Europe, this crisis is embodied in the rise of populist parties. Because of this, there is a responsibility in Europe to show that **democracy works and can deliver effective governance**.



The discourse even from tech companies has changed in the recent years, with many calling for practical regulations and government action that sets up the rules of the game.



However, Nemitz also argued that **AI presents a new level of complexity**, in terms of lack of transparency and market concentration. The industry shies away from sharing information with independent researchers, and the majority of the market power is in the hands of just a few companies.

Pressing questions

So what is the answer to governing such a space? What is the role of ethics? What is the role of regulation and how can we keep up with the pace of technology, given the deliberative nature of democracy? These questions dominated the discussion with academics, students and members of industry, media and civil society that followed.

“What is the role of ethics?”

Among other topics, the **power and weight of ethics** to guide companies above and beyond the law was discussed. Ethics can be used as a heuristic to arrive at new regulations, but, Nemitz argued, it must be an “add on” to laws that protect fundamental

rights, not a replacement of law. In a related aspect, the law can promote ethics. For instance, we need stronger **whistleblower protections and incentives** to get through the lack of industrial transparency that defines much of the tech sector today. Standardization agencies can also play a vital role for bringing company insights to guidelines for industrial practice. Nemitz also saw big opportunity for connecting the growing popularity of the **green new deal** with the research on the use of AI.

“How can legislation keep pace with technology?”

Nonetheless, a major question remains: **how can we develop an appropriate mechanism for policy making in an industry as fast paced and complex as the tech sector?** Nemitz argued that we cannot treat the process of law making the same way as corporate decision making, as it would undermine some of the most important tenets of democracy. We can, however, create laws that are dynamic and open to interpretation so that they can adapt alongside the industry. The GDPR may be a good template for this development.

Final thoughts

Towards the end of the workshop, the importance of **media narratives and tech accountability journalism** was discussed. This form of journalism is gaining momentum in the US, and is tackling company practices, but also rewriting the narrative on the impacts of AI.

These final points underscored the reinforcing roles of civil society, democratic processes and participation and ethical guidance to govern this emerging and complex sector.