# BSA Submission
## on the
## NITI Aayog's Working Document on
## Enforcement Mechanism for Responsible #AIforAll

**Ms. Anna Roy,**
Senior Adviser,
NITI Aayog,
Government of India

January 14, 2021

Dear Madam,

**Subject: BSA Submission on the NITI Aayog's Working Document on Enforcement Mechanisms for Responsible #AIforAll**

BSA | The Software Alliance (**BSA**) thanks NITI Aayog for the opportunity to comment on the "Working Document: Enforcement Mechanisms for Responsible #AIforAll" (**Working Document**).[1]

BSA is the leading advocate for the global software industry before governments and in the international marketplace. Our members[2] are at the forefront of software-enabled innovation that is fuelling global economic growth, including cloud computing, data analytics, and artificial intelligence (AI) products and services. As leaders in the development of cutting-edge technology, BSA's members have unique insights into both the tremendous potential of these new technologies and the government policies that can best support the responsible use and ensure continued innovation of such technologies.

To that end, BSA has identified five pillars that are crucial to the development of responsible AI and other emerging technologies.[3] These pillars, with which the Working Document is broadly aligned, reflect how both industry and government have important roles to play in promoting the benefits and

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[1] NITI Aayog released a draft working document on Enforcement Mechanisms for Responsible AI for All dated 18 November 2020; https://ourgovdotin.files.wordpress.com/2020/11/niti-working-document-enforcement-mechanisms-for-responsible-aiforall.pdf.

[2] BSA's members include: Adobe, Amazon Web Services, Atlassian, Autodesk, AVEVA, Bentley Systems, Box, , Cisco, CNC/Mastercam, 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.

[3] BSA AI Policy Overview, accessible at: https://ai.bsa.org/

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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.

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, 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.

NITI Aayog has rightfully recognized the multitude of benefits that AI can bring to individuals and society, as well as the necessity to develop well recognized principles to guide the development and deployment of such innovative technology. The smart use of AI has the potential to spur tremendous economic growth across every industry sector, improve human decision-making in ways that will make the world more inclusive, and enable cutting-edge breakthroughs. At the same time, AI services that are not developed and used responsibly, like other innovations, create risks of unintended consequences or malicious uses.

To that end, BSA supports the NITI Aayog's efforts to promote the responsible and ethical use of AI in India. The Working Document is a step in the right direction, providing a balanced approach between ensuring security and privacy and promoting innovation. However, given that the AI industry is still in nascent stages of development, any future regulation or guidelines for the use and deployment of AI should focus on maximising its benefits, enabling innovation, and avoiding prescriptive requirements.

At the same time, BSA also recommends that the NITI Aayog takes into consideration similar international efforts regarding AI and ethics. An international perspective on how to realize trustworthy AI, and assess it, would ensure that the India remains competitive in global markets, while contributing to strengthen trust in new technologies. This will also ensure that India takes a leadership role in regulating the development and deployment of innovative AI technologies.

Our recommendations on the Working Document are listed below.

### 1. Proposals should be Advisory and Participatory

The Working Document recommends the creation of an oversight body called the Council for Ethics and Technology (**Oversight Body**). The Oversight Body is intended to be a highly participatory body that serves an advisory role. However, the title of the document refers to "enforcement mechanisms", which seems to suggest that the NITI Aayog is proposing a regulator or another authority for enforcing

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principles. Given the nascent nature of AI technology and sociotechnical quality of many of its most significant challenges, any framework around the AI ecosystem should be guiding and collaborative. Prescriptive guidelines could be counterproductive in a rapidly developing field such as AI. Therefore, we recommend removing references to enforcement mechanisms. Instead, the language of the Working Document should be aligned with the NITI Aayog's objective of creating a policy framework that is advisory and participatory in nature.

## 2.  Recommend a Context-Specific and Risk-Based Approach

BSA supports and commends NITI Aayog's recognition of a context-specific and risk-based approach to AI governance. Any proposed rules/guidelines for AI should: (1) be a function of the degree of risk and the potential scope and severity of harm; and (2) avoid one-size-fits-all mandates. The AI ecosystem is broad because it includes a diverse range of technologies and use cases with applications across different industry sectors and involves a wide array of stakeholders. The risks that AI poses and the appropriate mechanisms for mitigating those risks are largely context-specific.

The Working Document appears to propose a self-regulatory framework for private bodies to comply with any guidelines that may be developed by the Oversight Body. However, private sector organizations would have to demonstrate compliance either through third party audits or self-declaration. When it comes to technical methods to achieve trustworthy AI, effective methods for performing an audit will be heavily context dependent.

Accordingly, we support NITI Aayog's acknowledgement that the appropriate mechanisms for performing an audit will vary based on risk and that stakeholders should have the flexibility to develop mechanisms that are tailored to the AI systems they are developing. BSA recommends risk-based regimes that support solutions to significant technical and operational issues in new technologies. NITI Aayog should consider advancing the use of risk assessment tools for AI as a means for companies to interpret how technological, operational, and policy controls, requirements, and standards can support implementation of responsible AI.

To this end, BSA recommends that NITI Aayog adopt a context-specific and risk-based approach that recognises varying degree of risk across different deployment contexts and use cases.

## 3.  Collaborate with MeitY, other Ministries, and Sectoral Regulators

The NITI Aayog recommends that the Oversight Body coordinate with various government ministries and sectoral regulators for the development of any new guidelines or regulations. BSA supports such a collaborative approach. Interfacing with government ministries like the Ministry of Electronics and Information Technology (**MeitY**) would ensure that there is uniform implementation of policies under the AI framework. Given that MeitY is the nodal ministry for several issues that affect AI development (such as data use and IT products), BSA recommends closely working with the MeitY at all stages, from ideating and framing policies to their implementation.

## 4.  Support a Collaborative Multi-stakeholder Advisory Body

The Working Document indicates that the Advisory Body would be "participatory and advisory". Such an Advisory Body would comprise multi-disciplinary stakeholders and experts from the industry, civil society, government, standard setting bodies, and others. We support such a collaborative approach to develop an AI policy ecosystem. Inclusive approaches are critical to the development of AI and emerging technologies. Such an approach will develop a broad AI ecosystem which includes a diverse range of technologies and use cases. We support NITI Aayog's approach in this regard.

### 5.  Promote Voluntary Data Sharing Mechanisms

The Working Document identifies the promotion of data access and technology tools for responsible AI as one of the key objectives and proposes "safe data sharing protocols". BSA supports the development and adoption of tools and best practices that make it easier and less expensive to share data in ways that are consistent with rigorous privacy expectations. However, any mandatory data sharing protocols or obligations should be avoided since mandatory requirements would only stunt innovation and can be counterproductive. The NITI Aayog should focus on policies such as incentive schemes and voluntary data sharing frameworks that facilitate the voluntary business-to-business exchange of data and boost the development of AI services. In this regard, please refer to BSA's Open Data Agenda[4] which aims to enhance the collective benefits of data through responsible policies that promote voluntary data sharing and foster opportunity, collaboration, and growth.

### 6.  Promote Competition and Innovation

The NITI Aayog recommends that the Oversight Body may formulate guidelines for "Model AI Procurement" to guide responsible AI procurement in the public sector. In this regard, we recommend that the NITI Aayog: (1) limit public procurement guidelines to a narrow section of high-risk use cases or high-risk sectors only; and (2) avoid instituting procurement preference for domestic AI tools and solutions. Indigenous technologies represent only a subset of global innovation. Preventing foreign competition in public procurement denies government agencies access to world-class products and services. Furthermore, such policies deprive domestic technology firms of valuable opportunities to collaborate with global leaders and make them less competitive internationally, harming global innovation. Opening procurements to solutions from the global marketplace will increase efficiency, cut costs, and improve security.

### 7.  Promote Global and Interoperable Standards for AI

The Working Document proposes that the Oversight Body may, in addition to leveraging international standards, identify and create standards for the local context. We recommend that any proposed guidelines refrain from introducing national or local standards and focus on ensuring the adoption of, or interoperability with, internationally recognized standards instead. 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. The proliferation of national standards can undermine global commerce and stunt the development of technology. It can give rise to a patchwork of inconsistent national standards that act as an unintentional barrier to international trade, making it more costly for companies to develop and sell their AI-related products and services to the global marketplace.

India's leadership in the development of AI technologies will be possible only if Indian companies can access global markets. Ensuring that India's approach to AI regulation is interoperable with trading partners will therefore be a critical priority in the years ahead. Such engagement has already yielded some important early successes. For instance, the Organization for Economic Cooperation and Development (OECD) Recommendation on AI represents an important first step toward establishing global norms around the governance of AI.[5] Those norms are predicated on a risk management-based approach for enhancing the benefits of AI and safeguarding against unintended harms.

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[4] BSA's Open Data Agenda, dated June 2020 accessible at: Open Data: Bridging the Data Divide (bsa.org)

[5] Recommendation of the Council on Artificial Intelligence, OECD, accessible here: OECD Legal Instruments

Similarly, the European Commission's recent White Paper on Artificial Intelligence sets out a regulatory vision that shares common conceptual foundations as the NITI Aayog Working Document. For instance, the White Paper seeks to establish a regulatory framework that is informed by existing law,[6] risk-based,[7] and context-specific.[8] Global convergence around risk-based AI governance is an international trend that should be encouraged. NITI Aayog can lend momentum to these positive developments by ensuring that the Oversight Body give consideration to the international regulatory and standards landscape. To minimize the risk of international fragmentation, the Oversight Body should be directed to ensure that its recommendations are not in conflict with risk-based approaches implemented by India's key trading partners and allies, including the EU and the US.

We thank you for the opportunity to provide recommendations and hope our submissions are useful to the consultation process. We look forward to participating in this important discussion and would be happy to answer any questions you may have.

Sincerely,

Venkatesh Krishnamoorthy
Country Manager, India
BSA | The Software Alliance

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[6] *See, e.g.,* European Commission AI White Paper at pg. 10 ("[T]here is a need to examine whether current legislation is able to address the risks of AI and can be effectively enforced, whether adaptations of the legislation are needed, or whether new legislations is needed.")

[7] Id. at pg. 17 ("As a matter of principle, the new regulatory framework for AI should be effective to achieve its objectives while not being excessively prescriptive so that it could create a disproportionate burden, especially for SMEs. To strike this balance, the Commission is of the view that it should follow a risk-based approach.")

[8] Regulatory efforts will focus on "high-risk AI *applications*."