To prioritise innovation or regulation?:

Global tensions and pressures on regulatory models

01

Jade Kowalski
Partner
jkowalski@dacbeachcroft.com

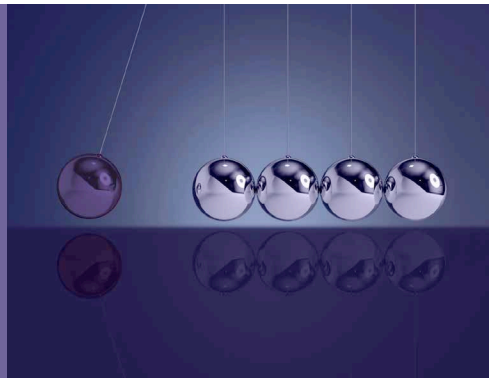
Louis-Axel Batiste
Associate
labatiste@dacbeachcroft.com

María José Sánchez
Partner
msanchez@dacbeachcroft.com

Joshua Chan
Senior Associate
jchan@dacbeachcroft.com

Policymakers and regulators in many jurisdictions face a recurring dilemma: how to encourage innovation while safeguarding against emerging risks. For many years, regulation appeared to be the prevailing priority, with certain jurisdictions (notably, the EU) racing to set global standards for legal frameworks for governance of innovation. But the dial is shifting. As technological developments and geopolitics take centre stage, governments are reassessing their approach. Few issues reveal the strain between innovation and regulation as starkly as the ongoing debate over artificial intelligence.

Differing approaches to the regulation of AI amplify longstanding challenges and illustrate how difficult it has become for global governance frameworks to keep pace with transformative technologies. As governments weigh the benefits of economic growth, scientific progress, and global competitiveness against concerns about privacy, safety, and accountability, the broader struggle between innovation and regulation is coming into sharp focus, and the innovation versus regulation pendulum is swinging.



The development of contemporary regulatory data protection frameworks

Data protection in the UK and EU

The EU and UK have been at the forefront of the growth of data related legislation and regulation, with each stage of development reflecting advances in technology, from early computing to email and the internet, through to big data and artificial intelligence. Early laws in the 1980s and 1990s established key concepts such as fair and lawful processing, purpose limitation and data minimisation. However, it was the drafting of the EU General Data Protection Regulation (**GDPR**) which supercharged the data protection debate.

The final text was agreed in 2016. At that time, the recitals highlighted that *"Rapid technological developments and globalisation have brought new challenges for the protection of personal data"* and the GDPR was heralded as *"a strong and more coherent data protection framework… backed by strong enforcement"*. Taking effect from May 2018, the GDPR remains the foundation of data protection regimes in both the EU and the UK.

From global benchmark to over-regulated framework?

For many years, the GDPR was accepted as the global standard for data protection law. It is frequently cited as an example of the 'Brussels effect', being an EU legal instrument which serves as a standard for other jurisdictions to follow or is voluntarily adopted by companies in countries without similar regulations. For several years, a company could assert with confidence that being GDPR-compliant meant generally meeting regulatory standards on a global basis.

Many jurisdictions, particularly in Latin America, followed the EU's lead. A number of countries implemented their own data protection regimes, borrowing principles from the GDPR including Brazil in 2018, Mexico in 2021 and Chile in 2024, largely aligning their local regimes with that of the EU. Additional efforts are also underway in Argentina to update the existing data protection law to bring closer alignment to GDPR provisions, despite already being in receipt of an adequacy decision from the European Commission.

The GDPR also serves as a tool for trade, motivating other countries to raise the bar of local laws in order to ensure the free flow of personal data from the EU. Adequacy decisions recognising those jurisdictions offering an 'essentially equivalent' level of data protection to that provided by GDPR have been adopted in respect of geographically varied locations such as Japan, South Korea, Argentina and Uruguay. The European Commission also recently published a draft adequacy decision for Brazil.

However, there are key outliers on all sides; those with less developed data protection laws (for example, the United States) and those which have more stringent requirements (for example, data localisation requirements in China).

At opposite ends of the regulatory spectrum, both approaches can be understood as serving protectionist economic objectives, whether through a light touch regulatory approach or state control. In the short term, jurisdictions adopting a minimalistic approach to regulation may confer cost-based competitive advantages on domestic firms. However, we have seen historically that compliance with globally recognised frameworks, such as GDPR can, over time, confer significant advantages in terms of trust, market access and cross border operability. Whether these longer-term advantages continue to hold in an era of accelerating technological innovation remains an open and increasingly important question.

A new path for the UK

Against a backdrop of growing concern about overregulation hampering digital transformation activity in organisations, the UK has spent several years considering its place in the global ecosystem. Following Brexit, the UK has reassessed its economic position and its degree of divergence from the EU rulebook. In 2025, the government published its Regulation Action Plan focussing on (i) tackling the complexity and burden of regulation; (ii) reducing uncertainty across the regulatory system; and (iii) challenging and shifting excessive risk aversion in the system – a clear indication of the UK's positioning in the ongoing balance between innovation and regulation.

Throughout the DUAA legislative process, a central consideration was the desire for the UK to retain its adequacy decision issued by the European Commission. Earlier, subsequently abandoned, attempts in the form of the Data Protection and Digital Information Bills were criticised for including proposals which would potentially jeopardise the UK's adequacy status.

*In respect of data protection regulation, consideration of how and where to break away from certain GDPR requirements spanned multiple governments and draft bills and ultimately resulted in the Data (Use and Access) Act 2025 (**DUAA**).*

The DUAA introduces a number of amendments to the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003. In the words of the UK data protection regulator, the Information Commissioner's Office (**ICO**), the DUAA will *"promote innovation and economic growth and make things easier for organisations, whilst it still protects people and their rights".* In reality though, the reforms were relatively modest, and may represent something of a missed opportunity, particularly in light of recent developments in the EU.

Arguably, the UK has fallen victim to unfortunate timing and external circumstances. In November 2025, the European Commission introduced a significant package of measures known as the "Digital Omnibus" to amend its own data and privacy laws including the GDPR. Had this occurred 6-12 months prior, the UK Government might have considered more ambitious reforms (and of course may still consider doing so in the future).

Time for the EU pendulum to swing?

The EU is clearly now considering its position in the global economy and the impact of balancing regulation with innovation.

In 2024, the former European Central Bank president and former Prime Minister of Italy Mario Draghi issued a report on European competitiveness (known as the Draghi report). The report raised concerns that capacity to innovate within the EU is being *"hindered at every stage by inconsistent and restrictive regulations"* and urged reflection on the regulatory burden placed on companies across the entirety of the EU rulebook. By way of one example, it highlighted that *"there is no EU company with a market capitalisation over EUR 100 billion that has been set up from scratch in the last fifty years, while all six US companies with a valuation above EUR 1 trillion have been created in this period."* As a result, *"Member States are already acting individually and [protectionist] industrial policies are on the rise"* in the EU itself.

In response to these and related concerns, in November 2025 the European Commission published the 'Digital Omnibus' package of measures proposed to amend EU data and privacy laws with objectives including 'simplification', 'streamlining rules' and 'making it easier to do business'.

The proposed changes include:

- An updated definition of personal data, narrowing its scope.
- An expansion of 'legitimate interest' to allow it to be used as a legal basis for AI training and use.
- Amendments to the regime governing tracking technologies such as cookies.
- Allowing data controllers to refuse subject access requests where the request is considered to be an abuse of the rights conferred by GDPR.

Although these proposals are far from finalised, many consider that the essence of change is likely to be retained in any final provisions agreed by the European Parliament and Council.

AI as a microcosm for the regulation vs innovation divide

The tensions between innovation and regulation are particularly pronounced when it comes to AI.

European Union – amendments to requirements before they come into effect?

Unsurprisingly, given the intent to set a global standard once again, the EU won the race to establish the first AI specific legislative framework in the form of the EU AI Act. The Act touches almost everyone who handles or uses AI, dividing them into 'providers'; 'deployers'; 'importers'; and 'distributors' and has broad extra-territorial effect.

Utilising a risk-based approach, the relevant requirements depend on the risk of an AI system or use case. Whilst certain 'high-risk AI systems' can be used with appropriate safeguards, prohibited AI practices are banned due to posing an 'unacceptable risk'. Prohibitions on AI practices with unacceptable risks and the obligations for general-purpose AI models are already applicable, but wide-ranging provisions relating to high-risk AI systems are yet to apply. Could it be that they won't? Or at least not in their current form/for some time yet?

As part of the Digital Omnibus proposals, the Commission has put forward a number of simplification measures including the delay of the introduction of rules relating to high-risk AI systems until December 2027. Again, throughout the proposals there are numerous references to innovation and the need for implementation to be innovation-friendly. The proposals clearly demonstrate the EU's current perspective on the innovation versus regulation debate; efforts are underway to simplify measures before they are even implemented.

> *It can be argued that the motive for these measures is not limited to efforts to promote innovation. Geopolitical pressures have played a role.*

Prior to the publication of these proposals, the EU (and the UK) faced challenges from across the pond, both from US companies and government officials, over digital policy.

In particular, the EU AI Act has faced specific criticism due to the extraterritorial reach it wields. In late 2024, Senator Ted Cruz wrote to the then-Attorney General warning of *"heavy-handed regulation of U.S-developed internet technologies,"* and warning against *"artificial roadblocks"* which would prevent competition with China. President Trump also threatened trade action against the EU following the issue of a $2.95bn fine to Google by the European Commission over abusive practices in online advertising.

United Kingdom – the AI bill that never was

Although the UK's data protection framework is based on the same foundation as the EU, it has (thus far) opted for an independent approach to the regulation of AI. Currently, the UK is operating an expressly pro-innovation, principles-based approach. Adopted under the previous government, this approach is underpinned by five principles to inform the responsible development and use of AI in all sectors of the economy:

- **Safety, security and robustness**
- **Appropriate transparency and explainability**
- **Fairness**
- **Accountability and governance**
- **Contestability and redress**

These principles are supplemented by sector-specific guidelines from regulators such as the ICO, Financial Conduct Authority and the Competition and Markets Authority. Although the first King's Speech of the Labour Government in 2024 stated that the government would *"seek to establish the appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models",* no AI-specific legislation has been advanced by government to date. Reporting from mid-2025 indicates that any legislation will not be advanced until mid-2026 at the earliest, if at all.

In the meantime, the UK Government continues to place AI at the heart of its growth strategy, believing that the *"current pro-innovation approach to regulation is a source of strength relative to other more regulated jurisdictions".* The DUAA further underpinned the UK's existing approach by providing a clearer legal foundation for AI-driven data processing and model training. It is clear that, for the moment, innovation is taking precedence over regulation in the UK approach.

United States – a microcosm within a microcosm?

The current relationship between US state and federal bodies on the regulation of AI is itself a microcosm of the overall tension between innovation and regulation. An Executive Order was issued by President Trump shortly after his inauguration which ordered the removal of barriers to 'American Leadership in Artificial Intelligence'. The order explicitly revoked *"certain existing AI policies and directives that act as barriers to American AI innovation."*

Because of distinct state and federal regulations in the US, several states created their own AI laws. States such as Texas, California and Utah introduced laws intended to be effective in the first months of 2026, differing in their priorities, but sharing a common focus on transparency, accountability, and risk mitigation.

In response, in December 2025, President Trump issued a further Executive Order mandating a *"minimally burdensome national policy framework for AI"* and seeking to challenge inconsistent state laws, effectively blocking states from enforcing their own AI regulations. The issue of the Executive Order was not a surprise following the rejection of proposals for a Trump-supported 10 year federal moratorium on AI state regulation in the Senate earlier in 2025. At the federal level in the United States, the focus is clearly on the development of and innovation in artificial intelligence.

Further afield

Looking to other countries, to date, Singapore has adopted a similar approach to the regulation of AI to that of the UK. Although the country is committed to wider discussions about the development of AI, it has elected not to adopt a single AI law as of yet. This approach relies upon a series of frameworks and guidelines, tailored to specific sectors.

Whilst formal, binding legislation remains rare, several jurisdictions are clearly modelling binding frameworks on the EU AI Act, in a manner comparable to their adoption of domestic data protection frameworks using the GDPR as a guide. It is not yet clear whether those countries who have used the GDPR and AI Act as models will consider 'simplifications' of their own in the future. What is clear is that there is currently no uniform approach across Latin America to the regulation of AI.

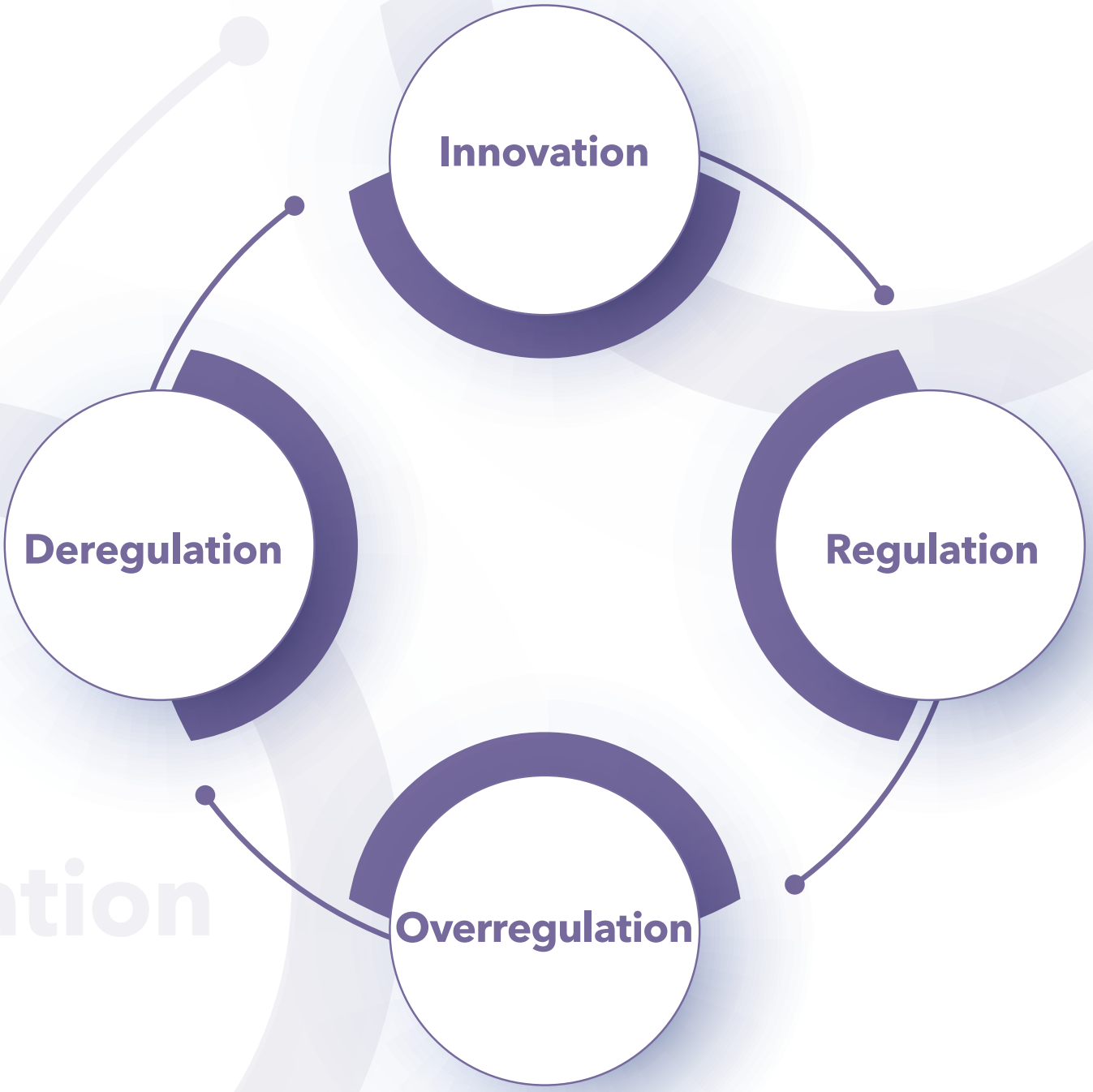
Across Latin America, the regulatory approach to AI varies significantly from country to country, and cross-sectoral and foundational legislation akin to the EU AI Act remains limited. Peru recently approved the creation of a general framework for the use of AI in the country, one of the first of its kind in the region. Similar to the EU AI Act, the framework is structured into three tiers, with risks classified as 'misuse' being prohibited (e.g. manipulation and biometric surveillance), 'high-risk' (e.g. credit scoring and critical infrastructure) and 'acceptable risk'.

In Brazil, a wide-ranging bill to regulate AI is progressing, although with no clear timescales for implementation in sight yet. If passed, the Bill will adopt a similar tier system to that established by the EU AI Act, with 'excessive' systems being prohibited and 'high risk' systems being subject to heavy regulation. Chile's AI Bill, currently under legislative review, will create a similar classification model with four tier classifications. A draft Federal Law Regulating AI has also been introduced in Mexico, again progressing through the legislative process.

Other countries, including Argentina and Colombia, are taking a softer approach, being guided by a variety of measures such as national AI strategies and sector-led guidelines. Similar to the UK, these are underpinned by principles such as transparency.

The innovation and regulation cycle?

At the heart of the differences in approach lies the pivotal question, is the correct course fostering innovation, or establishing regulation?



No single approach to the question of innovation and regulation will satisfy all stakeholders or protect against future developments. This is especially true in respect of technological advances.

As noted above, the GDPR was (and in some locations still is) considered to be the global standard for data protection frameworks. Recent years have seen a backlash to that perspective. The UK, and to a lesser degree the EU, have worked to develop more adaptable data protection rules in response to concerns regarding innovation and economic opportunity.

However, the primary focus of the tension between innovation and regulation crystalises when considering AI and is most starkly observed when comparing the US and the EU, with the US position clearly aimed at promoting innovation. Conversely, the EU, having opted for a risk-based legislative framework is already taking steps to 'simplify' measures not yet in force in order to foster innovation and economic growth. These two positions illustrate the regulation and innovation paradox; the pro-innovation jurisdiction remains in a state of flux due to a lack of regulation, and vice versa.

It is of course an oversimplification to frame the decisions faced by policymakers as choosing to head down one of two paths; one marked 'innovation' and another marked 'regulation'. There is a delicate balance to be achieved, with a number of multi-faceted considerations to consider.

So, what does this mean for organisations trying to advance AI and data-driven initiatives amid such uncertainty? In our view, a principles-based approach offers the most effective way to navigate the space between regulation and innovation. Core principles such as accountability, transparency, and fairness provide stable guidance even as more prescriptive aspects of data protection law continue to shift.

When it comes to AI specifically, this focus on principles over rigid rules creates the agility and adaptability organisations need as AI technologies and regulatory expectations continue to evolve.

In the end, a principles-based approach offers the flexibility to adapt, the clarity to guide, and the resilience to endure as technologies evolve. By focusing on outcomes rather than rigid requirements, businesses are empowered to build and use AI responsibly. The challenge now is not to predict every future development (or legislative solution), but to commit to the values that will shape trustworthy AI for decades to come.

Regulation