Consultation on the "White Paper
on Artificial Intelligence - A European
approach to excellence and trust"

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Introduction

The European Commission's White Paper on Artificial Intelligence was published on 19 February 2020.

In the forewords, the White Paper states that the "Commission is committed to enabling scientific breakthrough, to preserving the EU's technological leadership and to ensuring that new technologies are at the service of all Europeans – improving their lives while respecting their rights." (WP p.1)

The White Paper puts forward the Commission's view on how to achieve these aims. All stakeholders, including civil society organisations, were invited to react to the ideas presented.

The Civil Liberties Union for Europe hereby submits its comments to the Commission's proposals in the hope of contributing to its decision-making in the discussed realm.

The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (henceforth Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. Liberties is built on a network of national civil liberties NGOs from across the EU.

Liberties, and its members, want the peoples of the EU and its member countries to live in societies where their civil liberties are protected, where they can participate freely in the democratic process and where their governments respect the rule of law.

Liberties is headquartered in Berlin and has a presence in Brussels. Currently, it has member organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Hungary, Ireland, Italy, Lithuania, Poland, Romania, Spain, Slovenia, the Netherlands and associated partners in Germany

and Sweden. Liberties intends to keep expanding its membership to include NGOs from all EU countries.

General comments on the approach taken by the White Paper

In the White Paper, the European Commission takes a predominantly economic and technosolutionist approach to the use of artificial intelligence.

The White Paper sets the goal of Europe becoming "a global leader in innovation in the data economy and its applications" amid fierce global competition. While the White Paper talks about the advantages of the EU's strong attachment to values and the rule of law, it degrades this very attachment to an instrumental role – it may make European AI products and services more marketable globally and may give European firms a competitive advantage. Liberties believes this to be a dangerous approach. European values and the rule of law are not valuable because European products sell better. It is a very fortunate coincidence if they do. However, European values and the rule of law are to be respected and promoted even when they constrain economic interests.

The White Paper repeatedly emphasizes the improvements artificial intelligence can bring to our lives in ways "that we can only begin to imagine" and is clearly committed to significantly broadening its uptake both in the public and in the private sectors. Liberties believes that this unquestioned commitment is mistaken. AI can solve certain societal problems, but it can also exacerbate others. In a democratic society people should have a say whether, and if so, where and how, AI can be used. This is particularly true where AI-based technologies affect their fundamental rights and freedoms and/or their access to public services.

Liberties believes that instead of the above-described predominantly economic and technosolutionist approach, the Commission ought to adopt a human rights-based and democratic approach. Human rights ought to constrain the development and deployment of new technologies. Democratic oversight over the use of new technologies needs to be promoted.

The Commission must make sure that we are not surrounded by AI that only looks trustworthy. The AI we live with must be genuinely worthy of our trust.

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Consultation on the White Paper on Artificial Intelligence - A European Approach

Below you can find Liberies' filled out consultation form. Liberties edited out the general introduction and the „About you" section for reasons of brevity.

Section 1 - An ecosystem of excellence

To build an ecosystem of excellence that can support the development and uptake of AI across the EU economy, the White Paper proposes a series of actions.

In your opinion, how important are the six actions proposed in section 4 of the White Paper on AI (1-5: 1 is not important at all, 5 is very important)?

	1 - Not important at all	2 - Not important	3 - Neutral	4 - Important	5 - Very important	No opinion
Working with Member states	○	○	○	○	○	◉
Focussing the efforts of the research and innovation community	○	○	○	○	○	◉
Skills	○	○	○	○	○	◉
Focus on SMEs	○	○	○	○	○	◉
Partnership with the private sector	◉	○	○	○	○	○
Promoting the adoption of AI by the public sector	◉	○	○	○	○	○

Are there other actions that should be considered?
500 character(s) maximum

> The Civil Liberties Union for Europe (henceforth "Liberties") would like to express its deepest concern about the European Commission's basic assumption in the White Paper, namely that it is imperative that uptake of AI is promoted, especially in the public sector. Liberties believes that this assumption needs to be carefully scrutinized.

Revising the Coordinated Plan on AI (Action 1)

The Commission, taking into account the results of the public consultation on the White Paper, will propose to Member States a revision of the Coordinated Plan to be adopted by end 2020.

In your opinion, how important is it in each of these areas to align policies and strengthen coordination as described in section 4.A of the White Paper (1-5: 1 is not important at all, 5 is very important)?

	1 - Not important at all	2 - Not important	3 - Neutral	4 - Important	5 - Very important	No opinion
Strengthen excellence in research	○	○	○	○	○	◉
Establish world-reference testing facilities for AI	○	○	○	○	○	◉
Promote the uptake of AI by business and the public sector	◉	○	○	○	○	○
Increase the financing for start-ups innovating in AI	○	○	○	○	○	◉

Develop skills for AI and adapt existing training programmes	○	○	○	○	○	◉
Build up the European data space	○	○	○	○	○	◉

Are there other areas that that should be considered?

500 character(s) maximum

> Liberties would like to stress that promoting AI ought not to be regarded as a self-evident aim. Liberties believes that the approach the European Commission seemingly takes, the approach sometimes coined as "technosolutionism", is in fact dangerous. In certain cases technology may help us in solving societal problems, but in others it may exacerbate them and/or undermine our fundamental rights.

A united and strengthened research and innovation community striving for excellence

Joining forces at all levels, from basic research to deployment, will be key to overcome fragmentation and create synergies between the existing networks of excellence.

In your opinion how important are the three actions proposed in sections 4.B, 4.C and 4.E of the White Paper on AI (1-5: 1 is not important at all, 5 is very important)?

	1 - Not important at all	2 - Not important	3 - Neutral	4 - Important	5 - Very important	No opinion
Support the establishment of a lighthouse research centre that is world class and able to attract the best minds	○	○	○	○	○	◉
Network of existing AI research excellence centres	○	○	○	○	○	◉
Set up a public-private partnership for industrial research	○	○	○	○	○	◉

Are there any other actions to strengthen the research and innovation community that should be given a priority?

500 character(s) maximum

> While the White Paper discusses strengthening European AI research at length, the need of research into the human rights and social impacts of new technologies based on AI are clearly not given appropriate attention. The EU must generously fund such research. In addition, EU research funding on technology (AI included) should always be conditional on meeting strict ethical standards. European AI ought not only look trustworthy. It needs to be trustworthy.

Focusing on Small and Medium Enterprises (SMEs)

The Commission will work with Member States to ensure that at least one digital innovation hub per Member State has a high degree of specialisation on AI.

In your opinion, how important are each of these tasks of the specialised Digital Innovation Hubs mentioned in section 4.D of the White Paper in relation to SMEs (1-5: 1 is not important at all, 5 is very important)?

	1 - Not important at all	2 - Not important	3 - Neutral	4 - Important	5 - Very important	No opinion
Help to raise SME's awareness about potential benefits of AI	◉	○	○	○	○	○
Provide access to testing and reference facilities	○	○	○	○	○	◉
Promote knowledge transfer and support the development of AI expertise for SMEs	○	○	○	○	○	◉
Support partnerships between SMEs, larger enterprises and academia around AI projects	○	○	○	○	○	◉
Provide information about equity financing for AI startups	○	○	○	○	○	◉

Are there any other tasks that you consider important for specialised Digital Innovations Hubs?
500 character(s) maximum

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While catering to the needs of small and medium enterprises may well be in the
public interest, it is imperative to emphasize that no business should be exempt
from respecting human rights. Businesses of any size are not to be granted
exemptions from ensuring that the technology is safe, fair and rights-
respecting.
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Section 2 - An ecosystem of trust

Chapter 5 of the White Paper sets out options for a regulatory framework for AI.

In your opinion, how important are the following concerns about AI (1-5: 1 is not important at all, 5 is very important)?

	1 - Not important at all	2 - Not important	3 - Neutral	4 - Important	5 - Very important	No opinion

AI may endanger safety	○	○	○	○	◉	○
AI may breach fundamental rights (such as human dignity, privacy, data protection, freedom of expression, workers' rights etc.)	○	○	○	○	◉	○
The use of AI may lead to discriminatory outcomes	○	○	○	○	◉	○
AI may take actions for which the rationale cannot be explained	○	○	○	○	◉	○
AI may make it more difficult for persons having suffered harm to obtain compensation	○	○	○	○	◉	○
AI is not always accurate	○	○	○	◉	○	○

Do you have any other concerns about AI that are not mentioned above? Please specify:

500 character(s) maximum

> Liberties believes that the use of AI (especially in the public sector) should be based on, or informed by, rigorously established scientific evidence, should meet certain transparency requirements, and should be subject to democratic oversight. Liberties believes that these concerns are not adequately addressed in the White Paper.

Do you think that the concerns expressed above can be addressed by applicable EU legislation? If not, do you think that there should be specific new rules for AI systems?

- ○ Current legislation is fully sufficient
- ○ Current legislation may have some gaps
- ○ There is a need for a new legislation
- ◉ Other
- ○ No opinion

Other, please specify

500 character(s) maximum

> Some yes, some not. However, even the best piece of legislation becomes paltry without proper enforcement. Enforcement authorities need to be sufficiently funded and upskilled to face the challenges posed by emerging new technologies. The EU must urgently address the issue of lack of appropriate GDPR enforcement. In addition, the EU must ensure that no new regulatory framework for AI allows loopholes to the GDPR (or any other legislation protecting our fundamental rights).

If you think that new rules are necessary for AI system, do you agree that the introduction of new compulsory requirements should be limited to high-risk applications (where the possible harm caused by the AI system is particularly high)?

- ○ Yes
- ○ No
- ◉ Other
- ○ No opinion

Other, please specify:

500 character(s) maximum

> Mandatory fundamental rights impact assessments ought to be conducted for all AI applications, and some types of applications should be banned outright. Categorising all AI into "high-risk" and "low-risk" is fundamentally flawed. Some uses of technology are not "high-risk", but au fond incompatible with the values the European Union is founded on and stands for, and, as such, unacceptable. The sector-based approach should be replaced by an outcome-based human-rights approach.

If you wish, please indicate the AI application or use that is most concerning ("high-risk") from your perspective:

500 character(s) maximum

> The White Paper does not suggest a ban on remote biometric identification. This is a grave mistake. Without a ban, law enforcement agencies will use the technology in ways they see fit. Police surveillance coupled with remote biometric identification technology endangers our democracies. It hinders our right to speak our minds, to meet others, and publicly express our disagreement with people in power. It is especially dangerous in times when authoritarianism is on the rise.

In your opinion, how important are the following mandatory requirements of a possible future regulatory framework for AI (as section 5.D of the White Paper) (1-5: 1 is not important at all, 5 is very important)?

	1 - Not important at all	2 - Not important	3 - Neutral	4 - Important	5 - Very important	No opinion
The quality of training data sets	○	○	○	○	●	○
The keeping of records and data	○	○	○	○	●	○
Information on the purpose and the nature of AI systems	○	○	○	○	●	○
Robustness and accuracy of AI systems	○	○	○	○	●	○
Human oversight	○	○	○	○	●	○
Clear liability and safety rules	○	○	○	○	●	○

In addition to the existing EU legislation, in particular the data protection framework, including the General Data Protection Regulation and the Law Enforcement Directive, or, where relevant, the new possibly mandatory requirements foreseen above (see question above), do you think that the use of remote biometric identification systems (e.g. face recognition) and other technologies which may be used in public spaces need to be subject to further EU-level guidelines or regulation:

- ○ No further guidelines or regulations are needed
- ○ Biometric identification systems should be allowed in publicly accessible spaces only in certain cases or if certain conditions are fulfilled (please specify)
- ○ Other special requirements in addition to those mentioned in the question above should be imposed (please specify)

○ Use of Biometric identification systems in publicly accessible spaces, by way of exception to the current general prohibition, should not take place until a specific guideline or legislation at EU level is in place.

● Biometric identification systems should never be allowed in publicly accessible spaces

○ No opinion

Please specify your answer:

> Liberties strongly believes that such systems pose significant threats to our fundamental rights and ought to be banned.

Do you believe that a voluntary labelling system (Section 5.G of the White Paper) would be useful for AI systems that are not considered high-risk in addition to existing legislation?

○ Very much
○ Much
● Rather not
○ Not at all
○ No opinion

Do you have any further suggestion on a voluntary labelling system?

500 character(s) maximum

> Liberties does not find the high-risk/low-risk categorization acceptable. The voluntary labelling system ought not to be adopted.

What is the best way to ensure that AI is trustworthy, secure and in respect of European values and rules?

☐ Compliance of high-risk applications with the identified requirements should be self-assessed ex-ante (prior to putting the system on the market)

☐ Compliance of high-risk applications should be assessed ex-ante by means of an external conformity assessment procedure

☐ Ex-post market surveillance after the AI-enabled high-risk product or service has been put on the market and, where needed, enforcement by relevant competent authorities

☑ A combination of ex-ante compliance and ex-post enforcement mechanisms

☑ Other enforcement system

☐ No opinion

Please specify any other enforcement system:

500 character(s) maximum

> Liberties is of the standpoint that all AI systems should undergo a mandatory ex ante human rights impact assessment from an external body.

Do you have any further suggestion on the assessment of compliance?

500 character(s) maximum

Section 3 – Safety and liability implications of AI, IoT and robotics

The overall objective of the safety and liability legal frameworks is to ensure that all products and services, including those integrating emerging digital technologies, operate safely, reliably and consistently and that damage having occurred is remedied efficiently.

The current product safety legislation already supports an extended concept of safety protecting against all kind of risks arising from the product according to its use. However, which particular risks stemming from the use of artificial intelligence do you think should be further spelled out to provide more legal certainty?

- ☑ Cyber risks
- ☑ Personal security risks
- ☑ Risks related to the loss of connectivity
- ☑ Mental health risks

In your opinion, are there any further risks to be expanded on to provide more legal certainty?
500 character(s) maximum

> Microtargeted political advertising and its detrimental consequences to the
> democratic political process needs to be expanded on.

Do you think that the safety legislative framework should consider new risk assessment procedures for products subject to important changes during their lifetime?
- ◉ Yes
- ○ No
- ○ No opinion

Do you have any further considerations regarding risk assessment procedures?
500 character(s) maximum

Do you think that the current EU legislative framework for liability (Product Liability Directive) should be amended to better cover the risks engendered by certain AI applications?
- ◉ Yes
- ○ No
- ○ No opinion

Do you have any further considerations regarding the question above?
500 character(s) maximum

Do you think that the current national liability rules should be adapted for the operation of AI to better ensure proper compensation for damage and a fair allocation of liability?

- ⦿ Yes, for all AI applications
- ○ Yes, for specific AI applications
- ○ No
- ○ No opinion

Do you have any further considerations regarding the question above?

500 character(s) maximum

> The EU needs to review copyright and database protections to allow users to seek redress.

Thank you for your contribution to this questionnaire. In case you want to share further ideas on these topics, you can upload a document below.

You can upload a document here:

AI_WPcon_Lib_Annex.pdf

Contact

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