
European Commission Consultation on the
White Paper on Artificial Intelligence

OPEN SOCIETY EUROPEAN POLICY INSTITUTE'S RESPONSE

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**OPEN SOCIETY
EUROPEAN POLICY
INSTITUTE**

The Open Society European Policy Institute is the EU policy and advocacy branch of the Open Society Foundations network, based in Brussels. It works to influence and inform decision-making on EU laws, policy, funding, and external action to maintain and promote open societies in Europe and beyond.

In June 2020, The Open Society European Policy Institute submitted its response to the public consultation launched by the European Commission on its [White Paper on Artificial Intelligence – A European Approach to Excellence and Trust](#). The submission, developed in collaboration with other Open Society Foundations programmes, calls on the Commission to prioritise a model of Artificial Intelligence (AI) governance that safeguards human rights and counters all forms of discrimination.

In our submission, we make the case against the White Paper’s plan to regulate only for so-called ‘high risk’ scenarios. Instead, a larger scope of the law will be necessary to incorporate strong measures to regulate and, in some cases, prohibit the use of AI in highly sensitive public functions such as policing, surveillance, immigration or social welfare. Public institutions, at EU, national, regional and local level, need to establish public registers of the automated decision-making (ADM systems used in the public sector, in order to document the purpose, explain the logic of the system and provide information on the developer, to enable transparency, accountability, remedy, and redress). Concrete mechanisms and dedicated funding programmes will be needed to ensure that racialised and at-risk groups are meaningfully involved and represented in all policy-making aimed at governing technology.

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I. 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.

Q1. 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
1. Working with Member states					X	
2. Focusing the efforts of the research and innovation community					X	
3. Skills					X	
4. Focus on SMEs			X			
5. Partnership with the private sector	X					
6. Promoting the adoption of AI by the public sector	X					

Q2. Are there other actions that should be considered?

Response from Open Society European Policy Institute

The top priority must be to protect human rights throughout the AI lifecycle. The promotion and uptake of AI, particularly in the public sector, should not be a policy goal or value in itself, and public institutions should use AI only where benefits are proven, and with proper impact assessments and risk mitigation safeguards. A plan is needed to systematically include the voices of groups that are most discriminated against in all policy and legislative processes.

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.

Q3. 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
1. Strengthen excellence in research				X		
2. Establish world-reference testing facilities for AI			X			
3. Promote the uptake of AI by business and the public sector	X					
4. Increase the financing for start-ups innovating in AI		X				
5. Develop skills for AI and adapt existing training programmes				X		
6. Build up the European data space		X				

Q4. Are there other areas that that should be considered?

Response from Open Society European Policy Institute

A revised coordinated plan should strive to ensure the affordability and accessibility of ADMs that are critical to accessing basic services, supporting people in vulnerable situations; and ensure personal data obtained from people is not re-purposed for law enforcement or immigration purposes. The plan should also include criteria on how to allocate EU resources on AI based on human rights, the societal impacts of AI and ADMs, and the democratic oversight of AI systems.

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.

Q5. 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
1. Support the establishment of a lighthouse research centre that is world class and able to attract the best minds			X			
2. Network of existing AI research excellence centres				X		
3. Set up a public-private partnership for industrial research	X					

Q6. Are there any other actions to strengthen the research and innovation community that should be given a priority?

Response from Open Society European Policy Institute

All EU-funded R&I must:

- Primarily aim to address the challenges faced by the most discriminated against and racialized groups
- Be made conditional upon respect for fundamental rights
- Involve and consult civil society, particularly those groups who are most affected by discrimination, throughout the design, implementation and evaluation phases
- Include provisions to make the outputs (hardware, software, data, publications) available to the public under free, open licenses.

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.

Q7. 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
1. Help to raise SME's awareness about potential benefits of AI	X					
2. Provide access to testing and reference facilities		X				
3. Promote knowledge transfer and support the development of AI expertise for SMEs			X			
4. Support partnerships between SMEs, larger enterprises and academia around AI projects			X			
5. Provide information about equity financing for AI startups			X			

Q8. Are there any other tasks that you consider important for specialised Digital Innovations Hubs?

Response from Open Society European Policy Institute

Digital Innovation Hubs should engage with civil society, especially with marginalized groups to build models of innovation and AI governance that safeguard democratic values and fundamental rights. As a rule, civil society should be included in decisions on funding for technology. DIHs should prioritize projects to enhance the access to digitalized public services for people in vulnerable situations, with the aim of closing the digital divide and avoiding an increase in inequities.

II. AN ECOSYSTEM OF TRUST

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

Q9. 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
1. AI may endanger safety					X	
2. AI may breach fundamental rights (such as human dignity, privacy, data protection, freedom of expression, workers' rights etc.)					X	
3. The use of AI may lead to discriminatory outcomes					X	
4. AI may take actions for which the rationale cannot be explained					X	
5. AI may make it more difficult for persons having suffered harm to obtain compensation					X	
6. AI is not always accurate				X		

Q10. Do you have any other concerns about AI that are not mentioned above? Please specify:

Response from Open Society European Policy Institute

AI:

- is used by the public sector without sufficient visibility, transparency and oversight
- threatens accountability by making public and private uses and actors more difficult to monitor, evaluate and control

- can disrupt democratic processes and public debate
- can exacerbate existing and persistent discriminatory, harmful situations
- can provoke and worsen anticompetitive behavior
- can entail harmful collection and exploitation of personal data
- can be inappropriately repurposed

Q11. 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

The Commission must ensure EU law is fully applicable where AI is involved, and assess if laws on liability, safety, anti-discrimination and equality require review. Ambitious enforcement, especially of the GDPR, is necessary. Any legislative intervention must reinforce existing rights, not undermine them. Additional measures will be necessary to regulate and, in some cases, prohibit the use of AI in highly sensitive public functions (e.g. policing, surveillance, immigration or social welfare).

Q12. 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:

Mandatory rules should not be limited to high-risk use, because that would leave important uses and potential transfers to other sectors out of scope and miss an opportunity to address existing harms. Instead, the regulatory framework should encompass all types of uses that present risks to people. The public sector should be regulated through a dedicated regime, due to the critical nature of certain functions as well as states' obligations to protect human rights and provide essential services.

Q13. If you wish, please indicate the AI application or use that is most concerning (“high-risk”) from your perspective:

Response from Open Society European Policy Institute

The use of AI by public authorities requires a specific governance framework given state obligations to observe human rights and the high-risk nature of the services provided. A special risk-assessment, register and public audit framework is necessary. More generally, any AI use that risks harming fundamental rights, creating or exacerbating discrimination, or endangering democratic accountability of public and private actors, are to be considered always high-risk.

Q14. 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
1. The quality of training data sets					X	
2. The keeping of records and data					X	
3. Information on the purpose and the nature of AI systems					X	
4. Robustness and accuracy of AI systems				X		
5. Human oversight					X	
6. Clear liability and safety rules					X	

Q15. 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:

Response from Open Society European Policy Institute

The most harmful uses of AI, such as the use of biometrics for identification purposes (1:n), will likely require an outright ban, due to the severity of the threats they pose to human rights, in particular to the rights to privacy, equality and non-discrimination, and to peaceful assembly and association. The EU regulatory framework should include a list of prohibited uses, and the Commission should consult stakeholders and representatives of the most affected groups specifically on such list.

Q16. 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

Q17. Do you have any further suggestion on a voluntary labelling system?

Response from Open Society European Policy Institute

The EU could impose a labelling system for state-deployed ADMs as a mechanism to open access to data and systems and to enhance accountability, while respecting rights. Mandatory labelling could include information on training and modeling data, model cards and oversight notes. Beyond that, voluntary, self-regulatory or ethics-based mechanisms have demonstrated to be ineffective governance mechanisms in the digital economy and should only complement, never replace, regulatory obligations.

Q18. 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 X
- No opinion

Please specify any other enforcement system:

Response from Open Society European Policy Institute

A successful governance framework for AI will require both clearly defined and ambitious ex-ante rules as well as a structured, efficient ex-post market surveillance and enforcement framework. Independent human rights impact assessments must be mandatory and undertaken before entry into market. Enforcement procedures should include a regular review and possible sunset clauses, and mechanisms of remedy and redress to correct and/or compensate natural and legal persons if their rights are violated.

Q19. Do you have any further suggestion on the assessment of compliance?

Response from Open Society European Policy Institute

Especially if the high-risk approach is followed, it should never be for the providers of AI/ADM applications to self-assess compliance with the established requirements and provisions. Member States breaching the legal framework should be sanctioned. Assessment and enforcement activities will require multidisciplinary and multi-sectorial expert advice, particularly from civil society and human rights experts.

III. 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.

Q20. 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 security risks
- Personal security risks
- Risks related to the loss of connectivity
- Mental health risks

