



EUROPEAN DIGITAL RIGHTS

# European Commission Consultation on the White Paper on Artificial Intelligence

## *EDRi Consultation Response*

*The below outlines EDRi's submission to the European Commission consultation on the White Paper on AI. To read EDRi's recommendations to the European Commission on AI, read our additional paper.*

### SECTION 1 – *An Ecosystem of Excellence*

**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)?**

*EDRi answers:*

Working with Member states: 5

Focussing the efforts of the research and innovation community: 5

Skills: 5

Focus on SMEs: 3

Partnership with the private sector: 1

Promoting the adoption of AI by the public sector: 1

**Are there other actions that should be considered? 500 characters max**

*EDRi answers:*

- Ecosystem of excellence must include trust. The development and deployment of AI systems must respect human rights. EU funded research must follow HLEG Ethics Guidelines
- We oppose AI uptake in the public sector in absence of evidence of substantial benefits and heightened safeguards against downside risks, especially to human rights
- We call for additional safeguards for fundamental rights in the lifecycle of public procurement processes
- Ensure democratic oversight, include civil society and impacted communities in meaningful consultation

## Revising the Coordinated Plan on AI (Action 1)

**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)?**

*EDRi answers:*

strengthen research: 4 important  
testing facilities: no opinion  
promote the uptake: 1 not important  
financing of start up innovation: 2 not important  
develop skills: 4 important  
build up the data space: 2

**Are there other areas that that should be considered?**

*EDRi answers:*

- Promotion of AI is not a value in itself. The coordinated plan should include common scientific/ policy criteria to determine the allocation of resources for the above listed purposes, rather than assume benefits in areas such as health and transport
- The coordinated plan and member state strategies should include a section on human rights, societal impacts of AI/ automation, and how to ensure democratic oversight
- The build-up of European data space must comply with the GDPR

## A united and strengthened research and innovation community striving for 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)?**

*EDRi answers:*

Support to establishment of a lighthouse research: 3  
network of existing AI research: 4  
set up a public private partnership: 1

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

*EDRi answers:*

- Public interest should set the priorities of research centers and research partnerships
- Research priorities should include the human rights and societal implications of the development and use of AI, fairness design, discrimination risks and transparency
- Receiving public funding for research should require fulfilling a set of criteria following the EU Ethics Guidelines
- The Horizon2020 program must be reviewed to ensure fundamental rights both in the funding process and in funded projects

**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)?**

*EDRi answers:*

Help raise SME awareness about potential benefits: 1  
Provide access to testing and reference facilities: 2  
Promote knowledge transfer: 3  
Support partnerships: 3  
Provide information about equity financing: no opinion

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

*EDRi answers:*

DIHs and other innovation incentives for SMEs must not provide exceptions from fundamental rights. The Clearview AI example shows that small companies can cause harms, too. There should be no blanket exemptions of sandboxing for innovation solely based on the size of the entity

The EU should develop a scheme where the public funding on AI applications is reverted to the public, for example by making outcomes publicly available and applications licensed under Free Software licenses

## SECTION 2 - *An ecosystem of trust*

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

*EDRi answers:*

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

## Do you have any other concerns about AI that are not mentioned above?

*EDRi answers:*

- AI used in sensitive areas (public services) without democratic oversight, transparency or sufficient evidence to justify the need/ purpose
- Increasing use of opaque, privately owned tech
- Conscious obfuscation of accountability for harms
- AI poses collective harms which cannot be addressed in the anti-discrimination or data protection frameworks
- 'Innovation' invoked to justify trials without safeguards
- Characteristics of machine learning can lead to unauthorised or secondary use and function creep

## 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?

*EDRi answer:* Other

### Other, please specify:

*EDRi answers:*

- Legislation must strengthen, not replace, GDPR. AI presents issues for meaningful consent, objection, data minimisation, purpose limitation, explanation
- AI law must complement a broad interpretation of GDPR, including affinity profiling or sensitive inferences
- Current law does not address use of non-personal data, and collective impact of AI, such as furthering overpolicing, surveillance, inequality
- Current law does not prohibit AI discrimination on non-protected grounds, eg financial status

## 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)?

*EDRi answer:* Other

### Other, please specify (500 characters):

*EDRi answers:*

- New rules are necessary to determine the criteria for when it should be legal to develop and deploy AI
  - standards for scientific and policy evidence
  - burden of proof is on the developer/deployer and not on impacted groups
  - mandatory democratic oversight before deployment of AI in public sphere
- mandatory fundamental rights impact assessments for all uses
- The EU should proactively ban AI applications in areas where the fundamental rights and societal implications are too great to risk

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

*EDRi answers:*

The use of AI to determine delivery of essential public services, predictive policing, autonomous lethal weapons, identification/ analysis of emotion and identity traits, and indiscriminate biometric surveillance, are incompatible with fundamental rights and should be banned by default

Determining ‘risk’ should be rights and outcomes focused, not sectoral. Major concern with systems which impact fair trial, in migration control and policing, and systems which may perpetuate inequalities in hiring

**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) (1-6: 1 is not important at all, 6 is very important)?**

*EDRi answers:*

The quality of training data sets: 6

The keeping of records and data: 6

Information on the purpose and the nature of AI systems: 6

Robustness and accuracy of AI systems: 5

Human oversight: 6

Clear liability and safety rules: 5

**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:**

*EDRi answer:* Biometric identification systems should never be allowed in publicly accessible spaces.

**Please specify your answer:**

*EDRi answers:*

The use of biometrics for remote identification in publicly-accessible spaces significantly contributes to unlawful mass surveillance so should never be deployed.

Such uses will transform public spaces into sites of continuous watching and irreversibly compromise fundamental rights to privacy, freedom of assembly, expression, non-discrimination, data protection, fair trials, democracy and the presumption of innocence. The EU must harmonise and enforce existing legislation to protect these rights.

**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?**

*EDRi answer:* Rather not

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

*EDRi answer:*

We should exercise caution deciding that some applications are inherently low risk and therefore do not require oversight to guarantee fundamental rights.

We strongly caution against incorporating voluntary, self-regulatory and ethics based approaches in AI regulations. Such approaches provide scope to circumvent accountability and soften fundamental rights obligations. Further, they reduce certainty and impede access to justice for those harmed.

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

*EDRi answers:*

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

and:

Other enforcement system

**Please specify any other enforcement system:**

*EDRi answers:*

In addition to regulatory delineation of scope of lawful AI, including bans, there should be oversight of all applications to guarantee fundamental rights

We call for mandatory, ex ante human rights impact assessments (which include an assessment of collective and social harms posed by applications, with review at the stages of design, development, testing and deployment. Clearly enforced consequences should applications fail to meet certain standards, including the potential to halt deployments

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

*EDRi answers:*

Insofar as possible compliance with regulatory measures should be guaranteed by external and independent entities, avoiding self regulation and ensuring there are no loop holes to fundamental rights protection.

## SECTION 3 – *Safety and liability implications of AI, IoT and robotics*

**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?**

*EDRi answers:*

Cyber risks  
personal security risks  
Risk 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?**

*EDRi answers:*

Heightened risks of discrimination, in particular with reference to online products and services using data for targeted advertising. This poses risks of differentiated pricing, discrimination financial detriments, the risk of creating filter bubbles, interference in the democratic process, based on sensitive inferences or associations. In addition, there are concerns related to accessibility or harms specifically to be experienced by people with disabilities.

**Do you think that the safety legislative framework should consider new risk assessment procedures for products subject to important changes during their lifetime?**

*EDRi answer:* Yes

**Do you have any further considerations regarding risk assessment procedures?**

*EDRi answers:*

Internal supervisors, such as Data Protection Officers under GDPR should be included and asked for advice.

**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?**

*EDRi answer:* Yes

**Do you have any further considerations regarding the question above?**

*EDRi answer:*

Liability should be centered around accountability and the extent to which faults can be redressed by users of technology.

There should be liability for producers of AI that do not disclose source code (including their algorithmic models/ datasets) and do not provide fixes for issues brought to their attention or otherwise hinder fixes from being applied, for example by not allowing third-party fixes based on any disclosed source code. The issue of repurposing of AI systems should be addressed.

**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?**

*EDRi answer:* Yes for all applications

**Do you have any further considerations regarding the question above?**

*EDRi answers:*

AI applications are covered both by copyright and database rights protections, which prevent users from assessing their quality and limit their ability to redress issues that have been observed. Moreover, current software liability is usually exonerated through license agreements. Liability rules should limit the ability to exonerate such liabilities by providing incentives for openness.