



Letter to President of the European Commission Ursula von der Leyen,

Executive Vice-President Margrethe Vestager,

cc Vice-President Věra Jourová  
cc Commissioner Thierry Breton,  
cc Commissioner Helena Dalli,  
cc Commissioner Johansson,  
cc Commissioner Didier Reynders,

Dear President von der Leyen,

We write to you ahead of the upcoming publication of the proposal on artificial intelligence. Your letter to MEPs on 29 March assured that all high risk artificial intelligence (AI) systems would be subject to mandatory rules, with even stronger measures for applications that are incompatible with fundamental rights. As we have recently called for red lines against unacceptable uses of AI in the EU in [two high profile civil society letters](#),<sup>1</sup> we welcome this commitment from the Commission.

The recently leaked draft of the Regulation on *A European Approach For Artificial Intelligence* from January 2021 takes important steps in tackling the most harmful applications of AI, particularly with the inclusion of Article 4 on Prohibited Artificial Intelligence Practices. We welcome the inclusion of prohibitions, as it shows that the Commission is willing to place limits on applications of AI that are incompatible with fundamental rights.

**However, based on the leaked document, we believe that the text of the proposal can still be improved to ensure the necessary protections for fundamental rights.** In particular, we strongly urge you to consider reflecting the following in the legislative proposal:

- **Prohibitions should be real prohibitions.** We welcome the inclusion of prohibited practices in Article 4.1 of the leaked Regulation, however we believe that the list has some significant gaps including predictive policing and risk assessment systems in the criminal justice system, biometric mass surveillance practices, AI at borders and in migration control, and the recognition of sensitive characteristics.
- **Eliminate broad exceptions:** Furthermore, we are deeply concerned that **Article 4.2 allows for such broad exceptions that it significantly undermines the very principle of a prohibition.** The fact that these “prohibited” practices could be allowed, under

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<sup>1</sup> Open letter dated 12<sup>th</sup> January 2021: <https://edri.org/our-work/civil-society-call-for-ai-red-lines-in-the-european-unions-artificial-intelligence-proposal/>; Open letter dated 1<sup>st</sup> April 2021: <https://edri.org/our-work/european-commission-must-ban-biometric-mass-surveillance-practices-say-56-civil-society-groups/>

certain conditions, by or on behalf of public authorities in order to safeguard such a broad goal as “public security” will only serve either to legitimise or incentivise deeply harmful practices. Similarly, Articles 42 and 43 could be understood to legalise biometric mass surveillance practices under conditions that Member States could easily meet, in effect undermining existing protections in EU data protection law against these rights-violating practices. We thus encourage you to strengthen these paragraphs towards an effective ban of harmful practices such as biometric mass surveillance.

- **Ensure effective oversight and enforcement:** Rather than creating a new European Artificial Intelligence Board, as outlined in Article 47, risking confusion and disharmony if member states designate different authorities to the task of enforcing the Regulation, as outlined in Article 50, we believe that existing Data Protection Authorities and the European Data Protection Board should be provided with additional resources and expertise on AI to be responsible for the application, implementation and enforcement of this Regulation.
- **Strengthen civil society:** The proposal must encourage a strong enforcement of the Regulation by providing civil society with the tools we need to act as watchdogs. Regarding the expert group as outlined in Article 49, we call for a broad inclusion of diverse stakeholders, including civil society organisations, representatives of affected groups, and experts in the broad range of fundamental rights that are impacted by AI systems. We also call for collective redress from fundamental rights and consumer groups to act against potential infringements of the Regulation, in the same way that is described in Article 80.1 and 80.2 of the General Data Protection Regulation (GDPR).
- **Improve transparency and accountability:** Finally, in order to ensure the European database outlined in Article 52 is truly effective, we consider that, as a minimum, all high-risk applications proposed or implemented by the private sector should be included in the database, in addition to all AI systems used by the public sector regardless of their risk level. Mechanisms must also be in place to allow civil society and, more broadly, people affected by AI systems, to request detailed information on all systems in the database where needed.

The European Union has made a commitment to chart a path forward with artificial intelligence that places fundamental rights at its core. The upcoming legislative proposal is a unique opportunity to ensure the protection of fundamental rights of all in society, including those of marginalised groups. We hope to see these changes in the official legislative proposal.

Yours sincerely,

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Chaos Computer Club  
Civil Liberties Union for Europe  
D3 – Defesa dos Direitos Digitais  
Digitale Gesellschaft CH  
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