European Commission White Paper on Artificial Intelligence

Global Partners Digital response

June 2020

About Global Partners Digital

Global Partners Digital is a social purpose company dedicated to fostering a digital environment underpinned by human rights.

Introduction

We welcome this opportunity to provide our comments on the proposals set out in the White Paper, in addition to our responses to the consultation questionnaire.

We also welcome the European Commission's strong and consistent recognition, throughout the White Paper, of the impact of artificial intelligence (AI) on human rights, and therefore the need to ensure that human rights are protected when it comes to the governance of AI. We commend the Commission for dedicating a section of the White Paper to the risks to human rights that stem from AI, including the rights to privacy and data protection, non-discrimination, freedom of expression, and to a fair trial.

In this submission, which accompanies our response to the consultation questionnaire, we examine the proposals set out in the substantive parts of the White Paper (sections 4 and 5). In doing so, we highlight those areas where we are particularly supportive, and make a series of recommendations of how the Commission can ensure that its commitment to human rights is reflected in the actions it takes.

Section 4: An ecosystem of excellence

A. Working with Member States

We have no comments on the proposals in this section.

B. Focusing the efforts of the research and innovation community

Action 2 in the White Paper is for the Commission to "facilitate the creation of excellence and testing centres that can combine European, national and private investments" including through financial support to support "world reference testing centres in Europe under the Digital Europe Programme".

Support for research and innovation in AI provides a number of opportunities to ensure that this research and innovation, itself, ensures the protection of human rights, and promotes developments in AI which enhance the enjoyment of human rights. These are set out in the box below.

> **Recommendation 1**: The Commission should:
> - Require any AI research grant applications to set out how they are human rights-respecting (particularly when it comes to the rights to privacy, data protection and non-discrimination) and for this to be a key consideration in funding decisions;
> - Require prospective research projects to undergo human rights impact assessments in order to identify and mitigate risks to human rights that might materialise as a result of the research;
> - Place as a specific condition for funding evidence that the research will not undermine human rights;
> - Promote collaboration between different research disciples on AI-related funding, so as to build capacity within AI research more broadly on understanding and integrating human rights consideration; and
> - Dedicate a specific proportion of funding for research and innovation which specifically focuses on the societal impacts of AI, how human rights can be protected in the development and use of AI, and on AI technologies which enhance human rights.

C. Skills

Action 3 in the White Paper is for the Commission to "establish and support through the advanced skills pillar of the Digital Europe Programme networks of leading universities and higher education institutes to attract the best professors and scientists and offer world-leading masters programmes in AI".

Supporting the development of skills and talent should incorporate human rights considerations in two respects (summarised in the box below). First, any education or training programmes that are provided by universities and higher education programmes should themselves incorporate human rights considerations in the curriculums. Second, mitigating risks of discrimination caused by AI necessitates including all affected groups in the development of AI, including at educational institutions. Efforts should therefore be made to ensure that the students, professors and scientists supported by the European Commission represent the diversity of groups within society.

> **Recommendation 2**: The Commission should:
> - Promote the incorporation of human rights into any education and training programmes related to AI; and
> - Consider how to ensure that this support is provided to, and encourages, a diverse range of students, professors and scientists with representation from all segments of society, including marginalised and under-represented groups.

D. Focus on SMEs

Action 4 in the White Paper is for the Commission to "ensure that at least one digital innovation hub per Member State has a high degree of specialisation on AI". Action 5 is to "launch a pilot scheme of €100 million in Q1 2020 to provide equity financing for innovative developments in AI".

SMEs, given their limited resources, are less likely than larger companies to be able to fully consider the societal impacts of the technologies that they develop, use and offer. The support provided by the Commission to SMEs through digital innovation hubs and financial support both provide opportunities to help build the capacity of SMEs to consider the human rights implications of the products and services that they develop and provide. These are set out in the box below.

> **Recommendation 3**: The Commission should:
> - Ensure that digital innovation hubs in member states offer opportunities to build the capacity of SMEs to understand the human rights implications of AI, and support in helping mitigate risks to human rights as SMEs develop, use and offer AI technologies;
> - Tie prospective funding for innovative developments in AI to a requirement for human rights impact assessments to be undertaken in order to identify and mitigate risks to human rights that might materialise; and
> - Place as a specific condition for funding evidence that the funding will not undermine human rights.

E. Partnership with the private sector

We have no comments on the proposals in this section.

F. Promoting the adoption of AI by the public sector

While the Commission's plans here are fairly open, Action 6 is for the Commission to "initiate open and transparent sector dialogues (...) in order to present an action plan to facilitate development, experimentation and adoption". These sector dialogues, which will prioritise healthcare, rural administrations and public service operators, will be used to prepare a specific "Adopt AI programme" to "support public procurement of AI systems, and help to transform public procurement processes themselves".

Many of the risks to human rights which stem from AI come through its application in the public sector, particularly where the AI technologies are themselves procured from others, rather than developed by the relevant public authority. Launching these sector dialogues provide opportunities for the Commission to build the capacity of public authorities in member states to consider the human rights implications of the AI systems that they procure and use. These are set out in the box below.

Recommendation 4: The Commission should:
- Consider how to incorporate capacity-building on the human rights implications of AI among public authorities through these sector dialogues.
- Develop guidelines on assessing human rights risks in public procurement of AI. Such guidelines could include:
- Ensuring that decisions about procurement are made by teams which include individuals with expertise on human rights;
- Conducting human rights impact assessments before starting any procurement process; and
- Engaging with affected stakeholders to better understand potential impacts, particularly when it comes to marginalised groups and those vulnerable to discrimination.

G. Securing access to data and computing infrastructures

We have no comments on the proposals in this section.

H. International aspects

We welcome the commitment for international cooperation on AI matters to be based on "an approach that promotes the respect of fundamental rights, including human dignity, pluralism, inclusion, non-discrimination and protection of privacy and personal data". We also welcome the targeting of a broad range of key forums and processes where this approach can be promoted.

Section 5: An ecosystem of trust: regulatory framework for AI

In principle, we support the development of a new regulatory framework for AI, provided that it sufficiently ensures the protection of human rights. In our responses to the different elements of the regulatory framework below, we set out how it can do so.

A. Problem definition

We have no comments on this section, and fully endorse the analysis of the risks that AI poses to fundamental rights, including personal data and privacy protection and non-discrimination.

B. Possible adjustments to existing EU legislative framework relating to AI

We have no comments on this section, and fully endorse the proposal for existing EU legislative frameworks to be reviewed and updated, subject to consultation, to ensure that they apply effectively to AI technologies. As the White Paper itself notes, these frameworks should include the EU's frameworks on data protection generally (the General Data Protection Regulation (GDPR)), data protection for law enforcement purposes, and non-discrimination.

C. Scope of a future EU regulatory framework

We recognise the need for an AI-specific regulatory framework to be flexible and proportionate, given the wide range of sectors where AI may be used, its different uses and applications, and the level of risk of harm to, among other things, human rights. We therefore support the approach of designating certain sectors and uses of AI as "high-risk" which would therefore require more onerous safeguards.

The White Paper proposes that determination of whether a particular use of AI should be made by reference to the sector in which it will be used, as well as the particular manner of its use. Whether this approach is maintained or not, we recommend that any regulatory framework make clear that any use of AI which has the potential to significantly interfere with an individual's human rights should always be considered as "high-risk". Those developing or applying AI systems should be encouraged, or required, to undertake some form of human rights impact assessment in order to determine whether there are any significant risks to AI.

> **Recommendation 5**: The Commission should:
> - Ensure that any regulatory proposals provide that any use of AI which has the potential to significantly interfere with an individual's human rights should always be considered as "high-risk".
> - Ensure that any regulatory proposals encourage or require those developing or applying AI systems to undertake some form of human rights impact assessment in order to determine whether there are any significant risks to AI.

D. Types of requirement

We fully support the proposals for the new regulatory framework to contain requirements on the quality of training data, record keeping, the provision of information, ensuring robust and accurate AI systems and mandating human oversight. We recommend, however, that a further requirement should be that a human rights impact assessment be undertaken prior to the development or use of a particular AI technology. Such an approach has precedent with the requirement, under Article 35 of the GDPR, that a data controller undertake a data protection impact assessment (which includes considerations of human rights impacts) whenever a particular form of data processing is "likely to result in a high risk to the rights and freedoms of natural persons,".

We note that the consultation does not set out specific proposals in relation to the gathering and use of biometric data for identification of individuals in public places, intending, instead, to "launch a broad European debate on the specific circumstances, if any, which might justify such use, and on common safeguards".

The use of facial recognition in public places, particular for the purposes of law enforcement, constitutes a significant interference with individuals' right to privacy, with potential risks to other human rights (such as non-discrimination), and should only be permitted in limited circumstances with meaningful safeguards and oversight. We look forward to participating in the broader European debate, but would call, at a minimum for the safeguards set out below.

> **Recommendation 6**: The Commission should ensure that the following safeguards are included within any regulatory proposals relating to the of facial recognition in public places:
> - Any public authority or company which wishes to develop, procure or use facial recognition technology in a public place should, prior to doing, be required to publish a report which contains:
>   - Details on the facial recognition technology, who produced it, and its capability and limitations;
>   - The data (or types of data) that the technology will use;
>   - How that data is generated, collected and processed;
>   - The types of data that the technology is likely to generate;
>   - Details of the purpose and proposed use of the technology;
>   - Details of the policies that will be used to manage how data is processed and its security ensured;

- o Details of the measures that will be taken to minimise the inadvertent collection of data beyond that which is necessary for its purposes;
  - o Details of with whom any data will be shared, and under what conditions.
- The authority/company should also be required to undertake and publish a human rights impact assessments which sets out any potential impacts of the technology on human rights (including the rights to privacy and to non-discrimination), and how these impacts will be mitigated against;
- The authority/company should be required to consult on both the public report and the human rights impact assessment prior to publication;
- The authority/company should make available an application programming interface or other technical capability to enable legitimate, independent, and reasonable tests of those facial recognition services for accuracy and unfair performance differences across different groups.
- The authority/company should be required to conduct periodic training of all individuals who operate a facial recognition service or who process personal data obtained from the use of a facial recognition service. The training should include coverage of (i) the capabilities and limitations of the facial recognition service and (ii) procedures to interpret and act on the output of the facial recognition service.
- A regulatory body should be established or nominated, whether within each member state or EU-wide, with the power to prevent or limit particular uses of facial recognition technology by either public authorities or companies where there are significant risks to human rights. Such a body could either be a new one, with a mandate specifically focused on facial recognition technology, or an existing body with a relevant mandate, such a data protection authority or a national human rights institution.
- Any security or law enforcement agency which wishes to deploy facial recognition technology in a public place in order to engage in ongoing surveillance, conduct real-time or near real-time identification, or to undertake persistent tracking should be required to obtain a court order so permitting it.
- The authority seeking such a court order should be required to show that the use of facial recognition technology in the circumstances is necessary and proportionate. Court orders should be time limited with review and renewal of orders required periodically.

E. Addressees

We have no comments on this section, and agree with the Commission's view that each obligation in a regulatory framework should be addressed to the actor(s) who is (are) best placed to address any potential risks.

F. Compliance and enforcement

We have no comments on this section.

G. Voluntary labelling for non-high risk AI applications

We reiterate our recommendation that any regulatory framework make clear that any use of AI which has the potential to interfere with an individual's human rights should always be considered as "high-risk". For non-high risk applications of AI, we support transparency to ensure that individuals are always aware of when AI is being used in ways which affect or might affect them. We have no opinion in relation to a labelling scheme as the specific means by which transparency is ensured, but do believe that any scheme should be mandatory, rather than voluntary.

Recommendation 7: The Commission should:
- Ensure that any regulatory proposals make labelling of non-high risk AI applications mandatory, rather than voluntary.

H. Governance

We have no comments on this section.