EDF position on the European Commission's White Paper on Artificial Intelligence – A European Approach to excellence and trust

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Below are European Disability Forum's (EDF) general recommendations on the European Commission's White Paper on Artificial Intelligence (AI) – A European approach to excellence and trust and answers to the specific questions of the public consultation on the White Paper. This document summarises our position on the EC AI White Paper and should be viewed as integral part of EDF's response to the public consultation survey.

Who we are

We, the European Disability Forum (EDF), are an umbrella organization of persons with disabilities that defends the interests of over 100 million persons with disabilities in the EU. We are a unique platform run by persons with disabilities and their families, and a strong, united voice of persons with disabilities advocating for the implementation of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) in the EU.

General recommendations

Artificial Intelligence will have huge implications on the lives of all citizens, including persons with disabilities who can already benefit of several AI-based applications.[1] However, we have previously raised some significant concerns about AI-powered 'solutions' that may have negative impact on persons with disabilities.[2] We therefore need strong legal safeguards to protect the rights of all citizens, including citizens with disabilities, from AI-powered technology that

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[1] See EDF report "Plug and Pray? A disability perspective on artificial intelligence, automated decision-making and emerging technologies – 2018" http://www.edf-feph.org/sites/default/files/edf-emerging-tech-report-accessible.pdf

[2] See paper from Sandra Wachter "Why fairness cannot be automated: bridging the gap between EU non-discrimination law and AI" https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3547922

could discriminate them and cause harm. In this context, an assessment of the potential gaps in human rights law that currently protect European citizens is required.[3] In addition, specific legislation regulating AI is necessary, in line with European accessibility legislation and standards, with strong emphasis on safeguarding fundamental rights of citizens, ensuring inclusive participatory approach to AI development and human oversight, as well as clear and effective liability, accountability and redress mechanisms. Self-regulation and voluntary compliance with set of guidelines are not enough to offer reassurance to consumers with disabilities.

Europe has a unique landscape of diversity, including cultural and linguistic (this includes diversity of sign languages in Europe), which is a potential source of innovation for AI, and can be utilised to advance social justice and substantive equality. To ensure this potential is sufficiently realised, it is important that wide diversity of citizens, including persons with disabilities, are involved in AI development and deployment. Therefore, the EU and Member States need to proactively promote inclusive innovation principles and empower citizens to exercise informed choice and control in relation to AI-based services and products. There is also a need to educate citizens, including citizens with disabilities, about AI, automated decision-making and how personal data, including sensitive personal data such as information about disability, is used in AI-powered technology.

Section 1 - An ecosystem of excellence

Actions proposed in section 4 of the White Paper on AI. Are there other actions that should be considered?

When working with Member States, the Coordinated Plan should consider societal wellbeing, the broadest possible range of users, and that all members of society equally benefit from AI. Research and Innovation efforts should include

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[3] The EU still lacks a horizontal antidiscrimination legislation, as the proposed Equal Treatment Directive is blocked in the Council for over a decade now.

participation of persons with disabilities to ensure that as affected stakeholders they are considered throughout the whole development and implementation cycle of AI applications. Accessibility of skill-building initiatives, communication to raise awareness on AI is vital. Awareness-raising initiatives under the Digital Education Action Plan should prepare citizens to take informed decisions in relation to AI. This Action Plan should also integrate and emphasize the importance of inclusive innovation, accessibility following a design for all approach, as well as anti-discrimination responsibility/accountability measures. It should also include 'plain English' and 'easy-to-read' information about AI so that everyone understands what it means. Public procurement of AI in healthcare, transport, and other fields should comply with EU public procurement legislation requiring assurance of accessibility. To ensure this in practice, the requirements of the European Accessibility Act, Web Accessibility Directive and the [European Standard on accessibility of ICT products and services (EN 301 549 V3.1.1)](#) must be considered. The [European Standard EN 17161 on "Design for All - Accessibility following a Design for All approach in products, goods and services - Extending the range of users"](#) can also be useful. Importantly, safeguards and criteria should be developed to ensure that use of AI by public bodies does not lead to aggravation of discrimination and marginalisation of persons with disabilities, and increase inequality gaps in society.[4] AI should instead be used to promote equality and contribute to social justice, for example through advancing accessibility for persons with disabilities. To ensure this, persons with disabilities must be able to engage in the design and development of AI applications from the outset. They must also be able to participate in mechanisms of oversight and public accountability during implementation.

Revising the Coordinated Plan on AI (Action 1). Are there other areas that that should be considered?

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[4] Some of those risks where highlights in our '[Plug and Pray'](#) report.

Research and innovation, uptake of technologies by private and public sector, development of skills must ensure accessibility and collaboration with societal stakeholders such as organisations of persons with disabilities (DPOs) to ensure that development brought by AI does not increase existing barriers and equality gaps – benefits are equally reaped by all members of society. The coordinated plan and Member State strategies should incorporate assurance of human rights, assessment of societal impacts of AI and automation, as well as democratic oversight from affected stakeholders.

A united and strengthened research and innovation community striving for excellence. Are there any other actions to strengthen the research and innovation community that should be given a priority?

It is important to ensure the participation of societal stakeholders in research and innovation, including through funding that enables their participation on an equal basis with other stakeholders. DPOs have extensive knowledge in user-experience and often expertise on accessibility, so can be important contributors to innovation. The whole process needs to be based on an inclusive and participatory approach to ensure that the developed products and services benefit everyone equally and are not biased against certain social groups, such as those with disabilities. Research and innovation should also prioritise assessment of fundamental rights and the societal impact of AI. Finally, strict guidelines and criteria should ensure that no EU funding is used to create AI-based products and services that are inaccessible for persons with disabilities, breach their fundamental rights or exacerbate inequalities in any other way. We suggest that meaningful participation of persons with disabilities should be an essential criterion for EU funding focusing on research and innovation.

Focusing on Small and Medium Enterprises (SMEs). Are there any other tasks that you consider important for specialised Digital Innovations Hubs?

Digital Innovation Hubs must also ensure that SME and potential partners uphold fundamental rights, accessibility and inclusive participation principles and laws during development and application of AI. DPOs must be consulted and enabled to participate in partnerships at equal level around AI projects. Ex ante rules for financing of AI projects by SME should also apply in reference to accessibility, fundamental rights and non-discrimination of persons with disabilities.

Section 2 - An ecosystem of trust

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

Aggravation of inequalities: AI could increase existing inequalities for certain demographics such as persons with disabilities, if development and implementation of AI applications do not consider the requirements, interests and concerns of these individuals. There are plenty of examples of discriminatory AI-powered technologies being adopted at pace. For example, we are aware of large companies using AI in the EU to screen candidates for jobs whereby an algorithm is used to analyse how individuals answer preselected questions in a recorded video interview, grading their verbal responses and facial movements. We are concerned about the assumptions that are made about what a candidate should look like or how they should behave in front of a video. This technology could discriminate against a range of candidates with disabilities (e.g. people who have had a stroke, blind people, etc.).[5] An AI-based solution for transport services will most likely dismiss the way which persons with disabilities travel (e.g. needing passengers' assistance, taking more time to go through the accessible paths), thus aggravating barriers and difficulties. These are only few examples of potential harm and discrimination that AI-based solutions could cause if safeguards and strong regulatory framework is not in place. Therefore a 'Design for All' approach must be ensured in the development of smart mobility using AI. Also, to avoid this, persons with

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[5] https://www.vox.com/recode/2019/12/12/20993665/artificial-intelligence-ai-job-screen

disabilities should be involved in the whole cycle of development and implementation of AI applications. The European Standard for achieving accessibility following a Design for All approach (EN 17161) should be followed by initiatives designing, developing and implementing AI-based products and services, so that these are accessible to a wide diversity of users, including persons with disabilities. Any development and deployment of AI should be subject to strict guidelines and criteria, which ensure accessibility and safeguard against any breach of fundamental rights or exacerbation of inequalities for persons with disabilities. There should also be robust mechanisms of oversight during implementation, where affected stakeholders are empowered to effectively participate and seek redress when necessary.

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

The current EU legal framework does not sufficiently address the risks we identified. It is important to consider that current EU equal treatment and accessibility-related legislation is not comprehensive. For example, EU equal treatment legislation protects rights of persons with disabilities only in employment and vocational training, leaving out vital aspects of daily life such as education, healthcare, and social services, among others. The European Accessibility Act does not sufficiently address transport and built environment accessibility. So, specific rules guaranteeing accessibility and protection of fundamental rights for AI systems are needed.

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)?

The White Paper rightly acknowledges that in certain cases just the use of AI will be a sufficient criterion to consider its application high-risk. The Paper also notes concerns, such as non-transparency of AI algorithms, 'mutation' capabilities of AI-based products that may result in unforeseen risks and expansion of our understanding of safety. Therefore, limiting the proposed requirements to a list of 'high-risk' AI applications does not seem to be a future-proof approach. It raises many concerns, because risks may evolve over time and vary, considering human diversity (for example, a person using a wheelchair may need to move backwards when crossing a road, will an AI-based application consider the risk of such an exceptional case?). Consequently, at first, the focus should not be on high and low risk applications but on setting boundaries to the domains in which AI can be deployed (e.g. when the automated decision taken by an AI-based solution has even a small chance of harming or discriminating against people), as AI will in most cases not consider people who are largely out of societal ideas of "the norm", like persons with disabilities.

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

See previous answer. AI is run on datasets, when these datasets refer to people or people's behaviour, minority groups such as persons with disabilities have a high risk of not being taken into consideration, even in qualified as low-risk AI applications. Therefore, the assessment should be done on a domain by domain basis, taking into consideration all potential implications for the widest range of people. So first, the EU must set the limits as well as ex ante and regular ex post evaluations of those allowed AI systems. These evaluations are crucial for all AI-based products and services, particularly those affecting the everyday lives of citizens. As mentioned above, any AI application affecting citizens

should be considered with the presumption of being high-risk as a starting point. The White Paper notes healthcare, transport, energy and areas of the public sector, such as asylum, migration, border control and judiciary, social security and employment services as potential high-risk AI application sectors. Similarly, as we highlighted, use of AI for private recruitment, to determine candidates' 'employability' can discriminate against candidates with speech impairments, and other disabilities, and have negative long-term consequences for life-long career opportunities those affected. While there are sectors where high-risk of AI use is more self-evident (such as those noted in the White Paper), it is important to carefully assess particular use of AI both in the public and private sectors to determine whether it poses high risk to affected persons. In addition, it is very important to understand and assess how the use of personal data in an AI context could have long term unintended consequences for persons with disabilities, for example people being turned down for credit or insurance.

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:

Biometric identification systems should not be allowed in publicly accessible spaces, as they risk being highly discriminatory, often inaccessible for persons with disabilities, and deployed without the consent of affected persons. Sensitive data about an individuals' chronic illness or disability can be gathered without their consent, and later be used to discriminate against the person.

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

Again, it will be very difficult to establish what is high-risk, as AI applications pose considerable transparency concerns and can change functionality during their lifespan. Especially, given that experience with AI use is still concerning for

many citizens, strong regulatory frameworks with safeguarding mechanisms are vital. We need clear governance structures and robust enforcement of existing EU rules. This needs to be applied to all AI usage for the time being, with the possibility to review and soften compliance, if proven unduly demanding.

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

A combination of ex-ante compliance and ex-post enforcement mechanisms. Ex ante by means of external conformity assessment procedures, as well as an enforcement mechanism, to include a redress mechanism for users, must also be put in place. We also need to ensure that there is a good level of understanding of what AI is and how it works among the population. Public authorities should safeguard citizens against potential risks associated with AI, as many people who currently use AI-powered 'solutions' do not understand how their data is used by the technology industry.

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

It should be clearly stated that external conformity assessment procedures should be carried out by an independent public organisation to avoid private entities from unduly certifying clients for commercial reasons.

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

In your opinion, are there any further risks to be expanded on to provide more legal certainty?

Automated discrimination is likely to be far more difficult to detect as people do not have access to the algorithms that underpin them. This create significant legal uncertainty and will make it difficult to determine liability for AI-powered 'solutions'. There are other risks to consider, including risks impacted personal security, mental health, discrimination, inequality, and lack of accessibility and data privacy.

Do you have any further considerations regarding risk assessment procedures?

Any assessment of risk to fundamental rights, non-discrimination, equality, accessibility, privacy, personal security and mental health should be based on an intersectional approach, considering full diversity of affected persons/groups in society. DPOs should be involved in such assessment procedures.

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?

The current EU legislative framework should be strengthened to take new risks into account. Any revision of current EU legislative framework on liability should ensure mechanisms for the users to claim their rights. For example, if a city or company procures an AI-based solution, which discriminates against persons with disabilities, there should be an accessible non-judicial mechanism prior to Court action that should be able to remedy the situation.

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? Do you have any further considerations?

Yes. Persons affected by AI applications must be able to redress issues that have been observed. Copyright, database rights protection, or other forms of business confidentiality principles should not be used to prevent affected persons from seeking redress for harm caused, especially (but not limited to), cases of discrimination and breach of fundamental rights.

Useful resources:

EDF report "Plug and Pray - A disability perspective on artificial intelligence, automated decision-making and emerging technologies": http://www.edf-feph.org/newsroom/news/edf-launches-report-plug-and-pray

EDF response to [Draft Ethics Guidelines for Trustworthy AI (doc)](#) | [Draft Ethics Guidelines for Trustworthy AI (pdf)](#)

[European Standard on Accessibility requirements for ICT products and services (EN 301 549 V3.1.1 (2019-11))](#)

European Standard [EN 17161:2019 'Design for All - Accessibility following a Design for All approach in products, goods and services - Extending the range of users'](#)

EDRi Recommendations for a Fundamental Rights-based Artificial Intelligence Regulation:
https://edri.org/wp-content/uploads/2020/06/AI_EDRiRecommendations.pdf

"[Why Fairness Cannot Be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI](#)" Sandra Wachter et al, University of Oxford, March 2020

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