

<p>N°11 White paper on Artificial Intelligence – A European approach to excellence and trust COM(2020) 65 final EESC 2020/1110 – INT/894 553rd Plenary Session – July 2020 Rapporteur: Catelijne MULLER (NL-II) DG CNECT – Commissioner BRETON</p>	
<p>Points of the European Economic and Social Committee opinion considered essential</p>	<p>European Commission position</p>
<p>1.3. However, it considers the focus on mere data-driven AI too narrow to make the EU a true leader in cutting-edge, trustworthy and competitive AI. The EESC urges the Commission to also promote a new generation of AI systems that are knowledge-driven and reasoning-based, and that uphold human values and principles.</p>	<p>In its ‘White paper on Artificial Intelligence - A European approach to excellence and trust’³⁰, the Commission identified the main elements of Artificial Intelligence (AI) that include ‘data’ and ‘algorithms’. The Commission takes note of the Committee’s recommendation to focus on a broader definition of AI going beyond pure data-driven models. The Commission is attentively considering this question and is carrying out discussions with stakeholders and experts.</p>
<p>2.9. The EESC welcomes the effort to address the fragmented AI landscape in Europe by bringing together AI researchers, focusing on SMEs and partnering with the private and public sectors. In addition, the EESC would recommend: (i) fostering multidisciplinary in research, by involving other disciplines such as law, ethics, philosophy, psychology, labour sciences, humanities, the economy, etc.; (ii) involving relevant stakeholders (trade unions, business organisations, consumer organisations, NGOs) in the debate on AI, but also as equal partners in EU-funded research and other projects such as the Public Private Partnership on AI, the sector dialogues, the Adopt AI programme in the</p>	<p>The Commission takes note of the Committee’s comment on fostering multidisciplinary in research, involving all kind of stakeholders as well as educating and informing the broader public of artificial intelligence. Those elements were included within the Commission’s consultation strategy on requirements for trustworthy AI. Furthermore, the Coordinated Plan on Artificial Intelligence³¹ is dealing exactly with these aspects and will be reviewed in the first quarter of 2021, together with the Member States.</p> <p>Additionally, the Commission will support, in the next Multiannual Financial Framework, initiatives that will strengthen</p>

³⁰ COM(2020) 65 final

³¹ COM(2018) 795 final

<p>public sector and the lighthouse centre; and (iii) continuing to educate and inform the broader public on the opportunities and challenges of AI.</p>	<p>the transparency and excellence in artificial intelligence. The available funding will target upskilling, research and deployment of artificial intelligence, aiming to stimulate investments and make Europe attractive for the best talent in this field.</p>
<p>2.10. The White Paper acknowledges the fact that AI does not operate in a lawless world. The EESC particularly welcomes the emphasis on the implications of AI for fundamental rights and recommends that the Commission considers more in-depth the AI impacts on a broad set of fundamental rights and freedoms such as freedom of speech and expression, and the right to respect for private life (which goes far beyond protecting people's data), to a fair trial, to fair and open elections, to assembly and demonstration, and to not be discriminated against.</p>	<p>For the Commission, a human-centric approach to artificial intelligence means, first and foremost, that the use of AI applications complies with rules designed to protect fundamental rights, such as the right to privacy, data protection, non-discrimination, freedom of expression, freedom of assembly or fair trial, etc.</p> <p>It is important to prevent breaches of fundamental rights and, if they occur, to ensure that those breaches can be addressed by the national authorities. The complexity and opacity of certain AI systems can make it difficult to determine if they comply with fundamental rights related obligations.</p> <p>To address these problems, the Commission has proposed, in the White paper on Artificial Intelligence that possible requirements should cover transparency and documentation, which would allow potentially problematic actions or decisions by AI systems to be traced back and verified. This should not only facilitate supervision and enforcement; it may also increase the incentives for the economic operators concerned to take account at an early stage of the need to respect those rules.</p>
<p>2.13. In any case the EESC continues to firmly oppose the introduction of any form of legal personality for AI. This would hollow out the preventive remedial effect of liability law and poses a serious risk of moral hazard in both the development and use of AI, where it creates opportunities for abuse.</p>	<p>The Commission agrees that autonomous systems should not be given a legal personality, as the harm these may cause should always be attributed to the responsible persons or bodies who are designing and using these systems, in accordance with the principle of accountability endorsed in the Communication ‘Artificial Intelligence for</p>

	Europe ³² of April 2018.
<p>2.16. Following the White Paper's logic, a high-risk AI application used in a low-risk sector will in principle not be subject to the regulatory framework. The EESC stresses that undesirable adverse effects of high-risk AI in a low-risk sector could exclude AI applications or uses from regulation, providing a "window" for circumventing rules: think of targeted advertising (a low-risk sector), which has been shown to have potentially segregating, discriminatory and dividing effects, for example during elections or with personalised pricing (a high-risk use or effect). The EESC recommends drawing up common characteristics of AI applications or uses that are to be considered high risk "as is", irrespective of the sector in which it is being used.</p>	<p>The Commission takes note of the Committee's comment that an approach based on a strict delineation between sectors may pose certain challenges, including open opportunities for circumvention of the legal framework. The Commission also takes note of the Committee's proposal to define common characteristics of AI applications or uses that are to be considered high risk 'as is', irrespective of the sector in which they are being used. Building on the feedback from the public consultation on the White paper, the Commission is currently analysing different options to best identify the high-risk AI applications to be regulated, taking into account also the input provided by the relevant stakeholders and expert groups.</p>
<p>2.18.; The EESC welcomes the Commission's invitation to open a public debate on the use of AI-driven biometric recognition. Biometric recognition of micro-expressions, gait, (tone of) voice, heart rate, temperature, etc. is already being used to assess or even predict our behaviour, mental state, and emotions, including in recruitment processes. To be very clear, no sound scientific evidence exists to suggest that a person's inner emotions or mental state can be accurately "read" from their facial expression, gait, heart rate, tone of voice or temperature, let alone that future behaviour could be predicted by it.</p>	<p>The Commission agrees with the Committee that biometric technology for so-called 'affect recognition' deserves particular scrutiny regarding its scientific reliability and accuracy to predict inner emotions or the mental state from one's biometric data. As a follow-up to the White paper on AI, the Commission organised a specific event with experts, to discuss potential new conditions, limitations and safeguards for the use of remote biometric technology, including for affect recognition and categorisation purposes.</p>
<p>2.20. AI-driven biometric recognition also affects our broader right to respect for private life, identity, autonomy and psychological integrity by creating a</p>	<p>As noted by the Committee, remote biometric technology poses major risks to fundamental rights beyond privacy and data protection. Results from the public</p>

³² COM(2018) 237 final

<p>situation in which we are (constantly) being watched, followed and identified. This could have a psychological "chilling effect", where people might feel inclined to adapt their behaviour to a certain norm. This constitutes an invasion of our fundamental right to privacy (moral and psychological integrity). Furthermore, AI-driven biometric recognition could affect other fundamental rights and freedoms, such as freedom of assembly and the right not to be discriminated against.</p>	<p>consultation on the White Paper show that businesses, civil society organisations and citizens generally agreed that remote biometric technology should be covered by the new legal framework and regulated as high-risk. Accordingly, the Commission has envisaged such a regulatory option for action in its July 2020 inception impact assessment ‘Proposal for a legal act of the European Parliament and the Council laying down requirements for Artificial Intelligence’³³.</p>
<p>2.21. The EESC recommends that any use of biometric recognition only be allowed if there is a scientifically proven effect, in controlled environments, and under strict conditions. Widespread use of AI-driven biometric recognition to conduct surveillance, track, assess or categorise humans or human behaviour or emotions should not be allowed.</p>	<p>The Commission will consider the Committee’s recommendation to permit the use of biometric recognition only in controlled environment, under the strict oversight of the regulators and subject to appropriate forms and conditions. Another open question to be addressed is whether, as the Committee points out, there is a need to prohibit certain AI practices that may go against the EU values and the applicable standards under the EU Charter of Fundamental Rights, for example, indiscriminate AI-driven surveillance and general-purpose scoring of citizens.</p>
<p>2.23. The EESC advocates early and close involvement of workers and service providers of all types, including freelancers, the self-employed and gig workers – not just people who design or develop AI, but also those who purchase, implement, work with or are affected by AI systems. Social dialogue must take place before the introduction of AI technologies in the workplace, in line with the applicable national rules and practices. In the workplace, access to and governance of worker data should be guided by principles and regulations negotiated by the social</p>	<p>Artificial Intelligence may negatively affect workers’ rights when their personal data is processed, for example, for recruitment, personnel management and surveillance purposes. However, AI solutions may also help to improve safety and working conditions at the workplace and to enhance workers’ capabilities. The Commission agrees with the Committee that any use of AI technology at the workplace should happen in accordance with the existing requirements for close involvement and consultation of workers, as envisaged in Member States’ labour laws, and in accordance with the</p>

³³ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12527-Requirements-for-Artificial-Intelligence>

<p>partners.</p>	<p>existing data protection laws and regulations negotiated by the social partners.</p>
<p>3.2. Robustness and effectiveness: data-driven AI to forecast the spread of coronavirus is potentially problematic, because there is too little data about coronavirus for AI to have reliable outcomes. Moreover, the little data that has become available is incomplete and biased. Using this data for machine-learning approaches could lead to many false negatives and false positives.</p>	<p>The Commission agrees with the Committee that the availability and quality of training data is of paramount importance for the efficiency and reliability of the AI model's predictions. This interdependence has been emphasised in the White paper on Artificial Intelligence, and certainly applies in relation to AI solutions developed to tackle the COVID-19 crisis and beyond. Specific requirements that the Commission has proposed in the White paper concern notably the quality of the training data sets and requirements for the accuracy and robustness of the AI outputs and systems.</p>
<p>3.3. Transparency on the data and the models used, as well as explainability of outcomes, are paramount. At this moment in particular the world cannot afford to take decisions based on "black boxes".</p>	<p>Ensuring transparency of the AI systems is another requirement that has been proposed in the White paper on Artificial Intelligence in order to promote the responsible use of AI, build trust and facilitate redress where needed. The White paper on Artificial Intelligence states that this could in particular include obligations for the provision of adequate and clear information in a proactive manner about the capabilities and limitations of the AI application. In particular, this covers the purpose for which the systems are intended, the conditions under which they can be expected to function as intended and the expected level of accuracy in achieving the specified purpose. Separately, citizens should be clearly informed when they are interacting with an AI system and not a human being. Furthermore, while it is a challenge for certain AI systems, explainability of outcomes can be improved by combining symbolic reasoning with deep neural networks.</p>