



European Women Lawyers Association

The Voice of Women Lawyers Across Europe

Brussels 14 June 2020

EWLA Statement Public Consultation regarding White Paper on Artificial Intelligence – A European Approach to Excellence and Trust

- Having regard to the principle of gender equality and non-discrimination as enshrined in Art. 2 and Art. 3 (3) TEU,
 - having regard to the report of 8 April 2019 of the High-Level Expert Group on Artificial Intelligence entitled "Ethics Guidelines for trustworthy AI",
 - having regard to the report of 26 June 2019 of the High-Level Expert Group on Artificial Intelligence entitled "Policy and investment recommendations for trustworthy AI",
 - having regard to the powers vested in the European Commission acting as the Guardian of the Treaties as it has been laid down in Art. 17 (1) TEU
- and
- emphasizing the considerable contributions that the European Institutions have made to the progress in the EU gender equality acquis up to now.

EWLA welcomes the opportunity to comment on the White Paper on Artificial Intelligence (and the related documents thereto) [COM (2020) 65 final]:

1. Risk based approach of the White Paper

EWLA welcomes that the European Commission is fully aware of the specific risks that AI systems can pose. However, proportionality considerations should not prevent the European legislator from adjusting the existing legal framework that protects fundamental rights with further legislation to counterbalance the danger of possible violations of the non-discrimination principle and the undeniable informational asymmetries of algorithmic decision-making that citizens are confronted with. The European Women Lawyers Association will be following closely any legislative initiative that will be taken by the European Commission. We highly esteem that it is foreseen to guarantee a maximum amount of stakeholders' participation including civil society organisations in the further development of the framework.

2. Non-Risk Applications

In our view it might prove to be insufficient to only establish a voluntary labelling scheme for so-called non-risk AI applications. Similar to regular ex post assessments of EU legislation an ex post evaluation of such schemes should be introduced that allows for the examination of whether such a possibility of voluntary participation in non-risk self-classification is sufficient or a means of intentional circumvention. Should this self-classification prove to be inefficient in practice, perhaps because it results in unconscious

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failure to comply with ethics guidelines, additional legislative measures should be taken into consideration. In conclusion, and as there is a thin line between high-risk, less risk and minor risk AI applications, EWLA would favour a more differentiated legislative approach of the European Commission and therefore only minor risk applications should be left out of the European legal framework.

3. Ethics Guidelines for Trustworthy AI

EWLA welcomes that the Principles, as they were elaborated in the Ethics Guidelines for Trustworthy AI, have been reiterated and taken up by the White Paper. EWLA emphasizes that we have been actively contributing to the public consultation on the final version of the Ethics Guidelines as well. And we are very satisfied that our remarks on a lack of gender perspective in the document discussing aspects of non-discrimination have been heard and explicitly taken into consideration in the wording of the adopted Ethics Guidelines and therewith also in the White Paper of the European Commission.

4. Report on the Safety and Liability Implications of AI, IoT and Robotics [COM (2020) 64 final]

Having regard to the analysis and findings of the European Commission in the said Report, EWLA supports the European Commission's deliberations to ease the burden of proof for victims of harming AI applications that are unable to get access to relevant data. The coupling of strict liability with an obligation to obtain available insurance similar to the Motor Insurance Directive's requirements in order to ensure compensation irrespective of the liable person's solvency is also welcomed by EWLA for AI applications with a risk potential that is comparable to that which is inherent in motor vehicles. We share the opinion that, in cases where the allocation of costs for damages seem distributed in an unfair or inefficient way, the present liability regimes be it European or nationally fragmented should be reconsidered.

5. Eco-system of Trust based on a Human-Centric AI

EWLA welcomes the European Commission's pro-active approach to creating an eco-system of trust that is based on a human-centric AI which could serve as a model for other jurisdictions. As technologies do not know any boundaries, the European Commission should take the lead in international standard setting on a larger scale that exceeds the borders of the European Union. By means of supranational legislative standard setting in the EU – similar to that of the GDPR – the adoption of an EU Regulation would ensure extraterritorial application of a human-centric "flagship" standard that would become the common denominator for all stakeholders.

6. Closing remarks

EWLA is of the opinion that, on one side AI applications can pose risks to fundamental rights and in particular to vulnerable persons and groups including women. But, on the other side, we hold the view that AI applications also have a huge potential to improve the everyday-life of EU citizens, to support mankind in solving the problems related to climate change and to create progress including in the health sector. The positive aspects of AI give us reason to believe that, in a common effort of all stakeholders, this technology can serve mankind also by weeding out conscious or unconscious bias if programmed to be human-rights and gender aware and if fed with broadly representative, diverse and accurate data sets. The results and autonomous decisions of AI should stay under regular responsible human oversight and monitoring in the ongoing self-learning processes.

The European Women Lawyers Association (EWLA) is registered in Belgium as an international non-governmental, non-profit, association (Association Internationale Sans But Lucratif). It is a federation of national women lawyers associations from amongst the European Union countries and those of EFTA countries. EWLA Members are also individual women lawyers and academics from these countries. EWLA pursues the co-operation of European women lawyers, in order to combine their specific expertises to assist in monitoring the law and politics from the perspective of fundamental rights, and in particular, gender equality.