

## UNI Europa ICTS specific responses to the Consultation on the White Paper on Artificial Intelligence

### Section 1 - An ecosystem of excellence

#### Are there other actions that should be considered?

AI and robotics significantly impact the labour market, particularly as older jobs and tasks transform or disappear, and new ones emerge. We need a deeper understanding of the scope of all these changes and the timeframe within which they will occur. We need to raise awareness among the European citizens about the challenges and opportunities that AI represents.

The challenges related to the quality and quantity of work, skills and training, ethics, equality, and health and safety are of great concern. Without social dialogue, we cannot build the best strategy for AI. European trade unions play an essential role in identifying the underlying dimensions and immediate job effects of digital change and in elaborating tailored solutions and standards that are to be respected to cushion the social impact of the transformation and to take the most of it for the benefit of both employers and workers. UNI Europa has explained this vision in more detail in the UNI Europa position paper on Artificial Intelligence ([http://www.uni-europa.org/wp-content/uploads/2019/12/AIUniEuropaWeb\\_en.pdf](http://www.uni-europa.org/wp-content/uploads/2019/12/AIUniEuropaWeb_en.pdf)).

#### Revising the Coordinated Plan on AI (Action 1)

##### Are there other areas that should be considered?

Upskilling and training at the workplace need to be better included in the overall policies governing AI. The Commission needs to further develop training and retraining schemes for workers at all levels, giving it a broader focus including adult learning. Likewise, we need clear rules and governance mechanisms for data collection and management. Design and implementation of AI systems should respect the privacy rights of employees involved in the development and use of the systems. Social partner negotiations regarding data collection are key for implementing AI at the workplace. The Commission should support the European social partners' capacity building activities. Trade unions must be involved in establishing the skills and training required to transition to a fair workplace of the future, as they can best identify training and workforce needs. Technological changes, new interactions of humans and machines, and evolving skill sets will not produce increased productivity or generate job satisfaction if only employers are involved. Trade unions and workers' representatives shall be enabled to engage in effective negotiations regarding the use of AI. "Negotiating the algorithm" should become a real practice.

### 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?

A key aspect to be included within the R&I realm, is the involvement of European and national social partners and sectoral trade unions, as they bring expertise and experience of situations of real workplace exposure. They further contribute to shaping sustainable AI technologies with possible ways forward in the development of research and innovation. The lighthouse structure for innovation needs to have a space for trade unions, in their role as European and national social partners.

## **Focusing on Small and Medium Enterprises (SMEs)**

### **Are there any other tasks that you consider important for specialised Digital Innovations Hubs?**

Digital Innovation Hubs need to be equipped in order to (a) give support to carry out risk assessment and managing data protection to the different SMEs across Europe. It is key to upgrade their capacity in these two issues that are impactful for work and employment; (b) to allocate trade unions equal access and participation to shape and monitor AI technologies at work and to take part to related employment discussions with the related national authorities.

## **Section 2 - An ecosystem of trust**

### **Do you have any other concerns about AI that are not mentioned above?**

#### **Please specify**

To address the collection and management of worker data, data access and governance should be guided by principles and regulations negotiated by the social partners. The challenges regarding data collection have ethical, practical, and legal dimensions. The design and implementation of AI systems should respect the privacy rights of all concerned persons, especially the employees involved in the development and use of the systems.

Likewise, AI systems must not be abused to undermine the right to collective bargaining and the freedom of association, nor any other fundamental rights.

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

The introduction of AI systems at the workplace impacts the health and safety of workers. These systems enable constant, data-driven surveillance and monitoring of workers, leading to psychological stress and job insecurity. Algorithm-driven decisions impact wage cuts, redundancies and untransparent performance assessment. Examples of these harmful applications are HIRE VUE - used by some 600 multinational companies for recruiting on the basis of video interviews analyzing candidates' facial expressions-, and CallMiner, an AI application used for managing contact centres.

### **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:**

#### **Please specify your answer:**

The White Paper on AI should have had a reference to a ban on facial recognition in public spaces, at least "for up to five years until safeguards to mitigate the technology's risks are in place". The lack of such a ban is unacceptable in the face of the rash development of AI with little to no public control and no legally binding rules on ethics and references to human and fundamental rights instruments. The moratorium should be reconsidered, as facial recognition and other remote identification systems are intrusive technologies that can be used in multiple harmful and disruptive ways. The impacts of AI technology and its possible risks should be assessed. GDPR states that processing biometric data for the cause of identifying individuals is prohibited, except for specific circumstances. Yet, there are still unsolved dilemmas about their implementation in policing, enforcement or at the workplace. One of the most probable risks for society is that facial recognition creates mass surveillance across the world, incompatible with human rights and democratic

principles. It will raise inequalities exponentially and exacerbate biases. Facial recognition should remain exceptional and reduced to clearly specific circumstances fixed in law. Any aspect of AI collection and processing of personal data should be based on sound, public and democratic rules, taken in cooperation with legitimate social partners.

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

Voluntary labelling systems are problematic as they are granted by private organisations/companies with little to no public control and becomes a profitable business that does not provide for independence, quality and trust. They also rely on voluntary will for implementation and compliance; are driven by marketing instead of by safety and quality; and such systems lack official and public evaluation and verification schemes. Moreover, it is difficult to guarantee or certify that an AI is unbiased and fair, only that it has not yet been proven to be so. A system's first 10.000 decisions can be excellent, then self-training, growing data sets or a flaw that might have been there all the time can surface.

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

The ex-ante assessment should be done by an external authority prior to putting the system on the market. The agency or authority that assesses compliance of the AI system must be independent and external to the organization that wants to put the application on the market or wants to use it (companies or administrations). Having a mandatory AI framework can improve the level of compliance of business operating in the EU. Applying the legal precautionary principle set up by the TFEU ensures that Europe secures and reinforces AI via its fundamental rules and values. The EU should have the ambition to live up to the fundamental rights values anchored in the Treaty and to set up a legal system for AI. If GDPR is open for revision to further regulate personal data for AI applications, European and national trade unions need to be on the table of negotiations.

### **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?**

The AI related risks are still highly unknown, and they can emerge in many circumstances and they can be completely new. More legal certainty is needed to address new risks like the “deepfakes”, risks related to self-learning applications, bias and discrimination. Also, there will be various factors to consider to attribute “fair” liability. A business/employer that uses a technology with a certain degree of autonomy, should remain fully liable for any harm that results from using this technology. Using a semi-autonomous technology should not be used as an excuse to reduce liability.

#### **Do you have any further considerations regarding risk assessment procedures?**

If an AI system is likely to have a great impact on personal rights, working conditions, or other social consequences, a risk assessment is necessary. Assessments should include risks related to human decision-making, social discrimination, and impact on working conditions. In order to carry out a risk assessment, all parties—especially worker representatives—should be involved in defining the guidelines. AI systems should be evaluated in light of their social impact unless a prior risk assessment has shown that there is no relevant impact. Evaluations should be based on pre-defined success criteria, but also allow for the analysis of new and unexpected outcomes and experiences. An evaluation should be carried out in the pilot phase so that faults and problems can be discovered early and with the participation of employees. This will help employee representatives play a role in safeguarding human design of AI systems.

**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?**

**Do you have any further considerations regarding the question above?**

Priority must be given to defining clear rules attributing liability to natural or legal persons, in the event of failure to comply with these rules. A business/employer that uses a technology with a certain degree of autonomy, should remain fully liable for any harm that results from using the technology. Using a semi-autonomous technology should not be used as an excuse to reduce liability. Manufacturers should make sure that the AI application works safely before it is applied, using AI should not be an excuse to breach the duty of care. In amending the EU liability framework, trade unions need to be properly consulted and involved.

**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 regarding the question above?**

National legal regimes might require adaptation too. Again, national legal regimes provide different liability considerations to the supply of services and to the supply of products. It is necessary to clarify the scope of potential liability of designers, hardware manufacturers, operators, network service providers, etc. Further discussion in relation to the probe of harm or psychosocial issues at the workplace is also required.