

6/14/2020

Submitted electronically

Re: Consultation: White Paper: Artificial Intelligence - A European approach to excellence and trust

The Software & Information Industry Association (SIIA) appreciates the opportunity to comment on the European Commission's *White Paper on Artificial Intelligence* ("The White Paper"). Announced alongside the *Communication for A European strategy for data*, the White Paper recognizes the opportunities and challenges that AI can bring to Europe's digital economy, and subsequently presents the Commission's plan to build an 'Ecosystem of Excellence' to promote the uptake of AI in the EU, and an 'Ecosystem of Trust' to address the risks associated with the emerging technology. SIIA is supportive of the Commission's intention to define a framework for the safe development and deployment of AI in the EU based on European values and principles. Our comments will focus on highlighting a few priorities and signaling areas of concern or our membership, and we respectfully request that the Commission work in close cooperation with industry and other stakeholders throughout the process to design an effective regulatory framework for AI.

By way of introduction, SIIA is the principal trade association for the software and digital information industries worldwide. SIIA's membership (nearly 800 companies and growing) includes the global industry leaders for the digital age, including software, data analytics, and information service companies. SIIA's member companies reflect the

broad and diverse landscape of digital content, including both B2B and B2C services, small specialized providers, and large multinational industry leaders. The innovative companies that make up SIIA's membership have embraced AI and actively utilize it on many fronts – from journalism to fraud detection, money laundering investigations, and locating missing children. AI enables our member companies to leverage an increasingly large pool of data sets and regularly invest billions in its development, acquisition, and use. Our members also recognize that the utilization of this emerging technology brings with it an obligation to uphold established ethical principles, and are committed to conducting their business accordingly.

SIIA has been supportive of and keenly engaged in the European Commission's review of the treatment of AI. Our comments build upon our previous contributions to the EU Consultation on Draft AI Ethics Guidelines¹ and the Communication for A European strategy for data²; as well as the information presented in our Issue Briefs on Ethical Principles of Artificial Intelligence and Data Analytics³ and Algorithmic Fairness⁴

SIIA stresses importance of a clear and narrow definition of terms and scope

An essential foundational element of any regulatory framework is a clarification of scope, accordingly SIIA agrees with the Commission that a clear definition of AI is a critical aspect of this White Paper and future policymaking in this space. We further

¹ SIIA Response: EU Consultation on Draft AI Ethics Guidelines (January 2019) [LINK](#)

² SIIA Response: Communication A European strategy for data (May 2020) [LINK](#)

³ SIIA Issue Brief: Ethical Principles of Artificial Intelligence and Data Analytics (September 2017) [LINK](#)

⁴ SIIA Issue Brief: Algorithmic Fairness (September 2016) [LINK](#)

agree with the Commission that the “definition of AI will need to be sufficiently flexible to accommodate technical progress while being precise enough to provide the necessary legal certainty.”⁵ The White Paper goes on, however, to frame AI broadly as having the main elements of “data” and “algorithms.” Such a definition risks over-regulation as it puts nearly all of contemporary software in scope. SIIA recommends that the Commission adopt a narrower definition of AI, and suggests that descriptive specific use-cases be leveraged to supplement a definition.

Another foundational element of a new regulatory framework is an understanding of how it would fit within the existing body of rules and regulations. On this point, the White Paper also lacks specificity. While the Commission acknowledges that new risks will be introduced to existing frameworks by the involvement of AI, it does little to explain how a new framework for AI would relate to the rules in place, including those governing data protections and access to markets. Such clarity is needed to guard against and manage any regulatory conflicts.

SIIA welcomes enhanced coordination within the EU and with international partners to form an ecosystem of excellence

To foster the development of AI across the EU economy and public administration, the White Paper presents a series of actions to build “an ecosystem of excellence.” The actions are spread across multiple levels, and include measures to build AI research skills, expand private sector partnerships, and promote public sector adoption. SIIA

⁵ European Commission *White Paper: Artificial Intelligence - A European approach to excellence and trust*, p17

applauds this effort, recognizing that Europe is home to strong academic and developer communities that are poised to play a leading role in AI research, development and application. The White Paper proposes strengthening coordination among such communities through the establishment of a new lighthouse center of AI research and expertise. SIIA is supportive of this initiative, but would caution against forcing activities to be overly-centralized.

SIIA is also encouraged to see the recognition of ongoing international AI initiatives, and a commitment by the Commission to continue to work with like-minded countries as well as global players (including the OECD, ITU, and UN) on an approach to AI that promotes the respect of fundamental rights.⁶

SIIA welcomes the risk-based approach to create an ecosystem of trust but calls for more nuance and proportionality in classifications and mandatory legal requirements

Since AI systems can pose significant risks in certain contexts (including to fundamental rights and personal safety) the Commission sees building trust as essential to fueling the adoption of the technology. To achieve this the White Paper presents a risk-based approach to regulating AI. Specifically, the Commission proposes to focus in the near term on “high-risk” AI applications, defined as those that are both deployed in a high-risk sector and utilized in a high-risk manner. If deemed high-risk, an AI application would be subject to mandatory pre-marketing conformity assessment requirements to enforce transparency and other requirements.

⁶ European Commission *White Paper: Artificial Intelligence - A European approach to excellence and trust*, p9

While SIIA is supportive in principle of a risk-based approach whereby only high-risk applications are subject to mandatory legal requirements, we want to stress the importance of clearly defining relevant terms and criteria to ascertain the scope of such a strategy. In this case more nuance and proportionality should be added to the risk assessment criteria to provide legal clarity and ensure companies understand when their technology may be classified as high-risk. In particular, the “exceptional instances” clause of the White Paper is too open-ended and creates legal uncertainty and ought to be removed.

With regards to the potential types of mandatory legal requirements for high-risk AI applications, SIIA strongly urges the Commission to work closely with industry practitioners to ensure that such requirements are carefully written to be clear and precise, effective for the intended purposes, and avoid inadvertently imposing undue technical constraints.

SIIA urges reconsideration of voluntary labelling for non high-risk AI applications

To provide a level of consumer confidence and trust in applications that do not fall under the high-risk category, the White Paper proposes establishing a voluntary labelling system that would allow interested suppliers to be awarded a quality label for their AI applications that users can easily recognize. While SIIA acknowledges the ambition of building consumer trust in all AI applications (not only in those deemed high risk), we do not believe that a voluntary labelling system is an effective mechanism to achieve that goal.

Given the diverse range of AI products and services that will fall into the category of 'no-high-risk', a one-size-fits-all labelling system would be unworkable and untenable. It would also place a significant burden on SMEs who may lack the compliance resources of larger firms. Furthermore although the scheme is voluntary, it is conceivable that it would be adopted as part of national procurement and other purchasing guidelines, making participation in the 'voluntary' scheme, de facto mandatory.

SIIA agrees that AI applications determined to be non high-risk, must remain entirely subject to existing EU rules and should be exempt from additional mandatory legal requirements.

SIIA cautions against imposition of prior conformity assessments

As a means of checking compliance with the mandatory requirements applicable to high-risk applications, the White Paper suggests the use of prior conformity assessments. SIIA strongly cautions against such an approach. Many higher risk products which utilize AI (such as medical applications) are already subject to review procedures, so a standalone conformity assessment for AI systems risks duplicating those processes that already effectively govern those products. SIIA believes that for products and applications where review mechanisms already exist they should continue to be applied. And for high-risk AI applications not already part of such reviews, an ex-ante self-assessment should be completed, coupled with ex-post enforcement mechanisms where problems are identified. Care should be taken to ensure the self-

certification process is not too onerous, especially in terms of documentation requirements, so as to not discourage innovation or put an undue burden on SMEs.

Concluding assessment: regulatory framework welcome in principle but further clarifications needed to be effective

In closing, we would like to reiterate our general support of the Commission's intention to define a regulatory framework for the safe development and deployment of AI in the EU based on European values and principles. SIIA and our member companies look forward to continuing to work with the Commission moving forward. Please contact Jesse Spector, Director of Technology Policy, at (202) 789-4473 or jspector@siia.net for any questions or requests for further information.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Jesse Spector', with a long horizontal line extending to the right.

Jesse Spector
Director, Technology Policy
Software & Information Industry Association