

Letter to President of the European Commission Ursula von der Leyen,

Executive Vice-President Margrethe Vestager,
Vice-President Věra Jourová
Commissioner Thierry Breton,
Commissioner Helena Dalli,
Commissioner Johansson,
Commissioner Didier Reynders,

Brussels, 16 April 2021

Dear President von der Leyen,

We write to you ahead of the upcoming proposal on artificial intelligence. In your letter to MEPs of 29 March, you assured us that all high risk AI systems would be subject to mandatory rules, with even stronger measures for applications that are incompatible with fundamental rights. The EU's vision for AI must be one that puts fundamental rights at its heart.

The leaked draft proposal from January 2021 takes an important step in tackling the most harmful applications of AI, particularly with the inclusion of Article 4 on Prohibited Artificial Intelligence Practices. The inclusion of measures for prohibitions shows that the Commission is serious about going as far as necessary to place limits on applications of AI that are incompatible with fundamental rights.

That being said, the actual provisions in Article 4 fall short of what is necessary to protect fundamental rights, in particular to prohibit uses of AI that will be especially harmful to Europe's minority communities who have historically faced marginalisation and oppression, and which can be exacerbated by certain applications of AI.

The draft proposal also asserts that some of the conditions upon AI providers of high-risk systems will be through self-assessment methods, which cannot be sufficient if we are to prevent discrimination. **We call on you, therefore, to ensure that the upcoming proposal remedies these oversights in order to ensure that Europe truly protects the rights and freedoms of its diverse people.**

In particular, we strongly urge you to consider reflecting in the legislative proposal for a regulation on artificial intelligence the following:

- **There is no legitimate basis for carrying out the automated recognition of people's sensitive characteristics, such as gender, sexuality, race/ethnicity, health status and disability.** These practices reduce the complexity of human existence into a series of clumsy, binary check-boxes, and risk perpetuating many forms of unlawful discrimination. The AI proposal offers a welcome opportunity for the EU to introduce this additional prohibition without exception due to the fact that the automated recognition of sensitive characteristics by definition is not in line with EU values or the protection of fundamental rights.
- **Furthermore, inferences about people's sensitive characteristics often form the basis of the widescale and indiscriminate monitoring and tracking of populations using their biometric characteristics (for example remote biometric identification (RBI) in publicly accessible spaces leading to biometric mass surveillance).** These practices disproportionately affect minority communities, and as a result, 56 civil society organisations called for them to be banned in a recent letter, with the support of a public

initiative signed by over 46.000 Europeans and in accordance with the Commission's own consultation (see Recital 31 of the leaked draft). These practices can lead to harms including violating rights to privacy and data protection; suppressing free speech; making it harder to expose corruption; and having a severe chilling effect on everyone's autonomy, dignity and self-expression – which in particular can seriously harm LGBTQI+ communities, people of colour, and other discriminated-against groups. As such, the potential for mass surveillance arising from the use of RBI in publicly accessible spaces means that it should be expressly prohibited in the upcoming proposal, without exception, due to the inherently disproportionate threat to people's rights and freedoms.

- **The use of predictive policing modelling to forecast when and by whom certain types of crimes are likely to be committed is similarly incompatible with European fundamental rights and values.** Such methods unfairly criminalise certain people on the basis of who they are, where they live, and other proxies for their sensitive characteristics. These practices repeatedly score poor, working class, racialised and migrant communities with a higher likelihood of presumed future criminality. Like social scoring (which the draft rightly prohibits) discriminatory predictive policing must also be prohibited, as recommended in a recent letter by 62 civil society organisations.
- **Uses of AI at the border and migration control pose a real danger to the dignity and rights of and must be restricted until fully compliant with fundamental rights law.** Among other worrying use cases, AI has been tested to purportedly detect lies for the purposes of immigration applications at European borders and to monitor deception in English language tests through voice analysis, all of which lack credible scientific basis. These use cases may infringe on data protection rights, the right to privacy, the right to non-discrimination, and several principles of international migration law, including the right to seek asylum. Given the significant power imbalance such deployments exacerbate, there should be a ban or moratorium on the use of automated technologies in border and migration control until they are independently assessed to determine compliance with international human rights standards.

The upcoming legislative proposal is a promising opportunity to ensure full and robust fundamental rights protections in relation to the use of artificial intelligence in the EU. For a legislation that truly protects fundamental rights of all in society, including those of marginalised groups, we hope to see these changes in the official legislative proposal.

Yours sincerely,

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