

September 2019

A HUMAN-CENTRIC DIGITAL MANIFESTO FOR EUROPE

HOW THE DIGITAL TRANSFORMATION CAN SERVE THE PUBLIC INTEREST

Edited by

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Since November 2018, the Open Society European Policy Institute (OSEPI) and The European Consumer Organization (BEUC) have hosted a series of civil society workshops in Brussels to discuss how Europe can shape the next decade of digital transformation in the public interest.

This document outlines a series of areas that the participants believe should be the main focus for the EU institutions, particularly the European Commission, and includes concrete policy recommendations.

The individuals that participated in the workshops and contributed to this document are listed at the end of the document. Their participation in the workshops or contribution to this document do not necessarily imply endorsement by their respective organizations of all views represented herein. At the same time, this document does not reflect the full detail of its contributors' views on each topic.

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INTRODUCTION BY

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This document is the result of the invaluable contributions of the following organizations:

Access Info Europe

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AGE Platform Europe

ARTICLE 19

Better Finance

The European Consumer Organization (BEUC)

British Institute of International and Comparative Law (BIICL)

COFACE – Families Europe

Commons Network

COMMUNIA

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EDRi – European Digital Rights

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Privacy International

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World Wide Web Foundation

September 2019

The development of this vision is a joint initiative coordinated by the

Open Society European Policy Institute (OSEPI) and **The European Consumer Organization (BEUC)**.

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EXECUTIVE SUMMARY

The disruption of new technologies has triggered entirely new challenges for institutions and regulators, who are increasingly asked to address the impact of the digital revolution on society, protect user rights and agency, and establish the conditions for an open, fair digital market to flourish and stimulate innovation that benefits society.

In this age of rapid transformation and an increasing loss of trust, the European Union has a unique opportunity to shape the digital transformation and position itself as a global leader and ambitious norm-setter that puts people and the public interest back at the centre of the 21st century revolution. This will require different parts of society to work together and a combination of public policy, corporate responsibility, social investment, legal reform and technological innovation.

The agenda of the next European Commission should move beyond the current focus on the digital single market and individual privacy to look at the wider **societal impact of digital technologies**. A strong commitment to **rights-based policies and regulation** based on the principles of human dignity, freedom, democracy, equality, rule of law, human rights, solidarity, justice, inclusion and non-discrimination underpinning the EU Charter of Fundamental Rights will be paramount to ensure that existing offline rights are protected online. To serve the public interest and foster open societies, EU institutions will need to engage civil society in the design and implementation of human-centric digital policies guided by the principles of **transparency, accountability and participation**.

At the initiative of the Open Society European Institute (OSEPI) and The European Consumer Organization (BEUC), a diverse group of experts, activists and

representatives of rights groups, sectoral organizations, think tanks and business associations have identified possible ways for Europe to shape a **human-centric digital transformation** in the public interest.

As a result of this collaborative endeavor, this paper identifies **eight priority areas** for the next term of the European Commission.

1. Democracy, Fundamental Rights and Consumer Protection

The next European Commission should adopt a comprehensive strategy aimed at guaranteeing its democratic values, the rule of law and the fundamental rights enshrined in the EU Charter also in the digital economy. This would include:

- Completing the regulatory framework to provide access to redress and remedy for violations of fundamental rights that take place online or via new technologies;
- Monitoring legislation and policies in Member States to ensure their compliance with EU Fundamental Rights;
- Following up on existing efforts to address the issue of disinformation online as well as hate speech, public incitement to violence or hatred, in close collaboration with the Fundamental Rights Agency of the EU (FRA);
- Working with the European Data Protection Board (EDPB), the European Data Protection Supervisor, DG Competition and national authorities responsible for competition, data protection and consumer protection to investigate and address those business models in the digital economy that have the potential to affect consumers' human and economic rights;

- Ensuring strong ePrivacy protection by defining a clear and limited scope for processing communications data (including metadata), addressing all types of electronic communications, protecting individuals and organizations against online tracking, and requiring privacy by design and by default;
- Adopting a comprehensive strategy to safeguard against the use of personal data and data systems in ways that perpetuate discrimination and exclusion, particularly when they affect vulnerable groups who already face high levels of inequality;
- Bringing legal certainty for the liability regime of internet platforms in terms of user-generated content, through the introduction of clear notice-and-action procedures for strictly defined illegal content, and avoiding the use of automated filtering algorithms;
- Entrusting the Fundamental Rights Agency (FRA) with mapping and reviewing existing legislation that enables public authorities to restrict the rights to privacy and protection of personal data for national security, public order, national intelligence, border security or any related purposes, as well as the infrastructure for storing and processing personal data for such purposes;
- Building a harmonized framework for the protection of fundamental rights when dealing with State surveillance, including in the framework of existing or potential proposals such as cross-border access to data ('e-evidence') or data retention;
- Proposing a comprehensive strategy – building on the data protection and privacy laws, the consumer law *acquis*, competition law and EU anti-discrimination laws – to address the problem of permanent commercial surveillance of consumers, and protect their freedom, autonomy and self-determination in the digital age.

2. A Fair and Competitive Data Economy

First, the European Commission should complete the regulatory framework for a vibrant and competitive data economy by addressing the data needs of market operators to develop competitive

services while ensuring that users' data protection rights are upheld. Data portability should be a guiding principle of this regulatory framework, where both individuals and businesses should have the opportunity to access and govern aggregated data for competitors and public bodies, in order to ensure fairer competition and the use of data for the common good. It should also give people better protection regarding the data they generate, where this data does not fall within the definition of personal data, to address new concerns related to unfair discrimination and behavioral manipulation. Secondly, the Commission should take into account the availability of datasets as a relevant factor in the assessment of companies' market power, as well as of their behaviors towards competitors and consumers. Thirdly, the Commission should consider the need for *ex-ante* mechanisms aimed at ensuring non-discriminatory data access and interoperability among market players.

3. Public Services and Public Funding in Research and Digital Technologies

The next European Commission should invest in establishing a strong community of local authorities, public bodies, governments and civil society organizations committed to the socially responsible development, procurement and use of digital technologies. This should be done by:

- Launching a strategy on the governance of public sector technology in the EU that aims to develop open standards, guidelines and rules for the effective procurement of human-centric digital technology, and defines good practice on public-private digital technology partnerships.
- Increasing the visibility of the European Commission's Joinup project.
- Developing mechanisms for the effective governance of public sector digital technologies, including through engagement with technical standards bodies that permit such engagement (for instance W3C), to ensure robust privacy mechanisms.
- Providing support to people in vulnerable situations to enhance their access to digitalized public services, and keeping the situation under

review with the aim of closing the digital divide and avoiding an increase in inequities - in particular regulation, transparency and systems for public complaints, redress and support for people in vulnerable situations.

- Creating and promoting EU-wide independent web-based online comparison tools for financial consumer products.
- Promoting new forms of public sector technology that envision services as done “with” users, empowering people to become active participants rather than just passive recipients, and harnessing the power of Digital Social Innovation to further human-centric public sector technology.
- Reviewing the eligibility and selection criteria embedded in EU procurement rules and processes to prioritize the procurement of digital technology that protects people’s personal data, privacy and security, and is accessible and affordable for all – regardless of age, ability, gender, nationality and socio-economic circumstances.
- Launching an EU-wide review of public procurement rules applicable to national public contracts, and developing guidelines for Member States to prioritize the procurement of accessible and affordable digital technologies that protect people’s personal data, privacy and security. Companies that roll out strong and demonstrable strategies to fulfil such criteria across the EU should be given preference, all other things being equal.
- Ensuring that all results of EU-funded research and development are made available to the public under free and open licenses.
- Ensuring that EU funding in the information technology sector follows a mission-oriented approach to research and development and is directed towards areas that result in the greatest possible social benefit. Innovation funded with public money must aim to solve societal problems through projects that reflect the values to which Europe aspires, and not focus on economic growth alone. Moreover, innovation must aim to create a digital space that strengthens public institutions

and democratic governance, that promotes equality and justice, and that protects diversity and inclusion in Europe. This requires the development of a sovereign European technology stack.

4. Competition Policy

First, the European Commission should develop guidelines for the assessment of consumer welfare in digital markets beyond price and quantity considerations, and take into account choice, quality, innovation and the respect for fundamental rights and consumer rights in the short as well as the long term. Secondly, the Commission should keep markets open to new entries, by intervening at an earlier stage of market concentration and by targeting the behavior of dominant players that has the effect of raising barriers to access and/or locking in consumers. Thirdly, the Commission should prioritize measures to tackle mergers that lead to excessive market concentration. In order to capture acquisitions that aim to suppress future competition (‘killer mergers’) and deny consumers the benefits of a competitive economy, the jurisdictional thresholds of the EU Merger Regulation need to be revised to include mergers that currently fall outside the scope of EU merger review, due to the low turnover thresholds of the firms involved. This should be accompanied by specific measures to block ‘killer mergers’ or make them conditional (e.g. restricting the ability of firms above a certain market share from acquiring new firms).

5. Artificial Intelligence and Algorithmic Decision-Making (ADM)

The European Commission should propose a legislative binding framework for AI-powered automated decision-making (ADM) technologies to ensure that they are fair, transparent and accountable to consumers and citizens, and that they do not negatively affect their fundamental rights. At the same time, the Commission should promptly undertake in-depth fitness checks of all relevant EU legislation – including competition, consumer, and security law – and propose legislative updates where necessary, so that the challenges of ADM systems are addressed effectively. In particular, the Commission should:

- Promptly undertake an in-depth mapping and evaluation of all relevant EU legislation - including competition, consumer, safety, security, product liability, privacy and data protection laws – that apply to the development and deployment of AI and ADM systems.
- On the basis of that holistic analysis, immediately propose the necessary legislative updates of all relevant EU laws, working together with relevant national and European regulatory authorities where appropriate. This exercise should include an evaluation and propose improvements, where necessary, to existing mechanisms for the enforcement of fundamental rights and consumer rights.
- Propose binding legislation that will give EU consumers and citizens new rights to ensure transparency, fairness and accountability of ADM systems. In all stages of their life cycles, including during design, development and deployment, ADM systems should be subject to impact assessments in order to ensure compliance with fundamental rights, consumer rights and the rule of law.
- Identify areas where the development and/or deployment of ADM systems should not be permitted, particularly regarding areas such as policing and migration, and propose the necessary measures to establish these red lines.
- Promote the digital literacy of citizens and consumers regarding ADM systems to increase the understanding of the possibilities, limitations and potential risks of such systems and awareness of consumers' and citizens' rights in this context.

6. Jobs, Employment and the Future of Work

The next digital agenda of the European Commission should reflect on the new labor market reality and the various ways technologies and technological processes are affecting workforce, trade union and business organizations. This could be done by:

- Promoting evidence-based studies on the impact of tech on labor at different levels (e.g. employment, upskilling needs, taxation, collective bargaining, new rights);

- Facilitating the sharing of best practices among trade unions and business organizations across the EU;
- Conducting and providing skills forecasts on national, regional and local levels;
- Promoting a European narrative and practice around new forms of work, labor rights and B2B relationships that protects and promotes dignified work in platform-mediated working arrangements;
- Boosting the digital skills of people in Europe by updating education and training systems, engaging social partners in the design of training offers (especially when EU-funded), and encouraging continuous lifelong learning.

7. Digital Rights in EU Trade Agreements

The next European Commission should not negotiate digital rights-related policies such as personal data transfers in the framework of international trade agreements. Ongoing and future WTO negotiations on e-commerce, for example, shall not undermine the fundamental rights provided for in the EU *acquis*. At the same time, the Commission should prevent forced data localization policies when they are unjustified. This approach would contribute to levelling the global playing field for EU businesses that currently face a competitive disadvantage.

To ensure this crucial balance, the Commission must not deviate from the EU horizontal position on cross-border data flows, data protection and privacy in trade negotiations that have a bearing on data transfers.

8. Human-centric Technology for Social Good

The EU should aim to be a global leader in DSI or 'tech for good', and promote it as a distinctively European response to the challenges of the 21st century. In this sense, the next Commission should promote digital solutions to key social and environmental challenges through increased social impact investment, crowdsourcing and participatory budget planning initiatives that involve the population in policymaking and funding decisions. This would include:

- Engaging with civil society and citizens, early in the new term, to build a positive shared model of innovation and governance that safeguards democratic values and rights in the interaction between citizens and technology;
- Investing more in Digital Social Innovation and e-government, and incentivizing governments and the public sector across Europe to do so, since EU institutions can act as both customers and promoters of technology for social good;
- Helping city administrations to grow their capability to scale Digital Social Innovation;
- Prioritizing investment into digital infrastructure in rural, remote and vulnerable areas to support upward cohesion and ensure that people and companies in such areas have equal opportunities to participate in civic, economic and social activities;
- Boosting the capacity of civil society organizations to use develop technology for social good by supporting digital literacy, capacity building, awareness and knowledge sharing;
- Including civil society in decisions on funding for technology.

A HUMAN-CENTRIC DIGITAL MANIFESTO FOR EUROPE

HOW THE DIGITAL TRANSFORMATION CAN SERVE THE PUBLIC INTEREST

INTRODUCTION

Over the past decade, new technologies have begun to alter societies dramatically. Entire industries — education, transportation, media, finance, healthcare, publishing — as well as trust in democratic institutions, governance and the very notion of open society are being turned upside down by the digital revolution. Much of what we took for granted — the nature of work, individual rights, the legitimacy of elites, and even what it means to be human — is being questioned across the world by the digital revolution.

Despite the original promise of a web based on a decentralized architecture, today's digital space has become intensely centralized. Over the past ten years, the network effect has enabled tech superpowers to gain astonishing power and wealth, often based on business models that profit from the commercial appropriation of users' data.

Digital technologies have fundamentally altered the mechanisms through which individuals encounter and consume information and services, engage and communicate with other individuals and with institutions, form self-identities and foster communities. They have also provided new means for individuals to engage with the societal

and political spheres, through shared causes and citizen-driven movements. A shift in the dynamics of societal participation can be a force for progressive change towards a more efficient form of organization, or at least a more inclusive or representative one. However, fast and disruptive changes also pose existential challenges to institutions that were conceived in the 20th century but seem to have lost touch with this new reality.

The adverse consequences of the digital revolution – surveillance capitalism based on the exploitation of our personal data; the spread of anonymous online abuse; the growing power of big data monopolies; the decline of mainstream media; orchestrated disinformation and online propaganda; unaccountable algorithmic segregation dividing us into introverted opinion bubbles; an increasing number of surveillance measures under the pretext of fighting against criminal networks; the unaccountable extension of State powers, which is justified as necessary to deal with emerging threats; the impact of machine-learning, automated decision-making and smart automation on employment, access to culture¹ and privacy²— all of these challenge the resilience of open and democratic societies.

The disruption of new technologies has triggered new challenges for institutions and regulators, who

1 e.g., the introduction of upload filters in copyright and terrorist content regulation.

2 e.g., e-evidence and data retention.

are increasingly asked to address the impact of the digital revolution on society, protect users' rights and agency, and establish the conditions for an open and fair digital market to flourish and stimulate innovation that benefits society. To protect the rights of the people from technological forces that often seem both uncontrollable and unaccountable, the EU, its Member States and civil society need to address comprehensively a set of key questions affecting European democracies and societies.

For the EU to innovate and promote governance processes that are more inclusive and encourage people to participate in policymaking, it needs to diversify the input into the debate around the European digital agenda, bringing together cutting-edge knowledge, different sectoral perspectives and innovative thinking that goes beyond past institutional norms. For this reason, the Open Society European Policy Institute (OSEPI) and The European Consumer Organization (BEUC) joined forces to convene a diverse group of civil society representatives to discuss how Europe can shape the next decade of digital transformation in the public interest. During a first meeting with senior EU officials in November 2018, the group called on the European Commission to promote a **human-centric approach to the digital transformation** in the preparation of the post-2019 EU agenda.

The Sibiu Declaration of May 9 2019 was an important first step in this direction, as EU Member States jointly stressed the need to uphold the principle of **fairness** in the digital transformation, and committed to help the most vulnerable in Europe and **put people before politics**.³ In June, the *Council conclusions on the future of a highly digitised EU* went even further by emphasizing the crucial role of a human-centric approach that respects the Charter of Fundamental Rights and ensures respect for privacy, data protection rights and intellectual property rights as well as rules of product safety and liability.⁴

Europe is now faced with the dramatic challenge, responsibility and opportunity of pioneering a better digital society and bringing human agency back to the centre of innovation, growth and social cohesion. To do so, the next European Commission will need to:

- a) Focus on the **societal impact of digital technology**, looking beyond the single market and individual privacy to develop a European model of digital transformation predicated on human dignity, freedom, democracy, equality, rule of law, human rights, solidarity, justice, inclusion and non-discrimination;
- b) Strongly commit to **rights-based policies and regulation**, particularly at a time when tech giants increasingly push forward narratives and commitments on ethics in what seems like an attempt to dodge issues of public accountability and societal interest (i.e. 'ethics washing'). Principles informing EU policymaking in the digital sphere should **build on the EU Fundamental Rights framework**, and expand it **to ensure that existing offline rights are protected online**;
- c) Ensure that **transparency, accountability and participation** underpin the development of human-centric digital policies in Europe. The genuine, meaningful involvement of civil society in the development of the next digital agenda for Europe will be critical to designing and implementing policies and regulation that serve the public interest and foster open societies.

This paper expands on these three overarching recommendations by identifying eight key areas of focus for the next Commission. Based on contributions from a diverse group of civil society representatives, it addresses specific concerns and suggests possible ways of addressing them.

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3 European Council, *Sibiu Declaration on the future of Europe*, May 9 2019.

4 Council of the European Union, *Transport, Telecommunications and Energy Council Conclusions on the 'Future of a highly digitised Europe beyond 2020: Boosting digital and economic competitiveness across the Union and digital cohesion'*, June 7 2019.

SECTION 1: STRENGTHENING DEMOCRACY, FUNDAMENTAL RIGHTS AND CONSUMER PROTECTION

1.1 ENFORCING FUNDAMENTAL RIGHTS AND DEMOCRATIC PRINCIPLES IN THE DIGITAL AGE

Everyone in Europe is protected by the Charter of Fundamental Rights in theory, but not always in practice. Several business models in the digital economy are based on the collection and exploitation of personal data on an increasingly massive scale, with important implications for the enjoyment of fundamental rights and liberties. Technological advances frequently exclude vulnerable groups such as older people, persons with disabilities and undocumented migrants. Moreover, elections and political campaigns around the world, including in EU Member States, are becoming ever more sophisticated data operations.

Strong political action in Europe is urgently needed to ensure transparency and accountability in the democratic process, to defend and promote pluralistic, diverse and independent media, democratic institutions and civil society, and to protect communities at risk. As institutions and legal frameworks grapple to adapt to the way technology is changing elections and political campaigns around the world, it is essential that the European Commission follows up on the work it has already started in this sphere.

Recommendations

The next European Commission should adopt a comprehensive strategy aimed at guaranteeing that its democratic values, the rule of law and the fundamental rights enshrined in the EU Charter also thrive in the digital economy. In particular, the Commission should:

- a) **Complete the regulatory framework in order to establish the necessary independent and adequate redress mechanisms that provide access to remedies for fundamental rights violations in Europe, including in the digital sphere - as well as strong enforcement by independent authorities.**
- b) **Monitor and review Member States' legislation, policies and actions linked to the digital economy to ensure they are consistent and compliant with the rights and principles enshrined in EU law, especially the EU Charter of Fundamental Rights.**
- c) **Review current approaches to disinformation and 'hate speech' online, including public incitement to violence or hatred, to ensure freedom of expression is protected.** In doing so, the European Commission should work closely with the Fundamental Rights Agency (FRA) to ensure that policies to tackle disinformation and

‘hate speech’ strike the right balance between fundamental rights and do not unduly infringe freedom of expression online. Overall, the European Commission should put in place policies and actions to avoid bottlenecks in the flow of information online and to defend a pluralistic and diverse online media ecosystem in the EU.

- d) **Work closely with the European Data Protection Board (EDPB), the European Data Protection Supervisor, DG Competition and national authorities responsible for competition, data protection and consumer protection to investigate and address business models in the digital economy that have the potential to affect consumers’ human and economic rights.** Among others, the Commission should carefully assess the dynamics of the online advertising ecosystem and the related exploitation of personal data, especially in political campaigning.
- e) **Monitor and address actions by Member States aimed at silencing NGOs and human rights defenders,** including by launching any necessary infringement procedures for violations of EU law and fundamental rights.
- f) **Establish a mechanism that allows researchers to access all relevant datasets from online intermediaries for public interest research,** in order to allow for evidence-based policy development.

What would success look like?

The European Commission puts forward a comprehensive strategy to protect democratic principles and fundamental rights in the digital age within the first two years of the new term. The deployment of any necessary institutional and/or regulatory reforms are completed by the end of the term.

1.2 ENSURING STRONG EPRIVACY PROTECTION

Protecting ePrivacy in all types of electronic communications with a clear and limited scope for processing communications data, including metadata, is essential to strengthen individuals’ fundamental right to privacy and confidentiality of communications, as enshrined in Article 7 of the EU Charter of Fundamental Rights, and to protect individuals and organizations against online tracking.

Strong EU-wide legislation on ePrivacy, fully resourced and empowered Data Protection Authorities as well as privacy by design and by default are needed in order to ensure user protection and harmonization with the GDPR, rebuild and reinforce public trust and security in the digital economy, enable privacy-friendly business models to flourish and ensure protection from corporate and state surveillance.

Recommendations

The next European Commission should ensure a timely and ambitious conclusion of the ongoing negotiations on the ePrivacy Regulation, as recently recommended by the European Data Protection Board (EDPB).⁵ The Regulation should be finalised with a **clear and limited scope for processing communications data, including metadata,** given their sensitive nature, and ensure that all types of electronic communications are covered. The Regulation must also **protect individuals and organizations against online tracking and require privacy by design and by default.** Finally, **Data Protection Authorities should be empowered to enforce the regulation** and ensure user protection, as well as harmonization with the General Data Protection Regulation (GDPR).

⁵ European Data Protection Board, *Statement 3/2019 on an ePrivacy regulation*, March 13 2019.

What would success look like?

- Negotiations on the ePrivacy regulation are concluded by the end of 2019.
- The ePrivacy regulation establishes strong and enforceable safeguards for the privacy and confidentiality of electronic communications as well as obligations to provide privacy by design and by default.
- The ePrivacy regulation provides a high level of protection, legal certainty and predictability for users across the EU.

1.3 A HUMAN RIGHTS APPROACH FOR PLATFORM REGULATION

Online content moderation is – and has always been – a challenge for our democratic societies and processes. While internet platforms can facilitate and amplify freedoms of expression and association for their users, their role and responsibilities increasingly come into question in areas such as counterterrorism policies, copyright enforcement, disinformation and hate speech. Since freedom of expression and the right to impart and receive information are at the core of this challenge, it is important to protect users and intermediaries from constant monitoring, which is incompatible with freedom of expression, and from undue pressure to delete allegedly harmful or illegal content without clear legal processes and accountability.

Recommendations

The next European Commission should bring legal certainty for the liability regime of internet platforms in terms of user-generated content online. A new regulatory framework (such as a review of the E-Commerce Directive) will be a major opportunity in the upcoming mandate to develop a sensitive, evidence-based approach to the moderation of illegal online content. The Commission should ensure that the E-Commerce

review only regulates illegal content. **Any new regulatory framework should introduce clear notice-and-action procedures for strictly defined illegal content in order to protect fundamental rights, as well as to provide predictability for hosting intermediaries.**

This framework should also determine how an appropriate, necessary and proportionate process for removing illegal online content works, and introduce the safeguards necessary to protect the right to free speech in a transparent way. In order to ensure due process of law, **any initiative encouraging or requiring companies to prevent allegedly illegal content from appearing on their networks, notably by the use of automated filtering algorithms, must be avoided.**

What would success look like?

- Any review of the E-Commerce Directive is based on genuine consultations with all relevant stakeholders, including civil society organizations. As a general rule, the European Commission undertakes a thorough ex-ante human rights impact assessment as well as a legality, necessity and proportionality test of the measures put forward in the review.
- Any new rules concerning removal or mandatory scanning and blocking of uploaded content are clear and predictable, and allow for appropriate and accessible redress mechanisms for content providers. New rules proscribe any arbitrary and unpredictable interference by internet intermediaries, and thus prevent a system of privatized law enforcement for every public policy goal at stake.
- For content prohibited under national or international law that constitutes or involves serious crime, EU rules require investigation by competent judicial authorities, so that serious criminal conduct may be properly investigated and dealt with according to the established procedure of the criminal justice system.

1.4 COUNTERING THE ADVERSE EFFECTS OF DIGITAL TECHNOLOGIES ON EQUALITY AND INCLUSION

For all its benefits, the increased use of digital technologies can drive increased discrimination against – or the exclusion of – some groups. This is all too often due to biases embedded in algorithms that inform decision-making, for example in policing, as well as access to services such as banking and health care. These biases can directly impact citizens' ability to enjoy their fundamental rights, including freedom of expression and information, freedom of assembly and of association, and privacy and data protection.

Data is already used in some European jurisdictions to inform surveillance and policing practices that often target people of colour and low-income communities as 'at risk of high crime'. Since the selection and choice of data used to feed the machine learning is based on assumptions, the algorithms used for these practices tend to reinforce biases against groups that are already over-policed, and prioritize crimes such as terrorism and gang-related activities over others.⁶ Structural discrimination and racism are embedded in these techniques, which reinforce the exclusion of certain communities.⁷ In this sense, technology can make an existing societal problem worse.

Moreover, data is increasingly used to 'police' people who are undocumented, for instance when they access services such as health care, social services, and education or when they approach the authorities to demand protection or to report crime. By approaching authorities and public administration, undocumented people face the risk of their personal data being used against them for immigration enforcement actions. This seriously affects their social rights, fundamental rights to privacy and data protection, and leads to racial profiling and discrimination in practice.

Algorithms also further discrimination when they rely on data that leaves out some segments of the population – for instance, people over the age of 75 years, or people with disabilities, who tend to use new technology less.⁸ There is also evidence of algorithms with clear gender bias.⁹ The digitalization of public services (or any services of general interest like energy, postal, financial services), can also lead to exclusion, amplifying existing gaps in access and creating new inequalities.¹⁰

The EU's Draft Ethics Guidelines for Trustworthy AI have underscored how the use of artificial intelligence can lead to discrimination through data bias, incompleteness and bad governance.¹¹ The Council of Europe's Commissioner for Human Rights has issued recommendations on how to mitigate the 'discrimination risks' of AI systems, including through consultation with diverse communities.¹²

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- 6 In the Netherlands, Crime Anticipation Systems (CAS) pilots are being implemented in different districts, using large datasets to predict crime. Although there is no clear evidence that this is preventing crime, the CAS has been rolled out nationwide because it may benefit law enforcement. See Sagar Harinarayan, June 20 2017, "[Predicting crime using big data](#)," *Holland Times*; June 4 2018, "[How data-driven policing threatens human freedom](#)," *The Economist*.
- 7 Rosamunde Van Brackel, Paul De Hert (2011), *Policing, Surveillance and Law in a Pre-Crime Society: Understanding the Consequences of Technology-Based Strategies*; Liberty (February 2019), [Policing by Machine: Predictive Policing and the Threat to Our Rights](#).
- 8 European Disability Forum (2018), [Plug and Pray – A disability perspective on Artificial Intelligence, automated decision-making and emerging technologies](#), at p.25 ("It is a fact that automated decision-making based on AI could discriminate against some categories of the population. If an algorithm making a decision on the price of insurance policy discriminates against persons with disabilities, they may end up paying more for insurance or be denied cover. There are similar potential risks of discrimination in a wide range of areas: automated screening for recruitment, financial services and so on.").
- 9 Jeffrey Dastin, October 10 2018, "[Amazon scraps secret AI recruiting tool that showed bias against women](#)", *Reuters*; see also Caroline Criado Perez (2019), *Invisible Women: Data Bias in a World Designed for Men*.
- 10 [Report of the UN Independent Expert on the enjoyment of all human rights by older persons](#), July 21 2017, A/HRC/36/48.
- 11 High-Level Group on Artificial Intelligence set up by the European Commission, [Ethics Guidelines for Trustworthy AI](#), April 2019.
- 12 Council of Europe Commissioner for Human Rights (May 2019), [Unboxing Artificial Intelligence: 10 Steps to Protect Human Rights](#).

However, whereas EU standards on privacy and data protection have established safeguards against undue processing and repurposing of personal data in theory, the same safeguards often fail to apply in practice, particularly when it comes to certain contexts or groups of data-subjects.

Recommendations

The next European Commission should adopt a comprehensive strategy to safeguard against the use of new technologies such as algorithmic decision-making (ADM) systems in ways that perpetuate discrimination and exclusion, particularly against groups who already face high levels of inequality. The Commission should:

- a) **Closely review the implications for communities of color, and other at-risk groups, of the use of technology in predictive policing and immigration control.**
- b) **Undertake specific actions such as facilitating dialogue, providing training and launching infringement proceedings, where necessary, to ensure that the GDPR and fundamental rights are upheld for everyone, without discrimination, and not eroded by derogations justified by broad ‘policing’ exceptions that do not meet the high thresholds of EU law.**
- c) **Empower equality bodies, data protection authorities, and other relevant public bodies to ensure accountability for the implications of digital technologies such as ADM systems and data processing for human rights and discrimination.**

- d) **Provide guidance and support to Member States to ensure the availability, affordability and accessibility of new technologies that are critical to accessing basic services; and that personal data obtained from people who access these services is not repurposed for law or immigration enforcement purposes.**

What would success look like?

The EU has developed clear guidelines on policing, inclusion and data, based on meaningful consultations with relevant stakeholders, including with law enforcement, digital rights organizations, representatives from affected communities, non-governmental organizations, data protection authorities, and equality bodies. These guidelines address data-driven profiling as a form of discrimination that is incompatible with fundamental rights, and set out strict standards and criteria for derogations.

1.5 COUNTERING GOVERNMENT AND COMMERCIAL SURVEILLANCE IN THE DIGITAL AGE

The EU Fundamental Rights Agency (FRA) has stated that, given threats like terrorism, cyber-attacks and sophisticated cross-border criminal networks, *“the work of intelligence services has become more urgent, complex and international”*, but also that such work can strongly interfere with fundamental rights, especially with privacy and data protection. FRA, the EDPS, and other institutions have also expressed significant concerns about the fundamental rights

implications of EU regulations that upgrade and expand the European border and security information systems.¹³ The contradiction between the role of the Commission as initiator of legislation on surveillance (such as the Data Retention Directive, the EU Passenger Name Record Directive and recent regulations on interoperability) and its responsibility as guardian of the treaties calls for an urgent evidence-based debate on how to deal with modern threats to security, while respecting fundamental rights. This debate should prioritize the protection of democratic principles and guarantees, countering populist narratives that call for increased surveillance without safeguarding fundamental rights.

In parallel to government surveillance, the dominant business model in the digital economy is also built on surveillance. Consumers' activities, both online and offline, are extensively monitored, analyzed and monetised by a myriad of companies. This is increasingly the norm across business sectors. Commercial surveillance undermines fundamental rights to privacy and data protection, and puts consumers' freedom, autonomy and self-determination at risk. Such risks are exacerbated as connected products and AI technology become a bigger part of consumers' lives. Monitoring and scrutinizing individual action for commercial purposes could influence the behavior and decisions of consumers in ways beyond their knowledge, understanding or control, leaving them easily exposed to discrimination and manipulation. This is a problem that does not only affect consumers but society at large, as it is becoming almost impossible to participate in digital society and enjoy the benefits of digital technology without being subject to permanent surveillance.

Recommendations

The next European Commission should thoroughly map and review existing legislation that enables public authorities to restrict the rights to privacy and protection of personal data for national security, public order, national intelligence, border security or any related purposes. Specifically, the Commission should:

- a) **Entrust the Fundamental Rights Agency (FRA) with a thorough mapping exercise and review of existing legislation that enables public authorities to restrict fundamental rights** including the right to non-discrimination, the rights to privacy and protection of personal data for national security, public order, national intelligence, border security or any related purposes.
- b) **Map and review the infrastructure storing and processing personal data for such purposes** (e.g. national or EU databases).
- c) **Build a harmonized framework for the protection of fundamental rights when dealing with State surveillance, including in the framework existing or potential proposals such as cross-border access to data ('e-evidence') or data retention.**

In addition to this, **the Commission should propose a comprehensive strategy** – building on the data protection and privacy laws, the consumer law *acquis*, competition law and EU anti-discrimination laws – **to address the problem of permanent commercial surveillance** of consumers, and protect their freedom, autonomy and self-determination in the digital age.

13 See e.g., FRA (July 2017), [Fundamental rights and the interoperability of EU information systems: borders and security](#); FRA (March 2018), [Under watchful eyes: biometrics, EU IT systems and fundamental rights](#); FRA (April 2018), [Interoperability and fundamental rights implications: Opinion of the European Union Agency for Fundamental Rights](#); EDPS (November 17 2017), [Reflection paper on the interoperability of information systems in the area of Freedom, Security and Justice](#); EDPS (April 16 2018), [Opinion 4/2018 on the Proposals of two Regulations establishing a framework for interoperability between EU large-scale information systems](#); Data Protection Authorities supervising SIS II VIS and Eurodac (June 17 2018), [Opinion of the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems](#); Meijers Committee (February 2018), [CM1802 Comments on the proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems](#).

What would success look like?

- The next Commission has conducted a comprehensive mapping of EU and national laws and databases gathering or processing personal data for security-related purposes, and has assessed their impact on fundamental rights.
- Building on research¹⁴ by the EU Fundamental Rights Agency, the Commission has indicated which actions need to be taken at EU level (e.g. infringement proceedings) and at the national level (e.g. litigation, legislative changes) to ensure that legislation on surveillance and large-scale data processing are in line with the Charter of Fundamental Rights.
- The next Commission does not propose any legislative initiative on surveillance without an *ex-ante* human rights impact assessment.
- The Commission has proposed and implemented a comprehensive strategy (including stronger competition law, strong ePrivacy Regulation and effective GDPR implementation) that protects consumers from commercial surveillance. This strategy also promotes innovative business models that are privacy-friendly and enhance consumer choice and autonomy, instead of models that rely on the constant monitoring and exploitation of consumers' behavior.

14 EU Fundamental Rights Agency, [Surveillance by intelligence services - Volume I: Member States' legal frameworks](#) (November 2015); and [Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU - Volume II: field perspectives and legal update](#) (October 2017)

SECTION 2: A FAIR AND COMPETITIVE DATA ECONOMY

Digital markets are increasingly characterized by business models based on data aggregation and analytics. Data has become the fuel of innovation in a digitalized economy. Consumer products and services generate huge amounts of data, which are used to develop products and services that are often essential for our daily lives. Access to data is often key to the maintenance and/or renewal of the resources of the circular economy, where the value of products and materials is preserved for as long as possible. Due to the presence of strong network effects in digital and data-driven markets, users – individual consumers or businesses, and especially SMEs – are being locked-in to ecosystems controlled by a few market players. This means that barriers to entry increase, and competition is restricted, leading to a loss of choice and quality for consumers. The continued concentration of data in the hands of a few market players is not only often in violation of EU data protection, privacy and consumer laws, but also prevents socially valuable innovation from thriving - which would be to the benefit of consumers and citizens. Establishing a form of data access right (compatible with data protection law) for competitors and public bodies would open up new possibilities, and ensure fair competition and innovation that is more valuable. Moreover, the advent of the Internet of Things and AI-powered automated decision-making means the existing data protection framework is insufficient for people to have full control over the data they generate, and especially over data that is inferred about them, as these do not fall within the definition of personal data covered by GDPR.

Recommendations

The European Commission should **complete the regulatory framework for a vibrant and competitive data economy** by addressing the data needs of market operators to develop competitive services, while ensuring that users' data protection rights are upheld. **Data portability should be a guiding principle of the complete regulatory framework**, where both individuals and businesses should have the possibility of accessing and governing aggregated data for competitors and public bodies, in order to ensure fairer competition and the use of data for the common good. It should also give people better protection regarding the data they generate, where this data does not fall within the definition of personal data, to address new concerns related to unfair discrimination and behavioral manipulation. In addition, the European Commission should **take into account the availability of datasets as a relevant factor in the assessment of companies' market power, as well as of their behaviors** towards competitors and consumers. Finally, the European Commission should **consider the need for *ex-ante* mechanisms aimed at ensuring non-discriminatory data access and interoperability among market players.**

What would success look like?

- Data is deployed for the benefit of users in the form of societal-valuable innovation. This is made possible by a data economy package, as described above, which is adopted by the EU and becomes applicable before the end of the next European Commission's term of office.
- Robust industry-specific regulations clearly detail requirements to safeguard consumer control over generated data and fair competition amongst service providers.
- The EU develops the first global binding requirements for data access, based on open and interoperable protocols (including encouraging interoperable APIs to enable data portability) for platforms and services. Requiring services and platforms to allow access to users' data via open protocols will give users greater control over the data they generate when they use digital services and connected devices.
- The EU carries out sector examinations to better understand the impact of practices and agreements that shape digital markets. In particular, the Commission initiates an examination of the online advertising marketplace to gather information about how undertakings and firms are shaping this important market for the provision of services to users.
- The EU assesses the market power of firms using online data, using the control of data necessary for the creation and provision of services as a proxy.
- In the assessment of companies' behaviors under competition rules, the violation of data protection obligations towards consumers is understood as harming consumers. The EU adopts a multi-disciplinary approach to digital markets. An anti-competitive practice is often likely to also amount to a breach of other areas of law, such as data protection and consumer laws. The EU systematically considers data protection and privacy standards when assessing mergers and acquisitions, and prohibits such mergers or imposes conditions when they would negatively affect the protection of personal data, the privacy of individuals, and more generally democracy and pluralism.

SECTION 3: PUBLIC SERVICES AND PUBLIC FUNDING IN RESEARCH AND DIGITAL TECHNOLOGIES

3.1 A HUMAN-CENTRIC STRATEGY FOR PUBLIC SECTOR DIGITAL TECHNOLOGY

Government procurement of digital tech could be an important lever to foster a thriving ecosystem of human-centric technology, given that public sector investment in technology makes up a significant proportion of the European market. Some areas of public sector technology use — such as the use of algorithms in policymaking and the justice system, or facial recognition technologies in policing — need further consideration as to whether they are ever appropriate and compliant with fundamental rights. Moreover, many technologies require better governance to ensure that legal and ethical standards are upheld, as well as to build public trust.

The accessibility and affordability of technology are also critical as public services become increasingly digitalized. In countries or regions with weaker infrastructure or lower levels of digital skills among the population, in particular, the digitalization of a large number of public services and bureaucratic procedures risks deepening exclusion and discrimination for vulnerable groups such as older people on a very low income.

In the healthcare sector, where data analytics promises to develop innovative diagnostics and enhance health research, the current legal framework is insufficient to address the range of ethical issues related to the use of biomedical health data and novel analytical solutions.

In the financial sector, EU consumers are in need of digital comparison tools to assist them in their decision-making process. Digitalization can enhance transparency, comparability and accountability, especially in those sectors in which the complexity of information can easily mislead the consumer. This is particularly true for the financial sector, where the complexity of products proposed to investors can easily lead to mis-selling. For better or worse, digital advances are changing the way in which financial institutions do business. While — as for all consumer products — this can constitute a threat to EU citizens in their capacity as savers and investors, a human-centric approach would empower them to become more informed and responsible users of financial services.

Oversight mechanisms to protect consumer and public health interests and accountability mechanisms allowing for public scrutiny of the use of biomedical big data are urgently needed.

Furthermore, public sector technology can benefit from harnessing open and collaborative technologies that empower people, use citizens' collective intelligence and engage with multiple sectors to deliver better social outcomes. Such technologies, which can be grouped under the term Digital Social Innovation, will support the delivery of objectives such as non-discrimination, accessibility and fairness.

The European Commission adopted a similar strategy when it ensured public websites were accessible. This approach could identify working industry frameworks and ensure they are normalized in the European Community.

Recommendations

- a) **The next European Commission should invest in establishing a strong community of local authorities, public bodies, governments and civil society organizations committed to the socially responsible development, procurement and use of digital technologies.** This should be done by:
 - b) Launching a strategy on the governance of public sector technology in the EU that aims to develop **open standards, guidelines and rules for the effective procurement of human-centric digital technology**, and defines good practice in public-private digital technology partnerships.
 - c) Increasing the visibility of the European Commission's Joinup project.¹⁵
 - d) **Developing mechanisms for the effective governance of public sector digital technologies, including through engagement with technical standards bodies that permit such engagement (for instance W3C) to ensure robust privacy mechanisms.**

- e) **Providing support to people in vulnerable situations to enhance their access to digitalized public services**, and keeping the situation under review with the aim of closing the digital divide and avoiding an increase in inequities - in particular regulation, transparency and systems for public complaints, redress and support for people in vulnerable situations.
- f) **Creating and promoting EU-wide independent web-based online comparison tools for financial consumer products.**
- g) **Promoting new forms of public sector technology that envision services as done "with" users, empowering people to become active participants** rather than just passive recipients, and harnessing the power of Digital Social Innovation to further human-centric public sector technology.

What would success look like?

- Open standards and policies for responsible development, procurement and use of digital technologies are adopted across all EU Member States.
- The public has a high trust in public sector technologies through robust governance and oversight mechanisms.
- The EU is home to a culture of transparency and openness around public sector technologies.
- Public, or at the very least independent, EU-wide web-based comparison tools for financial consumer products and services enable the objective comparison of products and services, and empower the consumer.

¹⁵ [Joinup](#) is a collaborative platform created by the European Commission and funded by the European Union via the *Interoperability solutions for public administrations, businesses and citizens (ISA2) Programme*. It offers several services that aim to help e-government professionals share their experience with each other.

3.2 PROCUREMENT PROCESSES PROMOTE A HUMAN-CENTRIC DIGITAL TRANSFORMATION

A very recent study published by EDRi and Cookiebot indicated that many public authority websites are full of cookies and tracking tools of which people are unaware. This is unhealthy in an era of digital transformation. Public authorities should be frontrunners in protecting people against unwanted tracking activities and promoting the use of privacy-friendly services.

As public tenders provide access to important markets, they can drive innovation in private markets – and taxpayers’ money into a more sustainable direction, i.e. contribute to securing a human-centric transformation. Tender processes can provide for a positive agenda that rewards the best companies when it comes to digital transformation. They also have a preventative role in setting strong conditions ahead of the roll-out of contracts, as well as in ensuring transparency. Procurement rules also provide accountability mechanisms and sanctions when these conditions are not complied with.

Public tenders can provide critical mass, enabling innovative competitors, especially SMEs, to enter markets that are dominated by incumbents. A strong privacy- and security-friendly procurement policy by EU institutions and agencies can be legitimately presented as a demonstration by the EU that it cares for people’s wellbeing and fundamental rights. Procuring authorities should also harness procurement to enable new forms of public sector technology that empower citizens and draw upon their collective intelligence, developing a model of public services “done with” rather than “done to”.

Targets for privacy and security should not necessarily be restricted to practises which are already in the marketplace. In this respect, the European Commission should learn from the work of the National Institute of Standards and Technology (NIST) in the US. The NIST differs from similar EU institutions in particular in that it does not necessarily allow industry to water down a specification in order to make it fit with their current practices. Rather, NIST drives technological advancement by advocating those technical specifications that are reasonable given the policy goal. This makes their recommended practises “state-of-the-art” rather than “lowest-common-denominator”.

KEY INSIGHTS

Ad tech companies are extensively tracking EU citizens who visit non-ad funded government and public sector websites. Even on sites featuring sensitive health information, vulnerable citizens are unknowingly being tracked. EU governments and public sectors are thereby – unintentionally – serving as platforms for online commercial surveillance.



Recommendations

The next European Commission reviews the eligibility and selection criteria embedded in procurement rules and processes implemented by EU institutions and agencies, to prioritize the procurement of digital technology that protects people's personal data, privacy and security, and is accessible and affordable for all – regardless of age, ability, gender, nationality and socio-economic circumstances.

Alongside, **the Commission should launch an EU-wide review of public procurement rules applicable to national public contracts and develop guidelines for Member States** to prioritize the procurement of accessible and affordable digital technologies that protect people's personal data, privacy and security.

Companies that roll out strong and demonstrable strategies to fulfil these criteria across the EU should be given preference, all other things being equal.

What would success look like?

- New guidelines and rules for public procurement by EU institutions and agencies are available on the website, and prioritize among the eligibility and selection criteria those companies that can demonstrate and put into practice their commitment to providing the best available levels of privacy and security protection.
- The thresholds set for application of the rules take account of developments in the data economy, i.e. the non-monetary retribution of the provider via the sharing of personal data, where goods or services are procured at zero-price or at low value, but risks for data protection and privacy are significant. In such cases, even where public procurement regulations do not apply because of small monetary implications, the contract must fully safeguard the rights of the data subjects, as set by GDPR and interpreted by the EDPB.
- Public procurement rules applicable at national level have been updated to include human-centric digital transformation as a strategic priority.
- Procuring national authorities have allocated specific resources to meaningfully assess and monitor this priority.
- Regular reports on the roll-out of this strategic priority are publicly available, both at national and EU level.
- Lack of roll-out by authorities is highlighted and remedied.
- Best practices developed by companies are identified at EU and national level and made publicly available, to inspire future bidders.
- Obstacles that deter SMEs from bidding are properly addressed, both at national and EU level, including through smaller contracts, pre-commercial procurement and open-source procurement; social and ethical values are recognised in procurement assessments.

3.3 PUBLIC FUNDING FOR RESEARCH NEEDS TO LEAD TO PUBLIC AVAILABILITY

Public money should be invested towards societal benefit wherever possible. In the case of research, making scientific and academic works freely available is of clear benefit for universities and public institutions. The former benefit from greater visibility for their work and their staff, as the outcome of their work can be improved and reused by similar institutions or by individual experts. The latter benefit from access to the work in which they have directly or indirectly invested.

At the same time, by requiring the use of open standards, open source code, open hardware and open data, the EU will be investing in improving its security, avoiding vendor lock-in, ensuring transparency as well as control of technologies, and allowing for cross-border collaboration within EU Member States' institutions and with non-EU partners. This will strengthen innovation and better ensure the achievement of broader policy goals on data protection, privacy and security.

Recommendations

Building on initiatives such as Next Generation Internet¹⁶ and the recent use by the European Commission of Creative Commons licenses, **the next European Commission should ensure that all results of EU-funded research and development will be made available to the public under free and open licenses.**¹⁷

What would success look like?

- All output of EU-funded research and development activities (hardware, software, data and publications) is available for free reuse. Specifically, software is under an open source license; data is under an open data license; and all other outputs are under a Creative Commons Attribution license.
- European research projects have opportunities to follow up on their findings later in the marketization process, for instance in technical standardization.

3.4 PUBLIC FUNDING FOR RESEARCH CONTRIBUTES TO HUMAN-CENTRIC DIGITAL TRANSFORMATION

Research and innovation funding at the European level needs to reflect the values to which Europe aspires. Without a strong focus on societal relevance, funding for technology risks further entrenching existing characteristics of the digital space. EU-funded research and development needs to be directed towards technologies that ensure equal access to digital technologies for all, and create a more equitable and democratic digital environment. Research and development activities funded

with public money need to contribute to a digital environment where basic liberties and rights are protected.

On the other hand, research and innovation funding can be directed towards work explicitly focused on harnessing digital technologies to deliver positive social and environmental impact, as shown through existing programmes like CAPS under Horizon 2020.

Public funding for research and development must become a tool to steer Europe towards a process of human-centric digital transformation. By aligning funding for research and development with these goals, it will become possible to steer economic growth and a European policy agenda for the digital space that protects the rights and economic needs of people in Europe, while also reorienting digital technology as a force for empowerment and positive social and environmental impact.

Recommendations

Future EU funding in the information technology sector should follow a mission-oriented approach to research and development¹⁸. EU-funded research and development needs to be directed towards areas that result in the greatest possible social benefit. **Innovation funded with public money must not focus on economic growth alone, but must also aim to solve societal problems by prioritizing projects that reflect the values to which Europe aspires, and directly increasing funding for Digital Social Innovation across DGs. It must aim to create a digital space that strengthens public institutions and democratic governance, that promotes equality and justice, and that protects diversity and inclusion in Europe.** This requires the development of a sovereign European technology stack.

16 The mission of the EU-funded [Next Generation Internet initiative](#) is to re-imagine and re-engineer the internet for the third millennium and beyond.

17 Free and open licenses are the EUPL (or another open source compatible license) for software, and Creative Commons Attribution or equivalent for all other research outputs.

18 For more background on mission-oriented research and development see: [MISSIONS - Mission-Oriented Research & Innovation in the European Union, European Commission 2018](#).

What would success look like?

- EU research and development funding follows a mission-oriented approach that aligns economic growth with societal and environmental benefits.
- Funding for research programmes seeking to exploit the positive potential of digital technologies for social and environmental impact has increased.
- The development of the sovereign European technology stack has been defined as a mission within the EU research and development framework.
- EU funding for hardware research and development is conditional on showing that privacy and security are integral parts of the research project.

SECTION 4: COMPETITION POLICY

4.1 A EUROPEAN CONSUMER WELFARE STANDARD FOR THE DIGITAL AGE

The current concept of consumer welfare is imported from the US. It is applied in a narrow fashion and it does not capture the problems created by data-driven platforms. The interpretation of consumer welfare has focused strictly on immediate benefits in terms of prices and quantity. This has allowed companies to grow at unprecedented scale with the consequence of high concentration in many markets across a number of industries. The European Commission should endorse a vision which relies on a broader notion of consumer welfare, rather than the current narrow view limited to the protection of markets' economic efficiency. The interpretation of consumer welfare has to embrace the legitimacy of primarily non-economic values of society, such as the creation of fair and open markets, which adequately respect individuals' rights.

Recommendations

The European Commission should develop guidelines for the assessment of consumer welfare in digital markets beyond price and quantity considerations, and take into due account choice, quality, innovation and the respect for fundamental rights and consumer rights in the short as well as the long term. As a starting point, the Commission should produce a report of existing case law in competition and digital markets, in order to identify a landmark case for the Court of Justice of the European Union (CJEU) to broaden its interpretation of consumer welfare in the digital context.¹⁹

What would success look like?

- The EU adopts an interpretation of consumer welfare that goes beyond economic considerations and recognises the negative impact that data usage can have on fundamental rights embedded in EU treaties, such as privacy, both at a collective and individual level.
- The EU stimulates market players to compete on parameters such as quality, innovation, choice and respect of individuals' rights. EU consumers have more choice and better quality products and services.

¹⁹ In the remit of competition law, the notion of 'consumers' includes SMEs and business users of platforms.

4.2 A PRO-COMPETITION POLICY TOWARDS MARKET CONCENTRATION AND THE INTERNET INFRASTRUCTURE

Excessive concentration can have an adverse impact on innovation, result in fewer choices and services for consumers, and constitute a real threat to the enjoyment of individuals' human rights as well as economic and non-economic freedoms. For society, concentration is a problem because monopolies and oligopolies can cause rising assets inequity and a lack of flexibility.

Digital market concentration may also lead to the establishment of gatekeepers. The European Commission's past decisions in the Microsoft and Google Android cases exemplify this issue. In addition, ancillary difficulties may arise, concerning the terms of service and policies associated with a particularly dominant app for the distribution of other apps. In these cases, the terms of service and policies may themselves act as a competitive restraint on downstream markets, and affect freedom of expression and the right to conduct business. Another specific challenge concerns information markets, where concentration implies control over the flow, availability, findability and accessibility of information and content online. Here, unilateral behaviors of actors as well as mergers have a strong impact on media pluralism, to the detriment of individuals' freedom of expression and access to information.

Electronic communications network and services providers play a growing role in connecting individuals with the complex infrastructure of wires, cables, satellites and wireless technologies that enable them to 'go online'. In the past decade, we have seen two trends in the sector, encouraged by relevant competition policy: a push towards consolidation, and a favourable approach to vertical integration. Nevertheless, it remains doubtful whether having fewer players in the market, or having vertical integrated ones rather than competition at the different layers, would eventually lead to greater efficiency or enhance consumer welfare.

Recommendations

The European Commission should keep markets open to new entrants, by intervening at an earlier stage of market concentration and by targeting the behaviors of dominant players that have the effect of raising barriers to access and/or of locking-in consumers. Moreover, the European Commission should protect competition in the internet infrastructure markets, and take into account the impact on consumers' rights, apart from economic considerations, when assessing the dichotomy between fewer bigger players or more and smaller players on the market.

To begin with, **the European Commission should prioritize measures to tackle mergers leading to excessive market concentration.** More specifically, merger policy needs to be adapted to be able to capture acquisitions that aim to suppress future competition ('killer mergers') and deny consumers the benefits of a competitive economy. In this sense, the **jurisdictional thresholds of the EU Merger Regulation need to be revised** to include mergers that currently fall outside the scope of EU merger review due to the low turnover thresholds of the firms involved. This should be accompanied by **specific measures to block or condition 'killer mergers'** (e.g. by restricting the ability of firms above a certain market share from acquiring new firms).

What would success look like?

- The EU keeps markets open to new entrants, by intervening at an earlier stage of market concentration and by targeting the conduct of dominant players that has the effect of raising barriers to access and/or locking-in consumers.
- The EU protects competition in infrastructure markets, and implements policies that support the entry of new players at different layers of the infrastructure.

SECTION 5: ARTIFICIAL INTELLIGENCE AND ALGORITHMIC DECISION-MAKING

The shift towards Artificial Intelligence (AI) and automated decision-making (ADM) changes the way in which markets, societies and public institutions function. Tasks and decisions are increasingly carried out by or with self-learning machines, without meaningful human control and oversight. While individuals and societies clearly have a lot to gain from these new technologies, the associated risks can create economic and non-economic harm to people and society as a whole.²⁰ The EU's legal framework is not adapted to these new challenges. Protections are insufficient and market functioning can be hampered. The use of automated decision-making technologies by businesses and public administrations triggers a new asymmetry of power between companies and public administrations on the one hand, and consumers and citizens on the other. Such asymmetry may lead to a significant loss of trust, transparency and accountability, undermining people's privacy and autonomy as well as generating unfair competition and arbitrary discrimination. These risks need to be addressed by establishing a governance framework that includes any necessary new consumer/citizens' rights and updating all relevant legislation. In addition, authorities should ensure effective public oversight of AI-powered and ADM technologies through efficient monitoring, and enforcing mechanisms of legal compliance.

While the values and objectives of the EU's "Ethics Guidelines for Trustworthy AI" are welcome, that initiative can only be a first step. The creation of a voluntary and self-regulatory framework to achieve "legal, ethical and robust" AI is insufficient. The European Commission must follow through with policy recommendations and binding legal frameworks to ensure that 'trustworthy AI' is not just an empty policy slogan.

Recommendations

The European Commission should propose a legislative binding framework for AI-powered automated decision-making (ADM) technologies to ensure that they are fair, transparent and accountable for consumers and citizens, and that they do not negatively affect their fundamental rights. At the same time, the Commission should promptly **undertake in-depth fitness checks of all relevant EU legislation** – including competition, consumer, and security law – **and propose legislative updates where necessary**, so that the challenges of ADM systems are addressed effectively.

²⁰ OECD, *Artificial Intelligence in Society*, June 2019.

In particular, the Commission should:

- a) **Promptly undertake an in-depth mapping exercise and evaluation of all relevant EU legislation** - including competition, consumer, safety, security, product liability, privacy and data protection laws – **that applies to the development and deployment of AI and ADM systems.**
- b) On the basis of that holistic analysis, **immediately propose the necessary legislative updates of all relevant EU laws, working together with relevant national and European regulatory authorities where appropriate.** This exercise should include an evaluation and propose improvements, where necessary, to existing mechanisms for the enforcement of fundamental rights and consumer rights.
- c) **Propose binding legislation that will give EU consumers and citizens new rights to ensure the transparency, fairness and accountability of ADM systems.** In all stages of their life cycles, including during design, development and deployment, ADM systems should be subject to impact assessments in order to ensure compliance with fundamental rights, consumer rights and the rule of law.
- d) **Identify areas where the development and/ or deployment of ADM systems should not be permitted, particularly regarding areas such as policing and migration,** and propose the necessary measures to establish these red lines.
- e) **Promote the digital literacy of citizens and consumers regarding ADM systems to increase the understanding of the possibilities, limitations and potential risks** of such systems, and awareness of consumers' and citizens' rights in this context.

What would success look like?

- The European Union completes a mapping and evaluation exercise and makes the necessary changes to ensure it has a binding legal framework to protect and empower its consumers and citizens in the age of AI.
- The new EU legislative framework for human-centric AI includes rules on transparency, accountability and fairness for automated decision-making systems, and provides for fundamental and consumer rights impact assessments for ADM systems.
- The new EU legislative framework for human-centric AI, followed by well-coordinated, ambitious enforcement, contributes to building the EU's concept of a human-centric AI environment and setting global standards.
- In addition to fundamental and consumer rights impact assessments, ADM-based products and services undergo any necessary *ex-ante* market tests, and are subject to *ex-post* market surveillance activities throughout their life to ensure they are fair, safe, and secure and do not pose undue risks to society.
- Companies selling ADM-based products and services comply with their obligations to adequately inform users of how their technologies work.

SECTION 6: JOBS, EMPLOYMENT AND THE FUTURE OF WORK

In the world of work, digitalization can be both an opportunity and a challenge. The emergence of online digital labor platforms²¹ has been one of the major transformations in the world of work over the past decade; however, many aspects of this process are not yet clear or understood. The debate on the future of work is currently dominated by fear, and unrealistic expectations on the potential achievements of technology and how they will be incorporated into the workplace. The reality of automation, platforms and technology in the labor context is more complex and EU-centric than commonly depicted. There is a general assumption that technology will cause great havoc in the labor force, and that the workforce, businesses, education systems and trade unions are not prepared to respond to these challenges.

More needs to be done to help people acquire or upgrade their digital skills, and ultimately boost European competitiveness. Lifelong learning is key

to employability, particularly as it allows employers to tap into the full potential of the adult population (including inactive and unemployed people) at times of skills and labor shortages.

At the same time, the rapid growth of digital labor platform companies is built on a business model that excludes fair labor practices and perpetuates low pay. Building on European labor laws and on the Commission's focus on dignified work and labor conditions, the EU can play a critical role in developing a deeper understanding of the impact of digital technology in European labor markets, and seize the opportunity to become a global norm-setter in this field.²²

Moreover, whereas technology all around the globe continues to reinforce existing power relations, the potential for technology to promote and reinforce labor rights is still under-researched.

21 'Digital labor platforms' include both web-based platforms, where work is outsourced through an open call to a geographically dispersed crowd ("crowdwork"), and location-based applications (apps) which allocate work to individuals in a specific geographical area. While digital labor platforms are a product of technological advances, work on these platforms resembles many long-standing work arrangements, merely with a digital tool serving as an intermediary. For more information, see ILO report 2018 on 'Digital labor platforms and the future of work: Towards decent work in the online world' and EU report 2018 on 'European legal framework for digital labor platforms'.

22 Acknowledging the changes brought by digital technologies to the world of work, the European Social Partners have devoted an extensive part of their work programme 2019-2021 to digitalization. They will explore different aspects and experiences (acquisition of digital skills, organization of the work, possibilities and modalities of connecting and disconnecting, working conditions) and negotiate an autonomous framework agreement on digitalization.

Recommendations

The European Commission should reflect in its next agenda on the new labor market reality and the various ways technologies and technological processes are affecting the workforce, trade unions and business organizations. This could be done by:

- a) **Promoting evidence-based studies on the impact of tech on labor at different levels** (e.g. employment, upskilling needs, taxation, collective bargaining, new rights).
- b) **Facilitating the sharing of best practices among trade unions and business organizations across the EU.**
- c) **Conducting and providing skills forecasts at national, regional and local levels**, as a basis for accurate policymaking and the provision of active measures in education and training.
- d) **Promoting a European narrative and practice around new forms of work, labor rights and business-to-business (B2B) relationships that protect and promote dignified work in platform-mediated working arrangements.**²³
- e) **Boosting the digital skills of people in Europe** by updating education and training systems, engaging social partners in the design of training offers (especially when they are EU-funded), and encouraging continuous life-long learning.

What would success look like?

- The EU proactively engages with the challenges of automation and the *platformization* of work in the emerging gig economy. This entails a swift collaboration between countries, EU bodies, business organizations and trade unions to tackle new developments in a way that is evidence-based, practical and has specific goals and indicators. As a minimum, access to the basic social protection provided for by the relevant national social security system is guaranteed to all people in platform-mediated working arrangements (employees or self-employed).
- More Europeans have skills that match the needs of companies. Digital skills and confidence encourage people in Europe to become not only users, but also creators of technology. Awareness of the safe and responsible use of digital technologies in the world of work has increased.
- The EU supports Member States with benchmarking and mutual learning to improve the design and impact of their active labor market policies, and provides tools to tackle the labor and skills gaps (e.g. training and capacity building). Member States closely involve social partners in the whole process.

²³ In the collaborative economy, people engage in platform-mediated working arrangements either as employees or as self-employed. Whereas the 'employee – platform relationship' would be governed by labor law, the relationship between the self-employed and the platform would be governed by a business-to-business (B2B) contract.

SECTION 7: PROMOTING DIGITAL RIGHTS IN EU TRADE AGREEMENTS

International trade agreements used to be designed to reduce tariffs on trade between countries. Nowadays they also aim to abolish other potential barriers to trade such as differences in regulatory regimes, notably in the field of digital policy. The larger the group of negotiating parties (and the more diverse their positions), the less likely it is that the EU will be able to maintain the high standards that it would like to promote in areas such as data protection. In such a situation, any agreement is bound to either reflect the lowest common denominator – i.e. negatively affect digital rights such as the rights to privacy and freedom of expression – or contain vague, generic language that would minimize the impact of the agreement.

Net neutrality, privacy, data protection and intermediary liability are intimately connected to our fundamental rights, and therefore should not be negotiated in the framework of international trade agreements. If the Commission has to include such topics in trade negotiations, its red lines should fully protect the right to privacy and effective non-discriminatory access to the internet.

Similarly, ongoing and future WTO negotiations on e-commerce shall not undermine the fundamental rights that are provided for in the *EU acquis*.

Recommendations

The next European Commission should not negotiate digital rights-related policies such as personal data transfers in the framework of international trade agreements. Ongoing and future WTO negotiations on e-commerce, for example, should not undermine the fundamental rights provided for in the *EU acquis*.

At the same time, **the Commission should prevent forced data localization policies when they are unjustified.** This approach would contribute to levelling the global playing field for EU companies that currently face a competitive disadvantage.

To ensure this crucial balance, **the Commission must not deviate from the EU horizontal position on cross-border data flows, data protection and privacy in the case of trade negotiations that touch on data transfers.**

What would success look like?

- The EU does not allow the desire to facilitate sweeping ‘cross-border data flows’ to undermine the ability of both parties to protect people’s fundamental rights to privacy and data protection.
- The EU refrains from negotiating net neutrality in international trade agreements. If this is not possible, the Commission ensures that net neutrality provisions do not contain ambiguous language such as “allowing for ‘reasonable’ traffic management”.
- The EU works towards preventing forced data localization policies when they are unjustified.
- The EU ensures that the trade agreements it ratifies do not prevent access to the source code of self-learning algorithms (i.e. artificial intelligence) that have an impact on people’s lives and fundamental rights.

SECTION 8: PROMOTING HUMAN-CENTRIC TECHNOLOGY FOR SOCIAL GOOD

8.1 CHAMPIONING DIGITAL SOCIAL INNOVATION (DSI)²⁴

The use of digital technologies to tackle social and environmental challenges (i.e. making the most of the open and collaborative potential of technology to empower citizens from the bottom up) has shown its potential in many fields - making public services more efficient and effective, tackling challenges ranging from refugee integration to plastic waste, and rebuilding trust in society through participatory democracy. However, Digital Social Innovation (DSI) or ‘tech for good’ has so far received far less funding than digital military innovation or commercial innovation. DSI has received significant support from the European Commission, particularly through the CAPS programme, the Blockchain for Social Good Prize, and parts of the EUSIC, but the field will need more support in the years to come. Out of almost 2,000 organizations and over 1,000 projects involved in DSI across Europe, relatively few initiatives deliver impact at scale, as most projects and organizations involved in DSI are still poorly connected to each other.²⁵ There is, then, a pressing need to grow strong networks, within and across countries and regions, to boost collaboration and knowledge sharing.

Alongside its role as funder, the EU has significant power to champion causes, influence Member States, international governments and sub-national governments, and provide leadership and stewardship on the development of human-centric technologies for social good. The EU should aim to be a global leader in DSI, and promote it as a distinctively European response to the challenges of the 21st century.

Recommendations

- a) **Create an EU Observatory for Digital Social Innovation.**
- b) **Develop and support open standards,** including for software, hardware, data, and procurement, to support DSI.
- c) **Task the Directorate-General for Communications Networks, Content & Technology (DG CNECT) of the European Commission with a coordination role to ensure that Horizon Europe and structural funds give appropriate prominence to DSI across Commission DGs,** as part of mission-driven research and innovation.

²⁴ The term Digital Social Innovation (DSI) – along with “tech for (social) good”, “social tech”, “public interest tech” and “civic tech” – refers to the use of open and collaborative digital technologies to tackle social and environmental challenges.

²⁵ Toby Baker, Peter Baeck, Matt Stokes, What Next for Digital Social Innovation? Realising the potential of people and technology to tackle social challenges, May 2017 – Report on the DSI4EU project carried out for the European Commission by Nesta.

- d) **Provide support to Member States wishing to promote DSI** in policy and regulation.
- e) **Enable peer learning, knowledge sharing and the spread of best practice** not only between practitioners, but also between funders, policymakers and investors.

What would success look like?

- The EU is recognised as a leader in Digital Social Innovation worldwide.
- Better research, data, standards and shared agendas for DSI in Europe are developed.
- Member States' governments have more awareness of DSI.
- The EU provides more impactful funding for DSI by supporting a range of projects and organizations that aim to build a true ecosystem of DSI in Europe.
- Platforms (online and offline) for knowledge sharing lead to less duplication and more impact.

8.2 DIGITAL SOCIAL INNOVATION AND E-GOVERNMENT

The public sector can play a huge role, both as customer and promoter of DSI initiatives, in scaling the impact of technology for social good. This is particularly true since public procurement accounts for 1.4% of GDP across the EU, and the public sector is the dominant or the only player in sectors where DSI has the highest potential (e.g. healthcare, education, employment support). At the same time, DSI can help public services become more efficient and involve citizens as co-creators – rather than just users of services – through open, collaborative, bottom-up DSI initiatives in e-government. However, slowness to engage with DSI in the public sector has left huge untapped potential.

Recommendations

EU institutions should invest more in Digital Social Innovation – and incentivize governments and the public sector across Europe to do so – to scale their impact, acting as both customers and promoters of technology for social good. The rapidly growing field of **e-government**, in particular, holds great promise for collaborative, bottom-up DSI initiatives that has not yet been realised.

For DSI to also foster and promote alternatives to the dominant technological and business models, **the next European Commission and other EU institutions should engage with civil society and citizens, early in their new term, to build a positive shared model of innovation and governance that safeguards democratic values and rights** in the interaction between citizens and technology.

What would success look like?

- Governments at EU, national and city level understand the benefits of DSI approaches, procure them regularly through smaller contracts, pre-commercial procurement and open-source procurement, and diversify the number of suppliers, thereby delivering better services for citizens.
- A shared regulatory and civic action plan for a new model of innovation and governance, implemented by civil society and the Commission, in an atmosphere of mutual trust and respect is developed.

8.3 SUPPORTING PLACE-BASED INNOVATION TO HARNESS THE FULL POTENTIAL OF TECHNOLOGY IN THE PUBLIC INTEREST

Cities are hotbeds for DSI because they gather people, assets, skills, key stakeholders and digital and physical infrastructure. At the same time, they face a huge range of challenges that DSI is uniquely placed to tackle. By recognising the importance of urban environments to scale Digital Social Innovation and identifying place-based testbeds for procurement and context-specific approaches, the EU can play a key role in building the capacity of city administrations through funding, technical advice and knowledge-sharing.

At the same time, innovation should not be limited to urban areas. Rural areas are already confronted with a deficit in infrastructure, educational offers, local supply and commerce, along with the necessary resources to adapt to digital transformation including skilled labor. Digitalization is a means of overcoming distance barriers for businesses and people. By supporting rural areas in harnessing the potential of technology, the EU can ensure that the gap in inequalities and the digital divide do not widen.

Recommendations

The EU should recognise the importance of urban environments for scaling Digital Social Innovation as well as identify and develop place-based testbeds for procurement and place-based approaches. **City administrations need direct help to grow their capability, and testbeds require funding, support, technical advice and knowledge sharing.**

At the same time, regional policy should prioritize investment into digital infrastructure in rural, remote and vulnerable areas to support upward cohesion and ensure that people and companies in these areas have equal opportunities to participate in civic, economic and social activities.

What would success look like?

- Strong relationships between city governments and the DSI community are established and enable a strong ecosystem of collaboration and support.
- Investments in regional infrastructure, especially into digital infrastructure, training facilities and public transport have become a policy priority for regions at risk of being left behind.

8.4 SUPPORTING DIGITAL CIVIL SOCIETY

Digital technologies allow civil society to deliver services in new ways, generate new income, engage stakeholders as co-creators and increase their impact. However, the engagement of civil society organizations, NGOs, social enterprises and trade unions with Digital Social Innovation has so far been limited, despite the opportunity it offers them to deliver better services at a lower cost. The EU is uniquely placed to invest in the capacity of CSOs on technology for social good by providing funding and support for digital literacy, capacity building, awareness and knowledge sharing.

Recommendations

The EU should support civil society to equip itself for the twenty-first century by providing funding and support for digital literacy, capacity building, awareness and knowledge-sharing. As a rule, civil society should be included in decisions on funding for technology. For this to happen, **the next Commission should intensify its outreach to civil society organizations (CSOs) and its investment in building their capacity on technology for social good.** Financial support for DSI should not only focus on start-ups and grassroots organizations, but also on improving digital maturity in established civil society organizations and supporting DSI initiatives within them.

What would success look like?

Civil society organizations - from the smallest grassroots organizations to the largest charities and cooperatives - are equipped with the people, skills and tools to make the most of digital technologies to engage end-users and other stakeholders and deliver services in new, cheaper, more effective, and more participatory ways.

ACKNOWLEDGEMENTS

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