

# Response to ICDPPC public consultation on Ethics and Data Protection in Artificial Intelligence

Brussels, 25 January 2019

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## EXECUTIVE SUMMARY

DIGITALEUROPE welcomes the International Conference of Data Protection and Privacy Commissioners' (ICDPPC) Declaration on Ethics and Data Protection in Artificial Intelligence as well as the establishment of the related permanent working group.

Responsible development and use of artificial intelligence (AI) rest on a principled approach to data protection and privacy. AI doesn't necessarily present a threat to these rights. We believe AI can be developed and used in a privacy-protective way. It can even enhance privacy, if developed and used correctly.

We hope this public consultation will contribute to a constructive debate on data protection and AI as well as to the future work of the newly established working group. We believe the Conference is well placed to enhance public debate on these topics, and we look forward to the working group's contribution towards a better understanding of, and respect for, data protection principles in the development and use of AI.

We welcome the Conference's ambition to operate within a global context and encourage the working group to take into account similar exercises driven by other stakeholders in the international community. The current policy discussions on AI around the world revolve around the same challenges and opportunities, and the nature of AI requires cross-regional policy approaches in order to appropriately address AI's risks and enable its full benefits.

We support the acknowledgement of the need for data protection and privacy authorities to work with other authorities addressing human rights. Collaboration will need to go hand in hand with expert knowledge in order to generate fruitful discussions on AI. With the growing importance and volume of personal data processing, data protection and privacy authorities are challenged today in terms of human and financial resources. Their expertise needs to increase and remain specific in order to respond effectively to their tasks. Similarly, other authorities will have to strengthen their capacity and resources whilst maintaining their specific focus.

The challenges identified in the Declaration are accurate and reflect industry experience. We believe the Declaration identifies the right principles and provides useful input to the public debate. In our response we would like to provide input and comments on the Declaration's specific guiding principles.

## FAIRNESS PRINCIPLE AND REDUCING AND MITIGATING UNLAWFUL BIASES OR DISCRIMINATIONS

DIGITALEUROPE believes that the principles of fairness and reducing biases or discriminations could be merged into one, as fairness is closely linked to impartiality and equity.

When addressing both concepts, it is important to consider that the AI ecosystem is more complex than personal data processing. In fact, specific AI use cases may not even involve personal data in the first place. Therefore, we feel a blanket application of personal data protection principles to all AI systems overstates the relevant challenges. This is particularly the case when the Declaration refers to the need to ensure that AI systems remain consistent with their original purposes and that data is used in a way that is not incompatible with the original purpose of collection.

With this exception, the Declaration otherwise raises valid considerations on this topic. DIGITALEUROPE believes that for AI to be beneficial for society at large, we must strive to tackle the challenges related to biases. While AI models will never be completely free of biases, as bias permeates our world and societies, there is a lot we can do to address the issue and constantly improve models.

One of the ways to reduce bias is to place attention on the quality of data sets. In many cases, bias can be reduced by using a larger and therefore more representative data set. To make a system fairer towards minority groups, developers might need to access sensitive information about their sample, for example race. A principled but flexible approach to the use of data is needed in such cases to respond to important ethical issues.

Combined with training and education of the designers and users of AI and algorithms, this will help to prevent discrimination but also to better detect and correct issues as they arise. Robust governance processes, including the introduction of continuous re-evaluation to detect divergences and anomalies and correct flaws, play a key role towards ensuring fair AI.

## CONTINUED ATTENTION, VIGILANCE AND ACCOUNTABILITY

DIGITALEUROPE welcomes the suggestions provided in this section and recognises the importance of promoting accountability across the whole chain. There are two points that we believe merit attention here.

Firstly, as with other matters, one-size-fits-all approaches that carry excessive or ineffective requirements can have many unintended consequences.

Not all AI systems require the same level of vigilance and oversight. When these principles are implemented in practice, there needs to be appropriate and effective differentiation of AI systems, for instance based on the level of risk arising from the context or purposes of the AI system or the potential harm to individuals.

Secondly, the reference to ‘demonstrable governance processes for all relevant actors’ is important also in this context and can be facilitated by voluntary governance models. Here again it is equally important to mention the role of good data quality, which needs to be the cornerstone of good governance, improved algorithmic performance and effective review of algorithmic outputs.

## IMPROVING TRANSPARENCY AND INTELLIGIBILITY

Improved systems’ transparency and intelligibility is key to building trust. We view ‘transparency’ as meaningful information to users about their interaction with an AI-powered service or product. We believe such information provision, proportionate to the product’s or service’s purpose and context, will enhance users’ trust in the technology and facilitate uptake across the board.

A certain level of clarity should be envisioned on why a model returns a certain outcome. We have clarity on what factors influence a system – we know what data it was fed – but there may be challenges around

understanding how that information was combined to arrive at an output. Human reasoning works in a similar way, as humans may not be able to describe the exact process behind their decisions. With AI systems, we can actually take action to make this decision-making process fairer and more equal.

‘Algorithmic transparency’ is not a useful way to deliver understanding and accountability. It is widely recognised today that a public disclosure of the software programming code would not achieve the intended results. The goal should be to be able to provide meaningful explanations about models’ interaction with the input and training data. Output data is also relevant in this context, particularly in relation to techniques that help ‘reconstruct’ the algorithmic method.

Industry and academic researchers are already developing techniques giving more information and context behind AI-driven decisions. The same applies to voluntary international standards that define algorithm explainability for different AI implementations. Principles and guidance are being produced to assist developers in making systems auditable from the start. This effort meets the needs of the users, but also of the practitioners themselves, who want to build better models and ensure that AI is fit for purpose.

## ‘ETHICS BY DESIGN’ APPROACH

We support an ‘ethics by design’ approach to the development and use of AI systems. This approach in practice would mean that ethics principles would be taken into account when developing and using AI.

The development of ‘ethics by design’ can borrow from the ‘privacy by design’ principles and their implementation. However, it would be insufficient and inadequate to model ‘ethics by design’ solely on the latter.

‘Ethics by design’ is already undertaken by a large portion of the industry and needs to be flexible enough to accommodate the breadth of AI uses, applications and types of systems.

## EMPOWERMENT OF EVERY INDIVIDUAL

Individuals’ empowerment with respect to their rights, including data protection and privacy, is an important element of transparency and trust creation. It will enable AI to provide its full benefits to individuals and society as a whole.

As we have argued in the sections above, however, we feel that a verbatim application of data protection concepts to all AI systems as such overlooks the complexity of the AI ecosystem. Risk-based accountability approaches will be more practicable to reflect such complexity while protecting individuals.

Data protection rights will clearly apply in the context of AI where personal data processing takes place, but specific AI use cases may not even involve personal data in the first place. More broadly, not all AI systems will raise the same concerns and it is important to differentiate between different use cases, taking into account the various contexts and purposes that different AI systems may operate within.

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## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total over 35,000 ICT companies in Europe represented by 63 Corporate Members and 40 National Trade Associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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