

- Bundesverband E-Commerce und Versandhandel Deutschland e.V. (bevh) -

Position on the EU's AI White Paper

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Contact: Alien Mulyk, Manager Public Affairs EU & International, am@bevh.org

1. Introduction

E-commerce is the driver for digitalisation in retail. This is especially true for the use of artificial intelligence. AI is today already applied for various different purposes in online retail along the whole supply chain. Whether it is intelligent human-machine interaction in customer service, a forward-looking procurement system that can often anticipate precisely actual requirements, the optimisation of the product range or the delivery, as a tool in the fight against cybercrime and fraud – be it for the endconsumers or the commercial users: The AI applications used in e-commerce are diverse and offer solutions that IT has not been able to provide so far, or at least not in an economically viable way. This development is not only beneficial for the companies themselves. The use of predictive technologies can also contribute to more sustainability and resource efficiency.

Therefore, the considerations in the EU White Paper “On Artificial Intelligence – A European approach to excellence and trust” are highly relevant for the sector and as German e-commerce association, bevh¹ welcomes the commitment to promote the use of AI in the EU and to provide funding for it.

2. Need to ensure the uptake of AI by businesses

We welcome the planned promotion of innovation and research in the field of AI as well as the objective to fill the skill shortages by ensuring the necessary education and upskilling of the workforce. Both is essential for Europe to remain competitive at global level in the future and will be crucial for encouraging companies to use AI applications. Moreover, increased practical knowledge about AI will also enhance trust in safe AI applications among consumers.

Another prerequisite for companies to take up AI technologies is the access to data. The Commission rightly highlights both, the great importance of the value creation from data and the need for a large amount of different types of data. Therefore, a responsible use of data must not be hindered by preventing access to data. In this sense, the Commission should not emphasize the prevention of data collection in the data protection regulation, but rather their security with regard to data processing.

Representing 99% of all businesses in Europe, SMEs are the backbone of the EU's economy. Therefore, their role will be crucial in promoting the broad uptake and acceptance of AI. Many small and medium sized online retailers are already using AI applications today in the public clouds of international corporations for various purposes. The use of these applications will even be more important in the future to ensure that they can compete at global level. Thus, we welcome the focus put on SMEs and the planned strengthening of already existing Digital Innovation Hubs and platforms.

¹ The German E-Commerce and Distance Selling Association (bevh) represents a dynamically growing membership of large and small distance selling businesses using the internet, catalogues, direct sales and TV as sales channels. The members of bevh represent more than 75% of the total industry turnover in Germany. In addition, more than 130 service providers from the e-commerce sector are affiliated to the association.

However, when providing support to SMEs to understand and adopt AI solutions, these hubs need to make sure that their recommendations are fit and tailor-made for the respective sectors.

3. Need to attract investors

The White Paper rightly deplores that there is significantly less investment in AI research and innovation in the EU than in other parts of the world, particularly the US and Asia. Considering previous investments, the envisaged annual investment of € 20 billion in the period 2020-2030 seems to be quite ambitious. The envisaged sum can only be reached if international corporations can be attracted to invest into research in Europe. Thus, we welcome that the EU White Paper announces to establish a coordinated set of rules for research on AI projects for non-European investors.

In order to increase the willingness for investments in the EU and its attractiveness for AI development, an EU-wide common legal framework in combination with common data spaces is needed. Otherwise, fragmented interpretations of data protection and data security rules could prevent high investments from being made. In this context, the Commission should ensure that no additional obstacles are created in the course of the new e-privacy regulation and the evaluation of the GDPR and strengthen the cooperation and effective coordination between Member States.

4. Need for a user-centric approach

We agree that trust is the basis for the uptake and acceptance of AI especially by the end-users. However, for this reason, we are skeptical about narrowing the perspective down to industrial data and the investment focus on the industrial sector. Therefore, an AI as well as a data strategy cannot purely be developed from the point of view of the industry but need to involve consumers and the data produced by them in order to achieve the desired effects of a more sustainable production and consumption.

5. No need for fundamental changes to legislation

We welcome that the Commission intends to build the ecosystem of trust on the already existing far reaching European legislation on fundamental rights, consumer protection, product safety and product liability. Open legal questions with regard to AI can to a large extent be resolved on the basis of legal provisions already in force. A further development of intellectual property and product liability law, which is being discussed in the professional public, is only necessary where applicable law does not sufficiently reflect the legal issues associated with the use of AI. But if needed, moderate adjustments of the already existing principles will be enough to cover the use of AI in software and machines. This also applies to insurances against possible damages.

In any case, the threat of over-regulation must be prevented at all costs. Moreover, taking the international dimension of AI into account, new requirements should only be applied entirely uniformly throughout the Single Market. In addition, any changes to the existing rules should not result in unnecessary and disproportionate burden for SMEs.

6. Need for a risk-based approach

We believe that algorithm-based processes without any potential for damage or discrimination should not be subject to any further regulations. For example, applications exclusively having a tool function such as automated product list sorting or image recognition for automated product data description as used in e-commerce are not entailing any risks. Therefore, we broadly agree with the proposed risk-based approach applying specific mandatory requirements only to those applications that are considered high-risk based on both, an assessment of the sensitivity to risk of the typical activities in a sector and the sensitivity to risk of the manner of use of the AI application in the sector.

Only these high-risk applications should be classified ex-ante, monitored ex-post and if necessary re-trained as suggested by the White Paper. Some of the mentioned mandatory legal requirements for these high-risk applications might however be problematic.

First, algorithms are permanently evolving, which means that a decision taken at a time t , does not necessarily look the same at a time $t+x$ although the same data was taken into consideration. Robustness and reproducibility of outcomes and human oversight are, therefore, difficult to achieve without undermining the principle of machine learning itself. Machine learning is today not based on static algorithms anymore, but algorithms are rather trained by algorithms today, which makes the reproducibility of decisions problematic. This approach offers a great opportunity for better decisions, but also the risk of less transparent ones. Nevertheless, even such opaque decision can be correct. A process needs to be defined that allows for the continuous monitoring by qualified institutions. We welcome that the EU White Paper recommends this in terms of compliance and enforcement. However, algorithms are the basis of digital transformation. Thus, they should not be put under general suspicion as for example in the German Data Ethics Commission's proposal for a regulation of algorithms.² A more balanced approach is needed at European level, otherwise digitisation will be hampered.

Another requirement for high-risk AI applications is that users have to be informed when they are interacting with AI. In our view, it is very important that this requirement really remains limited to these high-risk applications. Otherwise, as AI is today part of many background processes, this would rather risk creating mistrust against AI and also uncertainty with regard to its use. Moreover, there are also hybrid forms in direct interaction with the user, where no clear classification is possible.

7. Opportunities of a voluntary labelling scheme

Although there is no need to label applications complying with existing legislation, a voluntary labelling scheme for non-high-risk applications as proposed by the Commission could be an opportunity to showcase the trustworthiness of the AI used. However, it needs to be clearly specified which information and documentation obligations would be linked to such labelling scheme. If the labelling scheme is not set up properly, it will rather lead to uncertainty and does not serve the purpose of the White Paper to increase the acceptance of and trust in AI.

² https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/it-digital-policy/datenethikkommission-abschlussgutachten-kurz.pdf;jsessionid=7467153AAA956D6986A879346DA2F4A4.2_cid373?__blob=publicationFile&v=2