**Follow up to the European Parliament non-legislative resolution on shaping the digital future of Europe: removing barriers to the functioning of the digital single market   
and improving the use of AI for European consumers**

1. **Rapporteur:** Deirdre CLUNE (EPP / IE)
2. **Reference numbers:** 2020/2216 (INI) / A9-0149/2021 / P9\_TA-PROV(2021)0261
3. **Date of adoption of the resolution:** 20 May 2021
4. **Competent Parliamentary Committee:** Committee on Internal Market and Consumer Protection (IMCO)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution presents the position of the European Parliament on the functioning of the digital single market and the use of Artificial Intelligence (AI) for European consumers. It calls on the Commission to avoid the fragmentation of the digital single market, to remove any existing unjustified barriers and administrative requirements and to support innovation, especially for small- and medium-sized enterprises (SMEs). The resolution further calls on the Commission to support sustainable technology in the realisation of the Green Deal. It stresses the necessity of the Digital Europe Programme, the Horizon Europe programme and the Connecting Europe Facility for the digital transformation of Europe, and calls for their timely deployment. The resolution also recommends a comprehensive European approach to foster investments in technology in the EU. The resolution is supportive of the objective set forth by the Commission to increase the availability and sharing of non-personal data and highlights the importance of high-quality datasets to fully unlock the potential of the Green Deal. It is also concerned with SME access to data, in particular non-personal data, based on voluntary processes and in compliance with relevant legislation. The resolution welcomes the new EU’s Cybersecurity Strategy for the Digital Decade. It argues that the current legal framework does not provide for general mandatory cybersecurity requirements for products or services and calls for a ‘whole-of-society’ approach towards cybersecurity. The resolution also takes note of the proposals for a Digital Services Act and for a Digital Markets Act and considers that both should guarantee a high level of consumer protection and the improvement of users’ rights, trust and safety online, while supporting innovation. With regard to AI, the Parliament welcomes the Commission’s White Paper and calls for a common EU regulatory framework that is human-centric, risk-based, clear, future-proof, in full respect of fundamental rights, that ensures consumer and data protection and security, and that fosters innovation. Acknowledging certain risks associated to AI, the resolution stresses the need for adequate human control, transparency, explicability and basic consumer education on AI. While the Parliament considers that the use of AI in high-risk contexts should be limited to specific purposes, it also voices concerns about overly complex regulatory burdens.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

Part 1: removing barriers to the functioning of the digital single market

The Commission agrees with the Parliament on the importance that Europe has a strong vision for Europe’s digital transformation by 2030, including as regards the digital single market. It refers the Parliament to its communications on ‘Shaping Europe's digital future’ (the ‘Digital Strategy’, COM(2020) 67 final) and on a ‘2030 Digital Compass: the European way for the Digital Decade’ (the ‘Digital Decade Communication’, COM(2021) 118 final).

The latter communication includes, inter alia, the objectives of having, by 2030, 75 % of European enterprises taking up cloud computing services, big data and AI, more than 90 % of SMEs reaching at least a basic level of digital intensity and Europe to grow the pipeline of its innovative scale-ups and to improve their access to finance, leading to doubling the number of unicorns in Europe (**paragraph 2**). The Commission’s SME Strategy (COM(2020) 103 final) also supports European SMEs in becoming more digital, including, for example, with the network of European Digital Innovation Hubs (see also under **paragraph 18**, further below), as well as Digital Crash Courses for SME employees and a ‘digital volunteers’ programme matching young skilled people and experienced seniors. Concerning the call for a ‘fitness check’, the Commission already systematically reviews how newly proposed legislation affects SMEs. This review, referred to as ‘the SME test’, is mandatory for all impact assessment processes that precede legislative proposals.

Concerning **paragraph 6**, the Commission set out its views on the matter in its Digital Strategy and in the Digital Decade Communication. In particular, the Digital Strategy announced ‘initiatives to achieve climate-neutral, highly energy-efficient and sustainable data centres by no later than 2030’. To meet this goal, the Commission will rely on a mix of existing instruments, including the Ecodesign Regulation on servers and data storage products ((EU) 2019/424), the EU Code of Conduct on Data Centre Energy Efficiency, the EU Green Public Procurement criteria for data centres, server rooms and cloud services. As part of the ‘Fit for 55’ package, the Commission proposed to revise the Energy Efficiency Directive (2012/27/EU), which aims to set measures for the recovery of waste heat, strengthen the provisions for the energy management and energy audits by large energy consumers like data centres and propose a scheme for a transparent reporting of the data centres’ sustainability. The Commission also adopted a delegated act related to the Taxonomy Regulation ((EU)  020/852), which sets the framework for investments to be qualified as sustainable, covers data centres and is currently subject to the scrutiny of the Parliament and of the Council. Concerning the management of networks and services needs in the context of an integrated energy system, the Communication on an Action Plan on the Digitalisation of the Energy Sector (PLAN/2021/11398) aims at supporting the reduction of the carbon footprint of Information and Communication Technology (ICT) solutions, with measures that increase energy efficiency, reuse waste heat, and promote the use of renewable energy sources. Furthermore, funding from various programmes (Horizon Europe, the Connecting Europe Facility, Digital Europe, InvestEU, the Recovery and Resilience Facility) can also be directed towards the greening of data centres. The Commission is also currently conducting a study to address the lack of commonly accepted definitions and methods to assess the energy-efficiency, climate-neutrality and overall sustainability of data centres. The study will be useful for development of a common measurement framework to assess progress in achieving the Digital Strategy goal of having climate neutral, highly energy-efficient and sustainable data centres by no later than 2030, as well as proposing policy options to meet those goals. AI is also prominent in Clusters 4 (‘Digital, Industry and Space’), but also 5 (‘Climate, Energy and Mobility’) and 6 (‘Food, Bioeconomy, Natural Resources, Agriculture and Environment’) of the Horizon Europe programme, in ways that can contribute to the Green Deal objectives. The Digital Europe Programme can fund the testing and experimentation of AI-based solutions in sectors such as manufacturing, agri-food, smart cities and communities. Moreover, the funding support from both funding programmes for edge AI developments and optimised AI chips with very low power consumption is expected to contribute to greener AI as well. Finally, as announced in its SME Strategy, the Commission will launch a green tech investment initiative to pool funding from the EU, the Member States and the private sector to increase access to equity finance for innovative SMEs and start-ups that develop and adopt green tech solutions.

The Commission fully agrees with the Parliament that the success of the Green Deal relies, inter alia, on the accessibility of interoperable data (**paragraph 7**). The latter, combined with digital infrastructure (e.g. supercomputers, cloud, ultra-fast networks) and AI solutions, can facilitate evidence-based decisions and the understanding and addressing of environmental challenges. A Common European Green Deal data space, announced by the Data Strategy (COM(2020) 66 final) in February 2020, will use the potential of high-value datasets in support of the Green Deal priority actions on climate change, the circular economy, zero-pollution, biodiversity, deforestation and compliance assurance.

The Commission recognises the need for a balanced, future-proof and evidence-based approach to legislation (**paragraph 9**). It refers the Parliament to its Communication on Better Regulation (COM(2021) 219), which foresees, among others, a more streamlined, inclusive and simpler consultation system, a ‘one in, one out’ approach to minimise burdens for citizens and businesses, the mainstreaming of the United Nations Sustainable Development Goals, the improvement of the way in which better regulation addresses and supports sustainability and digital transformation, and the integration of strategic foresight into policymaking.

Concerning **paragraph 12**, the Commission refers the Parliament to the Digital Strategy and the Digital Decade Communication and to its recent proposal for a regulation on a horizontal regulatory framework for AI (‘AI Act’, COM(2021) 206 final). Its principal objective is to facilitate the protection of safety and fundamental rights of people, and to ensure the proper functioning of the single market by creating harmonised rules for the development and use of trustworthy AI in the Union. In this context, the Commission agrees that SMEs should be at the centre of European initiatives aiming to support innovation and believes that the regulatory framework on AI should not disproportionately affect their competitiveness (as indicated in **paragraph 17**). The Commission notes that the AI Act proposal provides legal certainty and that rules are intended to apply only where strictly needed and in a way that minimises the burden for economic operators, with a light governance structure (**paragraph 88**). The AI Act proposal addresses risks, while shielding from diverging national regulations other systems that are not posing high risks to safety or fundamental rights. It enhances the uptake of AI by increasing users’ trust, legal certainty as well as by providing for special tools and measures to support small-scale providers and users.

The Communications on ‘EU law: Better results through better application’ (C(2016) 8600) and on the ‘Long term action plan for better implementation and enforcement of single market rules’ (‘Single Market Action Plan’, COM(2020) 94 final) provide the framework for the strategic enforcement policy of EU law (**paragraph 13**) and a proactive dialogue with the Member States. As stated in the former communication, the Commission believes it important to use its discretionary power in a strategic way to focus and prioritise its enforcement efforts on the most important breaches of EU law affecting the interests of EU citizens and businesses. As stated in the Single Market Action Plan, the Commission agrees with the Parliament that the effective enforcement of single market rules requires collaboration at all levels of governance in the EU, starting from local and regional administrations and courts, all the way up to the European level, and that it is crucial that the Member States and the Commission support each other in their respective roles to live up to their shared responsibility. To strengthen such cooperation, the Commission set up a joint Single Market Enforcement Task-Force in April 2020, which is composed of the Member States and the Commission. As of July 2021, the Task Force had met seven times, the last one in June 2021, where it discussed progress on the work to remove some of the most pressing and long-standing barriers in the single market to ensure its proper functioning in supporting recovery and the digital and green transitions.

The Commission agrees with the Parliament on the importance of a regulatory framework and policies that support innovation, consumer protection, and a strong and fair single market for Europe to successfully navigate the digital transformation (**paragraph 14**), in line with better regulation principles. In this respect, it refers the Parliament to the Digital Decade Communication, the Digital Strategy and the Data Strategy, as well as to the proposed Digital Services Act and the proposal for an AI Act.

Concerning digital education and skills (**paragraphs 63 and 84**), in addition to the objectives set out in the Digital Decade Communication and in the Digital Education Action Plan 2021-2027 (COM(2020) 624 final), the Commission refers the Parliament to the 2021 review of the Coordinated Plan on AI (COM(2021) 205 final), and its Section 8 in particular, as well as to a number of relevant actions for the improvement of skills (including advanced, and in relation to AI) that are envisaged under the Digital Europe, Horizon Europe, including the Marie Skłodowska-Curie Actions, and the Erasmus+ programmes (the Digital Opportunity Traineeships). The Commission recalls that the Digital Competences Framework is currently updated to include AI and data-related competences and that, with the support of a dedicated expert group, it works on the development of ethical guidelines for teachers and educators on AI and data usage in the education and training process. Lastly, in 2022 the Commission plans to propose a Council recommendation on improving the provision of digital skills in education and training.

The Commission also shares the call of the Parliament to boost support for research and innovation in AI, which is indeed one of the cornerstones of ensuring the digital sovereignty of the Union (**paragraph 88**). Section 5 of chapter II of the Coordinated Plan on AI puts forward a set of concrete actions and steps to achieve AI research and innovation excellence, for instance an AI lighthouse for Europe and additional networks of AI excellence centres to be funded under the Horizon Europe programme.

Under the Recovery and Resilience Facility (RRF), the centrepiece of NextGenerationEU (**paragraph 18**), the Member States committed to spend at least 20 % under their Recovery and Resilience Plans to foster the digital transformation, including investments and reforms. When receiving the Member States’ plans, the Commission assesses whether such digital target is met, but also, inter alia, whether the proposed measures respond to the Country Specific Recommendations and whether they have a transformative nature. As proposed by the Commission, the Member States can use RRF funds to support multi-country projects, thus building European digital capacities, including high impact technologies and pan-European infrastructure. Projects such as ‘Building and Deploying European Common Data Infrastructure and Services’, and ‘Design and manufacturing of the next generation of processors and semi-conductor chips’ have seen significant take-up in the Recovery and Resilience Plans of Member States.

Concerning the Parliament’s call in **paragraph 19**, the Single Market Programme (Regulation (EU) 2021/690) provides support for the competitiveness and sustainability of enterprises, especially SMEs, including when it comes to their digital transition, as reflected in the first work programme of the SME pillar (C(2021)3046, Annex 2). The Commission will also enhance and upgrade the Enterprise Europe Network including with sustainability and digitalisation services, in collaboration with other support services such as the Network of European Digital Innovation Hubs (see more on this below). The Joint Cluster Initiative will improve industrial ecosystems, boost their resilience and improve technologies and supply chains. Other actions concern tourism SMEs, the EU Built environment and the Single Digital Gateway. In this context, the above-mentioned network of European Digital Innovation Hubs is also relevant. The RRF is also expected to give a major boost to implementing the SME strategy. In this regard, it is worth noting that the Recovery and Resilience Plans assessed and officially endorsed by the Commission until now show that the Member States are dedicating to the digitalisation of businesses, including SMEs, around one fifth of the part of their budgets devoted to the digital transition [[1]](#footnote-1).

Furthermore, to address the substantial investment gap for innovative digital start-ups and SMEs in Europe (**paragraph 20**), the Commission will use the InvestEU Fund to ensure availability of risk capital for early and growth-stage equity investments into European SMEs (including start-ups). The European Commission also developed a dedicated AI and Blockchain Investment Fund, which enhances access to finance in the form of equity, to innovative and higher risk AI and blockchain SMEs and start-ups that develop and deploy innovative AI and blockchain technologies. The total investment volume of the fund is reaching approximately EUR 900 million for 2020/2021 through co-investments from venture capital funds and the European Investment Bank's co-investment facility. This dedicated fund is expected to be scaled-up and broadened in the form of a Strategic Digital Technology Fund for investments in innovative digital start-ups and SMEs that are developing and deploying breakthrough technologies.

Concerning **paragraph 21**, the Commission recalls that it has adopted the work programme of Horizon Europe for the period 2021-2022, for a total of EUR 14.7 billion in funding. It is estimated that 34 % of funds in the presented work programmes, and 35 % of funds across all parts of Horizon Europe, contribute to the digital transition. This equals to overall investments of EUR 8.49 billion during 2021-2022. The overall investment into main digital activities, i.e. the development of core digital technologies, is estimated at EUR 4 billion in the same period. The Commission is also finalising the first work programme for the Digital Europe programme and for the Connecting Europe Facility – Digital.

As regards global standards (**paragraph 22**), the Commission will work with international and European standardisation organisations, and has called for cooperation between the various stakeholders and standardisation organisation in the ICT standardisation rolling plan. The Commission agrees with the need of using the different tools existing in the standardisation system, including schemes such as the European Committee for Standardisation (CEN) Workshop Agreements and the European Telecommunications Standards Institute (ETSI) Industry Specification Groups in specific areas when relevant. Furthermore, based on the successful EU acquis on product safety, the proposed AI Act was conceived as a New Legislative Framework legislation. This means that harmonised standards are a key tool for the implementation of the future legislation and contribute to ensure that AI systems are safe and trustworthy.

With reference to **paragraph 23**, it is a priority of the Commission to make sure that Europe harness the potential of the large amounts of industrial data for the benefit of the European economy and society. The legislative proposals for a Data Governance Act (presented in November 2020) and for a Data Act (forthcoming) are meant to build on, and be compliant with existing European legislation on privacy and data protection, notably the e-Privacy Directive (2002/58/EC) and the General Data Protection Regulation (GDPR, (EU) 2016/679), and fully respect European values and fundamental rights.

The Commission also fully agrees with the Parliament on the need of making more data available for re-use for the general interest in Europe, including data generated by public undertakings (**paragraph 25**). In this regard, the Open Data Directive ((EU) 2019/1024) aims to minimise the risk of data lock-in in the case of public–private agreements concerning public sector data. An implementing regulation planned for 2021 is intended to further contribute to unleashing the socio-economic potential of data as public good by defining the list of specific high-value datasets within six thematic categories (geospatial, earth observation and environment, meteorological, statistics, mobility, and companies). Such datasets will have to be made available for free, in machine-readable formats, via application program interfaces (APIs) and (where relevant) as bulk downloads.

Concerning **paragraph 30**, the Commission will provide more guidance on how the existing EU consumer law framework can be applied to new problematic practices in the digital area by updating the guidance documents on the Unfair Commercial Practices Directive (2005/29/EC) and on the Consumer Rights Directive (2011/83/EU) based on the recent amendments to EU consumer law. The Commission further investigates, including through studies, new practices that raise fairness concerns for consumers and also works on the modernisation of the relevant legislation. For example, the Commission’s recent proposal to replace the General Product Safety Directive (2001/95/EC) with a new General Product Safety Regulation also addresses the safety of products linked to new technologies and AI as well as on the challenges posed by the growth of online sales and the role of online marketplaces in the constantly developing supply-chain. The new Commission proposal for a directive on consumer credits also aims at addressing developments brought by digitalisation, including the use of automated processing for providing personalised offers to consumers and for creditworthiness assessments. The proposed Digital Services Act is also very relevant in this context, in particular as regards the dissemination of illegal content, including selling dangerous products or infringing consumer protection rules. The Commission’s proposals on the Digital Services Act and on the General Product Safety Regulation are fully aligned and are building on each other. The Commission is also working closely with the Member States on the transposition of recent amendments to EU consumer law. The Commission works with the competent national authorities to strengthen their cooperation within the Consumer Protection Cooperation network, and will continue investing in digital enforcement capacities. In the coming years, an e-lab is planned to be set up at EU level (the ‘EU eLab’), which should place technologies (software, other tools and devices) at the disposal of national authorities to conduct various investigations, mystery shopping, accessing the offers and interacting with traders’ technologies in the same manner as typical consumers. The Commission is also about to deploy a modern digital e-surveillance tool by the end of 2021, which will support market surveillance authorities in their investigations, monitoring and efforts to ensure offers of dangerous products sold online can be effectively removed.

As regards geo-blocking (**paragraph 31**), the Commission is fully engaged with the national competent authorities with a view to strengthening their cooperation within the Consumer Protection Cooperation network and to provide further guidance. It will also monitor developments with regard to the effects of other measures that aim at facilitating the engagement of traders in cross-border trade, in view of its stocktaking exercise in 2022. As indicated in the Commission’s Media and Audiovisual Action Plan (COM(2020) 784 final), in the course of 2021 the Commission will launch a dialogue with the audiovisual sector to agree on concrete steps to improve access to and availability of audiovisual content across borders.

Part 2: improving the use of AI for European consumers

Regarding the importance of the effective collaboration with the Member States and all stakeholders (**paragraph 36**), in drafting the proposal for the AI Act, the Commission took into account the views expressed in the more than 1 200 responses to the public consultation that followed the publication of the White Paper ‘on Artificial Intelligence – a European approach to excellence and trust’ (‘White Paper on AI’, COM(2020) 65 final), and the views of representatives of the private sector, civil society and the scientific community as expressed in numerous meetings. The proposed minimum requirements for high-risk AI systems laid down in the proposed AI Act are also the result of two years of preparatory work, derived from the Ethics Guidelines for Trustworthy AI prepared by a High-Level Expert Group on AI, which had an inclusive and broad membership of 52 well-known experts. Moreover, the proposed AI Act envisages the possibility of stakeholder participation in the governance framework and in the development of voluntary codes of conduct for trustworthy AI. Furthermore, the revised Coordinated Plan on AI, prepared in close collaboration with Member States, encourages synergies and identifies key action areas where partnership with stakeholders is particularly beneficial. It makes concrete proposals in the context of a significantly different AI landscape and new funding made available through the new Multiannual Financial Framework and the RRF. Finally, the European AI Alliance, launched in June 2018 within the framework of the European Strategy on Artificial Intelligence, brings together a diverse set of participants and has become a point of reference in stakeholder-driven discussions on AI policy.

Concerning the need to ensure close cooperation between the Commission and the Member States in the enforcement of the AI Act (**paragraph 45**), the Commission proposed a coherent governance mechanism and, in particular, the creation of a European AI Board with the purpose to assist the national supervisory authorities and the Commission in ensuring the consistent and effective application of the proposed new rules across the digital single market. The Board is to support the smooth coordination between national supervisory authorities and the Commission and coordinate and contribute to guidance and analysis with regard to matters covered by the proposal (paragraph 13). At the same time, the Member States will be responsible for facilitating the coordination between market surveillance authorities and other relevant national – e.g. sectoral – authorities supervising the application of other Union legislation that may be of relevance to AI.

With regard to **paragraph 40**, the Commission refers the Parliament to Article 59 of the proposed AI Act, which provides for, among others, appropriate competence and expertise of national competent authorities as well as regular assessments of their financial and human resources and exchange of experience. Furthermore, the European AI Board, mentioned above, is meant to have an important role in the improvement of the relevant governance framework. It will be supported by the administrative structure of the Commission and an expert group providing additional expertise where required.

The Commission fully recognises the importance of developing a human-centric, risk-based, clear and future-proof EU regulatory framework for AI (**paragraph 41**) and agrees with the Parliament that the scope and stringency of any regulatory requirements in that regard should be scaled in accordance with the level of risk posed by the AI applications. This approach is reflected in the legislative proposal for the AI Act, which lays down four categories of AI systems according to the level of risk for fundamental rights and safety: (i) certain limited uses of AI systems pose unacceptable risks and shall be prohibited as contravening Union fundamental rights and values, (ii) high-risk AI systems interfering with important aspects of people’s lives, which shall be subject to strict requirements related to data and data governance, documentation and record keeping, transparency and provision of information to users, human oversight, robustness, accuracy and cybersecurity, (iii) certain AI systems (e.g. chatbots or emotion recognition systems) that shall be subject to transparency obligations ensuring that persons are informed that they are exposed to an AI system, and (iv) minimal to no risk which is in fact the large majority of AI applications that will be allowed insofar as they are compliant with already applicable legislation, including consumer protection rules. The proposed regulatory framework for AI is capable of responding in a timely manner to the dynamic market and technological developments in the area through the possibility to update certain elements, such as the list of high-risk AI systems, by way of delegated acts on the basis of clear conditions and criteria.

The Commission fully agrees with the Parliament that clarity and consistency in the interaction between applicable legislation in force and the proposed new rules is very important (**paragraph 44**). While the EU has a strong legal framework for product safety and fundamental rights that applies also to AI systems, the specific features of certain AI systems pose challenges to the enforcement of that legislation and create novel risks to safety, security and fundamental rights. The proposal for an AI Act aims to address those challenges with specific requirements for trustworthy AI that are complementary, consistent with existing legislation and facilitating its effective enforcement. The Commission takes note of the Parliament’s call on the Commission to issue guidance on the functioning and synergy between any current applicable legislation and the new rules.

The Commission agrees that the risks posed by certain AI systems that collect data and adapt in real time to the personal needs and preferences of users (**paragraph 47**) require a comprehensive regulatory approach combining existing and novel legal instruments. It is indispensable that data controllers using such systems implement effectively the GDPR and protect the personal data of natural persons and their fundamental rights. The New Consumer Agenda will further strengthen the rights of consumers, while the proposal for a Digital Services Act aims to enhance the accountability and transparency of digital services and to contribute to a safe online environment. The AI Act proposal is meant to complement these safeguards with specific requirements before high-risk AI systems can be placed on the Union market. The AI Act proposal also envisages the prohibition of a number of unacceptable AI-driven manipulative practices enabled by the vast amount of personal information available, in particular AI systems that use subliminal techniques or exploit vulnerabilities related to age and disabilities in a way that causes or is likely to cause physical or psychological harm.

Regarding **paragraph 53**, the AI Act proposal sets uniform requirements and obligations for high-risk AI systems that are proposed to be operationalised through harmonised technical standards, thus supporting a common understanding and implementation of the new rules. National authorities responsible for their enforcement will have a new mechanism for cooperation at EU level and exchange of information, with an important role for the new European AI Board as explained above. The Board also is also meant to issue recommendations and opinions to the Commission, act as a competence centre that national authorities can consult and support standardisation activities in the area.

The Commission agrees that the assessment of the risk of harm posed by AI applications should be based on an objective methodology focused on the context, application and specific use of the technology (**paragraph 55**). Section 5.4.2. of the Impact Assessment (SWD(2021) 84 final) of the proposed AI Act outlines in particular the rationale behind the identification of AI systems to be prohibited or subjected to mandatory requirements and obligations. In addition, Articles 6 and 7 of the proposed AI Act provide for the specific conditions and criteria that shall be fulfilled for an AI system to be classified as high-risk. For the specific case of algorithmic tools used by online platforms, the proposed Digital Services Act includes detailed risk assessment and mitigation obligations for very large online platforms, which pose the highest societal risks, including as regards the design and use of their algorithmic systems. In accordance with the proposal, the obligations shall be monitored through independent audits, public and regulatory oversight, and be subject to dedicated guidelines.

Welcoming the comments of the Parliament on the importance of innovative regulatory tools such as ‘regulatory sandboxes’ that are conducive to innovation (**paragraph 59**), the Commission notes that the AI Act proposal provides for common rules for ‘regulatory sandboxes’ implementation as well as for other measures to support small-scale providers and users. As indicated in the revised Coordinated Plan for AI, regulatory sandboxes are an important part of building an ecosystem of trust insofar as it is necessary to design public regulation that will facilitate and not stifle innovation. Other measures such as the European Digital Innovation Hubs, Testing and Experimentation Facilities, and the AI-on-demand platform will further contribute to the smooth implementation of the regulatory framework by providing in particular technical and scientific support to providers and notified bodies.

The elaboration of the Commission’s standardisation mandate to European standardisation organisations to produce harmonised standards for the purpose of the AI framework (**paragraph 61**) will be underpinned by extensive technical analysis regarding standardisation needs in the areas covered by the proposed AI Act. This will also include the identification of priority issues where vertical (use-case specific) standardisation may be necessary. As a general rule, standards are reviewed every five years by standardisation organisations. Moreover, whenever harmonised standards are submitted by the standardisation organisations to the Commission for publication in the Official Journal of the European Union, they are subject to the Commission’s legal and technical review. Such review is intended to ensure that the standards produced reflect the contents of the Commission’s mandate and they actually satisfy the requirements of the legislation that they claim to cover.

The Commission has launched an impact assessment process to assess possible ways of adapting liability rules to the digital age and circular economy (**paragraph 65**). This will include updating terms and concepts of the Product Liability Directive and an assessment of whether in some cases the characteristics of emerging technologies make it unreasonably difficult for consumers to obtain compensation. With respect to AI in particular, the Commission is also assessing targeted and risk-based adaptations of national liability laws to achieve the objectives set in the White Paper on AI. A public consultation on the revision of the Product Liability Directive and the harmonisation of national liability rules for AI will be launched shortly.

As already announced in the Commission reply to the Parliament’s resolution on ‘Digital Services Act: adapting commercial and civil law rules for commercial entities operating online’ (P9\_TA-PROV (2020)0273), the Commission is committed to analysing and consulting on the use of smart contracts (**paragraph 67)**, with the objective of overcoming obstacles as well as enabling their use across the Member States. In this regard, the Commission is about to launch a study on smart contracts to identify private law related obstacles and to assess how smart contracts can help to exercise consumer rights in the data economy. In parallel, the Commission plans a targeted consultation with stakeholders on smart contracts. Furthermore, the Commission is working with representatives and technical experts from the Member States, Norway and Liechtenstein under the auspices of the European Blockchain Partnership (EBP) to develop the European Blockchain Services Infrastructure, which aims to build a pan-European infrastructure for the delivery of cross border public services and thus provides a testing environment for innovative blockchain solutions. The EBP aims also to establish dialogue between regulators and innovators.

The Commission welcomes the Parliament’s support for the World Trade Organization (WTO) negotiations on e-commerce (**paragraph 68**). Those negotiations remain the EU’s most important strategic objective in this area and the Commission is strongly committed to advancing them towards an ambitious and balanced outcome. The discipline on the protection of software source code is an important tool to fight the rising trend of digital protectionism. It was introduced in response to the practices of certain governments that force foreign businesses to transfer confidential information to the authorities, which in turn might disclose it to local competitors. Also with regard to the proposal for an AI Act, the EU has indeed taken a prudent position in bilateral and WTO e-commerce negotiations in order to preserve the necessary policy space, while at the same being able to address protectionist measures related to digital trade. These include, for example, data localisation and mandatory technology transfer requirements. The WTO negotiations on e-commerce provide the Union with a unique opportunity to tackle these challenges at global level. The Commission believes that the WTO moratorium on electronic transmissions provides much needed certainty to businesses and consumers around the globe and facilitates digital trade. This commitment is also of systemic importance for the WTO and should therefore be maintained. The EU has effectively implemented its tariff schedule under the Information Technology Agreement (ITA), as approved by all participants in February 2017, and the Commission continues to push for ITA’s and Telecommunication Services Reference Paper’s full implementation by all current members as well as for its geographical expansion.

The regulation of AI is an emerging area and development of global standards incorporating EU’s values (**paragraph 69**) can help to avoid fragmented approaches which often result in the proliferation of trade barriers, whilst at the same time promoting trustworthy AI in line with the EU’s values. The Commission believes that it is important to develop a more strategic and coordinated approach to global standardisation in this area, including with like-minded trading partners, to ensure that standards are set in line with EU values. The Commission is a founding member of the Global Partnership on Artificial Intelligence and is establishing specific cooperation mechanisms on AI with Japan and India.

Concerning **paragraph 70**, the Commission welcomes the establishment of the EU-US Trade and Technology Council and will use this forum to pursue a transatlantic AI agreement. The Commission welcomes the support for the work being done with the United States, Japan and other WTO Members to reform the international rules to better address competition distortions caused by state intervention in the economy, such as subsidies, forced technology transfers and state-owned enterprises. The Commission is promoting a plurilateral initiative on Competitive Neutrality as a way to tackle the negative spillovers in a coherent manner.

As regards transport (**paragraph 71**), the digitalisation of infrastructure of all modes is an important element to limit congestion and hence reduce greenhouse gas emissions and pollution in general, as well as and to improve the safety and security of transport. This was recognised in the Sustainable and Smart Mobility Strategy (COM (2020) 789), which lays down 19 initiatives to advance smart mobility. The Connecting Europe Facility, the Digital Europe programme and the RRF can also contribute to physical and digital infrastructure projects. Furthermore, the revised Trans-European Transport Network (TEN-T) Regulation that will be proposed by the Commission in 2021, and the updated Technical Specifications for Interoperability will promote digitalisation efforts and measures, for example by accelerating the deployment of the European Railway Traffic Management System (ERTMS) in rail to optimize the use of infrastructure, or by deployment of Intelligent transport systems (ITS) on the TEN-T network. The Commission is proposing that Europe’s Rail Joint Undertaking (funded under the Horizon Europe programme) will also develop advanced digitalisation solutions to improve rail performance. The revised Coordinated Plan on AI also sets out, in its section 16, a number of measures to reap the benefits of AI technologies in the transport sector. The Sustainable and Smart Mobility Strategy considers AI as a key enabler for transport automation and digitalisation in all modes and help the transport sector achieve its environmental goals. It can help optimize the planning and conduct of travel, freight and transport operations, allow better prediction and lead to faster and better decisions. Therefore, the strategy announced, under flagship 7 and more particularly action 50, the establishment of an AI roadmap for mobility.

Welcoming the Parliament’s call for a clear strategy for the European Digital Innovation Hubs (**paragraph 80**), the Commission notes that the goal of the network of European Digital Innovation Hubs is to have at least one hub per region in working distance from all SMEs in Europe. They should deliver a seamless service within Enterprise Europe Network. European Digital Innovation Hubs will provide services that take into account the specialisation of the region and will also have specific local knowledge and understanding of the local context. Through the network, businesses will also have access to the expertise of other hubs around Europe. The network will be supported by a support action called the Digital Transformation Accelerator. It will ensure matchmaking for needs and demands at the European level and will facilitate sharing of best practices between groups of hubs with similar interests. The Digital Transformation Accelerator can also facilitate cross-sector learning whenever it would be appropriate. Concerning start-ups, the Organisation for Economic Co-operation and Development, mandated by the Commission, completed a first pilot-study in five countries to determine the ingredients for scaling-up. A follow-up study is being considered. This will give better evidence for a fine-tuned start-up and scale-up policy. As the scale-up gap is widening in the EU, as confirmed by different surveys and academic studies, a specific scale-up financing instrument (ESCALAR) was successfully launched in 2020 and this pilot-scheme will be integrated in Invest-EU 2021 – 2027. According to the Survey on the Access to Finance of Enterprises (SAFE) 2020, taxation is not among the most important issues for SMEs. Tax incentives for SMEs, in some cases, are not well targeted to address their concerns and must be properly designed to minimise the risk of tax avoidance. The Commission is aware that some features of tax systems could have an impact on financing decisions, which is relevant for many SMEs. In view of this, the Commission will bring forward a proposal for a measure to address the debt-equity bias in corporate taxation. Finally, alongside its Communication on business taxation for the 21st century (COM(2021) 251 final), the Commission has also put forward a Recommendation for a carry backward of losses incurred in 2020 and 2021 (C(2021) 3484 final), so as to improve business cash flow, especially for SMEs, and support them during the crisis. As regards the call of the Parliament for a ‘EU Start-up Visa’, admission of third-country nationals through specific schemes for ‘start-ups’ is not regulated at EU level. A mapping of schemes targeting start-up founders and entrepreneurs was conducted in the context of the impact assessment for the Blue Card legislation revision and was updated at the end of 2019 by a study conducted by the European Migration Network on ‘Migratory Pathways for Start-ups and Innovative Entrepreneurs in the EU’. Finally, the fitness check on Legal Migration has also a dedicated annex on the topic and provides for further analytical elements. Against this background, and in the context of Single Permit Directive and/ or other future initiatives on legal migration, the Commission will analyse the need and feasibility of regulating the procedures and/ or admission conditions for self-employed third-country nationals at EU level. Furthermore, through the EU’s Startup Nations Standard the Commission is working closely with the Member States to enhance the enabling environment for start-ups and to ensure that all start-ups and scale-ups in the EU benefit from the best practices underpinning Europe’s and the world’s most successful start-up ecosystems. The standards include concrete best practices on entrepreneurship friendly measures. The Commission also recalls the objective, set out in its Digital Decade Communication, for Europe grow the pipeline of its innovative scale ups and improve their access to finance, leading to doubling the number of unicorns in Europe, by 2030.

As regards **paragraph 85**, the Commission highlights that the proposed mandatory requirements for high-risk AI systems aim to ensure that unfair bias is not embedded in the AI system or is addressed otherwise and its use respects the principles of equality and non-discrimination. AI systems must be technically robust to guarantee that the technology is fit for purpose and results are not affecting protected groups in a discriminatory way. Data-driven AI systems should also be trained and tested with sufficiently representative and relevant datasets to minimise the risk of discrimination and there should be appropriate bias detection, correction and other mitigating measures implemented before the system is placed on the market and during its use. High-risk AI systems must also be traceable and auditable with appropriate documentation that would be key in ex post investigations carried out by national competent authorities. The Commission believes that these requirements will significantly contribute to the development, deployment and use of AI technologies that respect the principle of gender equality and contribute to overcoming gender discrimination. The Ministerial declaration of women in digital that Member States signed in April 2019 is now part of the Commission’s Equality Strategy (March 2020). The Commission is working with national representatives to implement the declaration’s actions.

The Commission shares the Parliament’s view expressed in **paragraph 86** of the resolution that it is important to foster R&I and capacity building in AI and Internet of Things (IoT) technologies in agri-food, in particular to strengthen the sector’s sustainability and economic performance. In the post-2020 period AI and IoT will continue to be approached strategically across programmes. Under the Horizon Europe programme, a portfolio of instruments will be available in the field of digitalisation and data technologies in agri-food. Moreover, a large-scale R&I undertaking has been proposed by Commission in the form of a partnership on Agriculture of Data, to exploit the potential of data technologies and earth observation for the agricultural sector and agricultural policies. In addition the Digital Europe Programme is expected to support the upscaling and deployment of innovative solutions. In the field of agri-food, Digital Innovation Hubs, Testing and Experimentation Facilities for Artificial Intelligence as well as a Common European Agricultural Data Space will be supported to boost the digital transformation of the agricultural sector (see section 17 of the Coordinated Plan on AI). Digital and Data infrastructure relevant for digitalisation in the agricultural sector, including the roll-out of high speed internet, can also be supported under the Connecting Europe Facility and the Recovery and Resilience Facility.

The updated Industrial Strategy (COM(2021) 350 final) analysed strategic dependencies, and in particular identified 137 products in sensitive ecosystems for which the EU is highly dependent on third countries (**paragraph 88**). The updated Industrial Strategy presented measures to address such dependencies, amongst others, via industrial alliances.

The Commission has been a pioneer in supporting research in technology for the next generations of networks in the Horizon 2020 programme (**paragraph 90**). 5G networks were supported in the 5G Public-Private Partnership and will now be supported by the Connecting Europe Facility. In particular, the action for 5G Smart Connectivity aims to support its development and to reduce the digital divide. The digital divide, its impact and policies to reduce it are studied in particular in the Digital Economy and Society Index report.

The Commission agrees with the need to reinforce cyber resilience in the EU (**paragraph 92**), as a general objective to be embedded across all digital policies, mobilising relevant legislation, funding and cooperation to that effect. In particular, EU-funded support for strategic technologies should embed cybersecurity considerations from the outset. The Commission also hopes that the proposal for a revised Directive on Network and Information Security is speedily adopted.

1. Based on the methodology for digital tagging set out in Annex VII of the Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17–75 [↑](#footnote-ref-1)