

Margrethe Vestager  
Executive Vice President, A Europe Fit For  
the Digital Age

Thierry Breton  
Commissioner, Internal Market

Didier Reynders  
Commissioner, Justice

By email

Ref.: BEUC-X-2019-097/MGO/UPA/cs

Brussels, 19 December 2019

**Re: The EU's approach to regulating artificial intelligence**

Dear Executive Vice President Vestager,  
Dear Commissioner Breton,  
Dear Commissioner Reynders,

We are writing in view of the upcoming White paper on artificial intelligence (AI) which we understand the Commission is currently preparing, following President Von der Leyen's commitment that within her first 100 days in office she would put forward legislation for a coordinated European approach on the human and ethical implications of AI. Given your respective role as members of the College with the tasks to co-ordinate, lead and contribute to the European Commission's policy on AI, we would like to provide you with insights into concerns and needs of European consumers with a view to new or potential business practices in this respect.

AI-powered products and algorithmic decision making (ADM) processes are already changing consumer markets and our societies. While their uptake comes with the promise of increasing convenience and efficiency, ambitious solutions are required to ensure that these new technologies do not harm consumers.

Consumers are worried about the risks posed by algorithmic decision making<sup>1</sup> and would like to see public control over the use of this technology. AI leading to manipulation, risk or unacceptable outcomes is among the highest scoring concerns.

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<sup>1</sup> See the survey by our German member vzbv: nearly 80 % of consumer said that supervisory authorities should be able to check whether automated decisions comply with applicable laws and 75 % said automated decisions about consumers are regarded as a risk if the underlying data and principles applied are unclear.  
[https://www.vzbv.de/sites/default/files/2019\\_vzbv\\_factsheet\\_artificial\\_intelligence\\_0\\_0.pdf](https://www.vzbv.de/sites/default/files/2019_vzbv_factsheet_artificial_intelligence_0_0.pdf); Report by the University of Amsterdam, Digital Communication Lab: Automated Decision-Making Fairness in an AI-driven World: Public Perceptions, Hopes and Concerns  
[http://www.digicomlab.eu/wp-content/uploads/2018/09/20180925\\_ADMbyAI.pdf](http://www.digicomlab.eu/wp-content/uploads/2018/09/20180925_ADMbyAI.pdf)

In view of these concerns and views, it is essential to make sure that consumers have strong and enforceable rights to defend themselves when necessary and to empower them to reap the benefits of the digital transformation.

Ethical guidance – such as the principles published in April 2019 by the High-Level Expert Group on artificial intelligence (of which BEUC is a member) – can be helpful as a starting point but is not enough to ensure business act fairly and consumers benefit from effective rights.

We very much welcome that President von der Leyen announced a horizontal legal framework for Europe that sets the main principles to regulate AI and ADM. Regulation is essential not only to protect individuals' rights but is also a pre-condition to spur innovation for the common good. We need legal certainty and strong, enforceable rules to ensure a fair and safe use of this technology.

According to our assessment, the current EU legal framework is not fit for purpose to fulfill its legislative objectives and does not provide a high level of consumer protection as required in Article 38 of the Charter of fundamental rights of the EU. It needs to be updated to effectively meet the challenges related to AI and ADM. In addition, new rules need to be established for example as regards fairness, transparency, accountability and control of ADM uses. Particular regulatory attention should be given to the use of biometric identification technology, such as facial recognition, which is quickly gaining ground when it comes to user identification, authentication and access control.

#### Risk-based approach to EU regulation

Obviously not all AI uses require the same level of regulation. New rules should follow the general principle that the higher the potential adverse impacts of the use of algorithmic decision making and AI, the stronger the regulatory requirements must be. For this purpose, a comprehensive ADM risk assessment system should be developed.

We support the approach of the [German Data Ethics Commission](#)<sup>2</sup> to establish risk categories in the regulatory system for the use of algorithmic systems.

#### AI rights for consumers

We would like to bring to your attention a paper that we recently published which outlines a series of AI rights for consumers<sup>3</sup>. These rights should be concretised and integrated into the EU legal framework. Existing legislation, such as the General Data Protection Regulation (GDPR), or horizontal EU consumer law do not provide enough protection for consumers against the risks created by AI and ADM.

These rights should be the following:

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<sup>2</sup>Opinion of the German Data Ethics Commission, October 2019; summary in English accessible at: [https://www.bmjv.de/SharedDocs/Downloads/DE/Themen/Fokusthemen/Gutachten\\_DEK\\_EN.html;jsessionid=7BF8A3D09569886178644C216BEE266F.1\\_cid289?nn=11678512](https://www.bmjv.de/SharedDocs/Downloads/DE/Themen/Fokusthemen/Gutachten_DEK_EN.html;jsessionid=7BF8A3D09569886178644C216BEE266F.1_cid289?nn=11678512); BEUC's German member vzbv was a member of this Commission.

<sup>3</sup>[AI Rights for Consumers](#) (Ref: BEUC-X-2019-063)

- Right to Transparency, Explanation, and Objection
- Right to Accountability and Control
- Right to Fairness
- Right to Non-discrimination
- Right to Safety and Security
- Right to Access to Justice
- Right to Reliability and Robustness

### Control and oversight

A key point is ensuring that AI and ADM technology is subject to independent control and oversight. Whether an algorithm-based decision is accurate, fair, or discriminative can only be assessed if an appropriate control system is in place.

As a general principle, companies and operators should be able to demonstrate that they comply with the law, such as rules on consumer or data protection, as well as non-discrimination rules. Depending on the level of risk, accountability measures should comprise ADM impact assessments, documentation, internal audits or transparency measures for the users.

At the same time, companies must put in place measures to allow for external control of their ADM systems. This can be done through technical options, such as interfaces, which give data access to competent supervisory authorities. These authorities should be well-equipped and possess the necessary expertise and competences. For those applications that present the highest levels of risk, ex-ante scrutiny procedures (e.g. regulatory pre-approval before market deployment, publication of impact assessments) should be put in place. As an ultima ratio measure, authorities should be able to ban the use of certain AI or ADM systems. They should have the power to terminate ADM systems in case they pose a significant risk to individuals and society that is not properly managed by the company/public service operator using the ADM technology.

### Liability

The existing European rules on liability are outdated to deal with the challenges raised by new technologies and ADM systems. While the Product Liability Directive of 1985 has been a central pillar for the protection of consumers against damages occurred by defects of products, key concepts underpinning the EU regime such as the notion of defect or the burden of proof are no longer adequate with regards to the potential risks of emerging digital technologies. This was also highlighted by the report of the Expert Group on Liability for New Technologies.<sup>4</sup> Therefore, BEUC considers that new rules need to be put in place via a review of the Product Liability Directive to ensure that consumers can rely on effective

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<sup>4</sup> Report from the Expert Group on Liability and New Technologies – New Technologies Formation, *Liability for Artificial Intelligence*, November 2019, available at: [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=63199](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=63199).

restorative and compensatory remedies in case of damages caused by products powered by ADM systems.

### Data access and governance

Data is the building block of our economy. Data impacts how companies innovate, and data is a crucial resource for the development of services and products powered by ADM technologies. But those who “control” the data are not inclined to share it with their competitors. While it is important to ensure firms can compete on the merits by enabling them to access essential data, personal data sharing needs to be done only under full control by consumers. It will be both inappropriate and undesirable that wide data access policies lead to a race to the bottom when it comes to personal data and privacy protection. Furthermore, any data access regime to be developed at sectoral level needs to have a clear governance scheme with strong oversight by supervisory authorities<sup>5</sup>.

The challenges posed by AI and ADM are not only a matter of consumer protection. This is about the kind of society we want to live in. By protecting consumers, the EU protects our democratic values that are so much under threat in current times.

The EU can be a global standard setter when it comes to AI, much like it has been with the GDPR. We call on you to put forward a solid legal framework to ensure AI develops in a way that respects our fundamental and consumer rights and European values and contributes to people leading better lives.

We trust you will take our input into consideration for the upcoming Commission initiative and very much hope we will have the opportunity to meet to discuss our views.

In the meantime, if you have any questions please do not hesitate to let us know.

Yours sincerely,

Monique Goyens  
Director General

Ursula Pachtl  
Deputy Director General  
Member of the European Commission’s  
High Level Group on AI

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<sup>5</sup> [Access to consumers’ data in the digital economy](#), (Ref.: BEUC-X-2019-068)