

## The Consumer Voice in Europe

Ref.: BEUC-X-2022-120

10 November 2022

### Subject: AI Act – Consumer safeguards missing in Council’s compromise text

Dear Deputy Permanent Representative,

I am writing to you on behalf of BEUC, The European Consumer Organisation, ahead of the COREPER discussion on the AI Act (AIA) scheduled for 18 November.

The Council text that will be discussed unfortunately does not address the shortcomings of the Commission’s proposal from a consumer protection point of view. Even if certain positive elements have been added to the initial proposal (e.g., expansion of prohibition of social scoring to private entities), we strongly regret that the current political agreement does not bring the necessary safeguards to address the risks of AI for consumers.

Faced with a technology that can have such a significant impact on fundamental rights, our everyday lives and our society, consumers must have strong rights they can rely on and be sure they can seek redress if they are harmed as a result of the use of an AI system. A technology of this complexity and reach cannot be deployed without giving a high level of protection to the people who will be affected by it.

To ensure consumers are adequately protected, we urge the Council to use these last days before the adoption of the text to ensure the following:

1. **The scope of the AIA must remain broad and clear:** the focus on high-risk AI systems in the AIA proposal is already limited and covers very specific use cases. The scope of the proposal should not be further reduced. The introduction of additional restrictions such as an exemption for purely accessory AI systems is not necessary and will only create legal uncertainty.

Furthermore, the consideration of insurance products as high-risk should not be limited to life and health insurance but should cover all retail insurance products.

2. **The list of prohibited practices needs to be expanded:** the use of remote biometric identification by *private entities* in publicly accessible spaces should be prohibited and the use of emotion recognition systems should only be allowed in very limited circumstances related to health or research purposes, in line with the recommendations of the European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS).<sup>1</sup>

3. **Additional rights for consumers, including *collective redress*, must be introduced:** we welcome the introduction of the right to submit a complaint to a supervisory authority, but important rights towards the (commercial) entity who uses the AI system are missing. For example, the right to an explanation and right to object when an AI powered decision has a significant impact on an individual; and the right for an individual to mandate a consumer organisation to exercise his or her rights under the Regulation.

The AIA should also enable the use of the collective redress mechanisms foreseen in the newly adopted Representative Actions Directive<sup>2</sup>. Given the huge asymmetry of information and the vulnerability of

<sup>1</sup> The EDPB and the EDPS are [calling](#) for the prohibition of AI used to infer emotions, except for very specified purposes (e.g. in the health sector, there could be applications where patient emotion recognition can be important).

<sup>2</sup> Directive 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers

consumers that most AI cases will involve, it is unlikely they will ever be able to bring court cases individually. Consumers must have the right to act collectively in case of mass harm, like it is the case already for example for the Digital Services Act, the Digital Market Act and the General Data Protection Regulation.

- 4. Harmonised technical standards should not be used to regulate or interpret fundamental rights:** standards are traditionally used to implement technical requirements of products and it is highly questionable if technical standards, which are drafted by non-public entities and their technical experts (without for example the input of fundamental rights experts), should regulate or interpret fundamental rights and legal principles.

We thank you in advance for taking our recommendations into consideration. We remain at your and your colleagues' disposal for any question or comment you may have.

Yours sincerely,

Ursula Pachi  
Deputy Director General