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Head of Unit
DG JUST, European Commission
CPC Network
c/o European Commission

By email

Ref.: BEUC-X-2023-045   21 April 2023

Subject: Call for action to open an inquiry on generative AI systems to address risks and harms for consumers

Dear Members of the CPC network,
Dear Ms. Benassi,

I am writing on behalf of BEUC, the European Consumer Organisation, to ask the CPC network to open an inquiry into AI-text generators such as ChatGPT. Our call comes in the context of a rapid development and widespread commercial offer of such systems, their increasing use by consumers and the corresponding risks of deception, fraud, mis- and disinformation.

While such technologies can bring benefits to our economy and society, they come with big challenges and concerns for consumers that become more evident each day. ChatGPT for example can produce inaccurate information while making its outputs sound plausible. Consumers may be easily tricked into believing that they are dealing with a new form of an intelligent or reasonable system, potentially with harmful consequences. Despite their power to manipulate and distort consumer behaviour, these systems are not specifically regulated and are put on the market without an adequate impact assessment by an independent third party and without public scrutiny or specific oversight. The use of these systems is spreading quickly across sectors: For example the company behind ChatGPT, OpenAI, now offers plugins for GPT-4 for consumer services, which means that businesses can buy a license to build the chatbot into their products, including for travel, finance, and shopping.[1]

BEUC thus asks you to investigate the risks that these AI systems pose to consumers as a matter of urgency, to identify their presence in consumer markets and to explore what remedial action must be taken to avoid consumer harm. Below we explain our concerns in more detail.

Consumer protection concerns

As these generative AI systems are designed to emulate human speech patterns, behaviours and emotions, they are inherently manipulative while not predictable. . They can produce highly convincing content which appears true and reliable but is often factually incorrect. They can also persuade consumers to undertake actions they otherwise would not have taken.

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[1] See for example https://twitter.com/OpenAI/status/1638952876281335813?s=20 and plugins in shopping https://www.klarna.com/international/press/klarna-brings-smoooth-shopping-to-chatgpt/ and travel services https://twitter.com/ExpediaGroup/status/1638963397361545216?s=20

The civil society research organisation CAIDP (Center for AI and digital Policy) recently filed a complaint to the U.S. Federal Trade Commission, in which ample evidence is provided of the various consumer risks.[2]

a) Concerns related to misleading consumers by creating a false impression (Art. 6 UCPD[3])

A strong misalignment exists between GPT systems' commonly admitted limitations and their marketing and deployment. OpenAI publicly declares that ChatGPT, despite making an excellent impression, cannot be treated as a reliable source of information and that it was launched as a research "preview"[4]. At the same time, these products are being offered worldwide as commercial products to organisations willing to deploy them in their own contexts, including chatbot functionalities, drafting legal documents[5] or even supporting the work of public administrations.[6]

As a result of ChatGPT's capability to appear intelligent and rational, it makes the impression of being a reliable interlocutor. In this context, evidence demonstrates clearly that ChatGPT influences consumers' judgement even if they know that they are being influenced by an AI system.[7] Thus there is a strong risk of consumers not being in a position to make good use of any information or even warnings put forward by its deployer.

b) Concerns related to potential deceptive commercial statements and advertising (Art 6 and 7 UCPD)

Commercial deployment of chatbots like GPT-3.5 or GPT-4 in a consumer-facing context carries a significant risk related to the roles companies may put the system to perform.

A series of examples about possible problematic uses of such chat bots include:

- a possible rollout to the financial sector and using a language model for giving investments or debt management advice[8], with the risk of financial harm ensuing;

- deployment for consumer credit or insurance scoring, carrying the risk of unfair and biased results, preventing access to credit or increasing the price of health or life insurance for certain types of consumers;

- use of chatbots in e-commerce for a more 'human-like experience' and an illusion of increased trustworthiness, despite the underlying risk of e.g. producing substantially wrong purchasing advice.

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[2] US-based civil society group CAIDP filed a complaint with the US Federal Trade Commission against ChatGPT-4end of March 2023: https://www.caidp.org/cases/openai/

[3] Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market.

[4] "*We launched ChatGPT as a research preview so we could learn more about the system's strengths and weaknesses and gather user feedback to help us improve upon its limitations." https://openai.com/blog/chatgpt-plus*

[5] See for example Spellbook.legal: https://www.spellbook.legal/contract-drafting-ai; for an overview of use cases, see Piper A., ChatGPT and the legal profession, 23.03.2023, International Bar Association; for a report on the risks of implementation in law firms see ChatGPT and Generative AI within Law Firms, Thomson Reuters 2023

[6] The Straits Times, Civil servants to soon use ChatGPT to help with research, speech writing, 14.02.2023; Portugal recently launched GPJ, an interactive guide to justice matters powered by the same GPT3.5 model underpinning ChatGPT, see https://justica.gov.pt/Servicos/Guia-pratico-da-Justica-Versao-Beta

[7] *"Unfortunately, ChatGPT's advice is not consistent. Nonetheless, it does influence users' moral judgment, we find in an experiment, even if they know they are advised by a chatting bot, and they underestimate how much they are influenced." https://www.nature.com/articles/s41598-023-31341-0*

[8] See for example "Banks can use ChatGPT to enhance the customer experience and streamline operational processes. Here's how " https://www.beyondsoft.com/blog/6-ways-chatgpt-is-disrupting-consumer-banking/;

It should be noted that certain risks to consumers aggravated by GPT models, such as in distance marketing of financial services, can also be addressed at the level of the Consumer Protection Cooperation Network, by virtue of the relevant regulation being included in the Annex to Regulation (EU) 2017/2394. We therefore kindly ask you to discuss these matters also with the respective European agencies.

Under Article 6 of the Unfair Commercial Practices Directive, a commercial practice that entails provision of information that is factually correct but its context, including overall presentation, is still likely to deceive the average consumer, qualifies as a misleading practice if it leads to a transactional decision the consumer would not have taken otherwise. Consequently, in many cases, a consumer interacting with an AI driven chatbot may likely be misled as to the utility value they are deriving from this interaction.

c) *Concerns related to potential misleading practices due to omission of information (Art 7 UCPD) and lack of information (Art 5 CRD[9])*

The OpenAI[10] website may be misleading to consumers who enter it to use ChatGPT. The website offers substantial amounts of marketing claims, praising the 'reasoning' capabilities of the GPT model. They will face marketing language suggesting interaction with an interlocutor capable of some kind of thought, such as 'interacting in a conversational way', 'answering follow-up questions', 'admitting its mistakes', 'challenging incorrect premises', and 'rejecting inappropriate requests'. The 'Safety' link does not lead to safety information but to a page praising the efforts made by OpenAI to improve safety. At no point is the viewer notified that the system has no awareness of the actual meaning of what its 'reasoning' produces.

Upon entering the ChatGPT interface, the user may access the privacy policy[11] and the Terms of Use[12], which only mention that 'given the probabilistic nature of machine learning', the system's outputs may be inaccurate. Only those consumers who explore the website further may learn that the 4th generation system, while improved upon version 3.5 which powers ChatGPT, still carries risks. They include producing advice on terrorist attacks or hate speech, may represent various societal biases and worldviews contrary to the user's intent, will likely allow propagandists to transform online influence operations, will render successful cyberattacks cheaper or that it 'probably' is still unable to replicate itself and gather resources.[13]

As a result, there is considerable likelihood that the ChatGPT information available on the OpenAI website violates Article 5 (1) of the Consumer Rights Directive, by not providing an accurate description of the main characteristics of the product in a clear and comprehensible manner. A striking lack of information seems present also in other chatbot products.[14]

The recent suicide of a Belgian who had spent weeks discussing death with a GPT-J chatbot named ELIZA should be seen as strong example of the importance of consumers being adequately informed about the risks and safety precautions to take when dealing with systems which can produce a convincing illusion of being a sentient being.

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[9] Directive 2011/83/EU on consumer rights
[10] https://openai.com/, last accessed on 20 April 2023.
[11] https://openai.com/policies/privacy-policy, last accessed on 21 April 2023.
[12] https://openai.com/policies/terms-of-use, last accessed on 21 April 2023.
[13] https://openai.com/research/forecasting-misuse; https://cdn.openai.com/papers/gpt-4-system-card.pdf
[14] See for example the Q&A section of chatbot Replika https://help.replika.com/hc/en-us/articles/360058852132-Is-Replika-sentient-"*If your Replika has ever confused you* with something they said, be sure to react to the message that they sent you".

d) Protection of children

We are particularly concerned with the impact that this technology might have on more vulnerable consumers such as children and teenagers. Younger consumers are typically exposed to screens and online content many hours per day and are particularly receptive to harmful uses of AI language model technologies because of their credulity. We have already clear evidence and experience with the dangerous impact that algorithms on social media can have on teenagers and children.[15]

Employing generative AI chatbots in the daily online experience can only be expected to exacerbate these risks, including deceptive advertising, aggressive commercial practices and manipulation.

In the light of the risks described above, we ask CPC authorities to particularly examine the risk of uses of such chat-bots by children (below 18 years).

Notably, in unfair commercial practices law, the likelihood of a material distortion of a transactional behaviour needs to be considered from the perspective of the group of consumers who are targeted by the commercial practice. Where the group is characterised by a specific susceptibility to the practice or the underlying product (such due to as age or credulity) that the trader could reasonably be expected to foresee, such a practice needs to be assessed from the perspective of an average member of that group. The recently revised Guidance document to the UCPD notes that, in a highly personalised digital environment, such a group can also be just one person. Combined with the broad understanding of what constitutes a transactional decision, it should be noted that the UCPD already has the tools to address the most obvious risks brought by AI systems like ChatGPT and related technologies.

Multiple risks for consumers, in particular regarding their safety and data protection

In addition to consumer protection risks that fall under the CPC's competence, other authorities also need to investigate and take the necessary measures to counter other significant risks that these AI systems may cause to consumers such as risks to privacy and personal data protection as well as risks to public health and safety.

The decision of the Italian data protection authority to temporarily prevent OpenAI's ChatGPT system from processing the data of Italian users shows the seriousness of the matter. Data protection authorities in several other countries are currently considering taking measures. Regarding the important risk for public health as demonstrated by the recent Belgian suicide after receiving continuous "encouragement" to do so by a similar AI chat bot, BEUC also asked the Consumer Safety Network for action under the General Product Safety Directive and we have been invited to present our concerns to the next meeting of the Consumers Safety Network.

We thus ask you, the CPC authorities to collaborate with other relevant authorities to exchange information, findings of analysis and investigations and to identify the best remedies.

Why the pending AI Act is not the solution at this stage

While the AI Act proposal may address some of our concerns, it will only become applicable in three or four years, leaving consumers at risk of harm from a technology which is not sufficiently regulated during this interim period. Meanwhile, commercial uses of such technologies are developing at great pace and for which consumers are not prepared.

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[15] See for example Suicide, Incels, and Drugs: How TikTok's deadly algorithm harms kids, a report by Ekō, March 2023; Linda Charmaraman, A. D. Lynch, A. M. Richer, J. M. Grossman, Associations of early social media initiation on digital behaviors and the moderating role of limiting use, Computers in Human Behaviour, vol. 127 2022; https://doi.org/10.1016/j.chb.2021.107053; Throuvala, M.A.; Griffiths, M.D.; Rennoldson, M.; OECD (2019) Impacts of technology use on children: exploring Literature on the brain, cognition and well-being, OECD Education Working Paper No. 195.

The role of the CPC authorities beyond the AI Act

It's also important to take into account that, once applicable, the AI Act will apply in its majority only to high-risk AI systems. It is not clear at this stage if and how generative AI like these chatbots will be regulated. This increases the role of consumer authorities, who will be responsible for ensuring that all commercial uses of these AI systems, regardless of whether they are regulated or not by the AI Act, are sufficiency transparent, fair and compliant with consumer protection rules.

BEUC considers that these AI systems need greater public scrutiny and public authorities must reassert control over them. We thus urge you to start a discussion and investigation into the commercial uses of such Large Language Model systems to take the necessary measures to avoid any further consumer harm as soon as possible and to be prepared for the market developments that will now happen very quickly.

We are at your disposal for any further information you would require and hope to hear from you soon.

Best regards,

Ursula Pachl
Deputy Director General