

The Consumer Voice in Europe

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**Subject: EU-US AI voluntary code of conduct and an 'AI Pact' for Europe**

Dear Executive Vice-President,  
Dear Commissioner Breton,

We are writing to express our concerns in relation to the announced initiatives on generative artificial intelligence (AI), both with regards to the joint EU-US AI voluntary code of conduct and an 'AI Pact' for Europe.

Based on media reports, we understand that both initiatives will be voluntary commitments negotiated with a few industry players for the development and use of generative AI systems. We fully agree that urgent and swift action is needed to protect people from the significant risks of generative AI and to ensure that its benefits can be rolled out without harming consumers and our societies. We also appreciate the Commission acknowledging that we cannot sit and wait for the entry into application of the AI Act but must take measures now to avoid further damage. Yet, we consider it highly problematic that the European Commission plans to engage into negotiations with a few businesses in such a voluntary initiative while the European Parliament and the Council of Ministers, the EU co-legislators, enter a crucial trilogue phase to agree on the proposed AI Act. Therefore, BEUC would like to make the following **recommendations**:

**1. An EU-US AI code negotiation must not be launched before the finalisation of the AI Act.**

As long as the legislative procedure on the AI Act is not finalised, no negotiations with industry for a voluntary initiative should take place, be it between the US and the EU, or within the EU itself.

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Firstly, there is an obvious risk of conflict between the respective roles of the European Commission as executive body and the Council and the Parliament as legislative institutions on the other side. The European Commission has an institutionalised role in trilogue negotiations. It cannot fulfil this role impartially when negotiating a code of conduct with third countries and industry on the same topic. The problems consumers are experiencing come from the very companies that would sit on the negotiations.

BEUC together with other EU and US consumer and digital rights groups has repeatedly called for the Trade and Technology Council (TTC) not to interfere with respective legislative processes. The announcement of the launch of a voluntary code of conduct for AI during the last TTC meeting confirms our concerns.

Secondly, it is unclear what requirements a voluntary agreement can include when the legal requirements for these actors in the EU are not yet defined. There is an obvious risk that the voluntary commitments will not be in line with the final legal text. As you know, by mid-June, the European Parliament will adopt its opinion on the AI Act, which will include newly inserted specific rules for foundation models / generative AI systems. In addition, the European Parliament will vote on urgently needed additional rights for consumers/citizens as well as a fundamental rights impact assessment for high risk uses. If adopted in Plenary, these fundamentally important elements will now have to be negotiated in trilogue with the Council aiming at a final agreement by the end of the year.

Thirdly, in addition to influencing the EU legislative negotiations on the AI Act, this initiative could lower the willingness of the US to regulate AI. Companies are likely to put pressure on the US government and the FTC to rely only on the voluntary code of conduct and keep it as the long-term solution. This would be detrimental to consumers on both sides of the Atlantic. The EU should commit to continue pushing for legislative solutions also with the US and at international level and lead the way to better regulate AI and protect consumers across the globe.

## **2. Instead of relying on voluntary industry commitments, strengthen enforcement**

We underline that, both before and after the AI Act becomes applicable, existing EU law such as consumer protection, data protection or product safety legislation, must be enforced effectively. With Europe still facing an enforcement gap, the European Commission should urgently prioritise enforcement of legislation on its agenda, which plays an essential role in how the European Union deals with quickly emerging technologies like generative AI.

This is why BEUC already in March and April 2023 called on the Consumer Protection Cooperation Network ([CPC](#)) and the Consumer Safety Network ([CSN](#)) to urgently investigate and to take the necessary actions to address the various risks regarding safety and consumer protection of ChatGPT and other AI chatbots. We also published a [press release](#) on 30 March 2023, calling for an investigation by EU and national authorities. As you know, the European Data Protection Board (EDPB) also [established](#) a dedicated task force to look at Chat GPT and generative AI in the context of the temporary halt imposed by the Italian data protection authority (DPA). Several other DPAs are also currently exploring the way forward.

We ask you to do your utmost to support the work of the enforcement authorities using existing law to ensure that AI companies deliver legally compliant products that do not harm people, and that they are held accountable for doing so. Member States have to ensure that enforcement authorities are sufficiently resourced and motivated to undertake their tasks effectively.

Effective enforcement of other horizontal EU legislation for the protection of consumers and citizens will remain a necessity even after the AI Act enters into application, as unfortunately a significant number of AI products (which are not considered high-risk or generative AI) will not be regulated specifically under its framework.

### **3. Participation of civil society**

During the TTC stakeholder event of 31 May 2023, it was announced that the EU-US AI code would be drafted in coordination with stakeholders. We thus use this opportunity to ask you to involve BEUC and TACD (the Transatlantic Consumer Dialogue) and other civil society organisations in any such undertaking. We consider that obviously AI regulation goes far beyond the trade agenda: it carries a big impact on the future of our society, our values and fundamental rights. While we support the EU leadership in this process, it needs to be carried out in a forum other than the TTC, whose overarching objective is to facilitate trade. The drafting of the AI code of conduct should be transparent and fully involve civil society, in a democratically legitimised multistakeholder forum.

We would very much welcome an opportunity to discuss these concerns and recommendations further with you.

Your sincerely,

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Director General

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Deputy Director General

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