

Subject: AI Act – BEUC’s recommendations ahead of third trilogue

Dear policy-maker,

Ahead of the next trilogue meetings on the Artificial Intelligence (AI) Act, BEUC – The European Consumer Organisation would like to share recommendations on key topics for consumers’ protection:

1. The classification of AI systems as ‘high-risk’ use cases should be automatic (Article 6)

We remain very concerned about adding a filter to Article 6 and **urge EU policy-makers to go back to the European Commission’s original proposal on this point**. If an AI system is in Annex III, it should automatically be considered ‘high-risk’. As recalled by BEUC and more than 100 civil society organisations in a recent [open letter](#), this filter would allow developers of AI systems to decide themselves if they believe the system is ‘high-risk’, undermining the entire AI Act. It would not only endanger consumers but also lead to high legal uncertainty, fragmentation of the EU single market, huge challenges for authorities to effectively enforce the AI Act and unfair market conditions for responsible AI developers who would be at a disadvantage, as less responsible developers could use this loophole to avoid complying with the basic legal requirements.

2. The list of high-risk AI systems should include emotion recognition (Annex III)

We regret that consumer uses of emotion recognition were not introduced in the list of banned AI practices in Article 5 of the proposed AI Act. At the very least, this technology should be added to the list of high-risk AI systems **as per the European Parliament’s position**. The use of AI for emotion recognition is very worrying for consumers, as it can lead to serious infringements of consumers’ privacy and to their manipulation.

3. All generative AI systems should be regulated (Article 28b)

EU legislators should **follow the approach of the European Parliament** when it comes to regulating generative AI systems and foundation models. All generative AI systems should be subject to a set of specific rules and **not only** be regulated when used in a **high-risk** context. If rules on generative AI were to apply to high-risk use cases only, this would mean that **ChatGPT and other similar chatbots like Replika would hardly be regulated by the AI Act**.

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The rules on generative AI should also **apply to all companies** and not only to Big Tech or gatekeepers. Limiting the rules to big companies would result in many potential harmful applications not being regulated simply because they were developed by a smaller company. For consumers, it does not matter whether harm is caused by a small or a large company. Consumers should be protected equally. OpenAI was not known to many until recently and the small companies of today can become the big companies of tomorrow.

4. The AI Act needs to provide new rights for consumers (Articles 68a-d and 29(6a))

BEUC strongly **welcomes the European Parliament's position** to introduce rights for consumers. In particular, the AI Act should at the very least contain a

- **Right to lodge a complaint before a national supervisory authority (Article 68a).** Consumers should have access to justice if AI-associated risks materialise.
- **Right to collective redress (Article 68d).** We strongly welcome the addition of the AI Act to Annex I of the Representative Actions Directive (RAD) by the European Parliament, Directive (EU) 2020/1828. This will allow consumers to seek compensation collectively or consumer organizations to claim injunctive relief in case of infringements against the AI Act. This would not only be necessary for a high level of consumer protection and access to justice, but also be coherent with other recent EU digital laws like the Digital Services Act, the Digital Markets Act, or the Data Act which are included in the scope of the new rules on representative actions of the RAD. There is no justified reason to treat the AI Act differently.
- **Right to be informed that a high-risk system is being used (Article 29 (6a)).** Only with an adequate level of transparency and a right to information can consumers understand what they are subjected to and, if necessary, contest a decision made by an AI system.
- **Right to explanation of individual decision-making (Article 68c).** Upon request, consumers should have a right to be informed by the deployer of the reasons behind a decision by a high-risk AI system which produces legal effects. This right should *inter alia* include clear information regarding the role of the AI system in the decision-making procedure.
- **Right to an effective judicial remedy against a national supervisory authority (Article 68b).** Consumers should have a right to hold market surveillance authorities accountable, notably if authorities fail to abide by their obligations under the AI Act.

Thank you in advance for taking our recommendations into consideration. We have developed them in more detail in [our position paper](#).

We remain at your and your colleagues' disposal for any question, comment or suggestion you may have.

Yours sincerely ,

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