

The Consumer Voice in Europe

Draft Implementing Regulation establishing a Scientific Panel of independent experts in the field of AI

BEUC's response to the European Commission's public consultation



Contact: Frederico Oliveira da Silva – digital@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu

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Recommendations to the draft Implementing Regulation establishing a Scientific Panel of independent experts in the field of AI

BEUC welcomes the possibility to comment on the Commission's draft Implementing Regulation establishing a scientific panel of independent experts in the field of artificial intelligence (AI).¹

BEUC has advocated for the establishment of a pool of experts since the publication of the AI Act proposal.² This group of experts can play an important role in assisting the Commission and national authorities in the implementation and enforcement of the AI Act, thereby contributing to a high level of consumer protection.

BEUC has the following main recommendations to the Commission's draft proposal:

1. Explicit ineligibility in case of lack of independence, impartiality or conflict of interest

Article 3 (3) establishes that experts will need to ensure, inter alia, independence, impartiality, objectivity and absence of conflict of interest as set out in Article 68(4) of Regulation (EU) 2024/1689.

First, in addition to Article 3 (3), the Implementing Regulation should explicitly clarify that evidence of lack of independence, impartiality or conflict of interests should render the experts *ineligible* for the scientific panel. This could be done, for example, under Article 10 (2) of the Implementing Regulation. This would bring more legal certainty and reassurance of the quality and expertise of the scientific panel.

Second, the perception of somebody's independence, impartiality, objectivity and absence of conflict also matters. Ties with providers and deployers of AI systems or general-purpose AI (GPAI) can be direct or indirect and both should be taken into account when assessing the independence or impartiality of an expert. For example, someone who has a financial interest or is financially dependent from a company, which, in turn, has a financial interest or is financially dependent of an AI system provider should not be considered as independent.

2. Ineligibility of experts in case of financial and other interests in a provider and deployer

Article 10 (2) states that experts shall not have financial or other interests in a provider of AI systems, or general-purpose AI models within the meaning of Regulation (EU) 2024/1689, which could affect their independence, impartiality and objectivity

Article 10 (2) only states that experts should not have financial or other interests in *providers* of AI systems or general-purpose AI models. Unfortunately, the proposal does not extend to *deployers* of AI or GPAI. If someone has financial or other interests in a *deployer* of AI systems or GP-AI, this will not amount to ineligibility under the draft Implementation Regulation due to conflict of

¹ Artificial intelligence – implementing regulation establishing a scientific panel of independent experts: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14398-Artificial-intelligence-implementing-regulation-establishing-a-scientific-panel-of-independent-experts_en

² BEUC's position paper on the AI Act proposal: https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-088_regulating_ai_to_protect_the_consumer.pdf

interest or lack of independence. That person would therefore be able to become an expert of the scientific panel.

It is important to recall that one of the main tasks of the scientific panel is to advise and assist the AI Office and national market surveillance authorities on the implementation/enforcement of the AI Act.³ This means that if the Implementation Regulation was to be adopted as proposed by the Commission, an expert of the scientific panel with a financial (or other interest) in a deployer of an AI system would be able to provide or influence an opinion on a possible enforcement action regarding the same AI system they could have a vested interest in.

This should not be acceptable to adequately protect the public interest. That is why we recommend that experts who have financial or other interests in both providers and deployers of AI systems and GPAI are considered to have a conflict of interest and as such, following our first recommendation, ineligible to apply to the scientific panel.

3. Experts need to be financially independent from providers or deployers

Article 10 (2) of the draft Implementing Regulation states that experts should not have a financial or other interest in the company which could affect their independence.

This wording is not clear and ambitious enough. To have a financial interest in a company (e.g. company stocks) is not the same as being independent, including financially, from that company.

The Implementing Regulation should specifically mention that, in addition from not having any financial and other interests, experts shall be independent, including financially independent, from the provider or deployer of an AI system or GPAI. Article 21 (3) (a) of the Digital Services Act could serve as inspiration.

4. Aligning assessments of requests for documentation and information with other EU law

When a request for documentation and information is issued by an expert of the scientific panel, Article 15 requires that the AI Office assesses if the request is necessary and proportionate. The proposal does not however establish any time-limit for this assessment by the AI Office.

We recommend that the proposal clarifies that the Commission's assessment and disclosure of information and documents should not take more than a limited, specific period of time similar to Regulation (EU) 1049/2001.

5. AI Office should have an obligation to act when an expert is not independent or impartial

Article 10 (5) establishes that the AI Office *may* take all appropriate measures, including revoking the appointment of the expert from the scientific panel, when certain conditions (e.g. independence) are not met.

Whenever an expert lacks independence or impartiality, the AI Office should have an *obligation*, and not only the possibility, to take the necessary measures, including revoking the appointment of the expert. The draft Implementing Regulation should reflect this in Article 10 (5).

³ Article 68 (3) (b), (c) and (d) AI Act

6. Strict interpretation of trade secrets' and confidentiality claims

The draft Implementing Regulation establishes that when the Commission is assessing a request for documentation or information from the scientific panel due account must be taken of the need to protect trade secrets and confidential business information.

Companies should not be allowed to randomly claim trade secret protections or make bogus or too broad confidentiality claims in a way that impacts the expected and normal work of the scientific panel. Trade secret and confidentiality claims should be assessed strictly and only be allowed exceptionally in circumstances that are foreseen in the law. These claims must be sufficiently justified, and verified by authorities. Otherwise, the purpose of the scientific panel to assist the AI Office and authorities may not be fully achieved.

ENDS