



# BEUC

The European  
Consumer  
Organisation

The Consumer Voice in Europe

## Position paper

# Consumers' right to explanation under AI decision making

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## Why it matters to consumers

Decisions made or supported by complex AI systems increasingly shape consumer access to credit, insurance, employment, housing, and digital services. That is why consumers need a clear and enforceable right to an explanation of such systems, to promote transparency, fairness, and accountability of AI systems. Without insight into how such decisions are made, consumers cannot understand whether a decision is justified, detect errors or discrimination, or challenge unfair outcomes. To ensure the effectiveness of this right for consumers, BEUC recommends the EU to draft clear guidelines that ensure explanations are meaningful, actionable, and linked to enforcement and redress mechanisms.

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The European Consumer Organisation (**BEUC**) is the largest organisation promoting the general interests of Europe's consumers. Founded in 1962, it proudly represents more than 40 independent national consumer organisations from over 30 European countries. Together with our members, we inform EU policies to improve people's lives in a sustainable and fair economy and society.

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## TABLE OF CONTENT

<b>Introduction .....</b>	<b>5</b>
<b>1. The right to explanation across EU regulation .....</b>	<b>7</b>
<b>2. The GDPR's definition of the right to explanation applies to the AI Act .....</b>	<b>8</b>
<b>3. The right to explanation under the AI Act .....</b>	<b>9</b>
<b>Conclusion .....</b>	<b>11</b>

# Summary

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The EU's Artificial Intelligence Act (AI Act) introduced the right to an explanation of decisions that are based mainly on the output from a high-risk AI system. This represents a crucial step forward for consumer protection in the context of AI systems. From BEUC's perspective, this right is a cornerstone for accountability, enforcement, and effective redress under the AI Act.

BEUC has long warned that obscurity in AI and algorithmic systems undermines consumer autonomy and fosters unfair practices and discrimination, especially when consumers cannot understand the logic behind scoring, profiling, or risk assessments by AI systems. The right to an explanation helps rebalance this information and power asymmetry. It obliges companies to disclose meaningful information about logic and factors behind the decision.

This is the minimum requirement to allow consumers to detect mistakes, identify unfair practices and seek redress. To ensure the effectiveness of the right to explanation under the AI Act, BEUC recommends the EU to draft clear guidelines with the following in mind:

## Clear guidance on the AI Act's interpretation and the interplay with other EU legal frameworks

- 1 The guidelines should instruct deployers how to apply the AI Act, considering its complementarity with the GDPR and strive for coherence with other EU legal frameworks.

## Connecting the right to an explanation and the right to complaint

- 2 The right to explanation should empower consumers to recognise violations of their fundamental rights or possible breaches of the AI Act and other regulation so they can effectively exercise their right to complain.

## Encourage proactive provision of explanations

- 3 The guidelines should require deployers of high-risk AI systems to provide meaningful explanations and to act proactively, ensuring transparency and reducing consumer harm.

## Promote a clear two-step enforcement pathway process

- 4 To improve the quality of enforcement, the guidelines should establish a two-step process where the right to an explanation can be followed up by the right to file a complaint in cases of non-compliance.

# Introduction

The right to algorithmic explanation is one of the most innovative features of European data legislation and a cornerstone of fairness and transparency in digital markets. It enables consumers to understand whether and how an AI system has affected a decision that can impact their lives. The right to algorithmic explanation includes insight into the main parameters, logic, and factors that influenced the decision.

This is an essential right for consumers as automated decisions increasingly influence access to everyday services (e.g. credit, insurance, employment opportunities, housing, and even basic online interactions). When these decisions are made by obscure algorithms, consumers do not have any insights as to why a decision was taken or whether it was fair. As a result, consumers are unable to challenge unfair, discriminatory, or erroneous decisions, while deployers of AI systems risk operating without adequate scrutiny.

BEUC and its member organisations have consistently highlighted the risks from obscure automated decision making<sup>1</sup> and generative AI<sup>2</sup>. We have also successfully called for a consumer right to receive an explanation to be introduced in the AI Act<sup>3</sup> in Article 86. Consumers must always have the right to receive meaningful explanations of AI-driven decision-making processes that affect them individually.

The insights under Article 86 AI Act must enable consumers to effectively challenge AI decisions and protect their rights. Beyond transparency on the use of AI, the explanation should place consumers in the position to recognise a violation of their rights and react appropriately.

This means that **any violation which is meaningful to this extent needs to be disclosed**. This includes - but is not limited to - the purpose of the AI system, types of personal data and the specific data used, other input elements, as well as an explanation of how the information was used and a specific outcome reached.

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<sup>1</sup> See BEUC's position paper: *Regulating AI to protect the consumer* (2021), available at [https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-088\\_regulating\\_ai\\_to\\_protect\\_the\\_consumer.pdf](https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-088_regulating_ai_to_protect_the_consumer.pdf)

<sup>2</sup> Report by BEUC's Norwegian member Forbrukerrådet, *Ghost In the Machine, Addressing the consumer harms of generative AI*, July 2023, available at <https://storage02.forbrukerradet.no/media/2023/06/generative-ai-rapport-2023.pdf>

<sup>3</sup> See BEUC's publication: *AI and Generative AI: trilogue negotiations for the AI Act* (2023), available at <https://www.beuc.eu/position-papers/ai-and-generative-ai-trilogue-negotiations-ai-act>

In other words, consumers should have the right to react to AI-based decision-making and to request human intervention (whether via internal channels, complaint procedures, or judicial actions), whenever an AI-based decision may have a significant impact on them.

For this right to be effective in practice, it must be fully implemented. Clear and authoritative guidance for companies can ensure the explanations are meaningful, actionable, and linked to enforcement and redress mechanisms.

This is crucial for confirming potential infringements of the AI Act, such as the use of prohibited practices, non-compliance with high-risk system requirements, or failures in human oversight and risk management. Without this, Article 86 risks failing to provide consumers and consumer organisations with the tools needed to challenge harmful or unlawful AI-driven outcomes.<sup>4</sup>

Moreover, the deterrent effect of such actions creates clear, strong incentives for companies to adopt safer, more accountable AI systems. The additional accountability and scrutiny discourage the use of discriminatory, biased, unfair decision-making criteria which would otherwise remain undisclosed and unaccounted for.

The right to an explanation is therefore not merely a procedural safeguard but a fundamental consumer protection tool. It ensures that companies only deploy AI systems that are trustworthy, fair, and respectful of individuals' rights.

In this paper, we explain the right to an explanation as noted down in both the EU's GDPR and AI Act. We also provide our recommendations for clarifications to be provided through the Commission/EDPB's guidelines and, where necessary, future legislative action.

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<sup>4</sup> See BEUC's position paper: Reasons to add the AI Act to the Representative Actions Directive (2022), available at [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-124\\_Reasons\\_to\\_add\\_the\\_AI\\_Act\\_to\\_the\\_representative\\_actions\\_directive.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-124_Reasons_to_add_the_AI_Act_to_the_representative_actions_directive.pdf)

# 1. The right to explanation across EU regulation

The right to explanation is not an innovation of the AI Act itself. It has been an important feature of European data legislation. It fosters fairness and transparency in digital markets and varieties of it can be found across EU law. For instance, before the AI Act, the right to explanation was already introduced in the GDPR and the Digital Services Act (DSA).

The interaction between these laws (AI Act, GDPR and DSA) is a constant, dynamic relationship, yet they rely on their own scope of application or specific provisions.<sup>5</sup> What unites them is a shared core purpose: **a right to explanation is meaningful only to the extent that it allows the *information obtained* to be used effectively in each specific sector.**<sup>6</sup>

Explanations must therefore enable consumers to understand decisions that affect them, assess whether their rights may have been infringed, and decide whether and how to seek redress or enforcement.

The right to explanation in each EU regulation is designed to serve its respective legal framework and address specific risks for consumers. From BEUC's perspective, this should not be seen as fragmentation, but as complementary safeguards.

## Recommendation

**The guidelines should clarify the interaction with other EU legal frameworks.** Article 86 in the AI Act does not limit obligations arising under other EU laws.

Where a deployer of an AI system qualifies as controller under the GDPR, they must continue to provide all relevant information required under data protection law. Consumers should not face fragmented or contradictory information depending on the legal basis invoked.

<sup>5</sup> The GDPR applies to the processing of personal data. In turn, Art. 86 AI Act provides that its "Right to explanation" shall only apply "to the extent that the right referred to in paragraph 1 is not otherwise provided for under Union law." In other words, if the explanation under the GDPR applies, Art. 86 AI Act will not.

<sup>6</sup> The uses that an individual intends to make of the information obtained with the explanation fall within their freedom of choice. In principle, however, the explanation must at least enable the holder of the right to exercise the additional rights guaranteed by a certain discipline.

## 2. The GDPR's definition of the right to explanation applies to the AI Act

The right to explanation has been widely debated in the context of Art. 15(1)(h) and Art. 22 of the GDPR. The adoption of the AI Act has reignited crucial questions about how the new obligations under Article 86 AI Act complement and interact with existing GDPR rights to information and access.

A case of the Court of Justice (*Dun & Bradstreet Austria*)<sup>7</sup> confirmed consumers are entitled to a genuine right to an explanation of specific automated decisions under the GDPR<sup>8</sup>. To do so, controllers must provide “meaningful information” which means **functional, important, relevant, and intelligible for the consumer**. The Court further clarified that, in line with Article 47 of the EU Charter of Fundamental Rights, the explanation should be detailed enough to allow the consumer to effectively exercise *subsequent* rights.<sup>9</sup> Simply put, if a consumer intends to lodge a complaint under the GDPR, they need to be aware of the potential infringement of the GDPR they can file the complaint about.

This critical role of information in securing an effective judicial remedy is confirmed by another ruling (*Ligue des droits humains*). In this ruling the Court<sup>10</sup> emphasised that information access is also essential for individuals to decide if and what legal action they want to pursue<sup>11</sup>. The explanation must place the consumer in a position of autonomy and self-determination to decide on any potential next steps.

While *Dun & Bradstreet* is a GDPR case, its effects go beyond mere data protection. The decision refers to a “right to explanation,” which is exactly what Art. 86 AI Act regulates. The judgement also clarifies the concept of “meaningful information.” Once again, the same

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<sup>7</sup> (C-203/22). A data subject had requested a small funding for a phone contract, but the algorithm deemed her financially unreliable. Their request for access to clarify the decision was refused by the controller, which raised various defenses, including the protection of its trade secrets. The Court of Justice ruled on the case and required the controller “*to explain in a concise, transparent, intelligible and easily accessible form the procedure and principles pursuant to which the result of the ‘actual’ profiling was obtained*” (para. 65).

<sup>8</sup> The CJEU defines Art. 15(1)(h) GDPR as a “genuine right to explanation” of automated decision-making. This is especially the case when the explanation is needed to exercise the rights to contest the automated decision under Art. 22(3) GDPR.

<sup>9</sup> See: Kaminski, Margot E. “The Right to Explanation, Explained.” *Berkeley Tech. LJ* 34 (2019): 213. “*This suggests an interesting aspect of transparency: the substance of other underlying legal rights often dictates the substance of transparency. If one has a right to correction, one needs to see errors. If one has a right against discrimination, one needs to see what factors are used in a decision. Without this transparency, information asymmetries can render these underlying rights effectively void.*”

<sup>10</sup> Ligue des droits humains (CJEU C 333/22). The applicant was denied the right to participate in a public demonstration without an explanation from the police. This raised the question of whether the applicant could successfully file a complaint without information on the police’s decision. The Court of Justice concluded such information should be available to place the petitioner “in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his or her applying to the court.”

<sup>11</sup> The CJEU in *Ligue des droits humains* highlighted two main principles: on the one hand, the right to defend oneself against a certain decision. On the other hand, the right to be informed about the reasons for this decision and to self-determine in relation to the actions to be taken.

wording is used in Art. 86 AI Act. Finally, and most importantly, the scope of the GDPR's right to explanation is defined by looking at the purpose of the law and EU fundamental rights. This, too, is clearly applicable to Art. 86 AI Act.

In the next paragraph, we will use these instructions to define the scope and functioning of the right to explanation under Art. 86 AI Act.

### Recommendation

**The right to explanation should be linked to the right to complain.** It should be clarified that a "clear and meaningful explanation" must place consumers in a position to identify potential infringements (i.e. the obligation to inform consumers of the use of high-risk AI systems, the requirement for effective human oversight, compliance with data quality, and validation and risk mitigation obligations).

This allows consumers to **assess whether the AI system has had an impact on their health, safety, or fundamental rights**, and whether the deployer **has complied with the AI Act**. This is essential to ensure the effectiveness of the right to lodge a complaint with a Market Surveillance Authority under Article 85. A right to complain without actionable information is not effective.

## 3. The right to explanation under the AI Act

Art. 86 AI Act protects consumers from AI decisions impacting on their health, safety, or fundamental rights. In such cases,<sup>12</sup> consumers should receive a clear and **meaningful explanation** of the role of the AI system and the **main elements of the decision taken** that, similarly to GDPR principles, provide a basis for consumers to exercise other rights. This comes down to two things.

**First**, the explanation should allow the consumer to **lodge a complaint with a market surveillance authority** under Art. 85 AI Act. To do so, the explanation needs to equip consumers to identify if there has been an infringement of the AI Act. Such an infringement could include not notifying the person affected that a high-risk system was used, or that there was no effective human monitoring and intervention with the use of a high-risk system.

<sup>12</sup> The decision must be taken by a "deployer" on the basis of the output from a "high-risk AI system" listed in "Annex III", with the exception of systems listed under point 2 thereof, and which "produces legal effects or similarly significantly affects" that person in a way that they consider to have an "adverse impact" on their health, safety or fundamental rights.

This information could reveal that the AI system used biased data or was not properly validated – information that consumers can then use in a complaint.

**Second**, the explanation should also show whether the AI decision has had any impact on the user's health, safety, or fundamental rights<sup>13</sup>. This could enable the consumer to take different actions, beyond the mere AI Act.<sup>14</sup>

For example, consumer protection is a fundamental right in the EU Charter. Therefore, **consumer protection** laws such as the Unfair Commercial Practices Directive might come into play if an AI-driven decision involves misleading or aggressive practices that led to unfair treatment. Another example would be **anti-discrimination laws**, such as the Equal Treatment Directives. If a consumer feels that an AI decision discriminated against them based on gender, age, or other protected characteristics, they might rely on anti-discrimination frameworks to lodge a complaint.

In short, the content provided to consumers under the right to explanation needs to consider the rights of the end user under both the **AI Act and the wider EU law framework**. Otherwise, these rights **would not be effective**.

## Recommendation

**The guidelines should encourage proactive explanations, not only on request.** To reduce consumer harm and enforcement gaps, BEUC recommends clarifying that deployers of high-risk AI systems should provide meaningful explanations whenever an automated decision produces legal or similarly significant effects for consumers.

In addition, where a consumer requests an explanation and the deployer considers that no explanation is required, the **deployer should be required to provide a reasoned refusal** within a short and clearly defined timeframe. It should contain enough information for the consumer to understand the decision and to effectively exercise their rights.

**The guidelines should also promote a two-step process**, enshrining a clear right for consumers to first request an explanation under Article 86, and secondly lodge a complaint under Article 85 to a Market Surveillance Authority where the explanation reveals or suggests non-compliance. This strengthens consumer empowerment while also supporting more targeted and substantiated complaints, benefiting enforcement authorities.

<sup>13</sup> For example, it is possible that the decision resulted in the exclusion of the user from a job selection, or that it led to the assignment of a medical examination too late, based on a calculation error.

<sup>14</sup> In addressing the right to lodge a complaint, the AI Act also states that, in line with case law, the explanation should enable affected consumers to assess whether other options are viable and to exercise their rights under other laws or through other remedies.

# Conclusion

The effective enforcement of the AI Act will largely depend on whether people can understand and address problems when AI systems are used to determine decisions about them. In this context, the right to receive a “clear and meaningful explanation” plays a crucial role in delivering tangible benefits for consumers.

BEUC therefore recommends providing authoritative guidelines for Article 86 of the AI Act that provide clear instructions for deployers on how it should be interpreted. This ensures that the **right to explanation will be effective, enforceable, and meaningful for consumers**. Clarifications should ensure coherence with other obligations under the AI Act, as well as with existing EU consumer and data protection law. Without such guidelines, the right to an explanation risks becoming a purely formal obligation and leaving affected consumers unable to identify potential infringements or trigger enforcement.

Finally, if practical experience shows that the authoritative guidelines are insufficient, BEUC considers that legislative clarification should be explored to firmly anchor the role of explanations as an enforcement-enabling right.