BEUC The European Consumer Organisation

The Consumer Voice in Europe

European Parliament

Committee on Internal Market and Consumer Protection (IMCO)

Committee on Civil Liberties, Justice and Home Affairs (LIBE)

B – 1047 Brussels

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29 June 202

Re: AI Act consideration of amendments on 30th June

Dear Members of the IMCO and LIBE Committees,

We write on behalf of BEUC - The European Consumer Organisation in view of the upcoming consideration of amendments for the Proposal for a Regulation on an AI Act, which will take place on Thursday 30 June.

The AI Act is key to establish a solid horizontal legal framework to ensure that AI benefits both the individual and society. In this regard, significant improvements in the text are necessary to address the risks that consumers face with AI and ensure they are adequately protected.

The amendments tabled in IMCO and LIBE to the AI Act include several positive measures for consumers, which we would like to underline below.

We call on MEPs to take these observations into consideration in the forthcoming discussions on this very important law for consumers.

All AI technology should be fair, accountable and transparent

The scope of the AIA has a strong focus on 'high-risk AI systems'. As a consequence, a lot of AI applications that consumers use or will use in the near future in their everyday lives (e.g., virtual assistants or content recommender systems that select what people see on their social media feeds) would not be adequately regulated, as they would not fall under the 'high risk' category.

Other than high-risk AI systems does not mean risk free. While other EU laws may apply to AI systems (e.g., General Data Protection Regulation or Unfair Commercial Practices Directive), several loopholes remain.

This is why we welcome **AMs 1143, 1145 and 1150** that propose to introduce a new provision establishing a set of mandatory basic principles such as transparency, accountability and fairness that would apply to all AI systems. Only with such a provision will AI be fully trustworthy.

Strong rights, including the right to redress, should be granted to consumers

Consumers will only trust this technology if granted rights they can rely on, and if they can seek redress when an AI harms them. A technology of this complexity and reach cannot be deployed without giving a high level of protection to the people who will be affected by it.

In this regard, we were pleased to see that the draft report from Mr. Benifei and Mr. Tudorache includes a right to lodge a complaint against the providers before a national authority and the right to a judicial remedy against a national authority.[1]

[1] Amendments 262 and 263 of the IMCO and LIBE draft report on the proposed AI Act;

However, when it comes to redress and enforcement, other rights are still missing. For example, the right for individuals to be represented by a consumer organisation when exercising their rights. Also, very importantly, the collective redress mechanisms foreseen in the EU Representative Actions Directive must be fully enabled in this area.

Finally, only with an adequate level of transparency and the right information can a decision be duly contested. Dealing with an AI system can be frustrating and problematic for consumers as they are not able to understand how the system functions or reaches its decision. In cases where an automated decision has a significant impact on consumers, they should have the right to be given a clear explanation about how an AI system affecting them works, and the right to object the decision.

We welcome that several amendments have been tabled to address these issues, in particular:

- **1149, 1151, 1152 and 1153 on the right to receive an explanation;**
- **2771, 2772 and 2773 on the right to lodge a complaint before a national authority;**
- **2774, 2778, 2781 and 2784 on the right to be represented by an independent not-for-profit organisation, including consumer organisations;**
- **2779, 2780 and 2782 on the right to an effective judicial remedy against an authority;**
- **2783 on the right to collective redress under the AI Act.**

Prohibited AI practices need to be broadened and strengthened (Article 5)

We strongly welcome the introduction of a list of prohibited practices in Article 5 of the proposal. However, this list must be broadened and strengthened to account for harmful practices which are currently not covered.

- We support the replacement of the 'intention requirement' in Articles 5 (1) a) and b) with the wording 'with the objective or effect of'. The original wording would mean that these provisions are in practice unenforceable as it would be very difficult, if not impossible, to prove the original malicious intent.
- 'Economic harm' should also be covered in Articles 5 (1) a) and b). Otherwise, for example, an AI system used by an energy company to target price increases to those perceived as less likely to switch service provider (less price sensitive consumers) would be outside of the scope of this provision.
- Art. 5 (1) b) should also cover AI used to exploit vulnerabilities other than those related to age or social or economic situation.
- The use of real-time remote biometric identification in publicly accessible spaces or the use of social scoring by *private entities* should also be prohibited. Such practices aggravate the risk of discrimination, the loss of privacy, anonymity and personal freedom regardless of whether used by a public or private entity.
- The use of AI for emotion recognition is very worrying for consumers as it can lead to serious infringements of consumers' privacy and to distort people's choices and decisions. Its use should be heavily restricted and only be allowed for strictly limited purposes and under very limited conditions, such as health or research purposes.
- Lastly, the AI Act should prohibit AI systems from enabling or allowing discrimination of individuals on the basis of the characteristics listed in the Charter, on the basis of biometrics or otherwise.

We welcome that several amendments have been tabled to address these issues, in particular:

- **1157, 1158 and 1160 on Article 5 (1) a)**
- **1174 – 1177 and 1182 on Article 5 (1) b)**
- **1187, 1191 - 1196 on social scoring (Article 5 (1) c))**
- **1233, 1234, 1236, 1237, 1242 and 1244 on remote biometric identification systems (Article 5 (1) d))**
- **1225, 1293, 1295, 1297 and 1395 on the ban of emotion recognition**
- **1289, 1298, 1300, 1305, 1327 and 1380 on the ban of biometric categorisation systems.**

Third party assessment should always be required to assess the conformity of 'high-risk AI systems' (Article 43)

The proposed conformity assessment framework entails an evident conflict of interest: the entity assessing whether a certain product is in compliance with the rules is the same who has an interest in placing the AI on the EU market as quickly as possible. This is particularly problematic when it comes to 'high risk applications'.

A third-party assessment should always be required to assess the conformity of 'high-risk AI systems'. Self-assessments should only be allowed to assess AI systems not considered to be high-risk. In this regard, we welcome **AM 2160**.

Standards should not replace legislation

The successful application of the proposed AI Act heavily depends on the development and application of harmonised (technical) standards by the manufacturers of an AI system.

We welcome the draft report's proposal to ensure that all relevant stakeholders, including civil society, are involved in the standardisation process.[2] Today, the standardisation process is heavily dominated by the industry and civil society and consumers' interests are not sufficiently represented at national, European and international standardisation bodies.

We urge the European Parliament to ensure that harmonised standards must not go beyond the implementation of mere technical aspects and enter in areas of public policy and law which require a certain level of interpretation. For example, a standard should not be used to determine what types of biases are prohibited under Art. 10 (2) f) AIA. Also, technical standards should not be used by developers of 'high-risk AI systems' to ensure compliance with the fundamental rights assessment foreseen in Annex IV, Point 3 of the proposed AI Act.

We remain at your disposal should you have any questions or wish to receive further information.

Best wishes,

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[2] Amendment 160 of the IMCO and LIBE draft report on the proposed AI Act.