Committee on the Internal Market and Consumer Protection

2020/2012(INL)

8.7.2020

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

with recommendations to the Commission on the framework of ethical aspects of artificial intelligence, robotics and related technologies
(2020/2012(INL))

Rapporteur for opinion: Alexandra Geese

(Initiative – Rule 47 of the Rules of Procedure)

(*) Associated committee – Rule 57 of the Rules of Procedure

United in diversity

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SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible:

– to incorporate the following suggestions into its motion for a resolution:

A. Whereas ethical guidance, such as the principles adopted by the High-Level Expert Group on Artificial Intelligence, provides a good starting point, but is not enough to ensure that businesses act fairly and guarantee effective consumer protection;

Scope

1. Underlines the importance of an EU regulatory framework focusing on the ethical aspects of artificial intelligence (AI), robotics and related technologies being applicable where consumers within the Union are users of, subject to, targeted by, or directed towards an algorithmic system, irrespective of the place of establishment of the entities that develop, sell or employ the system; furthermore, believes that, in the interest of legal certainty, the rules set out should apply to all developers and across the value chain, namely the development, deployment and use of the relevant technologies and their components, and should guarantee a high level of consumer protection; reiterates the importance of Union values as referred to in the Treaties regarding the importance of the protection of personal data and of explicit, informed consent and proposes that those rules take into account the lessons drawn from the implementation of Regulation (EU) 2016/679[1] (GDPR), which is considered a global benchmark; considers that a legal representative, established in in the Union, to whom requests could be addressed, in order, for example, to allow for consumer redress, is important for the enforcement of a future EU regulatory framework;

2. Notes that the EU regulatory framework should apply to algorithmic systems, including the fields of AI, the internet of things, machine learning, rule-based systems, automated and assisted decision-making processes and robotics; further notes that standardised icons could be developed to help explain such systems to consumers whenever those systems are characterised by complexity or are enabled to make decisions that impact the lives of consumers significantly;

3. Stresses that the EU regulatory framework must have a human-centric approach and lead to the development of systems which incorporate European ethical values by design; considers that an EU regulatory framework that focuses on Union values as referred to in the Treaties would represent added value providing Europe with a unique competitive advantage and would make a significant contribution to the well-being and prosperity of Union citizens and businesses, as well as boost the internal market; underlines that an ethical framework for AI also represents added value as regards promoting innovation on the internal market;

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[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

4.   Points out that the legislative framework introduced by Decision No 768/2008/EC[2] provides for a harmonised list of obligations for producers, importers and distributors, encourages the use of standards and provides for several levels of control depending on the dangerousness of the product; considers that that framework should also apply to AI embedded products;

5.   Stresses that any future regulation should follow a differentiated risk-based approach to enable the development and deployment of secure and trustworthy systems, with clear criteria and indicators, followed by an impartial legal assessment based on the potential harm or breaches of rights of the individual, as well as for the whole of society, taking into account the specific context of use of the algorithmic system; stresses that legal obligations and certification requirements should gradually increase with the identified risk level; highlights that in the lowest risk category there should be no additional legal obligations; notes that algorithmic systems that may harm an individual, or cause potential breaches of an individual's rights, or impact an individual's access to public benefits shall not be deemed to be in the lowest risk category; notes that the risk-based approach should follow clear and transparent rules providing enough legal certainty whilst being future-proof; calls for a uniform implementation of the system of risk classification and related legal obligations to ensure a level-playing field among the Member States and to prevent a fragmentation of the internal market; stresses that the risk assessment of a specific system must be subject to regular re-evaluation;

6.   Recalls that the Commission should examine the existing EU legal framework and its application, including the consumer law *acquis*, product liability legislation, product safety legislation and market surveillance legislation, in order to identify legal gaps, as well as existing regulatory obligations; considers that this is necessary in order to ascertain whether the existing EU legal framework is able to respond to the emergence of AI, robotics and related technologies and whether it is able to ensure a high level of consumer protection;

Data Management
7.   Underlines the importance of an EU ethical and regulatory framework including in particular provisions requiring high quality data to train algorithmic systems in relation to the purpose of their use; in that regard, highlights the necessity of ensuring the representativeness of the training data used and, where possible, the de-biasing of data sets, as well as of data and aggregation standards in order to improve the output of algorithmic systems and boost consumer trust and acceptance; stresses that those data sets should be auditable by the competent authorities whenever called upon to ensure their conformity with the previously referenced principles;

Consumer protection: transparency and explainability of algorithms
8.   Underlines that consumer trust is essential for the development and implementation of AI, robotics and related technologies which can carry inherent risks when they are based on opaque algorithms and biased data sets; believes that consumers should have the right to be

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[2]   Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82)

adequately informed in an understandable, timely, standardised, accurate and accessible manner about the existence, reasoning, possible outcome and impacts for consumers of algorithmic systems, about how to reach a human with decision-making powers, and about how the system's decisions can be checked, meaningfully contested and corrected; recalls that humans must always be able to overrule automated decisions; believes that consumers should also be protected by the right to switch off or limit an AI system using personalisation where possible; stresses the importance of proportionality in the development of such a transparency framework to avoid creating an unnecessary burden on start-ups and small and medium enterprises (SMEs) operating in low-risk categories;

9.   Stresses the need to effectively address the challenges created by algorithmic systems and to ensure that consumers are empowered and properly protected; underlines the need to look beyond the traditional principles of information and disclosure on which the consumer *acquis* has been built, as stronger consumer rights and clear limitations regarding the development and use of algorithmic systems will be necessary to ensure technology contributes to improving consumers' lives and evolves in a way that respects fundamental and consumer rights and European values;

10.   Considers that a value-sensitive design approach is strongly needed to create the conditions for widespread social acceptance of AI for consumers; considers that ethical values of fairness, accuracy, confidentiality and transparency should be the basis of AI, which in this context entails that the system's operations should be such that they do not generate unfairly biased outputs;

11.   Recalls the importance of ensuring the availability of effective remedies for consumers and calls on the Member States and national market surveillance authorities to ensure that accessible, affordable, independent and effective procedures and review structures are available in order to guarantee an impartial human review of all claims of violations of consumer rights through the use of algorithmic systems, whether stemming from public or private sector actors; urges that dispute resolution and collective redress mechanisms in line with the Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC[3] should be made available to challenge the introduction or ongoing use of a system entailing a risk for consumer rights violations, or to remedy a violation of rights; asks the Commission to ensure that national and European consumer organisations have sufficient funding to assist consumers in exercising their right to a remedy in cases where decisions based on AI applications infringe consumer rights;

12.   Stresses that where money originating from public sources significantly contributes to the development or implementation of an algorithmic system, in addition to open procurement and open contracting standards, the code, the generated data -as far as it is non-personal- and the trained model could be public by default upon agreement with the developer, in order to guarantee transparency, enhance cybersecurity and enable the reuse thereof so as to foster innovation; stresses that, in this way, the full potential of the single market can be unlocked, avoiding market fragmentation;

Internal market: consumer information and awareness

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[3]   COD (2018)0089, under publication.

13.   Underlines the importance of ensuring that the interests of all consumers, including consumers who are marginalised or in vulnerable situations, such as persons with disabilities, are adequately taken into account and represented in a future EU regulatory framework; notes that for the purpose of analysing the impacts of algorithmic systems on consumers, access to data could be extended to appropriate parties, in particular independent researchers, media and civil society organisations, where possible via Application Programming Interfaces (APIs), while fully respecting Union data protection and privacy legislation and trade secret legislation; recalls the importance of educating consumers to be more informed and skilled when dealing with algorithmic systems, in order to protect them from potential risks and uphold their rights; considers that AI, the internet of things, and other emerging technologies have enormous potential to deliver opportunities for consumers to be able to have access to several amenities which facilitate their daily lives in numerous ways and allow for better products and services, while also benefitting consumers in terms of fostering better market surveillance, as long as all applicable principles, conditions (including transparency and auditability), and regulations continue to apply;

14.   Underlines the importance of achieving a high level of overall digital literacy and training highly skilled professionals in this area as well as ensuring the mutual recognition of such qualifications throughout the Union; highlights the need of having diverse teams of developers and engineers working alongside key societal actors to prevent gender and cultural biases being inadvertently included in AI algorithms, systems and applications; supports the creation of educational curricula and public-awareness activities concerning the societal, legal, and ethical impact of AI;

15.   Calls on the Commission to promote and fund the development of human-centric AI, robotics and related technologies that address environment and climate challenges and that ensure equal access to and enjoyment of fundamental rights through the use of fiscal, procurement, or other incentives;

16.   Underlines that AI and algorithmic systems should be legally compliant, robust, reliable and secure by design; calls on the Commission to ensure that the Union's regulatory approach to algorithmic systems includes appropriate measures to make it possible for such systems to be subject to independent control and oversight;

Market surveillance
17.   Calls for the establishment of a European centre of expertise strengthening Union capacities and building as far as possible on existing structures to promote the exchange of information related to algorithmic systems between the Member States' authorities and to support the development of a common understanding in the single market by issuing guidance, opinions and expertise to Member States' authorities, monitoring the implementation of relevant Union legislation, addressing potential consumer protection issues, identifying standards for best practice, and, where appropriate, making recommendations for regulatory measures; further calls for this structure to be appropriately advised by stakeholder organisations, such as consumer protection organisations, in order to ensure wide consumer representation; considers that due to the disproportionate impact of algorithmic systems on women and minorities, the decision levels of such a structure should be diverse and gender balanced; emphasises that Member States must develop risk-management strategies for AI in the context of their national market surveillance strategies;

18.	Calls for the Commission to propose measures for data traceability, having in mind both the legality of data acquisition and the protection of consumer rights and fundamental rights; stresses, meanwhile, that the data sets, algorithms and processes used in the development and deployment of algorithmic systems, including those of data collection and data labelling, should be documented in accordance with the industry standard; notes that it is essential that the risk assessment documentation, software documentation, the algorithms and data sets used or produced by artificial intelligence, robotics, and related technologies be accessible and explainable to market surveillance authorities, while respecting Union law and trade secrets; further notes that such documentation should be stored by those who are involved in the different stages of the development of algorithmic systems; notes that additional prerogatives should be given to market surveillance authorities in that respect; considers that an examination of the current market surveillance legislation might be necessary to avoid it becoming obsolete and ensure that it responds ethically to the emergence of AI, robotics and related technologies;

19.	Calls for the designation, and sufficient funding by each Member State, of a competent national authority for monitoring the application of the provisions related to algorithmic systems; stresses the need for national market surveillance authorities to be reinforced in terms of capacity, skills, and competences in AI as well as knowledge about the specific risks of AI;

20.	Calls for a strong coordination of Member State authorities and the establishment of a European market surveillance board for algorithmic systems, composed of national authorities, to ensure effective oversight, a European level playing field and to avoid fragmentation of the internal market;

21.	Acknowledges the valuable output of the High-Level Expert Group on Artificial Intelligence, particularly 'The Ethics Guidelines for Trustworthy Artificial Intelligence'; suggests that that group comprising representatives from academia, civil society and industry, as well as the European AI Alliance, might provide expertise to the European market surveillance board for algorithmic systems;

22.	Notes that, particularly in business-to-consumer domains, systems should be user-centric and designed in a way that allows everyone to use AI products or services, regardless of their age, gender, abilities or characteristics; notes that accessibility to this technology for persons with disabilities, is of particular importance; notes that AI systems should not have a one-size-fits-all approach and should consider universal design principles addressing the widest possible range of users, following relevant accessibility standards; stresses that this will enable individuals to have equitable access to and to actively participate in existing and emerging computer-mediated human activities and assistive technologies.

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INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	7.7.2020
Result of final vote	+: 39 −: 1 0: 4
Members present for the final vote	Alex Agius Saliba, Andrus Ansip, Alessandra Basso, Brando Benifei, Adam Bielan, Hynek Blaško, Biljana Borzan, Vlad-Marius Botoş, Markus Buchheit, Dita Charanzová, Deirdre Clune, David Cormand, Petra De Sutter, Carlo Fidanza, Evelyne Gebhardt, Alexandra Geese, Sandro Gozi, Maria Grapini, Svenja Hahn, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Marcel Kolaja, Kateřina Konečná, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Antonius Manders, Beata Mazurek, Leszek Miller, Kris Peeters, Anne-Sophie Pelletier, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Kim Van Sparrentak, Marion Walsmann, Marco Zullo
Substitutes present for the final vote	Pascal Arimont, Maria da Graça Carvalho, Edina Tóth, Stéphanie Yon-Courtin

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FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

39	+
EPP	Pascal Arimont, Maria da Graça Carvalho, Deirdre Clune, Arba Kokalari, Andrey Kovatchev, Antonius Manders, Kris Peeters, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Edina Tóth, Marion Walsmann
S&D	Alex Agius Saliba, Brando Benifei, Biljana Borzan, Evelyne Gebhardt, Maria Grapini, MariaManuel Leitão-Marques, Adriana Maldonado López, Leszek Miller, Christel Schaldemose
RENEW	Andrus Ansip, VladMarius Botoş, Dita Charanzová, Sandro Gozi, Svenja Hahn, Stéphanie YonCourtin
GREENS/EFA	David Cormand, Petra De Sutter, Alexandra Geese, Marcel Kolaja, Kimvan Sparrentak
ECR	Adam Bielan, Carlo Fidanza, Eugen Jurzyca, Beata Mazurek
EUL/NGL	Kateřina Konečná, AnneSophie Pelletier
NI	Marco Zullo

1	-
ID	Hynek Blaško

4	0
ID	Alessandra Basso, Markus Buchheit, Virginie Joron, JeanLin Lacapelle

Key to symbols:
+ : in favour
- : against
0 : abstention

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