

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

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Paragraph 1

Underlines the importance of an EU regulatory framework focusing on ethical aspects of artificial intelligence, robotics and related technologies being applicable where consumers within the Union are users of, subject to, or 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 development, deployment and use of the relevant technologies and their components and should guarantee a high level of consumer protection; reiterates European values on personal data and explicit, informed consent and proposes that these rules take into account the lessons drawn from the implementation of Regulation (EU) 2016/6791 (GDPR)¹, considered a global benchmark; considers a legal representative, established in in the Union, to whom requests could be addressed, in order, for example, to allow for consumer redress, important for its enforcement;

Paragraph 2

Notes that the regulatory framework should apply to algorithmic systems, including the fields of artificial intelligence, 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 these are characterised by complexity or are enabled to make decisions that impact the lives of consumers significantly;

Paragraph 2 a

Stresses that an EU regulatory framework of AI shall have a human-centric approach and lead to development of systems which incorporate European ethical values by-design; considers that an EU regulatory framework that focuses on European values would be an added value providing Europe with a unique competitive advantage and make a significant contribution to the well-being and prosperity of European citizens and businesses, and boost our internal market;

Paragraph 2 b

Points out that the legislative framework introduced by Decision No 768/2008/EC² provides for a harmonised list of obligations for producers, importers and distributors, encourages the use of standards and foresees several levels of control depending on the dangerousness of the product;

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).

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).

considers that this framework should also apply to AI imbedded products;

Paragraph 2 c

Underlines that an ethical framework of AI is an added value to promote innovation on the market;

Paragraph 3

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 use context of the algorithmic system; legal obligations and certification requirements should gradually increase with the identified risk level; in the lowest risk category there should be no additional legal obligations; 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;

Paragraph 3a (new)

Recalls that the Commission should examine the current EU legal framework and existing legislation 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 existing legislation is able to respond to the emergence of artificial intelligence, robotics and related technologies and that it is able to ensure a high level of consumer protection;

Data Management

Paragraph 4

Underlines the importance of an 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 this regard, highlights the necessity of ensuring the representativeness of 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 fitness with the previously exposed principles;

Consumer protection: transparency and explainability of algorithms

Paragraph 5

Underlines that consumer trust is essential for the development and implementation of artificial intelligence, 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 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 unnecessary burdens on start-ups and SMEs operating in low-risk categories;

Paragraph 5 a

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 making consumers' lives better and evolves in a way that respects fundamental and consumer rights and European values;

Paragraph 5 b

Considers that a value-sensitive design approach is strongly needed to allow a 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 cannot generate unfairly biased outputs;

Paragraph 6

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 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 should be made available to contest the introduction or ongoing use of a system with potential for consumer rights violations, or remedy a violation of rights; asks the European 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;

Paragraph 7

Stresses that where money originating from public sources significantly contributes to the development or implementation of an algorithmic system, alongside 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 to guarantee transparency, enhance cybersecurity and enable their reuse so as to foster innovation; stresses that in this way, the full potential of the Single Market can be unlocked, avoiding market fragmentation;

Paragraph 8

Underlines the importance of ensuring that the interests of all consumers, including consumers which are marginalised or in vulnerable situations, such as persons with disabilities, are adequately taken into account and represented in a future 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 notably independent researchers, media and civil society organisations, where possible via APIs, while fully respecting Union data protection and privacy law and trade secret law; 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, IoT, and other emerging technologies have enormous potential to deliver opportunities for consumers to have access to several amenities in many aspects of their lives alongside with better products and services, as well as to benefit from better market surveillance, as long as all applicable principles, conditions (including transparency

and auditability), and regulations continue to apply;

Paragraph 9

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 across the Union; highlights the need of having diverse teams of developers and engineers working alongside key societal actors to prevent gender and cultural bias of being inadvertently included in AI algorithms, systems and applications; supports the creation of educational curricula and public awareness activities around the societal, legal, and ethical impact of AI;

Paragraph 9 a

Calls on the Commission to promote and fund the development of human-centric artificial intelligence, 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 tax, procurement, or other incentives;

Paragraph 9 b

Underlines that artificial intelligence 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 enable that these systems are subject to independent control and oversight;

Market surveillance

Paragraph 10

Calls for the establishment of a European centre of expertise strengthening EU 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 EU 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 organizations, such as consumer protection organizations, 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; emphasizes that Member States must develop risk-management strategies for AI in the context of their national market surveillance strategies;

Paragraph 11

Calls for the European 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; meanwhile stresses 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 for the risk assessment documentation, software documentation, the algorithms and data sets used or produced by artificial intelligence, robotics, and related technologies to be accessible and explainable to market surveillance authorities, while respecting Union law and trade secrets; further notes that such elements should be preserved 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 this respect; considers that an examination of the current market surveillance legislation might be necessary to avoid its obsolescence and ensure that it responds ethically to the emergence of artificial intelligence, robotics and related technologies;

Paragraph 12

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 its specific risks;

Paragraph 13

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;

Paragraph 13 a

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

Paragraph 13 b

Notes that, particularly in business-to-consumer domains, systems should be user-centric and designed in a way that allows all people to use AI products or services, regardless of their age, gender, abilities or characteristics. Accessibility to this technology for persons with disabilities, which are present in all societal groups, is of particular importance. 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. This will enable equitable access and active participation of all people in existing and emerging computer-mediated human activities and with regard to assistive technologies;