



To:
BAK Brussels Office

BUNDESARBEITSKAMMER

PRINZ-EUGEN-STRASSE 20-22
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Your reference	Our reference	Contact person	Tel. 501 65	Fax 501 65	Date
-	BAK/KS- Stg/DZ/BE	Daniela Zimmer	Ext. 12722	Ext. 142722	07.04.2022

Need for improvement to the draft Artificial Intelligence Act from the consumer's point of view

Dear Sir,
Dear Madam,

The Austrian Federal Chamber of Labour (BAK) is the legal representative of the interests of some 3.6 million employees, wherein its responsibilities also encompass consumer protection. Ensuring a high level of consumer protection is particularly important to us for all products and services that are based on algorithms and artificial intelligence (AI) and that consumers come into contact with. We are particularly committed to ensuring that they are given the best protection against the erosion of their basic rights and freedoms, lack of transparency, discrimination, and other risks of damage caused by such analysis software.

In its AI White Paper, the European Commission emphasised that AI must be trustworthy, because benefits and dangers are close together. As correct as the findings are, unfortunately, the legal instruments that the Artificial Intelligence Act (AIA) ultimately provides for the protection of citizens and consumers are weak. The trust of those affected by AI can only be won if transparency is ensured vis-à-vis those affected, high-risk AI is approved and continuously supervised by independent authorities, and low-threshold legal protection enables those affected to easily defend themselves against unlawful, unfair AI decisions.

In order to adequately protect those affected, therefore...

...to provide rules not only for high-risk AI. A tiered regulatory framework is needed for all AI risk classes. Voluntary self-commitments are often not suitable for protecting consumer rights and increasing trust. Even in the case of applications that are "merely" risky for basic personal and consumer rights, at least transparency, freedom from discrimination, and rights of appeal must be safeguarded by appropriate regulations.

...individual rights for affected consumers, whose needs have not been considered at all. These include, amongst others, the right to information, access, self-determination with regard to the possibility of also rejecting AI analyses and decisions based on personal data, rights of appeal.

...ban socially undesirable AI systems without exception (instead of patchy bans only for a few varieties of social scoring, biometric monitoring, and behavioural manipulation).

...specifically identify the risks that manufacturers and users must minimise. For example, the description (in Article 7) of when AI is considered high-risk does include references to threats to safety, health, and fundamental rights. Neither a prohibition of discrimination nor a standardisation in which the risk-free or risky state exist in which AI may enter the market.

...close loopholes in the corresponding Art 22 GDPR (regarding data protection rights in algorithmic, automated individual decisions).

...AI certifications to be carried out by independent authorities without exception (instead of mere self-certification by manufacturers).

...AI applications – if otherwise prohibited – to be designed in such a way that their decisions are explainable and verifiable (especially with regard to impermissible discrimination, disadvantage, behavioural manipulation, or fraud).

...enshrine protection standards for biometric AI analysis in consumer transactions (e.g. security standards against misuse).

...not to provide for exemptions from the GDPR for data use in AI "real labs".

...to revise the outdated rules for product liability and product safety to make them AI-fit.

...to introduce collective legal protection for affected parties through the power to bring collective actions.

In the annex, we provide you with detailed proposals for amendments in line with our concerns, which were drafted by Dr Christiane Wendehorst on behalf of the Austrian Ministry of Consumer Affairs (with the exception of Art 53 et seq. on real-world laboratories). The entire study on AI and consumer protection is available at the link:

<https://www.sozialministerium.at/Themen/Konsumentenschutz/Konsumentenpolitik.html>

The author is, amongst other things, Professor at the Institute for Civil Law at the University of Vienna, Scientific Director of the European Law Institute, one of the 30 experts from 17 countries in the "Global Partnership on AI" alliance, and until 2019 was Co-Chair of the German Federal Government's Data Ethics Commission. She has worked on topics such as digital content, the Internet of Things, artificial intelligence, and data economics for the European Commission, the European Parliament, and the German government, amongst others. The text proposals were developed in close professional exchange with the Austrian Consumer Ministry and the BAK.

In the service of the consumers we represent, we hope that our concerns will be supported to the best of your ability by you, dear Member of Parliament!

Should you require any further information, please do not hesitate to contact us.

Yours sincerely,

Renate Anderl
President