

EN
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Answer given by Mr Breton
on behalf of the European Commission
(27.5.2020)

The Commission shares the Honourable Member's general concerns and underlines that the principles outlined in the White Paper fully apply to the use of AI in online commercial practices. In particular, meaningful transparency, and appropriate capabilities for competent authorities are important. The Commission is currently conducting a public consultation on the White Paper on Artificial Intelligence to gather further insights on these issues. The deadline for participation is 14 June and the consultation is accessible online¹.

Rules protecting consumers' interests in online advertising and pricing practices fully apply, regardless of the use of artificial intelligence or other technologies. This includes all rights and obligations under the General Data Protection Regulation² (in particular Article 22 on automated individual decision-making, including profiling), but also the Unfair Commercial Practices Directive (UCPD)³ and its guidance document⁴ (in particular as regards persistent marketing and aggressive commercial practices), as well as the newly adopted Directive on better enforcement and modernisation of EU consumer protection rules⁵ (e.g. on transparency obligations for personalised pricing based on automated decision-making) amending inter alia UCPD.

More broadly, the upcoming new Consumer Agenda will address the challenges that consumers face in digital markets⁶. Furthermore, the impact assessment ahead of the Digital Services Act will further investigate a number of emerging issues, including challenges related to algorithmic decision-making on online platforms including in online advertising.

¹ <https://ec.europa.eu/digital-single-market/en/news/white-paper-artificial-intelligence-european-approach-excellence-and-trust>

² 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. 1–88 <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices, OJ L 149, 11.6.2005, p 22.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

⁴ Commission Staff Working Document Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A comprehensive approach to stimulating cross-border e-Commerce for Europe's citizens and businesses SWD/2016/0163 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0163>

⁵ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, PE/83/2019/REV/1, OJ L 328, 18.12.2019, p. 7–28 <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁶ Annexes to the Commission Work Programme 2020, COM(2020) 37 final, Annex item no. 35 https://eur-lex.europa.eu/resource.html?uri=cellar%3A7ae642ea-4340-11ea-b81b-01aa75ed71a1.0002.02/DOC_2&format=PDF