OPINION

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

on shaping the digital future of Europe: removing barriers to the functioning of the digital single market and improving the use of AI for European consumers (2020/2216(INI))

Rapporteur for opinion (*): Marion Walsmann

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

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

General

1. Stresses the importance of a fully functioning digital single market and the positive impact that the use of AI, robotics and related technologies can have on our markets and society, since they have the potential to effectively tackle the challenges societies face, as demonstrated in particular during the COVID-19 pandemic; considers, however, that socio-economic, legal and ethical impacts have to be carefully addressed in line with EU values in order to establish legal clarity for consumers and businesses;

2. Maintains that SMEs, start-ups and scale-ups need to be supported in their digital transformation as they are the backbone of Europe’s economy and play an important role in the uptake of new technologies in Europe; calls on the Commission to pursue a proportionate approach to enable such companies to develop and innovate, including specific measures for the digitalisation of SMEs and start-ups in future legislation, to pursue a fitness check for SMEs before introducing legislation and to keep administrative burdens and obstacles to a minimum by, inter alia, taking into account their position at every step of the digital transformation, developing fair and effective standards, removing unnecessary legal barriers to access to data and improving cross-border access to digital content, while at the same time achieving the underlying policy objectives;

3. Highlights that SMEs face many challenges in the digital market, since many of their owners are not aware of the value of the data they create, lack the tools required to process them and are not sufficiently prepared to operate in a digital economy, and that true access to justice for SMEs requires expertise in the area of law and technology, a combination that is scarce and expensive; calls on the Commission, therefore, to integrate the promotion of legal technological expertise in Europe into its digital skills strategy, underlines the need to increase investments and welcomes the launch of new financing instruments to support artificial intelligence companies across Europe, including SMEs and start-ups;

4. Points out that the digital single market and AI are developing rapidly and therefore highlights the importance of a flexible, future-proof, proportionate and harmonised European framework; urges the Commission to put forward proposals and initiatives based on the right balance which supports innovation and ensures consumer safety and protection, and thereby to avoid a one-size-fits-all approach on the one hand and the fragmentation of the digital single market through divergent national approaches, including unnecessary layers of sectoral barriers in the field of AI, on the other;

Improving the use of AI for European consumers

5. Highlights that a new regulatory framework for AI is needed in order to deal with the potential risks of automated decision-making and to maximise the trust of and the benefit for users, while safeguarding the best interests of EU citizens and ensuring an
adequate level of protection; invites the Commission, therefore, to present a thorough impact assessment which identifies legal gaps in existing laws, followed by a proposal for a risk-based, innovation-friendly, robust and future-proof legislative framework, inspired by a humanistic and human-centric approach, for the use of AI and automated decision-making systems that focuses on closing the legal gaps without prejudice to existing sector-specific legislation;

6. Is of the firm view that harmonised, future-proof definitions of ‘AI’ and ‘high-risk’ are crucial to providing legal clarity to consumers and businesses, including for the purposes of pursuing claims in connection with a malfunction or accident and within the framework of a risk-based approach; recalls that this approach should take into account the potential of these technologies to breach fundamental rights and to cause prejudice or harm to individuals or society as a whole, and recalls the need for full human oversight of the development, deployment and use of high-risk AI applications at all times;

7. Considers that the lack of clear European rules on the attribution of liability in the event of a malfunction or accident caused by AI applications is one of the key barriers to the implementation of AI-based technologies for widespread use and is therefore convinced that existing legislation needs to be modernised in line with technological developments, among which those enabled by AI; urges the Commission to update inter alia the Product Liability Directive\(^1\), in particular by redefining the terms ‘product’, ‘damage’ and ‘defect’ and considering adjustments to the concept of ‘burden of proof’, which should mirror the modifications to the General Product Safety Directive\(^2\), and by proposing a liability framework for AI operators based on the results of the impact assessment that takes account of the vulnerability of AI users and consumers by guaranteeing their effective protection, ensures fair compensation to victims when damage occurs and is based on the proportion of control the operator holds over the risk of the operation, taking into account the development and deployment phases; underlines that the update of the legislation should be in line with the corresponding recommendations of the European Parliament;

8. Outlines that society, including consumers, should benefit from the responsible development, deployment and use of AI technologies that benefit citizens, generate opportunities for businesses and serve the good of society; asks the Commission, therefore, to define clear ethical norms for the development, deployment and use of AI, robotics and related technologies that fully respect fundamental rights and guarantee human dignity, fairness, safety, security, transparency, good governance and consumer protection rights, taking into account the principles of better regulation, and calls on the Commission to work closely with the Member States on the implementation and enforcement of ethical principles, to develop guidelines and to involve citizens and relevant stakeholders;

9. Underlines that, for the training of AI, the free flow of data within the functioning digital single market in line with applicable legislation such as the General Data Protection Regulation (GDPR)\(^3\) is essential and that this should be underpinned by a

---

\(^1\) OJ L 210, 7.8.1985, p. 29.
\(^3\) OJ L 119, 4.5.2016, p. 1.
solid underlying legal framework which promotes trust among businesses and includes, where necessary, appropriate, non-discriminatory and fair contractual rules addressing existing power or market imbalances, ensuring a consumer-friendly approach to data access and control, and limiting unnecessary barriers to the availability of data in line with European data protection rules, including, under appropriate conditions, data generated in connection with the provision of services of general interest in accordance with applicable Union law; welcomes the Commission’s commitment to building a genuine European single market for data, allowing businesses to start up and scale up, to innovate and to compete or cooperate on fair terms;

10. Recalls the global dimension of the opportunities implicit in AI technologies and underlines that the EU should position itself as a global leader in the development of AI; calls on the Commission to promote consistent international cooperation with like-minded countries that contributes to creating synergies on AI between European entities and other multilateral forums, so as to align efforts and better coordinate the development of AI; urges the Commission to support multilateral efforts to discuss international standardisation processes in relevant forums in order to guide the development, deployment and use of AI; takes note, in this respect, of the ambition to introduce a global digital cooperation strategy and a transatlantic AI agreement;

**Functioning of the single market as regards digital elements**

11. Highlights that citizens, as users and consumers, should always be informed in a timely and intelligible manner about the existence of algorithmic systems and that they are already benefiting from strong data protection rules such as the GDPR and ePrivacy Directive⁴; calls for the swift adoption of a strong ePrivacy Regulation and the efficient enforcement of the GDPR and its principles, including privacy by design and by default; appreciates that the Commission foresees measures to empower individuals to exercise their rights and that it encourages consumer-centric systems based on fair and non-discriminatory practices, allowing consumers to have control over their choices by always safeguarding their consent, their right to have explanations and, where possible, their right to use a connected device and all its functions, even if consumers withdraw their consent to share data with the device manufacturer or third parties;

12. Asks the Commission to ensure that users and consumers are properly informed and that their rights are clearly defined and effectively guaranteed when AI systems personalise a product or service for its users and when they interact with automated decision-making systems or are subjected to autonomous processes and decisions, and that automatic decision-making systems do not harm consumers or generate subjective, unfair, unreasonable or illegitimate biased or discriminatory outputs for consumers in the single market;

13. Points out that the use of self-learning algorithms enables businesses to gain a comprehensive insight into consumer’s personal circumstances and behaviour patterns, allowing them to tailor their advertising, and highlights the need to ensure a strong protection of the rights of users in the Digital Services Act (DSA), particularly in order to protect, inter alia, the freedom of expression and information and the freedom to provide services, and to protect users from harmful business practices based on non-

---

consensual targeting or the exploitation of data; reiterates the need for transparency in contractual terms, allowing the user to make an informed choice, and conditions for the possibility and scope of data sharing with third parties;

14. Stresses the need to guarantee greater transparency in the consumer-related rules of internet platforms, as well as their compliance with European consumer protection standards, and that it is unacceptable that consumers are exposed to unsafe and counterfeit products; highlights, therefore, that clear responsibilities for online marketplaces based on the principle of proportionality are needed to reinforce the digital single market; outlines that the responsibility of content-hosting platforms for goods sold or advertised on them should be clarified in the DSA in order for the consumer safeguards, which should be observed at all times, and the concomitant redress measures for retailers and consumers to be considered in place, by inter alia closing the legal gap in which the buyers failed to obtain the satisfaction to which they are entitled according to the law or the contract for the supply of goods for example because of the inability to identify the primary seller (‘know your customer’ business principle); proposes consideration of the option of requiring digital service providers from third countries that provide their services in the EU to establish a representative within the Union;

15. Calls on the Commission to assess the development and use of distributed ledger technologies including blockchain, namely smart contracts in the digital single market, and to provide guidance and consider developing an appropriate legal framework in order to ensure legal certainty for businesses and consumers, in particular the question of legality, the enforcement of smart contracts in cross-border situations, and notarisation requirements where applicable;

16. Acknowledges that market imbalances exist in relation to digital businesses, since large platforms with significant network effects resulting from, for example, the data they possess could impose their business practices on consumers and customers and therefore act as de facto ‘online gatekeepers’ of the digital economy, which creates significant barriers and unfair competition that has a disproportionate impact on SMEs; urges the Commission to introduce measures to protect the rights of consumers, start-ups and SMEs by restoring the level playing field in the internal market and through clear obligations for interoperability.
### INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Date adopted</th>
<th>22.2.2021</th>
</tr>
</thead>
</table>
| **Result of final vote** | +: 24  
  -: 0  
  0: 0 |
| **Members present for the final vote** | Manon Aubry, Gunnar Beck, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Ernő Schaller-Baross, Stéphane Séjourné, Raffaele Stancaelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos |
| **Substitutes present for the final vote** | Andrzej Halicki, Javier Nart, Emil Radev |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th></th>
<th>+</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Ernő Schaller-Baross, Axel Voss, Marion Walsmann, Juan Ignacio Zoido Álvarez</td>
</tr>
<tr>
<td></td>
<td>Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters</td>
</tr>
<tr>
<td></td>
<td>Pascal Durand, Karen Melchior, Stéphane Séjourné, Adrián Vázquez Lázara</td>
</tr>
<tr>
<td></td>
<td>Gunnar Beck, Jean-Paul Garraud, Gilles Lebreton</td>
</tr>
<tr>
<td></td>
<td>Marie Toussaint</td>
</tr>
<tr>
<td></td>
<td>Angel Dzhambazki, Raffaele Stancanelli</td>
</tr>
<tr>
<td></td>
<td>Manon Aubry</td>
</tr>
<tr>
<td></td>
<td>Mislav Kolakušić</td>
</tr>
<tr>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>