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EuroCommerce contributions to the roadmap on Artificial Intelligence – ethical and legal requirements

About EuroCommerce

EuroCommerce is the voice of over 5 million retail, wholesale, and other trading companies. Our members include 32 national federations from all EU Member States and European countries outside the EU, 36 leading European retail and wholesale companies, and federations representing specific retail and wholesale sectors. Our members are the link between producers and consumers billions of times every day.

Summary

Artificial Intelligence (AI) can offer significant benefits not just to businesses, but also to consumers and society. Retailers and wholesalers are central actors in the supply chain and are in daily contact with Europe's 450 million consumers. Many retailers and wholesalers use and develop Artificial Intelligence applications to operate sophisticated and efficient systems ensuring reliable and safe sourcing and distribution of goods to meet consumers' demand and keep them safe. In most cases, AI applications used by retailers and wholesalers carry no direct impact or risks for individuals but improve shopping experiences and internal efficiencies.

EuroCommerce welcomes the opportunity to provide input to the Commission's Inception Impact Assessment for the upcoming legislative framework on AI. We believe that the combination of set objectives in the Option 1 and Option 3.b are the best to support and foster further AI developments in the EU.

To secure a future-proof framework that will support an innovative and competitive retail and wholesale sector, EuroCommerce believes that:

- **Having a positive narrative towards AI technologies is a prerequisite to unlock Europe's tech sovereignty.**
- **The future European framework for AI should be technology-neutral** and focus more on achieving desirable outcomes rather than regulating AI tools, as it is already the case with existing legislation such as the General Data Protection Regulation.
- **The future EU framework for AI should support the digital development of SMEs.** SMEs need to be supported in their digital transformation and provided with the right set of digital skills and training that will help them responsibly use the potentials offered by AI.
- **The future European framework for AI should rely on a simple, narrow, clear, and harmonised definition of 'Artificial Intelligence'**.
- **The use of already existing AI applications should not be disrupted.**
- **Careful attention should be paid to avoid overregulation – especially considering recently adopted EU and national legislation, support the use of existing AI technologies and bolster innovation.**
- **Regulatory sandboxes for testing high-risk AI solutions could potentially enable businesses of all sizes to explore the potential of Artificial Intelligence.**

- **The European Commission's priority should be to work towards a global framework that would secure a level-playing field beyond EU borders.**
- **Competition coming from outside the EU should not be ignored.**
- **B2B data sharing for the purpose of AI development should remain on a voluntary basis.**
- **Investing in skills, digital education and research should be a priority of the EU institutions.**

General recommendations

Having a positive stance towards AI technologies is a prerequisite to unlock Europe's tech sovereignty. Artificial Intelligence is still, in many areas, at its infancy and has the potential to better the lives of European citizens, optimise public service management and boost businesses' competitiveness. AI technologies in retail can better consumer experience and increase the efficiency of resource allocation, only to name a few. The future EU framework should highlight the benefits of AI and provide risk management mechanisms. Flexible rules supporting innovation will also secure that EU consumers have easier access to upcoming AI-powered services.

The future European framework for AI should be technology-neutral and focus on achieving desirable outcomes rather than regulating AI tools, as it is already the case with existing legislation such as the General Data Protection Regulation and Product Liability Directive.

The future EU set-up should support the digital transformation of SMEs. SMEs need to be supported in their digital development and provided with the right set of digital skills and training that will help them responsibly use the potentials offered by AI. SMEs can significantly benefit from further AI development. Therefore, it is essential to promote and support digital skills and education so that SMEs can fully thrive in future AI development and benefit from 'AI as a service'.

The future European framework for AI should rely on a simple, narrow, clear, and harmonised definition of 'Artificial Intelligence'. The definition of 'Artificial Intelligence' is needed to secure the necessary legal certainty for businesses to innovate in the European Union and should not include (unintentionally) other technologies, it should be AI specific. All stakeholders, from developers to researchers and users, should be able to easily understand such a definition to foster trust among consumers. Currently, the definition for AI, set in the AI White paper, includes "data" and "algorithms", this is a very broad definition, that can be applied to various types of software. Therefore, we would appreciate a simpler, narrower, clear, and harmonised definition of what is considered under AI.

The use of already existing AI applications should not be disrupted. Any upcoming EU AI framework should take into consideration that there is already a wide spectrum of low risk applications in use. The effect and the costs connected to unbaling use of these applications should be taken into consideration.

Should the European Commission decide to update existing regulations in light of upcoming AI applications, **careful attention should be paid to avoid overregulation – especially considering recently adopted EU and national legislation, support the use of existing AI technologies and bolster innovation**. Any future update of EU law should be proportional and rely on careful consultation and assessment with stakeholders. Over-regulation will hinder – or even prevent – the development and use of AI in the European Union. SMEs and start-ups would be particularly exposed to negative outcomes while enforcement of current and new rules to players outside the EU would unlikely be successful. As a result, the European economy would face a loss of competitiveness at a global stage, which would reduce consumers' choices and expose them to lower quality goods and services.

Regulatory sandboxes for testing high-risk AI solutions could potentially enable businesses of all sizes to explore the potential of Artificial Intelligence. Current European and national legislative frameworks, notably competition and privacy rules, limit data reuse for AI training purposes between small, medium, and large companies. The European Commission could potentially introduce sandboxing for high-risk AI applications in which governments could experiment innovative approaches to regulation that are supportive of small and large businesses alike.

The European Commission's priority should be to work towards a global framework that would secure a level-playing field beyond EU borders. An AI ecosystem of excellence cannot be built without the establishment of global standards. By nature, AI technologies are universal, do not know any border and can be developed in several places at the same time. Therefore, the requirement to retrain AI in the EU can cause potential harm to innovation and should be removed.

Competition coming from outside the EU should not be ignored. Countries like China and the United States have foreseen the rise of AI technologies and have become the leading AI developers and users. European businesses need to act swiftly to remain competitive in a AI-powered world. The European Union must develop a more business-friendly environment where businesses can innovate and existing and upcoming safeguards for AI apply to all actors, no matter where they are based.

Data sharing for purpose of AI development should remain on a voluntary basis. Data is the driving force behind the AI development. To have successful data sharing for the purpose of AI development, companies should remain free to decide for themselves which data they want to share or grant access to, and to whom. Sharing data can be expensive and cumbersome. A voluntary approach would support data reuse, foster AI development while safeguarding the competitiveness of European businesses and securing adequate investment for data management.

Investing in skills, digital education, and research should be a priority of the European Union. We strongly encourage the European Commission to support investment in various digital skills and in cooperation with education providers to secure digital literacy across the EU, so that everyone can flourish in an AI-powered future. Additionally, we support the suggestions put forward by the European Commission to invest in already existing and create new AI research centres ('*lighthouse centre of research and innovation for AI in Europe*') that should promote a balanced centralised approach. Digital education will be paramount to train the AI experts of tomorrow and support the competitiveness of the European economy. We also strongly support that the AI White Paper focusses on increasing the number of women trained and employed in AI, this will lead and help to broaden distribution of AI across society. Additionally, retaining and retraining current employees will be key to make the most out of digital opportunities, as well as addressing the changing customer demand.

Views on the proposed European Commission's policy options

EuroCommerce supports the Option 4 when combining Option 1 and 3.b.

- **A 'soft law' approach under Option 1 will complement the existing EU framework** and provide the regulatory flexibility needed for innovation. Recently adopted regulations (e.g., General Data Protection Regulation, Omnibus Directive, Platform-to-Business Regulation) are already addressing issues related to Artificial Intelligence. Existing voluntary tools, such as the Ethics Guidelines on AI from the AI High-Level Expert Group, complement this framework and provide the regulatory flexibility needed for innovation.

- **Mandatory requirements for "high-risk" AI applications under Option 3.b should acknowledge that a 'one-size-fits-all' approach is not appropriate for AI**, as one AI application used in a given sector can have a completely different level of harm in another sector. Any upcoming AI framework should be application-based and not technology-based. Such an approach should implement safeguards on technological use rather than development, thereby securing technology neutrality. 'High-risk' applications should be assessed on their intended use, i.e. on whether they will be used for internal business processes, decision tools, physical use that presents safety risks including harm to the human body.

A future-proof EU framework should rely on effective enforcement and assessment of existing rules to the benefit of both potentially vulnerable people and businesses and avoid legal uncertainty. Mandatory requirements for "high-risk" applications should only address remaining gaps to support innovation and protect consumers in an agile way.

Considering the fast development of AI technology, we would encourage the European Commission to establish a special AI committee, consisting of stakeholders and Member States' experts, that will cooperate with the European Commission regularly when reviewing and assessing potential high-risk AI applications.

EuroCommerce welcomes the European Commission's recognition of the retail and wholesale sector as a low-risk sector for use and development of AI applications. Retailers and wholesalers should be able to make their own risk assessments of AI applications. Considering the fast-changing nature of AI, the European Commission should provide businesses with adequate guidance to secure flexible and reliable risk assessments for high-risk AI applications. In particular, by providing the scope of harm, clear criteria for high-risk applications and a narrow, clear and harmonised definition what is considered AI.

High-risk AI applications should be defined and overseen in a way that provides legal certainty and is future-proof.

- The future EU framework for high-risk AI applications should rely on a clear definition of what constitutes 'risk' and 'harm' in line with the Product Liability Directive. Securing a harmonised definition of these concepts and underlying factors and measurement will be paramount to support the uptake of Artificial Intelligence in the EU. Legal certainty will help retailer and wholesalers to assess risks, ensure compliance and meet safety requirements.

- 'Immaterial damage' should be removed from the scope of high-risk harms. Immaterial damage is a very broad concept that is difficult to define and could be misused, reducing the attractiveness of the EU for the development of innovative AI applications.

Certain biometric identification systems contribute to significant innovations in retail, such as paying by fingerprint. When properly managed, such innovations facilitate the customer journey and benefit internal efficiencies. EU rules for remote biometric identification systems should balance privacy concerns with opportunities for consumer experience improvement. The General Data Protection Regulation (GDPR) has already created a clear framework for remote biometric identification systems in which biometric data processing should be a last resort option. Retailers and wholesalers would welcome the opportunity to explore innovative. We would encourage a further dialogue on the issue and further consultations with relevant stakeholder. It would be very important not to treat all biometric identification systems in the same way, but rather take a case by case approach.

EuroCommerce questions the effectiveness of Options 2, 3.a and 3.c:

- **A voluntary labelling scheme under Option 2 would likely overflow users and end users with information and refrain them from using AI technologies by putting forwards the notion of risks rather than benefits.** Such a scheme would also increase administrative burdens for developers and reduce the attractiveness of the European Union for AI innovation and development. In light of the current digital skill gap the European Union faces, finding the right skills to implement such a scheme could prove most difficult. Should the Commission opt for this Option, attention should be paid at securing an EU-wide scheme that accounts for the diversity of AI applications.

- **Mandatory requirements for biometrics under Option 3.a and for all AI applications under Option 3.c would hamper the regulatory agility needed to support innovation and prevent consumers from benefiting from upcoming technological developments.** Option 4 would balance consumer protection safeguards and business interests.