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P9\_TA(2020)0032

## **Automated decision-making processes: Ensuring consumer protection, and free movement of goods and services**

**European Parliament resolution of 12 February 2020 on automated decision-making processes: ensuring consumer protection and free movement of goods and services (2019/2915(RSP))**

(2021/C 294/03)

*The European Parliament,*

- having regard to its resolution of 12 February 2019 on a comprehensive European industrial policy on artificial intelligence and robotics <sup>(1)</sup>,
  - having regard to its resolution of 16 February 2017 with recommendations to the Commission on civil law rules on robotics <sup>(2)</sup>,
  - having regard to the report entitled 'Liability for artificial intelligence and other emerging digital technologies' by the Commission's Expert Group on Liability and New Technologies, published on 21 November 2019,
  - having regard to the report entitled 'Policy and investment recommendations for trustworthy artificial intelligence' by the Commission's High-Level Expert Group on Artificial Intelligence, published on 26 June 2019,
  - having regard to the document entitled 'Ethics Guidelines for Trustworthy AI' by the Commission's High-Level Expert Group on Artificial Intelligence, published on 8 April 2019, as well as the Trustworthy AI assessment list,
  - having regard to the Commission communication of 8 April 2019 on building trust in human-centric artificial intelligence (COM(2019)0168),
  - having regard to the Commission communication of 7 December 2018 on a coordinated plan on artificial intelligence (COM(2018)0795),
  - having regard to the Commission communication of 25 April 2018 on Artificial Intelligence for Europe (COM(2018)0237),
  - having regard to the motion for a resolution of the Committee on the Internal Market and Consumer Protection,
  - having regard to the question to the Commission on automated decision-making processes: ensuring consumer protection and free movement of goods and services (O-000008/2020 — B9-0007/2020),
  - having regard to Rules 136(5) and 132(2) of its Rules of Procedure,
- A. whereas technological advances within the fields of artificial intelligence (AI), machine learning, complex algorithmic-based systems and automated decision-making processes are being made at a rapid pace, and whereas the applications, opportunities and challenges presented by these technologies are numerous and affect virtually all sectors of the internal market;
- B. whereas the development of automated decision-making processes is expected to make a significant contribution to the knowledge economy, and offers benefits for society through, among other things, improved public services, for consumers through innovative products and services and for businesses through optimised performance;

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<sup>(1)</sup> Texts adopted, P8\_TA(2019)0081.

<sup>(2)</sup> OJ C 252, 18.7.2018, p. 239.

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- C. whereas the use and development of AI and automated decision-making processes also presents challenges for consumer trust and welfare, especially in terms of empowering consumers to identify such processes, to understand how they function, to make informed decisions on their use, and to opt out;
- D. whereas ethical guidance, such as the principles adopted by the Commission's High-Level Expert Group on Artificial Intelligence, provides a starting-point; whereas, however, an examination of the current EU legal framework, including the consumer law acquis, product safety and market surveillance legislation, is needed to check whether it is able to respond to the emergence of AI and automated decision-making and provide a high level of consumer protection, as required under Article 38 of the Charter of Fundamental Rights of the EU;
- E. whereas a common EU approach to the development of automated decision-making processes will help secure the benefits of those processes and mitigate the risks across the EU, avoid fragmentation of the internal market, and enable the EU to better promote its approach and its values around the world;

### ***Consumer choice, trust and welfare***

1. Welcomes the potential of automated decision-making to deliver innovative and improved services to consumers, including new digital services such as virtual assistants and chatbots; believes, however, that when consumers are interacting with a system that automates decision-making, they should be properly informed about how it functions, about how to reach a human with decision-making powers, and about how the system's decisions can be checked and corrected;
2. Urges the Commission to monitor closely the implementation of new rules under the Better Enforcement Directive <sup>(3)</sup> that require traders to inform consumers when prices of goods or services have been personalised on the basis of automated decision-making and profiling of consumer behaviour, allowing traders to assess the consumer's purchasing power;
3. Urges the Commission to monitor closely the implementation of the Geo-blocking Regulation <sup>(4)</sup>, in order to ensure that automatic decision-making is not being used to discriminate against consumers on the basis of their nationality, place of residence or temporary location;
4. Encourages the Commission to monitor whether obligations on traders enable effective consumer choice and offer sufficient consumer protection; calls on the Commission to check the existence of any regulatory gaps and to examine whether additional measures are necessary in order to guarantee a strong set of rights to protect consumers in the context of AI and automated decision-making;
5. Notes that automated decision-making systems are being used in alternative dispute resolution mechanisms on various digital platforms to resolve disputes between consumers and traders; calls on the Commission to ensure that any upcoming review of Directive 2013/11/EU on alternative dispute resolution for consumer disputes <sup>(5)</sup> and Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes <sup>(6)</sup> takes into account the use of automated decision-making and ensures that humans remain in control;

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<sup>(3)</sup> 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 (OJ L 328, 18.12.2019, p. 7).

<sup>(4)</sup> Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60 I, 2.3.2018, p. 1).

<sup>(5)</sup> OJ L 165, 18.6.2013, p. 63.

<sup>(6)</sup> OJ L 165, 18.6.2013, p. 1.

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### ***Safety and liability framework for products***

6. Underlines that the EU's product safety framework obliges businesses to ensure that only safe and compliant products are placed on the market; recognises that the emergence of products with automated decision-making capabilities presents new challenges, since such products may evolve and act in ways not envisaged when first placed on the market; urges the Commission to bring forward proposals to adapt the EU's safety rules for products covered by specific EU legislation that sets harmonised requirements, including the Machinery Directive<sup>(7)</sup>, the Toy Safety Directive<sup>(8)</sup>, the Radio Equipment Directive<sup>(9)</sup> and the Low Voltage Directive<sup>(10)</sup>, and for 'non-harmonised products' covered by the General Product Safety Directive<sup>(11)</sup>, so as to ensure that the new rules are fit for purpose, that users and consumers are protected from harm, that manufacturers have clarity about their obligations, and that users have clarity on how to use products with automated decision-making capabilities;

7. Stresses the need for a risk-based approach to regulation, in light of the varied nature and complexity of the challenges created by different types and applications of AI and automated decision-making systems; calls on the Commission to develop a risk assessment scheme for AI and automated decision-making in order to ensure a consistent approach to the enforcement of product safety legislation in the internal market; emphasises that Member States must develop harmonised risk management strategies for AI in the context of their national market surveillance strategies;

8. Notes that the Product Liability Directive<sup>(12)</sup> has, for over 30 years, provided a valuable safety net to protect consumers from harm caused by defective products; recognises the challenge of determining liability where consumer harm results from autonomous decision-making processes; calls on the Commission to review that directive and consider adapting such concepts as 'product' 'damage' and 'defect', as well as adapting the rules governing the burden of proof; urges the Commission to make proposals to update these concepts and rules if necessary;

### ***Regulatory framework for services***

9. Recalls that the existing regulatory framework on services, consisting of the Services Directive<sup>(13)</sup>, the Professional Qualifications Directive<sup>(14)</sup>, the Proportionality Test Directive<sup>(15)</sup>, the e-Commerce Directive<sup>(16)</sup> and the General Data Protection Regulation (GDPR)<sup>(17)</sup>, already covers many policy aspects relevant for services that incorporate automated decision-making processes, including rules on consumer protection, ethics and liability; notes that such rules should apply to both traditional services and services incorporating automated decision-making processes;

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<sup>(7)</sup> Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast), OJ L 157, 9.6.2006, p. 24.

<sup>(8)</sup> Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1).

<sup>(9)</sup> Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

<sup>(10)</sup> Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).

<sup>(11)</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

<sup>(12)</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

<sup>(13)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

<sup>(14)</sup> Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 354, 28.12.2013, p. 132).

<sup>(15)</sup> Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (OJ L 173, 9.7.2018, p. 25).

<sup>(16)</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

<sup>(17)</sup> 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).

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10. Underlines that while automated decision-making processes can improve the efficiency and accuracy of services, humans must always be ultimately responsible for, and able to overrule, decisions that are taken in the context of professional services such as the medical, legal and accounting professions, and for the banking sector; recalls the importance of supervision or independent oversight by qualified professionals in cases of automated decision-making where legitimate public interests are at stake;

11. Underlines the importance, in line with the Proportionality Test Directive, of properly assessing risks before automating professional services; urges Member State competent authorities to ensure that professional training takes account of scientific advances in the field of automated decision-making;

#### ***Quality and transparency in data governance***

12. Notes that automated decision-making systems rely on gathering large amounts of data, and believes that the Regulation on the free flow of non-personal data <sup>(18)</sup> will help to make more data available across the EU, thereby enabling innovative data-driven services to be created; acknowledges the potential of data sharing not only from public but also private sources in this regard, while emphasising the imperative of protecting personal data under the GDPR; stresses the importance of using only high-quality and unbiased data sets in order to improve the output of algorithmic systems and boost consumer trust and acceptance;

13. Stresses that, in light of the significant impact that automated decision-making systems can have on consumers, especially those in vulnerable situations, it is important for those systems not only to use high-quality and unbiased data sets but also to use explainable and unbiased algorithms; considers that review structures are needed within business processes to remedy possible mistakes in automated decisions and that it should be possible for consumers to seek human review of, and redress for, automated decisions that are final and permanent;

14. Underlines that, in order to assess whether products with automated decision-making capabilities are in conformity with the relevant safety rules, it is essential for the algorithms behind those capabilities to be adequately transparent, and to be explainable to market surveillance authorities; invites the Commission to assess whether additional prerogatives should be given to the market surveillance authorities in this respect;

15. Calls on the Commission to monitor closely the implementation of the Platform-to-Business Regulation <sup>(19)</sup>, especially the rules on the transparency of rankings, which involve use of automated decision-making processes;

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16. Instructs its president to forward this resolution to the Council and the Commission.

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<sup>(18)</sup> Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union (OJ L 303, 28.11.2018, p. 59).

<sup>(19)</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).