Raising standards for consumers

ANEC replies to the European Commission Consultation on Inception Impact Assessment: Proposal for a legal act of the European Parliament and the Council laying down requirements for Artificial Intelligence

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1 | Introduction

ANEC welcomes the European Commission consultation on the Inception Impact Assessment for a proposal for a legal act laying down requirements for Artificial Intelligence and we are happy to share our views on the policy options for a European legislation on AI.

As a member of the Independent High-Level Expert Group on Artificial Intelligence set up by the European Commission and of the CEN-CENELEC Focus Group on Artificial Intelligence, we focus our replies on the use of standards and related legislation to shape the European approach for Trustworthy AI.

2 | Objectives and Policy options

As the European Commission's assessment of product safety and liability legislation shows, there are gaps in present legislation and new AI related aspects such as explicability require **new legal provisions**, especially for enforcement purposes. We therefore support **Option 3.c**: EU legislative instrument establishing mandatory requirements for all applications.

The new rules have to cover risks posed by AI systems in a proportionate manner, with more stringent rules for high-risk applications. The EU regulatory approach on safety should be based and explicitly refer to the **precautionary principle**.

We think that new rules should be adopted to make the **appropriate risk assessment of all AI systems**, taking into account of the nature of the hazard and the likelihood of its occurrence. Based on the assessment results, different rules can be applied in a proportionate manner.

In order to assess whether the AI system is posing a high or low risk, **criteria** such as likelihood of the harm occurring, immediacy of the harm, the foreseeable use of the AI system (and not only the intended use which is not covering the potential effects of machine learning) have to be taken into account too. In addition, provisions have to deal with how **uncertainties and assumptions** impact the risk assessment. Once the risk is identified, **mitigating measures** have to be adopted (by industry, public authorities). Standards can be used to support the risk assessment. Any assessment, audit, certification, market surveillance activities have to cover the evolving nature of the AI system. For this, **access to the AI system algorithms, codes and data sets** must be ensured to understand and assess the risks.

About the level of risk, in our view, it is not a question of the kind of AI application as such, but of how to assess the risks posed to consumer protection by AI systems. In addition to cyber risks, personal security risks, risks related to the loss of connectivity and mental health risks, the risks to the environment should not be forgotten.

We believe that product liability rules should be updated to ensure consumers are protected when they face problems with their digital goods.

We also believe that **new consumers rights** should be enshrined, for all AI systems, and not only high-risk applications, as follows:

-Right to Transparency, Explanation, and Objection

-Right to Accountability and Control

-Right to Fairness

-Right to Safety and Security

-Right to Access to Justice

-Right to Reliability and Robustness

We think that consumers interacting with AI systems must be able to keep full and effective self-determination/autonomy over themselves. This means securing human oversight over processes in AI systems. AI systems must not create asymmetries of power or information, such as between businesses and consumers. AI systems must not endanger the environment.

We also suggest adopting the **definition of AI** provided by the EC HLEG on AI in the ethical guidelines. And to add a definition of ADM-Systems (Automated Decision Making).

Legislation is needed to determine how and by whom **biometrics** technology can be used and the guarantees for citizens and consumers. Considering the high risk of abuse, discrimination and violation of fundamental rights to privacy and data protection, the European Union must develop a strong, privacy-protective approach for biometrics systems before they are largely used in public spaces.

Voluntary labelling system

Consumer information is useful in order to help transparency. However, labels are only as good as the requirements and enforcement systems on which they are based. Once clear legal rules and enforcement mechanisms are in place, the role of a label could be considered.

Another important element to address is the inherent information asymmetry associated with AI or an evolving/machine learning system, making the function of a label different from a label linked to traditional, non-AI products (e.g. Ecolabel) where the technological content of the product is "static". Regardless, label and warnings should never be used as substitutes for built-in safety and security-by-design.

ENDS

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and the use of standards, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 34 countries.

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