THE CONSUMER PERSPECTIVE ON THE JOINT EU-US ROADMAP ON ARTIFICIAL INTELLIGENCE

Artificial Intelligence (AI) products and services, such as virtual assistants and facial recognition tools, are already changing consumer markets and our societies. It is a technology which carries huge expectations of improving and making consumers' lives more convenient. But the use of AI also comes with great risks and has major implications for consumers' autonomy and self-determination, their privacy, their capacity to interact with products and services and, ultimately, in their ability to hold businesses responsible if something goes wrong.

Consumer organisations value voluntary cooperation between EU and U.S. regulators on issues that pose common challenges, such as is the case of AI technology. However, we have major concerns over the joint AI roadmap published during the third EU-U.S. Trade and Technology Council (TTC) ministerial meeting. We would like to provide recommendations to ensure that the TTC's work will be beneficial for consumers.

GENERAL COMMENTS

ENSURE BETTER STAKEHOLDER ENGAGEMENT AND TRANSPARENCY IN THE TTC

Most consumer groups in the European Union and the United States have not been involved in the stakeholder consultation during the drafting of the roadmap. This raises concerns as the roadmap goes well beyond standardisation of AI and requires broader stakeholder engagement.

We welcome the pledge from Executive Vice President Vestager to organise a stakeholder workshop about the AI roadmap.[1] We recommend consulting consumer groups and other civil society organisations every time a key TTC document is drafted.

The TTC needs a more organised and predictable stakeholder outreach. We were pleased to hear from Secretary Gina Raimondo that the U.S. would publish more information about the TTC overall.

THE IMPORTANCE OF INDEPENDENT THIRD PARTIES IN THE EVALUATION OF AI SYSTEMS

The roadmap does not mention who should carry out the risk assessment and evaluation of AI systems. This is an important aspect to consider. Indeed, there is a clear conflict of interests when those responsible for assessing compliance with legislation are the exact same companies which are subject to those legal requirements, and which are eager to place their products on the market as quickly as possible.

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[1] https://futurium.ec.europa.eu/en/EU-US-TTC/events/ttc-stakeholder-assembly

The safest way to ensure consumers are adequately protected is, at the very least, to require that AI systems considered to represent a higher risk undergo a third-party assessment.

DETAILED COMMENTS ON THE CONTENT OF THE ROADMAP

1. RISK-BASED APPROACHES: BRINGING EU AND U.S. APPROACHES CLOSER

The EU and U.S.' respective approaches to AI do share some common principles. The high-level principles are similar: human oversight, non-discrimination, safety, privacy, accuracy, and transparency. These values contribute to consumer protection, and we encourage the TTC to promote them in the field of AI at international level.

However, the AI roadmap itself recognises that the EU and the U.S. in practice do not implement these principles in the exact same way. There are divergences in 1) the allocation of responsibility for risk assessment, 2) the legal responsibility for the establishment of a risk management system and 3) the balance between regulatory and voluntary measures. It is necessary to acknowledge and respect these differences because an alignment could lead to reduced consumer protection both in Europe and the United States.

2. ROADMAP ACTIVITIES

2.1 ADVANCE SHARED TERMINOLOGIES AND TAXONOMIES

The roadmap activities include the agreement on shared terminologies and taxonomies for operationalizing trustworthy AI. According to the roadmap, these activities should support the EU's and U.S.' work on interoperable definitions of key terms such as trustworthiness, risk, harm, risk threshold. Common work is also foreseen about socio-technical characteristics such as bias, robustness, safety, interpretability, and security such as an "interoperable taxonomy."

However, the roadmap doesn't seem to take into account the fact that in domestic legislation, like for example in EU product safety law or in EU chemicals legislation, terms like 'safety' and 'risk' are already legally defined. It is solely the European Union's Court of Justice who has the competence to interpret such concepts and terminology of EU legislation. Other concepts such as 'harm' are defined in European national laws and thus are defined by their national member states legislators and interpreted by national courts. The TTC is therefore not the right forum for defining or interpreting key concepts of the EU legislation.

In the U.S., lawmakers have tabled several proposals to regulate AI, some of which have bipartisan support and have reached advanced stages of the U.S. legislative process, such as the American Data Privacy and Protection Act. This bill includes rules on civil rights and algorithms and defines terms such as 'algorithm'. The proposed EU AI Act is currently being negotiated between EU institutions. The proposed EU legislation includes important definitions, for instance of 'AI system'. It also includes important concepts such as 'bias'. Many important elements under the EU AI Act or any relevant U.S. legislation might end up being established in its implementation phase, through the development of technical standards. For example, key concepts such as biases in AI might be defined through technical standards, by standardisation bodies, after the adoption of the AI Act.

At the same time, the joint EU-U.S. AI roadmap foresees common work on the same issues. If these concepts are defined between the EU and the U.S. before the implementation of the AI Act or the forthcoming U.S. legislation, then there is a risk that the TTC pre-empts domestic legislative processes. This should be avoided. For instance, if the concept of 'bias' is defined too narrowly under the TTC, it might not cover all types of discrimination addressed in the EU.

Therefore, **the definition of such important concepts for consumers must be carried out domestically, by legislators, with sufficient democratic scrutiny**.

2.2 EU-U.S. LEADERSHIP AND COOPERATION ON INTERNATIONAL TECHNICAL STANDARDS AND TOOLS FOR TRUSTWORTHY AI AND RISK MANAGEMENT

2.2.1 INTERNATIONAL TECHNICAL STANDARDS

The roadmap insists on the importance of cooperating on international standards. In this context, the EU and the U.S. must take into account the lack of representation of civil society organisations in the making of standards. Indeed, industry stakeholders are over-represented in standard setting. Therefore, the expert working group on AI standards, created by the roadmap, should assess how to better take into account the consumer view. The set-up of this expert working group, if rightly composed, could be an opportunity to address flaws and gaps in consumer protection when it comes to existing AI standards.

In the long run, the TTC should work on improving civil society participation in the making of AI-related standards. The governance of standardisation organisations must considerably evolve to better represent civil society, including consumer organisations. The EU and the U.S. could take inspiration from the EU Standardisation Strategy[2] to achieve this objective. Working Group 1 of the TTC should act for such a change to be implemented in international standardisation organisations such as ISO/IEC.

It is important to be careful when it comes to the use of International Standards for public policy objectives. Indeed, in AI international standardisation, there is strong participation of countries which do not share the democratic values and principles of the EU and the U.S. In addition, while technical standards can deliver technical robustness, security and interoperability, some aspects of AI are challenging to standardise and require a cautious approach. For instance, aspects relating to fundamental rights, such as defining what constitutes discrimination, should not fall within the remit of standardisation working groups.

Finally, we are concerned about the intention of the EU and the U.S., as stated in the roadmap, to base trustworthy AI and risk management regulation on the World Trade Organization's (WTO) technical barriers to trade (TBT) principles. In addition to the problems associated with tying public policy to international standards explained before, the WTO's TBT Agreement forces countries to subject their rights to enact technical regulations to the obligation of avoiding creating "unnecessary obstacles to trade." Countries have often found issues trying to justify that their polices are "necessary" under WTO law given the stringent way in which WTO adjudicating bodies have interpreted this language.[3] In an emerging field such as AI, the EU and the United States should not put the idea of trade liberalization above consumer safety and welfare.

2.2.2 TOOLS FOR TRUSTWORTHY AI AND RISK MANAGEMENT

- **Shared hub/repository of metrics and methodologies**

It is important to make the shared hub/repository of metrics and methodologies available to the public, as stated in the roadmap. The TTC should carefully define the selection criteria that will determine whether a metric can be included in the shared hub. For instance, the OECD tool contains a lot of metrics developed by individual companies, including major AI companies themselves. The future TTC shared hub should favour work that was peer-reviewed, open to comments, and involved as many as possible civil society actors.

2.3 MONITORING AND MEASURING EXISTING AND EMERGING AI RISKS

- **A tracker of existing and emergent risks and risk categories based on context, use cases, and empirical data on AI incidents, impacts, and harms.** The tracking of existing and emerging

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[2] European Commission, "An EU Strategy on Standardisation - Setting global standards in support of a resilient, green and digital EU single market", Communication, 2 February 2022. In this document, the Commission "calls on the ESOs to make proposals by the end of 2022 to modernise their governance. This should include addressing uneven and untransparent representation of industrial interests and increasing the involvement of SMEs, civil society and users." Additionally, the Commission will "launch a peer review process amongst Member States and national standardisation bodies by the end of 2022 to achieve better inclusiveness, including of civil society […]".

[3] Daniel Rangel, "WTO General Exceptions: Trade Law's Faulty Ivory Tower," Public Citizen's Global Trade Watch, Jan. 2022. p.18-19. Available at: https://www.citizen.org/article/wto-general-exceptions-trade-laws-faulty-ivory-tower/.

AI-related risks is an interesting proposal. It could help identify at early-stage risky technologies and classify them as high-risk (e.g. in the context of the EU AI Act). In extreme cases, such a tracker should even lead to the withdrawal of harmful AI technologies from the market.

- **Interoperable tests and evaluations of AI risks.** The evaluation of AI systems is crucial to ensure that they are trustworthy, which means legal, ethical and robust according to the European Commission's high expert group on AI. However, what the roadmap does not mention is that equally crucial is the question of who evaluates them. Independent third parties with the required competencies should perform such an evaluation, not the manufacturers/providers/deployers. Therefore, this roadmap activity should approach the question from this angle, giving priority to a scenario where a third party evaluates an AI system as evaluations can also be used for compliance tests by certification bodies and market surveillance authorities.

3. IMPLEMENTATION PLAN

Short- and long-term objectives

- **Establish inclusive cooperation channels.** Three working groups would be established: 1) AI terminology and taxonomy, 2) AI standards and tools for trustworthy AI and risk management, and 3) monitoring and measuring existing and emerging AI risks. The EU and the U.S. must be transparent about the composition of these working groups. It should be clarified whether they will only gather officials or also stakeholders. The mandate of these working groups should also be made public. If stakeholders will be involved, then there needs to be representatives of all relevant civil society actors, including consumer groups. All stakeholder groups participating in the working groups e.g. Industry/enterprises, civil society organisations and academia should be represented in equal proportions.

- **Advancing shared terminologies and taxonomies.** As explained in point 3.1, the definition of such important concepts for consumers must be carried out domestically, by legislators, with sufficient democratic scrutiny. Moreover, the interpretation of legally defined concepts in the EU is the competence of the Court of Justice of the EU. The TTC is not the right forum for defining or interpreting key concepts of the EU legislation.

- **AI Standards:** The lack of consumer representatives in standardisation is particularly acute at the international level. The TTC should contribute to a better representation of the consumer interest in standardisation bodies.

On top of what is proposed in the roadmap, we recommend developing the following activities:

- Exchange best practices on how to ensure transparency, accountability, and fairness of algorithmic practices. Working Group 10 on global challenges should explore how to ensure that regulators, consumer advocates, and researchers can have access to algorithms and source code to detect discriminatory, unfair, biased, and other illegal conduct. Indeed, discussions about how to prevent forced technology transfers should not lead to a situation where authorities and researchers would not be able to assess whether AI systems comply with domestic laws[4].
- Exchange information on technology trends, case studies of real-life AI applications, and their impact on consumer rights.

FURTHER READING

- BEUC position on the AI act: https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-088_regulating_ai_to_protect_the_consumer.pdf

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[4] See the study commissioned by the Federation of German Consumer Organisations, vzbv, about trade & AI:
https://www.vzbv.de/sites/default/files/downloads/2021/01/21/21-01-26_study_ai_and_trade.pdf

- EPIC publication on AI Bill of Rights: https://epic.org/ai-bill-of-rights-leaves-actionable-instructions-for-companies-agencies-and-legislators/
- TACD Recommendations for the EU-U.S. cooperation agenda: https://tacd.org/wp-content/uploads/2021/12/20211206-FINAL_TACD-recommendations-on-EUUS-cooperation-agenda-2021.pdf