Background Paper for Panel Sessions
Open Forum - "Artificial Intelligence for consumer protection"

1. **Basic information:**

   a. **Title of Panel session: Artificial Intelligence (AI) for consumer protection**

   b. **Identify relevant IGF subtheme**

The Open Forum will embrace the **Economic and social inclusion and human rights,** as the main focus area with a particular regard to two of the policy questions:

- *(4.) Inclusion, rights and stakeholder roles and responsibilities*

- *(5.) Promoting equitable development and preventing harm*

Furthermore, the discussion shall lead also to the emerging and cross-cutting issue areas such as: **Emerging regulation: market structure, content, data and consumer/users rights regulation**.

   c. **List up to 5 tags**

"consumer protection", "Artificial Intelligence", "consumer rights", "consumer law and policy", "algorithmic transparency".

2. **Summary or Abstract of background paper (1 – 2 paragraphs): This short summary should contain at a minimum**:
   a. **A statement of purpose (e.g. Why should this Internet Governance issue be considered at this time?)**

- AI-based applications raise new, so far unresolved legal questions, and consumer law is no exception.
- As with many new and emerging technologies, Artificial Intelligence (AI) is still, to some extent, an enigma. And while it can be hard to separate the myths from the facts, there should be no doubt that AI is already beginning to have a big impact on our daily lives.

   b. **Description of the relevance to Internet Governance, and to the themes/sub-themes of the IGF meeting.**

- The Open Forum sets out to explore the opportunities and challenges of AI, and what potential it has for the future in embracing consumer rights.
- The event will embrace the *Economic and social inclusion and human rights* along with the corresponding stakeholder roles and responsibilities for equitable development.

   c. **Description of the expected results of the discussion**

   The Open Forum shall bring answers on:

- how can AI be used to enhance consumer rights enforcement on the Internet,
- how to ensure in practice, considering technological, HR, organizational and ethical aspects, that AI-powered applications designed to protect consumers are efficient enough while their use does not lead to discrimination, opacity of decisions, bias or other harmful effects

3. Body of Paper the background paper should address the following:

a. Statement of purpose (e.g. Why should this Internet Governance issue be considered at this time?)

It is said the future belongs to artificial intelligence. However, it's up to us how we design it. How do we design the new order?

By the time legislators have reacted to a problem and passed the necessary laws to protect consumers, there is a good chance that the technology giants who dominate the AI industry may have taken their algorithms in a different direction – a direction that is not necessary in the best interests of consumers.

The use of AI has many implications, both for consumers and the consumer protection authorities that seek to protect them. AI throws up a number of a challenging issues for consumer protection across the globe; a lack of transparency about how algorithms are used to shape the services & prices we receive online, concerns that human biases and discrimination may be reflected in technology and input data, and invasive uses of AI that undermine our privacy.

On the other hand, tools to protect consumers based on new technologies (including artificial intelligence) can also be implemented in consumer protection authorities with an appropriate level of funding and adaptation of their technological and human resources infrastructure. Some tools are already available on the market (web crawlers, image recognition tools, big data analytics, bots), however others still need to be developed in cooperation between authorities and data scientists. Thus, government technology activities should be encouraged and supported.

How the Forum resolves these issues is unclear, but the consensus at the event will be that a combination of approaches are necessary, including greater transparency, stronger enforcement and more corporate accountability. Collaboration will also be key, with consumer organizations, civil society, business and policy-makers working together to develop answers to the questions raised by AI.

b. Relevance to Internet Governance, IGF themes and subthemes

The Panel connects with a broad range of stakeholders and other IGF themes that have an important impact on consumers' everyday lives from the scope of the legislation, to more practical aspects.

The Open Forum on Artificial Intelligence (AI) will embrace the *Economic and social inclusion and human rights,* as the main focus area with a particular regard to the following policy questions:

- (4.) Inclusion, rights and stakeholder roles and responsibilities

- (5.) Promoting equitable development and preventing harm

Furthermore, the panel shall also lead to the issue area of: "Emerging regulation: market structure, content, data and consumer/users rights regulation".

c. Review of the current situation. (This can be as simple as an annotated bibliography. This can also include a list of other venues and institutions working on the issue).

Artificial intelligence is a very broad term. The definition of "AI system" developed for the OECD Recommendation on Artificial Intelligence is as follows:
"AI system: An AI system is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy". It is indeed the highest level of development in quantitative methods. The speed at which technologies such as AI grow and develop makes effective regulation difficult.

As with any multi-use technology, the regulation of AI will require a closer look at the opportunities and risks that arise for consumers in particular applications. It should not be forgotten that AI applications are not per se harmful to consumers. AI-based systems can be used to strengthen consumer rights. For example, AI based personalization can also help to ensure that information given to consumers, as well as contracts, are tailored to the needs and preferences of the individual consumer.

Furthermore, AI systems can also be used for automated compliance monitoring and for the enforcement of consumer regulations by consumer protection authorities. In addition, there are some legal-tech companies emerging to ensure that consumers can enforce their rights more quickly, easily and cost-effectively than was previously the case.

In April 2021 the European Commission unveiled its proposal for a law on artificial intelligence (AI). The proposal falls short of consumer groups' expectations and of the EU's own objective of enabling AI that people can trust. According to them, the proposed rules are focused on a very limited range of AI uses and issues. They do not adequately protect consumers, for example from possible economic harm caused by AI products and services. In other words, in the eyes of some stakeholders, the EU proposal for artificial intelligence law is weak on consumer protection.

Consumer groups are recommending that this new horizontal law should have a broader scope. Legal obligations should gradually increase depending on the identified level of risk, with some basic principles and obligations (e.g. regarding fairness and transparency) applicable to all AI applications. Proper preparation of this legislation right is essential so that AI benefits both the individual and society as a whole. There are calls from some stakeholders that the proposal should be improved to ensure this goal can be met.

Parties that are being involved in the current work on the AI matter include but not limited to the following: European Union institutions as European Commission, academy as European

University Institute, NGO's consumer associations, intergovernmental consumer forums as well as government entities responsible for consumer protection.

Bibliography:

- White Paper on AI: https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf, page 11.

- Prof. Sartor, *New aspects and challenges in consumer protection. Digital services and artificial intelligence*: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648790/IPOL_STU(2020)648790_EN.pdf, chapter 9.

- US FTC position on decision making using AI: https://www.ftc.gov/news-events/blogs/business-blog/2020/04/using-artificial-intelligence-algorithms

- BEUC position about using AI to make decisions: https://www.beuc.eu/publications/beuc-x-2020-121_artificial_intelligence_must_serve_not_harm_consumers.pdf

- BEUC: https://www.beuc.eu/publications/eu-consumer-protection-20-structural-asymmetries-digital-consumer-markets-0

- Verbraucherrecht (in:) M. Ebers, C. Heinze, T. Krügel, B. Steinrötter (red.), Künstliche Intelligenz und Robotik, C.H. Beck 2020 (co-authors: H.-W. Micklitz, A. Jabłonowska)

- EUI, Consumer law and artificial intelligence : challenges to the EU consumer law and policy stemming from the business' use of artificial intelligence : final report of the ARTSY project: https://cadmus.eui.eu/handle/1814/57484

- Fundacja ePaństwo, Two reports (2019 and 2021) on the usage Automated Decision Making in Central and Eastern Europe): https://epf.org.pl/en/projects/algovrithms

- OECD, Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449 https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449

- OECD, Recommendation of the Council on Consumer Product Safety, OECD/LEGAL/0459 https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0459

- OECD (2018), "Consumer product safety in the Internet of Things", OECD Digital Economy Papers, No. 267, OECD Publishing, Paris, https://doi.org/10.1787/7c45fa66-en. (p 11 and 12)

- OECD (2021), Roundtable on Dark Commercial Patterns Online: Summary of discussion, https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2020)23/FINAL&docLanguage=En - the use of web crawlers (AI technology) to detect dark commercial patterns misleading consumers online

   d.   List of questions to be discussed and/or to be asked to key players

The questions listed below are exemplary and represent the themes that should be discussed in the panel (for purposes of planning the panel, several most representative questions will be selected)

- What kind of AI applications shall be used to better protect consumers on the Internet?
- How to identify processes within consumer rights enforcement institutions that can be automatized and supported by AI?
- Is it recommended to choose machine learning methods or more static ones? How to provide an adequate set of initial data? How to supervise the learning machine and make it act transparently enough?
- Can a public authority fully rely on results of analysis made by AI-powered machine?
- What role should AI applications play in the decision-making process: a tool, an assistant, a peer?
- How can consumer rights enforcement benefit from natural language processing methods? Are they suitable for the detection of unfair contract terms?
- How to ensure AI is used in a fair, transparent and responsible way, especially by public authorities?
- What are the experiences of the Forum guests on implementing AI in their organizations? What technological, managerial, HR or legal challenges they have met? What advice can they give to go through the process of implementation of AI successfully?
- What ethical concerns may raise with regard to the use of AI by a public authority (transparency and fairness of decision-making, proper oversight, concerns on employment reduction etc.)
- What legal issues shall be taken into consideration while choosing and implementing AI applications (protection of data, fitting the AI tool into the legal procedures of decision-making, compliance with public procurement law)
- How to ensure a strong oversight and enforcement system, including effective redress mechanisms and public enforcement if risks associated with AI materialize?
- What are liability rules to ensure compensation in case of harm arising from AI-powered products and services?
- How to prevent AI from manipulating its decisions that might lead to unfair discrimination?
- Who shall be accountable if AI causes harm?
- Is the current European/worldwide legislation adequate to regulate AI-based activities (any gaps in protection of consumer rights)?
- How to ensure that AI-powered products and services are safe and secure, and are kept that way throughout their expected lifetime?

e.   Description of Expected results: (what progress in the understanding of the issue is hoped for? For instance: more detailed problem definition, and/or various stakeholders' views of policy options, and/or recommendations, and/or barriers, and/or critical success factors, and/or goals to be advanced etc.).

The panel shall facilitate an open dialogue and better understanding of the relevance of AI in consumer protection. Specific questions listed above will be selected and discussed. The Panel aims to evaluate corporate use of AI in consumer-facing applications, highlight the key debates

about consumer protection and artificial intelligence, and connect relevant regulators, international fora and academics working on these issues.

From the perspective of consumer law, the discussion should therefore:

•   first of all focus on identifying the deficits of the current (national and European) legal framework for the use of AI systems in order to determine the corresponding need for regulation in specific areas and risks.

•   In the above regard, the focus should not only be on consumer protection. It should also take into account neighboring fields of law which are interlinked with consumer law, especially data protection, anti-discrimination and media law as well as competition law.

•   It should also cover major practical aspects of AI implementation in law enforcement bodies, especially transparency procedures, proper oversight, employment concerns and managerial challenges.

The moderator shall steer the discussions to provide specific answers which will be captured in a summary document that will be disseminated by speakers' institutions. The document will be formulated as a policy brief to allow a the reader to easily grasp relevant policy-conclusions.

The discussion should lead to conclusions for both public enforces and private sector. For the former, it will concern the adoption of new regulatory approaches for consumer protection with the use of modern technologies as well as their practical implementation. Understanding and using new technologies will be an essential step for consumer protection authorities if they are to evolve and continue to serve consumers in an increasingly ubiquitous digital world. The latter will benefit from best practices in the elimination of unfair practices by online marketplaces and e-commerce retailers, and the adoption of new regulatory approaches for consumer protection with the use of modern technologies. The diversity of stakeholders ensured by representatives of public and government bodies, international organization, NGO, academia and business will lead to a discussion that will address all aspects of the very complex problem – in terms of technical/technological, ethical and legal issues.