

RECOMMENDATIONS OF THE DATA ETHICS COMMISSION

vzbv's demands towards the European legislators

On 23 October 2019, the German Data Ethics Commission (DEC) published its final report with recommendations for European and national policy-makers with regard to algorithm-based decision-making systems (ADM), artificial intelligence (AI) and the handling of data. Drawing from the DEC's recommendations for action, the Federation of German Consumer Organisations (vzbv) believes that there are concrete tasks for the European legislator that need to be tackled and solved.

AI and ADM are increasingly influencing lifestyles, opportunities for participation, consumer choices and autonomy of individuals, as well as society as a whole. For example, the proliferation of digital assistants can fundamentally change the position of consumers and undermine individual self-determination: Digital assistants are increasingly taking decisions for consumers. The criteria according to which these decisions are made are often opaque. Manipulating consumer decisions via biased rankings is already a reality today on large online market places and comparison platforms. Systems that make phone calls autonomously are already so advanced that people do not always recognise them as machines on the phone. Some systems analyse human emotions in real time and evaluate personality profiles of people.

The recommendations for action presented by the DEC are suitable for minimising the risks of AI and ADM while exploiting the opportunities offered by this technology.

The recommendations of the DEC result in the following tasks for the European legislator:

- ❖ **European Regulation on Algorithmic Systems (EU-ASR):** The EU-ASR should follow a risk-based regulatory approach with horizontal rules on the design and admissibility of ADM and AI, on rights of the individual, transparency, supervisory authorities and structures, as well as technical specifications to ensure the legality and accountability of the systems. These are to be further substantiated by sector-specific rules.
- ❖ **Ensure transparency, explainability and traceability:** Developers and operators of ADM and AI must be able to understand and explain how their systems work to ensure traceability. Data subjects must be provided with all the information necessary to exercise their rights when necessary. In the case of ADM and AI, a labelling obligation is particularly necessary if there is a risk of confusion between human and machine during interaction with the system (e.g. in the case of speech-based systems).

- ❖ **Expand rules for automated decision-making:** The scope of Article 22 of the General Data Protection Regulation (GDPR) should be extended to cover decisions that are prepared automatically. These are often adopted by a human decision-maker without further examination. This extension should either be carried out as part of the evaluation of the GDPR or included in the EU-ASR as *lex specialis* provisions.
- ❖ **Regulate profiling:** Profiling as such (and not merely decisions based on it) must also be regulated. In this respect, limits should be defined, admissibility requirements should be standardised and the principle of proportionality should be clarified.
- ❖ **Establish quality requirements for (partially) automated decision making and profiling:** In order to ensure that the results of decisions are legal and correct, substantive procedural requirements should be laid down. In particular, the data used for the decision should be processed on the basis of a recognised mathematic statistical procedure and be demonstrably relevant to the decision-making process.
- ❖ **Create an obligation to prepare and publish a risk impact assessment:** An impact assessment is appropriate for risky ADMs and AIs. It must take into account information on the data bases, the logic of the model as well as quality and fairness measures in order, among other things, to counter risks of discrimination.
- ❖ **Standardise documentation and logging obligations:** Such obligations are necessary for supervisory authorities to be able to trace and monitor ADM and AI with respect to their legality.
- ❖ **Regulate data management and data trust schemes:** Although such systems are primarily intended to strengthen individual self-determination, they pose considerable risks. Therefore, a legal framework should be provided which regulates admissibility and limits, standardises fiduciary obligations, excludes conflicting interests, and creates appropriate possibilities for control and sanctions.
- ❖ **Prevent the notion of "data ownership":** Data ownership in the sense of an exclusive right is not a suitable instrument to regulate access to data.
- ❖ **Prohibition of de-anonymisation subject to penalty:** It must be prohibited to revoke the anonymisation of data.

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