Ensure rights and redress for people impacted by AI systems

This document outlines amendments to the European Commission's proposed Artificial Intelligence Act (AIA) with respect to the rights and availability of redress to persons whose fundamental rights are impacted by Artificial Intelligence (AI) systems.

I. Why the AIA needs to include rights and redress for those impacted by AI systems

The AIA currently does not confer individual rights to people impacted by AI systems, nor does it contain any provision for redress or a mechanism by which people or public interest organisations can engage in the investigatory process of high-risk AI systems. In particular, the lack of individual rights and redress mechanisms in the AIA presents the following limitations:

- **Lack of accountability for uses of AI that violate fundamental rights or are not compliant with the Act:** Currently there is no mechanism by which those affected by a 'prohibited AI practice' (Article 5) or AI systems that do not comply with the Regulation can challenge such systems or seek redress for the myriad harms that arise from the use of AI systems.

  As documented by civil society, such harms include being subject to unjustified surveillance, discrimination, violations of the presumption of innocence and fair trial rights, as well as being subject to unjust and incorrect decisions in the area of social welfare, employment, education, healthcare and many other areas.

- **Limited redress in existing law and high burden of proof on impacted persons:** In the absence of rights and redress mechanisms in the AIA, people affected would have to rely on existing EU or national law to redress harms stemming from automated systems. Not only does this introduce a high burden of proof for affected persons (particularly problematic considering a lack of access to information about the use of AI, the complexity of AI systems, and existing power imbalances), there are also gaps in existing laws. EU Data Protection Law (GDPR, LED) is limited to the processing of personal data and 'solely' automated processing, and does not always guarantee explicit consent to data processing[1] which produces legal or otherwise significant consequences. EU anti-discrimination law is specific to a limited set of protected characteristics, and it is often difficult to establish evidence when automated systems indirectly discriminate, as per its definition in EU discrimination directives.[2]

- **Insufficient information to those affected by decisions of high-risk AI systems:** People affected by AI systems often lack knowledge that they had been subject to an AI system, and rarely have sufficient information about the operation of the system to enable them to challenge it in the event of errors or fundamental rights violations. Despite many use cases being designated as 'high-risk' under the regulation, often this requires no duty to provide information to those affected by the use of this system. Whilst the AIA provides some direct notification for those interacting with 'limited risk' systems in Article 52, there is no parallel duty to those affected by more grave 'high-risk' systems.

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[1] E.g., to people deprived of legal capacity (GDPR, Article 9.2(c)).
[2] Council of Europe Ad hoc Committee on Artificial Intelligence (2020) Feasibility Study, https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da

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II. Amendments to the Artificial Intelligence Act

The following amendments are proposed to ensure meaningful rights and redress for people and groups affected by high-risk AI systems. These amendments must be taken in conjunction with one another in order to ensure a comprehensive framework for redress in instances where AI systems violate the principles of the AIA or fundamental rights.

1. **Include a title [IVa] 'rights of affected persons'**
2. **Include a right 'not to be subject to non-compliant AI systems**' to ensure natural persons have actionable rights under this regulation, providing a baseline for contesting systems which (a) pose an unacceptable risk and are prohibited and (b) otherwise do not comply with the requirements of the AI act.
3. **Include a Right to information about the use and functioning of AI systems** to ensure that natural persons right to be informed that they have been exposed to high-risk and other regulated (Article 52) AI systems. Ensure also that natural persons have a right to request information when they have been significantly impacted by an AI system within scope.
4. **Include a right to lodge a complaint with a national supervisory authority** where they consider their rights under the regulation have been violated.
5. **Include a right to Representation of natural persons and the right for public interest organisations to lodge a complaint with national supervisory authority**
6. **Include a right to an effective remedy against the national supervisory authority**
7. **Right to an effective remedy against a user for the infringement of rights**