Parliament's negotiating position on the artificial intelligence act

The European Commission tabled a proposal for an EU regulatory framework on artificial intelligence (AI) in April 2021. The draft AI act is the first comprehensive EU legislation to regulate AI and address its potential harms. Parliament is preparing to debate and vote on the joint report from the Internal Market and Consumer Protection (IMCO) and Civil Liberties (LIBE) Committees during its June plenary session. This would then set Parliament's position for trilogue negotiations with the Council on the proposal.

Background

AI technologies including machine-learning techniques and automated decision-making systems are expected to bring a wide array of **economic and societal benefits** in many sectors. However, the **risks** posed by these new technologies, especially for human rights and fundamental freedoms – including with regard to discrimination, data protection and privacy – have been long documented. Against this backdrop, EU policymakers pledged to develop a **'human-centric' approach to AI** to ensure these new technologies are developed and used in line with EU values and principles, and committed to **promote the uptake of AI** and **address the risks associated** with the technology. After an initial soft-law approach, EU lawmakers supported the adoption of additional EU rules, given that existing legislation appeared insufficient to tackle the risks posed by AI technologies due to their specific characteristics.

According to the Commission's impact assessment, AI systems usually exhibit the following **specific characteristics**: (i) opacity (limited ability of the human mind to understand how certain AI systems operate), (ii) complexity, (iii) continuous adaptation and unpredictability, (iv) autonomous behaviour, and (v) data (functional dependence on data and the quality of data). Furthermore, a new wave of disruptive 'general-purpose AI' technologies with generative capabilities such as **ChatGPT** are quickly transforming the way AI systems are built and deployed and raise a number of policy concerns around privacy, intellectual property rights and disinformation spread.

European Commission proposal

The draft AI act lays down a harmonised legal framework for the development, supply and use of AI products and services in the EU. The proposal proposes to introduce a **technology-neutral definition of AI systems** in EU law and to lay down a classification for AI systems with different requirements and obligations tailored on a **'risk-based approach'**. Some AI systems presenting **'unacceptable' risks** to people's safety and fundamental rights, such as those enabling harmful manipulative 'subliminal techniques' or 'real-time' remote biometric identification in publicly accessible spaces for law enforcement purposes (e.g. facial recognition), would be prohibited except in a limited number of cases. A wide range of **'high-risk' AI systems** falling in certain areas or use cases (such as education, employment, law enforcement and justice) would be authorised, subject to a set of requirements and obligations (e.g. conformity assessment). AI systems presenting only **'limited risk'** would be subject to very light transparency obligations. The AI act would also enshrine sandboxing rules to foster innovation in AI.

Council and Parliament positions

The **Council** adopted its common position in December 2022. The Council proposes, inter alia, to allow biometric identification systems in publicly accessible spaces exceptionally for law enforcement purposes and to impose some requirements on general-purpose AI systems by way of implementing acts.

In **Parliament**, the proposed AI act was assigned jointly to IMCO and LIBE (co-rapporteurs: Brando Benifei, S&D, Italy; and Dragoş Tudorache, Renew, Romania). Adopted with 84 votes in favour, 7 against and 12 abstentions, the joint report would amend the Commission's proposal substantially.

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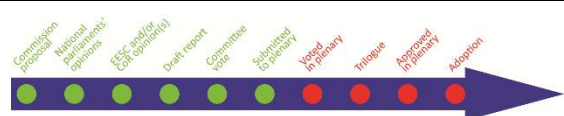The key changes relate to:

- ➢ **Definition**. Parliament amended the definition of AI systems to align it with the definition agreed by the Organisation for Economic Co-operation and Development (OECD).

- ➢ **Prohibited practices**. Parliament substantially amended the list of AI systems prohibited in the EU. Parliament wants to ban the use of biometric identification systems in the EU for both real-time and ex-post use (except in cases of severe crime and pre-judicial authorisation for ex-post use) and not only for real-time use, as proposed by the Commission. Furthermore, Parliament wants to ban all biometric categorisation systems using sensitive characteristics (e.g. gender, race, ethnicity, citizenship status, religion, political orientation); predictive policing systems (based on profiling, location or past criminal behaviour); emotion recognition systems (used in law enforcement, border management, workplace, and educational institutions); and AI systems using indiscriminate scraping of biometric data from social media or CCTV footage to create facial recognition databases.

- ➢ **High-risk AI systems**. While the Commission proposed to automatically categorise as high-risk all systems falling in certain areas or use cases, Parliament adds the additional requirement that the systems must pose a 'significant risk' to qualify as high-risk. AI systems that risk harming people's health, safety, fundamental rights or the environment would be considered as falling in high-risk areas. In addition, AI systems used to influence voters in political campaigns and AI systems used in recommender systems displayed by social media platforms designated as very large online platforms under the Digital Services Act would be considered high-risk systems. Furthermore, Parliament imposes on those deploying a high-risk system in the EU an obligation to carry out a fundamental rights impact assessment, including a consultation with the competent authority and relevant stakeholders.

- ➢ **General-purpose AI**. Parliament wants to enshrine a layered approach in the AI act to regulate general-purpose AI systems. Parliament wants to impose an obligation on providers of foundation models to ensure robust protection of fundamental rights, health, safety, the environment, democracy and the rule of law. They would be required to assess and mitigate the risks their models entail, comply with some design, information and environmental requirements and register such models in an EU database. Furthermore, generative foundation AI models (such as ChatGPT) that use large language models to generate art, music and other content would be subject to stringent transparency obligations. Providers of such models and of generative content would have to disclose that the content was generated by AI not by humans, train and design their models to prevent generation of illegal content and publish information on the use of training data protected under copyright law. Finally, all foundation models should provide all necessary information for downstream providers to be able to comply with their obligations under the AI act.

- ➢ **Governance and enforcement**. National authorities' competences would be strengthened, as Parliament gives them the power to request access to both the trained and training models of the AI systems, including foundation models. Parliament also proposes to establish an AI Office, a new EU body to support the harmonised application of the AI act, provide guidance and coordinate joint cross-border investigations. In addition, Members seek to strengthen citizens' rights to file complaints about AI systems and receive explanations of decisions based on high-risk AI systems that significantly impact their rights.

- ➢ **Research and innovation**. To support innovation, Parliament agrees that research activities and the development of free and open-source AI components would be largely exempted from compliance with the AI act rules.

First-reading report: 2021/0106(COD); Committees responsible: IMCO/LIBE; Rapporteur: Brando Benifei (S&D, Italy) and Dragoş Tudorache (Renew, Romania). For further information see our 'EU Legislation in progress' briefing.