

Proposals for the Artificial Intelligence Act

In April 2021, the European Commission published its proposal for an Artificial Intelligence (AI) Act.¹ Its ambition is to ensure that AI systems comply with the fundamental rights and the values of the European Union, while facilitating the development of a single market for “lawful, safe and trustworthy AI applications”. The proposal is accompanied by a revised Coordinated Plan on Artificial Intelligence which calls for an alignment and further coordination of national and EU-level policies and investments “to create EU global leadership on trustworthy AI”.²

The Guild fully endorses the ambition of the proposal for an AI Act to ensure that AI systems are trustworthy and do not threaten the fundamental rights and values of the EU. The present document nevertheless highlights some areas of concerns and formulates recommendations on how to address them.

The European Commission, advised by a high-level expert group, decided on a risk-based approach. AI systems, whose use could create unacceptable risk, will be banned, while high-risk AI systems will need to go through ex-ante conformity assessment and comply with few other obligations. The Guild is concerned about two caveats in this approach. It requires a definition of AI systems that reflects the fast technological developments while being operationalizable by legal practitioners. An annex to the AI Act includes the definition of techniques and approaches that allow the development of AI systems. This will allow for easy update. However, **The Guild recommends that the European Commission establishes a high-level expert group, composed of academic researchers among others. Its tasks will include advising on whether any technological progress requires a revision to the annex or to the body text of the AI Act.** The second caveat is that the approach in the AI Act may be interpreted as an attempt to regulate AI systems instead of practices. The Guild agrees that the practices presented as causing unacceptable risks should be banned for a better protection of fundamental rights and the EU values. However, **the European Commission may consider, as a more effective and/or complementary approach, setting up regulatory frameworks that explicitly ban those jeopardizing practices, such as social scoring.**

The Guild acknowledges that the AI Act aims to regulate AI systems put onto the market (either as standalone systems or embedded in products or services) depending on the degree of risks their uses could create. Doing so, the proposal of the European Commission does not have the ambition to create obligations for research on AI and AI systems. However, The Guild foresees that the AI Act could define new standards for responsible and ethical research and have therefore an indirect impact on research. It is especially concerned about future additional burdens on researchers applying for EU funding. All proposals for an EU grant (including Horizon Europe) that involve the development, deployment and/or use of AI must already provide minimum information on the potential ethic risks and risk mitigation measures. If risks are foreseen, the applicants need to conduct an ethics self-assessment.³ **The Guild**

¹ Proposal for a regulation laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act), COM(2021) 206 final.

² Coordinated Plan on Artificial Intelligence 2021 Review, COM(2021) 205 final Annex.

³ European Commission (2021) *EU Grants: How to complete your ethics self-assessment*. Version 1.0.

asks that the AI Act does not add to the ethical requirements of EU grants and does not increase the burdens on researchers through a blanket obligation to demonstrate that the AI systems to be developed, deployed and/or used, in the proposed research projects, do not infringe the AI Act. The European Commission may consider instead requiring an ethical approval only for the research proposals that involve the development, deployment and/or use of specific risky AI systems.

The Guild anticipates that the AI Act may create legal uncertainties, especially if there is no harmonization in its national transpositions and interpretations across the European Union's Member States. A similar situation with the General Data Protection Regulation⁴ has already detrimental effects on health research.⁵ **The Guild calls not to reproduce the same mistake and recommends giving the European Artificial Intelligence Board the mandate – with the support of an high-level expert group – to ensure the harmonized implementation of the AI Act in the Member States.** The AI Act may create uncertainties also by introducing concepts such as 'trustworthy AI systems' in a technological field evolving at a fast pace. Even though the European Commission clearly define the process e.g. for the ex-ante conformity assessment of high-risk AI systems, AI developers may be still uncertain on how to concretely ensure that their systems are trustworthy and comply with all requirements listed in the AI Act. The Guild contends that universities may offer them solutions. **The European Commission should support research projects aimed at elucidating – especially from a technological perspective – the concepts introduced in the AI Act (e.g. trustworthy AI, robust AI etc.) and finding how AI developers can concretely comply with the Act.**

For further information on The Guild's position, please contact Julien Chicot (julien.chicot@the-guild.eu).

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural per-sons with regard to the processing of personal data and on the free movement of such data.

⁵ European Commission (2021) *Assessment of the EU Member States' rules on health data in the light of GDPR*. Luxembourg: Publications Office of the European Union. DOI: 10.2818/546193