

EACA Comment on the European Commission's Proposal for a Regulation laying down harmonised rules on artificial intelligence COM (2021) 206 final

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The European Association of Communications Agencies (EACA) represents more than 2,500 communications agencies and agency associations from nearly 30 European countries that directly employ more than 120,000 people. EACA members include advertising, media, digital, branding and PR agencies.

On 21 May 2021, the European Commission presented a proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain legislative acts of the EU ("Proposal for an AI Regulation").

Communication agencies are mostly using AI in the context of engagement and communication; namely chatbots or virtual assistants, programmes to optimise advertising campaigns, detecting and addressing ad fraud or bot detection, and to generate better performance insights. It is also used but to a lesser extent, for automated content creation, language translation and audience discovery.

We support the objectives of the Proposal for an AI Regulation, namely to proportionately address the risks associated with certain uses of AI and to ensure legal certainty to facilitate investment and innovation in the sector. However, we believe that some of the concepts used in the Proposal for an AI Regulation remain rather vague and would merit further clarification in order for providers to better understand what is expected from them and to ensure legal certainty.

We understand that certain requirements of Proposal for an AI Regulation apply to providers of high-risk AI systems and that they will need to subject their AI systems to conformity assessments that demonstrate that the system complies with certain requirements. We believe that these requirements need to be better defined.

- **High quality of data sets feeding the system:** We believe that it is in the nature of AI to learn from the data that is being fed to it and to improve through iterative loops. It is not always possible to feed the system with high quality data, e.g. if the AI system is meant to recognise patterns from huge amounts of data.
- **High level of robustness and accuracy:** These terms require a definition to be actionable. Will there be a threshold defined for these? It should also be noted that accuracy is not confined to a single measure but can be distinct across different sub-groups in the population, which is the major critique against machine visioning algorithms.
- **Need to consider implications of different errors:** The question is how to balance between false positives and false negatives. In crime prediction, high false negative means that AI failed to identify people who could commit crimes but high false positive means that AI will infringe human rights. An effective AI programme may need to balance the trade-off between false positive and false negative rather than prioritise one over another.
- **Need to better define and distinguish AI from non-regulated techniques of machine learning and predictive modelling:** For example, techniques such as the creation of lookalike audiences and

performance optimisation, whilst the ethical challenges may be similar to AI, they should not be unduly subject to regulation which is targeting a different area.

- **Duplicative legislative regimes.** The GDPR already provides individuals with strong rights to the use of personal data and places obligations of transparency, accountability and ensuring appropriate security. The Proposal for an AI Regulation should not overlay additional obligations which lead to notification fatigue, consent fatigue or other obligations which would confuse or compete with existing legislative requirements.

For additional information, please contact:

Nina Elzer
Senior Public Affairs Manager
EACA – European Association of Communications Agencies
nina.elzer@eaca.eu.