

Feedback on the EU consultation on *the Artificial Intelligence Act*

The City of Stockholm welcomes the regulation laying down harmonised rules on artificial intelligence and amending certain union legislative acts. However, certain concerns arise with the current proposal for the Artificial Intelligence Act:

1. There is a need to clearly specify which types of legal requirements that are mandatory for the different authorities, organisations and companies (etc) concerned.
2. Who is to define whether or not certain users or systems fall under the category of “high risk”?
3. There is a need to conduct further risk analyses to sort out the consequences for those affected by the legislation on different levels, such as the public sector.
4. It should be investigated in further detail which issues regarding AI that are suitable for regulation at EU regulation level and which other regulation level.
5. The AI Act should be developed in line with other current legislation and legislative proposal in the field of data sharing, data reliability and security.
6. How is “common normative standards” defined?
7. Many citizens are sceptical of data collection and data sharing and see it as an intrusion into their lives – proactive information campaigns on how AI works should be planned.
8. It is unclear whether innovation within the area of cloud services will be encouraged. Will the AI Act encourage the creation of European cloud services to test AI and AI-compliance?

1. Which types of legal requirements are mandatory for which types of stakeholders?

In previous consultations, the City of Stockholm has stressed the importance that in the development of regulations for AI there is a need to clearly specify which types of legal requirements that are mandatory for the different authorities, organisations and companies (etc) concerned. In this proposal for regulation the requirements are

mainly based on providers of AI systems and the City of Stockholm finds it challenging to fully understand which role the user and in our case the public sector have in this regulation.

2. Which users or systems fall under the category of “high risk”?

The City of Stockholm uses AI-systems in a number of areas today, for example:

- The Education Department at the City of Stockholm uses an AI system called Lexplore that maps students' reading using eye tracking and artificial intelligence.
- SISAB - The Stockholm School Properties Company uses an AI system called SOLIDA. The system controls, optimizes and analyses properties in real time using algorithms.

Based on the proposed legislation, does these systems fall under the category “high risk”.

Furthermore, the proposal states: *The technical documentation of a high-risk AI system shall be drawn up before that system is placed on the market or put into service and shall be kept up-to date.*

How will this be followed and by who? How will we as users rely on it to be “kept up-to date”.

3. What will be the consequences for those affected by the legislation, such as the public sector?

Furthermore the City sees that it is overall an extensive and complex area and that the regulation is demanding for those who fall under the category of “high-risk AI”.

The proposal states: *AI systems used in education or vocational training, notably for determining access or assigning persons to educational and vocational training institutions or to evaluate persons on tests as part of or as a precondition for their education should be considered high-risk, since they may determine the educational and professional course of a person's life and therefore affect their ability to secure their livelihood.*

The Commission also states: *AI systems used in employment, workers management and access to self-employment, notably for the recruitment and selection of persons, for making decisions on promotion and termination and for task allocation, monitoring or evaluation of persons in work-related contractual relationships, should also be classified as high-risk, since those systems may appreciably impact future career prospects and livelihoods of these persons.*

The City of Stockholm agrees with the fact that if AI-systems are misused it can limit a person's possibilities to determine their own educational needs and in the long run, their ability to secure their livelihood. Since the City conducts education it will be affected by the proposal concerning educational and vocational training. The regulation concerning employment may also affect the City. The City of Stockholm urges the Commission to make it more clear how the regulation affects the public sector.

The City sees that there would be an added value in conducting further risk analyses to sort out the consequences for those affected by the legislation, both on the EU-level, the national level and local and regional level; for example how the legislation effects the providers as well as the *users* of AI-systems, when it comes to the administrative burden.

4. AI-regulation on EU level vs other regulation level

An important part of the AI Act is the high-risk catalogue and the requirements for providers and users. The proposal states that these parts can be changed through delegated acts over time. Delegated acts usually supplement and specify an EU regulation, not fundamentally change it. It should therefore be investigated in more detail which issues of AI are suitable for regulation at EU regulation level and which on other regulation level.

5. The AI Act needs to be synchronised with EU legislation and legislative proposals on data sharing, reliability and security.

The City also wants to highlight the importance to make sure that this legislation is drawn up in accordance with other EU-legislations, for example the General Data Protection Regulation (GDPR). At present the AI Act proposal at some points appears to be in direct conflict with GDPR regulation. Furthermore, if the AI Act is adopted as is, there will be two supervisory bodies, the EAIB (European AI Board) and EDPB (European Data Protection Board) with overlapping areas of responsibility which might lead to misinterpretation concerning regulation that takes precedence. For clarification and elaboration see attachment in Swedish. Finally, the AI Act-proposal should also be synchronised with current legislative proposals on the topic of data sharing, data reliability and security.

An important topic in this context is the use of algorithms and deepfakes. Currently there is much fake info is spread online about vaccinations. Further, on the topic of data collection it is unclear how corporate confidentiality can be/ought to be taken into account? Some companies hold very sensitive information and should be able to retain the right to trade secrets.

6. How is “common normative standards” defined?

The proposal states: *In order to ensure a consistent and high level of protection of public interests as regards health, safety and fundamental rights, common normative standards for all high-risk AI systems should be established.*

How does the commission define “common normative standards” and how will this be followed up?

7. AI and the citizens

There is also an ethical aspect of AI. It is important to clarify which authority will hold the responsibility to communicate about AI and answer the citizens’ questions concerning data collection, which algorithms that are behind the AI decisions etc. Many citizens are sceptical of data collection and see it as an intrusion into their lives. Proactive information campaigns on how AI works should be planned.

8. AI, innovation and European cloud services

The City also welcomes the initiative on encouraging member states to establish artificial intelligence regulatory sandboxes.

Development and usage of AI brings about new challenges linked to new digital technology. It is therefore important to encourage innovation and to make it possible to try new ideas. A question that arises is – will this also include the area of cloud services? Will the AI Act encourage the creation of European cloud service to test AI and AI-compliance, which currently to a great extent is dominated by American solutions?

AI Act – elaboration *in Swedish* from a legal perspective

Otydlighet och eventuell regelkonflikt

Förslaget ålägger en ”provider” av AI flera skyldigheter, bl. a tillse regelefterlevnad, transparenskrav och upprättande av dokumentation och instruktioner för ”users”. Liknande skyldigheter åligger enligt dataskyddsförordningen den personuppgiftsansvarige, inte personuppgiftsbiträdet som enligt förslaget benämns ”provider”. Den som upphandlar AI är vanligen personuppgiftsansvarig enligt dataskyddsförordningen och har därmed en ansvarsskyldighet för de behandlingar av personuppgifter som sker i verksamheten. Personuppgiftsansvarig är skyldig att endast anlita personuppgiftsbiträden som har en tillräcklig säkerhet och garanti, vidare en skyldighet att ålägga biträdet instruktioner för behandlingen av personuppgifter för sin räkning etcetera. Förslaget å andra sidan ålägger ”user” en skyldighet att efterleva den tekniska dokumentationen och de instruktioner som en ”provider” tillhandahåller, ”user” ska även

bl. a kontrollera AI-systemets funktion i relation till de givna instruktionerna och risker som identifieras ska rapporteras till ”provider”.

Sammantaget skiljer sig förslagens skyldigheter – och närmast krockar med – de skyldigheter som föreligger enligt dataskyddsförordningen. Det finns en risk för att det uppstår en osäkerhet och eventuell regelkonflikt i den praktiska tillämpningen av de två EU-förordningarna såsom förslaget nu är utformat i sin struktur vad gäller skyldigheter för ”provider” och ”user”. Vidare finns en risk för att en regelkonflikt uppstår även vid tillämpning av EU-regelverk för offentlig upphandling där det måste gå att kravställa en leverantör. Det är därför viktigt att förslaget utformas i överensstämmelse med övriga EU-regelverk.

Ett nytt parallellt system för tillsyn

Parallellt med dataskyddsförordningens tillsynssystem föreslås en ny europeisk byrå för AI – European Artificial Intelligence Board (EAIB) - vid sidan om EDPB¹ jämte införandet av ett parallellt tillsynssystem i medlemsstaterna. Om en aktör bryter mot förslagens skyldigheter kommer sannolikt samma agerande leda till en överträdelse mot dataskyddsförordningen. Här är det nödvändigt med vissa förtydliganden avseende

- vilken reglering som ska ha företräde i fall av undvikande av dubbla och/eller motstridiga tillsynsförfaranden och sanktioner,
- hur de nationella tillsynsmyndigheterna ska förhålla sig till varandra,
- tänkt ansvarsfördelning mellan EDPB och EAIB.

Förutsägbarhet är en grundpelare inom EU-rätten; det får inte råda oklarhet över vilket regelverk som ska tillämpas och när och vilka konsekvenserna skulle bli vid en eventuell överträdelse av ett regelverk.

Förslagens legitimitet

Förslagens kärndelar är bland annat högriskkatalogen och krav på skyldigheter för respektive aktörer. I förslaget anförs att dessa delar ska kunna ändras genom delegerade akter över tid. Det är sannolikt inte rättsligt möjligt att genom delegerade akter - EU-kommissionens genomförandebeslut - ändra en EU-förordning. Delegerade akter brukar komplettera och precisera en EU-reglering, inte ändra den i grunden. Det bör utredas närmare vilka frågor avseende AI som lämpar sig för reglering på EU-förordningsnivå respektive annan regleringsnivå.