Committed to Europe

Orange's preliminary position on the Artificial Intelligence Act

Executive Summary

Orange welcomes the opportunity to comment on the European Commission's proposal for an Artificial Intelligence Act. This proposal, a first of a kind as highlighted by the EC, will have significant implications for AI ecosystems once it enters into force. And with AI being increasingly part of manufacturing, logistics and services sectors, it will have far reaching implications for EU economies. It is hence of utmost importance that the AI Act strikes a right balance between the need to ensure that AI applications implemented and used in the EU follow clear ethical principles, including strong governance and transparency rules, and the necessity to ensure that EU players thrive and innovate in the global race for AI leadership without undue burdens.

Orange is committed to applying ethical principles in AI. We have been actively involved in the High Level Expert Group that crafted ethical principles to advise the Commission. Orange and Arborus[i] have also revealed the first International Charter for inclusive AI whose aim is to ensure AI is designed, deployed and operated in a responsible and inclusive way. More recently, Orange set up a "Data and AI Ethics Council"[ii] made up of 11 independent recognized experts of the field.

As a general comment, we support the risk-based approach adopted by the EC in its proposal, in line with Orange's initial reactions to the Commission's white paper on Artificial Intelligence[iii]. In particular, Orange considers that the prohibition of some unacceptable-risk AI as outlined in the proposal is aligned with EU values and ethical principles. In addition, Orange approves the EC's proposal to set transparency obligations on low-risk AI that interacts with humans.

There are however some significant concerns, which could put undue and possibly excessive burden on significant parts of the European AI ecosystem:

- The definition of AI as currently drafted includes a number of techniques, including statistical methods, or expert systems, which have long been used in a number of IT developments without raising any specific issue. This means there is a risk that a significant part of existing digital activities would be considered as AI and have to comply with new regulation especially for high-risk, whereas this is not the core objective of the AI Act;
- The requirements for high-risk AI may be costly and difficult to achieve. Record-keeping obligations might for instance represent excessive amounts of data to be stored.

There is also a risk of deterring innovation in the EU since burdensome requirements could possibly hinder the development of AI activities in the EU compared to other parts of the world that have no such constraints. The EU could turn out to be an importer of innovation developed elsewhere.

Orange therefore advocates that:

- The AI definition should be streamlined, in order to avoid capturing standard IT systems or algorithms, and focus solely on the categories that are the most prone to ethical issues[iv];
- The requirements should be streamlined to a principle-based approach, while specific aspects should be tackled through existing product legislation or the forthcoming revised versions of the product safety and product liability directives;
- To promote innovation, the requirements should favor a fair and sustainable competition between European companies and non-EU competitors.

A pragmatic and proportionate approach based on risk is needed

The AI Act creates a horizontal legislative instrument, regulating AI on a risk-based approach. Orange welcomes this pragmatic method of classification of AI applications according to their level of risks, and shares the Commission view that AI applications that are not aligned with European values and ethical principles, as mentioned in article 5, should be prohibited within the EU.

The requirements applying to the AI systems focus on applications considered as « high risk ». Orange supports this approach, and agrees with the fact that high-risk AI systems should only be placed on the Union market or put into service if they comply with certain requirements.

The Commission's proposal on high-risk is twofold. First, high-risk AI refers to AI systems used as a safety component or being themselves a product subject to third party conformity assessment in compliance with the EU legislation listed in Annex II. This raises some questions on the exact scope and consequence for such obligations, notably when looking at the Radio Equipment directive.

Second, the Commission suggests listing specific applications as high-risk, rather than sectors, in Annex III, which makes sense from a business point of view. Orange supports this methodology, provided that the possibility for the Commission to modify the list through a delegated act once a year does not lead to legal uncertainty for market players. Any change to the list should be done only after due public consultation with market players.

Orange is in favor of a light touch approach, to ensure the AI act complements sectorial legislations without creating an accumulation of processes, obligations and penalties. The coherence and logical hierarchy with existing European legislation is therefore a crucial point to avoid overregulation.

Transparency requirements for all AI systems interacting with humans, consisting in information to users is highly beneficial to strengthen users' confidence in AI systems. Orange is also in favour of the proposal to apply a voluntary Code of conduct for low - or minimal - risk applications, which is coherent with Orange's work and commitment on defining an ethical use of AI.

A too broad definition of AI system that needs to be streamlined

While the definition should be flexible and potentially evolve with new AI techniques, it is important to streamline the scope of application to precise categories of AI systems.

Article 3 of the legislative proposal gives a definition of AI, to be read together with Annex I that lists the techniques covered by the Regulation, from machine learning to statistical approach or optimization methods. It includes statistical methods, or expert systems, which have long been used in a number of IT developments. Combined with the risk-based approach, this definition still covers a large range of activities and paves the way for legal uncertainty. Orange is in favor of narrowing down the definition, particularly by deleting the mention to "Statistical approaches, Bayesian estimation, search and optimization methods" in Annex I (c).

Moreover, there is no clear distinction made between AI which consists in automated tools creating autonomous decisions, and AI systems assisting humans in decision-making. In our view, the primary target of the Regulation should be techniques that humans could not perform themselves, conducted through non deterministic developments.

Strong obligations applying to high-risk AI applications

The Regulation places a clear set of horizontal obligations across the AI value chain (including users, importers, distributors and authorised representatives). Orange supports the Commission's focus on the provider as the primary target of obligations to mitigate risks. However, even though the requirements are set in order to guarantee a safe placing of products on the market, some obligations seem particularly burdensome:

- the requirement to keep technical documentation for over 10 years, including pictures
- defining of residual risks in terms of risk management
- record-keeping of logs

Furthermore, European regulators and notified bodies would have the possibility to demand access to businesses' data, source code, and algorithms. Even though the regulation specifies that the information only goes to public authorities, and will not figure in the EU-wide public database (as planned in Title VII), the risks from incidents, such as cyberattacks, on confidentiality and IPR, and of devaluing companies' investments in data and data-driven innovations cannot be fully rejected.

Orange supports the necessity to define structuring principles especially for the use of high risk AI, and also considers that guidelines and light touch regulatory safeguards have a role to play in preserving EU principles. However, the regulatory intervention should not prevent competitiveness of the European AI industry, as well as the resilience of the supply chain. The Commission aims to ensure a level playing field with economic players outside the EU by applying the same obligations to providers, whether they are established in the EU or in a third country. We however fear that AI developers could circumvent these rules by developing and marketing AI products outside the EU and entering the EU at a later stage for products that proved scalable and successful. In such case, the EU could turn out to be limited to the role of an importer of innovation developed elsewhere.

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[i] https://arborus.org/en/orange-1ere-entreprise-a-obtenir-le-label-geeis-ai/
[ii] https://www.orange.com/en/newsroom/press-releases/2021/orange-creates-data-and-ai-ethics-council
[iii] https://oran.ge/3ybSl6t
[iv] E.g. non-model-based, reinforced learning, AI that generates autonomous decisions or non-deterministic outcomes could be relevant examples