

## A Proportional Regulation for AI Innovation & Application

### *WEC-Europe's response to the proposed EU Artificial Intelligence Act*

In this paper World Employment Confederation – Europe (WEC-Europe), the European trade association for Private Employment Services, provides its input on the Proposal for a regulation laying down harmonised rules on Artificial Intelligence (hereafter: the AI Act).

#### Main points:

- WEC-Europe welcomes the creation of a regulatory framework of AI that will improve predictability and a level playing field for the application of AI.
- Following its Code of Conduct, WEC-Europe is dedicated to improving labour market inclusiveness and fighting (un)conscious human bias from the recruitment process, irrespective of the software used in its services.
- WEC-Europe emphasizes that AI is a tool that can be programmed to identify these (un)conscious human biases and minimize them in recruitment procedures. As such, it welcomes the opportunities in the proposal to do so. It highlights that in contrast to this ambition, 'users' are unable to do so in the proposal. This prevents users ability to countercheck providers and/or enhance de-biasing methodologies. Moreover, this shapes market dependencies that will not drive innovation and diversity.
- WEC-Europe warns that the current definitions in the proposal of high-risk AI as well as recruitment is so broad it covers all software used in recruitment (and employment), including those that do not involve any automated decision-making or machine-learning that impact the risk the proposal seeks to mitigate. As such, the proposal's definitions diminish the overall high-risk approach.
- WEC-Europe brings forward that this broad definition and the administrative requirements of the proposal will benefit large providers that are able to meet these. Thereby raising issues of AI market concentration, competition, innovation, and adoption.
- WEC-Europe welcomes the decentral oversight mechanisms but emphasizes the need for clarity for business on the competent authority.

#### Labour market efficiency, inclusiveness, and support in times of economic disruption

Members of WEC-Europe provide private employment services including recruitment, temporary agency work and career guidance. Through these services, they contribute to (1.) efficient matching of labour market demand and supply, (2.) labour market inclusivity and (3.) a stepping-stone to quality and sustainable employment. In this time of increased economic uncertainty and the subsequent labour market dynamic, private employment services are a crucial part of the European ecosystem for labour market support for business and workers. Of course, like any industry, the services are evermore enhanced and improved by new (digital) technologies, including Artificial Intelligence (hereafter: AI).

#### Private Employment Services get workers ready for an AI enhanced workplace

Annually, [private employment services touch the lives of 11,5 million workers](#) as they transition on(to) the labour market. In this they play a key role to prepare and re-/upskill workers and job seekers for new workplaces that require new skills, competences, and ways of working. This is exactly the difference half a million labour markets consultants and recruiters in

Europe seek to make. As such, the industry is deeply vested and committed to ensure European workers and employers have access to the skills needed to succeed in a workplace and labour market that is induced with applications of AI.

### WEC-Europe's dedication to fight labour market discrimination

WEC-Europe is dedicated to ensuring the provision of private employment services – *irrespective of the (digital) tools deployed* – contributes to diverse and inclusive labour markets in Europe and beyond. The industry's track record and [Code of Conduct](#) tell this story:

1. Through private employment services a vast and diverse workforce is recruited and employed. Women, youth, and people with a background of long-term unemployment, disability and/or migration are heavily represented in the group of workers private employment services engage with, especially in comparison to other sectors.
2. On the European and national level, as complement to governmental initiatives, industry bodies have put in place a vast array of standards, audits, staff training and remedies to fight labour market discrimination through private employment services.
3. Finally, the industry has a vast track record of partnering with public employment services in the EU Member States to support the employment and labour market participation of the various underrepresented groups that are identified for specific labour market support on the European, national, regional, and local level.

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To continue to play and improve these roles, WEC-Europe brings forward the following inputs for the legislative process for the adoption of an AI Act in Europe:

- **WEC-Europe welcomes a clear framework for the application of AI**

Having legal certainty on the regulatory framework for the application of AI in recruitment is an important element. It holds the potential to provide predictability and level playing field that is needed for the development and application of quality and responsible applications on AI in Europe. It is from that perspective WEC-Europe welcomes the proposal for such a framework.

- **WEC-Europe deems the proposed definition of high-risk AI in recruitment vastly too broad**

The definition of AI the Commission proposed is too broad, creates legal ambiguity and does not align with the risk-based approach. It incorporates all pieces of software and not the technical functioning that the proposal seeks to regulate. Neither does the definition clearly add a dimension to what is already covered in the GDPR, thus further increasing legal uncertainty.

Alternatively, we propose to specifically target those dimensions of AI functioning that could actually lead to the risks identified. This should exclude 'traditional' software that do not have any risky automated machine learning or decision-making in them.

To this purpose we put forward the following suggestions:

#### Art 3 sub 1:

'artificial intelligence system' (AI system) means software *whose primary purpose and function is driven by the use of ~~that is developed with~~ one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions ~~influencing the environments they interact with.~~*

#### **Annex III pt 4.**

We suggest distinguishing to different forms of AI applications in recruitment:

##### Low risk:

- Applications that support marketing/outreach for job openings;

- The creation of job descriptions and vacancies to improve their accessibility to more jobseekers;
- Applications that check on hard and objective criteria (such as availability, legal age, work permits, willingness to commute etc.)
- Systems that support the scheduling of job interviews
- Systems that do not generate outputs such as content, predictions, recommendations, or decisions within recruitment, selection, promotion, or termination outcomes without human involvement or oversight.
- Applications used to parse unstructured CV's into structured data.

#### High risk

- Systems that process biometric data
- Systems that include autonomous decision-making on (receiving) job opportunities, promotions, interviews or otherwise beneficial opportunities based on sensitive personal data
- AI systems that monitor performance and behaviour that include sensitive personal data

▪ **WEC-Europe emphasizes that AI is a tool that can both minimise and amplify conscious and unconscious human biases in recruitment and employment.**

In this respect, WEC-Europe finds that the current administrative requirements are disproportionately balanced towards the latter, thus preventing the easy application of AI that minimizes human biases. Further administrative intervention, requirements and audits will tip the balance further in the wrong direction for labour market inclusiveness. In this respect we strongly emphasize to maintain the self-assessment for high-risk AI applications in recruitment and employment.

▪ **WEC-Europe welcomes the high-risk approach of the proposed AI Act**

WEC-Europe concurs that specific AI applications in recruitment hold risks for labour market inclusivity and participation and recognizes that human oversight, security, transparency, record-keeping, and data-governance are key elements when private and public employment services apply them.

▪ **WEC-Europe welcomes the diversified approach to oversight, integrating existing public mechanisms, third-party certification, and self-regulatory mechanisms such as self-assessment and codes of conduct.**

The application and impact of AI differs from sector to sector. As such, social partners, governmental auditors, and policy makers in these respective sectors need to be fully involved in the specific sectoral applications. This prevents implementation that is insufficiently coordinated with sectoral public and private practitioners, to the detriment of sectoral functioning, existing oversight, or social dialogue.

▪ **The legislative process for a European AI Act is not the right policy platform or tool for regulating employment relations. In this context, WEC-Europe notes that Annex III pt. 4 significantly bypasses the legal realities on differences between (the creation, assessment, and termination of) a commercial (B2B or B2C) contract and an employment contract.**

To prevent significant legal inconsistencies and uncertainty, we advise to separate the two types of contracts (employment contracts and business contracts with self-employed service providers) and assess risks and regulatory intervention separately. In this respect WEC-Europe strongly emphasizes that the application (and enforcement) of an appropriate and clear worker classification regime is the most important gateway to employee protections, including against automated decision-making on their employment contract (including those protections provided in the GDPR). Worker status classification would especially be relevant to those gigs in location-based platforms providing delivery or personal mobility services.

▪ **WEC-Europe welcomes the technical opportunities for AI developers to identify, minimise and fight conscious and unconscious human (labour market) biases and discrimination.**

The opportunities for AI sandboxing are welcomed and Article 10 sub 5 of the proposal is adequately worded to serve this purpose. We advise to maintain this language.

Still, this section is limited to 'Providers' only. While 'Users' need an independent opportunity to countercheck, scrutinize and enhance the de-biasing methodology and/or data sets of the provider. Not having this opportunity creates an unhealthy dependency in an already centralised market. As such, 'Users' need to be able to access and build their own debiasing dataset. Indeed, the data-set Providers use (for example from other users of its service) potentially insufficiently align with the population of another user. For the sake of better de-biasing and prevent the further centralisation of market players, we call on the expansion of Article 10 sub 5 to 'Users'. This will allow and incentivize 'Users' to innovate in the development of unbiased datasets by themselves.

- **WEC-Europe notes that the administrative requirements involved identifying compliance to articles 8 to 16 will be a significant hurdle to innovation in AI.**

They raise questions on proportionality vis-à-vis the efficiency and inclusiveness gains of AI applications. In this respect, we anticipate this to be a significant threshold for the development and adoption of AI in Europe. As such, we advise EU legislators a less prescriptive approach that allows for flexibility for companies to implement the requirements addressed in the aforementioned articles.

Moreover, the extent of these requirements further raises the competitive advantage of large technology providers. Potentially raising issues on competition, market entry and innovation.

- **Decentral oversight should not lead to regulatory uncertainty or diverse audit practices**

The final AI Act would need to ensure market operators gain unambiguous clarity on the national authority competent on the application of the AI Act.

- **Business involvement in governance needs to be secured and mandatory at all levels.**

The proposal envisages an extensive infrastructure of exchanges and collaboration amongst (new?) national and (new?) European bodies. WEC-Europe emphasizes the importance of business involvement in all these bodies on all levels. Those bodies, collaborations and infrastructures that oversee and engage on the use of AI in recruitment should structurally incorporate the voice of private employment services. As such, we advise the inclusion of appropriate business consultation is mandatory for the policymaking of the various institutions involved in the governance, coordination, and enforcement of oversight of AI in the EU, including the 'European AI Board' and revising the list of high-risk applications. This explicitly should include a platform for sectoral involvement in these consultations when the respective sector is discussed. Finally, in addition to this, the proposal would require a flanking policy framework on how the EU will ensure oversight bodies can be properly staffed AI auditors.