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The Artificial Intelligence Act: Insights regarding its application and implications

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Abstract

This paper deals with Europe's Artificial Intelligence Act, the first regulation on the subject and is considered an international milestone. Therefore, the introduction provides a historical overview of legislative developments on Artificial Intelligence in Europe until the current milestone, namely the approval of the AI Act text, which is currently being amended and translated into its official publication. Afterwards, the regulation is dealt with in detail; its nuances are presented, along with the conceptualisation of artificial intelligence in the regulation and the classification of artificial intelligence systems, which is based on risks to users, together with the mechanisms created to make the regulation more efficient, specifically the Artificial Intelligence Office. Ultimately, considering the great innovation on the subject, this work presents different opinions regarding the application of the regulation, its risk-based analysis and classification, expectations and views on the possible impacts of the act on the market, thereby seeking to expose society's receptiveness to the regulation created. Therefore, based on the discussion points, it can be concluded that the regulation, which will soon be in effect, brings different feelings to citizens and members of the European market, who are still insecure about the risk-based approach used, harbouring feelings of fear about the limitation of innovation. However, at the same time, there is hope, given that regulation is necessary to guarantee safe innovation in line

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with the fundamental rights set out by the European Union. It can also be concluded that the approval and forthcoming publication of the act is a small step towards the challenges that will arise. It is certain that, regardless of the different opinions that exist, it is necessary to start implementing the act to analyse its effects on the market, society, politics, the economy and, above all, on innovations in artificial intelligence systems.

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1. Introduction

Over the past decade, the rapid technological advancements in various sectors, driven by Artificial Intelligence (AI) systems, have been accompanied by a growing recognition of these systems' potential societal, political, and economic impacts. This has underscored the need for regulation to ensure these tools' stability, safe development, and innovation, all in line with the Fundamental Rights advocated by the European Union.

In this regard, the Proposal for Regulation 2021/0106 of the European Parliament and of the European Council [1], currently the European Union AI Regulation [2], which seeks to regulate the rules on AI, emerged to guarantee the development of technological systems in a way that is integrated with the values and fundamental rights upheld and followed by the European Union, as well as prioritising safety, aiming for an approach based on the risks that the systems in use can and may generate for their users.

Thus, in addition to the clear objective of guaranteeing security in existing systems and those that are yet to be developed, the regulation proposed here is a way of honouring the proposals made by the president of the European Commission, Ursula von der Leyen, who stated in her political guidelines for the 2019-2024 term that the Union would take “more ambitious” measures [3], which can be seen in the regulation, given that it is the first on the subject in the world.

Since 2017, the European Council has been calling on the legislature to address the use of AI in the internal market. This call was prompted by the need to balance the benefits and risks of AI systems, aligning them with European directives. The rapid and autonomous advances in AI technology have created a sense of uncertainty, which the regulation aims to address.

However, it should be noted that the regulation under discussion here is not the first initiative taken by the European Union to regulate the use and innovations of AI systems [4] since documents such as the AI Strategy, the Commission Communication on Artificial Intelligence for Europe [5], launched in April 2018 or the Commission Communication on Increasing Trust in Human-Centred AI [6], in 2019, were already aimed at merging the development of systems and ethics in the European space.

Along similar lines, mention should be made of the 'Ethical Guidelines for Trustworthy AI' [7], created in 2019, and the 'White Paper on Artificial Intelligence - A European Approach to Excellence and Trust' [8], launched in 2020, which aims to present the policy approaches that can be used to balance the adoption of AI systems and the associated risks. Furthermore, the European Parliament adopted many resolutions in 2020 and followed up in 2021 in the fields of AI on the subjects of ethics, liability, criminal matters, education, culture and audiovisual [4].

Advances in AI systems have been occurring increasingly quickly and autonomously, and the world is still puzzling over their scope and the consequences of their use in the various sectors of society, especially regarding their accountability and safety. As a result, the European Union seeks to pioneer the development [9], applying and implementing comprehensive regulations based on the progress already made on the subject, resulting in the achievement of the Artificial Intelligence Act.

Within this scenario, in line with the regulations already adopted but more forcefully, the regulation was proposed with the specific objectives of guaranteeing the safe application of AI systems, respecting the fundamental rights respected by the European Union, facilitating investment and innovation, and avoiding market fragmentation.

It's worth noting that the proposed regulation was first published in April 2021[10]. Since then, numerous discussions and debates have been generated on the proposed topics. The second publication was made in December 2022, with many changes and amendments to the text.

In December 2023, the Council of the European Union and the European Parliament reached an agreement on the wording of the AI Act, which is being formally approved and translated. A corrigendum [2] was published on 16 April 2024, the latest available version of which is already being treated as 'Regulation' and has not yet been numbered.

However, even with the agreement on the subject by the Council and the European Parliament and the objectives pursued by the regulation concerning safety, fundamental rights, the search for innovations and investments in the internal market, regulation continues to be the subject of debate, generating different opinions about its effectiveness, necessity, the approach and the impacts it can have on advances and innovations in AI systems, not only in the legislative world but also in the academic, business and social context, being a highly visible topic that currently deserves focus.

2. The European Artificial Intelligence Act

Once the context of the regulation that will be dealt with here has been analysed and the reasons that led to its creation, along with the other negotiations up to the present moment, the European Union's Artificial Intelligence Act, its moulds, its basis and its structure will be discussed, based on the most recent publication of “Regulation (EU) 2024/... of the European Parliament and of the Council - laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)” [2] of April 2024, already approved and expected to be officially published in the first half of 2024 in the form already enumerated.

As previously mentioned, the AI Act proposed by the European Union is the first legal framework for AI in the world [11]. This international milestone is of great importance, deserves recognition, and generates enormous responsibility, given its influence on other countries' regulations. For this reason, it still needs time to be formalised and made effective [12].

Furthermore, it is worth mentioning the willingness of those involved, who remained able to discuss and make changes to the proposals initially presented, of which there were many. They always aimed to advance and evolve, seeking the best possible result for society, technology, politics, and the financial world.

Regulation was chosen as the regulatory model rather than another form of legislative act to ensure that, when the effective entry date is set, all EU member states can benefit from the acts laid down without needing any transposition or adaptation, facilitating the work carried out. Similar to what happened with the General Data Protection Regulation [4].

The regulation provides that it will be enacted twenty days after publication in the Official Journal and will be fully applicable throughout European territory two years after its publication [13], subject to a few exceptions¹. In specific scenarios, such as the information systems in the Schengen area, deadlines have been set until 2030 [14].

Concerning the act's objectives, its general aim is, as stated in the act itself, the “protection of public interests, such as health and safety and the protection of fundamental rights, including democracy, the rule of law and environmental protection as recognised and protected by Union law” [2], i.e. to ensure the safety and rights of citizens within the framework of advances and innovations in AI systems.

About its specific objectives [4], the regulation seeks to ensure that AI systems respect ethical values and current legislation on fundamental rights in the European Union, provide legal certainty for new technological investments, promote uniform progress, and guarantee good governance on the subject [2].

¹ Prohibitions will come into force in six months; governance rules and obligations for general-purpose AI models will come into force in twelve months; and rules for AI systems incorporated into regulated products will apply in thirty-six months [15].

The regulation seeks to analyse and classify the various AI systems according to the risks they present to users to generate a reliable framework for applying AI in different sectors. This means that the systems are regulated and classified into different levels of risk offered to the public, which will imply more or fewer rules for their designers to follow.

In this regard, on direct analysis of the regulations classification method of AI systems, the highest level of risk is called “unacceptable”, referring to systems that will not be accepted for application in the European space due to the significant risk they pose to users: manipulation of the cognitive and behaviour of vulnerable people and groups, such as toys that encourage inappropriate and dangerous behaviour in children; social scoring systems, which classify people based on their personal, economic or behavioural characteristics; biometric identification systems, in real-time or at a distance; and systems for categorising individuals [2,11,15].

It should be noted that even for unacceptable risk, the Act provides exceptions, such as remote biometrics systems, which will be allowed in a limited number of cases or even in cases of serious crime after court approval [2,15].

The impossibility of using these systems aims to protect the vulnerable from being unduly influenced by AI systems, ensure that people are not classified by their social situation and appearance, minimise the risks of prejudice and discrimination, and guarantee that databases cannot store personal, biometric information about their users [2,15].

The classification also includes high-risk systems, which, even if they pose a risk to security and fundamental rights, can be used as long as they follow certain more specific and restrictive guidelines [2,13,15].

This class of AI systems is divided into two categories: AI systems used in products already covered by EU product safety legislation, such as toys, cars, and aviation, and AI systems that fall into specific areas that will need to be registered in a database, such as systems aimed at management, education, law enforcement, legal assistance, immigration issues, and others [13].

Before AI systems can enter the market, a rigorous series of obligations must be met. These include risk assessment and mitigation, a wide range of informative data available to the system, results tracking, detailed documentation, and constant supervision [2,15].

It should be noted that this category allows users to evaluate AI systems constantly and may even file a complaint against the system with the competent national authority if they are harmed, have their rights violated, or find themselves in a dangerous situation [13].

AI systems classified as limited risk, on the other hand, are associated with systems considered to have a lack of transparency in the use of their system, i.e. specific AI systems, such as chatbots (e.g. ChatGPT [16]), which must have clear information about the user's interaction with a machine, as well as the information and texts it generates, so that it is public knowledge that the data was collected from an AI system and not by any other means [2,13].

This risk category aims to protect users from being deceived or manipulated by information and conversations generated by AI systems. Under the planned regulations, all conversations and content generated must contain information about the existence of an AI system [13,16].

Finally, the regulation addresses AI systems with minimal or no risk that can be used freely without any restrictions or rules to be followed, such as AI applications in games and spam filters, which, according to the regulation, do not pose any harm or risk to their users [13,15].

Within the classifications for each AI system, in the initial consideration no. 12 of the regulation [2], systems designed for national defence are excluded from the need for regulation, i.e., a field that exceeds the jurisdiction of the European Union.

Besides the risk classification of AI systems, on which the entire regulation revolves, the regulation also presents its concept of AI, which has tried to address the issue within the central objective of the regulation, that is, safety and flexibility for future advances, with AI being conceptualised in Art. 3 of the regulation, as “means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments” [2]. This definition is broader than older definitions such as that of the Commission Communication on Artificial

Intelligence for Europe [5], where it is defined as “systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals”.

Moreover, the central idea behind the regulation was that it would be easy to implement in the member states, which would happen because it was a regulation in which each state would be responsible for independently monitoring and enforcing the implementation of the new rules for AI systems.

However, the European Commission has created the so-called Artificial Intelligence Office, a specific place that will be the centre of expertise in AI for the entire European Union. This office will supervise, monitor progress, and apply the regulation, especially concerning general-purpose AI systems, removing this independent responsibility from each Member State [17,18].

According to the President of the European Commission, Ursula von der Leyen, the Office will serve the Member States of the European Union and play an international role concerning AI systems. She says, “it should be open to cooperate with similar entities around the world” [19].

In short, seeking to regulate the use and development of AI systems, the European Union is pioneering by implementing a regulation, using a risk-weighted regulation to define the standards to be followed in the development of each AI system. It has also created a centralised office responsible for regulatory issues. However, the outcome of the regulation has led to divergent views on the methodology adopted and the effects it could have on society.

3. The different perspectives

Despite the approval of its text and eventual official publication in April 2024, the European Union's AI Act still raises numerous questions and doubts, given the uncertainty about its efficiency, the possible limitation on the progress of AI systems, in addition to doubts regarding the conceptualisations and nomenclatures used, along with the existence of a focus on risks, which could have a rebound effect on society and the market, given the fear and insecurity about the possibility of implementing new systems.

Initially dealing with the insecurities observed regarding regulation, some researchers and legal professionals believe that “although it aims to promote safety and ethics in the use of AI, the legislation raises questions about its restrictive approach and its possible impacts on innovation and competitiveness, especially concerning startups and small businesses” [20]. Following the same line of thought, believing that the regulation is dense and complex, lawyer Patrícia argues that “the European Union's AI act could restrict competitiveness and innovation” [20].

Meanwhile, in the corporate sector, DigitalEurope, through the group's Managing Director, Cecilia Bonefeld-Dahl, also made some points about the regulation: “We have a deal, but at what cost? We fully supported a risk-based approach based on the uses of AI, not the technology itself, but the last-minute attempt to regulate foundation models has turned this on its head” [21], concluding that the regulation could take Europe out of the AI race and that “the AI race is not one Europe can miss out on” [21].

The idea that the regulation could harm Europe is also defended by Marianne Tordeux Bitker, representing France Digitale, where she states that although the regulation solves problems related to transparency and ethics, “it creates significant obligations for all companies that use or develop artificial intelligence [...], we fear that the text will create additional regulatory barriers that will benefit American and Chinese competition and reduce our opportunities to develop European champions in AI” [22].

Another question hanging over the world's heads concerns the need to create an AI Office: does governance lack competencies concerning AI systems? Or the legislature? Or the judiciary? According to the European Parliament through MEP Dragos Tudorache, all of the above questions can be answered with “no”, given that the creation of the office is not intended to make up for a supposed deficit in the European Union but rather to guarantee uniformity between the member states so that companies can grow and that systems can be developed following the regulation in question [23].

Regarding the criticisms and insecurities about the new regulation, what can be seen is not discontent with the legal text but rather insecurity about the repercussions that the rule could have on society and the market, given that the risk-based approach used could be a limiting factor in encouraging and fostering the development of new artificial intelligence systems.

However, contrary to the views presented above, some believe that the new legislation has a comprehensive character that will foster the internal market and innovation in AI systems, which is the view of lawyer Tainá Aguiar Junquillo, who says that “the EU act [...] points to market incentives. And I say this because the market model we live in today needs legal certainty to innovate” [20].

DigitalEurope also shares this view of the new possibilities that can arise for the market and the development of systems based on safety when it states that if the regulation is done correctly, “[the AI Act] can be a positive force for AI uptake and innovation in Europe” [21]. This demonstrates that even the most negative views on regulation are open to a change in thinking.

The co-founder and CEO of Giskard, a French AI company, said it was a relief that the regulation had been approved: “The EU Parliament's final adoption of the EU AI Act is both a historic moment and a relief” [24]. This is to say that, despite the uncertainties, there is hope that the regulation will bring the necessary balance. As he told Euronews Next, “the Act imposes additional constraints and rules on developers of high-risk AI systems and foundation models, deemed as ‘systemic risks,’ we're confident that these checks and balances can be effectively implemented” [24].

Arlindo de Oliveira, president of the Institute of Systems and Computer Engineering (INESC), also presents the point of competitiveness as a drawback of the Regulation, “it is relatively weak on the competitiveness component”, focussing “very much on the safety component of the risk levels of applications” [25].

Julie Linn Teigland, EY's managing partner for Europe, the Middle East, India and Africa (EMEIA), said that “it is vital that the EU harnesses the dynamism of the private sector, which will be the driving force behind the future of AI. Getting this right will be important for making Europe more competitive and attractive to investors” [24].

Among the existing polarised positive and negative thoughts on the new regulation, some believe that now is no longer the time to discuss the methodology used and the possible implications that the regulation may have and that it is necessary, at present, to turn to implementation and effective application [24].

Risto Uuk, director of EU research at the Future of Life Institute, told Euronews Next that “now the focus shifts to its effective implementation and enforcement. This also requires renewed attention to complementary legislation” [24].

In this regard, it is also believed that the AI Office will be of fundamental importance and must be adequately equipped to provide the necessary support to everyone [17,18]. “The key things to ensure that the law is worth the paper it's written on are that the AI Office has resources to perform the tasks it has been set and that the codes of practices for general-purpose AI are well drafted with the inclusion of civil society”, said Risto Uuk [24], responsible for the AI Act website².

Given the various opinions on the subject, and with the final text having already been approved and requiring no further changes, pending only the European Parliament's final decision, the need to wait for the regulation to be applied and enforced to be aware of its impacts can be seen.

4. Conclusion

This paper presents society and companies' different views and opinions on the European Union's Artificial Intelligence Act, which was approved in December 2023 and is currently being formatted, corrected and translated.

To this end, an overview of legislative developments on the subject is given, considering that Europe was already seeking to keep pace with advances in artificial intelligence systems, minimise their risks, and guarantee the fundamental rights that are so highly valued.

Furthermore, the regulation structure was presented, exploring the regulation risks-based evaluation of AI systems. Different risk categories, from the most severe to the lightest, present greater or fewer restrictions and rules to be followed.

² See <<https://artificialintelligenceact.eu/about/>>

Moreover, the definitions presented in the regulation were also discussed, as was the Artificial Intelligence Office set up by the European Commission. This office will be responsible for policing the application of the regulation and analysing the impacts that will be generated and the effects of implementation.

Although it has not yet been enacted, since it was first drafted, the regulation has generated different opinions from the public and industrial and technological sectors. Given that it is the first risk-based regulation on the subject, it contains classifications and structures not previously used to create and innovate AI systems.

Thus, the work presented different public opinions on the subject, which are divided into supporters of the regulation, who believe that the regulation was a great success on the part of the European Union and that it will facilitate market expansion and innovation in AI systems, and that it will guarantee safety and fundamental rights.

On the other hand, others believe that the regulation was a precipitate step, with risk-based analysis not being an assertive way of regulating the subject. They argue that it could slow down advances in the market and innovation, cause fear and uncertainty among the population regarding technological advances, and cause a rebound effect due to excessive precaution.

What is clear is that, according to different realities and individual interests, opinions on the regulations that will be adopted by the European Union change, either because of fear of the difficulty of generating innovations and expanding the market or because of insecurity in the face of new technological systems, lack of security, and uncertainty about the protection of fundamental rights.

Regardless of the opinions and scenarios for its arrival, it is imminent. Its accurate results can only be visualised once it has been implemented, at which point we will see whether, beyond respect for fundamental rights and security, the regulation will make it possible, within its restrictions, for new advances to be made and for the market to expand, strengthening the use of artificial intelligence systems, which, as is well known, can make life and work easier for society as a whole in different sectors.

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