

Proposals for the Artificial Intelligence Act

In April 2021, the European Commission published its proposal for an Artificial Intelligence (AI) Act.¹ Its ambition is to ensure that AI systems do not infringe or jeopardise the fundamental rights and the values of the European Union, while facilitating the development of a single market for “lawful, safe and trustworthy AI applications”. The proposal is accompanied by a revised Coordinated Plan on Artificial Intelligence which calls for an alignment and further coordination of national and EU-level policies and investments “to create EU global leadership on trustworthy AI”.²

The Guild fully endorses the ambition of the proposal for an AI Act to ensure that AI systems are trustworthy and do not threaten the fundamental rights and values of the EU. The present document nevertheless highlights some areas of concerns and formulates recommendations on how to address them.

Summary of The Guild’s proposals:

The overall approach in the European Commission’s proposal for an AI Act presents serious limitations. It requires a future-proofing definition of AI systems, which is already a highly complex endeavour. There are also serious concerns that it would be much more effective to ban some practices instead of regulating technologies which might be used for these purposes. Furthermore, The Guild worries about additional burdens that an AI Act may induce on researchers, by prohibiting some research projects or asking researchers to demonstrate that their research complies with the Act and is therefore safe and ethical. Finally, the European Commission should draw lessons from the implementation of the General Data Protection Regulation (GDPR): a dedicated body should oversee the harmonised interpretation and implementation of the Act across Member States. The research performing organisations, including universities, shall be involved in the regulatory sandboxes and assist AI systems with complying with the new requirements of the Act.

The European Commission, advised by a high-level expert group, decided on a risk-based approach. AI systems, whose use could create unacceptable risks, will be banned, while high-risk AI systems will need to go through an ex-ante conformity assessment and comply with other obligations. The Guild is concerned about two limitations in this approach.

Any regulation on AI requires a definition of AI systems that reflects their fast technological developments while being operationalisable by legal practitioners. An annex to the AI Act includes the definition of techniques and approaches that allow the development of AI systems (Annex I). It is assumed that this definition could be more easily amended because it is given in annex instead of in the body text of the regulation. However, **The Guild recommends that the European Commission establish a high-level expert group, composed of academic researchers among others. Its tasks would include advising on whether any technological progress requires an amendment to the annex or to the body text of the AI Act.** Furthermore, the current list of techniques and approaches in Annex I

¹ Proposal for a regulation laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act), COM(2021) 206 final.

² Coordinated Plan on Artificial Intelligence 2021 Review, COM(2021) 205 final Annex.

(referred to in the definition of ‘Artificial Intelligence’ in Article 3(1)) may lead to an interpretation of the scope of the AI Act as going beyond AI technologies. The Guild voices, more specifically, concerns that “statistical approaches”, which are widely employed by companies and public research performing organisations, may be viewed as having to comply with the Artificial Intelligence Act, even though they do not consist in AI technologies.

The second limitation is that the approach in the AI Act may be interpreted as an attempt to regulate AI systems instead of practices. The Guild agrees that the practices presented as causing unacceptable risks should be banned for a better protection of fundamental rights and the EU values. However, **the European Commission may consider, as a more effective and/or complementary approach, setting up regulatory frameworks that explicitly ban those jeopardising practices listed in Article 5, such as social scoring and exploitation of the vulnerabilities of a specific group of persons, instead of banning AI technologies which may be used for these practices.** Due to the fast-paced development of AI technologies, the AI Act and its annexes may need regular amendments to ensure that they continuously provide an appropriate level of protection against these practices. The Guild fears also that any regulation on technologies and their components stifles innovation while not being even effective in achieving their objectives.

The Guild acknowledges that the AI Act aims to regulate AI systems put onto the market (either as standalone systems or embedded in products or services) depending on the degree of risks their uses could create. The proposal of the European Commission does not have the ambition to create obligations for research on AI and AI systems. Moreover, The Guild welcomes the statement in Recital 16 that “research for legitimate purposes in relation to [AI systems intended to distort human behaviour] should not be stifled by [their] prohibition, if such research does not amount to use of the AI system in human–machine relations that exposes natural persons to harm and such research is carried out in accordance with recognised ethical standards for scientific research”. **This derogation should nevertheless be extended to other prohibited AI systems and, for the sake of legal clarity, be translated in the body of the regulation.**

The Guild also understands that the AI Act could define new standards for responsible and ethical research. It is especially concerned about future additional burdens on researchers applying for EU funding. All proposals for an EU grant (including Horizon Europe) that involve the development, deployment and/or use of AI must already provide minimum information on the potential ethical risks and risk mitigation measures. If risks are foreseen, the applicants need to conduct an ethics self-assessment.³ **The Guild asks that the AI Act does not add to the ethical requirements of EU grants and does not increase the burdens on researchers through a blanket obligation to demonstrate that the AI systems to be developed, deployed and/or used, in the proposed research projects, do not infringe the AI Act.** The European Commission may consider instead requiring an ethical approval only for research proposals that involve the development, deployment and/or use of specific risky AI systems.

The Guild anticipates that the AI Act may create legal uncertainties, especially if there is no harmonisation in its national transpositions and interpretations across the European Union’s Member

³ European Commission (2021) *EU Grants: How to complete your ethics self-assessment*. Version 1.0.

States. A similar situation with the GDPR⁴ already has detrimental effects on health research.⁵ **The Guild calls for actions to avoid reproducing the same mistakes and recommends giving the European Artificial Intelligence Board the mandate – with the support of a high-level expert group – to ensure the harmonised implementation of the AI Act in the Member States.**

The AI Act may also create uncertainties by introducing concepts such as ‘trustworthy AI systems’ in a technological field evolving at a fast pace. Even though the European Commission clearly defines the process e.g. for the ex-ante conformity assessment of high-risk AI systems, AI developers may be still uncertain on how to concretely ensure that their systems are trustworthy and comply with all requirements listed in the AI Act. The Guild contends that the universities may offer them solutions. **The European Commission should support research projects aimed at elucidating – especially from a technological perspective – the concepts introduced in the AI Act (e.g. trustworthy AI, robust AI etc.) and finding how AI developers can concretely comply with the Act.** Universities and other research performing organisations should also be actively involved in the “AI regulatory sandboxes” (Article 53) to support the development, testing and validation of AI systems in a controlled environment. However, this role implies facilitated access to data. The Guild highlights that there are still regulatory barriers to data exchanges and reuse of data, which prevents universities and research performing organisations from tapping into the large volume of data already collected.⁶ Considering that the testing of AI systems requires high-quality datasets (Title III, Chapter 2) even beyond the regulatory sandboxes, it is of crucial importance to allow any AI developers to have access to such data. Otherwise, The Guild is concerned that the AI Act may fail to ensure a level playing field by favouring large corporations that continuously constant collect data on their users (e.g. through social media platforms) over start-ups and universities’ spin-outs.

Finally, The Guild encourages the European Commission to consider using these regulatory sandboxes also for ex-ante assessment of the impacts of regulation on (digital) technologies.

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

⁵ European Commission (2021) *Assessment of the EU Member States’ rules on health data in the light of GDPR*. Luxembourg: Publications Office of the European Union. DOI: 10.2818/546193

⁶ The Guild (2021) *Proposals for the European Health Data Space*. The Guild of European Research-Intensive Universities and Bern Open Publishing. DOI: 10.48350/156905