



17.05.2021

## POSITION PAPER by IDFRIGHTS

### ARTIFICIAL INTELLIGENCE: THE EUROPEAN COMMISSION'S PROPOSAL

The year 2021 is definitely going to be one of the most surprising for the digital world. After the DMA/DSA package, the European Commission presented on 21 April a new regulation on artificial intelligence (AI).

The aim is to emphasize the values of the EU and to strengthen the confidence of European citizens at a time when more and more questions are being raised within civil society on this subject. In this text, the Commission therefore lays down a number of safeguards based on the risk-based approach.

It provides a definition of what it means by "artificial intelligence". It is software capable, for a "given set of human-defined objectives, of generating results such as content, predictions, recommendations or decisions influencing the environments with which they interact". This is a broad definition that can encompass many technological aspects and any form of AI system.

The proposal aims to provide a horizontal and transversal framework for most AI applications, but this regulation focuses more on the framework of uses than on the regulation of the technology itself.

Based on the model of the DSA (Digital Service Act), its strategy is based on an approach based on the assessment of risk classified in 4 categories:

- 1 - uses **representing minimal risks**: the proposal allows for the free use of applications such as video games. The draft does not foresee any intervention in these cases of minimal or no risk to the rights or security of citizens.

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- 2 - Uses representing **limited risks**, which will have to comply with transparency rules, such as, for example, having to specify to online users that they are interacting with a "chatbot" (a conversational robot that is a person/machine dialogue)

- 3 - AI systems considered as **high risk** are those used in infrastructures, notably in transport (autonomous vehicles), education, training, product safety or in the field of employment and private services. These systems will have to be labelled in order to be marketed in Europe, and therefore comply with strict obligations and be subject to human control. In addition, data quality and transparency will have to be ensured. Finally, these AIs will have to produce detailed documentation of the accessible system.

- 4- This category concerns a pure and simple ban on systems representing a risk **qualified as unacceptable**. This includes all uses of AI that threaten the safety, livelihoods and rights of individuals. In particular, "social scoring", which is an application that sorts citizens according to their social behaviour in order to assign them a score that may or may not allow them access to certain services, will be banned.

Real-time remote biometric identification systems in public spaces are considered "high risk". However, they may be used in exceptional hypothesis with a view to preventing specific and imminent terrorist threat, to identify or locate a suspect of a serious crime or to search for a missing child. In these cases, the use of these systems will have to be authorised by a judicial body or an independent body. The authorisation will include limitations in terms of duration, geographical scope, and will have to specify the databases that can be consulted.

It is worth noting that the legislator has made an effort to simplify the text by reverting to pre-existing terms and abandoning certain unclear concepts. Thus, the actors referred to in the text remain simply suppliers, users, agents, importers and distributors.

On the other hand, software publishers classified as "high risk" will have to set up a "legal representative" in Europe. These representatives, placed under the supervision of the competent national regulatory authorities, will have to ensure compliance with the rules laid down. The text also provides

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for optional "codes of conduct" to govern the use of systems that do not present a "high risk" and "regulatory sandboxes" to encourage responsible innovation.

Fundamental rights and consumer organizations have expressed their disappointment that the proposed rules provide little protection for consumers.

The European Parliament and the Council of the EU will now start their work under the ordinary legislative procedure.

In addition, the Commission, which has proposed a coordinated plan with the Member States to reform the EU's internal market, has been working on a proposal for a new EU law.

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