

BRIEF

AI UNLEASHED OR TAMED?
OUTLINES AND IMPLICATIONS FOR
EUROPE

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2023 saw a boom in generative Artificial Intelligence (AI). In just a matter of weeks, Open AI's Chat GPT went from being a niche application known only to tech enthusiasts to a common tool used by everyone for wide-ranging needs from essay writing to travel suggestions. However, this rapid expansion revealed the unpreparedness of governments to handle the unprecedented impact AI systems have on the core values of democratic societies.

It sparked a global conversation on AI safety and already produced several initiatives such as the high-level Blenchley Declaration, the US President's Executive Order on AI, and the establishment of the UN High-Level Advisory Body. On the EU level, the European Commission's AI Act has emerged as the first binding legislation of its kind. This brief outlines the state of the EU's AI Act, discusses concerns within Europe, examines the position taken by the Estonian techno system and government, and explores the future direction the regulation might take.

STATE OF THE ACT

Although the AI legislation was first proposed by the European Commission (EC) in 2021, it was not until December of last year that extensive negotiations culminated in an agreement between the Council and European Parliament (EP).¹ The final version of the Act was shared with EU members on 21 January 2024. Following a discussion within the Telecom Working Party of the EU Council, the Act was formally adopted at the ambassadorial level on 2 February 2024.² As the world's first legislation on AI, the Act has garnered global attention, becoming a focal point of discussions worldwide.

The Act takes a risk-based approach to regulation by classifying use cases into the 'no risk,' 'minimal risk,' 'high risk,' and 'unacceptable risk' categories, depending on the intended purpose of the AI system. The Act prohibits both the development

and use of AI systems and applications deemed an 'unacceptable risk,' whereas 'high-risk' systems need to undergo an extensive third-party conformity assessment.³ Specific risks associated with general-purpose AI have been introduced by the EP in a later stage of the proposal and are thus assessed separately. The current agreement on regulating general-purpose systems also includes a clause exempting providers of free and open-source models from most obligations.⁴ The full enforcement of the Act will take place two years from now, following a gradual implementation process.

WHAT'S DIFFERENT?

The ongoing discourse stands apart from previous efforts to regulate digital revolutions due to the pervasive nature of AI, as well as its wide-reaching and largely unpredictable implications. The emerging technology will become ingrained in every facet of society and industry, with AI solutions already being tested and implemented in entertainment, transportation, services, governance, and the military sector. On a global level, AI is able to influence a myriad of dynamics, from the decisions of individuals and their daily lives to the next arms race, and to determine the power relations between global superpowers. Furthermore, in the security domain, the ability of nations to safeguard themselves will hinge on AI technologies in the defence sector.⁵

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The high stakes at hand, coupled with escalating concerns about the potential adverse effects of AI, have catalysed action. Whereas the regulating bodies have traditionally allowed market forces to lead before intervening, in the case of AI, there has been shared acknowledgement among governments and companies alike that proactive

measures are essential, although to varying degrees.⁶ According to Estonian researcher Risto Uuk from the Future of Life Institute, this understanding of urgency motivated an early intervention in AI regulation by the EU.

Such a different approach is also attributed to the scope of economic impact AI innovation yields. Being a pioneer in regulating AI is part of a broader EU Digital Strategy that recognises digital sovereignty as a core priority. It attempts to control the internal digital market by unifying regulatory practices across Europe and thus position the EU as a leader in setting standards in the global race to regulate AI. AI systems have the potential to maximise productivity, boost economic growth, advance defence capabilities, and promote security. This early intervention, therefore, aims to ensure that regulatory responses by national authorities will not risk fragmenting AI development in the EU.

INNOVATION VS REGULATION

At the forefront of discussions surrounding the Act has been a classical debate pitting innovation against regulation, with free-market supporters and industry leaders arguing that stringent regulations hamper the capacity to innovate. However, the dynamics shift when it comes to AI. Both AI titans and most governments acknowledge the danger this technology poses when devoid of clear rules, thereby leading to a unique consensus on the need to introduce AI regulation as soon as possible.

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In Europe, the Act seems to have been welcomed by small and medium enterprises (SMEs). Last year, DIGITALEUROPE published a report about the worries and aspirations of ‘EU future unicorns’ that derived from in-depth interviews with nine AI-focused start-ups and SMEs, including Estonian Veriff, discussing the Act’s implications for competitiveness. Among the prevailing arguments in favour of the Act was the recognition that a unified EU-wide framework on AI would prevent legal fragmentation across markets and facilitate compliance in an industry bound to be regulated.⁷ In other words, the idea is to incentivise businesses to adopt safer technologies, in addition to averting AI doom.⁸ Hence, there appears to be a consensus among the legislators and the legislated regarding the Act’s benefits in reducing legal uncertainty and encouraging stronger cohesion within the internal market.

Nonetheless, the primary source of contention lies in the precise terms and methodology of the regulation. For instance, although the companies interviewed by DIGITALEUROPE generally agreed with the Act, there was some confusion regarding the categorisation of products by risk; the proposed guidelines were perceived as too broad and not sufficiently tailored to specific use cases.⁹ Similar concerns were expressed on the national level. Most notably, the three largest EU powers — Italy, France, and Germany — have tried to impede the legislation by stonewalling negotiations since November over the EP’s proposal to regulate foundational models.¹⁰ France, in particular, argues that the one-size-fits-all approach to the foundational models — i.e., prescribing the same standards to large language models like Chat GPT and France’s own MistralAI — is not only illogical but also harmful as it hinders the innovation capacity in Europe.¹¹ Despite criticism from other Member States, France maintained ambiguity regarding its position ahead of the decisive ratification vote on 2 February.¹²

The vagueness of classifications has also raised concerns outside of Europe. In October 2023, Bloomberg reported the US State Department warned that the proposed risk classifications by the EP might hamper investment in AI R&D, particularly affecting smaller companies that form the backbone of the European economy.¹³ However, some countries have taken a different stance. Just one month after the agreement had been reached, the Netherlands announced its commitment to adhere to the legislation — encapsulated in the “let’s start regulating what we know instead of waiting to know all” position by the Dutch government.¹⁴ In this instance, overshadowing the classical innovation vs regulation debate is the disagreement on the specific terms of the proposed legislation.

ESTONIA’S POSITION

Estonia has taken an active stand in the negotiations over the terms of the Act, not holding back on its scepticism. With the AI boom bringing unprecedented changes on a weekly basis, what worries a startup-centric nation like Estonia is the inhibition of technological innovations that have not yet been proven to have negative effects. Speaking to the Estonian parliament at an open session, Ott Velsberg, the Chief Data Officer for the government, has pragmatically pointed out that the focus of the current Act is on regulating and not on supporting the European AI industry.¹⁵