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## EUROPEAN APPROACH TO ARTIFICIAL INTELLIGENCE

### ABSTRACT

*The paper analyses how the institutions of the European Union approach solving the issue of the safe use of artificial intelligence. Documents from the Council of Europe, the European Parliament, and the European Commission are analysed. The Communication on the European Approach to Artificial Intelligence, of the European Parliament and the Council of Europe, the Coordinated Plans of the European Parliament and the Council of Europe for Artificial Intelligence, and the Proposal for the Regulation on Artificial Intelligence of the European Parliament and the Council of Europe were discussed. The goal of adopting all these documents is to create a safe environment for the use of artificial intelligence, that is, to create an adequate ethical and legal framework for the development and use of products and services based on artificial intelligence technologies. The European approach to the successful development of an environment for the use of artificial intelligence implies an accelerated investment in artificial intelligence technologies, the harmonization of artificial intelligence policies of individual EU countries, the creation of appropriate computing capacities, the construction and mobility of research capacities, the financing of innovative ideas and solutions, and the creation of adequate legal regulations for the safe use of artificial intelligence.*

**KEYWORDS: ARTIFICIAL INTELLIGENCE, EUROPEAN UNION, ARTIFICIAL INTELLIGENCE ACT.**

### INTRODUCTION

The development of new technologies has created potential dangers for individuals and companies, but high-quality legal regulation and its application in practice, along with an efficient system of sanctioning those who do not respect legal norms, is an adequate response that would lead to the creation of a well-ordered and safer society in the future (Prlja, Gasmi, Korać 2021: 128).

For many years, various institutions of the EU

have been trying to prepare regulations for an efficient application of artificial intelligence with the aim of ensuring a safe and controlled use of these systems. The European approach to artificial intelligence is focused on developing and using this technology in a responsible and ethical way, for the benefit of society as a whole. The first steps in this direction in Europe were made with the adoption of a series of strategic documents, recommendations and declarations by the institutions of the EU and the Council of Europe.

The most recent among these documents are

those published by the Council of Europe: *Declaration by the Committee of Ministers on the Manipulative Capabilities of Algorithmic Processes* in 2019 (Council of Europe 2019), *Recommendation CM/Rec of the Committee of Ministers to Member States on the Human Rights Impacts of Algorithmic Systems* in 2020 (Council of Europe 2020), and *Declaration by the Committee of Ministers on the Risks of Computer-Assisted or Artificial-Intelligence-Enabled Decision Making in the Field of the Social Safety Net* in 2021 (Council of Europe 2021).

The European Commission published *Building Trust in Human-Centric Artificial Intelligence* in 2019 (European Commission 2019), *White Paper on Artificial Intelligence – A European Approach to Excellence and Trust* in 2020 (European Commission 2020a), *Fostering a European approach to Artificial Intelligence* (European Commission 2021a) and its annexes - *Coordinated Plan on Artificial Intelligence 2021 Review* (European Commission 2021b) in 2021, as well as *Proposal for a Regulation of the European Parliament and the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts* (European Commission 2021c), together with its impact assessment (European Commission 2021d).

## FOSTERING A EUROPEAN APPROACH TO ARTIFICIAL INTELLIGENCE

*Fostering a European Approach to Artificial Intelligence* from 2021 (European Commission 2021a), of the European Parliament and the Council of Europe, is a political document. It states that artificial intelligence had shown its potential in contributing to the fight against the Corona virus, helping to predict the geographical spread of the disease, diagnose the infection, and to develop vaccines and medications to fight the virus. The links between the creation of a regulatory framework for artificial intelligence and the European *Data Governance Act*, legislation on product safety (i.e., amendments in the *Machinery Directive*, dealing with safety risks resulting from cooperation of humans and robots and the use of autonomous machines), the *EU Cybersecurity Strategy*, *Digital Education Action Plan 2021–2027*,

proposals for the *Digital Services Act*, the *Digital Markets Act*, and the *European Democracy Action Plan*, and amendments to the *Product Liability Directive*. were also highlighted. In addition to a series of advantages brought by artificial intelligence, some dangers were also emphasised, such as unjustifiably putting individuals in a disadvantageous position through the use of artificial intelligence, endangering privacy through facial recognition in public spaces, etc., and for this reason, the *Proposal for a Regulation of the European Parliament and the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts* (European Commission 2021c) was prepared as a new legal regulatory framework, as well as the *Coordinated Plan on Artificial Intelligence* for member states in 2021 (European Commission 2021b).

## COORDINATED PLANS

The *Coordinated Plan on Artificial Intelligence* of the European Parliament and the Council of Europe from 2018 (European Commission 2018) laid foundations for a harmonisation of policies on artificial intelligence and encouraged member states to work together to develop national strategies in this area and maximise the European Union's competitive potential in this field. It laid foundations for cooperation and defined the areas of further investment and was the first step in defining the common direction of the European artificial intelligence policy. The result of this joint plan were national strategies for artificial intelligence and investment in the development of artificial intelligence. *The Coordinated Plan on Artificial Intelligence* for the Member States for 2021 (European Commission 2021b) is the next step, which includes a set of joint actions of the European Commission, member states, and private stakeholders that include: accelerated investment in artificial intelligence technologies (through the Digital Europe programme – DEP, Horizon – HE, and the *Recovery and Resilience Facility* – RRF); acting in accordance with artificial intelligence strategies and programmes (Digital Innovation Hubs – DIH, robotics, *Internet of things*, etc.) and aligning artificial intelligence policies to avoid fragmentation.

Within the framework of the *Coordinated Plan on Artificial Intelligence* for the Member States for 2021, the plan is to implement measures within four areas.

The first area is *setting enabling conditions for artificial intelligence development in the EU*. It includes the unification and sharing of policies in the artificial intelligence field, harnessing of the potential of data, and fostering critical computing capacities. This set of measures enables the creation of the infrastructure necessary for the development and application of artificial intelligence with appropriate investment.

Within the second area, measures are defined that would make the EU a leader in the artificial intelligence development *from the laboratory to the market*: collaboration with stakeholders through European Partnerships for Artificial Intelligence, collaboration in the fields of data, robotics and expert groups, building and mobility of research capacities, providing environments for developers to test and experiment, and for small and medium companies and public administrations to take over technological solutions, and financing innovative ideas and solutions.

The third area is the *application of artificial intelligence for the benefit of people and the development of society*. In this context, the following set of measures is planned: honing talents and improving skills necessary to create a successful artificial intelligence ecosystem, developing political measures in order to ensure trust in artificial intelligence systems and promoting a vision of the EU with sustainable and reliable artificial intelligence. In this manner, it would be ensured that artificial intelligence placed on the EU market would be sustainable, safe, accessible and reliable.

The fourth area includes a group of measures related to *building strategic leadership and progress in high-impact sectors*: climate and environment, health, robotics, public administration, law enforcement, migration and asylum, agriculture, etc.

## PROPOSAL FOR ARTIFICIAL INTELLIGENCE ACT

A key step in achieving political goals in the artificial intelligence field in Europe is the *Pro-*

*posal for a Regulation of the European Parliament and the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts* (European Commission 2021c) of the European Parliament and the Council of Europe. The essence of this legal act is that it is focused on questions of safety and respect of fundamental rights in the use of artificial intelligence technologies. It provides a risk-based definition of artificial intelligence and sets mandatory requirements for high-risk artificial intelligence systems. It also envisions a governance mechanism that covers *ex ante* compliance assessments and *ex post* compliance control systems. Artificial intelligence systems that do not fall into the high-risk category are subject to existing legislation and have an obligation of transparency, and can voluntarily comply with the requirements of the *Proposal* on the basis of a code of conduct or another self-regulatory system.

The EU approach in the *Proposal* in terms of the challenges arising from the use of artificial intelligence is based on a special treatment of high-risk artificial intelligence systems. For high-risk systems that create a high risk for the health, safety and fundamental rights of individuals, special rules and mechanisms for the application of those rules are established. Those rules establish legal requirements in terms of data and data management, documentation and record keeping, transparency and user information, human control, resilience, and accuracy and security, all of which apply to manufacturers, importers, distributors, authorised representatives and users.

It is foreseen that the *European Committee for Artificial Intelligence* would be established at the level of the European Union, and that bodies that would determine compliance with the requirements of the Act, as well as supervisory bodies, would be established at the level of individual countries. The European Committee for Artificial Intelligence consists of representatives of the member states and the European Commission. National conformity assessment bodies would be appointed by the competent national body, and they would assess the conformity with reliable quality management and risk management systems. Also, they would monitor a given artificial intelligence system after it is placed on the market and issue

certificates on its compliance with the requirements of the Act. The national supervisory body would control the implementation and drastically fine manufacturers who do not comply with the prescribed provisions, with fines of up to 30 million euros, or up to 6% of the total annual turnover of the given company in the worldwide territory for the previous financial year. In addition to these binding legal norms, the proposed legal regulation mechanism foresees the creation of a code of conduct that would be voluntarily adhered to by manufacturers of high-risk artificial intelligence systems, as well as manufacturers of artificial intelligence systems that are not high-risk.

The *Proposal for a Regulation of the European Parliament and the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts* contains an *Explanatory Memorandum, Proposal and Annexes*.

The *Explanatory Memorandum* is very detailed and contains five parts. The first part provides the context for the Proposal, that is to say, the reasons and objectives of the Proposal are listed, as well as an overview of consistency with existing policy provisions in the policy area and consistency with other Union policies. The second part provides the legal basis, with the explication of subsidiarity and proportionality, as well as the choice of the legal instrument. The third part of the *Explanatory Memorandum* is dedicated to the presentation of the results of *ex-post* evaluations, stakeholder consultations and impact assessment, with a special overview of regulatory fitness and simplification and the relationship with fundamental rights. In the fourth part, budgetary implications that would occur after the adoption of the regulations are discussed. The fifth part of the *Explanatory Memorandum* included implementation plans, as well as monitoring, evaluation and reporting arrangements, along with a detailed explanation of the specific provisions of the *Proposal* by chapter.

The *Proposal* contains a preamble with 89 points and twelve chapters with 85 articles. In the first title – *General Provisions*, the subject matter of the Act is specified, as well as the scope of its application, and definitions of 44 terms are given, including the definition of artificial intelligence systems; also, amendments to Annex I of the Act are defined. The second title – entitled *Prohibited*

*artificial intelligence practices*, contains a list of practices in the field of artificial intelligence that are prohibited.

The third title – *High-Risk AI Systems*, provides, in the first chapter, the classification rules for high-risk artificial intelligence systems and defines the amendments to Annex III of the Act. The second chapter of this title defines requirements for high-risk artificial intelligence systems, risk management system, data usage, technical documentation principles, record-keeping principles for high-risk systems, principles for transparency and the provision of information to users, human oversight of the functioning of artificial intelligence systems, as well as the technical robustness and cybersecurity of artificial intelligence systems. The third chapter of this title defines obligations of providers of artificial intelligence systems (quality management system, obligation to draw up technical documentation, conformity assessment, automatic generation of event logs, corrective measures, duty of information, cooperation with competent authorities, and obligations of product manufacturers, representatives, importers and distributors), obligations of users of high-risk artificial intelligence systems and obligations of third parties.

The fourth chapter of this title is dedicated to the authorities responsible for the appointment of conformity assessment bodies and designated conformity assessment bodies and includes the method of submitting an application of a conformity assessment body for notification, the notification procedure, obligations and the method of functioning of the notified conformity assessment bodies, subsidiaries and subcontracting by notified bodies, assigning identification numbers and maintaining the list of designated notified bodies, the method of making changes to notifications, the method of challenging the competence of the designated notified body, the method of coordination and cooperation of the designated notified bodies and the relationship with the conformity assessment bodies of third countries. The fifth chapter provides an elaboration on the manner of assessing conformity on the basis of standards and common specifications, issuing certificates on conformity, the appeal procedure against decisions of notified bodies responsible for conformity assessment, information obligations of notified

bodies, derogation from conformity assessment procedure, EU declaration of conformity, CE marking of conformity, document retention and registration in the EU database of high-risk artificial intelligence systems. The fourth title defines *transparency obligations for certain artificial intelligence systems*, especially in those for emotion recognition, biometric categorisation, and those that manipulate image, audio or video content that appreciably resemble existing persons, objects, places, events, etc.

The fifth title is dedicated to *measures in support of innovation*, first and foremost to isolated artificial intelligence environments with a special legal framework and measures, taken for small manufacturers and users of artificial intelligences systems. The sixth title is dedicated to the *governance system* and is divided into two chapters. The first defines the structure and tasks of the European Artificial Intelligence Board, while the second chapter defines the procedure for designating national competent authorities. The seventh title is dedicated to the founding and management of a unique *database* with registered high-risk artificial intelligence system by the European Commission. The eighth title defines, in several chapters, the *monitoring system* of high-risk artificial intelligence system after they reach the market, the sharing of information on incidents and malfunctioning of these systems and market surveillance and control in the EU market and at a national level. The ninth title is dedicated to *codes of conduct* for artificial intelligence system that are not high-risk. *Information and data confidentiality and penalties* for infringement of the terms of the Act (administrative fines) are the topic of the tenth title. *Delegation of power* is the topic of the eleventh title of the Act. The twelfth title – *Final provisions*, contains articles with amendments to certain Regulations of the EU in order to gain conformity with the Act, as well as articles with regulation for artificial intelligence system already placed on the market, as well as articles dealing with evaluation and the need for review, in the future, of regulations and entry into force of the Act.

*Nine annexes* provided with the EU *Proposal on Artificial Intelligence Act* define techniques and approaches for artificial intelligence systems, provide a list on Union harmonisation legislation,

a list of high-risk artificial intelligence systems, and also define obligations regarding technical documentation. Additionally, elements of the EU Declaration of conformity are defined, as well as the conformity assessment procedure based on internal control, on the basis of assessment of quality management system, and on the basis of assessment of technical documentation; also, the group of information that is to be submitted upon the registration of high-risk artificial intelligence systems to the EU database, managed by the European Commission, and Union legislation is listed that regulate the functioning of large information systems in the area of freedom, security and justice.

At the national level, the member states of the EU are obliged to harmonise their legislation with the provisions of the *Artificial Intelligence Act* once it is adopted. It is also expected that countries that want to become members of the EU would also harmonise their legislation with the provisions of the Act and build mechanisms that would enable the safe use of high-risk artificial intelligence systems, as well as legal safety. The complex legal framework requires the adoption of new regulations and the amendment of existing ones, both those with a binding effect and those that do not have a binding effect. The first category certainly includes a special law on artificial intelligence with a strict sanctioning mechanism that would ensure effective implementation. The experience with the EU's General Data Protection Regulation (GDPR) has shown how high monetary fines affect compliance with legal regulations. The second category of non-binding rules includes professional codes of conduct at the national level and recommendations and declarations, primarily by international organisations, such as the Council of Europe.

## CONCLUSION

The extremely dynamic development of technologies today places high demands on the legal system, which should regulate the new reality based on algorithms. It is necessary to quickly adapt legal norms and in areas that open up a number of new dilemmas and questions: autonomous behaviour of artificial intelligence systems, legal subjectivity of artificial intelligence, liability for

damage caused by artificial intelligence systems, new professional and ethical standards, etc. Due to the extreme complexity and speed with which these changes occur, a clear regulatory framework must be based on the co-regulatory principle of general binding instruments and detailed sectoral non-binding instruments (Ben-Israel, I., *et al.* 2020: 90).

As a result of the technological complexity of artificial intelligence systems, it is not easy to legally regulate the use of algorithms and to protect fundamental rights and freedoms, but it certainly is possible and, in fact, necessary (Zuiderveen Borgtesius, F. 2018: 63)

The European approach to artificial intelligence includes the adoption of a series of strategic documents that should ensure the safe and effective use of artificial intelligence in all areas of life. The guidelines on artificial intelligence of the Council of Europe recommend ensuring the protection of privacy and personal data, during both the construction and operation of artificial intelligence systems. Citizens should have full control over their own data, and their data should not be used if there is a possibility of harm or discriminatory behaviour.

One of the areas where artificial intelligence has found its use is the research, preservation and presentation of cultural heritage. For example, through the integration of artificial intelligence into archaeological research processes, new perspectives have been opened for the study of past civilizations and archaeological sites. The use of machine learning and data analysis can enable archaeologists to process and interpret large amounts of data more quickly and accurately. In this way, artificial intelligence can help in the restoration and reconstruction of archaeological artifacts and sites, as well as in the sites' detection, which can provide a deeper understanding of past cultures as well as the preservation and presentation of cultural heritage. However, while using artificial intelligence in the area of cultural heritage, many ethical and other considerations can be raised, such as selection of data and its reliability, possible biased interpretations of data, protection of specific data and data control with copyright, as well as the question of authenticity challenged by reconstructions (Bickler 2021: 189; Pansoni *et al.* 2023: 1149-1155; European Commission 2020b: 147).

In the near future, artificial intelligence will significantly affect the development of the economy and the competitiveness of EU countries on the world market. Therefore, it is important to create an adequate environment for the control of high-risk artificial intelligence systems as soon as possible with maximum respect for all ethical and legal rules, with the aim of the safe use of artificial intelligence. The development and use of products and services based on artificial intelligence technologies in the EU should be accompanied by adequate financial support for innovations and new ideas, but also by precise legal regulation and the adoption of adequate ethical rules in order to eliminate all potential dangers of possible abuse.

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## REZIME

### EVROPSKI PRISTUP VEŠTAČKOJ INTELIGENCIJI

**KLJUČNE REČI: VEŠTAČKA INTELIGENCIJA, EVROPSKA UNIJA, PREDLOG UREDBE O VEŠTAČKOJ INTELIGENCIJI.**

U radu se analizira na koji način institucije Evropske unije pristupaju rešavanju pitanja bezbedne upotrebe veštačke inteligencije. Analiziraju se dokumenti Saveta Evrope, Evropskog parlamenta i Evropske komisije. Razmatrani su *Saopštenje o evropskom pristupu veštačkoj inteligenciji*, koordinisani planovi za veštačku inteligenciju i *Predlog uredbe o veštačkoj inteligenciji*. Cilj donošenja svih ovih dokumenata je stvaranje bezbednog okruženja za korišćenje veštačke inteligencije, odnosno stvaranje adekvatnog etičkog i pravnog okvira za razvijanje i upotrebu proizvoda i usluga baziranih na tehnologijama veštačke inteligencije. Evropski pristup uspešnom razvoju okruženja za upotrebu veštačke inteligencije podrazumeva ubrzano ulaganje u tehnologije veštačke inteligencije, usklađivanje politika veštačke inteligencije pojedinih zemalja Evropske Unije, stvaranje odgovarajućih računarskih kapaciteta, izgradnju i mobilnost istraživačkih kapaciteta, finansiranje inovativnih ideja i rešenja, i stvaranje adekvatne pravne regulative za bezbedno korišćenje veštačke inteligencije.

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