Our position

AI Act

Updated position

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Speaking for American business in Europe

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Executive summary

The Commission appropriately aims to create an ecosystem of trust and excellence and to ensure that the EU becomes a vibrant hub for research, development and innovation in trustworthy Artificial Intelligence applications through the proposed AI Act (AIA). However, there are six main points which should be revised by the Commission in order to achieve the above mentioned objectives.

The Commission should first set a clear and unambiguous definition of AI, aligning it with that of the OECD. Additionally, the AIA should avoid imposing requirements and compliance obligations for types of AI tools that are not intended for a particular purpose, thus maintaining the maintain the risk-based philosophy. At the same time, Council and Parliament should amend the text to target the designation of high-risk AI systems, framing the requirements in a flexible way so as to allow for the development of harmonised standards. Moreover, Parliament and Council should ensure that the AI Act enables efficient and balanced allocation, including by contract, of obligations between providers and users. Finally, maintaining self-assessment of conformity will be vital to encourage innovation, entrepreneurship and take-up without building trust and confidence.

Introduction

The American Chamber of Commerce to the EU (AmCham EU) has been engaged in discussions on the proposed AIA since it was published in April 2021. The AI Act is the first attempt to lay down a comprehensive legislative framework for the development and use of artificial intelligence and the proposal will no doubt to some extent serve as an anchor for policy proposals in other countries and regions. We provided a first position paper on the AIA in July 2021, and subsequently formulated a set of key amendments on core aspects of the legislation. AmCham's proposals are intended to contribute to realising the objectives of the EU AIA: to create safeguards for trustworthy AI systems, and foster development and use of AI in the EU. With this objective in mind, we offer the following observations on the direction the legislative process is taking, and put forward key recommendations on some of the most critical issues in the Regulation.

1. Definition of AI

A clear and unambiguous definition of AI is essential to the success of the proposed Regulation. The definition in the Commission's proposal is broader than that which has been adopted by leading international fora, such as the OECD (Organisation for Economic Co-operation and Development). The proposals from Members of the European Parliament (MEPs) would expand the definition in the Commission's proposal even further, which is concerning. A broad and vague definition would work counter to the objectives of the AIA.

Key Recommendations:

The Czech Presidency's recent efforts to tighten the definition and align it with the OECD's, as evidenced by the texts circulated recently by the Council , is encouraging. Member States should support this approach and the European Parliament should do the same.

2. General Purpose Artificial Intelligence

The proposed AIA does not mention the concept of General Purpose AI (GPAI), but this has emerged as a major theme in the legislative process. The French Presidency issued a text with provisions on GPAI in May 2022, and several MEPs have submitted similar amendments. Notably, compliance obligations for GPAI providers have been introduced in article 23a in the JURI adopted Report as well as in some proposed amendments in the IMCO (Internal Market and Consumer Protection)/LIBE (Civil Liberties, Justice and Home Affairs) joint Committee (Recital 70a - am 716, Voss etc & Art.23a - am 1976, Voss etcl).

Companies use general purpose tools and application programming interfaces (APIs) to design, train and deploy AI systems in a variety of industries. These tools, as well as, APIs are not AI systems *per se*, but users develop them into AI systems by defining their intended use. Consistent with the Act's risk-based approach and emphasis on intended purpose, a provider's duties should be assigned to the party that determines an AI system's intended purpose. Including obligations for GPAI would compel AI providers to comply with the AI Act regardless of whether the AI in question poses a high risk or not, and is fundamentally at odds with the risk-based approach the AIA is based on. It would raise cost and complexity for AI developers without addressing actual risks.

Key Recommendations:

The European Parliament and Council should revert to the European Commission's original proposal and they should avoid imposing requirements and compliance obligations for types of AI tools that are not intended for a particular purpose. This would maintain the risk-based philosophy of the AIA proposal.

3. A targeted designation of high-risk AI systems (art.6[3], Annex III)

One of the most important success factors for the AIA is a targeted and predictable designation of 'high risk'. This is essential to ensure that regulatory requirements and enforcement are focused on those AI use scenarios that may create actual risk to health, safety and fundamental rights. It is also proving to be one of the most difficult ones, especially for those AI systems that are not integrated into products that are already subject to conformity assessments (Annex III). This Annex lists a number of areas which the Commission considers involve 'high risk'. However, Annex III is very general and vague in its description of the types of AI systems that should be considered 'high-risk', which means that a very broad range of AI systems will be considered high-risk if used in the areas listed in the Annex. A too broad high-risk designation will have two consequences: (i) discourage the development and use of AI technologies in areas where there is little or no risk, and (ii) make enforcement less effective by broadening the scope of AI systems authorities have to deal with.

Key Recommendations:

Council and Parliament should amend the text to target the designation of high-risk AI systems. Wording should be added in art. 6(3) to clarify that only AI systems that meet the following criteria should be designated high-risk:
1. The AI system creates autonomous actions or decisions, or significantly determines or influences actions or decisions; and
2. those actions or decisions involve actual risks to fundamental rights and/or health and safety. This same language should be replicated in Annex III.

4. Requirements for high risk AI systems

The AI Act lays down a list of requirements that AI systems categorised as high-risk must meet. These requirements – such as risk management, data governance, human oversight, robustness and accuracy – are on the whole sensible in keeping with the Commission's preparatory work. However, some of the requirements seem to be overly prescriptive and detailed while some seem to be unrealistic. Suitably, proposals both in Council and the European Parliament seek to make the requirements flexible and realistic as well as focused on the outcomes. An example is an amendment that suggests 'minimising risks more effectively while achieving an appropriate and proportionate balance in implementing the measures to fulfil those requirements'. Such changes help ensure that the Act requirements are proportional to a risk-based approach. For example, a number of amendments put forward by the European People's Party (EPP) and Renew groups contribute to these objectives.

Key Recommendations:

Members of the European Parliament and Member States should make the framing of the requirements set out in articles 9-15 flexible and general enough to accommodate the very wide range of AI systems that will be subject to these requirements. The wording should also be flexible enough to allow for the development of harmonised standards, which is foreseen in the Regulation.

5. A balanced allocation of obligations on providers and users

Most of the responsibilities for fulfilling the standards for high-risk AI systems falls on their providers, while users (ie customers) who deploy AI systems must adhere to the provider's guidelines for the intended application. In the allocation of responsibilities within the AI value chain, it is important to ensure users appropriately share responsibility for monitoring an AI system. Users should share accountability for continuous compliance with the Act and have primary responsibility for implementing AI for its intended purpose as instructed by the provider. This is especially crucial in a Business-to-Business (B2B) context, where providers of AI systems may not have visibility to be able to monitor the implementation and performance of AI systems.

Key Recommendations:

The European Parliament and Council should ensure that the AI Act enables efficient and balanced allocation, including by contract, of obligations between providers and users. This should be based on which actor has the ability to abide by the obligation at the point in the AI lifecycle at which it applies. For example, providers should be obligated to provide clear instructions on correct use of the algorithmic system and management of data it interacts with. Users should be responsible for following these instructions and ensuring appropriate use of the AI system.

6. Self-assessment of conformity

Conformity assessment by a third party is not foreseen in the Commission's proposal for the majority of AI systems designated as high-risk. The proposal correctly acknowledged that third-party evaluation would disproportionately impact innovation and lengthen time to market. In addition, the wide variety of AI applications covered by the Act would present a challenge to assessment organizations, resulting in a process that is fragmented at best and deficient at worst. Nonetheless, some amendments to Recital 65 have been tabled by MEPs that mandate third-party assessment for all use cases listed in Annex III.

The proposed introduction of third party assessment to all use cases listed in Annex III in some of the Parliament text is worrisome, as it could result in a regulatory burden that would hamper innovation, entrepreneurship and take-up without building trust and confidence.

Key Recommendations:

The European Parliament and Council should maintain the approach taken in the European Commission's original proposal and refrain from imposing mandatory third-party assessment for the use cases listed in Annex III.

Conclusion

For artificial intelligence to continue flourishing, it should be monitored appropriately. But regulating AI is a difficult balancing act. Overall, AmCham EU commends the efforts by the European Commission to try and set robust safeguards for AI systems that could pose risks to health, safety or fundamental rights. The AIA can create a prosperous market for reliable and ethical AI systems. However, the AI Act draft also has room for improvement. With this paper we aim to put forward some proposals and considerations to ensure the achievement of the objectives of the EU AIA. By setting a clear and unambiguous definition of AI, avoiding requirements and compliance obligations for types of AI tools that are not intended for a particular purpose, framing the requirements for high-risk AI systems in a flexible way, ensuring a balanced allocation of obligations between providers and users and maintaining self-assessment of conformity, the AI Act can create safeguards for trustworthy AI systems, and there foster development and use of AI in the EU.

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