

European Union

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Artificial Intelligence, Fundamental Rights and Technological Development: Is There a Crowd in a Regulation?

When, in April 2021, the European Commission released its proposal for a future European Union (EU) regulation on artificial intelligence (AI), the so-called Artificial Intelligence Act (hereinafter, the 'AIA'), experts and stakeholders from around the world held their breath. Curiosity was high (although the 2020 White Paper on AI had already shed some light on what was to come) and the anxiety of those who created a business based on AI technology was no less. Everyone knows what is at stake: the content of the future European regulation on AI can dictate the success (or failure) of many projects (business and otherwise) in Europe and beyond (due to the extraterritorial effects of the AIA).

The AIA's primary objective is to facilitate and develop the use of AI in the EU to create a true Digital Single Market, a long-held aspiration. However, this objective may be limited in its realization by another aspiration of the AIA: the protection of fundamental rights, European values, and ethical principles potentially threatened by AI. It remains to be seen whether the expected compatibility of purposes can be fulfilled by the AIA.

Despite some criticism pointing out the AIA's excessive 'business tenor', it actually seems more prone to the protection of rights than to technological leverage. The defense of fundamental rights and values is, obviously, commendable. However, it is worth asking what room for maneuver is left to European start-ups. Apart from testing environments (the 'regulatory sandboxes') and measures to encourage small and medium-size AI providers, there is not much encouragement for technological innovation. Most likely, the activities of

research, manufacture, and commercialization of AI in the European space will suffer a hard blow, especially in the early days.

An immediately foreseeable problem is compliance with so many and so detailed rules, not just those of the AIA, but all other relevant rules, for instance, the Medical Device Regulation or the General Data Protection Regulation-GDPR, which frequently will come together in the particular case. Will a researcher, a manufacturer, or an entrepreneur be able to cope with so many simultaneous and eventually conflicting demands?

A parallel can be made with the GDPR: the level of demand in terms of requirements and limitations is at the maximum limit and the detail in regulation has no equivalent in the rest of the world, but in terms of practical outcomes, this came at a huge cost for innovation, especially data-driven innovation, and still many flaws regarding the protection of individual rights.

I fear that the AIA also becomes a hyper-regulation, with massive rules on practically everything, limitations that prevent the development of new technologies, excessive bureaucracy, absurd prohibitions and very heavy sanctions, without in the end necessarily resulting in greater protection for people's rights.

The AIA is still under discussion and the final version is expected at the end of 2023, but it seems the EU is determined to create another megalomaniac law. The existence of a legal framework for AI in the EU is an absolute need and the current draft act is a meritorious effort. However, there are no perfect outcomes, and the level of imperfection increases in the exact measure that the ambition of a project increases. The AIA is an ambitious project, both for its scope of application and for its level of detail, to which it must be added the complexity of a very new domain. We can only hope that in the end this high price brings some effective benefits for fundamental rights.