

Artificial Intelligence Act Amendments

This document outlines amendments to the European's Commission proposal for the Artificial Intelligence Act (AIA) with respect to (a) accountability of users, (b) transparency to the public and (c) to individuals, and (d) rights and redress for people affected by AI systems.

I. Amendments to the Artificial Intelligence Act

(A) Obligations on users of high risk AI

Amendment 1

Proposal for a regulation

Article 29 (a) new

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 2

Proposal for a regulation

Article 29 (b) new

Text proposed by the Commission

Amendment

Fundamental rights impact assessments for high-risk AI systems

1. Users of high-risk AI systems as defined in Article 6(2) shall conduct an assessment of the systems' impact in the context of use before putting the system into use. This assessment shall include, but is not limited to, the following:

(a) a clear outline of the intended

purpose for which the system will be used;

(b) a clear outline of the intended geographic and temporal scope of the system's use;

(c) verification of the legality of the system in accordance with Union and national law, fundamental rights law, Union accessibility legislation, and the extent to which the system is in compliance with this Regulation;

(d) the likely impact on fundamental rights of the high-risk AI system, including any indirect impacts or consequences of the system's use;

(e) any specific risk of harm likely to impact marginalised persons or those groups at risk of discrimination, or increase existing societal inequalities;

(f) the foreseeable impact of the use of the system on the environment, including but not limited to energy consumption;

(g) any other negative impact on the public interest; and

(h) clear steps as to how the harms identified will be mitigated, and how effective this mitigation is likely to be.

2. If adequate steps to mitigate the risks outlined in the course of the assessment in paragraph 1 cannot be identified, the system shall not be put into use. Market surveillance authorities, pursuant to their capacity under Articles 65 and 67, may take this information into account when investigating systems which present a risk at national level.

3. The obligation outlined under paragraph 1 applies for each new deployment of the high-risk AI system.

4. In the course of the impact assessment, the user shall notify relevant national authorities and all relevant stakeholders, including but not limited to:

equality bodies, consumer protection agencies, social partners and data protection agencies, with a view to receiving input into the impact assessment. The user must allow a period of six weeks for bodies to respond.

5. Where, following the impact assessment process, the user decides to put the high-risk AI system into use, the user shall be required to publish the results of the impact assessment as part of the registration of use pursuant to their obligation under Article 51(2).1

6. Where the user is already required to carry out a data protection impact assessment under Article 35 of Regulation (EU) 2016/679 or Article 27 of Directive (EU) 2016/680, the impact assessment outlined in paragraph 1 shall be conducted in conjunction to the data protection impact assessment and be published as an addendum.

7. Users of high-risk AI systems shall use the information provided under Article 13 to comply with their obligation under paragraph 1.

8. Where the user, pursuant to their obligation to define affected categories of persons under Article 29a, finds that use of a high-risk system poses a particular risk to a specific group of natural persons, the user has the obligation to notify established representatives or interest groups acting on behalf of those persons before putting the system into use, with a view to receiving input into the impact assessment.

9. The obligations on users in paragraph 1 is without prejudice to the obligations on users of all high risk AI systems as outlined in Article 29.

Justification: Including limited obligations on users of high-risk AI systems is crucial to create a framework of accountability for the use of such systems. In particular, this assessment is needed to capture the specific

risks to fundamental rights related to the deployment of high risk AI. Whilst the provider-led conformity assessment process may identify the core technical shortcomings of the system, this process is fundamentally ill-suited to identify the risks in the context of deployment. For the purpose of accountability to affected persons, this assessment should be published in the Article 60 database, as outlined in Article 29b(5). More detail is articulated in section II of this paper.

(B) Consistent and meaningful public transparency (Art 60 Database)

Amendment 4

Proposal for a regulation Article 51

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 5

Proposal for a regulation Article 60

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 5

Proposal for a regulation
Article 60

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

(C) Meaningful transparency for affected people

Amendment 5

Proposal for a regulation
Article 52

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 5

Proposal for a regulation
Article 52

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 5

Proposal for a regulation
Article 52

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 5

Proposal for a regulation
Article 52

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

Amendment 5

Proposal for a regulation
Article 52

Text proposed by the Commission

Amendment

Obligation on users to define affected persons

1 Before putting into use a high-risk AI system as defined in Article 6(2), the user shall define categories of natural persons and groups likely to be affected by the use of the system.

(D) Rights and redress for affected persons

Amendment 5

Proposal for a regulation
Title IVa (new)

Text proposed by the Commission

Amendment

Rights of affected persons

Amendment 5

Proposal for a regulation
Article 55a (new)

Text proposed by the Commission

Amendment

Right not to be subject to non-compliant AI systems

1. Natural persons shall have the right not to be subject to AI systems that:

(a) pose an unacceptable risk pursuant to Article 5, or

(b) otherwise do not comply with the requirements of this Regulation.

Amendment 5

Proposal for a regulation
Article 55b (new)

Text proposed by the Commission

Amendment

Right to information about the use and functioning of AI systems

1. Natural persons shall have the right to be informed that they have been exposed to high-risk AI systems as defined in Article 6, and other AI systems as defined

in Article 52.

2. Natural persons shall have the right to be provided, upon request, with an explanation for decisions producing legal effects or otherwise significantly affecting them or outcomes related to them taken by or with the assistance of systems within the scope of this Regulation, pursuant to Article 52 paragraph (3b).

3. The information outlined in paragraphs 1 and 2 shall be provided in a clear, easily understandable and intelligible way, in a manner that is accessible for persons with disabilities.

Amendment 5

Proposal for a regulation Article 55c (new)

Text proposed by the Commission

Amendment

Right to lodge a complaint with a national supervisory authority

1. Natural persons affected by the operation of AI systems within the scope of this Regulation, who consider that their rights under this Regulation have been infringed shall have the right to lodge a complaint with a national supervisory authority in the Member State of his or her habitual residence, place of work, or place of the alleged infringement.

2. National supervisory authorities have the duty to investigate, in conjunction with relevant market surveillance authority if applicable, the alleged infringement and inform the complainant, within a period of 3 months, of the outcome of the complaint, including the possibility of a judicial remedy pursuant to Article 55e.

Amendment 5

**Proposal for a regulation
Article 55d**

Text proposed by the Commission

Amendment

Representation of natural persons and the right for public interest organisations to lodge a complaint with national supervisory authority

1. Natural persons who consider that their rights under this Regulation have been infringed shall have the right to mandate a public interest organisation to lodge a complaint on their behalf with a national competent authority and to exercise on their behalf their rights as referred to in Articles 55c and 55e.

2. A public interest organisation is a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest.

3. Public interest organisations shall have the right to lodge complaints with national competent authorities, independently of the mandate of the natural person, if they consider that an AI system has been placed on the market, put into service, or used in a way that infringes this Regulation, or is otherwise in violation of fundamental rights or other aspects of public interest protection, pursuant to article 67.

3. National supervisory authorities have the duty to investigate, in conjunction with relevant market surveillance authority if applicable, and respond within a period of 3 months to all complaints where a prima facie case has been made as to infringements referred to

in paragraph 2.

Amendment 5

**Proposal for a regulation
Article 55e (new)**

Text proposed by the Commission

Amendment

Right to an effective remedy against the national supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a national supervisory authority concerning them.

2. Without prejudice to any other administrative or non-judicial remedy, each natural person shall have the right to an effective judicial remedy where the national supervisory authority does not handle a complaint or does not inform the person within three months on the progress or outcome of the complaint lodged pursuant to Articles 55c and 55d.

3. Proceedings against a national supervisory authority shall be brought before the courts of the Member State where the national supervisory authority is established.

Amendment 5

**Proposal for a regulation
Article 55f (new)**

Text proposed by the Commission

Amendment

Right to an effective remedy against a user for the infringement of rights

1. Without prejudice to any available

administrative or non-judicial remedy, any natural person shall have the right to an effective judicial remedy against a user where they consider that their rights under this Regulation have been infringed or has been subject to an AI system otherwise in non-compliance with this Regulation.

2. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the user for the damage suffered.

Detailed justifications of amendments overleaf.

II. Detailed justifications

Introduce obligations on users of high-risk AI systems

This document outlines amendments to introduce obligations on users of high-risk AI. In particular, these recommendations are designed to facilitate greater transparency as to how high-risk AI is used, and ensure accountability and redress for uses of AI that pose a potential risk to fundamental rights.

How does the AIA regulate ‘users’ of high-risk AI?

The Artificial Intelligence Act (AIA) predominantly imposes requirements on ‘providers’ (developers) rather than on the ‘users’ (deployers) of high-risk AI. For the majority of high-risk AI uses in Annex III, compliance with the regulation’s requirements (articles 8-15) is self-assessed by the providers themselves, pursuant to article 43(2).

The AIA imposes minimal obligations on users of high-risk AI systems. Article 29 outlines the duties of users of high-risk AI: to use the system in conjunction with the providers’ ‘instructions of use’, ensuring relevant data, and monitoring of the system. However, the user is not obligated to undertake any further measures to analyse the potential impact on fundamental rights, equality, accessibility, public interest or the environment, to consult with affected groups, nor take active steps to mitigate potential harms.

Why the AIA needs obligations on users

The following outlines why the AIA needs obligations on users of high-risk AI:

1 Foresight of AI harms in the context of use as well as design

A crucial flaw of the current AIA approach is that it overlooks the complexity of AI systems and the importance of the **context** within which they are used to be able to assess impact on fundamental rights, people and society. This is particularly true for ‘standalone’ AI systems defined under article 6(2), which display a wide and more complex range of risks than for products. As such, legislative approaches geared toward product safety will not be sufficient to address these broader implications for fundamental rights.¹ Whilst the provider-led conformity assessment process may identify the core technical shortcomings of the system, this process is fundamentally ill-suited to identify the risks in the context of deployment.

For example, a facial authentication system may meet the technical requirements specified in the Act yet still pose significant fundamental rights violations, compromise data protection and non-discrimination law, and disproportionate surveillance in the context of deployment (i.e. in a specific shopping centre) creating chilling effects on the enjoyment of fundamental rights.

Further, the requirements on providers in the AIA are highly technical in nature, and are thus insufficient as a mechanism to prevent or mitigate risks to fundamental rights, structural harms, or economic or environmental shifts engendered by the introduction of AI systems in certain contexts.² Such considerations are inherently better assessed by the users in light of the context of deployment of the AI system.

¹ Oxford Commission on AI & Good Governance (2021). Harmonising Artificial Intelligence: the role of standards in the EU AI Regulation. Available: <https://oxcaigg.oii.ox.ac.uk/wp-content/uploads/sites/124/2021/12/Harmonising-AI-OXIL.pdf>

2 Facilitating accountability of users of high-risk AI

While some of the risk posed by the systems listed in Annex III come from how they are designed, significant risks stem from how, and the purpose for which, they are used. This means that providers cannot comprehensively assess the full contextual impact of a high-risk AI system during the conformity assessment, and therefore that users of high-risk AI must be assigned obligations in the AIA to uphold fundamental rights in addition.

Member States have already demonstrated willingness to implement governance obligations on users of AI systems. For example, in the Netherlands the Ministry of Interior and Kingdom Relations has developed the Impact Assessment Mensenrechten en Algoritmes (IAMA) that requires public authorities to conduct impact assessments.³

The obligations outlined in the following amendments would require users to delineate the impacts of high-risk AI systems, publish the findings and therefore create a crucial tool of accountability over how high-risk AI systems are deployed. As stated below, the obligation to (a) conduct and publish a fundamental rights impact assessment and (b) register uses of high-risk AI systems will create the necessary mechanism of public transparency by which people affected by high risk AI, and public interest organisations, are able to access the information to oversee, and if necessary, challenge these systems when they infringe on fundamental rights. One of the goals of the AIA is to foster an ecosystem of trust and excellence, and having users of high-risk AI systems assess the impact of their deployments and be transparent about the systems they are using will be key to building public trust in this technology.

3 Countering dominance of AI providers

Obligations on users of high risk AI systems would also counter an over-focus on providers of AI systems as the primary governance mechanism. The assumption, underpinned by the regulatory proposal, that AI providers can fix all potential issues related to the use of AI system largely reinforces the dominant role of large technology firms as AI providers, in particular to entirely determine the terms of public service provision. The AIA assigns the responsibility to detect and mitigate risks to fundamental rights and other possible harms to these private actors, regardless of whether or not they have the relevant expertise, resources, and vested interest to do so.

Ensure meaningful transparency to individuals

What AI systems are currently subject to transparency obligations?

Currently, Article 52 of the AIA is the only provision which introduces basic transparency of AI systems vis-à-vis people affected by them, stipulating that in certain cases people should be informed about the fact that

² For further information as to the limits of technical mechanisms to prevent AI harms, see EDRI (2021). *Beyond De-biasing: Regulating AI and its inequalities*: https://edri.org/wp-content/uploads/2021/09/EDRI_Beyond-Debiasing-Report_Online.pdf, authored by Dr Seda Gürses and Agathe Balayn of Technical University Delft.

³ Ministerie van Binnelandse Zaken en Koninkrijksrelaties: Impact Assessment Mensenrechten en Algoritmes: <https://www.uu.nl/sites/default/files/Rebo-IAMA.pdf>

an AI system is in use. In the Commission's proposal this requirement applies only to a few systems, unless they are used to detect, prevent, investigate and prosecute criminal offences, namely:

- AI systems intended to interact with natural persons;
- emotion recognition systems;
- biometric categorisation systems;
- AI systems that generate 'deep fakes' (images, audio or video content that appreciably resembles existing persons, objects, places or other entities or events and would falsely appear to a person to be authentic or truthful).

It should be noted that currently there are **no transparency obligations vis-a-vis persons subject to high-risk AI systems or systems that haven't been categorized as high-risk but nevertheless affect individuals and pose a risk for them**, such as AI systems used to assess or evaluate people by businesses or public authorities, unless they also belong to the limited catalogue above. Another shortcoming of the proposed transparency obligation is that it is limited to the duty to inform the individual **about the mere fact that an AI system is in use**, without the obligation to provide any other information, e.g. on the purpose or functioning of the system, or even the identity of the user.

While Article 52 in its current form may lay the ground for a right to a non-individualised notification about the use of some AI systems, **the AIA does not currently envision the possibility for people subject to AI-supported decisions to obtain substantive information tailored to their specific situation**. In particular, under the Commission's proposal, people significantly impacted by such decisions will not be able to ask for an explanation of how and why the AI system produced a specific outcome in relation to them and – if a human was involved in the decision-making process – to what extent the algorithmic outcome influenced the decision. Such an explanation is a precondition for individuals' ability to meaningfully challenge the outcome of the system and effectively defend themselves from violations of their rights⁴.

Why do we need meaningful transparency of AI systems for individuals and how to achieve it?

1. Notification of the use of an AI system

To ensure a high level of protection of fundamental rights, the law should make it easy for people to find out if they are subject to, or impacted by, an AI system. Knowing that an AI system is used and for what purpose is a precondition to identify and report a violation of fundamental rights, such as discriminatory or unfair treatment, and to exercise one's rights. When companies or institutions using AI are transparent about it and do not operate in the dark, it contributes not only to increasing their accountability for the AI systems they deploy, but also to creating an ecosystem of trust and excellence around AI, which is one of the key goals of the proposed regulation.

Article 52 currently only covers situations where the nature of an AI system poses a risk of manipulation or deception, but notification about the use of AI systems is even more crucial when the use of an AI system may significantly impact someone's life, legal situation, or social status, which is the case for all high-risk AI systems included in Annex III. The opportunity to find out that an AI system is in operation and what it does is also essential from the perspective of consumer protection, where consumers' individual traits are assessed or evaluated for the purposes of offering them services or goods or determining the conditions of access to such goods or services.

⁴ See a separate paper with recommendations related to ensuring rights and redress for people impacted by AI systems.

In this context, the list of systems subject to transparency obligations under Article 52 is unjustifiably limited. All the more so when we consider that:

- the AIA in its current form does not envision a parallel obligation relating to high-risk AI systems. In the context of protection of fundamental rights it is not clear why people should be informed about the use of a chatbot, even when it poses a relatively lower risk, but not about an AI system which participates in assessing their CV or their benefits request⁵;
- GDPR information requirements related to profiling are insufficient in this context because, first of all, they apply only to situations where personal data as defined by the GDPR is processed (while an AI system might rely on big data or non-personal variables) and second of all, specific obligations related to providing meaningful information about the functioning, logic and consequences of an AI system are limited to situations which fall under the narrow scope of Article 22 GDPR (**solely automated decisions** which produce legal or otherwise significant effects for the data subject), thus excluding situations where impact on the individual's life is still significant but the decision is taken with the assistance of - and not solely by - an AI system;
- certain AI systems which assess or evaluate people's individual traits and influence their access to goods and services, even when such systems are not designated as high-risk under the AIA (e.g. price determination systems, systems which rank offers in online shops or recommend personalised diets based on an individual's health condition), pose an inherent risk of manipulation, consumer harm, discrimination or even a threat to health and safety, and as such people should be aware that such systems are used on them.

Therefore, we propose to expand the list of AI systems subject to transparency obligations to also **include all high-risk AI systems as well as AI systems which assess and evaluate people, predict their behaviour, interests or personal traits, recommend information, goods or services to them based on their activity or personal traits, regardless of whether these systems have been classified as high-risk**. The AIA should also envision an update mechanism for Article 52 in order to ensure a swift response to technological developments and emerging challenges for fundamental rights⁶.

To be useful for individuals affected by an AI system, the notice provided to them should include not just the mere information that an AI system is in use (which does not offer much insight), but also:

- concise, easily understandable, accessible for persons with disabilities information about the purpose or task of the system (what it does);
- indication where more information about the system can be found (e.g. a link to EU public database, other publicly available and accessible for persons with disabilities resource, or contact details of the user);
- the information about the right to request an explanation if the decision taken with the use of an AI system significantly impacted them (see point 2 below).

It should also be noted that due to the severe risks that their use poses to fundamental rights, emotion recognition systems and some uses of biometric categorisation systems should be elevated to 'prohibited AI' under Article 5⁷.

Finally, any exceptions to the obligation to inform natural persons about the use of an AI system for the purposes of detection, prevention, investigation and prosecution of criminal offences should not happen by

⁵ Please note that one of the supporters of these recommendations, the European Disability Forum, advocated for a prohibition on these systems.

⁶ See the ancillary amendment proposing a new Article 52a below.

⁷ See a separate paper with recommendations on biometric categorisation and emotion recognition for more information about this.

default and should be limited to specific cases where it is strictly necessary in order to avoid obstructing or prejudicing proceedings. Please also note that in a separate paper a number of civil society organisations is advocating for the prohibition under Article 5 of uses of AI systems in the context of predictive policing.

2. The right to request an explanation of significant decisions

As mentioned above, the AIA does not give individuals the right to inquire why a certain decision was made about them with the assistance of an AI system. While some might say that such a right exists under Article 22 of the GDPR, this is questioned by distinguished legal scholars⁸ who argue that, firstly, Article 22 provides other remedies, such as the right to human intervention, but not a right to explanation, and secondly, even if this right existed it would be limited to situations where decisions are **solely** automated. This seriously limits the practical application of this right as many decisions which significantly impact individuals are not made “solely” by an AI system, but rather by AI systems that assist the human in some stages of the decision-making process⁹.

As a result, individuals have no legal tools to obtain an explanation as to why a certain outcome was produced by the AI system and how it influenced the final decision in their case. **Lack of access to a meaningful explanation of reasons behind AI-assisted decisions makes it difficult, if not impossible, to contest false, inaccurate or discriminatory outcomes**¹⁰. This is especially important if the decision is made by a public authority, because under EU law the administration has the duty to give reasons for its decisions. The AIA should explicitly adapt this duty to the AI context¹¹.

For these reasons, we strongly recommend that **the AIA fill this gap and create a possibility to request an explanation of outcomes of an AI system generated in relation to them in cases where the AI-assisted decision produced legal effects or otherwise significantly impacted the individual**. The interpretation of “significant impact” could be inspired by existing jurisprudence related to Article 22 of the GDPR and the EDPB guidelines WP251 on automated decision-making and profiling, which mention, for instance, decisions which affect an individual’s financial circumstances (incl. differential pricing), access to education or employment opportunities, or even some forms of micro-targeting in online advertising¹².

Ensure rights and redress for people impacted by AI systems

This document outlines amendments to the European Commission’s proposed Artificial Intelligence Act (AIA) with respect to the rights and availability of redress to persons whose fundamental rights are impacted by Artificial Intelligence (AI) systems.

I. Why the AIA needs to include rights and redress for those impacted by AI systems

The AIA currently does not confer individual rights to people impacted by AI systems, nor does it contain any provision for redress or a mechanism by which people or public interest organisations can engage in the

⁸ See: S. Wachter et al., *Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation*, <https://academic.oup.com/idpl/article/7/2/76/3860948>.

⁹ See: R. Binns, M. Veale, *Is This Your Final Decision? Multi-Stage Profiling, Selective Effects, and Article 22 of the GDPR*, <https://academic.oup.com/idpl/article/11/4/319/6403925>.

¹⁰ In a separate paper we recommend the introduction of individual and collective redress mechanisms in the AIA, including the right to lodge a complaint with a supervisory authority.

¹¹ See: M. Fink, *The EU Artificial Intelligence Act and Access to Justice*, <https://eulawlive.com/op-ed-the-eu-artificial-intelligence-act-and-access-to-justice-by-melanie-fink/>.

¹² <https://ec.europa.eu/newsroom/article29/items/612053>

investigatory process of high-risk AI systems. In particular, the lack of individual rights and redress mechanisms in the AIA presents the following limitations:

Lack of accountability for uses of AI that violate fundamental rights or are not compliant with the Act:

Currently there is no mechanism by which those affected by a 'prohibited AI practice' (Article 5) or AI systems that do not comply with the Regulation can challenge such systems or seek redress for the myriad harms that arise from the use of AI systems.

As [documented by civil society](#), such harms include being subject to unjustified surveillance, discrimination, violations of the presumption of innocence and fair trial rights, as well as being subject to unjust and incorrect decisions in the area of social welfare, employment, education, healthcare and many other areas.

Limited redress in existing law and high burden of proof on impacted persons:

In the absence of rights and redress mechanisms in the AIA, people affected would have to rely on existing EU or national law to redress harms stemming from automated systems. Not only does this introduce a high burden of proof for affected persons (particularly problematic considering a lack of access to information about the use of AI, the complexity of AI systems, and existing power imbalances), there are also gaps in existing laws. EU Data Protection Law (GDPR, LED) is limited to the processing of personal data and 'solely' automated processing, and does not always guarantee explicit consent to data processing¹³ which produces legal or otherwise significant consequences. EU anti-discrimination law is specific to a limited set of protected characteristics, and it is often difficult to establish evidence when automated systems indirectly discriminate, as per its definition in EU discrimination directives.¹⁴

Insufficient information to those affected by decisions of high-risk AI systems:

People affected by AI systems often lack knowledge that they had been subject to an AI system, and rarely have sufficient information about the operation of the system to enable them to challenge it in the event of errors or fundamental rights violations. Despite many use cases being designated as 'high-risk' under the regulation, often this requires no duty to provide information to those affected by the use of this system. Whilst the AIA provides some direct notification for those interacting with 'limited risk' systems in Article 52, there is no parallel duty to those affected by more grave 'high-risk' systems.

¹³ E.g., to people deprived of legal capacity (GDPR, Article 9.2(c)).

¹⁴ Council of Europe Ad hoc Committee on Artificial Intelligence (2020) Feasibility Study, <https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-1680a0c6da>

Amendments to the Artificial Intelligence Act

Article 52

Transparency obligations for certain AI systems

1. Providers shall ensure that AI systems intended to interact with natural persons are designed and developed in such a way that natural persons are informed that they are interacting with an AI system, unless this is obvious from the circumstances and the context of use. This obligation shall not apply to AI systems authorised by law to detect, prevent, investigate and prosecute criminal offences, **if fulfilling this obligation would obstruct or prejudice detection, prevention, investigation and prosecution of a specific criminal offence**, unless those systems are available for the public to report a criminal offence.

1a. Users of a high-risk AI system, as defined in Article 6(2), shall inform natural persons exposed thereto of the operation of the system.

1b. Users of an AI system intended to evaluate, profile, assess natural persons, make predictions about them, their personal traits or behaviour, or, on the basis of their behaviour or personal traits, recommend information, goods or services to them or determine or influence their access to goods and services shall inform of the operation of the system the natural persons exposed thereto.

AI systems referred to in the first subparagraph may, in particular, include: price determination systems based on profiling of individuals, health and lifestyle monitoring and prediction systems, ad targeting and amplification systems, content recommendation systems, search engines, when they rely on the assessment on individuals' behaviour or personal traits.

This obligation is without prejudice to requirements and obligations of Regulation 2021/XXX Digital Services Act and Regulation 2021/XXX Digital Markets Act.

~~2.¹⁵ Users of an emotion recognition system or a biometric categorisation system, **excluding systems or uses prohibited under Article 5**, shall inform of the operation of the system the natural persons exposed thereto. This obligation shall not apply to AI systems used for biometric categorisation, which are permitted by law to detect, prevent and investigate criminal offences.~~

3. Users of an AI system that generates or manipulates image, audio or video content that appreciably resembles existing persons, objects, places or other entities or events and would falsely appear to a person to be authentic or truthful ('deep fake'), shall disclose that the content has been artificially generated or manipulated.

However, the first subparagraph shall not apply where the use is authorised by law to detect, prevent, investigate and prosecute criminal offences, **if fulfilling this obligation would obstruct or prejudice detection, prevention, investigation and prosecution of a specific criminal offence**, or it is necessary for the exercise of the right to freedom of expression and the right to freedom of the arts and sciences guaranteed in the Charter of Fundamental Rights of the EU, and subject to appropriate safeguards for the rights and freedoms of third parties.

¹⁵ Paragraph 2 has been amended in line with recommendations of a number of civil society organisations to introduce a prohibition under Article 5 on the use of emotion recognition systems and certain forms of biometric categorisation systems. See a separate paper for more information.

3a. Information provided to natural persons under paragraphs 1, 1a, 1b, 2 and 3 shall include a clear and concise indication of the purpose of the system, information about the right to request an explanation pursuant to paragraph 3b, and a reference to publicly available resource where more information about the AI system can be found, in particular the relevant entry in the EU database referred to in Article 60, if applicable. This information shall be presented in a concise, intelligible and easily accessible form, including for persons with disabilities.

3b. Users of AI systems referred to in paragraphs 1, 1a, 1b, 2, and 3 shall, when a decision made by or with the assistance of these AI systems produces legal effects concerning a natural person or otherwise significantly affects them, provide the affected person, following their request, with an explanation of the decision.

The explanation shall be provided in a clear, easily understandable, and intelligible way, accessible for persons with disabilities, and shall include meaningful, relevant information on the reasons for the decision, at a minimum:

- (a) the reasoning behind the outcome of the AI system in this particular case in plain, easily understandable language,
- (b) the indication of specific personal data of the affected person, or other information, that had significant impact on the outcome,
- (c) the category or group into which the affected person has been classified,
- (d) the information about whether the same outcome was produced in relation to other persons in similar circumstances or in whose case the input for the AI system was similar and if not – an explanation why the affected person was treated differently, without prejudice to the protection of other persons' personal data,
- (e) whether there was a meaningful human involvement in the decision-making and if so, to what extent and how the outcome produced by the AI system influenced their decision.
- (f) the information about the rights to remedy under this Regulation, including the right to lodge a complaint with the national supervisory authority.

4. Paragraphs 1-3b above shall not affect the requirements and obligations set out in Title III of this Regulation.

Ancillary amendments (explored in separate papers)

1 Updating the list of AI systems subject to transparency obligations¹⁶

Article 52a (new)

Amendments to the list of AI systems subject to transparency obligations

4 The Commission is empowered to adopt delegated acts in accordance with Article 73 to update the list of AI systems subject to transparency obligations under Article 52 by adding AI systems that affect individuals or to which they are subject, where the AI systems pose a risk of manipulation, harm to the health and safety, or a risk of adverse impact on fundamental rights, that is, in respect of its severity or

¹⁶ This amendment reflects the proposal of Access Now presented in a separate paper on issues with the risk-based approach taken by the AIA.

probability of occurrence, equivalent to or greater than the risk of harm or of adverse impact posed by the systems already referred to in Article 52.

5 When assessing for the purposes of paragraph 1 whether an AI system poses a risk that is equivalent to or greater than the risk of harm posed by the AI systems already referred to in Article 52, the Commission shall take into account the following non-cumulative criteria:

- a the intended purpose of the AI system, or the reasonably foreseeable consequences of its use;
- b the extent to which an AI system poses a risk of manipulation, or of adversely impacting one or more fundamental rights in a manner which could be to some degree mitigated by additional transparency measures;
- c the extent to which the use of an AI system impairs natural persons' agency, autonomy of choice or may lead to or already has led to developing addictive behaviour;
- d the extent to which the use of an AI system may lead to or has already led to price discrimination or other form of economic harm;
- e the extent to which the use of an AI system may lead to or has already led to negative societal effects such as increased polarisation of opinions, insufficient exposure to objective sources of information and amplification of illegal online content;
- f the extent to which an AI system has been used or is likely to be used;
- g the extent to which the use of an AI system has already been shown to pose a risk in the senses of points b) to e) above, has caused harm to health and safety or disproportionate impact on fundamental rights or has given rise to significant concerns in relation to the materialisation of such harm or disproportionate impact, as demonstrated by reports or documented allegations available to national competent authorities;
- h the potential extent of such harm or such disproportionate impact, in particular in terms of its intensity and its ability to affect a plurality of persons or to affect a particular group of persons disproportionately;
- i the extent to which potentially harmed or adversely impacted persons are dependent on the outcome produced with an AI system, in particular because for practical or legal reasons it is not reasonably possible to opt-out from that outcome or from the functionality of the service which relies on the AI system;
- j the extent to which potentially harmed or adversely impacted persons are in a vulnerable position in relation to the user of an AI system, in particular due to an imbalance of power, knowledge, economic or social circumstances, or age;
- k the extent to which the outcome produced with an AI system is not easily reversible, whereby outcomes having an impact on the health or safety of persons shall not be considered as easily reversible;
- l the extent to which existing Union legislation lacks:
 - l.i effective measures of redress in relation to the risks posed by an AI system, with the exclusion of claims for damages;
 - l.ii effective measures to prevent or substantially minimise those risks.

2 Public-facing transparency of certain AI systems¹⁷

Article 51

¹⁷ These amendments build on recommendations proposed by Algorithm Watch in a separate paper on consistent and meaningful transparency.

Registration

1. Before placing on the market or putting into service a high-risk AI system referred to in Article 6(2), **or AI systems referred to in Article 52 paragraphs 1b and 2**, the provider or, where applicable, the authorised representative shall register that system in the EU database referred to in Article 60.
2. Before using a high-risk AI system referred to in Article 6 paragraph 2 **or AI systems referred to in Article 52 paragraphs 1b and 2**, the user or, where applicable, the authorised representative shall register the uses of that system in the EU database referred to in Article 60. A new registration entry must be completed by the user for each use of the AI system.
3. Before using an AI system, public authorities shall register the uses of that system in the EU database referred to in Article 60. A new registration entry must be completed by the user for each use of an AI system.

Article 60

EU database for stand-alone high-risk AI systems, certain AI systems, uses thereof, and uses of AI systems by public authorities

- 1 The Commission shall, in collaboration with the Member States, set up and maintain a EU database containing information referred to in paragraph 2 concerning:
 - (a) high-risk AI systems referred to in Article 6(2) **and Article 52 paragraphs 1b and 2**, which are registered in accordance with Article 51(1);
 - (b) any uses of high-risk AI systems referred to in Article 6(2) **and AI systems referred to in Article 52 paragraph 1b and 2**, which are registered in accordance with Article 51(2);
 - (c) any uses of AI systems by or on behalf of public authorities registered in accordance with Article 51(3).