

Article 5: Prohibition of AI practices

The Commission proposes: “The placing on the market, putting into service or use of AI systems by public authorities or on their behalf for the evaluation or classification of the trustworthiness of natural persons over a certain period of time based on their social behaviour or known or predicted personal or personality characteristics, with the social score leading to either or both of the following:”

- “detrimental or unfavourable treatment of certain natural persons or whole groups thereof that is unjustified or disproportionate to their social behaviour or its gravity”

Need for clarification:

- How can unjustified or disproportionate intent be characterized? Will derogations exist for selected organizations, e.g. for credit bureaus?

Article 6: Classification rules for ‘High-risk’ AI systems

In addition to a definition of the term, a more detailed classification for different application areas with relevance for delegated acts may be provided for "High-risk AI" applications, e.g.:

- High-risk AI for critical infrastructure
- High-risk AI for autonomous driving
- High-risk AI for medical devices

Article 12: Record-keeping

Need for clarification:

- How to implement the traceability scheme for AI applications?

Article 18: Obligation to draw up technical documentation

Proposal to the European Commission:

- The documentation may be written down in a predefined structure according to a standardized format.

Article 41: Common specifications

In addition to HENs and the associated standardization requests, the EU Commission is able to consider the use of “common specifications”. Against this background, with a view to the conformity assessment of High-risk AI applications, “common specifications” from European SDOs could serve as the basis for conformity assessment procedures.

Needs for clarification:

- What are the advantages and disadvantages of bypassing the usual HEN standardization process, including standardization requests?
- To what extent is the EU Commission considering the use of standards of consortia or non-European SDOs?

Proposal to the European Commission:

- Formulation of requirements for systematically relevant High-risk AI applications with reference to the Articles 43 and 47.

Article 43: Conformity assessment

Needs for clarification:

- Who will manage the Notified Bodies and Conformity Assessment procedures for High-risk AI on the national level?
- Is a mutual recognition agreement under discussion for chain links of software applications that have the potential to cause harm?

Article 52: Transparency obligations for certain AI systems

Proposal to the European Commission:

- Disclosure of architectural models to identify risks for manipulation of AI applications, for example, based on conformity assessment procedures including test datasets for AI application training.

Annex

Need for clarification:

- How should AI be distinguished from common algorithms such as the common time series analysis or the usual particle swarm optimization?

References:

European Commission: **Proposal for a Regulation laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain union legislative acts**. Brussels, 21.4.2021.