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EUROPEAN LEGAL FRAMEWORK FOR THE USE OF ARTIFICIAL INTELLIGENCE IN PUBLICLY ACCESSIBLE SPACE

Abstract: The terms AI and AI systems are ambiguous but attempts are being made to agree on their definitions. International organizations and national public authorities are constructing legal acts and policy documents oriented toward maximizing benefits and reducing risks of the AI development and use. The EU draft AI Act prohibits the use of certain AI systems in the publicly accessible space. Therefore, it is important to clarify the definition of this category of the space and the scope of prohibited practices. The general principles applicable to all artificial intelligence systems introduced by the European Parliament in 2023 will affect the development and use of GIS in the publicly accessible space under the EU jurisdiction and their indirect impact may be even broader.

Keywords: artificial intelligence, AI, publicly accessible space, law

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Introduction

The development and use of artificial intelligence (AI) is the subject of intense work by many entities around the world. To meet new challenges, public authorities are constructing legal frameworks oriented toward maximizing benefits and reducing risks. The lawmaking process in the EU is advanced. The term "publicly accessible space" appears in the proposed regulation of the European Parliament and the Council. The purpose of this article is to verify, using the dogmatic-legal method, the hypothesis of the importance of this category of space in the structure of AI regulation and its binding with GIS.

A geographic information systems (GIS) are a computer system for capturing, storing, checking, and displaying data related to positions on Earth's surface. GIS can show many different kinds of data on one map, such as streets, buildings, and vegetation. This enables people to more easily see, analyze, and understand patterns and relationships (National Geographic).

Tips for Exploring ChatGPT with GIS are: data cleansing, image interpretation and semantic classification and segmentation (Duke, 2023). Generally, the convergence of intelligent geolocation and artificial intelligence technologies such as machine learning and Deep Learning is becoming known as GeoAI – advanced analysis of geospatial data enabled by GIS software. GeoAI supports institutions in answering complex and relevant questions at a scale and frequency never before possible. The results of rapidly identifying patterns and relationships in spatial data are: real-time updating of route maps in GPS, finding and pinpointing objects with specific features on maps, forecasting on the basis of GIS the spread of threats (e.g. epidemiological), supporting response to natural disasters (e.g. marking the territorial scope and sequence of actions in fires, floods, earthquakes) (ESRI).

When planning the development and applications of GeoAI, it is important to take into account the changing regulatory environment.

Material and methods

The article presents the results of a desk research study of the formation of a legal framework for the development and use of artificial intelligence. The draft of the Artificial Intelligence Act of the European Parliament and Council was analyzed against the background of other international and national initiatives: UN, OECD, US, China, India. While preparing the paper, DeepL was used.

AI & AI system – definitions

No single definition of "artificial intelligence" is accepted by the scientific community and the term "AI" is often used as a "blanket term" for various computer applications based on different techniques, which exhibit capabilities commonly and currently associated with human intelligence (CAHAI, 2020).

Comprehensive explanations of AI maybe found in online encyclopedias. These explanations vary in structure and priority. This is shown by comparing Wikipedia and Baidu Baike (ch. 百度百科; pinyin Bǎidù Bǎikē), a semi-regulated Chinese-language collaborative online encyclopedia owned by the Chinese technology company Baidu. According to Wikipedia: "artificial intelligence (AI) is the intelligence of machines or software, as opposed to the intelligence of humans or animals. It is also the field of study in computer science that develops and studies intelligent machines". According to Baidu Baike: Artificial Intelligence (AI) it is "a new technical science that studies and develops theories, methods, technologies and application systems for simulating, extending and expanding human intelligence. AI is an important driving force for a new round of scientific and technological revolution and industrial transformation ...". Within the meaning of encyclopedias, AI also includes a branch of informatics – a science the subject of which are algorithms, programs and devices in which programs are implemented (Węgrzyn, 1999; The Great Encyclopedia, 2021). Colloquially, AI is often briefly explained as the simulation of human intelligence processes by machines, especially computer systems (Techtarget, 2023). However, it should be noted that human intelligence is also understood differently. In the EU, AI is a fast evolving family of technologies that can contribute to a wide array of economic and societal benefits across the entire spectrum of industries and social activities but at the same time, depending on the circumstances regarding its specific application and use, AI may generate risks and cause material and immaterial harm to public interests and rights that are protected by Union law (Proposal, 2021, Rec 3, 4).

In official documents, attempts are mainly made to define the phrase "artificial intelligence system". According to the 2019 Recommendation of Organisation for Economic Co-operation and Development (OECD), an "artificial intelligence system" (AI system) is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy (Recommendation, 2019).

The European Commission proposed in 2021 that a regulation of the European Parliament and the Council should provide that the "artificial intelligence system" (AI system) is software that is developed with one or more of the techniques and approaches listed in Annex I [(a)Machine learning approaches, including supervised, unsupervised and reinforcement learning, using a wide variety of methods including deep learning; (b)Logic- and knowledge-based approaches, including knowledge representation, inductive (logic) programming, knowledge bases, inference and deductive engines, (symbolic) reasoning and expert systems; (c)Statistical approaches, Bayesian estimation, search and optimization methods] and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with (Proposal, 2021, Art. 3, paragraph 1 – point 1).

According to the amendment adopted by the European Parliament on 14 June 2023 to the proposal of the Artificial Intelligence Act prepared by European Commission:

"artificial intelligence system" (AI system) means a machine-based system that is designed to operate with varying levels of autonomy and that can, for explicit or implicit objectives, generate outputs such as predictions, recommendations, or decisions, that influence physical or virtual environments (Amendments, 2023, No165 for a regulation Article 3 – paragraph 1 – point 1).

The carried out analysis shows that the term artificial intelligence (AI) is used, on one hand, to designate a new field of science, integrating elements of several scientific disciplines, mainly informatics (computer science) and, on the other hand, a certain category of machine-based systems, which is defined by law.

The lawmaking processes

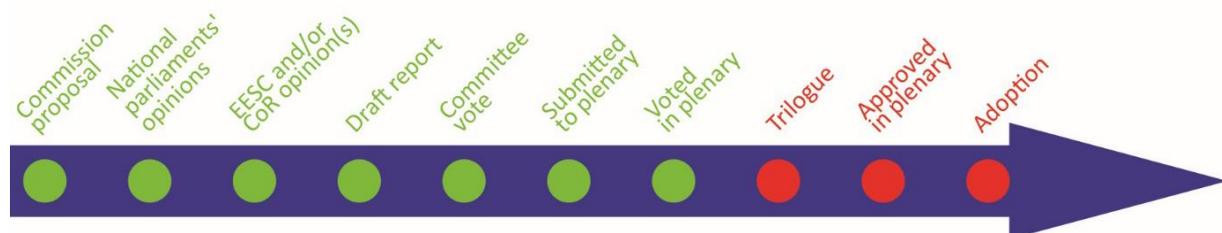
From an axiological perspective, in the formation of standards for the development of artificial intelligence, the following approaches may be observed: the American one, called "pragmatic", the Chinese one – "social cohesion" and the third – "trustworthy AI", proposed in Europe and as an international standard. The May 2019 OECD Recommendation on Artificial Intelligence, exposing the development of trustworthy AI and its responsible management within value chains, is the first intergovernmental policy standard in this area. It was adopted as a reference at the G20 summit in Osaka in June 2019, and was included in subsequent Council of Europe, EU and UN, acts, including UNESCO's Recommendations on Global Ethical Principles for Artificial Intelligence in Research, Science, Education and Communication, adopted on November 24, 2021, with the participation of 193 countries (Kubiak Cyrul, 2020; Kroplewski, 2021). These international agreements have also influenced national regulatory approaches.

In the US, Blueprint for an AI Bill of Rights: "Making Automated Systems Work for the American People" was published by the White House in October 2022 (Blueprint for an AI Bill of Rights, 2022). The National Telecommunications and Information Administration (NTIA) of the US Department of Commerce initiated a formal public request (open until June 10, 2023) for input on policies that should shape an AI accountability ecosystem. The seven major companies developing AI technology (Microsoft, Google, Meta, OpenAI, Anthropic, Inflection AI, Amazon) pledged to follow a set of principles to ensure the security of their products in July 2023. Activities to be carried out before they are released cover testing the capabilities of AI systems by internal and external experts, along with publishing the results of those tests. In addition, the companies undertook to prioritize security of their systems against cyberattacks, clearly label AI-generated content, and invest in AI-based solutions to society's biggest problems, from cancer treatment to climate change to job creation. The U.S. President Joe Biden said new laws, regulations and oversight are needed alongside voluntary commitments from companies. He announced that he intends to "take executive action to help America lead the way to responsible innovation" soon (PAP, 2023). The executive action took the shape of the Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence released on 30 October 2023.

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In China, alongside the "New Generation Artificial Intelligence Development Plan" adopted by the State Council on July 8, 2017 (Guofa, 2017, No. 35) on September 25, 2021, "in order to promote the healthy development of artificial intelligence", the "New Generation Artificial Intelligence Ethics Code" was issued by the National New Generation Artificial Intelligence Governance Professional Committee. The "Ethical Code" puts forward six basic ethical requirements, including enhancing human welfare, promoting fairness and justice, protecting privacy and security, ensuring controllability and credibility, strengthening responsibility, and improving ethical literacy. At the same time, 18 specific ethical requirements for specific activities such as artificial intelligence management, research and development, supply, and use are proposed (New Generation Code, 2021). In 2023, the Ministry of Science and Technology launched a special deployment of "AI for Science" to accelerate innovation and promote the high-level application of AI in key industries. AI was identified as a key industry in China's controversial industrial plan "Made in China 2025", in which it was stated that China's goal was to become a global leader in this field by 2030. China is developing new regulations to balance policy goals and incentives for innovation and new technological products. They specifically concern generative artificial intelligence, that is, both large language models and algorithms, such as those for creating images or video. The law is expected to require companies to obtain licenses to release products containing generative artificial intelligence. Major companies working with artificial intelligence, such as Baidu and Alibaba, are working to bring their products into compliance with the legal guidelines and rules (China Briefing, 2023).

The European Union has been preparing a comprehensive regulation to ensure the conditions for the production and use of trustworthy artificial intelligence in the EU market for a few years.



Data source: AI – EPRS_BRI(2021)698792_EN

In April 2021, the European Commission presented a proposal for an EU regulatory framework for artificial intelligence (AI). In December 2021, the Council agreed on the general position of EU member states (Proposal, 2021). In June 2023, Parliament voted on its position (Amendments adopted by the European Parliament, 2023). Next steps are "Trilogue negotiations". The legislation is expected to be approved by the end of 2023. The comprehensive law on artificial intelligence is part of the EU's digital strategy. The goal is a better environment for the development and use of this innovative technology and protection of the rights and data of Europeans. Recent lawmaking activity confirms the accuracy of the view that Regulating the "speeding train" has the

advantage that we minimize the risk of it crashing, but on the other hand it will move slower than competing connections. It seems [...] that the direction is good, but the risk of slowing down the development of AI in Europe is significant, and both of these issues should be taken into account when introducing possible regulations" (Trzciński, 2023).

The EU AI Act was met with interest in other countries, including India (Lal, 2023), where "the pace of AI adoption is faster than the rules formed to regulate it" (Prabhu, 2023). The existing IT Act 2000 is to be replaced by the Digital Act, which is in the draft stage (incorporating EU standards of the personal data protection) and AI issues, including ethical aspects (Proposed Digital India Act, 2023).

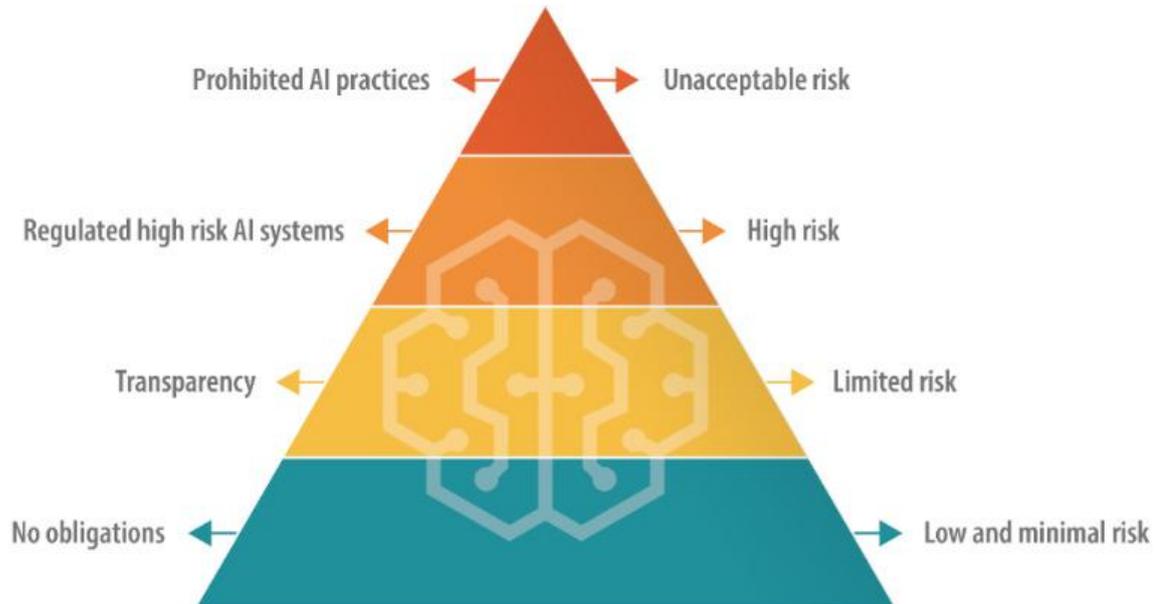
The attractiveness of EU standards is reinforced by the fact that, in the past, states protecting individual dignity and freedom won global competition in various fields where creativity and innovation was important. It may also affect the competitiveness of China's Belt and Road and EU Global Gateway initiatives in times of AI expansion (Mc Allister, 2023; Bradford, 2020; Szpor, 2016).

The analysis shows that the standards of legal regulation of AI are shaped not only by the global leaders in its development, but also by the leaders in the consumption of AI system solutions in the global market, and EU solutions are also taken into account outside the EU.

Structure of the EU Artificial Intelligence Act

The proposal of the Commission "sets harmonised rules for the development, placement on the market and use of AI systems in the Union following a proportionate risk-based approach" (Proposal, 2021, rec. 1). The risk-based approach was reflected in the Commission's proposed structure of the act. It included: Preamble (rec. 1–89); Title I General provisions (art. 1–4); Title II Prohibited artificial intelligence practices (art. 5); Title III High-risk ai systems (art. 6); Title IV Transparency obligations for certain ai systems (art. 52); Title V measures in support of innovation (art. 53–55); Title VI governance (art. 56–59); Title VII eu database for stand-alone high-risk ai systems (art. 60); Title VIII post-market monitoring, information sharing, market surveillance art. 61–68); Title IX codes of conduct (art. 69); Title X Confidentiality and penalties (art. 70–72); Title XI Delegation of power and committee procedure (art. 73–74); Title XII Final provisions (art. 75); Annex i Artificial intelligence techniques and approaches referred to in article 3, point 1; Annex II List of union harmonisation; Annex III High-risk ai systems referred to in article 6(2).

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Data source: European Commission; AI – EPRS_BRI(2021)698792_EN

In accordance with the Commission's proposal the AI practices which shall be prohibited include "placing on the market, putting into service or use of an AI system": (a) that deploys subliminal techniques beyond a person's consciousness in order to materially distort a person's behaviour in a manner that causes or is likely to cause that person or another person physical or psychological harm; (b) that exploits any of the vulnerabilities of a specific group of persons due to their age, physical or mental disability, pertaining to that group in a manner that causes or is likely to cause that person or another person physical or psychological harm; (c) 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: (i) detrimental or unfavourable treatment of certain natural persons or whole groups thereof in social contexts which are unrelated to the contexts in which the data was originally generated or collected; (ii) detrimental or unfavourable treatment of certain natural persons or whole groups thereof that is unjustified or disproportionate to their social behaviour or its gravity. Among the prohibited AI practices was also "the use of real-time remote biometric identification systems in publicly accessible spaces for law enforcement purposes" (Article 5. ust. 1. d), 2, 3, 4).

The scope of prohibited practices set out in Article 5 has been extensively amended by Parliament. Among changes, a new Article 4(a) has been added, setting out General principles applicable to all artificial intelligence systems (Amendments, 2023). The final form of the above provisions should be known by the end of 2023, but undoubtedly the legislative processes confirm the validity of the thesis that "law is a plane of compromise between the need for security and the need for development" (Pańko, 1984), with an overall cross-state compromise achievable despite the diversity of national hierarchies of needs.

Publicly accessible space

EU authorities have assumed that the use of AI in 'publicly accessible space' may involve unacceptable risks. It is therefore important both to define this category of the space and to precisely define the scope of prohibited practices. On both of these issues, the Parliament made more than a dozen amendments to the Commission's text in 2023 (bold text).

For the purpose of AI Act „publicly accessible space’ means any physical place accessible to the public, regardless of whether certain conditions for access may apply (Art. 3., p. 39). After the Parliament's Amendment (No 195 Proposal for a regulation) Article 3 – paragraph 1 – point 39 reads as follows: (39) "publicly accessible space" **means any publicly or privately owned** physical place accessible to the public, regardless of whether certain conditions for access may apply, **and regardless of the potential capacity restrictions.**

In the amendment No 26 to Recital 9 clarifies the explanation of this definition: "(9) For the purposes of this Regulation the notion of publicly accessible space should be understood as referring to any physical place that is accessible to the public, irrespective of whether the place in question is privately or publicly owned **and regardless of the potential capacity restrictions.** Therefore, the notion does not cover places that are private in nature and normally not freely accessible for third parties, including law enforcement authorities, unless those parties have been specifically invited or authorised, such as homes, private clubs, offices, warehouses and factories. Online spaces are not covered either, as they are not physical spaces. However, the mere fact that certain conditions for accessing a particular space may apply, such as admission tickets or age restrictions, does not mean that the space is not publicly accessible within the meaning of this Regulation. Consequently, in addition to public spaces such as streets, relevant parts of government buildings and most transport infrastructure, spaces such as cinemas, theatres, **sports grounds, schools, universities, relevant parts of hospitals and banks, amusement parks, festivals,** shops and shopping centres are normally also publicly accessible. Whether a given space is accessible to the public should however be determined on a case-by-case basis, having regard to the specificities of the individual situation at hand".

In the Commission's proposal Article 5 1. provided for: "The following artificial intelligence practices shall be prohibited: [...] (d) the use of 'real-time' remote biometric identification systems **in publicly accessible spaces for the purpose of law enforcement,** unless and in as far as such use is strictly necessary for one from the objectives mentioned in the three points (i, ii, iii) and shall take into account the two elements indicated in the paragraph 2 and in addition shall comply with necessary and proportionate safeguards and conditions in relation to the use, in particular as regards the temporal, geographic and personal limitations". Paragraph 3. provided that each individual use requires prior authorization by a judicial authority or independent administrative body of the Member State where the use is to take place, issued upon a reasoned request and in accordance with specific provisions of national law, the form

of which is set forth in paragraph 4. However, it was allowed as an exception to apply for authorization after the start of use or even after the end of use".

Following Parliament's amendments, point d) prohibits the use of "real-time" remote biometric identification systems in **publicly accessible spaces** (Am. 220). So the prohibition applies to the use, for whatever purpose (37), of a "real-time remote biometric identification system", which, according to the definition in Article 3(1)(37) as corrected by Amendment 194, "means a remote biometric identification system whereby the capturing of biometric data, the comparison and the identification all occur without a significant delay. This comprises not only instant identification, but also limited delays in order to avoid circumvention". According to the revised definition in point 36), remote biometric identification system' means an AI system for the purpose of identifying natural persons at a distance through the comparison of a person's biometric data with the biometric data contained in a reference database, and without prior knowledge of the deployer of the AI system whether the person will be present and can be identified, excluding verification systems (Am. 193).

It is further prohibited, pursuant to the added Article 5(1)(d)(d), the putting into service or use of AI systems for the analysis of recorded footage of **publicly accessible spaces** through 'post' remote biometric identification systems, unless they are subject to a pre-judicial authorisation in accordance with Union law and strictly necessary for the targeted search connected to a specific serious criminal offense as defined in Article 83(1) of TFEU **that already took place** for the purpose of **law enforcement** (Am. 227). In general, "law enforcement" means activities carried out by law enforcement authorities **or on their behalf** for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security (Art. 3, par. 1 point 41, Am. 196).

AI systems other than those prohibited in accordance with Art. 5 may in the publicly accessible space subject to the EU jurisdiction operate on the basis of the "General principles applicable to all artificial intelligence systems". A new Article 4(a) states in paragraph 1, that all operators falling under this Regulation shall make their best efforts to develop and use AI systems or foundation models in accordance with the following general principles establishing a high-level framework that promotes a coherent human-centric European approach to **ethical and trustworthy Artificial Intelligence**, which is fully in line with the Charter as well as the values on which the Union is founded: a) 'human agency and oversight' [...]; b) 'technical robustness and safety' means that AI systems shall be developed and used in a way to minimize unintended and unexpected harm as well as being robust in case of unintended problems and being resilient against attempts to alter the use or performance of the AI system so as to allow unlawful use by malicious third parties [...]; c) 'privacy and data governance' [...]; d) 'transparency' [...]; e) 'diversity [...]; f) 'social and environmental well-being' [...]. Paragraph 1 is without prejudice to obligations set up by existing Union and national law. For high-risk AI systems, the general principles are translated into and complied with by providers or deployers by means of the requirements set out in Articles 8 to 15, and the relevant

obligations laid down in Chapter 3 of Title III of this Regulation. For foundation models, the general principles are translated into and complied with by providers by means of the requirements set out in Articles 28 to 28b. For all AI systems, the application of the principles referred to in paragraph 1 can be achieved, as applicable, through the provisions of Article 28, Article 52, or the application of harmonised standards, technical specifications, and codes of conduct as referred to in Article 69, without creating new obligations under this Regulation. The Commission and the AI Office shall incorporate the "general principles" in standardisation requests as well as recommendations consisting in technical guidance to assist providers and deployers on how to develop and use AI systems. European Standardisation Organisations shall take the "general principles" into account as outcome-based objectives when developing the appropriate harmonised standards for high risk AI systems as referred to in Article 40(2b) (Am. 213).

Conclusions

The term artificial intelligence (AI) is used to designate either a new field of science, integrating elements of several scientific disciplines, mainly informatics (computer science) or a certain category of machine-based systems, which are defined by law. International regulatory standards are oriented towards the development of trustworthy artificial intelligence, which is in line with the European approach. Legislative processes adopt general principles applicable to all AI systems but also different legal instruments for the categories of systems distinguished according to the level of risk associated with development and use. The thesis that "law is a plane of compromise between the need for security and the need for development" remains valid, while the hierarchies of these needs differ from country to country, and the compromise reached in the acts of international law covers only general principles. The draft of Regulation of the European Parliament and Council – a high-level act directly applicable in the EU member states – prohibits the use of a "real-time" remote biometric identification systems in the publicly accessible spaces for any purpose and severely restricts use of AI systems for the analysis of footage recorded in the publicly accessible spaces through "post" remote biometric identification systems. Such bans and restrictions have never been implemented in the world before. The EU's AI Act raises concerns about reducing Europe's competitiveness, but past experience justifies the assumption that the development of the AI legal standards in the global market will be shaped not only by the global producers but also by the leaders in the consumption of AI systems solutions. It should be noted, that in recent centuries the states that protect individual dignity and freedom have won the global competition in various fields where creativity and innovation is important.

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