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AI Act: Regulation of Artificial Intelligence

The EU Commission's draft for an AI Act, published on 21 April 2021, represents the first regulation of artificial intelligence (AI) in Europe. It aims to create an innovative environment for trustworthy AI in Europe. Both the Council (in its General Approach of December 2022) and the European Parliament (in the amendments of June 2023) have proposed comprehensive changes to the AI Act. These proposed amendments are now to be discussed in the upcoming trilogue negotiations. From the point of view of ZVEI, the primary goal must be to continue to make the use of AI in industry practicable.

Our positions

- **ZVEI supports in principle the regulation of artificial intelligence in Europe.** Such regulation should generate an **innovation-friendly environment for companies** in the European digital industry, whose focus is not only on prohibitions, but also in particular on the opportunities of AI applications in industry.
- **We support the risk-based approach of the AI Act** where the obligations for AI are proportionate to the risk potential of the application. However**,** the highly regulated field of so-called "**high-risk AI" should only include truly critical applications** and not include conventional software applications.
- For this, a **narrow definition of AI that focuses on machine learning, reasoning or modelling approaches is important,** and **in particular, it includes those systems that continue to learn and act autonomously during operation**. Systems that contain logic and knowledge-based approaches or use statistical approaches, on the other hand, should not be classified as AI. This would otherwise include conventional software applications or long-established industrial controllers (e.g. programmable logic controllers) that have been used in industry for decades and do not continue to learn during operation. These are already adequately regulated under existing legislation for placing of products on the European market. The proposals, particularly on the part of the European Parliament, to remove these elements (logic and knowledge-based approaches as well as statistical methods) from the definition are therefore welcomed. This should also be reflected in the recitals.
- **Clear delimitation of Article 6 for so-called "high-risk AI" is necessary,** especially for such applications and systems that simultaneously fall under other NLF directives (including the Machinery Directive, the Radio Equipment Directive, etc.). From ZVEI's point of view, such a system as a whole should only be classified as high-risk AI if the AI has a direct influence on the safety-relevant elements of the system that are causal for the obligation of conducting a third-party conformity assessment for this product.
- **For manufacturers along the entire value chain, clear responsibilities need to be clearly defined.** This applies particularly to requirements where the provider must continue to fulfil requirements even after the placing on the market, but also to requirements for the disclosure of sensitive (IPR-critical) information on data sets or source codes along the supply chain.
- **Requirements for manufacturers must be feasible and should respect the principle of proportionality.** We consider the requirements for the introduction of a risk management system in addition to the conformity assessment of a product to be too comprehensive. Requirements for data governance and record keeping must be fulfilled and must not lead to products no longer being usable in practice due to insufficient storage capacities with large amounts of data at the same time. We also welcome the adjustments regarding the requirements for data sets, as complete and error-free data sets are not realistic in practice. Requirements for cybersecurity of AI systems must be in line with the requirements of the Cyber Resilience Act (CRA). A generalized fundamental rights check of AI systems is also considered difficult, especially in the industrial environment, as the extent of possible requirements is not foreseeable in many areas.
- **We support the close alignment with the New Legislative Framework (NLF) and the consistency with other Union harmonization legislation for placing products on the market.** Against this background, uniform definitions established for the placing of products on the market by Decision 768/2008 must be observed, as well as requirements of the Market Surveillance Regulation 1020/2019 and the Standardization Regulation 1025/2012.

- **No deviations from established principles in standardization:** The development of harmonized standards by the European Standards Organizations must remain the default. Nor should the basic premise be changed that the application of standards is voluntary. We therefore reject mandatory compliance with so-called "common specifications", as is currently envisaged in the area of fundamental rights.
- **The regulation of artificial intelligence must be thought of in the long term in order to achieve a more future-proof regulation.** Recent adjustments to "foundation models" by the European Parliament, which were necessary in order to take into account new developments and applications such as ChatGPT, show the necessity of long-term, technology-neutral regulation. This is particularly important for regulatory fields that are still in development, in order not to hinder innovations and at the same time not to make continuous adjustments to the legal text necessary. It must also be ensured that requirements for such foundation models are kept as low as possible and only as comprehensive as necessary in order not to block innovations.
- **Sufficiently long transition periods for the implementation of the AI Act of at least 36 months are necessary.** Sufficiently long periods are important, especially for a new legal act that deals with a completely new regulatory objective and cannot build on existing results and structures. This is the only way to ensure that all actors involved in the implementation of the AI Act fulfill their tasks in time and that products can be placed on the market smoothly. Even delays in a single element can lead to the entire process of implementing a legal act coming to a standstill. This is why sufficiently long transition periods are necessary, as successful implementation of the AI Act is only possible if all of the following points interact:
  - **Need for industry to have sufficient time to implement the requirements**: Only in this way can the requirements for AI systems already be taken into account in the planning and design of products and systems, and only in this way can the specific (additional) requirements of the AI Act for so-called "high-risk AI" be implemented.
  - **Need to list the harmonized standards in the EU Official Journal (by the deadline at the latest)**: Only in this way can manufacturers, notified bodies and market surveillance authorities use them as reference points for the interpretation of the AI Act and manufacturers can use them for conformity assessment in the context of self-declaration and thus create a presumption of conformity.
  - **Timely availability of guidelines for the** interpretation of the AI Act are equally important for manufacturers, standardization organizations, notified bodies and market surveillance authorities.
  - **Timely start of the accreditation of third-party conformity assessment bodies by the national accreditation bodies:** Only if the accreditation bodies are operational directly after the entry into force of the new legal act can third-party conformity assessment bodies be designated with sufficient lead time. This is necessary so that the testing of products can already be started before the application of the AI Act and that they are conformity assessed and can be made available on the market by the deadline.
  - **Ensure market surveillance capable of action**: Only with market surveillance capable of action can compliance with the AI Act be verified by economic operators in order to ensure a level playing field for economic operators.

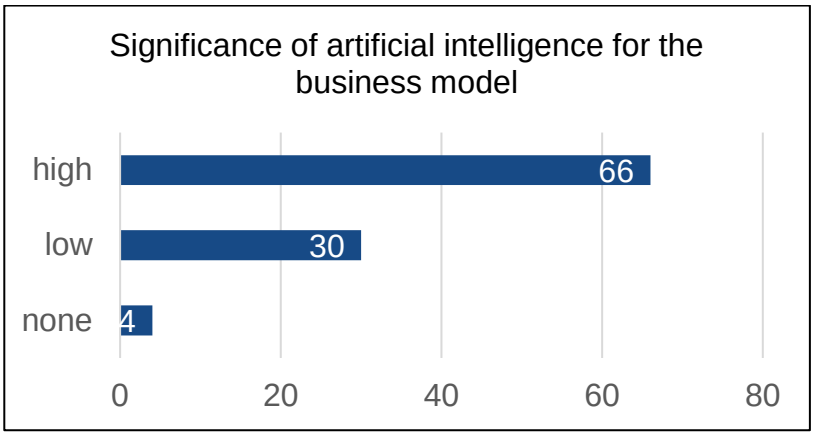
Current state

- The current proposals of the Council and the EU Parliament for the **definition of AI** are narrower than the Commission's proposal. Nevertheless, both compromise texts still use relatively broad definitions and have no explicit reference to the further learning of a system in operation. As a consequence, the scope of the AI Act would be very broad.
- With **regard to the classification of so-called "high-risk AI",** neither the proposals of the European Parliament nor the proposals of the Council provide for a clear delimitation in Article 6 (1). The consequence of this would be that - also in connection with the broad definition of AI - a large number of established applications in the industrial environment could be classified as so-called "high-risk AI". This would significantly increase the effort and costs for placing these products - which are already comprehensively regulated under existing legal acts - on the market. There is also great uncertainty among many companies as to whether their applications actually do fall into the high-risk category or not.
- The existing **quality infrastructure is currently hardly prepared** for the implementation of the AI Act and faces a major shortage of specialists in the field of AI. Both the national accreditation bodies and the market surveillance authorities in Europe are right now facing major challenges in building up competences in the field of AI.
- The currently foreseeable broad obligation to involve a third party **with the simultaneously envisaged very short transition period (EU Parliament and the EU Commission call for 24 months, the Council is calling for 36 months) can** lead to **delays** in **placing** AI systems on the European market.

Background: Numbers & facts

Artificial intelligence as a key technology needs a clear legal framework

- Artificial intelligence is one of the key technologies of digitalization and a major technological driver of the German electrical and digital industry. In ZVEI's "Digital Survey" in October 2021, for example, 66% of the companies surveyed saw artificial intelligence as being of great importance for their business model.[1]
- Challenges for the electrical and digital industry with regard to digitization are in particular the issue of a lack of skilled workers and a lack of legal certainty. In ZVEI's "Digital Survey" 2021, 66% of the companies surveyed named "lack of skilled workers" as the biggest obstacle to digitization, followed by a lack of legal certainty (39%). This shows the definite need for politics to ensure a clear legal framework. [2]
- In its assessment for the AI Act 2021, the EU Commission assumed that between 5% and 15% of all AI applications fall into the high-risk classification.[3] Against the background of the current discussions in the legislative process, more recent studies come to an order of magnitude of 18% of the examined AI applications and 40% of the applications for which there is legal uncertainty as to whether these applications are high-risk applications.[4]



Source: Based on ZVEI survey 2021, data in % of companies surveyed

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[1] ZVEI Digital Survey October 2021: https://www.zvei.org/themen/digitalisierung?showPage=3208937&cHash=fc3a7174442ba69cc5936c8b95120b7d
[2] Ibid.
[3] Impact Assessment, Accompanying the Proposal for a Regulation of the European Parliament and of the Council LAYING DOWN HARMONIZED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, EU Commission, 2021, p. 72: https://ec.europa.eu/newsroom/dae/redirection/document/75792
[4] Initiative for applied artificial intelligence: AI ACT: Risk Classification of AI Systems from a practical perspective, March 2023: https://aai.frb.io/assets/files/AI-Act-Risk-Classification-Study-appliedAI-March-2023.pdf

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