

**CENTER FOR AI AND DIGITAL POLICY
(CAIDP.ORG)
Statement on the Draft Report of LIBE and IMCO on
The EU Artificial Intelligence Act
10 May 2022**

**Committee on the Internal Market and Consumer Protection (LIBE)
Committee on Civil Liberties, Justice and Home Affairs (IMCO)
Rapporteurs:** Brando Benifei, Ioan-Dragoş Tudorache
cc: Committee on Legal Affairs

The Center for AI and Digital Policy (CAIDP) welcomes the Draft Report from LIBE-IMCO (“Committees”) and the opportunity to provide feedback as amendments to the text of the draft Artificial Intelligence Act (“Proposal”) are considered. This statement follows from CAIDP’s earlier statements on the Proposal to the European Commission, the European Parliament, and the European Council on April 20, 2021¹, and July 28, 2021.²

As we stated in our previous comments on the Proposal, “this initiative may be the single most important legal framework for the digital economy to ensure the protection of fundamental rights.” Our assessment of the draft report from LIBE - IMCO is favorable as the report brings further clarity to the EU AI Act. In particular, these changes will enhance the transparency of AI systems, promote public participation in oversight, and provide effective remedy mechanisms. Key improvements include:

- expansion of the list of high-risk systems in Annex III to include systems that make decisions related to health and life insurance eligibility (Amendments 285); voting and election campaigns (289); some generative AI systems (290); systems that interact with children (289); as well as the amendment to include small-scale credit scoring providers (24)
- addition of AI system ‘users’ to the list of parties with obligations to ensure AI systems do not harm rights and values (Amendments 145)
- requirement for public authorities to register their use of high-risk AI systems (Amendments 143)
- explicit inclusion of civil society in consultation processes with AI Board, standard setting bodies and Commission (Amendments 37, 87, 160, 196)

¹ CAIDP Statement to European Commission, European Parliament, and European Council regarding the Draft EU AI Regulation (Apr. 20, 2021). <https://www.caidp.org/statements/>

² CAIDP Statement to European Commission, European Parliament, and European Council regarding the Draft EU AI Regulation (July 28, 2021). <https://www.caidp.org/statements/>

- prohibition of person-based predictive policing systems (Amendment 16)
- definition for ‘biometrics-based data’ (Amendment 64)
- addition of complaint and remedy mechanisms for impacted individuals and groups to challenge AI systems that breach health, safety, and fundamental rights (Amendments 46, 262, 263, 269, 270)
- empowerment of Commission to take over investigations where lead national supervisory authority has not taken action against a complaint or has delayed action. (Amendment 253)

We recognize that this draft Report contains the points on which the co-Rapporteurs could easily agree and that there will be further discussions to ensure the protection of health, safety, fundamental rights, and the Union values enshrined in Article 2 of the Treaty on European Union (TEU).

Below are the recommendations of the CAIDP for additional improvements to EU AI Act.

PROHIBITED CASES

CAIDP repeats its previous recommendations that:

- **All prohibited use cases for AI systems should apply equally to both private and public entities.** If a system is a risk to the fundamental rights or public safety, then it does not matter whether the proposal is to deploy the system in the private sector or the public sector. The system should be prohibited in both domains.
- **Predictive policing in all forms, including location-based, should be banned.** We applaud the change in the draft report to ban person-based predictive policing. The Committees acknowledge the risk of discrimination against groups. Amendment 53 states “widespread infringement to mean any acts or omissions contrary to Union law that protects the interests of individuals, that have done, do or are likely to do harm to the collective interests of individuals and that have common features.” Location-based policing similarly violates human dignity as these systems are used to over-police, surveil and oppress disadvantaged communities.^{3 4}
- **Emotion recognition and biometric categorization systems should be banned.** These systems not only **lack scientific validity**, but they are used to **discriminate against and oppress certain groups**. AI systems categorizing individuals from biometric data into groups according to race, ethnicity, gender, political or sexual orientation, constitute discrimination under Article 21 of the Charter. Such categorization assumes genetic traits, diminish universal rights. and transform social constructs such as race, ethnicity, gender, political or sexual orientation into ‘objective’ truths. Biometric categorization denies the most fundamental of human rights – the right to freely choose one’s identity – and as such is contrary to the **values enshrined in Article 2 of the TEU**.

³ Sarah Brayne (2020) *Predict and Surveil: Data, Discretion, and the Future of Policing*. Oxford University Press

⁴ Chris Gillard (Jan. 2, 2022). *Crime Prediction Keeps Society Stuck in the Past*. Wired.

- **Biometric recognition systems for mass surveillance should be prohibited.** The current narrow definition will not prohibit the practice and will allow for use by both law enforcement and others.
- **Asylum seekers and refugee rights should be protected on an equal basis.** These populations should not become testbeds for emerging technologies. **The Committees determined that predictive risk scoring is in violation of the principle of presumption of innocence and human dignity.** However, the draft report falls short of addressing systems that purport to predict the trustworthiness of immigrants.

SOCIETAL RISKS

CAIDP congratulates LIBE – IMCO for the amendment to explicitly protect children’s rights, provide group-based complaint and remedy mechanisms, and for additional protections against misinformation – as these were three of the five recommendations we had initially proposed.

We still note that **there are further risks to the society for the Act to address to protect the environment and disability rights.**

- The EU AI Act should require AI system providers to document the impact of large AI systems on the environment, emissions, and waste. **The Declaration on A Green and Digital Transformation of the EU⁵** requires deploying green digital technologies to achieve climate neutrality.
- The EU AU Act should also require accessibility for all users of AI systems, so as not to treat people with disabilities as errors, outliers or edge cases in the development of these systems. Disability rights are protected by the **UN Convention on the Rights of Persons with Disabilities⁶** and **European Accessibility Act (Directive 2019/882).**⁷ As Party to the Convention, EU and member states are obliged to ensure accessibility of digital technologies.
- The draft report recommends that AI systems that adversely impact fundamental rights should be classified as high-risk (Amendment 21). **The practices and context in which these systems are deployed can have serious consequences. CAIDP strongly recommends mandatory ex-ante human rights impact assessments to be an obligation for providers of high-risk systems in Annex III.**

⁵ European Commission, Declaration on A Green and Digital Transformation of the EU: <https://digital-strategy.ec.europa.eu/en/news/eu-countries-commit-leading-green-digital-transformation>

⁶ UN Convention on the Rights of Persons with Disabilities (2007), <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#2>

⁷ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0882>

GENERAL RECOMMENDATIONS

- **Private Users:** The obligation for users to register the use of a high-risk AI system (Amendment 143) should include private entities to ensure protection of fundamental rights and corporate transparency.
- **Civil Society:** Ensure meaningful civil society participation in standards-settings work and investigation of AI systems. The role of standardization organizations should be limited to technical aspects and not fundamental rights or legal obligations.
- **Exclusions:** The draft report states that “no AI system should be excluded ex-ante.” However, the below two areas are still outstanding exceptions and have fundamental rights implications.
 - **Existing AI systems & large-scale EU IT databases:** CAIDP warns that **exclusion of legacy systems might result in the rushed adoption of systems without due diligence, proper development, or risk assessments. Exclusion might also leave many systems, which have an impact on fundamental rights, without any oversight** as these systems are mainly used on immigrant populations and should be included within relevant use case under high-risk AI systems. AI systems in use by the time of the EU AI Act coming into force should be equally subject to the EU AI Act.
 - **National security:** The Draft Report correctly removes the ability of Member states to authorize systems without conformity assessments, even if they claim public health or security. **CAIDP also recommends that member states must also prepare conformity assessments and follow all legal obligations for systems that may be designated ‘national security.’**

NOTABLE PROVISIONS FROM UNESCO RECOMMENDATION ON AI ETHICS TO BE CONSIDERED FOR EU AI ACT

On 24 November 2021, the **Recommendation on the Ethics of Artificial Intelligence** was adopted by UNESCO’s General Conference by 193 countries.⁸ All the countries within EU are among the signatories and now have commitments towards achieving the provisions of the Recommendations. CAIDP believes that EU can strengthen the EU AI Act and implement the UNESCO Recommendations by adopting some of the notable provisions:

- AI systems **should not segregate, objectify, or undermine freedom and autonomous decision-making as well as the safety of human beings and communities**, divide and

⁸ UNESCO Recommendation on the Ethics of AI (2021), <https://en.unesco.org/artificial-intelligence/ethics#recommendation>

turn individuals and groups against each other, or threaten the coexistence between humans, other living beings and the natural environment. (Rec #24)

- AI system use must not violate or abuse human rights; and the AI method **should be appropriate to the context and should be based on rigorous scientific foundations**. In scenarios where decisions are understood to have an impact that is irreversible or difficult to reverse or may involve life and death decisions, final human determination should apply. In particular, **AI systems should not be used for social scoring or mass surveillance purposes** (Rec #26)
- **All actors involved in the lifecycle of AI systems must comply with applicable international law and domestic legislation, standards and practices**. They should **reduce the environmental impact of AI systems**. (Rec #18)
- Appropriate oversight, **impact assessment, audit and due diligence mechanisms, including whistle-blowers' protection, should be developed** to ensure accountability for AI systems and their impact throughout their lifecycle. (Rec #43)
- Governments should adopt a regulatory framework that sets out a procedure, particularly for public authorities, to **carry out ethical impact assessments on AI systems to predict consequences, mitigate risks, avoid harmful consequences, facilitate citizen participation and address societal challenges**. The assessment should also establish appropriate oversight mechanisms, including auditability, traceability and explainability, which enable the assessment of algorithms, data and design processes, as well as include external review of AI systems. (Rec #53)

Thank you for your consideration of our views.⁹ We would welcome the opportunity to speak with you further about these recommendations.

Sincerely,



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⁹ Additional information about the Center, including our report *Artificial Intelligence and Democratic Values*, is available at caidp.org.