

Transparency Obligations under the AI Act Proposal: A Critical Legal Analysis

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Abstract : In April 2021, the European Commission released its AI Act Proposal, which is the first policy proposal at the European Union level to target AI systems comprehensively, in a horizontal manner. This Proposal notably aims to achieve an ecosystem of trust in the European Union, based on the respect of fundamental rights, regarding AI. Among many other requirements, the AI Act Proposal aims to impose several generic transparency obligations on all AI systems to the benefit of natural persons facing those systems (e.g. information on the AI nature of systems, in case of an interaction with a human). The Proposal also provides for more stringent transparency obligations, specific to AI systems that qualify as high-risk, to the benefit of their users, notably on the characteristics, capabilities, and limitations of the AI systems they use. Against that background, this research firstly presents all such transparency requirements in turn, as well as related obligations, such as the proposed obligations on record keeping. Secondly, it focuses on a legal analysis of their scope of application, of the content of the obligations, and on their practical implications. On the scope of transparency obligations tailored for high-risk AI systems, the research notably notes that it seems relatively narrow, given the proposed legal definition of the notion of users of AI systems. Hence, where end-users do not qualify as users, they may only receive very limited information. This element might potentially raise concern regarding the objective of the Proposal. On the content of the transparency obligations, the research highlights that the information that should benefit users of high-risk AI systems is both very broad and specific, from a technical perspective. Therefore, the information required under those obligations seems to create, prima facie, an adequate framework to ensure trust for users of high-risk AI systems. However, on the practical implications of these transparency obligations, the research notes that concern arises due to potential illiteracy of high-risk AI systems users. They might not benefit from sufficient technical expertise to fully understand the information provided to them, despite the wording of the Proposal, which requires that information should be comprehensible to its recipients (i.e. users). On this matter, the research points that there could be, more broadly, an important divergence between the level of detail of the information required by the Proposal and the level of expertise of users of high-risk AI systems. As a conclusion, the research provides policy recommendations to tackle (part of) the issues highlighted. It notably recommends to broaden the scope of transparency requirements for high-risk AI systems to encompass end-users. It also suggests that principles of explanation, as they were put forward in the Guidelines for Trustworthy AI of the High Level Expert Group, should be included in the Proposal in addition to transparency obligations.

Keywords : ai act proposal, explainability of ai, high-risk ai systems, transparency requirements

Conference Title : ICAILEP 2022 : International Conference on Artificial Intelligence: Law, Ethics, and Policy

Conference Location : Vienna, Austria

Conference Dates : December 29-30, 2022