Center for AI and Digital Policy

CAIDP Update 2.15 (Apr. 14, 2021) - *EU AI Regulation Will Establish "Red Lines" for AI*

The long awaited draft of the EU regulation for AI is now available. The "European Approach for Artificial Intelligence" follows from the 2020 EU White Paper, a statement from 116 members of the European Parliament, and the organizing efforts by many European NGOs on AI policy. (*CAIDP Update* 1.03)

The EU AI Regulation would prohibit certain AI systems, establish requirements including independent auditing for high-risk AI systems, and create limited transparency obligations for other AI systems.

The draft EU AI Regulation states "artificial intelligence can enable new manipulative, addictive, social control and indiscriminate surveillance practices that are particularly harmful and should be prohibited as contravening the Union values of respect for human dignity, freedom, democracy, the rule of law and respect for human rights." The Regulation highlights the manipulation of natural persons, indiscriminate surveillance, and social scoring, the practice promoted by the Chinese government to promote compliance with state requirements. The Regulation also makes clear that all high-risk AI systems will be subject to mandatory obligations.

The draft EU AI Regulation is far-reaching and the prohibitions on certain AI practices is notable. Many countries (and companies) have engaged in hazy discussions about "AI and ethics." The EU AI Regulation makes clear that certain AI applications cross red lines and should simply be prohibited. The Regulation takes aim at remote biometric identification systems, warning of "specific challenges for the protection of fundamental rights and freedoms, including human dignity, respect for private and family life, protection of personal data and non-discrimination."

Also notable is that the structure of the EU AI Regulation is similar to the GDPR. The aim is a comprehensive approach that protects the rights of natural persons and imposes clear obligations on those who seek to deploy AI Systems.

The Commission proposes to establish a European Artificial Intelligence Board (EAIB), composed of one representative from each of the 27 EU countries as well as the European Data Protection Supervisor. The AI Board is very similar to the European Data Protection Board (EDPB), established by the GDPR.

However the proposal fails to regulate governments and public authorities when carried out "in order to safeguard public security." That is a gaping hole that will need to be filled. Also of concern is the obligation of only "limited transparency" obligations for AI systems. This may be the reflection of Machine Learning (ML) advocates who contend that transparency obligations are difficult to impose on complex, data driven systems, but those are precisely the systems where the need for transparency will be greatest. The Commission should instead propose "robust" or "sufficient" transparency obligations.

In the report Artificial and Democratic Values, CAIDP urged adoption of regulations for AI to ensure fairness, accountability, and transparency. CAIDP also endorsed the prohibition on facial recognition in public spaces, following the recommendations of the Universal Guidelines for AI, an international AI human rights framework endorsed by many AI experts.

Margrethe Vestager, the Commission's Executive Vice President for Digital, is expected to formally release the EU AI proposal on April 21. At a time when many are looking for "AI solutions" to social problems, the EU AI Regulation wisely observes that "Artificial intelligence should not be an end in itself, but a tool that has to serve people with the ultimate aim of increasing human well-being."

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