

EU legislators must close dangerous loophole in AI Act

The European Union is entering the final stage of negotiations on its Artificial Intelligence Act (AI Act), but Big Tech and other industry players have lobbied to introduce a major loophole to the high-risk classification process, undermining the entire legislation. We call on EU legislators to remove this loophole and maintain a high level of protection in the AI Act.

The EU AI Act has the potential to improve protections for people impacted by AI systems. In its original form, it outlined a list of ‘high-risk uses’ of AI, including AI systems used to monitor students, to assess consumers’ creditworthiness, to evaluate job-seekers, and to determine who gets access to welfare benefits.

The legislation requires developers and deployers of such ‘high-risk’ AI to ensure that their systems are safe, free from discriminatory bias, and to provide publicly accessible information about how their systems work. However, these benefits will be undermined by a dangerous loophole introduced into the high-risk classification process in Article 6.

In the original draft from the European Commission, an AI system was considered ‘high risk’ if it was to be used for one of the high-risk purposes listed in Annex III. However, the Council and the European Parliament have introduced a loophole that would allow developers of these systems decide themselves if they believe the system is ‘high-risk’.ⁱ The same company that would be subject to the law is given the power to unilaterally decide whether or not it should apply to them.

These changes to Article 6 must be rejected and the European Commission’s original risk-classification process must be restored. There must be an objective, coherent and legally certain process to determine which AI systems are ‘high-risk’ in the AI act.

If the changes to Article 6 are not reversed, the AI Act will enable AI developers to decide to exempt themselves from all substantive rules for high-risk systems. The AI Act would:

- **Introduce high legal uncertainty** as to which systems are considered ‘high risk’;
- **Lead to fragmentation of the EU single market**, with different interpretations of what constitutes ‘high-risk’ across Member States;
- Result in **Member State authorities facing severe challenges to enforce the legislation**, without enough resources to monitor developers’ self-assessment sufficiently;
- **Allow unscrupulous developers to avoid the basic requirements of the law** that are meant to make their systems safer and more reliable. This would put responsible AI developers at a disadvantage.

We urge lawmakers to reverse these changes and restore the Commission’s original language in Article 6. The AI Act must prioritise the rights of people affected by AI systems and ensure that AI development and use is both accountable and transparent.ⁱⁱ

Signed,

1. Access Now
2. BEUC – The European Consumer Organisation
3. European Digital Rights (EDRi)
4. Access Info Europe
5. AlgoRace
6. Algorights
7. AlgorithmWatch
8. All Faiths and None
9. All Out
10. Alternatif Bilisim (AiA-Alternative Informatics Association)
11. Amnesty International
12. ARSIS Association for the Social Support of Youth
13. Article 19
14. Asia Indigenous Peoples Pact
15. Aspiration
16. Association for Legal Studies on Immigration (ASGI)
17. Association Konekt
18. Balkan Civil Society Development Network
19. Bits of Freedom
20. Bulgarian center for Not-for-Profit Law (BCNL)
21. Center for AI and Digital Policy (CAIDP)
22. Chaos Computer Club
23. Civil Rights Defenders
24. CIVIL SOCIETY ADVOCATES
25. CNVOS Slovenia
26. Coalizione Italiana Libertà e i Diritti civili
27. Comisión General Justicia y Paz de España
28. Controle Alt Delete
29. Corporate Europe Observatory (CEO)
30. D64 - Zentrum für Digitalen Fortschritt e. V.
31. DanChurchAid (DCA)
32. Danes je nov dan, Inštitut za druga vprašanja
33. Defend Democracy
34. Democracy Development Foundation Armenia
35. Digitalcourage
36. Digital Security Lab Ukraine
37. Digitale Gesellschaft
38. Digitalfems
39. DonesTech
40. dTest, o.p.s.
41. Eticas
42. EuroMed Rights
43. European Anti-Poverty Network (EAPN)
44. European Center for Not-for-Profit Law
45. European Civic Forum
46. European Movement Italy
47. European Network Against Racism (ENAR)
48. European Network on Statelessness
49. Fair Trials

50. Fair Vote UK
51. Fundación CIVES
52. Federación de Consumidores y Usuarios CECU
53. Federación de Sindicatos de Periodistas (FeSP)
54. Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv)
55. FIPR
56. Fritidsodlingens Riksorganisation
57. Gong
58. Greek Forum of Refugees
59. Health Action International
60. Homo Digitalis
61. Hungarian Civil Liberties Union
62. I Have Rights
63. IDAY Liberia Coalition Inc.
64. Institute Circle
65. Institute for Strategic Dialogue (ISD)
66. Irish Council for Civil Liberties
67. IT-Pol
68. Iuridicum Remedium
69. KEPKA- Consumers Protection Center
70. Kif Kif vzw
71. KOK German NGO Network against Trafficking in Human Beings
72. Konsumentvägladarnas Förening
73. Kosovar Civil Society Foundation (KCSF)
74. LA LIGUE DE L'ENSEIGNEMENT
75. La Strada International
76. Lafede.cat
77. LDH (Ligue des droits de l'Homme)
78. Legal Centre Lesvos
79. Liberty
80. Ligue des droits humains
81. Metamorphosis Foundation
82. Migrant Tales
83. Mobile Info Team
84. Moje Państwo Foundation
85. National Federation of Polish NGOs (OFOP)
86. National NGO Coalition
87. New Europeans International
88. Norwegian Consumer Council
89. Novact
90. OCU (ORGANIZACIÓN DE CONSUMIDORES Y USUARIOS)
91. Ökotárs - Hungarian Environmental Partnership Foundation
92. Open Knowledge Foundation Germany
93. Panoptykon Foundation
94. Partners Albania for Change and Development
95. PIC - Legal Center for the Protection of Human Rights and the Environment
96. Platform for International Cooperation on Undocumented Migrants (PICUM)
97. Polish Women's Strike Foundation
98. Politiscope
99. Privacy First
100. Privacy International

101. Privacy Network
102. PRO, Pensionärernas riksorganisation
103. Promo-LEX Association
104. Prostitution Information Center
105. Protection International
106. Red en Defensa de los Derechos Digitales
107. REPONGAC
108. SKPF Pensionärerna
109. SOLIDAR & SOLIDAR Foundation
110. Spiral
111. Statewatch
112. Stichting LOS
113. Superbloom (previously known as Simply Secure)
114. Swedish Asthma and Allergy Association
115. SYMBIOSIS
116. Symbiosis - Council of Europe School of Political Studies in Greece
117. The Swedish Consumers' Association
118. Wikimedia Deutschland e. V.

ⁱ The Council text proposes to exclude high-risk systems where the output of the system is ‘*purely accessory in respect of the relevant action or decision to be taken*’. The European Parliament text states that a system is high risk only if it poses a ‘significant risk’ to fundamental rights, health and safety. If the developer considers their system does not pose such a risk, they must notify a national authority, which has 3 months to respond.

ⁱⁱ 150 civil society organisations have called on the EU institutions to ensure the AI act protect’s peoples’ rights during the AI Act trilogues: <https://edri.org/wp-content/uploads/2023/07/Civil-society-AI-Act-trilogues-statement.pdf>