

/ EU Artificial Intelligence Act – recommendations on public transparency

Ensure consistent and meaningful public transparency

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Context

The draft AI Act sets out to establish and maintain a EU database for stand-alone high-risk AI systems in Article 60. This database offers a chance for increased public transparency on AI systems vis-à-vis impacted individuals and civil society, and could greatly facilitate public interest research. **Given that the AI Act largely depends on self-assessment procedures by providers and users of AI systems, the EU database offers a way of enhancing accountability through public scrutiny.** Thus, it could ensure effective public transparency on AI systems and therefore provide a necessary – but not yet sufficient – first step on the path towards a responsible use of AI systems that is in line with fundamental rights.

Why the public transparency database must cover uses of AI systems

- The database currently only contains information given by providers of systems classified as high-risk under the AI Act. Thus, it lacks information on the actual uses of these systems, even though the effects AI systems have on individuals and society highly depend on the way and context in which they are used. This loophole will prevent the public from finding out where, by whom, in which context, and for what purpose(s) high-risk AI systems are actually used – and hence will undermine the purpose of the database. Thus, in addition to the obligation incumbent on providers of high-risk AI systems, **there must be an obligation on users to register all uses of high-risk AI systems in the EU database before deployment**, providing basic information on key actors, purpose and model, and results of the impact assessment that should be incumbent on users.¹
- In addition, due to the unique role and responsibility public authorities bear, the sensitive personal data they have access to, the consequential effects their decisions have on individuals, and thus their primary obligation to respect, protect and fulfil fundamental rights, public authorities should be subject to more stringent transparency requirements when using AI

¹ This obligation is further detailed in the issue paper 'Introduce obligations on users of high-risk AI systems' prepared by EDRI et al. The document inter alia obliges users to conduct a fundamental rights impact assessment before putting a high-risk AI system into use.

systems. Hence, **any uses of AI systems – regardless of their level of risk – by or on behalf of public authorities should be registered within the EU database**, providing basic information on key actors, purpose and model, and results of any impact assessment conducted under obligations imposed by the AI Act² or voluntarily.

- Furthermore, meaningful public-facing transparency in the EU database should also be ensured with regard to **further AI systems that pose a significant risk to individuals but that haven't been categorized as high-risk** (including biometric categorisation systems as well as AI systems which assess or evaluate people and influence their access to goods and services and thereby pose an inherent risk of manipulation, consumer harm, discrimination or even a threat to health and safety³). Information about the use of these systems should be made available to individuals subjected⁴, but it is equally important to ensure meaningful public-facing transparency on the use of these systems in the EU database, which would increase their accountability and opportunities to identify potential abuses.

Amendments to the Artificial Intelligence Act

Article 51 Registration

1. Before placing on the market or putting into service, an **AI system referred to in the following paragraphs**, the provider or, where applicable, the authorised representative shall register that system in the EU database referred to in Article 60:
 - a. a high-risk AI system referred to in Article 6(2)
 - b. **any AI system referred to in Article 52 paragraphs 1b and 2**
2. **Before using an AI system referred to in the following paragraphs, the user or, where applicable, the authorised representative shall register the uses of that system in the EU database referred to in Article 60. A new registration entry must be completed by the user for each use of any of these AI systems:**
 - a. **high-risk AI systems referred to in Article 6 paragraph 2**
 - b. **any AI system referred to in Article 52 paragraphs 1b and 2**
3. **Before using an AI system, public authorities shall register the uses of that system in the EU database referred to in Article 60. A new registration entry must be completed by the user for each use of an AI system.**

² This obligation is further detailed in the issue paper 'Introduce obligations on users of high-risk AI systems' prepared by EDRI et al. The document inter alia obliges users to conduct a fundamental rights impact assessment before putting a high-risk AI system into use.

³ The scope of the list of these systems is part of the issue paper 'Ensure meaningful transparency of AI systems for affected people' prepared by Panoptikon Foundation et al.

⁴ This obligation is the subject of the issue paper 'Ensure meaningful transparency of AI systems for affected people' prepared by Panoptikon Foundation et al.

Article 60

EU database for stand-alone high-risk AI systems **and certain AI systems, uses thereof, and uses of AI systems by public authorities**

1. The Commission shall, in collaboration with the Member States, set up and maintain a EU database containing information referred to in paragraph 2 concerning:
 - a. high-risk AI systems referred to in Article 6(2) which are registered in accordance with Article 51(1);
 - b. any AI system referred to in Article 52 paragraph 1b and 2 which are registered in accordance with Article 51(1);**
 - c. any uses of high-risk AI systems referred to in Article 6(2) which are registered in accordance with Article 51(2);**
 - d. any uses of AI systems referred to in Article 52 paragraph 1b and 2 which are registered in accordance with Article 51(2);**
 - e. any uses of AI systems by or on behalf of public authorities registered in accordance with Article 51(3).**
2. **The Commission shall provide providers and users entering data into the EU database with technical and administrative support. The following information should be included in the EU database.**
 - (a) For registrations according to paragraph 1(a) and 1(b),** the data listed in Annex VIII point 1 shall be entered into the EU database by the providers.
 - (b) For registrations according to paragraph 1(c) , 1(d) and 1(e), the data listed in Annex VIII point 2 shall be entered into the EU database by the users.**
3. **The EU database and the information contained in it shall be freely available to the public, comply with the accessibility requirements of Annex I to Directive 2019/882, and be user-friendly, navigable, and machine-readable, containing structured digital data based on a standardised protocol.**
4. The EU database shall contain personal data only insofar as necessary for collecting and processing information in accordance with this Regulation. That information shall include the names and contact details of natural persons who are responsible for registering the system and have the legal authority to represent the provider **or the user.**
5. The Commission shall be the controller of the EU database. It shall also ensure to providers **and users** adequate technical and administrative support, **in particular in relation to registrations according to paragraph 1(e).**

ANNEX VIII

INFORMATION TO BE SUBMITTED UPON THE REGISTRATION OF HIGH-RISK AI SYSTEMS **AND OF CERTAIN AI SYSTEMS, USES THEREOF, AND USES OF AI SYSTEMS BY PUBLIC AUTHORITIES** IN ACCORDANCE WITH ARTICLE 51

1. The following information shall be provided and thereafter kept up to date **by the provider** with regard to high-risk AI systems **referred to in Article 6(2) and to any AI system referred to in Article 52 1(b) and (2)** to be registered in accordance with Article 51(1).
 - (a) Name, address and contact details of the provider;
 - (b) Where submission of information is carried out by another person on behalf of the provider, the name, address and contact details of that person;
 - (c) Name, address and contact details of the authorised representative, where applicable;
 - (d) AI system trade name and any additional unambiguous reference allowing identification and traceability of the AI system;
 - (e) Description of the intended purpose of the AI system;
 - (f) Status of the AI system (on the market, or in service; no longer placed on the market/in service, recalled);
 - (g) Type, number and expiry date of the certificate issued by the notified body and the name or identification number of that notified body, when applicable;
 - (h) A scanned copy of the certificate referred to in point 7, when applicable;
 - (i) Member States in which the AI system is or has been placed on the market, put into service or made available in the Union;
 - (j) A copy of the EU declaration of conformity referred to in Article 48;
 - (k) Electronic instructions for use as listed in Article 13(3) **and basic explanation of the general logic and key design as listed in Annex IV point 2(b) and of optimization choices as listed in Annex IV point (3).**
 - (l) **Assessment of the environmental impact, including but not limited to resource consumption, resulting from the design, data management and training, and underlying infrastructures of the AI system; as well as the methods to reduce such impact;**
 - (m) **A description of how the system meets the relevant accessibility requirements of Annex I to Directive 2019/882.**
 - (n) URL for additional information (optional).

2. **The following information shall be provided and thereafter kept up to date by the user with regard to uses of high-risk AI systems referred to in Article 6(2) and any AI system referred to in Article 52 1(b) and (2) to be registered in accordance with Article 51(2).**
 - (a) Name, address and contact details of the user;**

(b) Where submission of information is carried out by another person on behalf of the user, the name, address and contact details of that person;

(c) Name, address and contact details of the authorised representative, where applicable;

(d) URL of the entry of the AI system in the EU database by its provider, or, where unavailable, AI system trade name and any additional unambiguous reference allowing identification and traceability of the AI system;

(e) Description of the intended purpose of the intended use of the AI system;

(f) Description of the context and the geographical and temporal scope of application, geographic and temporal, of the intended use of the AI system;

(g) Basic explanation of design specifications of the system, namely the general logic of the AI system and of the algorithms; the key design choices including the rationale and assumptions made, also with regard to categories persons or groups of persons on which the system is intended to be used; the main classification choices; and what the system is designed to optimise for and the relevance of the different parameters.

(h) For high-risk AI systems and for systems referred to in Article 52 1(b) and (2), designation of persons foreseeably impacted by the intended use of the AI system as required by Article X;⁵

(i) For high-risk AI systems, results of the impact assessment on the use of the AI system that is conducted under obligations imposed by Article XX of this Regulation.⁶ Where full public disclosure of these results cannot be granted for reasons of privacy and data protection, disclosure must be granted to the national supervisory authority, which in turn must be indicated in the EU database.

(j) A description of how the relevant accessibility requirements set out in Annex I to Directive 2019/882 are met by the use of the AI system.

3. The following information shall be provided and thereafter kept up to date by the user with regard to uses of AI systems by public authorities to be registered in accordance with Article 51(3).

(a) Name, address and contact details of the user;

(b) Where submission of information is carried out by another person on behalf of the user, the name, address and contact details of that person;

(c) Name, address and contact details of the authorised representative, where applicable;

⁵ This obligation is the subject of an amendment outlined further in the amendment paper 'Introduce obligations on users of high-risk AI systems' prepared by EDRI et al. This amendment inter alia obliges users to define categories of natural persons and groups likely to be affected by the use of a high-risk AI system.

⁶ This obligation is the subject of an amendment outlined further in the amendment paper 'Introduce obligations on users of high-risk AI systems' prepared by EDRI et al. This amendment inter alia obliges users to conduct a fundamental rights impact assessment before putting a high-risk AI system into use.

- (d) For high-risk AI systems, URL of the entry of the AI system in the EU database by its provider, or, for non-high risk systems, AI system trade name and any additional unambiguous reference allowing identification and traceability of the AI system;
- (e) Description of the intended purpose of the intended use of the AI system;
- (f) Description of the context and the geographical and temporal scope of application, geographic and temporal, of the intended use of the AI system;
- (g) Basic explanation of design specifications of the system, namely the general logic of the AI system and of the algorithms; the key design choices including the rationale and assumptions made, also with regard to categories persons or groups of persons on which the system is intended to be used; the main classification choices; and what the system is designed to optimise for and the relevance of the different parameters.
- (h) Designation of persons foreseeably impacted by the intended use of the AI system;
- (i) If available, results of any impact assessment or due diligence process regarding the use of the AI system that the user has conducted;
- (j) Assessment of the foreseeable impact on the environment, including but not limited to energy consumption, resulting from the use of the AI system over its entire lifecycle, and of the methods to reduce such impact;
- (k) A description of how the relevant accessibility requirements set out in Annex I to Directive 2019/882 are met by the use of the AI system.

Recital 69

In order to facilitate the work of the Commission and the Member States in the artificial intelligence field as well as to increase the transparency towards the public, providers and users of high-risk AI systems other than those related to products falling within the scope of relevant existing Union harmonisation legislation, should be required to register their high-risk AI system **or the use thereof** in a EU database, to be established and managed by the Commission. **Certain AI systems listed in Article 52 (1b) and (2) and uses thereof shall be registered in the EU database. In order to facilitate this, users shall request information listed in Annex VIII point 2(g) from providers of AI systems. Any uses of AI systems by public authorities or on their behalf shall also be registered in the EU database. In order to facilitate this, public authorities shall request information listed in Annex VIII point 3(g) from providers of AI systems.** The Commission should be the controller of that database, in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council. **In order to ensure the full functionality of the database, when deployed, the procedure for setting the database should include the elaboration of functional specifications by the Commission and an independent audit report. In order to maximise the availability and use of the database by the public, the database, including the information made available through it, should comply with requirements under the European Accessibility Act.**

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