RECOMMENDATIONS

ARTIFICIAL INTELLIGENCE (AI) ACT

28 March 2022

CEDEC represents the interests of 1.500+ local and regional energy companies, serving 85 million electricity, gas and district heating customers and connections, with a total turnover of €120 billion, with more than 350.000 employees.

These predominantly medium-sized local and regional energy companies have developed activities as electricity and heat generators, as operators of distribution grids and metering systems for electricity, gas and heating & cooling, and as energy (services) suppliers.

The wide range of services provided by local utility companies is reliable, sustainable and close to the customer. Through their investments and local jobs, they make a significant contribution to local and regional economic development.

RECOMMENDATIONS

Artificial Intelligence Act (AI Act)

CEDEC welcomes the European Commission proposal for a European legal framework for artificial intelligence (the **Artificial Intelligence Act**), which aims to address the risks generated by specific uses of AI through a set of rules. CEDEC believes that a clear legal framework will provide developers and users of artificial intelligence (AI) systems with the needed clarity.

It is highly welcomed that the Commission is taking a risk-based approach in its proposal, which leaves the majority of AI systems untouched, as they do not pose any risk. It is now important that **only high-risk systems should fall under the scope of the proposed regulation**.

This means, firstly, that only systems that are used directly in a high-risk area must meet the strict requirements, in order not to limit innovation in this field. Secondly, the **definition of AI should not include traditional algorithms**, which use can not be considered as risky compared to self-learning and autonomous AI systems that may justifiably be associated with a potential loss of control and the creation of new risks for individuals or the society.

Local public companies are already using AI in many areas. AI will be used even more widely and in all business areas in the future, with growing amounts of data from intelligent sensor technology.

Already today, the use of AI is being considered in a wide variety of operational and business areas, for example in **sales, customer interfaces, the maintenance of machines and equipment, or in network and traffic control,** and is in some cases already being developed by the companies themselves or in cooperation with partners.

In addition, open source solutions are used or AI solutions are purchased which are partly adapted to the specific company situations. Ultimately, **local public companies also develop their own AI systems** or develop them jointly with partners, which could then also be offered on the market.

Recommendation 1 – Definition of AI systems (Art. 3.1 referring to Annex I)

In its proposal the European Commission sets a definition of artificial intelligence (AI) systems in Article 3(1) and refers to techniques and approaches listed in Annex I of the proposal.

CEDEC believes that these definitions of techniques and concepts of AI are defined too broadly. It is the Commission's declared aim to regulate openly, in a technology-neutral way, in order to take rapid developments into account. A clear determination of the AI applications that should be considered risky is thus needed. The risk of the application of systems based on traditional software is simply different than the risk of self-learning, autonomous and newly applied AI systems. According to the current definition, however, numerous applications that are not autonomous or self-learning AI systems would also fall under the extensive provisions of the regulation.

Under (b) and (c), Annex I defines *"Logic- and knowledge-based approaches, including knowledge representation, inductive (logic) programming, knowledge bases, inference and deductive engines, (symbolic) reasoning and expert systems"* as well as *"Statistical approaches, Bayesian estimation, search and optimization methods".* These definitions include a wide variety of algorithms that should not be

considered as AI because they are not self-learning or self-perpetuating. The definition also includes conventional algorithms, which are already in use in many ways today. However, these do not represent the risks usually associated with AI, such as lack of control or influence. Only those techniques and methods should be considered AI under this legislation that also pose a threat that this law seeks to prevent, namely, in particular, to the fundamental rights of EU citizens (recital nr. 5, 15, 16). This broad definition under (b) and (c) would include any software that uses "if-then" relationships. This means that almost all software, including the simplest applications, would be covered by the AI Regulation.

The definition of AI systems, in particular the techniques and concepts formulated under (b) and (c), should be further specified, so that traditional software and simple algorithms do not fall within the scope of application of the AI Regulation.

> → Changes needed in Annex I

Recommendation 2 – Definition of high-risk AI systems (Annex III.2)

The proposal provides for a classification of high-risk AI systems in Article 6 and refers to Annex III, which provides a list of AI systems that qualify as high-risk.

Local public companies are concerned by Annex III.2: *"Management and operation of critical infrastructure: (a) AI systems intended to be used as safety components in the management and operation of road traffic and the supply of water, gas, heating and electricity".*

A clear definition of "safety components" is necessary to ensure that only AI systems that actually pose a high risk due to their context of use as safety components are affected by the requirements of the regulation. Furthermore, the proposal refers to "critical infrastructure" without providing a definition or reference to EU law or without further specifying what can be understood as critical infrastructure. Such specifications on both terms would benefit the legal certainty of companies that potentially use AI systems as safety components.

> → Changes needed in Annex III.2

Recommendation 3 – AI for own use (Art. 28)

According to Article 28 of the proposal, users of high-risk AI systems are considered providers within the meaning of the regulation if a significant change is made to a high-risk AI system. The classification as a provider goes hand in hand with the responsibility for a comprehensive conformity assessment.

This would mean that local public companies that develop AI systems for their own use or adapt purchased systems to their own operating processes would also fall under the strict requirements that apply to providers of high-risk AI systems.

While we agree that the efforts related to a conformity assessment is appropriate in the commercial development of high-risk AI systems – because they are used by many operators and thus pose a cumulative risk – the risk when a company develops or modifies an AI system for its own use is in a completely different proportion to the effort of the conformity assessment.

For local public companies, such a conformity assessment would at worst represent a further obstacle to the widespread use of AI systems, as the efforts linked to the conformity assessment could have a deterrent effect. This could create a disincentive to develop or modify AI systems by local public companies themselves, which would then rather purchase AI systems as ready-made solutions. In the

long term, this would also inhibit the innovation of local public companies and increase their dependence on third-party providers.

Instead, the in-house development of AI systems, as well as the adaptation of purchased systems to one's own needs, should be promoted, as this would contribute to building specific know-how. Therefore, CEDEC suggest exempting the development and modification of high-risk AI systems for own use from the stricter requirements for providers. If necessary, a simplified conformity assessment could be a suitable alternative.

→ Changes needed in Article 28

FOR MORE INFORMATION

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