Negotiating the New Artificial Intelligence Act (AI-2 Act)

EU Ordinary Legislative Procedure Simulation

(comprising the Council of the European Union, the European Parliament, and the European Commission)

Introduction to the simulation

Recent developments in artificial intelligence (AI) herald a new digital revolution. AI could improve humankind's livelihoods by bringing long-awaited developments in many fields including medicine, computer science, education, and more.

Despite public excitement regarding AI, and the positive changes it promises to bring to people's lives and societies, many politicians, NGOs, and experts have warned that, if left unregulated, AI could become a menace to society. They have raised concerns relating to the protection of personal data, the loss of jobs due to automation, and ethical considerations linked to the use of AI tools.

In view of these threats, the European Union seeks to create a strong, yet flexible, legal framework, enabling the EU to take a pioneering role in developing novel AI technologies while maintaining protection of European citizens.

To this end, the European Commission proposed the Artificial Intelligence Act in 2021, which translated two years of research, analysis, and consultation with experts and stakeholders into draft legislation intended to be one of the main pillars of the EU Digital Strategy.

The current scenario simulates the ongoing Ordinary Legislative Procedure that followed the submission of the proposal. As such, the simulation includes discussions that take place in two different institutions at the same time; the Council of the European Union and the European Parliament (in this case, representatives of the political groups) separately. The simulation also includes an active role for the European Commission, which will provide further clarifications to the Council and the European Parliament, and try to mediate between the parties if needed, in the Conciliation Committee. The "Proposal" provided in the current scenario is based on key parts proposed in the original EU Artificial Intelligence Act of 2021.

Target Group for the simulation and topics covered

This simulation could be used with high-school students and junior undergraduates. It is mainly intended for senior undergraduates and graduate students studying topics relating to:

- Artificial Intelligence
- Computers and Society
- Ethics and Philosophy
- International Negotiation and Mediation
- Introduction to Computer Science

- International Relations

Scenario for the simulation

The term "Artificial Intelligence" (AI) encompasses a wide range of technologies, systems, and tools with the ability to perform tasks that would otherwise require the use of human intelligence. While academic and public discussion of AI is nothing new, recent breakthroughs in the area have led to many believing that the creation of a strong regulatory framework is necessary. Such a framework should be rigid enough to eliminate future threats stemming from the use of AI, yet flexible enough to embrace its positive potential and strengthen and support AI research and development within the European Union.

As the European institution responsible for proposing new pan-European legislation, the European Commission has put forward the following proposal, which, according to the Ordinary Legislative Procedure, is to be accepted, revised and accepted, or rejected by the Council of the European Union and the European Parliament.

Commission Proposal:

Article 1:

This regulation lays down harmonized rules that will apply to providers and users of high-risk AI systems and seeks to ensure a high level of protection for EU citizens' fundamental rights and aims to address various sources of risks through a clearly defined risk-based approach.

Article 2:

Member States will have to designate supervisory authorities in charge of implementing the legislative requirements.

Article 3:

The following artificial intelligence practices shall be prohibited:

    a. *the placing on the market, putting into service or use of an AI system that deploys subliminal techniques beyond a person's consciousness in order to materially distort a person's behaviour*

    b. *the use of 'real-time' remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement*

Article 4:

A risk management system shall be established, implemented, documented, and maintained in relation to high-risk AI systems. High-risk AI systems will include:

> a. *Biometric identification and categorization of natural persons*
> b. *Management and operation of critical infrastructure*
> c. *Education and vocational training*
> d. *Employment, workers management and access to self-employment*
> e. *Access to and enjoyment of essential private services and public services and benefits*
> f. *Law enforcement*
> g. *Migration, asylum, and border control management*
> h. *Administration of justice and democratic processes*

Although the proposal is quite straightforward, significant disagreements are expected to arise both in the European Parliament as well as in the Council's discussions.

Some Ministers and MEPs have already publicly stated that they think the Commission's proposal sets so many constraints and red tape on the development of AI that the European Union will be left behind in the dust by its competitors in the field of AI research and development.

Others have pointed out that the list of high-risk AI systems includes too many areas, unnecessarily barring the use of AI technologies in several sectors in which they could prove to be useful.

Finally, with regard to the two prohibitions in Art. 3, there are those who have suggested including exceptions in which full or partial use of AI would be permitted.

Overall, the European Parliament and the Council:

1. Must decide if they are going to accept, revise or reject the proposal. Each institution must reach its decision independently.

2. In the case that both institutions accept the proposal but at least one has accepted a revised version of it, the institutions must read both versions and agree on a jointly agreed upon wording for the proposal, if it is to become law.

Tips for running the simulation

> ➢ The facilitator may choose to assign participants a current news article discussing the main threats and benefits of the use of AI tools
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> ➢ Two rooms are required to properly run this simulation, one for the Council of the European Union and one for the European Parliament.
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> ➢ The simulation could also work with only one of the institutions (either the Council of the European Union or the European Parliament), if for example, there is a limited number of participants. The facilitator should explain that the process participants are simulating is only a part of the full legislative process.

> ➢ In a full simulation involving both institutions the European Commission is also an active player. In that case the task of the European Commission will be to defend the original text and spirit of the proposal, and answer questions that the Council and the Parliament may have.

> ➢ It is very difficult to simulate the OLP (Ordinary Legislative Procedure) exactly as it works in real life. For the simulation's purpose, we suggest simplifying it in the following way, while still keeping a high degree of realism:

>> ● run the two sessions (EP and Council) simultaneously and use the Commission to try and broker an agreement from both.

>> ● Assign the role of the Commission to one of the participants. The Commission should join the Council or Parliament meetings to introduce the draft agenda and provide clarifications on the proposal. The Commission may also suggest a "trilogue", an informal inter-institutional meeting, with the participation of representatives of all three institutions. In the case a trilogue is held, the Commission's role would be to mediate the discussion and help the co-legislators explore common ground.

>> ● Note that the Parliament decides by a simple majority vote (calculate the votes taking into account the relative power of each political party in the real world at the time you play the simulation), while the Council of the European Union decides by qualified majority (voting tool provided below[1]).

>> ● Note that the Parliament political groups change in the aftermath of European Parliament elections and that participants should conduct research on the existing political groups, their positions and interests at the time of the simulation

Selected sources for the simulation

White Paper on AI (2020)

The EU Artificial Intelligence Act (2021)

Voting Calculator Council of the European Union

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[1] If you want to add another layer of reality and complexity, you should encourage the participants to use split votes (see Rule of Procedure of the European Parliament: https://www.europarl.europa.eu/doceo/document/RULES-8-2019-03-25-RULE-176_EN.html)