# AI Governance at the Crossroads: Workshop on AI Regulation in the EU, Brazil, and the US.

## Recap and call for action.

On 30th June, the 3AI project at BI Business School brought together experts from leading institutions researching on issues of Internet and Society. In our workshop, the experts discussed the scope and impacts of policy instruments targeting AI:

Sebastian Schwemer (University of Copenhagen) discussed the European Union's proposed legal framework for AI. When the EU released the legislative proposal, it stated its aim was to make sure that AI can be trusted and that by setting these standards their message to the world was that technology could be ethical whilst remaining competitive along the way. How to achieve this was part of the bigger question.



SEBASTIAN SCHWEMER

In his analysis of the proposed legislation, Sebastian opened the discussion addressing questions on the material and geographical scope of the legislation, in other words, the application and jurisdiction of the EU to enforce the law over AI applications. In this regard, Sebastian pointed out that the proposed law applies to providers of AI systems in the EU irrespective of where the provider is located, as well as users of AI systems located within the EU, and providers and users located outside the EU "*where the output produced by the system is used in the Union.*"

*"Perhaps the title, Artificial Intelligence Act, is not the right one; it should be called, A Product Regulation on certain automated systems"*

Sebastian Schwemer- University of Copenhagen

This broad scope of application means that the regulation will most likely have an extraterritorial jurisdiction. This has been interpreted as a "Brussels Effect" by which the size and power of the EU results in setting global norms. It will be interesting if,

as with GDPR, this EU instrument will become a blueprint for AI legislation elsewhere.

On the other hand, Sebastian argued that the material scope of the proposed law is broad as it focused not just on AI but AI systems, defined as a software that is developed with one or more of the techniques mentioned in Annex I, which includes machine learning, logic, and knowledge-based approaches and interestingly, expert's system, statistical approaches as well as optimization methods. This begs the question: "what is the EU really regulating here with these artificial intelligence techniques. Are there any computational techniques, automation techniques that wouldn't fall into this rather broad definition?"

Next, Sebastian addressed the risk-based approach taken by the legislation to differentiate between AI systems, explaining that "Some AI systems are deemed to come with unaccepted risks and are therefore prohibited. Some AI systems are considered to entail high risks and come with extensive obligations, such as the obligation to establish risk management system, obligations on data governance, technical documentation, record keeping, transparency, human oversight, accuracy, robustness, and cyber security. And lastly, the category of limited risks basically just means that you need to put a label on your AI system when it interacts with natural persons and when the individuals might think to engage with a human whether in fact engaged with an AI system."

One noteworthy point of tension in the proposal comes in the form taken by human oversight i.e.: humans in the loop. Although the proposal contains a very elaborate idea on the human oversight, this "relates only to the design and development of an AI system. It doesn't relate to the operations of AI system. So, it seems that there might be some further clarification necessary."

One of the most interesting takes from the proposal is how its approach to regulate AI systems mirror European product design and development rules. In the receiving end of the law, it is primarily the provider of an AI system would be the entity that develops an AI system and places it in the market or put it into service in the EU. It also contains rules for users of those AI systems and the distributors and the importers but not the subject, not the individual that would be subject to an AI system. "So, maybe the title, Artificial Intelligence Act, is not the right one. Maybe this proposal should be called, a product regulation on certain automated systems".

Finally, according to Sebastian, the proposed rules do not focus on those affected by AI systems. Notably there is missing any requirement to inform people who are subjected to an AI system such as an algorithmic assessment. In other words, the legislation is less concerned with algorithmic fairness. This raises an interesting issue in accountability for AI that academia and advocacy groups would do well to keep in check.



JESSICA FJELD

The session continued with Jessica Fjeld and Adam Nagy from Harvard's Berkman Klein Center for Internet and Society with their presentation on the findings from a 2020 report they co-authored. In this study, they looked at 36 relevant documents on AI principles, including several from the U.S. government. The study revealed key themes for socially beneficial AI. "The paper in essence demonstrated that starting in 2019 there is an emerging consensus particularly in the US, Europe and China, around certain key themes for ethical, and rights- respecting AI".

The sample for the report is dominated by documents from North America, Europe, and China. The low number or in some cases non-existent governance documents from Africa and Latin America shows that in AI governance some actors are taking the lead. "In spite of efforts including assembling a very multilingual research team, there was a significant lack of geographic diversity, the sample being dominated by North American, European, and East Asian, primarily Chinese documents". On diversity and consensus around AI governance, our speaker noted that "At the time that we release the report, there were no principles from the continent of Africa that met our definition of principles, which means that, while it is a consensus, it is certainly not truly global consensus."

Jessica explained that there are eight themes they identified in their study. Fairness and nondiscrimination, privacy, accountability, transparency and explainability, safety and security, professional responsibility, human control of technology, and promotion of human values. From all the documents explored fairness and non-discrimination was the most prevalent

*"Our study of AI Governance instruments found eight recurring themes across the sample: Fairness and non-discrimination, privacy, accountability, transparency and explainability, safety and security, professional responsibility, human control of technology, and promotion of human values".*

Jessica Fjeld-Harvard University

theme among the documents. Particularly interesting was the fact that "while there was consensus that this theme is very important, the documents recommended very different actions to avoid or remedy, the potentially discriminatory effects of AI."

Other interesting findings from this study include: privacy was mentioned in 97% of the documents. It is implicated both in the use of AI, and sensitive contexts, such as in finance, and in health care, but also in the training of any AI, where personal data is processed. It's one of the areas in which the rights-based framework is most commonly brought to bear on AI.



ADAM NAGY

The sample of the study mentioned the different principles in different forms, some giving more relevance to others. The findings from the study highlight the concerns and priorities that policy makers have with regards to AI governance and the aspirations that they have for the actors in the space to abide by and reflect on these principles.

Adam Nagy continued the exploration of AI regulation in the USA with an analysis of the Artificial Intelligence Initiative Act and other trends in governance of AI. The Act establishes the national AI Advisory Committee, which advises the President of the United States on regulation, legal standards, and a subcommittee on law enforcement to deal with the use of AI in law enforcement and issues of bias, facial recognition, civil rights, privacy, etc. Adam mentioned that the trend in the USA is to encapsulate AI with innovation and competitiveness and avoiding "unnecessary regulation". "If there should be any regulation on AI in the USA it will be at the agency level for determined sectors and not sweeping overall regulation", concluded Adam.

> "There is a trend in the USA to encapsulate AI with innovation and competitiveness, so as to avoid unnecessary regulation".
>
> Adam Nagy- Harvard University

Worth noting in the USA is a new trend which is moratoriums or bans on facial recognition with large cities such as that San Francisco Boston and many towns in Massachusetts introducing bans on this AI technology.

The speakers noted the different approaches between EU top-down regulation efforts and the USA that follows a more sector-specific approach and tends to move away from regulation.

All in all, Adam and Jessica expect some parallels between the USA and the EU when it comes to a risk-based approach for rules in some sectors to avoid algorithmic harms.

In the final session of the workshop, Carlos Souza, and Celina Bottino from ITS Rio shared insights on AI governance developments in Brazil. In his talk, Carlos Souza focused on the Brazilian AI Strategy and problematized the challenges facing Brazil when it came to development of an AI strategy. In such a large country, leader in the region, an AI strategy is an important instrument.

*"The (Brazilian AI) strategy strives to remove barriers to innovation in AI, includes a strong educational component on training and education for the job market in the AI ecosystem and fosters a cooperative environment between the public and private sectors".*
Celina Bottino-ITS Rio

When constructing the document, Brazil followed a participatory approach, considering the existing digital divides. The strategy reflects Brazils' objective of becoming an important player in a global conversation on AI and not just a provider of users or another market segment for large tech companies.

ITS Rio conducted a study of different AI strategies as a contribution to the construction of the National AI strategy.



CELINA BOTTINO

Celina explained the process and consultation undertaken by the Brazilian government in the construction of the AI strategy: "A first draft benchmark was open to the public for comments and contributions: It was interesting to see the consultation process received a considerable number of contributions, more than one thousand contributions. Most of the contributions came from individuals next to the academic sector, private sector, and representatives from civil society.

CARLOS AFFONSO SOUZA

Specifically, the AI strategy contains a series of broad goals, highlighting a set of ethical principles for responsible AI development. The strategy also strives to remove barriers to innovation in AI, including the need train and educate people to work within the AI ecosystem and foster a cooperative environment between public and private sectors.

The strategy received mixed reaction from Brazilian society. As Carlos explained: "There has been a very large -- and I would say well developed public hesitation on the national strategy. But there is some frustration with the results, because not much of what you have in the public consultation ended up being reflected on the actual documents of the AI national strategy for Brazil. So here, you can see some of the criticism".

More importantly ITS considered that "our AI national strategy feels like more an academic endeavor, an academic product that ended up reflecting a lot of what's going on in the public debate on AI mostly on governance and regulation front, but it lacks all the details that you could expect from a national strategy concerning how those goals are going to be implemented, is there a budget to comply with the activities that you are promising to achieve?

> "Our AI National Strategy feels like more an academic endeavour, an academic product that ended up reflecting a lot of what's going on in the public debate on AI mostly on governance and regulation front, but it lacks all the details that you could expect from a national strategy concerning how those goals are going to be implemented."
> CARLOS SOUZA-ITS Rio

Other important remarks from ITS Rio dealt with a general review of the strategy: "So, our major reaction to the national strategy is this feeling that we could have done a little bit better to charting our way forward on how this national strategy could be implemented. It is well-intentioned. It ended up covering important topics, but it feels like something was lacking to make sure that this national strategy will be enforced... we don't want Brazil to be left behind in the whole conversation concerning AI, and we know that national strategy is a major step to make sure that the country has a vision moving forward on this conversation."

The session ended with a panel discussion where the participants exchanged questions and comments. Among some of the most interesting our panelists asked:

How do you feel we are at the stage right now that the national strategies, they end up reflecting more on AI arms race or do you feel like they end up creating ways for a global conversation on AI?

Sebastian Schwemer on whether AI national strategies are a form of arms race or global collaboration: "I guess the European developments can be both: in a way it is a market regulation approach that forces other actors to reflect on what the EU is doing. Since the providers of AI systems would have to be compliant if they are from third countries and I think that is maybe what amicably is setting a global standard."

The discussion will continue for years to come. AI governance is yet unchartered territory in many ways and will require not only a broad societal conversation in each country but global collaboration to level the field. Only then will a true governance over AI can be developed to really avoid harm and benefit everyone.

Academic and research collaboration efforts such as 3AI are greatly needed to engage society in the much-needed conversation on the future of AI and to shed light on those issues that impact the people directly. We hoped, through this workshop, to have contributed to providing the public with tools to be aware of AI systems around them and to demand accountability when those systems start posing a risk.

This workshop was just the first of a series of events on governing artificial intelligence responsibly we will host over the coming years. We want to hear your questions and comments so we can direct them to the speakers of the next workshop or an expert in our network. Please send us your questions and topics you would like to see discussed in our workshops and activities to [aiclinic@bi.no](mailto:aiclinic@bi.no) and visit our [project site](#) where we post regular updates on these topics and future events.

3AI Team.