

European  
**Artificial Intelligence  
& Society Fund**

# Making the AI Act work

How civil society can  
ensure Europe's new  
regulation serves people &  
society

A report prepared for the European AI & Society Fund by the Center  
for AI & Digital Policy

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## Summary

The EU Artificial Intelligence Act may be the most consequential legislation for the digital economy since the GDPR. Yet the temptation to move on to the next challenge after the formal adoption of the AI Act must be resisted. Laws are not self-executing. The AI Act will require ongoing engagement by civil society. Even the trilogue phase, where the European Parliament, the Council representing member states' governments and the European Commission negotiate a final, compromise text, presents risks as gains achieved by civil society so far could be lost. Civil society will need resources for research, education, capacity-building, technical assessments, policy analysis, conference organisation, investigation, communication, and advocacy training. Commitments must occur over a period of at least three years, from the present to 2026, when the Act is likely to go into force. This report, prepared for the European AI & Society Fund by the Center for AI & Digital Policy<sup>1</sup> looks in detail at the challenges ahead and sets out a strategy to build civil society capacity for implementation of the AI Act.

- The Center for AI and Digital Policy undertook a comprehensive review of civil society's capacity for AI Act implementation, based on a review of civil society's stated goals, the results to date, and the strategic opportunities ahead.
- The AI Act may be the most consequential legislation for the digital economy since the GDPR. It sets out a risk-based framework for the regulation of AI systems in the EU market, and AI is the most rapidly advancing technology in the digital economy.
- Through outreach and education during the legislative development process, Civil Society Organisations (CSOs) helped establish important safeguards for fundamental rights and ensure transparency and accountability for AI systems.
- During the upcoming negotiation among the EU institutions – the “trilogue” – there is a risk that key provisions civil society obtained could be watered down or removed. After the trilogue, important decisions will be made about risk classification, standard-setting, and the role of national supervisory authorities. Redress and strategic litigation will emerge as key priorities to ensure effective enforcement of the Act.
- Civil Society Organisations have developed high-level policy expertise and work well together, but there are substantial concerns about the challenges ahead and whether CSOs will have sufficient resources.
- AI systems are being rapidly deployed. Engagement now is likely far more effective than efforts to assess consequences later on.

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<sup>1</sup> This report was prepared by M. Hickok, and M. Rotenberg.

## Recommendations for funders

Funding for civil society to engage on the European AI Act must be sustained through and beyond the passing of the Act to ensure the victories gained in legislation are embedded in practice. The organisations closest to the political dialogue are best equipped to determine which activities to prioritise and how best to allocate resources.

The skills required for implementation will change through the different phases of implementation and enforcement. Civil society organisations will need to be resourced to:

1. maintain an active presence during the **trilogue phase** to ensure that victories achieved in the Parliament will be preserved and that there is no effort to “water down” legal standards. High priority skills for this phase are:
  - Policy expertise
  - Campaign and outreach expertise
  - Research expertise
2. maintain close contact with EU institutions during the **implementation phase** of the AI Act, monitor technical developments and engage in other international policy developments that might influence its effectiveness. They will need to prepare to monitor the work of national supervisory authorities and to develop technical capacity to assess emerging developments in the AI field capacity to assess emerging developments in the AI field. High priority skills for this phase are:
  - Policy expertise
  - Research expertise
  - Technical expertise
3. develop capacity to pursue litigation and collective redress claims to ensure enforcement of the AIA provisions that safeguard fundamental rights and prepare to assess outcomes during the **enforcement phase**. High priority skills for this phase are:
  - Strategic litigation expertise
  - Expertise in promoting AI literacy & education
  - Research expertise
  - Technical expertise
4. have sufficient capacity to respond to **unanticipated** developments in this fast-moving field. High priority skills for this are:
  - Policy expertise
  - Technical expertise
  - Investigative expertise
  - Research expertise

Of the 9 organisations involved in the AI Act policy process that responded to our survey (see Table 1), only 1 considered itself to have the internal capacity or skills to be ready for the next stage, 5 considered themselves somewhat ready and 3 are not ready. Regarding funding, four considered themselves somewhat ready with 5 not ready. All 9 organisations considered themselves somewhat ready on coordination.

	READY	SOMEWHAT READY	NOT READY
INTERNAL CAPACITY (SKILLS)	11.11% 1	55.56% 5	33.33% 3
FUNDING	0.00% 0	44.44% 4	55.56% 5
COORDINATION	0.00% 0	100% 9	0.00% 0

Table 1: results from the survey on CSO readiness for the implementation of the AI Act.

## Background

At the 2020 State of the Union, President von der Leyen said that Europe will need to lead the way on digital technologies or 'it will have to follow the way of others who are setting these standards for us.'<sup>2</sup> Artificial intelligence will open up new worlds, she explained, 'but this world also needs rules. We want a set of rules that puts people at the centre. Algorithms must not be a black box and there must be clear rules if something goes wrong.'

Over the last several years, the EU has moved forward a comprehensive proposal for the regulation of Artificial Intelligence. Beginning with a White Paper from the European

<sup>2</sup> State of the Union Address by President von der Leyen at the European Parliament Plenary (16 Sept. 2020), [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655)

Commission,<sup>3</sup> a proposal for a harmonised regulation,<sup>4</sup> and now the trilogue negotiation among the EU institutions, the EU is on track to establish the first comprehensive regulation for Artificial Intelligence. The EU AI Act will likely establish a global standard for AI as the GDPR did for data protection. In her State of the Union speech this year, von der Leyen noted, “Our AI Act is already a blueprint for the whole world. We must now focus on adopting the rules as soon as possible and turn to implementation”.

The urgency of this undertaking is not in doubt. The impact of AI is already far-reaching, influencing decisions in education, employment, public services, migration, asylum and border control, justice, healthcare, finance, and consumer products. Concerns about the replication of bias, the displacement of workers, and the increasing concentrations of power are widespread.<sup>5</sup> The recent introduction of generative AI products, such as ChatGPT, raises challenges for creative artists, public safety, cybersecurity, and democratic institutions, as well as potentially automating many jobs.

Unlike the right-based GDPR, the EU proposal for Artificial Intelligence regulation is a risk-based framework, modelled on product safety legislation, where perceived risk is assigned across a wide range of AI uses cases.

## Key provisions of the AI Act

The AI Act regulates the use of AI systems within the internal market of the EU. It focuses on the specific use of AI systems and associated risks.<sup>6</sup> Some AI systems presenting 'unacceptable' risks, such as facial recognition for mass surveillance and biometric categorisation would be prohibited. A wide range of 'high-risk' AI systems, such as management of critical infrastructure and public administration, would be authorised, but subject to a set of requirements and obligations to gain access to the EU market. Those AI systems presenting only 'limited risk' would be subject to very light transparency obligations.

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<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - Coordinated Plan on Artificial Intelligence (COM(2018) 795 final). <https://digital-strategy.ec.europa.eu/en/library/coordinated-plan-artificial-intelligence>

<sup>4</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS COM/2021/206 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206>

<sup>5</sup> Centre for the Governance of AI, *Preliminary Survey Results: US and European Publics Overwhelmingly and Increasingly Agree That AI Needs to Be Managed Carefully* (17 April 2023), <https://www.governance.ai/post/increasing-consensus-ai-requires-careful-management>

<sup>6</sup> European Parliamentary Research Services, *Artificial Intelligence Act*, June 2023, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS\\_BRI\(2021\)698792\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf)

The AI Act requires Member States to designate one or more competent authorities, including a national supervisory authority, which would be tasked with supervising the application and implementation of the regulation. The Act would also establish a European Artificial Intelligence Board (composed of representatives from the Member States and the Commission) at EU level. National market surveillance authorities would be responsible for assessing operators' compliance with the obligations and requirements for high-risk AI systems. At this point, it remains unclear whether the focus of authority will be at the national level or at the EU level. At the national level, there are also varying approaches emerging with some member states looking to their Data Protection Authorities to take on responsibilities for compliance, while Spain has notably established the first supervisory authority specifically for AI. Administrative fines of varying scales (up to €30 million or 6 % of the total worldwide annual turnover), depending on the severity of the infringement, are set as sanctions for non-compliance with the AI Act.

## The timeline

On 14 June 2023, the Parliament adopted its position regarding the AI Act. The next stage is the negotiation among the EU institutions. Spain took over the Presidency of the Council of the European Union on 1 July 2023. The Programme for the Spanish Presidency states “The Spanish Presidency will promote the work on the Artificial Intelligence (AI) Act through a regulatory framework for Artificial Intelligence which, in collaboration with the European Commission, will provide legislative implementation guides for the development and roll-out of AI with an ethical approach.” However, it remains unclear whether the Spanish Presidency will conclude the negotiation by the end of 2023. If it does not, Belgium will take up the presidency in the first half of 2024 and Hungary in the second half of 2024. Of the three, Spain may be most likely to favour a strong rights-based framework.<sup>7</sup> Proponents remain optimistic that work on the AI Act will be completed in 2023 but nothing is certain.

According to Euractiv, the key topics for the Spanish presidency will be the AI definition, high-risk classification, list of high-risk use cases and the fundamental rights impact assessment.<sup>8</sup> This means determining the scope of application - a narrow definition of AI could limit the Act's reach - determining which applications of AI will be subject to stringent review, and the requirement that AI systems are carefully reviewed prior to deployment.

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<sup>7</sup> In our most recent *AI and Democratic Values Index*, we ranked Spain among the top nations in the world for its alignment with democratic values.

<sup>8</sup> Luca Bertuzzi, *AI Act: Spanish presidency sets out options on key topics of negotiation*, Euractiv (3 July 2023), <https://www.euractiv.com/section/artificial-intelligence/news/ai-act-spanish-presidency-sets-out-options-on-key-topics-of-negotiation/>. The European Council position is available here: <https://data.consilium.europa.eu/doc/document/ST-11320-2023-INIT/en/pdf>

## Civil society wins & priorities

Despite being massively outgunned by industry lobbyists, civil society organisations played a leading role in the development of the AI Act, drafting key provisions, meeting with members of the European Parliament, and organising grassroots campaigns to help ensure that AI will be human-centric and trustworthy.<sup>9</sup> They also worked hard to engage with the European Council which has traditionally been less accessible to civil society involvement. But key questions remain concerning the finalisation of the AI Act, the implementation of the AI Act, and even the future role of civil society.

Civil society's presence to ensure the finalisation, implementation, and oversight of the AI Act is crucial if the promise of the AI Act is to be realised. Civil society will also need new capacities to assess emerging challenges, such as Generative AI, to advance the AI Liability Directive, and to engage the Commission's forthcoming proposal to regulate AI in the workplace.

As [Annexe 2](#) illustrates, in the development of the regulation many civil society organisations set out positions on provisions in the AI Act. Among the key goals we identified were:

- Ensuring that the AI Act applies to both public-sector and private-sector AI systems
- Prohibitions on AI systems posing an unacceptable risk to fundamental rights, including biometric identification for mass surveillance, emotion recognition, biometric categorisation
- Meaningful transparency and redress mechanisms
- Mandated governance mechanisms, including independent audits and human rights impact assessments
- Safeguards for asylum seekers and refugees

Thanks to their well-coordinated and tireless policy and advocacy work, there were remarkable achievements by civil society to safeguard fundamental rights, reflected in the position adopted by the European Parliament.

The text adopted by the European Parliament also included new provisions to create opportunities for civil society longer term. For example, civil society may now participate in the designation of high-risk AI systems in future updates to the AI Act. In the standard setting process, the EP negotiating position also established a commitment to a "balanced representation of interests" and "the participation of all relevant stakeholders." Previously it was assumed that only technical standards associations would determine the standards for the EU AI Act. CSOs successfully argued that the standards-setting process requires those who are expert in human rights.

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<sup>9</sup> See annexe

The gains in the negotiation in the Parliament are substantial, but there is also a risk that the absence of civil society participation in the trilogue could see achievements undone. For example:

- New exemptions in transparency and accountability provisions could be adopted
- Exceptions for AI systems in the context of law enforcement and immigration could be expanded
- The prohibitions to protect fundamental rights could be removed or watered down
- Lobbying efforts could delay the adoption for AIA
- Standardisation bodies could exclude civil society and thereby embed industry perspectives on key AIA determinations

The absence of civil society from the trilogue process and the implementation phase would also risk exacerbating the imbalance between civil society and the private sector in the digital economy. Private sector entities have established a strong presence in Brussels, and the tech industry spends €113m a year on lobbying<sup>10</sup>. Even think tanks and non-profit associations, funded by tech companies, seek to influence outcomes. The participation of civil society organisations helps to safeguard the public interest and to maintain the legitimacy of democratic institutions. Their absence would diminish the democratic process.

## Skills, capacities & readiness

Civil society organisations have scored remarkable successes but there is clearly more work to do. In the second half of 2023 and possibly through the first half of 2024 civil society will need to maintain a strong presence in the trilogue negotiation. Then there is the two-year gap between the passing of the Act and it taking force. Already there are indications that this period will could be fraught with new challenges.

CSOs have developed substantial subject matter expertise as well as strong ties to political leaders, the media, and policy influencers. Moreover, the organisations appear to work well together, supporting one another's initiatives and routinely exchanging information. Many of these same organisations have already worked together on the implementation of the Digital Services Act and have engaged policymakers on such issues as the designation of very large platform services and methodologies for risk assessments.

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<sup>10</sup> Corporate Europe Observatory "*Lobbying power of Amazon, Google and Co. continues to grow*", (8 September 2023): <https://corporateeurope.org/en/2023/09/lobbying-power-amazon-google-and-co-continues-grow>



In assessing which skills and capacities are most relevant to each phase of the AI Act, we began with the functions set out in the earlier EAI SF report identified as necessary for ecosystems to thrive.<sup>11</sup>

- Policy expertise
- Technical expertise
- Investigative expertise
- Strategic litigation expertise
- Expertise in building public interest use cases of AI
- Campaign and outreach expertise
- Research expertise
- Expertise in promoting AI literacy & education
- Sector expertise

We then grouped these functions as high, medium and low priority and noted how priorities would shift during different phases.

In deciding how to support organisations to address these needs, the specific allocation of funding is likely determined by an extension of current funding practices – the organisations closest to the political dialogue are best equipped to determine which activities to prioritise and how best to use resources.

## The phases of the AI Act

Civil society organisations face at least four different challenges over the next few years as the AI Act goes through various phases. We recommend:

- CSOs maintain an active presence during the **trilogue** phase to ensure that victories achieved in the Parliament will be preserved and that there is no effort to “water down” legal standards
- CSOs maintain close contact with EU institutions during the **implementation** phase of the AI Act, monitor technical developments and engage in other policy developments that might influence its effectiveness. They will need to prepare to monitor the work of national supervisory authorities and to develop technical capacity to assess emerging developments in the AI field
- CSOs develop capacity to pursue litigation and collective redress claims to test AIA provisions that safeguard fundamental rights and prepare to assess outcomes during the **enforcement phase**

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<sup>11</sup> European AI Fund, *How to Fund Public Interest Work around AI in Europe?* (December 2021), <https://europeanai fund.org/wp-content/uploads/2021/12/How-to-fund-public-interest-work-around-AI-in-Europe-updated.pdf>

- CSOs will require sufficient capacity to respond nimbly to **unanticipated** developments in this fast moving field.

### The trilogue negotiation phase (ongoing-2024)

Of the challenges ahead, the trilogue negotiations may be the most familiar to civil society organisations. CSOs will seek to preserve the victories achieved and look for opportunities to fix outstanding problems such as the unregulated use of AI in the immigration context. In a recent interview, MEP Tudorache<sup>12</sup> highlighted the strong sense of political alignment among the political institutions.<sup>13</sup> However, he expected the following areas to surface during the trilogue:

- AI use for biometric surveillance in public spaces. Parliament introduced prohibitions that limit law enforcement's use, which are likely to be objected to by member state governments in council.
- Definition of high-risk AI. Parliament allows for a broader definition of use cases for high-risk AI, while the council would prefer to narrow that definition.
- AI Governance. The three will need to discuss, among other things, national silos in terms of implementation and enforcement, as well as levels of coordination.

Other areas of disagreement, he noted, include generative AI regulation and assessments for high-risk applications after deployment.

Continued coordination and collaboration will be essential throughout this process. Already 150 organisations have signed onto a joint position<sup>14</sup> to

1. Empower affected people with a framework of accountability, transparency, accessibility and redress
2. Draw limits on harmful and discriminatory surveillance by national security, law enforcement and migration authorities
3. Push back on Big Tech lobbying: remove loopholes that undermine the regulation

### Skills required for the trilogue negotiation phase

High priority	Policy expertise Campaign and outreach expertise Research expertise
Medium priority	Technical expertise Investigative expertise Sector expertise
Low priority	Strategic litigation expertise Expertise in building public interest use cases of AI Expertise in promoting AI literacy & education

<sup>12</sup> MEP Tudorache is the co-rapporteur for EU AIA and chaired the Special Committee on Artificial Intelligence in the Digital Age

<sup>13</sup> *Analyzing the European Union AI Act: What Works, What Needs Improvement*, Stanford University Human-Centered Artificial Intelligence (21 July 2023), <https://hai.stanford.edu/news/analyzing-european-union-ai-act-what-works-what-needs-improvement>

<sup>14</sup> EU Trilogues: The AI Act must protect people's rights, EDRI <https://edri.org/wp-content/uploads/2023/07/Civil-society-AI-Act-trilogues-statement.pdf>

## The implementation phase (2024-2026)

Following finalisation of the AI Act, there will be a two-year period between enactment and enforcement. Typically, this period provides an opportunity for regulated industries to prepare for compliance and for agencies to provide clarifying guidance. But the AI issue is moving so rapidly and tech leaders are so eager to write the rules of the road that here is a real risk that a government-industry agreement, outside the formal processes for democratic decision-making, will take hold. Groups such as BEUC have already expressed concerns about a joint EU-US AI voluntary code of conduct and an 'AI Pact' for Europe.<sup>15</sup> Writing to Commissioner Breton, BEUC sought assurance that the EU-US AI code negotiation would not be launched before the finalisation of the AI Act. BEUC also sought assurances that stronger enforcement and civil society participation would be vital to any arrangement proposed.

During the implementation period, civil society organisations will need to maintain a strong presence with EU institutions, ensuring that key victories in the Parliament are not lost. But groups must also be prepared to engage in policy debates outside EU institutions that will influence the implementation of the AI Act. For example, BEUC's concerns about voluntary codes of conduct are already playing out at the EU-US Trade and Technology Council and the G7 Hiroshima Process, discussed below. Private companies typically with trade ministries are advancing voluntary agreements that minimise rights-based safeguards.

Global coordination among CSOs will be necessary to help ensure that the AI Act remains on course. The annexe on Strategic Opportunities lists the key areas for civil society organisations to engage.

### Skills required for the implementation phase

High priority	Policy expertise Research expertise Technical expertise ↑
Medium priority	Campaign and outreach expertise ↓ Strategic litigation expertise ↑ Investigative expertise Sector expertise
Low priority	Expertise in building public interest use cases of AI Expertise in promoting AI literacy & education

## The enforcement phase (2026 and beyond)

Significant questions remain about the application of the AI Act. To what extent will the Member States maintain authority to initiate enforcement? Will individuals have collective redress opportunities? Even on matters such as standard setting as well as the designation of new high-risk systems critical questions will arise about the role and authority of civil society organisations and independent experts.

<sup>15</sup> BEUC, *EU-US AI voluntary code of conduct and an 'AI Pact' for Europe* (2 June 2023), [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-071\\_EU-US\\_AI\\_voluntary\\_code\\_of\\_conduct\\_and\\_an\\_AI\\_Pact\\_%20for\\_Europe.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-071_EU-US_AI_voluntary_code_of_conduct_and_an_AI_Pact_%20for_Europe.pdf)

The recent review of the GDPR also makes clear the need for civil society to focus on enforcement mechanisms and the proposed coordination among supervisory authorities at both the national and EU level. The GDPR's coordination mechanisms often created bottlenecks that prevented effective enforcement. Civil society should be prepared to bring test cases and monitor enforcement on day one. Civil society must also be prepared to engage in the meetings of standard-setting organisations as well as the ongoing assessment of high-risk systems. Clear wins will be established when civil society is able to invoke the AI Act to dramatically reform or simply curtail the deployment of a controversial AI system. Civil society organisations have managed similar victories with the GDPR – Max Schrems cases being the most notable. Concrete outcomes will give meaning to AI Act and inspire others.

Skills required for the enforcement phase:

High priority	Strategic litigation expertise ↑ Expertise in promoting AI literacy & education ↑ Research expertise Technical expertise
Medium priority	Campaign and outreach expertise Investigative expertise Policy expertise ↓ Sector expertise
Low priority	Expertise in building public interest use cases of AI

**The unanticipated**

AI is a rapidly evolving technology. When the EU launched work on a regulation for Artificial Intelligence in 2020, Generative Pretrained Transformers (GPT) were familiar to only specialists in the field of AI research. By late 2022, ChatGPT had become the most rapidly adopted consumer product in history. Fortunately, the Parliament, with the assistance of civil society, was able to make several changes in its draft proposal for the AI Act in the late stages to address these challenges. But the message was clear: AI policy is not a “set it and forget it” process. Civil society will need to be on the front lines, and have sufficient technical expertise, to provide meaningful direction as new challenges emerge.

Skills required for the unanticipated:

High priority	Policy expertise Technical expertise Investigative expertise Research expertise
Medium priority	Sector expertise Strategic litigation expertise
Low priority	Expertise in building public interest use cases of AI Campaign and outreach expertise Expertise in promoting AI literacy & education

## Key strategies

There are several cross-cutting strategies to pursue to ensure meaningful civil society engagement.

**Sharpening the debate over key provisions**, such as the ban on remote biometric identification. Political processes tend toward compromise and that would be the anticipated outcome of the trilogue process. It remains the unique responsibility of human rights defenders to make clear that certain provisions are non-negotiable. Former UN High Commissioner Michelle Bachelet called for a moratorium on the sale and use of AI that poses a serious risk to human rights until adequate safeguards are put in place, and she was right. The need for red lines is central in the negotiation and implementation of the AI Act. As key decisions loom regarding the designation of systems as prohibited or high-risk, civil society must continue to make the case for the prohibition of AI systems that violate fundamental rights, lack scientific rigor, or could exacerbate discrimination and oppression.

**Engaging the public through political channels**. Civil society groups are uniquely positioned to lead public campaigns through political channels and to strengthen democratic institutions. For example, the ReclaimYourFace citizen initiative, coordinated by EDRi with the support of other CSOs, provided the foundation for a key provision in the AI Act, and was endorsed by the co-rapporteur MEP Brando Benifei. Civil society should continue outreach campaigns through political channels that strengthen democratic engagement and promote transparency of the political process.

**Developing New Leaders**. Even as CSOs are to be commended for their work to date, it is important to support new voices that bring broader human rights and social justice perspectives to the table. This requires a willingness to continue to be open and inclusive about organising strategies as well as actively recognising and supporting emerging leaders. In the United States, for example, the youth-led digital rights organisation Encode Justice has emerged as a powerful voice in AI policy debates, particularly when international organisations, such as the OECD and UNESCO, are seeking to engage youth leaders in new programmes. EU funders might consider specifically funding youth-led organisations, such as Encode Justice or an EU counterpart, to strengthen youth-based advocacy on the AIA.

## Related Developments

Even as work is underway with the AI Act, it is important to consider several related developments that will impact the strategy of civil society and the decisions of policymakers.

### **The AI Liability Directive and AI in the workplace**

Work is already underway to establish a Directive for AI liability.<sup>16</sup> As BEUC explains, 'A key question is who to hold responsible if something goes wrong and a consumer suffers damages from an AI system. For example, what happens if an AI system used by an insurance company refuses to grant an insurance policy because it has used biased or incorrect data?'<sup>17</sup> BEUC's answer is clear: 'It is essential that the EU's product liability rules establish a clear and enforceable legal framework that gives consumers access to justice.'

It also now appears that the next Commission will take on new work concerning AI in the workplace. According to Euractiv, the European Commission is laying the groundwork for a legislative initiative to regulate the use of algorithms for managing, monitoring, and recruiting workers.<sup>18</sup>

The study aims to assess the potential impact of AI-powered tools in the work environment, notably by investigating how widely algorithmic management technologies are adopted, the opportunities and challenges for employers and employees, the current legal framework at the EU and national level and whether there are regulatory gaps to be addressed.

Civil society must again be present in this process to ensure accountability and democratic legitimacy.

### **The Council of Europe AI Treaty**

A few of the CSOs involved with the AI Act are also engaged in Strasbourg at the Council of Europe Committee on AI on the development of the first global AI treaty. The COE AI Treaty holds great promise for defenders of fundamental rights, as the treaty follows from the Council of Europe's mandate to protect fundamental rights, promote the rule of law, and protect democratic institutions. But the European Commission has slowed work on the AI treaty, contending that it is necessary to first complete the AI Act. Non-member states have also persuaded the COE Secretariat to move the drafting sessions behind closed doors and exclude civil society. Key questions, such as whether the AI Treaty will cover private-sector AI systems as originally intended, remain unresolved.

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<sup>16</sup> European Parliamentary Research Service, Artificial intelligence liability directive , 2 Feb. 2023, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739342/EPRS\\_BRI\(2023\)739342\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739342/EPRS_BRI(2023)739342_EN.pdf)

<sup>17</sup> BEUC, *Proposal for an AI Liability Directive*, 2 May , 2023, <https://www.beuc.eu/position-papers/proposal-ai-liability-directive>

<sup>18</sup> Luca Bertuzzi, *EU Commission mulls rules on algorithmic management in workplace for next mandate*, Euractiv (19 July 2023), <https://www.euractiv.com/section/artificial-intelligence/news/eu-commission-mulls-rules-on-algorithmic-management-in-workplace-for-next-mandate/>

Civil society groups are aware of these developments. Their continued presence in the COE process is vital to ensure a favourable outcome.

### **Implementation of the UNESCO recommendation on AI ethics**

In 2021, 193 nations endorsed the UNESCO Recommendation on AI Ethics, the first comprehensive policy framework for AI. The UNESCO Recommendation established ethical impact assessments as a cornerstone of AI accountability, promoted AI readiness (particularly for the Global Majority), and set out prohibitions for certain controversial AI deployments, such as social scoring and mass surveillance. The UNESCO AI Recommendation was a milestone in the development of AI policy, and with work underway to promote implementation as well as the renewed engagement of the US at UNESCO, the significance of the UNESCO AI Recommendation will only increase.

For civil society groups pursuing the AI Act, the UNESCO Recommendation remains a useful source of positive norms for the governance of AI that could be incorporated in statements and organising efforts going forward.

### **The G7 AI Hiroshima Process**

Artificial Intelligence policy dominated the recent meeting of G7 leaders at Hiroshima.<sup>19</sup> G7 leaders stressed the need for greater oversight of AI developments and noted the recent rapid proliferation of AI technologies and the lack of certainty over their impacts. G7 leaders committed to developing global standards for AI.

The G7 Hiroshima Process is double-edged. The prospect of developing global norms for the governance of AI aligned with democratic values should be applauded. But democratic values also require transparency and the participation of civil society. EU civil society organisations should monitor developments with the G7, note positive developments, and also press for civil society participation. On this front, some progress was made recently when AccessNow was invited to join the G7 Data Protection officials advising the G7 ministers.

### **Positive developments in the United States**

Although the United States is generally seen as an opponent of digital regulation, much has changed in the last few years. President Biden has called for AI legislation, met with civil society leaders, and specifically stated that tech companies should not release AI products that are not safe. Both the EU and US lawmakers understand the importance of alignment between the two regions in governing AI. The rapporteurs of the EU AI Act published a letter addressed to US lawmakers urging EU-US collaboration on AI. The EU now has offices in both Washington D.C. and San Francisco.

EU civil society organisations should continue to monitor developments in the United States and call attention to these favourable developments. Civil society groups should also view sceptically the claims of tech CEOs who claim to speak on behalf of the US government. Support for progress in the US on AI policy will also strengthen efforts within the EU.

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<sup>19</sup> CAIDP, *G7 and Artificial Intelligence*, <https://www.caidp.org/resources/g7-japan-2023/>

## Conclusion

In her forthcoming book *Digital Empires: The Global Battle to Regulate Technology*, Professor Anu Bradford observes that China, the European Union, and the United States are in a competition for the regulation of the global digital economy. China is seeking to extend state power, the United States is seeking to extend private power, while the EU is seeking to extend rights-based frameworks. Although it remains unclear who will win this battle, Bradford expresses a preference for the EU approach as the one that will sustain democratic institutions. She notes also that the United States is likely to follow the lead of the EU as the global stakes become clear. Indeed, as described above, that process is already underway.

At the heart of the EU effort to extend the right-based approach to the digital economy will be civil society. It is the passion of those committed to safeguarding fundamental rights that is the best hope for democratic societies in the years ahead. Tech industry lobbying and corporate philanthropy are squeezing out vital independent voices that advocate for the needs of people and society. It is essential that these groups are resourced effectively so that the victories gained in legislation thus far can be enacted in practice.



## Annexes

### **Annexe I: CSOs - Strategic Opportunities**

A summary table of Strategic Opportunities for the AI Act, including Issue, Relevant Article, Strategic Opportunity, and Recommended Action.

### **Annexe II: CSOs – Mission and Objectives for the EU AI Act**

A summary table of Names, URLs, Mission and stated objectives for the EU AI Act of 23 leading Civil Society Organisations. Included also are a list of Statements on the EU AI Act endorsed by various CSOs, a list of Campaigns organised by CSOs, and a Timeline.

Annexe II can be [downloaded here](#).

### **Annexe III: CSOs - Recommendations for the EU AI Act**

A summary table of the Recommendations and Concerns concerning the EU AI Act, 24 in total, of the 23 leading CSOs.

Annexe III can be [downloaded here](#).

## Annexe I

### CSO Strategic Opportunities in the European AI Act

ACTIONS: Research-Investigation / Policy Analysis / Agenda-setting / Education / Community building / Governance involvement / Advocacy-Challenge / Redress / Litigate / Building alternative futures

All articles referenced below can be found in:

[Amendments adopted by the European Parliament](#)

[General Approach adopted by the Council of the European Union](#)

Issue	Relevant Article	Strategic Opportunity	Recommended Action (Function)
Loopholes for high-risk AI systems due to self-assessment of "significant" risk	EP introduces: Amendment 61 - Recital 32 a (new)  Council introduces: Amendment (Article 6)	Accountability	<b>Policy analysis</b>  <b>Investigation</b> - Monitor compliance / mis-categorisation
Loopholes for AI systems already in the market when AIA comes into effect	EP Amendment 688 -Article 83	Accountability  EC draft exempts until significant change to design/purpose. EP proposes compliance in 2 years after AIA enter into force (if system used by public authority).	<b>Support EP position</b> in Trilogue  <b>Investigation</b> - existing high risk systems used by private actors
EU AI Office (chaired by Commission) shall consult relevant stakeholders.	EP introduces: Amendment 703 - Article 84	Governance	<b>Support EP position</b> in Trilogue  <b>Agenda-setting</b>  Advocacy during implementation
Commission shall submit appropriate proposals to amend AIA after it is in effect.	EP Amendment 704 -Article 84	To take into account developments in technology, the effect of AI systems on health and safety, fundamental rights, environment, equality, and	<b>Support EP position</b> in Trilogue  <b>Engage w/ EU AI Office &amp; Commission</b> during implementation

		accessibility for persons with disabilities, democracy and rule of law	
Private right of action	EP introduces: Amendment 133 - Recital 84	Redress  To contest harmful AI systems	<b>Support EP position</b> in Trilogue  <b>Develop litigation strategy</b>  <b>Advocacy:</b> Ensure <u>future AI Liability Directive</u> provides meaningful rights
Collective right of action	Currently there is no mechanism by which CSOs / those affected by a prohibited use can collectively lodge a complaint, engage in investigation	Accountability  Redress  Oversight	<b>Advocacy:</b> Ensure AI AIA is listed in Collective Redress Directive  <b>Develop litigation strategy</b>  <b>Public Education</b>  <b>Community building</b>
National supervisory authority & market surveillance authorities will be designated to ensure implementation	Recital 77, 83, 84; Article 59. Currently there is no mechanism by which CSOs can engage.	Governance  Assessment	<b>Reporting</b>  <b>Investigation</b>
All providers & public deployers of high-risk AI systems self-assess conformity & submit details of AI system in a publicly available EU database	EP Amendment 770 - ANNEX VIII - SECTION B	Transparency  Accountability	<b>Monitor</b> compliance with obligations
Proposed ban on use > development and use of remote biometric	Draft only includes social scoring by public authorities and ban on real-time	Enforcement  Fundamental rights	<b>Monitor</b> if the prohibitions are followed by public & private actors

identification (RBI) >Social scoring >Predictive policing >Biometric categorisation > creation of biometric databases by scraping online photos	use of RBI with significant exemptions. EP Amendment 41 - Recital 18  Expanded bans are included in EP Amendment 50 - Recital 26		Advocacy campaigns  <b>Strategic litigation</b>
Proposed ban on use of emotion recognition systems in law enforcement, border management, education & workplace	EP Amendment 50 - Recital 26	Accountability  Fundamental rights	<b>Maintain EP position</b>  <b>Public Education</b>  <b>Advocacy:</b> to expand ban to other domains
Obligation for deployers to conduct ex-ante fundamental rights impact assessment (FRIA)	EP introduces: Amendment 92 - Recital 58; Amendment 413 - Article 29	Accountability  Fundamental Rights  Transparency	<b>Public education</b>  <b>Research</b> - CSOs can provide framework / rules on how to conduct this assessment
Obligation for public authorities to public results of fundamental rights impact assessment (FRIA)	EP introduces: Amendment 92 - Recital 58	Fundamental rights  Accountability	<b>Investigation</b> - Monitor if authorities are following mandate  <b>Investigation</b> - Verify which authority deploys the system
Exclusion of AI systems used in national security	Council introduces (Article 2)	Fundamental Rights  Justice and equity  Accountability	<b>Investigation</b> - Monitor the use of AI systems in national security with impact on rights and rule of law
Transparency & Accountability exceptions for AI	EP Amendment 641 - Article 70	Accountability  Fundamental Rights	<b>Investigation</b> - Monitor how authorities use

systems used in >law enforcement >border control >migration management		Transparency	discriminatory systems  <b>Monitor</b> the use of risk assessment & profiling systems  <b>Investigate</b> discriminatory results of these systems  <b>Advocacy:</b> to expand transparency & accountability obligations in these domains
Rights of people with disabilities	Article 69  EP Amendment 216 - Article 5	Justice and equity	<b>Investigation</b> - Monitor compliance with accessibility and inclusion requirements
Loopholes for large-scale IT systems ((i.e. Frontex, Eurodac, the Schengen Information System, ETIAS)	EC draft exempts. EP proposes compliance 4 years after AIA enter into force. Amendment 686 - Article 83	Accountability  Transparency	<b>Support EP position</b> in Trilogue  <b>Investigation</b> - Monitor compliance
Obligation for providers of General Purpose AI (GPAI) Systems & foundation models	Council introduces: Article 4  EP introduces: Amendment 99-102 -Recital 60 e (new); Amendment 399 - Article 28 b (new); Amendment 437 - Article 40; Amendment 771 - Annex VIII		<b>Investigation</b> - Monitor compliance with obligations (technical, risk management, governance, registration)
"balanced representation of interests" in the	EP Amendment 103 - Recital 61	Public safety Accountability	<b>Policy Analysis:</b> Technical expertise  <b>Research</b>

development of standards			<b>Governance</b>
Sustainability concerns	Article 69; EP Amendment 516 -Article 54; Amendment 83 - Recital 46; Amendment 213 - Article 4		<b>Research:</b> impact of AI systems on environment
Notification / Explanations to individuals interacting or being subject to high-risk AI systems	Not included in AIA	Transparency	<b>Advocacy:</b> Engage with Commission & EP during Trilogue to include