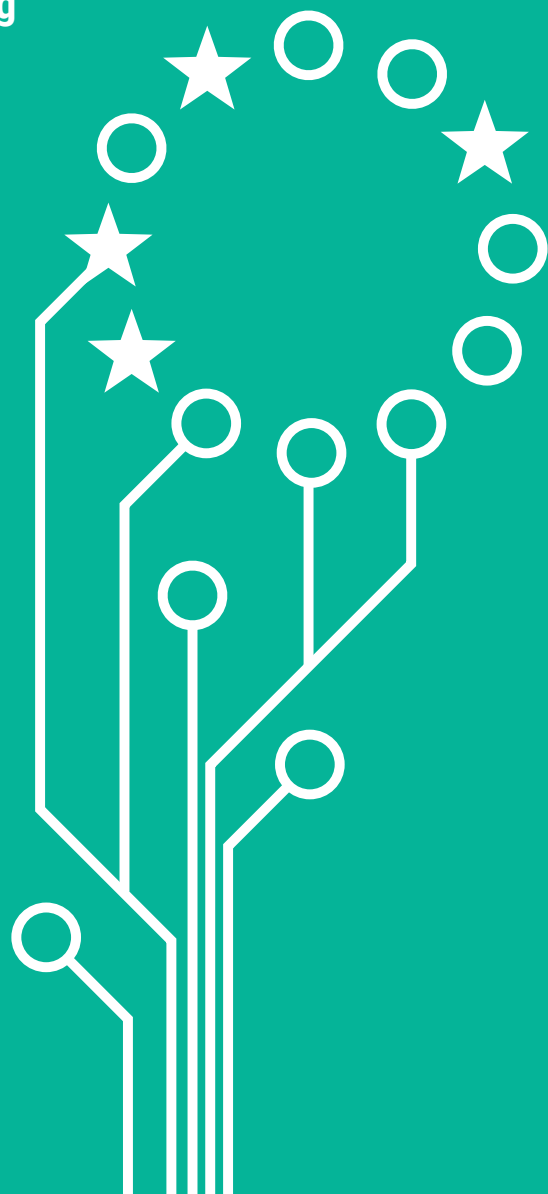


THE LOBBYING GHOST IN THE MACHINE

Big Tech's covert defanging
of Europe's AI Act



Corporate
Europe
Observatory



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Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the disproportionate influence that corporations and their lobbyists exert over EU policy-making. CEO works in close alliance with public interest groups and social movements in and outside of Europe to develop alternatives to the dominance of corporate power.

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THE LOBBYING GHOST IN THE MACHINE

Big Tech's covert defanging
of Europe's AI Act

Documents obtained by Corporate Europe Observatory reveal how the EU's pioneering attempt to regulate artificial intelligence has faced intense lobbying from US tech companies. Via years of direct pressure, covert groups, tech-funded experts – and a last-ditch push by the US Government – tech companies have reduced safety obligations, sidelined human rights and anti-discrimination concerns, and secured regulatory carve-outs for some of their key AI products. Will some of the remaining fundamental rights protections be further watered down during the final trilogue negotiations?

The European Union's push to regulate has faced intense corporate lobbying attempts at every stage of the policy-making process.

The words artificial intelligence (AI) still conjure up sci-fi images of futuristic autonomous and self-aware robots but in fact we have already grown well used to some forms of AI in the background of our everyday lives, from the algorithms that decides what we see on our social media feeds, to surveillance ads on the basis of our online behaviour. But AI is now starting to be applied in almost all sectors of the economy – from AI-powered personal shoppers and teaching assistants, to self-driving cars and AI-operated medical devices. AI has far reaching implications for society but regulatory systems for this brave new world don't yet exist.

In April 2021 EU Commissioners Margarethe Vestager and Thierry Breton presented a [proposal](#) for a European legal framework on Artificial Intelligence, or AI. It was celebrated as the first global attempt to establish a regulatory scheme for AI – a technology that, as the Commission [observed](#), would “have an enormous impact on the way people live and work in the coming decades”.

However, AI is increasingly central to the business models of large tech companies such as Google, Microsoft, and Meta (formerly Facebook). Google, in private meetings with the Commission, described itself as an “AI first company” with “AI driving all their products.” And so, unsurprisingly, the European Union's push to regulate has faced intense corporate lobbying attempts at every stage of the policy-making process.

The Commission proposed a risk-based approach to regulating AI (see Figure 1). This means that, as the risk increases, AI systems have to conform to stricter rules. For example, applications of AI involving say, chat bots, might be classed as “limited risk”. At the highest “unacceptable” risk level applications would be banned completely, for instance social scoring, eg scoring and rewarding the trustworthiness of people based on their online and offline behaviour or other personal data.

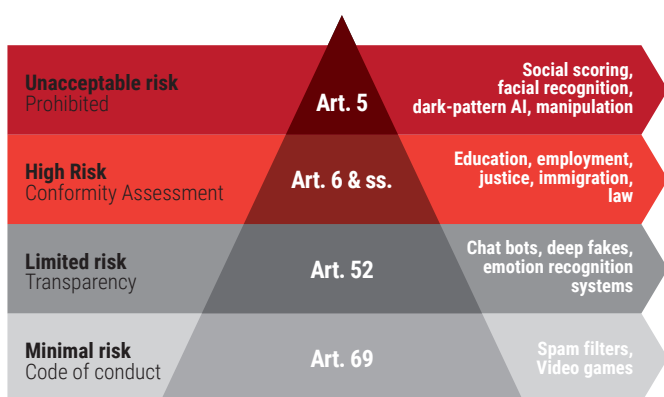


Figure 1: The AI Act's risk-based approach. Source: Ada Lovelace Institute, <https://www.adalovelaceinstitute.org/resource/eu-ai-act-explainer/>

Other applications, such as biometric identification, or using AI in critical infrastructure, education, trials, law enforcement and migration, would be considered “high risk” under the Commission proposal. These systems – estimated to be 10-15 per cent of all AI – would need to go through a “conformity assessment” to ensure they are “trustworthy” before they could be put on the market. Most systems would be estimated to have limited or minimal risk.

Corporate Europe Observatory has previously [highlighted](#) Big Tech’s in the EU. Previous research has also shown how Big Tech engaged the European Commission during the initial drafting of the AI Act, lobbying for [self-assessments](#) of high-risk AI systems and exerting influence through a high-level [expert group](#) dominated by industry representatives.

This report dives into what happened after the European Commission published its proposal, as the debate (and the lobbying) moved to the European Parliament and the Council.

What is already clear is that the discussion on general purpose AI will be pushed into the future – a win for Big Tech.

Documents obtained by Corporate Europe Observatory show how tech companies, particularly from the US, sought to reduce requirements for high risk AI systems and limit the scope of the regulation. In particular Big Tech lobbyists sought to exclude the newly introduced concept of ‘general purpose’ AI systems from regulation (where AI systems – usually produced by Silicon Valley giants – are used or incorporated into a variety of uses by other companies; these same tech giants want the regulations not to apply to the originator of the tech, but only to the companies deploying them in various ways).

The AI Act is now nearing its final stages, which are the [secretive](#) trilogue negotiations, which tend to [benefit](#) well-connected and well-funded lobbyists. As the Council, Parliament, and Commission, set out to reach agreements on EU policy proposals, the stakes for this world-first attempt to regulate AI remain high.

While MEPs are pushing for stronger fundamental rights protections in the AI Act, the Council introduced several concerning carve-outs for law enforcement and security. It is highly likely that the discussion on general purpose AI will be pushed into the future.

This analysis is based on documents obtained by Corporate Europe Observatory via freedom of information (FOI) requests from the European Commission and the Council of Europe through the Permanent Representation of Sweden to the European Union. It further uses publicly available documents and data from the European Parliament, scraped with support from [Parltrack](#), and the Council. Corporate Europe Observatory conducted interviews with about a dozen Brussels insiders and experts working on the AI Act.

WHAT IS AI?

It is surprisingly complicated to determine exactly what artificial intelligence is, and it remains a hotly contested topic in the regulatory debate, as the definition will determine which systems will be regulated.

Most technologies that we refer to as AI are a version of machine learning. Whereas traditional software is programmed to perform a task, AI is programmed to *learn to perform a task*.

Simply put, the machine – a computer, software programme, or robot – is trained to process large quantities of data. It uses complicated “brute force” mathematics to find mathematical correlations, and thus figure out how to get to the required results. The machine defines internal rules and steps to follow, and when a new input is received, it then follows these steps to make a decision.

Some of this is built on advanced technology, such as “deep learning” and multi-layer neural networks; however, other forms of AI are not built on machine learning, but more basic algorithms in automated decision-making systems.

While there are many potentially positive applications for AI, there is currently no real regulation or accountability. Big Tech companies deploying AI have been keen to circumvent a discussion of potential negative social impacts, such as fostering discrimination or invasive surveillance (see Box 1), and to head off regulatory attempts to ameliorate such impacts.



Box 1**Risky business:
the problem with AI**

With its wide variety of applications, AI is not just a technology, but also a mechanism for organising society. It is an inherently political tool that affects the distribution of power in society, and the [EU Fundamental Rights Agency](#) and [UN High Commissioner for Human Rights](#) are among the many who have noted AI's potential to exacerbate inequalities.

This is where there can be serious risks in the application of AI systems to almost all sectors of society, but particularly to the most marginalised. One immediate issue is that deployed AI systems often [do not work](#). Some have minor consequences, like Facebook algorithms mistakenly [censoring](#) pictures of onions for “nudity” and “sexually suggestive” content; others can have more serious risks, such as a ‘health bot’ [providing](#) flawed medical advice. Meanwhile the benefits can be over-hyped: despite inflated rhetoric, in reality hundreds of AI tools [developed](#) to deal with the COVID-19 pandemic had little, if any, effect.

One of the central problems with AI systems is that if the underlying data is flawed, or merely reflects existing social prejudices and problems, it will skew the results the AI comes up with.

One key vulnerability is the enormous amounts of human labour (especially in the [global south](#) but increasingly also the [global north](#)) going into AI development and maintenance. Critics have called this phenomenon of overselling automation and relying instead on humans as “[fauxtomation](#)” or “[Potemkin AI](#)”. In other words, the reason AI systems misfire may be that they were developed by people with no training or specialist knowledge in its field.

But one of the central problems with AI systems is that if the underlying data is flawed, or merely reflects existing social prejudices and problems, it will skew the results the AI comes up with. And, of course, AI is unable to make moral decisions, so it can produce results that reflect human prejudice – for example around race, age, gender, disability, class, sexuality – based on the data that it has been fed.

Another issue, as any student taking an introductory course in statistics is taught, is that correlation does not equal causation. Imagine an AI system deployed to assess credit scores for individuals. The system may “learn” to produce its assessments. Using the real-world data it was trained on, the AI finds a correlation between people with a certain skin colour having lower credit sources. It therefore concludes applicants with that skin colour are less creditworthy, and future applicants with that skin colour must therefore be assigned a lower credit rating too. The AI does not ask if this is fair, or if there is bias in the initial data – it simply learns to perform its task.

Professor Nancy Doyle [explained](#) the risks inherent in the technology:

All big, predictive data sets rely on the notion of the statistical norm, what is known as the bell curve, from which we draw predictive correlations from averages. These are limited to serving the needs of around 67 per cent of people who will score near average on whichever measurement taken and therefore the further away from any 'norm' you are, the less likely the AI will meet your need. Who decides what norms are taken, the extent to which your 'category' is present on the internet which feeds data into the AI learning, will determine your inclusion in an AI dominated world.

This is how AI systems can work to the detriment of marginalised groups, and effects are playing out in the real world. From credit scores to employee management, algorithms can [trap](#) people in poverty or enable intrusive worker surveillance. Facial recognition technologies process and categorise people based on sensitive biometric data, such as gender or race.

Some areas are not even on the radar of discussion, such as [digital discrimination against disability](#). For example, job applicants may find that AI face and voice recognition software may automatically throw out candidates with speech impairments, neurological disorders, or facial disfigurement. Anyone who needs special accommodations to perform a role – a right hard won by disability rights activists – could be screened out of employment without even realising they have fallen prey to an algorithm whose code is a commercial secret.

Biased AI systems have already [discriminated against job seekers](#) and [university applicants](#), and [declined access to key loans](#) and public services. System Risico Indicatie, or SyRI, was an automated legal instrument used by the Dutch Government

to detect various forms of fraud, including social benefits, allowances, and taxes fraud. It was found in [breach](#) of the European Convention on Human Rights after it falsely accused families, many with an immigrant background, of social benefits fraud.

There are particular concerns in the fields of policing and military defence, where AI can enhance pre-existing discriminatory law enforcement practices. At least [75 of 176 countries](#) already use AI for security purposes such as border management. The EU has spent [over €340 million](#) on AI research for border control purposes and military AI is [one of the funding priorities](#) of the European Defence Fund. There are real concerns over the disparate impact of police and military AI applications and data surveillance on populations that are already heavily surveilled and discriminated against in Europe – whether refugees, irregular migrants, Black people, Roma and traveller communities, or other ethnic minorities.

Algorithms can trap people in poverty or enable intrusive worker surveillance. Facial recognition technologies process and categorise people based on sensitive biometric data, such as gender or race.

THE QUESTION OF GENERAL PURPOSE AI

From the establishment of an expert group in 2018 to the eventual publication of the AI Act in 2021, the possibility of abuse consistently informed the Commission's approach to regulating AI.

The logic underpinning a risk-based approach was that the more sensitive the application, the more requirements an AI system would need to meet before going on the European market. Few disagreed with this, although [over a hundred NGOs](#) argued that the prohibitions and obligations for high-risk systems did not in fact go far enough to protect fundamental rights.

But over the course of 2021 and 2022, an important question popped up: what to do about AI systems with an indeterminate end use – systems that can be used for a wide variety of applications, both low and high-risk? How should they be regulated?

These “general purpose AI” systems are often large language models that can serve as the basis for more specialised AI systems with a specific application, such as chatbots, decision assistants, or translation services. Some models can process or produce audio, video, text, and physical data, at times in [one query](#). Other general purpose AI systems could include the “no code AI development platforms”, like Google AutoML or Amazon Sagemaker, which are trained by simply uploading data and setting indicators.

Because of the scale and amounts of memory, data and hardware required, general purpose AI systems are primarily developed by American tech giants such as [Google](#) and [Microsoft](#) or close affiliates, as well as some Chinese companies. DeepMind, [acquired](#) by Google in 2014, launched an AI that can perform over 600 tasks. OpenAI, in which Microsoft is both the [largest investor](#) and [service provider](#), developed the AI art generator

2018 (April)	Commission on communication “launching a European initiative on AI”.
2018 (June)	High-level expert group on AI established by the Commission.
2019 (April)	EU expert group presents ‘Ethical guidelines for trustworthy AI’.
2019 (June)	Expert group presents policy and investment recommendations for AI.
2020 (Feb)	Five options for regulating AI laid out in Commission White Paper on AI.
2021 (April)	Commission publishes proposal for AI Act.
2021 (Nov)	First Council compromise text includes introduces general purpose AI.
2021 (Dec)	Brando Benifei (S&D, IMCO) and Dragoş Tudorache (Renew, LIBE) appointed as Parliament rapporteurs on the AI Act.
2022 (June)	Thousands of amendments received by Parliament deadline.
2022 (Dec)	The Council of the EU adopts a common position on the AI Act.
2023 (Feb)	Negotiations in the Parliament continue.

General purpose AI are trained on societal data – allegedly in massive violation of copyright laws – and if these data have bias or discrimination in them, structural issues risk being baked into the systems.

Dall-E, and the recently launched [ChatGPT](#), which uses machine learning to generate human-like responses to text inputs. Microsoft has [announced](#) it is building ChatGPT into all its Office products. And although monetisation of general purpose AI is still in its infancy, some [business models](#) around these emerging technologies are already being implemented by tech companies.

Many of the general purpose AI models struggle with similar issues as the AI systems with a specific purpose. The systems are often complex and have behaviour that can surprise even their own developers. General purpose AI are trained on societal data – allegedly in [massive violation](#) of copyright laws – and if these data have bias or discrimination in them, structural issues risk being baked into the systems.

Researchers have also demonstrated risks specific to large language models. Some examples are producing [extremist](#) content, or [sexualised](#) images of non-white women; revealing [personal information](#) scraped from the internet; and giving completely fake, yet convincing [scientific advice](#) – which Google [said](#) was chatbots “hallucinating.” Language models can fail to recognise [negation](#), such as giving people flawed advice for example in the field of medicine, because they do not always understand this was what the seeker of advice should *not* do. And the ‘quick fixes’ employed to tackle these problems are both deeply problematic and unlikely to solve them: for example, OpenAI paid [Kenyan workers](#) less than \$2 an hour to make ChatGPT “less toxic”.



REGULATING GENERAL PURPOSE AI

General purpose AI was initially kept out of the draft regulation proposed by the Commission. Council meeting minutes, obtained by CEO, revealed that the Commission had initially not thought it necessary to include a definition for general purpose AI systems “as only high-risk use is regulated.” Critics [argued](#) that that this exclusion would pose “risks to health, safety and fundamental rights.”

In 2022, as the Council discussed the draft AI Act, the French presidency of the Council [proposed](#) requirements for general purpose systems. The Commission now supported the need for a definition and inclusion of the concept. The proposed rules would be less stringent than those for high-risk systems, and based on “internal control” – but they would be conformity assessments that providers of general purpose AI systems would have to conduct, nonetheless.

Dp. 3 AI-akten (AIA) – kompromissförslag artikel 3 1b, 4a-4c, bilaga VI 3 och 4 samt skäl 12a

ORDF meddelade att de inte hunnit ta fram ett kompromissförslag för alla skäl till dagens möte som planerat och avser återkomma längre fram. [REDACTED] önskade förklaring till de bakomliggande orsakerna till justeringarna avseende AI-system för allmänna ändamål. [REDACTED] välkomnade att det tydliggörs att AI-system för allmänna ändamål inte omfattas av regleringen. [REDACTED] framförde att de egentligen inte önskat ta upp AI-system för allmänna ändamål i AIA, men att de hade släppt den ståndpunkten för att vara konstruktiva. [REDACTED] såg dock behov av att justera formuleringarna i förslaget för att säkerställa att de är enhetliga.

[REDACTED] och SE framförde granskningsreservation

Image: Council meeting minutes, 17 May 2022

Minutes from the Council meetings, obtained through FOI, revealed that the French move caused considerable debate. Some states welcomed the inclusion, but others made it clear that general purpose AI should “not be covered by the regulation.”

ALARM BELLS

Given the stakes Big Tech has in developing and selling general purpose AI systems, it has repeatedly hit back hard against those highlighting their negative effects.

For example, Google [fired](#) both co-leads of its Ethical AI team over the issue. One of the co-leads, Timnit Gebru – a notable artificial intelligence expert and advocate for diversity in technology, as well as co-founder of the group ‘Black in AI’ – was fired by Google after she published a [paper](#) on harms in general purpose AI. [Her claims](#) included that it mimics language that could hurt marginalized populations, and that training a single model emitted as much CO₂ as a trans-American flight.

When general purpose AI entered the lexicon of the EU’s AI Act, Big Tech’s [well-funded](#) European lobby networks took notice – and action. Several sources who closely followed the proceedings in the European Council and Parliament, interviewed by Corporate Europe Observatory for this report, said Big-Tech lobbyists were working full-time on influencing decision-making on general purpose AI.

At times, those lobby overtures were made in public: during *Politico*’s ‘AI & Tech’ summit in April 2022, Google’s Vice President Marian Croak, [appointed](#) to oversee Google’s ‘Responsible AI’ following Gebru’s firing, [detailed](#) the company’s position: general purpose models should not be made to comply with the rules the EU was considering for high-risk systems.

In Croak’s words, “the balance of responsibility between users, deployers and providers... needs to be better distinguished.” This meant that compliance should only be done by the companies

Google fired both co-leads of its Ethical AI team over the issue. One of the co-leads, Timnit Gebru was fired by Google after she published a paper on harms in general purpose AI.

which would modify general purpose models for specific tasks. If those tasks would be considered high-risk under the AI Act, it would be the deployer's responsibility to ensure compliance – thus shielding Google from the responsibility.

The meeting where Croak spoke was sponsored by Google and featured the Parliament's co-rapporteur for the AI Act, Brando Benefei, and shadow-rapporteur Axel Voss.

This was further backed up in private. Google told the Commission that the French proposal in the Council “completely shifts the burden to GPAI providers” and that it was “concerned that co-legislators might add too many new criteria for the risk assessment” or expand the list of high-risk uses. A paper Google submitted to Commission, obtained by CEO through FOI requests, reiterated that “general purpose AI systems.. are not themselves high-risk” and that compliance of general purpose systems with the AI Act's rules on data governance, human governance, and transparency “would be difficult or impossible to meet in practice.”

Against this backdrop, we would suggest to **clarify that when other actors in the value chain modify a general-purpose system in a way that makes it high-risk, they should assume the responsibilities of a provider, and that the developer of the general-purpose system is not a provider under the AIA.** The deployer that modifies the system for use in a high-risk application is best equipped to identify the risks associated with their specific use case, data, and application, implement effective risk controls, and ensure that general-purpose systems they deploy in high-risk applications are appropriate to their needs, including working with providers of general-purpose systems to ensure their high-risk applications are compliant.

Image: Google's "Feedback on general purpose AI systems" to Commission, 11 July 2022

Over the autumn of 2022, others joined the call for general purpose AI not to be regulated. Microsoft set out its position in an open [letter](#) sent to the Czech Presidency of the Council. The company saw “no need for the AI Act to have a specific section on [general purpose AI]” and said that “without knowing the purpose of a general purpose tool, there is no way of being able to comply with any of the requirements for high risk”.

Influential business associations also pushed for general purpose AI to be excluded from the regulation. BusinessEurope [warned](#) that the “broad regulation of General Purpose AI Systems... defies the logic of the EU’s risk-based approach.” Digital Europe [said](#) “giving the right responsibilities to the right actor in the AI value chain is key” especially for general purpose AI, and parties should have flexibility to include this in contracts.

Given that general purpose AI is likely to be increasingly commonly used – after all, how many small companies will develop their own AI models from scratch? – fencing off the Big Tech companies that produce the initial models from responsibility tears a massive hole in the regulation. It also offers little accountability to those who might be discriminated against by the uses of such AI (see box 1).



“COVERT MISLEADING WAYS”

The Big Tech efforts to de-fang the regulating of general purpose AI were not always conducted out in the open. At times, these went through affiliates that count Big Tech among their members.

But the Big Tech efforts to de-fang the regulating of general purpose AI were not always conducted out in the open. At times, these went through affiliates that count Big Tech among their members.

A September 2022 [letter](#) pushed by BSA | The Software Alliance “strongly urge[d] EU institutions to reject the recent proposals on General Purpose AI” as it would ‘impact’ AI development in Europe and ‘hamper innovation’. BSA was created by Microsoft in 1988 and has in the past been accused of [operating](#) on behalf of the tech giant, specifically [targeting](#) small and medium enterprises (SMEs) to back Big Tech’s cause. BSA commented that “including general purpose AI, which is used mainly in low-risk cases, in the scope of the Act would create disproportionate obligations for developers and discourage AI development in the EU. This would negatively impact users of AI—large and small, who would not have access to these digital tools; and developers of AI—large and small, who would face significant and sometimes technically insurmountable requirements to enter the market.”

Sebastiano Toffaletti, the Secretary General of the European Digital SME Alliance, [reported](#) that some of the SMEs in their network had been approached by Big Tech to sign up to this letter. They had advised them against it as they saw [no benefits](#) for SMEs or start-ups.

There would be no benefits because excluding general purpose AI systems would place the hefty obligations for compliance on Europe’s SMEs, rather than on big tech companies. This made it surprising that Allied for Startups, a self-described network of advocacy organisations focused on improving the policy environment for start-ups across the globe, did sign up to BSA’s letter.

Significantly, however, Allied for Startups sponsors [include](#) Google, Apple, Microsoft, Amazon, and Meta. Though the organisation claims their sponsors have no voting rights, observers [note](#) their positions have closely aligned with those of Big Tech. Allied for Startups said that “all our positions are formed in consultation with our startup association members.” Their position underlines that not just Big Tech but “many European startups are in the scope, too” of the debated general purpose obligations.

Suspicion about the lobby efforts of Allied for Startups, as well as SME Connect and other Big Tech-funded organisations claiming to represent SMEs and start-ups, led MEPs Christel Schaldemose, René Ripasi, and Paul Tang to file a [complaint](#) sent to the European Parliament's president about "covert misleading ways" to influence policymakers in the Digital Service Act debate.

Asked about his position and the role SME Connect played in the AI Act, Axel Voss commented that "SME Connect is a network that brings together various stakeholders to discuss the needs of SMEs in the context of ongoing legislation. This includes a discussions between SMEs and Start Ups with Big Tech, some of which are part of the "Friends of SMEs" network, as is also noted in the Transparency Register. As a network and a platform, SME Connect is however not an actor in its own right. It does not represent a certain position, does not provide written input to MEPs or is involved in institutional hearings, it merely facilitates discussions.

There has to date been no public follow-up about the MEPs' claim of foul play. But in the debate on the AI Act, Allied for Startups again took a position that seemed closely aligned with the interests of Big Tech.



BACK-UP FROM UNCLE SAM

Privately, too, Microsoft used the argument that start-ups and SMEs would be negatively affected by the AI Act.

A document obtained for this investigation details a July 2021 exchange between Microsoft lobbyists and Roberto Viola of DG CNECT, the Commission department overseeing the drafting of the AI Act, which notes “a discussion on the EU and US position on the draft AI regulation took place, including the possible impact on start-ups and SMEs”.

The EU and US Government positions on regulating AI, referenced by Microsoft, have indeed diverged. A ‘joint roadmap’ [agreed](#) in December 2022, recognised that: “the EU and United States may have different views on regulatory approaches – including allocation of responsibility for risk assessment, possible legal responsibility for the establishment of a risk management system, and the appropriate balance between regulatory and voluntary measures”.

The “responsibility for risk assessment” is a thinly veiled reference to the debate over general purpose AI systems. The “balance between voluntary and regulatory approaches” refers to the EU’s approach of regulation, versus the US’s voluntary frameworks and self-assessment tools such as the [AI Risk Management Framework](#) and the [Blueprint for an AI Bill of Rights](#).

Unsurprisingly the US reliance on voluntary frameworks was almost certainly influenced by Big Tech, which [spent](#) US\$70 million lobbying Congress in 2021; and 2022 was a “[gold rush](#)” for AI lobbying aimed at ensuring both US Government contracts and favourable rules.

Another element has been the notoriously close connection between the US Government and Big Tech. The National Security Commission on Artificial Intelligence (NSCAI), a 15-member group tasked with advising the government on AI, [included](#) representatives of Microsoft, Google, and Amazon; to top it off, the commission was chaired by former Google CEO Eric Schmidt.

Meeting between Roberto Viola and [REDACTED], Microsoft, 9 July 2021

Participants Microsoft (MSFT)

[REDACTED]

DG CNECT: Roberto Viola [REDACTED]

Discussion: [REDACTED] requested the meeting to exchange on on-going digital files.

- Microsoft is working on a new TechFIREurope initiative. With this initiative, MSFT aims to change its approach to regulatory issues and to align more closely with European values. Microsoft also presented its European Data Boundary initiative through which it wants to demonstrate that it takes its European commitments seriously.
- Regarding the EU-US Trade and Technology Council, MSFT offered to share thoughts on democracy, technology and fairness if there is an industry interface.
- MSFT is committed to free journalism and is willing to help finding the right approach regarding the revenue sharing model.
- A discussion on the EU and US position on the draft AI regulation took place, including on the possible impact on start-ups and SMEs. MSFT is preparing a response to the public consultation. The Digital Services Act/Digital Markets Act were also briefly discussed.
- On cloud, MSFT is committed to Gaia-X. MSFT shared its idea of open cloud and is ready to provide feedback on the Cloud Rulebook.

Image: Minutes Commission meeting & Microsoft, 9 July 2021

While the NSCAI provided “recommendations that were friendly to the industry” and called for “vastly increased spending on AI research,” Schmidt was [accused](#) of serious conflicts of interest by investing in AI start-ups during his tenure as chairman of the NSCAI.

In an unusually overt display of interference in European law-making in September 2022, the US Government, due to “concerns over whether the proposed Act will support or restrict cooperation,” shared a “[non-paper](#)” with the Czech Presidency of the Council. The non-paper signalled concerns over an “over-inclusive” definition of AI, a lack of clarity on criteria for high-risk applications, and the issue of general purpose AI. The paper observed that “requiring all general purpose AI providers with the risk-management obligations of the AI Act would be very burdensome, technically difficult, and in some cases impossible”.

The US urged European lawmakers to distinguish between original manufacturers, and the organisations who would deploy the AI for high-risk purposes – all issues that have topped the lobbying priorities of Silicon Valley tech firms.



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THE CHINA THREAT

Another argument the US government and tech firms deployed in their lobbying blitz was that the EU's strict regulation on AI would stifle innovation, which in turn would benefit competitors like China.

A [leaked document](#) from the NSCAI warned that while in the US and Europe AI is painted as something to be feared for eroding privacy and stealing jobs, China views it as a tool to take technological leadership. Eric Schmidt, the ex-Google chief, has [said](#) that the US must do "whatever it takes" to beat AI on China, while US National Security Advisor Jake Sullivan has [argued](#) that the US and EU should work together because they face "a competitor that is determined to overtake U.S. technological leadership and willing to devote nearly limitless resources to that goal."

Days after the Commission launched its proposal, Microsoft asked for a meeting to discuss "the right balance on the regulatory front" and where the AI Act "put Europe in the global scheme of things between the US and especially China, where AI is less regulated and where investments are spiralling?"

The traditional lobby message, that regulation would stifle innovation and economic activity, was now framed as being part of a larger geopolitical debate. Microsoft also asked the Commission if the "balance was strong enough on the.. positive side" and to identify "some of the upsides from AI that will be facilitated by the regulation."

From: [REDACTED] <[REDACTED]@ec.europa.eu>
Sent: Monday, April 26, 2021 1:19 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: [EXTERNAL] RE: Meet up
 Many thanks, well received
 Best
 [REDACTED]

From: [REDACTED]
Sent: Monday, April 26, 2021 1:05 PM
To: [REDACTED]
Cc: [REDACTED] <[REDACTED]@ec.europa.eu>
Subject: RE: Meet up
 Hi again both,

As promised, please find below the questions we would like to cover. Let us know of any input or suggestions in case there are areas you'd like to add.
 Thanks again,
 [REDACTED]

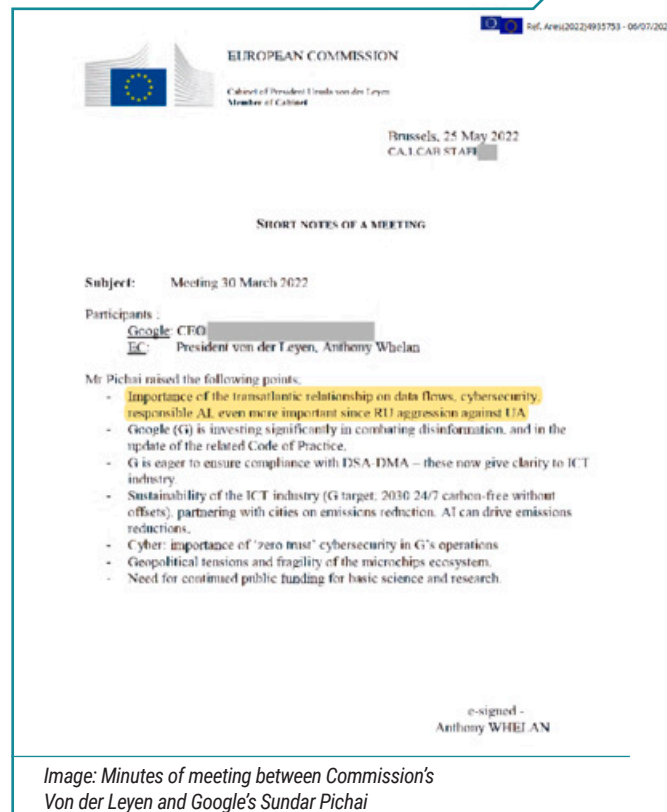
How to find the right balance on the regulatory front in order to ensure responsible AI while avoiding to stifle innovation. And where does it put Europe in the global scheme of things between the US and especially China, where AI is less regulated and where investments are spiralling?

Is the balance strong enough on the opportunity / positive side? If you were to highlight some of the upsides from AI that will be facilitated by this regulation, what would you point to?

Image: Email exchange between Microsoft and European Commission, 26 April 2021

For good measure, Google CEO Sundar Pichai in a meeting with Commission President Von der Leyen, threw in another foreign policy argument: “the transatlantic relationship... on responsible AI [is] even more important since [Russian] aggression against [Ukraine].”

The message from the US to Europe was clear: do not give in to the fears of the risks of AI, because it would enable competitors to overtake their technological dominance. “Whatever it takes”... to prevent overly burdensome regulation.



KICKING THE CAN DOWN THE ROAD

Debates in the Council are notoriously secretive and difficult to follow. Negotiations are conducted in secret, and as the EU Ombudsman has [said](#), “it’s almost impossible for citizens to follow the legislative discussions in the Council between national government representatives”.

The secrecy also creates important opportunities for lobbyists. [Research](#) by Corporate Europe Observatory found that business lobbies outnumbered trade unions and NGOs thirteen to one in the Council. Moreover, Council diplomats are not required to declare their lobby meetings, and many EU member states do not have transparency registers that allow for easy tracking meetings between their governments and business interests. And it is certain contacts were happening: according to Commission meeting minutes, Facebook “indicated it is in touch with MS [Member States] and MEPs to discuss the AI Act.”

- Facebook indicated that it is in touch with MS and MEPs to discuss the AI Act.
- COM provided an update on the status of the AI Act, highlighting the scope of the AI Act and the risk-based approach. COM also clarified the state of the legislative process.

Image: Minutes meeting cabinet of Com. Breton and Facebook France, 11 Oct 2021

An EU official who asked to remain anonymous said that “there can be no specific provision at EU level regarding member states’ and their delegates’ individual contacts with third parties, interest representatives, lobbyists. This is a 100% responsibility of each member state and falls within the hard core of its national sovereignty in which the EU cannot obviously intervene.” The French and Czech permanent representations, which chaired the EU Council during the negotiations over the AI Act, did not respond to a request for comment.

Although the secrecy makes it difficult to ascertain specifically how this played out, the lobbying from tech giants and their affiliates, and the last-ditch push from across the Atlantic, certainly appears to have had the desired effect.

These exemptions would “make the entire military-industrial-political complex a largely digital rights-free zone”.

The final Council text [narrowed](#) the definition of AI systems, to distinguish them from simpler software systems. Critics, such as Professor Joanna Bryson, have [argued](#) that such a narrow definition makes it “way too easy to argue at length in court for excluding a system from consideration by the act” and that this was exactly the position Google had long advanced.

The Council [draft](#) also carved out worrying law enforcement and national security exemptions. This could have very serious human rights implications (see Box 1), for example with regard to the EU migrant crisis, abusive policing situations, or for military applications. As the [European Centre for Not-for-Profit Law](#) observed, these exemptions would “make the entire military-industrial-political complex a largely digital rights-free zone”.

Finally, the Council tasked the Commission with conducting an impact assessment and consultation on which rules should be adapted for general purpose AI via an ‘implementing act’. In other words, the Council decided to kick the can down the road on what to do about general purpose AI – at least one-and-a-half years into the future.



THE PARLIAMENTARY DANCE

As the Council was negotiating the AI Act during the autumn of 2022 there were intense debates in the European Parliament too. A year after the Commission had published its proposal, [thousands](#) of amendments were filed by MEPs. Unsurprisingly, the same period saw intense lobbying. By mid-January 2023, MEPs had recorded 1,012 lobby meetings on AI with 551 different lobbyists, data gathered for this report showed.

Most organisations had one or a few meetings: Google topped the list with 28. Other large US tech companies such as Microsoft and Meta (Facebook) were also represented in the top ten, alongside DOT Europe, the “voice of the leading internet companies in Europe,” which counts Big Tech as its board members.

	Lobbyist	Number of MEP meetings
1	Google	28
2	BEUC – The European Consumer Organisation	18
3	Microsoft	14
4	Siemens	12
5	European Digital Rights (EDRi)	11
6	Meta (Facebook)	10
7	Bosch	9
7	Huawei	9
7	AlgorithmWatch	9
7	DOT Europe	9

Table: Top 10 actors with most lobby meetings on AI in the European Parliament

Civil society organisations, such as BEUC – the European Consumer Organisation, European Digital Rights (EDRi), and Algorithm Watch, are included among the top ten as well: civil society representatives interviewed for this study said they certainly found a more receptive audience in the Parliament than the European Council.

Data on the European Parliament meetings were scraped by [Parltrack](#) for this investigation on 16 January 2023 and are available through [this link](#). A total of 35,287 of lobby meetings in Parliament were identified. Meetings were coded as concerning AI if the fields “title” or “related” referred to AI, artificial intelligence, or any similar phrase (in English, French, or German, or other language), or if the [AIDA Parliament subcommittee](#) was mentioned. Reported lobbyists were categorised on the basis of publicly available information as academia/research, civil society, industry, public body/government, or trade association. If no public information was available or could be identified, this category was left blank.

But overall, the voice of civil society organisations was vastly outnumbered by industry and trade associations. Corporate Europe Observatory's analysis revealed that industry and trade associations together accounted for 56 per cent of all MEP meetings, while only a quarter of the meetings were with academics, researchers, and civil society organisations.

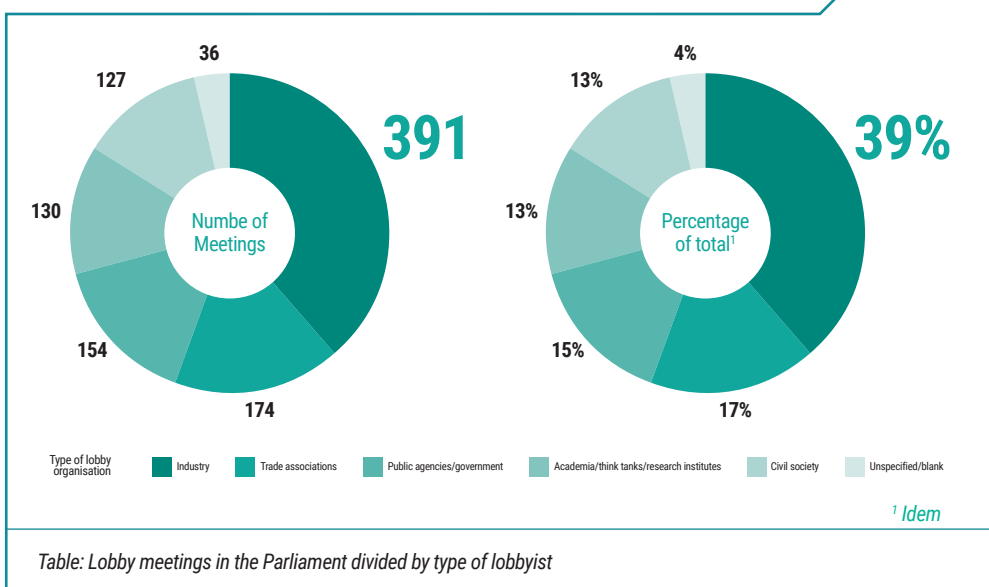


Table: Lobby meetings in the Parliament divided by type of lobbyist

There was, furthermore, a clear divide among party groupings. Moderate and conservative parliamentarians of the European People's Party and Renew accounted for 61 per cent the industry meetings, but only 23 per cent of the meetings with civil society. The Socialists & Democrats had a more balanced approach, while smaller left-leaning party groupings the Greens and the Left reported nearly half of all civil society meetings against 13 per cent of the meetings with industry reps. (See Appendix I.)

The Parliament data, while providing insight that is missing from the Council, do have several significant limitations. Most importantly, reporting meetings remains voluntary for most MEPs: only rapporteurs and shadow-rapporteurs are obliged to report them.

Some MEPs who were obliged to report their meetings only did so after having been contacted for this research. The shadow-rapporteurs for the

Identity and Democracy Group, Jean-Lin Lacapelle and Jaak Madison, have not reported any meetings, even after Corporate Europe Observatory reached out to them. In fact, not one MEP in the I&D grouping has reported any meetings on AI. This seems highly doubtful.

And while some MEPs are obliged to report meetings, no MEP assistants are. As one assistant interviewed for this report said, successful lobbyists “realise that it is more productive to meet with the assistant... because at the end of the day it is the assistants and the political advisors that do the drafting”.

The assistant also described the importance of cultivating long-term relations with MEPs and their assistants: “If you’re Microsoft, you have a team here, you have an office that is one hundred meters from the Parliament, you have regular meetings, so by the time a piece of legislation like the AI Act or the DSA comes you have already established a connection.”



A DIVIDED HOUSE ON GENERAL PURPOSE AI

The divergence in meetings between conservative and progressive parliamentarians was mirrored in the different proposed approaches proposed for regulating general purpose AI systems.

Both the Greens and the Left proposed that an “AI system shall be considered high-risk where: its uses are undetermined or indeterminate” (Parliament amendments 1415, 1424, 1455). This would clearly apply to general purpose AI, with its indeterminate uses, which would thus be high-risk, and human rights or fundamental rights assessments would be obligatory for them.

By contrast, right-of-centre party groupings argued that only those adapting general-purpose AI systems to a specific purpose would become a “provider” under the regulation, and that only if that purpose was high-risk would the system have to conform to rules for high-risk systems.

Renew spelled out what their proposed changes would mean for Big Tech: “Initial providers of general purpose AI systems should therefore only have to comply with the provisions on accuracy, robustness and cybersecurity” (amendment 404). The EPP went slightly further and did propose a limited conformity assessment, covering only risk management, data governance, transparency, as well as rules on robustness, accuracy, and cybersecurity (amendment 1976). The ECR was blunter: “general purpose AI systems shall not, by themselves only, make those systems subject to the provisions of this Regulation” (amendment 2284).

Shadow-rapporteur Svenja Hahn, together with her Renew colleagues, [justified](#) their amendment by stating that the article, following a proposal by the Council, “aimed at adequately [sic] addressing the roles of the various actors involved in developing and deploying AI systems”.

This argument – that responsibilities should be given to the right actor along the value chain – chimed with the line Big Tech was taking in their lobby efforts.

In the end the Parliament may follow the Council in kicking the can down the road by leaving out

Three quarters of all Google and Meta's EU lobbyists have formerly worked for a governmental body at the EU or member state level.

general purpose AI. As Euractiv reported, a note in the margin of the document said that "pending discussions, GPAI [general-purpose AI] will be treated separately".

Political negotiations about the inclusion of general purpose AI continue. A source in the Green party grouping involved in the negotiations said that general purpose AI "is currently not addressed in the text we have been proposed" but underlined that the systems "should be categorised as high-risk" so as "to not create loopholes, or incentivise businesses to change their business models to escape regulation."

Box 2

A wide web: EU officials with close connections to Big Tech

The contacts between Big Tech and EU officials are threads in a much larger web that the tech giants have spun across Europe in recent years. Three

quarters of all [Google and Meta's EU lobbyists](#) have formerly worked for a governmental body at the EU or member state level. Corporate Europe Observatory has highlighted how only a tiny percentage of [revolving door moves](#) by EU officials moving jobs are rejected.

One prominent example was Aura Salla who became a Meta/Facebook lobbyist just three months after leaving the European Commission. Email correspondence retrieved through FOI, was titled "MEETING agreed between Aura Salla and WS", i.e. Werner Steng of Vice President's Vestager's cabinet. With Salla's one-year cooling off period having ended, it is clear she is once again actively engaging Commission officials. Salla did not respond to a request for comment.

But Parliament also took a [step](#) towards labelling as high-risk "generative systems" that create text or visuals that appears to human-generated, which could cover systems such as ChatGPT. And while it proposed a narrower AI definition than the Commission, and one based on the [definition](#) of the US National Institute of Standards and Technology, it did clarify that this definition would include general purpose AI.



NOT-SO INDEPENDENT EXPERTISE

The first draft of the AI Act drew heavily on the advice of a ‘high-level level expert group’ which produced seven [key requirements](#) for a European approach to ethical and “human-centric” AI.

One issue with the EU’s reliance on ethical frameworks was that this played into the hands of the tech industry. Tech firms had responded to concerns over the use of AI by adopting their own voluntary set of ethical principles.

In fact, in a [speech at a Google-funded think tank in Brussels](#), Google CEO Sundar Pichai welcomed the guidelines of the EU expert group, saying “The good news is that they share a lot of commonality” with Google’s principles.

Over recent years, the use of ethical guidelines has become a powerful tool in Big Tech’s lobbying toolbox. It allowed tech companies to argue they’re on the right side of history while at the same time doing extensive [national security contracting](#), selling [advanced AI](#) to the Israeli military, or provide [cloud services](#) for spy agencies, to name just a few examples. Google even went as far as to offer [ethical AI as a service](#) to other companies.

In [private meetings](#) with the Commission, Google, Microsoft, and Meta (Facebook) underlined their “integrity” and “corporate principles”, and argued that their principles showed they could conduct “robust self-assessment” of high-risk AI systems.

Over recent years, the use of ethical guidelines has become a powerful tool in Big Tech’s lobbying toolbox.

More importantly, there was a widespread reliance by the Commission on Big Tech-funded academics and researchers working on artificial intelligence. Nearly half of the expert group’s 52 experts represented businesses, including Google and IBM. Of the group’s academics and civil society representatives, [nine had funding ties](#) to Big Tech, which the Commission did not deem a conflict of interest significant enough to preclude their involvement. The European Commission did not respond to a request for comment.

An important member of the expert group was Andrea Renda, who held the [Google Chair of Digital Innovation](#) at the College of Europe throughout his involvement in the expert group. He also served alongside a [former Google senior manager](#) at

The ubiquity of Big Tech funding for AI research across Europe creates conflicts of interest across academics and think tanks who work on AI while also advising policymakers on regulation.

Centre for European Policy Studies (CEPS), a think tank funded by all Big Tech players that has been shown to be [creating channels](#) for corporate-driven agendas to policy makers. CEPS later ended up [leading the study](#) supporting the Commission's impact assessment for the AI regulation.

This included Oxford Professor and "[Google's Philosopher](#)" Luciano Floridi, who during his tenure as an EU expert also [joined](#) Google's ([short-lived](#)) advisory council for the responsible development of AI. This was entirely in line with [Google's leaked strategy](#) to use "academic allies" to question rules and enlist US officials to lobby the EU. Both Renda and Floridi previously [commented](#) that they did not see a conflict of interest between the funding and their role as experts.

The ubiquity of [Big Tech funding](#) for AI research across Europe creates conflicts of interest across academics and think tanks who work on AI while also advising policymakers on regulation.

What is more, it can lead to difficult issues being skirted altogether. One critical voice on the EU expert group, ethics Professor Thomas Metzinger, said that "red lines" or non-negotiable ethical principles were deleted: he [called](#) it "ethics-washing." At another point, Google's representative in the group reportedly proposed [copy-pasting](#) a phrase from Google's ethics guidelines directly into EU recommendations.

This worrying trend is likely to continue in the future. The Council's [agreed draft](#) foresees the creation of "a central pool of experts" (Article 68b) which would advise the AI Board, the body tasked with assisting the Commission in implementing the AI Act. Although experts are expected to be impartial and draw up a declaration of interests, past performance indicates that this may in fact end up generating further reliance of the Commission on tech-funded experts.



SETTING STANDARDS

There is one other way the influence of Big Tech may yet play out in the implementation of the AI Act. This is the reliance on standards – the technical instructions that will outline how companies should conduct risk management, data governance, human oversight, and more.

Researchers have [said](#) that because of the design of the AI Act, the standard setting bodies, in particular CEN, the European Committee for Standardization, and CENELEC, the European Electrotechnical Committee for Standardization, are “arguably the most important actor” in the entire regulation. If these bodies adopt a standard, any provider can follow this standard and be presumed to be in conformity.

The problem is that the organisations setting these standards are overwhelmingly [dominated by the private sector](#), including representatives from the large US tech companies (sometimes through their European offices, for example, in Ireland). They have been accused of setting weak, industry-friendly standards, on issues like corporate social responsibility.

Civil society organisations have [raised](#) concerns that they will be [excluded from effectively participating](#) in standard-setting processes, which are deemed particularly inappropriate for AI with a [fundamental rights impact](#). SMEs may [struggle](#) to participate in this process too.

In December 2022, the Commission took the [decision](#) to rely only on CEN-CENELEC to define the standards under the AI Act, and exclude another European standards organisation, ETSI, which it accused of “being held hostage by non-European influences.”

But there are serious questions surrounding CEN-CENELEC too. The organisation [set up a committee](#) dedicated to developing European standards on AI, and with a focus group of 80 unnamed experts produced a [road map](#). When asked who will be participating in the technical committee, CEN-CENELEC [responded](#) that “the details of who participates are not made publicly available”.

Civil society organisations have raised concerns that they will be excluded from effectively participating in standard-setting processes, which are deemed particularly inappropriate for AI with a fundamental rights impact.

The body tasked with setting standards for, among others, transparency in European AI, seems less than committed to transparency for its own operations. CEN-CENELEC did not comment in detail on who participates and how they were selected, but said that besides national delegations, some organisations, including [Small Business Standards](#), have a special status and can participate directly in the work of the technical committee. "There has always been an expert from SBS physically present." CEN-CENELEC has also created an Ad Hoc Group on "SME and startups concerns."



CONCLUSION

Most importantly, by the end of its campaign, and despite all the concerns over AI and the critique over its other products, Big Tech had succeeded in spinning a positive narrative about the use of artificial intelligence in the European Union.

This report's focus has been on identifying the lobby attempts of large US tech corporations to influence the EU's regulation of artificial intelligence. Big Tech pushed all its levers to water down the regulation.

The process now proceeds into the trilogues. The Council is likely to push to maintain its law enforcement carve-outs and a narrow definition of AI during this process. Parliament is expected to ask for additional fundamental rights protections, although in a worst-case scenario, these will be further dressed down or even taken out together.

What compromise will be reached remains uncertain, and the secrecy of the trilogue process means that it [is conducted almost entirely without public scrutiny](#).

A narrowed AI definition and a carve-out for fundamental AI research are other likely outcomes of the trilogues. Amid attempts to push the debate into the future, it is highly unlikely to anticipate strict obligations for general purpose AI systems coming out of these negotiations - a victory for the tech giants. The future implementing act on general purpose AI may allow for additional loopholes: the Commission told Google that "derogation from [...] obligations is also possible if the GPAI provider states that the system cannot be used for high-risk." According to meeting minutes, this was of concern to Google.

Most importantly, by the end of its campaign, and despite all the concerns over AI and the critique over its other products, Big Tech had succeeded in spinning a positive narrative about the use of artificial intelligence in the European Union.

"I want to be very clear on this," EU Commission President Ursula von der Leyen [said](#) at an event organised by the Big Tech-funded DigitalEurope. "I believe in the power of artificial intelligence."

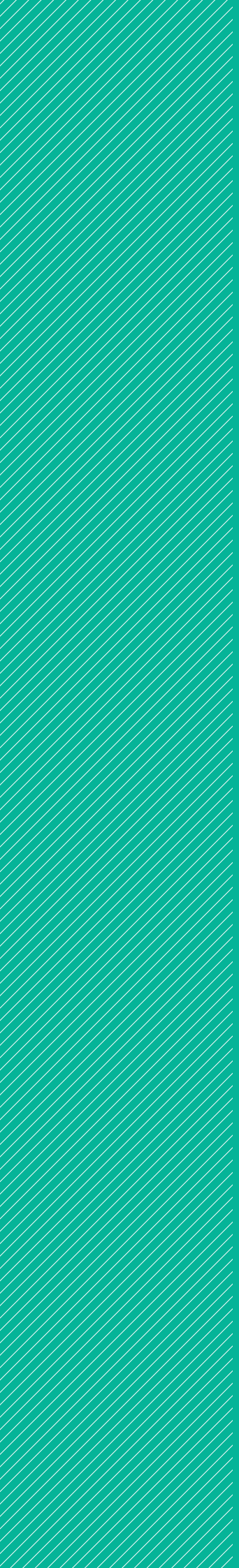
Von der Leyen listed several positive applications of AI, such as its applications in sustainable energy production and detecting breast cancer. She echoed Google CEO Sundar Pichai, who had used the same two examples in his [Brussels speech](#) earlier.

Margrethe Vestager, in presenting the Commission proposal, adopted a similar positive attitude towards AI. The Commission committed to [investing a billion euros](#) a year and, despite the risk of abuses, wanted to make “the public sector a trailblazer for AI.” When Vestager was asked about the balance between regulation and innovation, she [responded](#): “my main worry is that we will refrain from using artificial intelligence”.

For the time being, it seems unlikely the European debate on AI will move “[beyond debiasing](#).” The push to promote artificial intelligence uptake, and the narrow understanding of AI’s risks, ensures that complex social problems with AI, which need political solutions, remain in the domain of technical fixes and design. Right where the Tech companies, who will do the fixing and designing, would want the debate to be.



Corporate Europe Observatory reached out to the various tech companies mentioned in the report. Google and Meta did not respond. Microsoft was “unable to accommodate” a request for comment.



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