

## Can the EU fix its landmark AI rules?

European officials paused the rollout of the legislation after fierce criticism from business leaders and Big Tech. But it will be hard for Brussels to balance its desire to regulate with its push for growth.

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The birth of the Artificial Intelligence Act was a drawn-out, exasperating affair. In December 2023, European officials laboured for 36 hours to agree on the legislation considered to be a world first. “I saw my colleagues at their wits’ end,” says Laura Caroli, who took part as an assistant to one of the European parliament’s key negotiators, and is a former senior fellow at thinktank CSIS.



The stakes were high. Success would mean Brussels leading the way in crafting comprehensive rules for a technology forecast to transform the global economy. “There was massive international pressure,” says Caroli.

Finally, at about 1am on December 9, the negotiators had a deal. Then commissioner Thierry Breton swapped his gilet vest for a suit jacket, the exhausted lawmakers popped open bottles of sparkling wine and then headed to face the press.

Nearly two years on, and the mood in Brussels is decidedly less triumphant.

The AI Act was designed to use Europe’s economic heft to force companies to create “trustworthy AI” for its 450mn consumers through a risk-based approach: banning the most harmful uses, controlling high-risk systems and lightly regulating low-risk ones.

But the law's complexity, its rushed inclusion of AI models such as ChatGPT and its chaotic implementation have turned the AI Act from a symbol of European leadership into a case study for those who say the continent puts regulation ahead of innovation.

Yesterday, the European Commission postponed a key part of its landmark AI rules — the first formal acknowledgment that Brussels is struggling with its own legislation.

Now, officials and companies are grappling with two questions: did the EU go too far, too fast? And how can it fix the regulation to avoid the European economy missing the AI boat just as it struggles to compete with its geopolitical rivals?

Staying in the race for global dominance of AI is key for Europe. Its failure to create or scale tech giants has widened the productivity gap with the US. After failing to lead on other technologies, Brussels wants the EU to be an “AI continent” but the bloc is struggling to develop Europe’s AI ecosystem and to accelerate investment in the technology on a par with global superpowers such as the US and China.

Whether the EU succeeds in fixing its rules matters far beyond Europe’s borders. The AI Act is the world’s first attempt to regulate a technology with the potential not only to disrupt every sector of the global economy but also to spiral out of control, with unpredictable consequences. If Brussels waters down its legislation beyond relevance, the question becomes who else — if anyone — may lay down guardrails.

Ironically, Europe’s push to regulate AI was originally intended to help the new technology flourish. Regulating the market into existence became one of the priorities of the then new commission of Ursula von der Leyen in 2019.

At the time, there were concerns that public mistrust in AI products would lead to a slowdown in the development of the technology in Europe.

While negotiating the act, European lawmakers were heavily influenced by AI news coming out of the US, where facial recognition tools had led to false arrests, and various credit-scoring algorithms had led to biased outcomes. To control those risks, Brussels wanted to combine its traditional product safety law with fundamental rights protection, such as preventing mass surveillance.

At the time, there was a global consensus that AI needed rules, says Caroli. That was the case even for big technology companies; in 2020, Mark Zuckerberg visited Brussels to meet top European commissioners, urging governments to come up with new rules for online content.

There were also several AI governance initiatives that influenced each other, including AI principles from the OECD and the G7.

“The more we create trustworthy AI, the more Europe will be well positioned to adopt AI: that was essentially the goal,” says Gabriele Mazzini, who was the lead author of the AI Act

at the European Commission.

But when OpenAI's ChatGPT burst on to the scene in late 2022, the AI Act — with negotiations already well under way — was hastily rewritten to include rules for general-purpose AI models, systems that can generate text, images or code and can be deployed for many different purposes. The original draft created by the EU's executive arm had no reference at all to large language models, which until then had been viewed as largely experimental.

The AI Act “is not a ChatGPT regulation”, says Daniel Leufer, senior policy analyst at digital rights group Access Now. “It was never designed to be. And there was a sort of complex process of shoehorning that started happening after ChatGPT was released.”

On top of that, an open letter from the Future of Life Institute in March 2023, signed by the likes of Elon Musk, Apple co-founder Steve Wozniak, prominent computer scientists Yoshua Bengio and Stuart Russell and writer Yuval Noah Harari, called for a six-month pause in the development of powerful AI systems until proper safeguards were in place.

Mazzini says it “skewed completely the political conversation”. Instead of just regulating how companies and the public sector use AI tools, lawmakers now felt like they had to also regulate how the AI systems themselves were built — and ensure that legislation covered the biggest models.

“The parliament was completely unanimous in wanting to regulate at least ChatGPT,” says Caroli. “What are we even doing here if we exit this [negotiating] room without regulating ChatGPT? Basically we will be completely ineffective.”

Mazzini also pointed to a “regulatory hype in Brussels that was detrimental to the good outcome of the negotiations and pushed for even more urgency to close the file”. The European parliamentary elections of June 2024 were quickly approaching and negotiators did not want to miss the political window of opportunity.

That political deadline, external “interference” and the discussion around existential threats by artificial intelligence “created a mix where common sense seemed to have been lost”, Mazzini says.

For Patrick Van Eecke, co-chair of law firm Cooley’s global cyber, data and privacy practice, the commission made a “fundamental error” at the start of the regulatory process by treating AI as a product instead of as a process.

Under regulations governing static products, such as an elevator, companies have to meet safety requirements to put it on the market. But while an elevator will still be doing the exact same thing in 20 years, Van Eecke says, AI is a dynamic process that is constantly evolving. “This makes it impossible to apply hard-coded requirements,” he says.

When the AI Act officially entered into force in August 2024, many considered it half-baked.

The act required a wide range of additional legislation to set up codes of practice, guidelines and standards so companies knew how to implement the law. Many provisions only came into effect gradually, sometimes with delays and uncertainty about the exact timelines.

It has muddied the water for companies, says Elisabetta Righini, a lawyer at Sidley Austin who advises companies on the AI Act. “It takes time even for large digital companies to prepare for compliance with new rules,” she says. “The act left a number of details to be determined through implementing regulations and guidelines. Uncertainty is never great for businesses.”

Even if they can figure out how to comply, companies say the rules present a huge logistical burden as they assess the risks of their AI systems and have to put mechanisms in place to meet the transparency and accountability standards.

The resulting costs create the opposite of a level playing field in the sector, points out Van Eecke, the lawyer. “Larger, more mature companies will find it easier to be compliant and have even more competitive advantage than start-ups.”

AI start-ups warn that the present situation creates an environment where large companies thrive while scale-ups and start-ups can only survive.

Alexandru Voica, head of corporate affairs at London-based AI start-up Synthesia, says: “A lot of these scale-ups will never be able to reach the same sort of size and impact as American or Chinese companies, because they are buried under all of this regulation.”

But large companies are equally frustrated at the act. In July, large companies including Airbus, BNP Paribas, Mercedes-Benz and TotalEnergies, urged the European Commission to halt the AI Act’s timeline for two years to simplify the rules and allow time for companies to implement them.

Even Mazzini, an architect of the act, now concedes that it is too broad, complex and “doesn’t provide the legal certainty that is needed”.

Public outcry made the European Commission change its tune. The backlash against the AI Act coincided with a change in priorities in Brussels. Ever since von der Leyen started her second mandate last year, boosting competitiveness is the thread that runs through her key policy proposals.

At the same time, the global conversation about AI shifted dramatically. The fear-mongering about the existential risks of AI turned into a race for global dominance in the fast-developing technology — a race now defined by the power tussle between Washington and Beijing.

For Henna Virkkunen, who took over as European commissioner for digital and frontier technologies last December, the focus has shifted from regulation to innovation and

attracting investment, ensuring Europe does not fall behind on AI. In February, Brussels withdrew planned rules to ensure that people harmed by AI systems would enjoy more protection, the so-called AI liability directive, as part of a broader deregulatory push.

This week, that shifted rhetoric culminated in a proposed delay of implementation of the high-risk AI rules — a key part of the AI Act — by at least a year.

Proponents of the AI Act see the move as a setback. Kim Van Sparrentak, a Green European lawmaker, says the bloc should be proud it was the first with rules for safe AI and that this continues to be a competitive advantage. Jurisdictions such as Japan, Brazil and California have imposed similar transparency rules on AI models, for example.

“The commission should stand by it and work day and night to make it a success,” says Van Sparrentak. “This means following through and leading the way for businesses and people in Europe, not going back on our promises as soon as Trump and Big Tech complain.”

For others, such as Bengio, a Turing Award winner who is considered one of the “godfathers” of AI, criticism around the AI Act is simply “propaganda” by companies that dislike the legislation.

He argues that the AI Act merely formalises safety protocols that AI labs are already doing and brings more transparency. “What it’s going to do is level the playing field so that all the companies will rise to the level of the best players,” he tells the FT.

But it is clear Brussels feels it still has work to do to find the right balance between regulation and innovation on AI, so that it can fulfil its dual goals of making European companies global AI frontrunners while setting the rules for the rest of the world.

Virkkunen, the EU’s tech chief, said yesterday that the bloc continued to stand behind its high standards “because EU regulation is a trust mark for businesses. We are the one place on the planet that has framed the rules of the game in this way, to protect our values and fundamental rights.”

At the same time, she acknowledged regulation alone was not enough. “We must also move on from rulemaking to innovation building. Our rules should not be a burden, but an added value.”

But critics say that the delay to the act’s rollout announced yesterday will only complicate things further.

Mazzini has been urging Brussels for a complete rethink of the act. “There is time to be courageous and it’s time to say, ‘OK, we need to rethink this completely.’ I think this will be the wisest decision to make.”

But the narrative being pushed by Big Tech — that regulating while innovating and adopting AI are contradictory goals — is not necessarily true, says Anu Bradford, a Columbia University law professor who coined the term “Brussels effect” back in 2012.

The discussion about the AI Act is a “sideshow” to the main challenges facing European competitiveness, she says, which include its fragmented single market, attracting talent and funding innovation.

“The solution for the European competitiveness deficit in innovation is not simplification. We are not going to be an AI power just by scrapping the AI Act,” Bradford says. “There are more fundamental battles that we need to be fighting for, pushing those other reforms forward instead of just arguing over how much we’re scaling back legislation.”

If nothing else, the law has at least put Europe at the centre of the debate over how to regulate the technology, says Dan Nechita, who helped negotiate the act as an assistant to one of the AI Act’s key negotiators in the European parliament and is now at Vanguard Europe, a consultancy.

“It gave us a seat at the table. It gave us the leverage and the visibility and the weight that we unfortunately back then didn’t have in artificial intelligence,” Nechita says.