

Expert opinion

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Relevance of the AI Act and the Council of Europe Convention on AI in public communication, and on the use of AI in the production, distribution, and utilization of journalism in particular

Expertise on behalf of the Federal Media Commission (FMEC)

30 September 2024

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1. Introduction

When Jules en Michel Verne envisioned the Future of News in the Year 2889, they imagined (in 1889!) a future in which citizens would connect with their media organisation and have personalised conversations with statesmen, scientists, academics about what is news and worth knowing.¹ That future has arrived much earlier than the Vernes had anticipated, and today, in 2024, media and technology companies are building applications that summarise, re-format, read in different voices and even completely write the news. According to a recent global survey more than 75 % of respondents said to use AI at some point along the news value chain, to either gather, produce or distribute news content.² An even higher number of respondents indicated that they experimented with generative AI systems (85%), and an overwhelming majority of all respondents saw an even greater role for AI in the future.³ Increasing efficiency and productivity to free up journalists for more creative work were the main drivers for AI integration for more than half of the respondents, but the sector has only started exploring the many fascinating opportunities for the future of news. Interestingly, the same study also asked about challenges to the implementation of AI, and found that next to the technical challenges, ethical and cultural challenges together were as pressing as the technical challenges. In a similar vein, another recent study found that the most popular strategy to use (Generative) AI responsibly was *not* using it.⁴ This may highlight the importance of being able to effectively address the ethical, legal and cultural concerns around AI so that media professionals to be able to trust and use the technology in line with their professional values, and the demands of a democratic society.

What are these concerns? Key concerns include the lack of human oversight, followed by concerns about inaccuracies, bias, the lack of quality and transparency, but also issues around copyright and privacy.⁵ In policy debates and the academic literature, additional issues that emerge include the way AI would make it easier to create and disseminate disinformation and deepfakes,⁶ affect journalistic autonomy,⁷ change the interaction with the audience as well as more structural consequences for

¹ Jules Verne and Michael Verne, *In the Year 2889* (Project Gutenberg, 1889), <https://www.gutenberg.org/files/19362/19362-h/19362-h.htm>.

² Charlie Beckett and Mira Yaseen, 'Generating Change. A Global Survey of What News Organisations Are Doing with AI' (London: Journalism AI, 2023).

³ Beckett and Yaseen.

⁴ Nicholas Diakopoulos et al., 'Generative AI in Journalism: The Evolution of Newswork and Ethics in a Generative Information Ecosystem' (Associated Press, April 2024), <https://www.aim4dem.nl/out-now-generative-ai-in-journalism-the-evolution-of-newswork-and-ethics-in-a-generative-information-ecosystem/>.

⁵ Hannes Cools, *How Algorithms Are Augmenting the Journalistic Institution: In Search of Evidence from Newsrooms and Its Innovation Labs*, Doctoral Thesis (Leuven: KU Leuven, 2022).

⁶ Felipe Romero Moreno, 'Generative AI and Deepfakes: A Human Rights Approach to Tackling Harmful Content', *International Review of Law, Computers & Technology* 0, no. 0 (n.d.): 1–30, <https://doi.org/10.1080/13600869.2024.2324540>.

⁷ Hannes Cools and Nicholas Diakopoulos, 'Uses of Generative AI in the Newsroom: Mapping Journalists' Perceptions of Perils and Possibilities', *Journalism Practice* 0, no. 0 (n.d.): 1–19, <https://doi.org/10.1080/17512786.2024.2394558>.

workflows,⁸ the broader political economy⁹ and the planet.¹⁰ In response, and fuelled by the rapid proliferation of Generative AI, the past two years have also seen the emergence of a whole range of new ethical guidelines and principles to address these concerns.¹¹ Next to ethical guidelines, laws and regulations have a role, too, in defining the conditions for the responsible use of AI, and over the past years, regulators in Europe and beyond have been working on new regulatory frameworks to make the development and deployment of AI safer and trustworthy. In Europe, the two most prominent initiatives in this area are the European Union's AI Act, and the Council of Europe's AI Convention.

The goal of this expert opinion is to answer the question if, and if so, how the AI Act and the Convention on AI are relevant for public communication and the use of AI in the production and distribution of news.

More concretely, the following questions will be discussed:

1. What relevance do the AI Act and the Convention on AI have on public communication mediated by media and platforms in general, and on the use in the production, distribution, and utilization of journalism in particular?
2. Where are there important regulatory gaps?
3. What are relevant considerations that can speak for or against a possible sector-specific approach?
4. What significance does the AI Act have for media organizations and the journalistic use of AI in non-EU countries like Switzerland?

This expert opinion is based primarily on legal-doctrinal research, complemented by an external perspective from insights from communication law, digital journalism and digital humanities literature. A systematic literature review was outside the scope of this study.

The study was finalised on 15 September 2024 in Amsterdam.

2. What relevance do the AI Act and the Convention on AI have on public communication mediated by media and platforms in general, and on the use in the production, distribution, and utilization of journalism in particular?

The European AI Act, which has entered into force on 1 August 2024, lays down a general legal framework for the development, marketing and use of AI systems in the European Union. The AI Act is a piece of maximum harmonisation, meaning that member states cannot adopt further-reaching rules on matters that are regulated by the AI Act. Maximum harmonisation, in combination with a broad

⁸ Diakopoulos, Nicholas, *Automating the News* (Cambridge: Harvard University Press, 2019).

⁹ Felix M. Simon, 'Uneasy Bedfellows: AI in the News, Platform Companies and the Issue of Journalistic Autonomy', *Digital Journalism* 0, no. 0 (18 May 2022): 1–23, <https://doi.org/10.1080/21670811.2022.2063150>; Fernando van der Vliet, Anne Helmond, and Fabian Ferrari, 'Big AI: Cloud Infrastructure Dependence and the Industrialisation of Artificial Intelligence', *Big Data & Society* 11, no. 1 (1 March 2024): 20539517241232630, <https://doi.org/10.1177/20539517241232630>.

¹⁰ Payal Dhar, 'The Carbon Impact of Artificial Intelligence', *Nature Machine Intelligence* 2, no. 8 (1 August 2020): 423–25, <https://doi.org/10.1038/s42256-020-0219-9>.

¹¹ Kim Björn Becker, Felix M. Simon, and Christopher Crum, 'Policies in Parallel? A Comparative Study of Journalistic AI Policies in 52 Global News Organisations', SocArXiv, 2023, <https://osf.io/preprints/socarxiv/c4af9>.

and inclusive definition of AI,¹² effectively means that the AI Act will be the dominant legal framework for AI in the European Union.

What characterises the AI Act is a risk-based approach: the AI Act categorises the use of AI into different risk categories (unacceptable, high-risk, minimal risk, AI models with systemic risks). The higher the risk category, the more stringent the AI Act's legal requirements. In practice, the European Commission has a prominent role in determining in which risk category a particular AI system falls. The areas in which the use of AI systems is considered high-risk can be found in Annex III of the AI Act, and the European Commission is empowered to amend Annex III and add new areas, providing the use of AI in that area poses a significant risk to health, safety or fundamental rights.

So far, the use of AI in the media and communications sector is *not* included in the AI Act's list of high-risk AI applications. Practically this means that the use of AI in the media and public communication sector is considered minimal or no risk, and left largely unregulated by the AI Act.¹³ What is more, because the AI Act is maximum harmonisation, and in combination with the broad definition of the scope of the AI Act (and AI), the room for member states to adopt further-reaching rules for AI is significantly reduced. Doing so would run counter to the ambition of the European Commission to create a harmonised regulatory framework for AI. Instead, the AI Office and the European Member State shall encourage and facilitate self-regulation in the form of drawing up codes of conduct. Of particular importance for the media and public communication sector is that the codes of conduct should include aspects related to diversity ("facilitating an inclusive and diverse design of AI systems"), the promotion of AI literacy and assessing and preventing the negative impact of AI systems on vulnerability persons, accessibility for persons with disability and gender equality.¹⁴ In addition, the AI Act envisages that selected rules applicable to high-risk AI can also be voluntarily applied to low or minimal-risk AI.

Having said so, the AI Act is still directly relevant to *selected aspects of the use of AI in the media and public communications sector*, some of which will be discussed now.

2.1 AI literacy

One of the few obligations that apply to all providers and deployers of AI systems, irrespective of the risk category, is to ensure a sufficient level of AI literacy for their staff and other persons operating or using an AI system. In so doing, providers and deployers of AI have to take into account the technical knowledge, experience, education and training necessary as well as the context of an AI system and who will be affected by its use.¹⁵ Concretely for the media and communication sector this could mean that media organisations will have to make sure that their staff is sufficiently AI literate and aware of the implications that the use of different AI systems can have for their journalistic task, professional

¹² Article 3 (1) AI Act: "'AI system' means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments"

¹³ The use of AI by the media and public communications sector can still fall under a range of other laws, including data protection law, media law, competition and consumer law, the Digital Services Act, the Digital Markets Act, etc. A discussion of these legal frameworks, however, falls outside the scope of this expert opinion.,

¹⁴ Article 95 AI Act.

¹⁵ Article 4 AI Act.

values and the (fundamental) rights of the audience. This also means that AI literacy should not be limited to a technical understanding of AI, but also the legal, ethical and societal implications of AI.

The provision corresponds with the findings from a recent survey the University of Amsterdam conducted in collaboration with the Associated Press. In that survey, we found that 1 in 5 respondents indicated a need for training to be able to use Generative AI more responsibly, but it also became clear that often the resources, time and room for training is lacking. As one of our respondents said: “Training is lovely, but time spent on training is time not spent on journalism – and a small organization can't afford to do that.”¹⁶

Importantly, for *providers* of AI systems, the AI literacy obligation also means that there needs to be expertise about the context of the media and public communication sector the systems are developed for. This addresses concerns about the lack of knowledge of AI developers about the specific needs, concerns and professional values of those working with AI in the media and public communication sector.¹⁷

2.2 Unacceptable uses of AI in the media and communication sector

The AI Act lists several uses of AI that create unacceptable risks and therefore shall be banned. One category that is potentially relevant for the media is the use of AI systems intended to be used for biometric categorisation to categorise natural persons and deduce or infer their race, political opinions, religious and philosophical beliefs, etc.¹⁸ This provision could be relevant e.g. in context of using AI to analyse archival data or the automated creation of metadata. This prohibition does not apply to “any labelling or filtering of lawfully acquired biometric datasets, such as images”.¹⁹ More clarification is needed if this exception only applies in law enforcement, as is one reading of the provision, or could potentially also extend to the archives and data collections owned by media organisations, or to which media organisations have lawful access.

Another category of potentially prohibited AI practices concerns the use of AI to manipulate or deceive people or exploit their vulnerabilities.²⁰ This provision could potentially ban certain forms of dark patterns or unfair behavioural targeting practices, for example on social media platforms. The manipulation, deception or exploitation of vulnerabilities must cause or be reasonably likely to cause significant harm. The relevant recital in the AI Act refers to machine-brain interfaces or virtual reality as examples, but also clarifies that common and legitimate advertising practise in themselves do not fall under the prohibition.²¹ In practice, the provision will be most relevant for particularly malicious uses of AI-supported targeting practices, and forms of harms that are not covered by the Unfair Commercial Practice Directive, such as physical or psychological harms.

Even if an AI system, or a particular use of AI is not included in the list of banned practices of the AI Act, a sector can still decide not to engage in certain uses of AI (e.g. by means of self-regulation or

¹⁶ Diakopoulos et al., ‘Generative AI in Journalism: The Evolution of Newswork and Ethics in a Generative Information Ecosystem’.

¹⁷ Natali Helberger et al., ‘Towards a Normative Perspective on Journalistic AI: Embracing the Messy Reality of Normative Ideals’, *Digital Journalism* 10, no. 10 (2022).

¹⁸ Article 5 (1) (g) AI Act.

¹⁹ Article 5 (1)(g) AI Act.

²⁰ Article 5 (1) (a) and (b) AI Act.

²¹ Recital 29 AI Act.

general agreement). For example, in the international AP survey, most respondents agreed that the generation of entire pieces of content by generative AI should be banned. Other suggested bans include the generation of interview questions and creating content that misleads or deceives and therefore conflicts with professional values, such as a commitment to trust and integrity.²²

2.3 Use of AI in election campaigns

The only use of AI in the media and public communication area that has been listed as high-risk are AI systems “intended to be used for influencing the outcome of an election or referendum or the voting behaviour of natural persons in the exercise of their vote in elections or referenda”.²³ The phrasing “intended to be used for influencing the outcome of an election” is vague, and could potentially range from AI-driven recommender systems that show political content on the basis of user profiles who sees what political information to AI-driven polls, AI-driven political microtargeting, but also data journalism in an election context.

There is an equally broad exemption, too, and excluded would be the use of AI systems at the backend of a campaign, that is the use of “AI systems whose output natural persons are not directly exposed to, such as tools used to organise, optimise and structure political campaigns from **an administrative and logistic point of view**”.²⁴ In other words, the use of AI to develop a campaign strategy, analyse voter patterns or party programs will probably not fall under the high-risk categorisation. In practice, the distinction between backend and user-facing uses of AI does not necessarily reflect the risk of potential harm, which is why elsewhere, we have argued that this exemption should be interpreted narrowly and extent to strategic uses, for example to use AI to advise as part of a campaign strategy to instil fear or spread disinformation,²⁵ or using specific target criteria for matching up GenAI content for automated ad targeting.²⁶ These strategic uses may or may not directly expose users to the output of an AI system, but they are at the heart of many concerns about the use of (Gen)AI in elections.

The fact that the use of AI in election campaigns has been classified as high-risk does not imply that it is prohibited using AI in elections, but that the high-risk requirements have to be observed, and most of these requirements accrue to the developer, that is those developing and selling a system, like Outbrain, Elevenlabs, or Open AI, Microsoft and Google. Some examples of potentially relevant provisions for the use of AI in the context of elections and campaigning are the obligation to establish and maintain a risk management system and the provisions on data quality and management. The obligation to implement and maintain a risk management system means that the functioning of the high-risk AI system needs to be monitored throughout its entire lifecycle, to be able to identify and mitigate any known or reasonably foreseeable risks for e.g. the exercise of political freedoms but also the risk of misuse, for example, to create mal-information or political advertising campaigns to dissuade voters from voting.

²² Diakopoulos et al., ‘Generative AI in Journalism: The Evolution of Newswork and Ethics in a Generative Information Ecosystem’, 25–26.

²³ Annex III 8(b) AI Act.

²⁴ Annex III 8 (b) AI Act.

²⁵ See for example: <https://nos.nl/nieuwsuur/collectie/13903/artikel/2519046-chatbots-adviseerden-verspreid-desinformatie-en-zaai-angst-over-eu-verkiezingen>

²⁶ Natali Helberger and Claes H. de Vreese, ‘Caught between Grand Ambitions and Small Print: The AI Act and the Use of GenAI in Elections’, *Internet Policy Review*, 2024, <https://policyreview.info/articles/news/the-ai-act-and-use-of-genai-elections/1769>.

The AI Act also formulates requirements for the quality of training, validation and testing data, for example, making sure the data does not internalise biases that can lead to discriminatory outputs or are not sufficiently representative. The systems also need to be designed and developed in such a way that they can perform with accuracy and are resilient, to cyber-attacks or foreign interference. All these obligations do not necessarily translate into a direct obligation to make sure that an AI system does not generate inaccurate output or false information, but if systems create false information on a more systemic level, arguably this could trigger the monitoring & risk mitigation obligations.

The main obligations of a political party or a social media platform using a high-risk AI system would then be to follow the usage instructions by the developers, make sure the humans overseeing the system have the necessary training, make sure input data is relevant and representative, and inform the provider of any malfunctioning or risks that they observe when operating the system. If political parties can be considered to be bodies governed by public law they will also be obliged to perform a fundamental rights impact assessment, describing e.g. the categories of voters affected, potential harms to their fundamental rights, such as the right to freedom of expression, political participation, privacy or non-discrimination, and how these risks will be mitigated.²⁷ In contrast, the obligation to conduct a fundamental rights impact assessment would not accrue to a media organisation or social media platform because they are no bodies governed by public law.

2.4 Transparency obligations

One of the most prominent concerns around the use of AI, and generative AI in particular, in the media sector is the ease with which synthetic text, audio or video can be created. The moral and ethical basis for these concerns is complex and can include a diverse set of objections against the use of synthetic content. These can be fears about misleading users about the source or authenticity of a piece of information (human or AI), concerns about the quality and veracity of synthetic content, the intent with which it has been created (e.g. to manipulate and disinform), the lack of ‘humaness’ in the communication, denigration and disrespect for the audience (subjected to automated communication because cheaper, more efficient, etc.), fears about the ease with which humans can be replaced, personality rights and moral objections against being impersonated or adorning an AI with human features. Importantly, whether a content has been created by a human or an AI does not yet say much about the truth or accuracy of that content. Both, humans and AI can err, make mistakes and misrepresent the truth. And yet, in many public and academic debates, the one-size-fits-all solution to these concerns is transparency, so also in the AI Act.

The AI Act qualifies the use of AI to produce synthetic content as low risk that can be addressed through transparency obligations for both, the providers and deployers of AI systems. *Providers* of AI systems must ensure that users are informed when they are interacting with an AI system,²⁸ and the outputs of the AI system must be labelled in a “machine-readable format and detectable as artificially generated or manipulated.”²⁹ The latter obligation can, for example, help media organisations or social media platforms³⁰ to identify the authenticity of synthetic text, video or images.

²⁷ Article 29a AI Act

²⁸ Article 50 (1) AI Act.

²⁹ Article 50 (2) AI Act.

³⁰ This obligation needs to be read in connection with Articles 34 and 35 (1)(h) of the DSA to the extent that the proliferation of synthetic content can pose a systemic risks that Very Large Online Platforms are obliged to mitigate.

For *deployers* of AI systems that generate synthetic content, the AI Act distinguishes between synthetic image, audio or video (deepfake) and text. In both situations, deployers are obliged to disclose the fact that the content has been artificially generated or manipulated. *Where audio, video or images* form “part of an evidently artistic, creative, satirical, fictional or analogous work or programme, the transparency obligations set out in this paragraph are limited to disclosure of the existence of such generated or manipulated content in an appropriate manner that does not hamper the display or enjoyment of the work”.³¹ With regards to *text*, the transparency obligation only applies to text which is published with the purpose of “informing the public on matters of public interest” (which probably excludes commercial advertising, personalised targeting, entertainment, etc). It does not apply “where the AI-generated content has undergone a process of human review or editorial control and where a natural or legal person holds editorial responsibility for the publication of the content.”³² In other words, the use of AI systems to generate synthetic content in editorial media is excluded from the transparency obligation. Since the publication of text with the purpose of informing the public on matters of public interest is typically the primary task of the editorial media, which is subsequently excluded from the application of the provision, the practical relevance of Article 50 (4) AI Act for the media and public communications sector is minimal, symbolic at best.

2.5 Copyright

One important controversy around AI, and Generative AI in particular, is the legal protection of training data under copyright law. The question of whether or not to allow providers like OpenAI, Anthropic or Meta to train their models on publicly available media content is a question that splits the sector. While some media professionals argue that allowing these models to train on media content will help to make the models more accurate, represent different viewpoints or languages and ultimately benefit also the media industry, for others the unauthorised use of their contents raises serious concerns about copyright, unfair competition, the sustainability of the media sector and how to protect journalistic integrity and trust in journalism.³³ In response, some media organisations, like the New York Times, go to courts, others strike deals with companies like OpenAI. Often these deals are not transparent, and there is a danger of a growing digital divide between media organisations that are able to strike a deal or sue, and those who are not. While there is some discussion around potential collective solutions, the AI Act itself does neither enable nor encourage those.

Having said so, a necessary pre-condition for both approaches is the ability of media organisations, and rights holders more generally, to be able to exercise and ascertain their intellectual property rights in the content that is being used for training. Under European copyright law, training models on publicly available content can fall under the so-called text and data mining exception,³⁴ unless right holders opt-out from content being used as training data. Where media organisations have done so, providers of LLMs must negotiate for a licence to be able to use that content lawfully. Another

³¹ Article 50 (4), 3rd sentence.

³² Article 50 (4), 4th and 5th sentence.

³³ Diakopoulos et al., ‘Generative AI in Journalism: The Evolution of Newswork and Ethics in a Generative Information Ecosystem’.

³⁴ Art. 4 of the Directive on Copyright in the Digital Single Market. See also Thomas Margoni and Martin Kretschmer, ‘A Deeper Look into the EU Text and Data Mining Exceptions: Harmonisation, Data Ownership, and the Future of Technology’, *GRUR International* 71, no. 8 (1 August 2022): 685–701, <https://doi.org/10.1093/grurint/ikac054>.

challenge is the difficulty for a media organisation to verify that a model has been trained on copyrighted content.³⁵

The AI Act addresses this problem in two ways. First, it requires all providers of General Purpose AI models to have a policy in place to comply with intellectual property law and offer a technical state-of-the-art solution for right holders to reserve their rights.³⁶ Secondly, all providers shall make publicly available a sufficiently detailed summary of the content used for training the model, using a template by the AI Office.³⁷ This information can help rightsholders to ascertain whether their content has been used for training purposes but it can potentially also enable more scrutiny of other aspects of the training data, for example respect for data protection law, or whether data sets have been used that are problematic because of the inclusion of bias or unlawful content.³⁸

In practice, much will depend on the level of detail of information that the AI Office's template will mandate.

2.6 Generative AI

According to the latest version of the AI Act, the regulation refers to generative AI models like GPT or Gemini as “General Purpose AI Models” and distinguishes between models with and without systemic risks. Applicable to all providers of general purpose AI models – with the exception of open source models – are the obligation to draw up and keep an up-to-date technical documentation of the model and the way it has been trained and tested.³⁹ This information does not have to be made publicly available, but can be requested by the AI Office, the national competent authorities, and providers of so-called AI systems, i.e. services like ChatGPT or DeepL, that are built on top of a model. The goal is to give providers of these systems the information needed to understand the capabilities and limitations of a particular model. In addition, there are the obligations with respect to European copyright and the transparency of data sets (see section 5). Proposals by the European Parliament to train and design models in such a way as to ensure adequate safeguards against the generation of content in breach of Union law and without prejudice to fundamental rights⁴⁰ did not make it into the final version of the AI Act. Neither is there a legal obligation under the AI Act for general purpose AI models without systemic risks to test the models, identify and mitigate any possible risks.

The obligation to test and engage in risk assessment and mitigation is reserved to providers of general-purpose AI models *with* systemic risks. These are models that reach a certain threshold of technical capability or impact on the market.⁴¹ The risk monitoring and mitigation measures are limited to so

³⁵ João Pedro Quintais and Nicholas Diakopoulos, ‘A Primer and FAQ on Copyright Law and Generative AI for News Media’, *Generative AI in the Newsroom* (blog), 2023, <https://generative-ai-newsroom.com/a-primer-and-faq-on-copyright-law-and-generative-ai-for-news-media-f1349f514883>.

³⁶ Article 52 (1) (c) AI Act

³⁷ Article 53 (1) d) AI Act

³⁸ In this sense e.g. Open Future, Considerations for Implementing Rightsholder Opt-Outs by AI Model Developers, May 2024, <https://openfuture.eu/publication/considerations-for-implementing-rightsholder-opt-outs-by-ai-model-developers/>

³⁹ Article 53 AI Act.

⁴⁰ European Parliament, Amendments adopted by the European Parliament on 14 June 2023 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)), P9-TA(2023)0236, Article 28b (4)(b) AI Act.

⁴¹ Article 51 and 55 AI Act.

called ‘systemic risks’,⁴² echoing the systemic risk monitoring obligations that also apply to providers of Very Large Online Platforms under the DSA. The AI Act defines as “a risk that is specific to the high-impact capabilities of general-purpose AI models, having a significant impact on the Union market due to their reach, or due to actual or reasonably foreseeable negative effects on public health, safety, public security, fundamental rights, or the society as a whole, that can be propagated at scale across the value chain.”⁴³ Systemic risks can therewith potentially also pertain to fundamental communication rights, like freedom of expression, privacy or non-discrimination, and the reference to “society” could also include the media and public communications sector.

The relevance of the AI Act’s provisions for General Purpose AI for the media depend on whether media are providers of a General Purpose AI model (in the sense that they train their own model),⁴⁴ providers of General Purpose AI systems, i.e. a service, like a chatbot or text generator or users of third party systems.

For media organisations as developers of their own General Purpose AI **model**, the AI Act offers a very light weight regulatory approach (as long as they do not pass the threshold to qualify as a model with systemic risks), limited to technical documentation and transparency about training data, in addition to the general rules, like GDPR. It is up to media organisations to adopt additional voluntary rules that go beyond these requirements.

For media organisations as providers of a General Purpose AI **system**, the AI Act includes some transparency rights that can help a media organisation to make a first assessment of the reliability and trustworthiness of a particular model. This information is important for media organisations as the quality of the model can ultimately also affect the trustworthiness and reliability of the output of the service. Much will depend on the level of detail of the information, and on media organisation’s ability to conduct an informed assessment.

The down sight of the light-touch regulatory approach for General Purpose AI models is the lack of more concrete safeguards or guardrails to guarantee that a General Purpose AI model is trustworthy and safe to use. Concretely, this means that media organisations as users of 3rd party General Purpose AI Systems cannot trust that models that comply with the AI Act were trained on lawful and trustworthy data or tested for any potential negative effects and risks for the media, the audience and society at large – with the exception of the very largest models that qualify as General Purpose AI Models with Systemic Risks. The lack of further-reaching guardrails for General Purpose AI models could benefit the few models with systemic risks that fall under the more stringent legal obligations, and therefore potentially more reliable, and therewith defeat the original objective behind the light touch approach, namely, to improve the conditions for the so-called European champions.

⁴² See on the difficult notion of “systemic risks” Sally Broughton Micova and Andrea Calef, ‘Elements for Effective Systemic Risk Assessment Under the DSA’ (Center on Regulation in Europe (CERRE): University of East Anglia, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4512640.

⁴³ Article 3 (65) AI Act.

⁴⁴ Which so far only few media organisations do. One example is Bloomberg. In other countries, like the Netherlands and Sweden, there are cooperations between media organisations and providers of national general purpose AI models.

2.7 The Council of Europe AI Convention

The Council of Europe Convention on AI features several important differences, as compared to the European AI Act, also from the perspective of the media and public communications sector.

As a human rights instrument, the focus of the Convention is on creating the conditions for the protection of human rights, democracy and the rule of law in the context of AI. As a human rights instrument, and unlike the AI Act, the Convention is only directly applicable to public authorities, but imposes positive obligations on states to address risks and impacts ‘from activities within the lifecycle of artificial intelligence systems by private actors’.⁴⁵ The Convention then lists a number of fundamental rights and public interests that must be safeguarded, including human dignity and individual autonomy, equality and non-discrimination, privacy and personal data protection, reliability, save innovation, non-discrimination, digital literacy and the rights of persons with disabilities and children.

Most relevant for the media and communication sector is, next to the general commitments to fundamental rights such as privacy and non-discrimination, are

- A specific obligation to make sure AI is not used to undermine the integrity, independence and effectiveness of democratic institutions,⁴⁶
- A specific reference to the integrity of democratic processes and the obligation to protect “fair access to and participation in public debate, as well as their ability to freely form opinions”,⁴⁷
- The obligation to promote the “reliability of artificial intelligence systems and trust in their outputs, which could include requirements related to adequate quality and security.”⁴⁸

Therewith, and in contrast to the AI Act, the AI Convention explicitly addresses and makes more concrete some core values relevant for the media and public communications sector, such as integrity of democratic institutions, the impact of AI on participation in the public debate, and the reliability of the output. On the other hand, unlike the AI Convention, the AI Act specifically mentions the use of AI in elections. It remains to see how states will interpret the Convention’s concept of undermining “the integrity, independence and effectiveness of democratic institutions”, but a broad interpretation would potentially allow to address also more structural challenges to the media sector that the AI Act does not address. Examples could be the dependence on Big Tech companies, the lack of sovereign digital infrastructures, a growing digital divide between media organisations that can and cannot afford digital innovation, the proliferation of disinformation and decline of trust in the media. The emphasis on fair access to and participation in the public debate could potentially open the way for more pro-active value-driven approaches (instead of risk-based), such as stimulating diversity and inclusiveness in recommender systems or equal opportunities for political parties online. In a similar way, the obligation to promote the reliability and trust of the output of AI systems goes beyond a risk-based approach in the sense that it can also include positive measures or obligations to increase the quality and veracity of content, even before the lack of such turns into a risk for fundamental rights and society. Insofar, the AI Convention is more clearly geared towards tackling specific problems around the use of AI in the media and communication sector and includes more **pro-active obligation for**

⁴⁵ Article 3 (b) of the AI Convention.

⁴⁶ Article 5 (1) of the AI Convention.

⁴⁷ Article 5 (2) AI Act.

⁴⁸ Article 12 of the AI Convention.

public authorities to contribute to the realisation of values (rather than only concentrating on the mitigation of risks to values).⁴⁹

Another notable difference is that unlike the European AI Act, the AI Convention does **not explicate different risk categories**, but leaves it up to the individual states to identify “actual and potential impacts to human rights, democracy and the rule of law.” States must then adopt “graduated and differentiated measures”, depending on a case-by-case assessment of the context, intended use, and the severity and probability of impacts. Therefore, certain uses of AI in the media and communication sector could potentially fall under the risk assessment & mitigation obligations of the AI Convention.

Unlike under the European AI Act, there is an explicit obligation to consider as part of the assessment the perspectives of persons whose rights might be impacted. Also, the risk assessment framework of the Convention is broader in that it also obliges to take into account **the context** of an AI system, and requires, where appropriate, testing of all systems, not only high-risk AI systems, or General Purpose AI models with systemic impact.

Finally, unlike the European AI Act, which is maximum harmonisation, the AI Convention explicitly encourages states to adopt complementary sector specific regulations.

3. Where are there important regulatory gaps?

In the following I will outline several of the most important regulatory gaps that I see in the AI Act with view to the media and public communications sector. This list is the result of a first analysis and not exhaustive. A discussion of how to address these gaps requires additional (extensive) study and falls outside the scope of this expert opinion.

3.1 Substantive vacuum

The AI Act takes a procedural approach and defines responsibilities for several stakeholders to make sure AI systems and models are safe, trustworthy and respect fundamental rights. Doing so, the AI Act is premised on the principle of self-assessment, and it is in the first place up to providers of AI systems to define when exactly an AI system is posing a risk to fundamental rights. Put differently, tech companies, often non-European based, are tasked with the difficult task to interpret and conceptualise the scope of fundamental rights protection in an AI context and identify and anticipate known and yet unknown but reasonably foreseeable risks. This is a task that has been typically performed by courts and specialised government agencies and involves complex processes of contextual interpretation and balancing of conflicting rights and freedoms.

The AI Act, recognising the difficulty of the task, is seeking recourse to standardisation and automation to ease the burden on companies. For deployers that have to perform a fundamental rights impact assessment, for example, the AI Office must develop “a template for a questionnaire, including through an automated tool” to simplify the task.⁵⁰ And providers of general purpose and high-risk AI benefit from a presumption of conformity with the provisions of the AI Act when they follow harmonised standards by the European standardisation bodies.⁵¹ The latter are predominantly technical

⁴⁹ See Article 3 (a) and (b) of the Convention, in relation to private parties the focus is still on addressing risks and impacts only.

⁵⁰ Article 27 (5) AI Act.

⁵¹ Article 43 AI Act.

standardisation bodies, and experts have repeatedly warned about the industrial focus and lack of fundamental rights expertise, representation of a broad range of societal stakeholders and democratic accountability in these bodies.⁵²

A major gap that the AI Act leaves is the question of when exactly fundamental rights and freedoms are at risk and how to measure and assess the adequacy and effectiveness of mitigation measures. In other words, the AI Act leaves a substantive vacuum. The AI Act *does* define roles and responsibilities for a few stakeholders to provide substance and interpretation. There is potentially a role for the Fundamental Rights Agency, which will be a permanent member of the Advisory Forum that must advise the European AI Board and the Commission.⁵³ Then there is the AI Board, composed of member state representatives, another advisory body that must “facilitate the development of common criteria and a shared understanding among market operators and competent authorities of the relevant concepts provided for in this Regulation, including by contributing to the development of benchmarks”.⁵⁴ Potentially, also the Scientific Panel of Independent Experts will have a role to play as it must alert the AI Office of possible systemic risks of general purpose AI systems.⁵⁵ Finally, there are the National Competent Authorities, who must, next to technical skills also have an in-depth understanding of fundamental rights,⁵⁶ as well as the European Commission that determines which AI systems pose a high-risk to fundamental rights, and issue common specifications in case technical standards do not offer sufficient fundamental rights protection.⁵⁷ The AI Act foresees special rights of access to documentation and to require (technical) testing for the national authorities tasked to protect fundamental rights,⁵⁸ and failures to mitigate risks to fundamental rights can be sanctioned.⁵⁹ All these rules, however, are procedural.

Curiously absent in the AI Act are institutions that have traditionally played a key role in interpreting fundamental rights law, such as courts, and particularly the European Court of Human Rights, or the Council of Europe as human rights standard setting organisation. And yet, also the Council of Europe

⁵² Carlo Colombo and Mariolina Eliantonio, ‘Harmonized Technical Standards as Part of EU Law: Juridification with a Number of Unresolved Legitimacy Concerns?: Case C-613/14 James Elliot Construction Limited v. Irish Asphalt Limited, EU:C:2016:821’, *Maastricht Journal of European and Comparative Law* 24, no. 2 (1 April 2017): 323–40, <https://doi.org/10.1177/1023263X17709753>; Martin Ebers, ‘Standardizing AI – The Case of the European Commission’s Proposal for an Artificial Intelligence Act’, in Larry A. DiMatteo/Michel Cannarsa/Cristina Poncibò (Eds.), *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (Boston: Cambridge University Press, 2022); Natali Helberger, ‘FutureNewsCorp, or How the AI Act Changed the Future of News’, *Computer Law & Security Review* 52 (1 April 2024): 105915, <https://doi.org/10.1016/j.clsr.2023.105915>; Michael Veale and Frederik Zuiderveen Borgesius, ‘Demystifying the Draft EU Artificial Intelligence Act’, *Computer Law Review International* 22, no. 4 (2021). But also see Article 40 (3) AI Act, according to which “The participants in the standardisation process shall seek to promote investment and innovation in AI, including through increasing legal certainty, as well as the competitiveness and growth of the Union market, to contribute to strengthening global cooperation on standardisation and taking into account existing international standards in the field of AI that are consistent with Union values, fundamental rights and interests, and to enhance multi-stakeholder governance ensuring a balanced representation of interests and the effective participation of all relevant stakeholders in accordance with Articles 5, 6, and 7 of Regulation (EU) No 1025/2012.”

⁵³ Article 67 (5),

⁵⁴ Article 66 (g) AI Act.

⁵⁵ Article 68 (3)(a)(i) AI Act.

⁵⁶ Article 70 (2) AI Act and 28 (1) AI Act.

⁵⁷ Article 41 (1)(a)(iii) AI Act.

⁵⁸ Article 77 AI Act.

⁵⁹ Article 79 AI Act.

AI Convention deals with a similar problem – very inclusive but also very abstract commitments to human rights, and not further specified obligations for states to arrive at more concretisation.

3.2 Limits and pitfalls of a risk-based approach

AI systems in the media and communication sector are – apart from certain applications in the election context – not included in the high-risk category. This decision has not been uncontroversial. In the earlier European Parliament proposal, the Parliament, for example, had proposed to add the AI-driven recommender systems on social media platforms to the list of high-risk AI.⁶⁰ Others have suggested to include deepfakes into the high-risk category.⁶¹ The list of high-risk AI applications in Annex III is subject to potential amendments, and one important point for future discussion is **whether there are AI applications in the media and communications sector that should be considered high-risk.**

Having said so, it is also important to maintain some realism about the potential of the AI Act's high-risk AI obligations to address potential risks from AI for the media and communications sector. Reasons for this are, among others,

- a) a relatively narrow focus on risks flowing from the AI systems themselves and lack of a concrete obligation to consider the broader context or non-technical factors (e.g. human failure, lack of ethical guidelines and organisational safeguards to assist professionals in the responsible use of AI, negative repercussions for users' trust, available alternative choices, etc.),
- b) the lack of concrete measures or benchmarks to measure a negative impact on human rights, and the question to what extent negative impacts on human rights are at all susceptible to technical or quantitative measures, and more generally
- c) the difficulty of subsuming all concerns around the use of AI in the media and communications sector under the concept of fundamental rights (see more on this later), and the danger of a bureaucratisation and reduction of fundamental rights to make it more feasible and simpler for companies to comply with the AI Act.

In contrast, the AI Convention does relate to the broader context in which an AI system operates, and explicitly stresses the importance of involving affected users, such as marginalised communities and members of the audience that are typically under-represented in the media, or particularly vulnerable to the negative effects of content moderation or exclusionary practices. Having said so, because of its vagueness, much will depend on the willingness and political capital of individual states when interpreting and translating the commitments from the Convention.

On a more principal level, inherent to a risk-based approach is the focus on minimising risks, instead of maximising opportunities and optimal conditions for the realisation of fundamental rights. From the point of technology or commercially driven innovation this can be a sensible approach. From the perspective of fundamental rights and public values **an important gap that the AI Act leaves is creating incentives to go beyond what is strictly necessary to not interfere with core values.** In contrast, a

⁶⁰ European Parliament, Amendments adopted by the European Parliament on 14 June 2023 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)), Annex III, paragraph 1, point 8, point ab, P9_TA(2023)0236,

⁶¹ Romero Moreno, 'Generative AI and Deepfakes'; Mariëtte Van Huijstee et al., 'Tackling Deepfakes in European Policy', Report for the European Parliamentary Research Service (Brussels: European Parliament, 2021).

human-rights driven approach, like the AI Convention, acknowledges that AI can also create opportunities for the realisation and flourishing of human rights,⁶² and that the obligations of states under fundamental rights law *also* include pro-active duties to create optimal conditions for the realisation and flourishing of human rights.

3.3 Accountability gaps along the value chain

Unlike the AI Convention, the European AI Act is strongly provider-centric. Most obligations accrue to the developers/providers of AI systems. One of the primary obligations of deployers, i.e. professional users, is to follow the instructions of the providers and use the AI systems as intended.⁶³ In practice, the realisation of trustworthy and responsible AI depends on the interplay between a wide range of stakeholders, some of which are addressed by the AI Act (providers of AI systems, regulators, European standardisation bodies, importers), others not or hardly (providers of data sets, end-users, those building applications on top of AI systems, app stores, hardware producers, model market places, etc.).⁶⁴ In other words, the AI Act only addresses a part of the AI value chain, and leaves important **gaps in the chain of accountable actors**.

And while the AI Act lays down some of the ground rules for the development and deployment of AI systems, much of the actual regulation will take place in the relationship between providers and deployers, in the form of terms of use and user guidelines. The adequacy and fairness of the conditions in the terms of use can be determining for a fair and effective outcome. One example are contractual clauses in which providers of General Purpose AI reserve the right to change or cease the service without prior warning. As experiences with social media platforms have taught us,⁶⁵ provisions like these can be very problematic for media organisations that rely and build on third party technology. Contractual provisions that discourage or even ban reverse engineering and scraping AI models are problematic from the perspective of the role of the media as critical observers and identifying (systemic) risks, and so forth.⁶⁶ Another **gap, therefore, is the lack of attention for governance-by-contract**, and a **systemic control of the fairness of the terms** of use and their potential relevancy for the media.

Vice versa, the responsible use of AI begins with responsible procurement, i.e. selecting responsible AI systems, and in so doing, also **drive demand** for systems and models that are **better** than others in respecting fundamental rights, the environment, the interests of users and society. And yet, particularly for smaller media organisations without large legal departments it can be very difficult to assess the fairness of contractual conditions and the overall trustworthiness of an AI system. For all other AI

⁶² Natali Helberger et al., 'A Freedom of Expression Perspective on AI in the Media – with a Special Focus on Editorial Decision Making on Social Media Platforms and in the News Media', *European Journal of Law and Technology* 11, no. 3 (30 December 2020), <https://ejlt.org/index.php/ejlt/article/view/752>.

⁶³ Article 26 (1) AI Act.

⁶⁴ Ian Brown, 'Expert Explainer: Allocating Accountability in AI Supply Chains' (London: Ada Lovelace Institute, 29 June 2023), <https://www.adalovelaceinstitute.org/resource/ai-supply-chains/>; Alex C. Engler and Andrea Renda, 'Reconciling the AI Value Chain with the EU's Artificial Intelligence Act' (Brussels: CEPS, 3 September 2022), https://www.ceps.eu/download/publication/?id=37654&pdf=CEPS-In-depth-analysis-2022-03_Reconciling-the-AI-Value-Chain-with-the-EU-Artificial-Intelligence-Act.pdf.

⁶⁵ <https://www.nbcnews.com/business/business-news/facebook-s-news-feed-changes-are-latest-blow-publishers-brands-n837196>

⁶⁶ Natali Helberger, 'Generative AI in Media & Journalism: Think Big, but Read the Small Print First', Medium, 18 July 2023, <https://generative-ai-newsroom.com/generative-ai-in-media-journalism-think-big-but-read-the-small-print-first-375f2ecb1256>.

systems than high-risk AI and the very limited category of General Purpose AI systems with systemic risk, the AI Act creates minimal legal standards or signals as it leaves the majority of systems only lightly regulated. Assisting media organisations in that choice, particularly smaller and local ones, could go some way to help making the use of AI in the media and communications sector more responsible. This is also the reason why the Council of Europe has published procurement guidelines to help media organisations to make well-considered and responsible procurement decisions.⁶⁷

3.4 Synthetic content, deepfakes and limits to a transparency approach

The AI Act defines the use of AI to synthesize information and communication as low risk, subject to a transparency approach. At least two important regulatory gaps should be noted. **One concerns the effectiveness of the transparency provisions** in their current form, both in terms of scope as well as enforceability. For example, research by the AI, Media & Democracy Lab has indicated that people would always feel manipulated when not informed that a content has been AI generated.⁶⁸ Why then limiting the transparency obligation to content that is published with the purpose of informing the public on matters of public interest? Our research also found that the fact that a piece of content has been AI generated does not yet provide users with any meaningful information on whether it is accurate, true and trustworthy. More generally, to be effective, a transparency approach would need to be informed by empirical insights in the information that users need in order to make informed choices.

In terms of enforcement, if there are no effective, automated tools to distinguish synthetic from human-made content, the prospect of effective enforcement of the obligations is very questionable. Well-intending users of generative AI systems will have intrinsic motivations to inform about the use of AI in order not to lose the trust from the audience. Actors with ill-intent will have no incentives to comply with the provision unless effective detection is possible and pose the most serious threat to fundamental rights and (trust in) the quality of the public sphere.

The **second**, and more fundamental problem with the transparency approach is that it glosses over a **much needed discussion about where exactly the deeper structural problems with synthetic content are**, starting with the question if there are situations in which synthetic content poses a more significant (high) risk to fundamental rights than in others (e.g. in an election context, fully automated content, content with the intention to mislead)⁶⁹, concerns about moral and personality rights, the more structural changes (generative) AI can cause for the media sector, challenges in establishing the veracity and quality of content (synthetic content can still be truthful and high quality), issues of data quality and more generally how to tackle the underlying problem: the use of AI with the intent to produce harmful deepfakes and synthetic disinformation. Insofar, the qualification of synthetic content as low risk is undifferentiated and misleading.

⁶⁷ Council of Europe, Guidelines on the responsible implementation of artificial intelligence (AI) systems in journalism, 12 December 2023, Strasbourg.

⁶⁸ Stanislaw Piasecki et al., “‘I Would Feel Manipulated’: Do the Transparency Provisions in the AI Act Give News Consumers What They Hope For?”, *Internet Policy Review*, no. Forthcoming (n.d.).

⁶⁹ See e.g. the suggestion by Romero Moreno, ‘Generative AI and Deepfakes’. to put deepfakes into the high-risk AI category.

3.5 Beyond concrete risks and more structural problems for the political economy, including aspects of infrastructure capture and the environment

Then there is a question to what extent the focus on (risks for) human rights is adequate and sufficient in tackling the potential negative consequences for the political economy and structure of the media and communication sector. Respect for the right to freedom of expression, equality, political participation, privacy and other fundamental rights is critical for the ability of individual citizens to benefit from and participate in a vibrant digital public sphere. A human-rights centred approach, however, is less suitable to tackle more structural challenges.⁷⁰ Examples are the dependency of the media on technologies and digital infrastructures that are controlled by a small number of very large technology companies, and potential challenges for journalistic autonomy and independence, growing digital divides between media organisations that do or do not have room and resources to invest in AI, the decline of trust in the media as a result of the large-scale proliferation of disinformation and deepfakes, etc. Some of these challenges may fall under the scope of other pieces of EU legislation, such as the Digital Markets Act or EU competition law, others are left unaddressed. In a similar way, it is still very unclear to what extent the AI Act will be effective in tackling wider societal challenges around AI, including implications for the labour market, the economic sustainability of media organisations or the environment. And there is a real risk that harms to values not covered by the AI Act will only be detected once they have materialised.⁷¹

3.6 The lack of a research exemption

As the DSA, the effective implementation and enforcement of the AI Act will depend on a multitude of stakeholders, including researchers. Researchers will have, for example, important tasks around the development and assessment of AI systems.⁷² Unlike the DSA, however, the AI Act does not give researchers a right of access to data, models or the information that is needed to do so. Many of the leading AI companies restrict researchers access to the necessary information.⁷³ Another gap in the AI Act is therefore the **lack of a suitable research exemption**.

4. What are relevant considerations that can speak for or against a possible sector-specific approach?

One important consideration in favour of a sector-specific approach would be that it avoided the challenge of creating a regulation that can apply to all the different uses of AI and the resulting need for generalisation and abstraction. A more sector-specific approach would allow to identify and address more concretely concerns and opportunities of using AI in a particular sector, and to offer more clarity

⁷⁰ 'The Promises and Challenges of Addressing Artificial Intelligence with Human Rights - Onur Bakiner, 2023', accessed 30 August 2024, <https://journals.sagepub.com/doi/full/10.1177/20539517231205476>.

⁷¹ Marco Almada and Anca Radu, 'The Brussels Side-Effect: How the AI Act Can Reduce the Global Reach of EU Policy', *German Law Journal*, 19 February 2024, 1–18, <https://doi.org/10.1017/glj.2023.108>.

⁷² Recitals 68 and 142 AI Act.

⁷³ <https://www.washingtonpost.com/technology/2024/03/05/ai-research-letter-openai-meta-midjourney/> In a letter of 100+ US AI researchers, the researchers write: "While companies' terms of service deter malicious use, they also offer no exemption for independent good faith research, leaving researchers at risk of account suspension or even legal reprisals." And demand that "AI companies should provide basic protections and more equitable access for good faith AI safety and trustworthiness research."

and substantive guidance. It would also allow involving more sector-specific expertise, including that of media organisations, experts as well as specialised regulatory authorities.

Arguments against a sector-specific approach are related to the sensitivity of regulating the media sector, which has a long-standing history of self-regulation and non-state interference, grounded, among others, in fundamental rights law and the special position of the media as a democratic institution.⁷⁴ More specifically for the European Union, the AI Act, its inclusive scope and the fact that the regulation is maximum harmonisation, limits the room for national, sector-specific regulations.

5. What significance does the AI Act have for media organizations and the journalistic use of AI in non-EU countries like Switzerland?

As a non-EU country, Switzerland has no legal or contractual obligation to adopt or implement the AI Act. This is not to say that Switzerland could not decide to take over selected or all aspects of the AI Act. Having said so, the AI Act could apply under certain conditions indirectly to Swiss media organisations:

To the extent that Swiss media organisations develop or deploy AI in services that are *consumed by citizens of the European Union* certain provisions of the AI Act can apply.⁷⁵ An example is the obligation to label synthetic content. The same is true if a Swiss media organisation was to develop a General Purpose AI model and use it within the territory of the European Union.⁷⁶

If a Swiss media organisation wishes to **complain** that a provider of AI models or systems infringes the AI Act, the media organisation can lodge a complaint with the relevant European market surveillance authority.⁷⁷

In addition, Swiss media organisations can **benefit indirectly** from the AI Act to the extent that providers of AI systems or General Purpose AI comply with the AI Act for the territory of the European Union and offer the same services to Swiss media organisations. It remains to be seen to what extent the AI Act will have a so-called “Brussels Effect.”⁷⁸

In case Switzerland decides to ratify the AI Convention, it will create binding obligations for Switzerland. Having said so, and seeing the rather high-level character of the Convention, it will leave Switzerland considerable flexibility to decide how to implement the obligations from the Convention.

⁷⁴ Timothy Garton Ash, *Free Speech: Ten Principles for a Connected World* (New Haven ; London: Yale University Press, 2016), 188.

⁷⁵ Article 2 (1)(c) AI Act.

⁷⁶ Article 2(1)(a) AI Act.

⁷⁷ Article. 113 AI Act. The right to lodge a complaint is open to “any natural or legal person having grounds to consider that there has been an infringement”.

⁷⁸ Charlotte Siegmann and Markus Anderljung, ‘The Brussels Effect and Artificial Intelligence: How EU Regulation Will Impact the Global AI Market’ (arXiv, 23 August 2022), <https://doi.org/10.48550/arXiv.2208.12645>.