EU Artificial Intelligence Act and UN Global Digital Compact: Vehicles for Democracy and Rule of Law?

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Abstract

Der Artikel analysiert die wichtigsten Entwicklungen und Gefahren in der globalen digitalen Landschaft in Bezug auf künstliche Intelligenz (KI), Cloud Computing und Dateninfrastruktur. Es ist offensichtlich, dass digitale Technologien direkte und weitreichende Auswirkungen auf den Schutz der Menschenrechte, die nachhaltige Entwicklung und vor allem die Erhaltung und Wiederherstellung von Frieden und Sicherheit haben. Vor diesem Hintergrund versuchen die großen Volkswirtschaften der USA, Chinas und der EU, Risiken zu erkennen und einzudämmen, eine globale politische Agenda zu entwerfen und miteinander zu konkurrieren, um ein Regulierungskonzept zu erstellen. China hat 2023 vorläufige Maßnahmen für die Verwaltung von Diensten der generativen künstlichen Intelligenz verabschiedet. Bislang ist die EU jedoch am weitesten fortgeschritten, wenn es um die Verabschiedung umfassender und detaillierter Rechtsvorschriften zu KI geht. Die Vorschriften des KI-Gesetzes der EU (EU AI Act) sind komplex und werden die Wissenschafts- und Technologiepolitik weltweit beeinflussen. Während die Bletchley-Erklärung von 16 Ländern, die am KI-Sicherheitsgipfel 2023 teilnahmen, darunter die USA, Verpflichtungen zur Intensivierung und Aufrechterhaltung der Zusammenarbeit enthält, erließ Präsident Donald Trump im Januar 2025 eine Durchführungsverordnung, die bestehende KI-Politiken und -Richtlinien aufhebt, die als Hindernisse für amerikanische KI-Innovationen wirken. Eine zentrale Frage ist, ob der im September 2024 verabschiedete UN Global Digital Compact (GDC) in diesem Machtspiel eine Rolle spielen wird.

L'articolo analizza i principali sviluppi e pericoli nel panorama digitale globale che comprende l'intelligenza artificiale (AI), il cloud computing e l'infrastruttura dei dati. È evidente che le tecnologie digitali hanno effetti diretti e di vasta portata sulla tutela dei diritti umani, sullo sviluppo sostenibile e, soprattutto, sul mantenimento e il ripristino della pace e della sicurezza. In questo contesto, le grandi economie degli Stati Uniti, della Cina e dell'UE stanno cercando di identificare e mitigare i rischi, di definire un'agenda politica globale e di competere per definire un piano normativo. Nel 2023, la Cina ha adottato misure provvisorie per la gestione dei servizi di intelligenza artificiale generativa. Tuttavia, finora l'UE è la più avanzata nell'adozione di una legislazione completa e dettagliata sull'IA. Le regole della legge europea sull'IA sono complesse e influenzeranno la politica scientifica e tecnologica a livello globale. Mentre la Dichiarazione di Bletchley del 2023 di 16 Paesi, che hanno partecipato al Vertice sulla sicurezza dell'IA, tra cui gli Stati Uniti, contiene impegni per intensificare e sostenere la cooperazione, nel gennaio 2025 il Presidente Donald Trump ha emesso un ordine esecutivo che revoca le politiche e le direttive esistenti in materia di IA che agiscono come barriere all'innovazione america-

na in questo campo. Una questione centrale è se il Global Digital Compact (GDC) delle Nazioni Unite, adottato nel settembre 2024, assumerà un ruolo in questo gioco di potere.

I. Race for setting a regulatory blueprint for artificial intelligence

A. Brave New AI World free from engineered social agendas

At the Global AI Safety Summit in November 2023 at Bletchley Park – the base of UK code breakers during the Second World War – then US Vice-President Kamala Harris said: "Let us be clear: when it comes to AI, America is a global leader. It is American companies that lead the world in AI innovation. It is America that can catalyze global action and build global consensus in a way no other country can."

On January 23, 2025, President Donald J Trump issued the Executive Order on Removing Barriers to American Leadership in Artificial Intelligence[1] which seeks to maintain US leadership in AI innovation. To that end, it "revokes certain existing AI policies and directives that act as barriers to American AI innovation," but does not identify the impacted policies and directives. Rather, it appears those policies and directives are to be identified by the Assistant to the President for Science and Technology, working with agency heads. The executive order also requires the development of a new AI action plan within 180 days. Although the details of this new plan are forthcoming, the order fundamentally states that the development of AI systems must be "free from ideological bias or engineered social agendas."

President Trump also signed an executive order revoking 78 executive orders signed by former President Biden, including the Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence[2] of October 2023, which sought to regulate AI development, deployment, and governance within the US. The document offered insight into the issues that concerned the previous administration, specifically AI security, privacy, and discrimination.[3]

1 https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/ (03.02.2025).
2 https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence (03.02.2025).
3 *Neuburger/Mollod*, President Issues Sweeping Executive Order to Manage Risks of AI, Proskauer New Media and Technology Law Blog (2023), https://newmedialaw.proskau

B. Regulatory competition

There is excitement among investors that the implications of a rapidly developing AI will change the way we live and offer enormous benefits in education, energy, environment, healthcare, manufacturing, and transport. The arrival of consumer-facing AI, exemplified by the meteoric rise of ChatGPT, has made the workings of machine learning models more visible and led to acute policy concerns about safety, personal data, intellectual property rights, industry structure, and generally about the black box nature of the technology.

In this context, the big economies are trying to identify and mitigate risks, shape a global policy agenda and compete to set a regulatory blueprint. The 2023 *Bletchley Declaration* of 30 Countries, including the US, attending the AI Safety Summit,[4] contains commitments to intensifying and sustaining cooperation. Anticipating the summit, the Biden administration issued the above-mentioned Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence, building on voluntary commitments from the seven key US companies Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI.[5]

In July 2023, China had already adopted Interim Measures for the Management of Generative Artificial Intelligence Services.[6] What do these developments mean for the ambition of the EU in terms of setting the global rules for AI?

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er.com/2023/10/30/president-issues-sweeping-executive-order-to-manage-risks-of-ai/ (03.02.2025).

4 Australia, Brazil, Canada, Chile, China, European Union, France, Germany, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Kingdom of Saudi Arabia, Netherlands, Nigeria, The Philippines, Republic of Korea, Rwanda, Singapore, Spain, Switzerland, Türkiye, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America. See https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023 (03.02.2025).

5 Voluntary Commitments from Leading Artificial Intelligence Companies on July 21, 2023 – Tech Companies agree to develop Mechanisms for Identifying AI-generated works, 137 Harv. L. Rev. 1284 (2024), https://harvardlawreview.org/print/vol-137/voluntary-commitments-from-leading-artificial-intelligence-companies-on-july-21-2023/ (03.02.2025).

6 *Wu,* How to Interpret China's First Effort to Regulate Generative AI Measures, China Briefing (2023), https://www.china-briefing.com/news/how-to-interpret-chinas-first-effort-to-regulate-generative-ai-measures/ (03.02.2025).

C. The EU between digital dependency and digital sovereignty

In an era where digital prowess essentially means global influence, the EU finds itself at a critical juncture. The appointment of Henna Virkkunen as the European Commission's Executive Vice-President for Tech Sovereignty, Security and Democracy signals a recognition of the urgent need to bolster the technological independence of the EU as its digital landscape is shaped largely by the US and China. Tech giants dominate crucial sectors such as cloud computing, AI and data infrastructure. Their outsized influence not only undermines the EU's competitive edge but also jeopardizes its ability to safeguard data privacy and maintain sovereignty over its most fundamental digital services.

The EU's digital dependency is not a mere inconvenience but a strategic vulnerability. From digital health systems to government cloud storage and public administration platforms, the bloc's reliance on foreign technology providers is pervasive and can be found in most steps of the supply chain. This dependence severely hampers the EU's capacity to set its own standards and chart an independent course in the digital realm.

The EU is the most advanced in adopting comprehensive and detailed legislation. The new rules are complex and will affect science and technology policy globally, even if other jurisdictions go down different paths. While the EU has made commendable efforts through initiatives like the *Digital Single Market Strategy* and programs like *Digital Europe* and *Horizon Europe*, these measures still fall short. The time has come for a more ambitious, coordinated approach to funding and developing the bloc's own digital infrastructure.

D. The EU Artificial Intelligence Act – An Intelligent Piece of Legislation

On 8 December 2023, after negotiating for more than two years, European Union lawmakers reached a final agreement on the much-anticipated AI Act. It is the first extensive law in the world that governs the development, market placement and use of AI systems and will apply beyond the EU's borders. The European Parliament and the Council confirmed that several relevant changes to the Commission's original proposal from 2021 had been included, inter alia new requirements to conduct a fundamental rights impact assessment for certain AI systems, a revised definition of AI and more stringent rules on high-impact foundation model providers.

The higher the risk that an AI system poses to health, safety or fundamental rights, the stricter the rules. The AI Act establishes three categories. The following AI systems are considered to be a clear threat to the fundamental rights of people, pose an unacceptable risk and therefore will be banned:

- Biometric categorization systems that use sensitive characteristics such as political, religious and philosophical beliefs, sexual orientation, and race.
- Untargeted/random collecting/use of facial images from the internet or closed-circuit television footage to create facial recognition databases.
- Emotion recognition in the workplace and educational institutions.
- Social scoring based on behavior or personal characteristics.
- Systems that manipulate human behavior to circumvent free will.
- AI used to exploit the vulnerabilities of people due to age, disability, or social or economic situation.

AI systems will be classified as high risk due to their significant potential harm to health, safety, fundamental rights, the environment, democracy and the rule of law. Examples include certain critical infrastructures in the fields of water, gas, and electricity, medical devices, and systems for recruiting people. Certain applications used in the fields of law enforcement, border control, and administration of justice and democratic processes also will be classified as high risk. They must undergo mandatory fundamental rights impact assessments and will be required to comply with strict requirements, including risk-mitigation systems, high-quality data sets, logging of activity, detailed documentation, clear user information and human oversight.

Most AI systems are expected to fall into the category of minimal risk. These applications – such as AI-enabled recommender systems or spam filters – will benefit from a free pass and the absence of several obligations. Moreover, the AI Act sets transparency requirements. For example, users should be made aware when interacting with a chatbot. Deepfakes and other AI-generated content will have to be labelled as such, and users need to be informed when biometric categorization or emotion recognition systems are being used.

The regulation also introduces guardrails for general-purpose AI models requiring transparency along the value chain. For models that could pose systemic risks, there will be additional obligations related to managing these risks and monitoring serious incidents, as well as performing model evaluation and adversarial testing.

Noncompliance with the AI Act can lead to fines ranging from € 7.5 million, or 1.5% of a company's global turnover, to € 35 million, or 7% of global turnover, depending on the infringement. Furthermore, the agreement provides more proportionate caps on administrative fines for small and medium-sized enterprises (SMEs) and startups. Each nation's competent authorities will supervise implementation. To ensure a harmonized implementation, the Commission will introduce a European AI Office. Along with the national market surveillance authorities, the Office will be the first body to enforce binding rules on AI globally.

E. Conflicting goals

Whether the EU AI Act will protect individuals and societies from harm while simultaneously boosting European digital economies – which are, to a certain extent, conflicting objectives – is yet unclear. Much will depend on the concrete shape of the many implementing acts and the secondary legislation yet to be passed. However, many decisions taken in the very final phase of the legislative process have rather weakened its prospects. While it still does not seem impossible to render the AI Act into an effective tool, safeguarding citizens vis-á-vis risky AI applications, this will require persistent efforts by well-resourced administrative bodies to make the right decisions. In light of these considerations, one may hope that the AI Act will function as a springboard rather than a ceiling for the global regulatory efforts currently still ramping up.[7]

II. UN Global Digital Compact – A vehicle for Democracy or Authoritarianism?

A. The UN as a global digital stakeholder?

Until now, the UN has played a rather modest role in global and international digital policies, but it is evident that digital technologies have direct and far-reaching effects on UN core issues such as the protection of human

7 *Friedl/Gasiola,* Examining the EU's Artificial Intelligence Act, VerfBlog (2024), https://verfassungsblog.de/examining-the-eus-artificial-intelligence-act/, DOI: 10.59704/789d6ad759d0a40b (03.02.2025).

rights, sustainable development and above all the maintenance and restoration of peace and security.

The *United Nations Global Digital Compact* (GDC)[8], together with the *Pact for the Future* and the *Declaration on Future Generations*, was the third outcome of the United Nations Summit of the Future[9] in September 2024. While this compact, though governmental, is not legally binding, it could be a significant step towards addressing pressing digital challenges on a global scale. In addition, the process includes consultations with various stakeholders and involves both civil society and the private sector.

B. Origins of the Global Digital Compact

At the 75th anniversary of the UN in 2020, member states pledged to improve digital cooperation and shape a digital future in which the full potential for beneficial technology usage could unfold.[10] Building on this, the Secretary-General, in his 2021 report *Our Common Agenda*, proposed that a Global Digital Compact be developed to outline shared principles for an open, free and secure digital future for all.[11]

The GDC is the latest step in a lengthy policy journey to have, at least, a shared understanding of key digital principles globally and, at best, common guidelines for the development of our digital future. The idea of a GDC has additional roots in the 2019 *Age of Digital Independence* report, published by the UN Secretary-General´s High-Level Panel on Digital Cooperation, and the 2020 *Roadmap for Digital Cooperation* issued by the UN Secretary-General. Additional fine-tuning of this initiative is provided by *A Global Digital Compact – an Open, Free and Secure Digital Future for All | Our Common Agenda Policy Brief 5*.[12]

8 https://www.un.org/global-digital-compact/sites/default/files/2024-09/Global Digital Compact - English_0.pdf (03.02.2025).
9 https://www.un.org/en/summit-of-the-future (03.02.2025).
10 Declaration on the commemoration of the 75th anniversary of the United Nations, https://digitallibrary.un.org/record/3881025?ln=en&v=pdf (03.02.2025).
11 Our Common Agenda – Report of the UN Secretary-General, https://www.un.org/en/common-agenda (03.02.2025).
12 A Global Digital Compact – an Open, Free and Secure Digital Future for All | Our Common Agenda Policy Brief 5, https://www.diplomacy.edu/resource/a-global-digital-compact-an-open-free-and-secure-digital-future-for-all-our-common-agenda-policy-brief-5/ (03.02.2025).

The GDC aims to address critical areas of concern, such as the digital divide and inclusion in the digital economy, data governance, the application of human rights online, AI governance, and strategies for promoting trust and safety, including implementing accountability criteria for misleading content.

C. The road (not) to be taken

Digital governance and regulation are at a historical moment, with several multilateral processes defining how digital technologies, especially the Internet and AI, will function in the coming decades. Until now, the features of openness, decentralization, and multi-stakeholder governance have enabled digital technologies as instruments to enhance democratization. However, those features are not guaranteed to last forever. Fundamental traits of today's technology, including the global interoperability of the Internet, its capacity to allow people to bypass government censorship, the protection of users' privacy and their ability to speak freely and anonymously, may be at risk.

D. Future Internet governance as democratic role model?

On 1 July 2024, a group of technical experts involved in the development and maintenance of the Internet and the Web published an open letter calling on the UN Secretary-General and the Secretary-General's Envoy on Technology to uphold the bottom-up, collaborative and inclusive model of Internet governance that has served the world for the past half-century as part of the GDC.[13]

13 The crucial parts of the letter: "The Internet is an unusual technology because it is fundamentally distributed. It is built up from all of the participating networks. Each network participates for its own reasons according to its own needs and priorities. And this means, necessarily, that there is no center of control on the Internet. This feature is an essential property of the Internet, and not an accident. Yet over the past few years we have noticed a willingness to address issues on the Internet and Web by attempting to insert a hierarchical model of governance over technical matters. Such proposals concern us because they represent an erosion of the basic architecture. In particular, some proposals for the GDC can be read to mandate more centralized governance. If the final document contains such language, we believe it will be detrimental to not only the Internet and the Web, but also to the world's economies and

In December 2024, civil society organizations and individuals welcomed "the consensus adoption of the United Nations (UN) Global Digital Compact (GDC) annexed to the Pact for the Future. From the onset, the GDC has been an ambitious and well-intentioned effort for stakeholders — especially the Member States and the private sector — to agree upon a set of shared principles and commitments for a more collaborative digital future. We particularly welcome the explicit affirmation and application of the international human rights framework to digital technologies, the explicit recognition of the multistakeholder model and the UN Internet Governance Forum (IGF) – centering multi-stakeholder participation – as a predominant platform and model for policymaking. (…)". However, the signatories criticized shortcomings and failures and remained concerned about the lack of robust civil society engagement in the Global Digital Compact process. They called for the implementation of the GDC and other key UN processes.[14]

E. Potentials of the GDC and the EU AI Act

The GDC has emerged as a key process in negotiating the future of technology and improving digital cooperation among countries. It not only holds the potential to craft a brighter, more equal, accountable, and democratic digital future but also runs the risk of streamlining authoritarian beliefs on how the digital space should be governed. Invasive and invisible surveillance tools for national security, internet fragmentation, disinformation, online gender-based violence, and barriers to online freedom of expression are crucial elements to be discussed among member states, the private sector, civil society, and other stakeholders for a meaningful resulting docu-

societies. (…) Beyond some high-level consultations, non-government stakeholders (including Internet technical standards bodies and the broader technical community) have had only weak ways to participate in the GDC process. We are concerned that the document will be largely a creation only of governments, disconnected from the Internet and the Web as people all over the world currently experience them. Therefore, we ask that member states, the Secretary-General and the Tech Envoy seek to ensure that proposals for digital governance remain consistent with the enormously successful multistakeholder Internet governance practice that has brought us the Internet of today."

14 Joint statement: Civil society concerns and priorities for Global Digital Compact implementation, https://www.gp-digital.org/joint-statement-civil-society-concerns-and-priorities-for-global-digital-compact-implementation/ (03.02.2025).

ment to be produced. Many parts of the GDC, such as the specification of general objectives and the building of new institutions, will happen in the future. Therefore, the design of the follow-up- and review-process will be key for its success and effectiveness.

The EU AI Act offers a blueprint for a comprehensive risk-based approach that seeks to prevent harmful outcomes, ex-ante for all AI systems – before the event. Societies should regulate the development of unacceptably high-risk technologies ex-ante, such as nuclear power. Some experts say that AI is more like electricity – a general-purpose technology. In their view, rather than requiring detailed risk declarations, ex-post liability rules could enable open-source innovation, an area in which European firms have particular strengths. The complex risk hierarchy of the EU approach contrasts with the new US focus on removing all barriers to AI development. Comprehensive ex-ante risk assessments may impede innovation and concentrate investments in more lenient jurisdictions. In general, many experts are skeptical that legislators can anticipate the future of a general-purpose technology such as AI. At least, EU legislators have tried.