

Reply by the European Commission to a strategic initiative from the European Ombudsman
– SI/4/2024/MIK on How the European Commission decides on and uses artificial intelligence

I. THE EUROPEAN OMBUDSMAN’S STRATEGIC INITIATIVE

The strategic initiative was opened by the European Ombudsman on 15 March 2024. The European Ombudsman wants to collect information about how the Commission decides on and applies artificial intelligence (AI), as well as similar advanced technologies in its work. The initiative also aims to raise awareness about the need to ensure accountability in how decisions to introduce AI are taken and subsequently implemented and monitored.

The European Ombudsman indicates a set of specific questions for three Commission systems of particular importance to the right to good administration: (i) *Analysis of feedback from the public*; (ii) *Competition case management*; and (iii) *Complaints Handling with AI*.

II. THE REPLY OF THE EUROPEAN COMMISSION

The Commission recognises the profound implications of AI on public administrations and the delivery of services to European citizens and businesses. We welcome your interest in how we use AI in our organisation, safeguarding the right to good administration.

The Commission understands the significance of addressing the challenges posed by AI, including ensuring the accuracy of results, preventing bias and maintaining human oversight, especially in decision-making processes that have a direct impact on the public. To this end, the Commission adopted on April 2023 the ‘Guidelines for staff on the use of online available generative Artificial Intelligence tools’ and on 24 January 2024 the AI@EC Communication to the Commission¹, which outlines our strategic vision to foster the internal development and use of lawful, safe, and trustworthy AI systems. Our strategy includes concrete actions about how the Commission will build institutional and operational capacity to ensure safe, transparent and human-centred use of AI in its work. In so doing, the Commission anticipates and prepares internally for the implementation of the AI Act², the world’s first comprehensive law on AI. The European AI office³ will also play a key role implementing the AI Act by providing guidance, tools, and advice to support its effective implementation. The European Data Protection Supervisor (EDPS) is also designated as **notified body** and **market surveillance authority** to assess the conformity of high-risk AI systems that are developed or deployed by Union institutions (EUIs), as well as competent authority for the supervision of the provision or use of AI systems by EUIs.

¹ Communication to the Commission on Artificial Intelligence in the European Commission (AI@EC) - A strategic vision to foster the development and use of lawful, safe and trustworthy Artificial Intelligence systems in the European Commission, C(2024) 380 final, https://commission.europa.eu/publications/artificial-intelligence-european-commission-aiec-communication_en

² Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance), <https://eur-lex.europa.eu/eli/reg/2024/1689/oj>

³ See <https://digital-strategy.ec.europa.eu/en/policies/ai-office>, and Commission Decision establishing the European Artificial Intelligence Office, C(2024) 390 final, <https://digital-strategy.ec.europa.eu/en/library/commission-decision-establishing-european-ai-office>

The three AI systems mentioned in the letter, *Analysis of feedback from the public*, *Competition case management* and *Complaints Handling with AI*, are still under development. When the technical features are implemented, the tools will be opened to a selected group of staff for a limited period of testing, followed by collection and analysis of feedback. Following the assessment of the results, a decision regarding the continuation and transition to operations will be made. With this objective in mind, the Commission takes strong note of the Ombudsman's considerations regarding the right of good administration as expressed in the strategic initiative.

Technical functionalities and the automation of tasks

- 1) What will the specific functionalities of the tools envisaged by the Commission be? What specific tasks will these tools perform and how they will support decision making by humans?

Analysis of feedback from the public

The 'Better Regulation Have your say'⁴ portal allows citizens and business to share their views on new Union policies and existing laws. The feedback is usually provided by direct reactions (free text) or by answering a questionnaire. Contributions can be made in any of the 24 official Union languages.

The main functionalities and tasks for the planned in-house AI tool are: (i) the capacity to analyse feedback and surveys with hundreds of thousands of contributions coming from the 'Better Regulation Have your say' portal; (ii) the filtering of the contributions by topics, key-phrases and other search capabilities; (iii) the onboarding of other consultation types and formats; (iv) the identification of specific information such sentiment analysis, name and entity recognition in a simple way; (v) the extraction of key phrases; and (vi) the summary and translation of the contributions.

Regarding the support to decision-making, Commission staff will review manually the contributions filtered by the tool, and verify them by comparing to the original contributions. The output of the AI tool will not be used further without human check.

Competition case management

Competition investigations would benefit from enhanced capabilities for analysing documents and data to support investigations more efficiently. The Commission is researching the market and the possibilities for use of AI-enabled tools for documents and data analysis and is considering the launch of a pilot for an AI-enabled e-discovery tool. These tools are widely used already by competition agencies, legal advisors and companies under investigation in all jurisdictions. These tools could leverage AI to categorise documents accurately, based on human-reviewed samples and enhance relevance rankings through continuous learning from human feedback.

The Commission will ensure that the use of such tools fully complies with Union regulations and Commission rules regarding AI, sensitive data security, and personal data protection, ensuring adherence to procedural rights. Specifically, should the Commission decide to move ahead with the implementation of such tools for investigatory purposes, it will align with the AI@EC framework, emphasising strict compliance with the AI Act, the rights of undertakings

⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say_en

under Regulation 1/2003⁵ and other relevant legal frameworks, continuous human oversight and enhanced transparency.

Complaints Handling with AI

The Commission handles thousands of complaints per year, notified by citizens and business. These complaints may relate to potential non-respect of Union law in Member States.

The main functionalities and tasks for this tool are: (i) the capacity to implement a ‘smart’ search service that allows semantic search over a set of data sources and other relevant information⁶; (ii) the capacity to implement a ‘smart drafting’ function allowing semi-automated pre-drafting of the replies to enquiries/complaints with the use of generative AI; and (iii) the extraction of relevant information for the legal analysis of user queries using semantic search and generative AI on retrieved sources.

Regarding the support to human decision making, the tool will initially be used exclusively by a group of selected Commission staff identified for the testing of the modules of the tool and does not entail any processing by other actors. Currently this is an in-house pilot project subject to assessment of its outcomes and there is no decision yet to run it in the long term. After the initial testing phase, an internal discussion will take place with the related services on the next steps.

2) What general risks can result from the use of these tools to the right to good administration and how can these risks be addressed?

The Commission is dedicated to the values of service, independence, responsibility, accountability, efficiency and transparency. These values are reflected in the Code of Good Administrative Behaviour⁷. The Commission recognises the risks that the use of AI tools poses to the right to good administration and will take the following steps to prevent them:

- To ensure lawfulness, AI tools will follow the relevant laws and rules, including the AI Act and the data protection laws. For this purpose, the Commission is working on the extension of the current IT governance and is creating new internal guidelines. This guarantees that all actions taken in processes, supported by AI tools, are legal and respect the rights of individuals, including data privacy and confidentiality.
- To ensure non-discrimination and equal treatment, bias mitigation methods will be applied to identify and reduce bias in data and in used AI algorithms, to ensure that they do not discriminate based on nationality, gender, race or ethnicity, religion or beliefs, disability, age, or sexual orientation.

⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003R0001>

⁶ Different possible sources of information: CJEU case law (https://curia.europa.eu/jcms/jcms/j_6/en/), replies to relevant SOLVIT enquiries (https://ec.europa.eu/solvit/index_en.htm), entries in the Regulated Professions Database (<https://ec.europa.eu/growth/tools-databases/regprof/home>), Themis/Complaints (closed complaints since January 2014 until December 2023), EurLex (<https://eur-lex.europa.eu/homepage.html>), EP Questions (<https://data.europarl.europa.eu/en/datasets?title=questions&language=en&order=RELEVANCE>), TRIS notifications (<https://technical-regulation-information-system.ec.europa.eu/en/home>).

⁷ Code of Good Administrative Behaviour for staff of the European Commission in their relations with the public, Annex to the Rules of Procedure of the Commission, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000Q3614>

- To ensure proportionality, and appropriate use, AI tool interventions must be balanced with their intended goals and designed to avoid unnecessary administrative or budgetary burdens to citizens and business.
- To ensure consistency, objectivity and impartiality, standard procedures will be defined for the oversight and use of the AI tools' output. Deviations from established practices should be explained and documented. The processes using AI tools will be designed to support objective and impartial decision-making processes.
- To ensure transparency and justification of the decision-making supported by AI tools, the processes on how the decision is made and the rationale will be defined and documented. A mechanism for handling inquiries and feedback related to the AI tools will be in place.

The internal information technology (IT) Governance will require an assessment of the risks posed by each AI tool. The risk assessment is in relation with the specific use cases and includes the principles for good administration laid down in the Charter of Fundamental Rights of the European Union⁸.

Moreover, the European AI Office will develop a questionnaire and an automated tool to facilitate compliance with these obligations, that will be integrated in the corporate IT governance framework, when available.

Analysis of feedback from the public

The main aim of this tool is to provide information on the various data collected that could be useful for future decision-making. The same methods that are currently used to address the challenges to good administration will remain in place.

Competition case management

The primary objective would be to manage the review and assessment of increasing document volumes within stringent deadlines effectively. Commission staff will keep full control over the assessment and explanation of the evidence.

Complaints Handling with AI

The AI system adheres to the principle of 'Lawfulness' by utilising the same datasets utilised by Commission staff during the composition of replies. It also upholds the principles of 'Non-discrimination and Equal Treatment' since the used data lacks personal information from the complainant. Moreover, Commission staff verify the draft reply to ensure its alignment with this principle, as well as the principle of 'Proportionality'. Lastly, by allowing Commission staff to reuse previous replies the pilot ensures 'Consistency' between similar complaints.

Decision making on the use of AI

- 3) How will the Commission decide on the use of these tools? By which internal body will decisions be taken (will they involve the College of Commissioners, for example)? How will the Commission decide on the procedure for approving the use of these tools?

The decision for investing in any IT Tool (including those with AI components) is established by the Information Technology and Cybersecurity Board (ITCB), which it is a permanent sub-

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>

group of the Corporate Management Board (CMB) and is chaired by the Deputy Secretary-general/Chief Operating Officer⁹. This board ensures that resources and investments in Information Technology are used efficiently and that business needs are supported by efficient, secure, and resilient communication and information systems, in compliance *inter alia* with personal data protection principles in line with the Commission's Next generation digital strategy¹⁰. The AI@EC Communication includes actions to update the existing governance procedures for compliance with the AI Act. The Information Management Steering Board (IMSB) ensures that AI related initiatives are aligned with the Commission's information and data policies.

As stated in the AI@EC communication, the Commission Member(s) in charge of digital transformation, human resources and administration will oversee the implementation and report to the College of the major projects, based on preparatory work by the ITCB and the CMB.

Transparency of how decisions on the use of AI are taken

4) What information about these tools has already been made available? Does the Commission intend to make further information publicly available?

The existence of these AI systems has been made available internally within the Commission on diverse forums and to the public through the AI@EC Communication.

The information that the Commission makes available to the public in relation to IT Tools with AI components depends on many factors. The most important factor is the maturity status of the tool and the associated Corporate IT Governance track which the tool is following. IT tools in exploratory mode (including many with AI), like proofs of concept or prototypes, are by default not made public. For IT tools already in development or in production the Commission makes available information on the following domains: (i) Register of the Data Protection Office¹¹, (ii) Interoperable solutions portal Joinup¹², (iii) Open-Source platform¹³, (iv) Public access to documents¹⁴ and (v) the Register of Commission Documents¹⁵.

For the three described systems, *Analysis of feedback from the public*, *Competition case management* and *Complaints Handling with AI*¹⁶, since they are still in the testing stage, targeted communication actions have yet to start.

⁹ As set out under Article 5 of Commission Decision on the Corporate Management Board, C(2018) 7706 final, https://commission.europa.eu/system/files/2018-11/commission-decision-corporate-management-board_en.pdf

¹⁰ Communication to the Commission on the European Commission digital strategy – Next generation digital Commission, C(2022) 4388 final, https://commission.europa.eu/system/files/2022-06/c_2022_4388_1_en_act.pdf

¹¹ <http://ec.europa.eu/dpo-register/search.htm>

¹² <https://joinup.ec.europa.eu/collection/joinup/glossary/term/e-government>

¹³ <https://code.europa.eu/>

¹⁴ https://commission.europa.eu/about-european-commission/service-standards-and-principles/transparency/access-documents/how-access-commission-documents_en

¹⁵ <https://ec.europa.eu/transparency/documents-register/>

¹⁶ For Complaints Handling with AI, the Data Processing Register and the Privacy statement will be published before the launch of the pilot.

- 5) Has the Commission consulted, or will it consult any other EU institutions or bodies or stakeholders outside the EU administration (for example, interest representing groups, civil society, wider public consultation) on the introduction or further development of these tools?

The Commission appreciates the perspectives and insights of other Union institutions, bodies and agencies (EUIBAs) and stakeholders outside the Union administration for IT tools with AI components through different channels, like the Emerging Technologies subgroup of the Interinstitutional Committee for Digital Transformation (ICDT), the Interinstitutional Cybersecurity Board (IICB)¹⁷, the European AI alliance¹⁸, the Network of Member State Chief Information Officers, the Interoperability Expert Group, the Digital Investigations and AI working group of the European Competition Network, and others depending on the specific topic.

While such consultations can offer valuable feedback and contribute to the refinement of the tools and process, it is important to note that the Commission has the autonomy to leverage technology to enhance its operations without the necessity for external consultations. Nonetheless, the Commission is committed to transparency and accountability and will continue to engage with relevant stakeholders in a manner that it informs and enrich our work with AI, without it being a prerequisite for the adoption of such technologies.

Accountability regarding the use of AI tools

- 6) How transparent and explainable will the use of these tools in general and in individual cases be?

In the AI context, transparency means the AI systems are developed and used in a way that allows appropriate traceability and the capacity to be easily explained, while making humans aware that they communicate or interact with an AI system¹⁹. In general, AI systems used by the Commission will be subject to the AI governance that will indicate the appropriate transparency and explainability²⁰ obligations in relation to the specific use case and the technical possibilities. For AI systems that will be used by natural persons, it will be mandatory to indicate clearly that they are interacting with an AI system, unless it is obvious. Explainability has a strong dependency on the technical elements, as the algorithms or model selected, and the data availability so it will be aligned in relation to the specific use case requirements.

The three mentioned tools are designed to assist certain staff members with specific tasks, and they are not for general use. Commission staff will be trained on how to use the tools and will be duly informed of the nature of the tools and on their capacities and limitations.

In case the Commission moves to production any of the systems after pilot, it will be decided whether and how to communicate to citizens and business, in addition to what will already be publicly available (i.e. Data Protection Record and Privacy Statement). For AI systems that will directly interact with individuals, the individuals will be informed of this interaction, except

¹⁷ Established by Regulation (EU, Euratom) 2023/2841 of the European Parliament and of the Council of 13 December 2023 laying down measures for a high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302841

¹⁸ <https://digital-strategy.ec.europa.eu/en/policies/european-ai-alliance>

¹⁹ Recital 27 of the AI Act.

²⁰ Ability to understand and explain how and why an AI system makes its decisions or predictions.

when it is evident to a reasonably well-informed, and observant, person, considering the specific circumstances and context of use.

In this context, explainability means that the AI system is transparent in how it arrives at a result, in particular explaining how specific predictions are made.

Analysis of feedback from the public

Commission staff supported by the AI tool have access at all times to the original data and the corresponding translations to perform any necessary check.

Competition case management

AI use in competition will strictly adhere to the AI@EC Communication and comply with the AI Act, ensuring continuous human oversight and enhanced transparency.

Complaints Handling with AI

For both functionalities, Commission staff will have access to the original of the relevant search results and the selected source documents for checking the veracity and correctness of the output. As part of the results of the pilot, the transparency and veracity of the tool will be assessed.

7) How exactly do human decision makers verify the output of these tools?

There is at this moment no standard process enforced in the Commission for the verification of AI tools; each system owner is responsible for defining the process of verification of the output of their tools. The Commission services are working on defining guidelines to support system owners, following the best practices in the field.

Analysis of feedback from the public

Commission staff have access to the original data and the corresponding translations to compare with the filtered contributions.

Competition case management

AI use in competition will strictly adhere to the AI@EC Communication and comply with the AI Act, ensuring continuous human oversight and enhanced transparency.

Complaints Handling with AI

Commission staff will always have the references to the original texts from which any reply from the generative AI is created. The pilot tool will always provide the link between the generated content and the original texts. Commission staff will use the tool to generate initial suggestions for preliminary draft replies, while remaining fully responsible to verify and adjust the outcomes, ensure their legal accuracy and to obtain hierarchical approvals. There is no automated decision making on the part of Commission and no direct interaction between the pilot tool and potential recipients of replies.

8) Will the Commission regularly monitor the practical application of these tools and which entities within the Commission will oversee this?

The ITCB monitors the high-level implementation of the IT projects once they are approved, but there is no standard process enforced in the Commission for the monitoring of the practical application of IT tools. Each system owner is responsible for monitoring their tools. Currently the Commission is working on guidelines to support AI-system owners on best practices and regulatory compliance.

In any event, as any IT system, the system owner will monitor the operation of the AI system and, in case of issues, take the appropriate actions of informing and resolving or stop using the system in correspondence with the severity and importance of the issues.

Particularly for the three described systems, the system owners are ready to adhere to any future guidelines derived from the AI@EC Communication, and to fully comply with the AI Act, if decided to evolve the tools to a production system.

Questions for the AI systems

Analysis of feedback from the public

How the Commission assesses and plans to address potential risks resulting to the deployments of tools of this kind, such as the possibility for some actors to manipulate the perception of support in the EU for specific policy options.

The AI tool will help to identify and prevent attempts to influence the outcome of the survey as it will be able to detect patterns and anomalies in the survey data. It could identify if certain responses seem suspicious or if there is an unusual high number of similar answers for a particular option. Additionally, it can analyse the overall tone of the responses to each option, determining if the language used is generally positive, negative or neutral, providing insights on how people truly feel about each option.

Complaints Handling with AI

How the Commission intends to ensure protection against ‘automation bias’, as a result of which its complaint handlers could disproportionately trust solutions proposed by AI. Each complaint should be handled with sufficient care by human decision makers and possible past mistakes should not be multiplied due to automation.

The smart search and smart drafting functions are designed to help with complaint handling as explained in question 1 by offering suggestions for various parts of a draft response to complainants. Commission staff will have to choose from multiple possible solutions, based on the data sources available and the queries they make. Also, complaints often involve several issues, and the Commission must assess and address them all in its response. The smart drafting function will give ideas for a response separately for each issue. This will help avoiding ‘automation bias’ as Commission staff will have to review and select the elements and to put together the final response. The tool does not interact directly with complainants or any third parties and does not make any automated decisions.

To guarantee the legal correctness and accuracy of the decisions on how to follow up on potential infringements, each draft response prepared by Commission staff with the AI tool assistance will be checked and approved by their hierarchical superiors (i.e., it follows the same approval workflow as usual drafts).

One of the expected outcomes of the pilot will be the assessment of potential risks and malfunctions of the technology and to raise awareness of Commission staff to maintain human control in decision making.

III. CONCLUSION

The Commission is committed to the responsible use of AI in line with the right to good administration, ensuring that such technologies are deployed in a manner that is transparent, accountable and aligned with the fundamental values of the European Union. The Commission is already working on the organisational and operational actions defined in the AI@EC Communication and identifying the additional elements that would be needed after the entry into force of the AI Act to ensure compliance. The Commission will make sure that any tool that is used will fully follow Union regulations including the rules that protect personal data. Any measures described will be prepared in a timely manner to meet the deadlines set by the AI Act.

We thank the European Ombudsman for her review in the context of this Strategic Initiative and remain committed to uphold the highest standards of good administration in the use of AI within the European Commission.

For the Commission
Johannes HAHN
Member of the Commission

