

Steering brief

Scene setter

You will be meeting OpenAI [REDACTED] to discuss how their technology and offerings align with your thinking about how to make cutting edge technologies safely and widely available, for the benefit of people in Europe and worldwide.

OpenAI is an artificial intelligence research company at the forefront of generative AI. OpenAI was initially established as a non-profit in 2015 by influential figures like Elon Musk and Sam Altman. OpenAI transitioned to a for-profit structure in 2019, coinciding with a USD 1 billion investment from Microsoft. By 2023, Microsoft's total investment in OpenAI had risen to approximately USD 13 billion.

Recently, in May 2023, OpenAI's CEO Sam Altman testified before a US Senate subcommittee, urging lawmakers to regulate large AI models and suggesting measures such as independent audits, a licensing regime, and warning labels akin to those on food products.

On 24 May, Altman reportedly said OpenAI could consider leaving Europe if the EU's upcoming legislation on AI is too stringent. Altman has been touring Europe this week and visited countries including the United Kingdom, France and Germany.

On 24 May, Commissioner Breton tweeted its proposal for an AI Pact which would be a voluntary framework for industry (the 'AI Pact') Pact to be agreed with all major EU and non-EU AI actors until the AI Act enters into force. This was welcome by Google CEO Sundar Pichai.

Current concerns regarding large-scale AI models focus on: factuality (they tend to hallucinate and make up facts); misinformation & plagiarism (they are capable to write like humans that can fool teachers or the general public); employment (automation risk) and governance (currently only large technology companies are developing competitive models).

Key messages

- The proposed AI Act takes a risk-based approach with different set of rules applicable depending on the risk level determined by the legislator. General Purpose AI, such as ChatGPT, has a multitude of potential applications, which may include multiple risk categories.
- If the AI Act as proposed by the Commission were in force, the possible use of systems like ChatGPT for high-risk applications (like the evaluation of job candidates) would in principle trigger the applicability of the requirements and obligations established for high-risk AI.
- General Purpose AI has been intensively debated at the Council and Parliament. The Commission is still bound by its initial proposal, but it is closely monitoring the debate. The Commission is ready to act as an honest broker and support the co-legislators to find an appropriate solution.
- Mid-May, you were calling for regulation of AI in the US Senate, and especially for the establishment of a licensing system and independent audits for certain models and safety standards. What are your expectations for the ongoing negotiations on the AI Act, in particular as regards enforcement?
- As of the current legislative discussion, the AI Act would start to apply in 2026 or 2027. What do you think would ensure that only trustworthy AI is developed until then, including at global level?

Defensives

How would ChatGPT/GPAI be covered by the Commission proposal for the AI Act?

- The proposed AI act takes a risk-based approach. A different set of rules of the AI Act applies depending on the risk level determined by the legislator:
 - unacceptable risk: prohibited;
 - high-risk: compliance with requirements on data, documentation, transparency, human oversight, robustness, accuracy and cybersecurity is verified in a conformity assessment before the system is placed on the internal market;
 - low/transparency risk: disclosure obligations i.e. natural persons should be informed that they are dealing with an AI-system (bot) and not with a human;
 - other: none.
 - General Purpose AI such as ChatGPT has a multitude of potential applications, which may include all four-risk categories.
- Certain uses of ChatGPT like social scoring by public authorities may be prohibited due to the unacceptable level of risk.
- To assess whether an AI-system is high-risk the AI Act uses the concept of “intended purpose”, which is a common characteristic of EU product legislation. The provider of an AI system will have the responsibility to determine the purpose for which category its product is intended to be used. This decision leads to a classification of the system in the high-risk category and thus triggers the application of the corresponding rules (in particular the ex-ante conformity assessment of the requirements for high-risk systems).
- As far as ChatGPT can be directly used, including for high-risk applications (like the evaluation of job candidates), it would therefore have to fulfil the corresponding requirements for high-risk AI systems, if the AI Act were in force. This assessment would only be different, if any use for a high-risk purpose had been excluded by the provider.
- As ChatGPT is a chat bot, therefore the transparency obligations would have to be respected, i.e. natural persons would have to be informed that they interact with an AI.
- Thus, a risk assessment of each General Purpose AI based on its different potential applications is needed to determine which rules are applicable in each case.
- General Purpose AI can also be used as input by other companies to offer more specific AI applications. For example, a General Purpose Image Recognition AI could be further developed and used for airport security controls or biometric identification. In that case, the company using the General Purpose AI as an input would have the responsibility to comply with the corresponding obligations.

Contact – briefing coordination: [REDACTED]