*Andreas Sesing-Wagenpfeil*[1]

# (Over-)Regulating AI?

On the principles and possible white spots of the European Union's AI Act

The upcoming AI Act of the European Union is part of a huge debate on how to regulate 'Artificial Intelligence'. But what is Artificial Intelligence? The challenge for legislators is obvious: Unlike Wikipedia, it is not possible to just refer to various definitions, but it is necessary to find a one-and-only definition of 'AI' (or at least of an 'AI system') that determines the scope of the AI Act bindingly. Throughout the three main stages of the legislative process, two different approaches of defining AI systems could be observed: Whilst listing specific techniques was the main idea of the draft of the Commission from April 2021, the Parliament defines an AI system as "a machine-based system that is designed to operate with varying levels of autonomy […]".

Where the first draft was criticised as too broad and possibly being an over-regulation, the Parliament's approach evokes uncertainty especially regarding the element of autonomy. A deeper analysis of the AI Act eludes that the scope-giving definition is just one of numerous setscrews of the question whether the provider of a system must carry out the full bunch of obligations arising from the AI Act. Another important setscrew is, for instance, the definition of 'high risk AI systems', which consists mainly of two exhaustive lists, one of them enumerating harmonised rules applicable to certain products (e.g., medical products, cars, airplanes, machinery), the other one referring to critical areas and use cases (e.g., critical infrastructure, recruitment, evaluation of creditworthiness, judicial and authoritative decision making). Any product being itself a harmonised product or a safety component thereof, as well as products being designed for the use in a critical area, are considered as high-risk AI system.

The talk gives an overview on the evolution of the definition of an 'AI system' in the legislative process and highlights possible (but maybe unavoidable) weaknesses of the regulatory concept (e.g., the question of the relevant perspective for determining the intended scope of application of an AI system). In a final step, it will show that the respective lists specifying high risk AI systems leave some white spots, possibly leading to imbalanced under-regulation.

[1] Saarland University, Saarbrücken, Germany.