KU LEUVEN CiTiP
CENTRE FOR IT & IP LAW

Knowledge Centre Data & Society

Knowledge Centre Data & Society: Recommendations on the Cloud and AI Development Act consultation

The Knowledge Centre Data & Society is pleased to have the opportunity to provide feedback on the European Commission's proposal of the Cloud and AI Development Act (CADA).

The CADA's objectives are to address the overreliance on non-European cloud service providers, stimulate research and development, and increase data centre capacity in the European Union (EU).

The recommendations are provided by the KCDS and offer an overview of the Centre's primary observations of the proposal. The purpose of this document is to encourage the EU legislators to offer greater clarity to the respective subjects of the CADA and to ensure consistency throughout the various EU digital legislative instruments.

Who we are

The KCDS is an independent Flemish knowledge centre for the ethical, legal and societal aspects of artificial intelligence (AI) and data-driven applications.

The Centre brings together knowledge and experience on this topic tailored to industry, policy, civil society, and the general public. We are part of Flanders AI and are supported by the Flemish Government.

More information on our objectives, approach and dissemination can be found on our website.[1]

Recommendations

1. The technique of lawmaking

In its current form certain provisions within the CADA-proposal are leaning towards a directive model, deviating from the conventional form of lawmaking as expected of a regulation. In summary, a directive is a legislative act that sets out a goal which EU Member States are required to achieve. However, the determination of the way these goals are ought to be reached, is up for the individual **Member States' own discretion**. A regulation is a binding legislative act. It must be applied in its entirety across the EU[2]. In certain parts of the proposal, the text gives the impression that Member States have the **wiggle room** to decide the implementation of certain objectives.

Whilst this is not inherently problematic, it could **slow down the desired effects** of the legislation. Having **clarity on the specific measures** that need to be taken simplifies the implementation process for Member States, rather than them having to work it out for themselves first. A clear example of this can be seen in Articles 3(2) and 4[3], which set out some of the operational objectives of the proposal. Similarly, Article 6, concerning the implementation of the Cloud and AI Leaderships Initiatives, does not specify concrete and enforceable implementation

[1] https://data-en-maatschappij.ai/en/.
[2] See also https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en.
[3] Such as Article 4 (4)(a), Article 4 (5)(b) and Article 4 (7)(b).

measures. This lack of specificity risks undermining the effectiveness of the Regulation, as its objectives may not translate into concrete actions.

Recommendation:

We encourage the EU legislators to provide comprehensive clarity with regard to the implementation of the regulation and to tighten its wording where it leaves room for different interpretations. It is essential that due consideration should be given to Articles 3(2), 4 and 6 as mentioned above. Although these Articles establish a framework for action, they also have the potential to facilitate divergence throughout the EU, thereby contradicting the initial objectives of the proposal. We therefore recommend (i) **clearly allocating implementation responsibilities** between the Member States and the Commission and (ii) **setting measurable targets** for each objective. The underlying rationale pertains to the notion that **effective legislation** must be capable of **real implementation**, instead of merely consisting of a list of well-intentioned goals without clear measures[4].

2. The absence of (clear) definitions

A. Provide clarity on the definition of 'Frontier AI'

The proposed CADA-text defines 'frontier AI' as 'AI models or AI systems built upon such models that can perform a wide variety of tasks and that approach, reach or exceed the current state of the art'(Article 2(4)).

This definition can cause problems regarding legal certainty. It is not made clear when an AI model or AI system falls within the scope this definition. **Two elements are open for interpretation**. First, 'a wide variety of tasks' is **not accompanied by any parameters** indicating how broad that variety must be. Second, 'approach, reach or exceed **the current state-of-the-art'** introduced a **dynamic threshold**. The state-of-the-art shifts continuously and quickly. The text offers **no explanation** on how it is to be determined, by whom, or at which point in time. Further, 'AI model' is **not defined** in the proposal[5], whereas 'AI system' is defined by reference to the AI Act. The lack of clarity has practical consequences, because applicants need to able to assess in advance whether their project qualifies under 'frontier AI'.

More **clear parameters** are suggested. The AI Act shows how measurable criteria can be used to define abstract concepts. For example, it is presumed that a general-purpose AI model has high impact capabilities when the cumulative amount of computation used for its training exceeds 10^{25} floating points operations (see Article 51(2)).

Recommendation:

The current text of the CADA-proposal would benefit from a clearer definition of 'frontier AI'. This proposal should either provide a definition with **measurable parameters** such as a list of criteria similar to Annex XIII to the AI Act or refer to a requirement of the Commission to **publish guidelines that clarify** for citizens and organisations when an AI model or AI system is considered to be 'frontier AI' and how and when the current of the state of the art is to be assessed. We further recommend **adding a definition of 'AI model'.**

[4] For more information see https://publicaties.vlaanderen.be/view-file/5680.
[5] The AI Act fails to define 'AI models' as well.

B. Define 'strategic projects'

Chapter II of Title III Data Centre Capacities, and more specifically Article 14, refers to the Commission's power to designate **data centre projects as strategic projects**. These projects are selected through open calls for expressions of interest and must fulfil at least two of Article 14 (1)'s criteria. These criteria pertain, among other things, to the project including (1) **highly sustainable features** and (2) establishing and operating **infrastructure** that **directly supports** and **enhances essential public sector functions**.

These strategic projects will advance and contribute to the balanced distribution of computing capacity with aims to triple EU capacity in the next five-to-seven years and reach the needed capacity by 2035.

Whilst we welcome the initiative to ensure a balanced distribution of capacity, the CADA-proposal remains deficient in a number of ways.

The CADA fails to provide **a clear definition of strategic projects**, in contrast to the **Chips 2.0 Act**, which refers to them as 'projects that **provide significant added value** to the Union by substantially contributing to **objectives** of common Union interest, have a **clear cross-border dimension**, in particular through technical cooperation or public support involving more than one Member State, and **contribute to strengthening** the indispensability, resilience and prosperity of the Union's **semiconductor value chain** and the Union's **technological sovereignty** and **technological leadership** by enabling, advancing or securing critical capacities, technologies or capabilities within the Union, including by reducing strategic dependencies' (Article 2(36) Chips 2.0 Act).

In addition, the CADA-proposal refers to the Commission's prerogative to withdraw the designation of a project as a strategic initiative **when it no longer meets the stipulated criteria (Article 14 (4))**. Projects for which the designation as a strategic project has been revoked shall **lose all rights** associated with that status under the Regulation (Article 14(4)). Nevertheless, the legislator has not specified these rights in detail. In accordance with Recital 43, the **right to funding** is recognised as one of the fundamental entitlements. This encompasses the support from Union programmes, funds, and financial instruments. Nonetheless, it should be noted that the recitals and Article 14 itself do not specify **the full range of rights** attached to the strategic project status. This, in combination with the absence of an explicit right to appeal in the event of withdrawal, results **in limited legal certainty** for operators. This approach contrast with the more detailed regime set out in Article 18 of the Chips 2.0 Act.

Recommendation:

Unlike the Chips 2.0 Act, which defines the concept of 'strategic project', in addition to providing specific criteria to qualify as such, the CADA does not contain its own definition of 'strategic project'. The status is determined purely on **a functional basis** through a designation procedure (at least two out of five criteria must be fulfilled) and a reference to 'rights associated with that status', without these rights or the substantive content of the status being further elaborated. This leads to a less clearly defined legal position and greater uncertainty for operators. Therefore, we invite the Commission to **further clarify these elements, and, if possible, to define criteria for strategic importance that can be applied in a harmonious manner in the Chips 2.0 Act and the Cloud and AI Development Act**.

C. Assess the definition of operational autonomy for the purposes of the assurance criteria in Annex II

As outlined in Annex II of the CADA-proposal, cloud computing services providers are required to meet specific conditions to guarantee the respective assurance levels they claim. As listed in Article 19 (1) of the proposal, the intention is that any entity that has **assurance level 1** can self-certify through a **publicly available statement of conformity** (Article 19(3)) and **any higher assurance level** requires **an independent audit** by a competent national authority of a Member State (Article 20(1)). In order to fulfil the criteria for assurance level 1, the cloud computing service provider must be able to demonstrate that measures have been implemented to **ensure the traceability, security and governance** of outsourced operations. These measures must also ensure that the **operational autonomy** of the cloud computing service provider is not compromised.

While a definition of 'operational autonomy' and its restriction is essential to understanding the scope of assurance level 1 vis-à-vis other assurance levels or the lack of assurance, **no definition of 'operational autonomy' exist**. This approach **creates legal uncertainty**. This raises the following questions: *Does tracking endanger operational autonomy? In addition, does any form of vendor lock-in result in restrictions of operational autonomy? If yes, where is the threshold?*

Recommendation:

We recommend that that a definition for 'operational autonomy' is **developed**, either in a **guidance document** or a **standard**. A recital has the capacity to function as guidance on what are considered to be undue restrictions on operational autonomy, at the very least.

3. Clarify Article 30's application to existing procurement contracts and long-term public cloud arrangements

Article 30 'Public procurement' applies to contracting authorities that **procure** computing services for their exclusive use. The article sets out a classification of cloud computing services as falling under assurance level 1 or assurance levels 2, 3 or 4, based on whether or not they contribute to **the preservation of public order**.

However, **in exceptional cases** and where there is proper justification, contracting authorities may **decide not to procure cloud computing services** recognised as having **a Union assurance level** 1, 2, 3, or 4 (Article 30(4)). This could include the procurement of services at a disproportionate cost or not receiving any suitable tenders or participants. An example could be that, for certain AI models, there is no European equivalent.

In Flanders, Digital Flanders acts as an intermediary entity for the framework agreements for ICT services and digital security services.

The various Flemish administrative entities can act as customers and join the framework. There is no obligation to procure ICT services from the joint ICT service offering. Any administrative entity falling within the customer base is free to decide at any time to procure ICT services from the joint ICT service offering.[6]

The services pertain to the following:

- Service integration services: with Atos as ICT-partner;

[6] See https://assets.vlaanderen.be/image/upload/v1666854850/Basiscontract_-_ICT-contracten_2022_-_Finaal_bestek_nfnb54.pdf.

- Workplace services: with Cegeka as ICT-partner;
- Cloud and data centre services: with Atos as ICT-partner;
- Network services: with Proximus as ICT-partner;
- Application services: with Eviden, Cronos, DXC-Cegeka as ICT-partners;
- Mainframe services: with DXC as ICT-partner.

With regard to cloud services, two public cloud providers are used, with public cloud provider 1 being Amazon Web Services and public cloud provider 2 being Microsoft Azure.[7]

The above-mentioned ICT-partnerships have commenced on 1 February 2022 and will run until 31 January 2029.

Under the present proposal it remains unclear whether Article 30 will also apply to **existing contracts that incorporate third-country providers** within their contractual framework, as illustrated in the aforementioned scenario.

Recommendation:

It would be beneficial to provide clarification on **the operationalisation** of Article 30 in relation to **existing contracts**, including those that are set to expire after the entry into force of the current proposed CADA. In particular, the final text of the CADA should specify whether existing contracts must be brought into compliance with the Annex II assurance-level requirements, and, if so, by **what date and through what specific transitional arrangements**.

Additionally, the Commission should **outline the expectations and issue guidance** for **contracting authorities**, specifying how they can ensure compliance with the stipulated assurance-level requirements under pre-existing arrangements, such as those in place in Flanders.

4. **Clarify the high level of generality of the objectives and actions in Title II, Chapter I 'Cloud and AI Leadership Initiatives', which are currently framed as policy intentions rather than legal obligations**

The proposal establishes the Cloud and AI Leadership Initiatives to pursue the objective of promoting research and innovation activities, as well as achieving large scale capacity throughout the Union's AI and cloud ecosystem (Article 3).

The Initiatives pursue eight different operational objectives, focusing on objectives such as the support of the development and deployment of datacentres (operational objective 1) and increasing the development of AI models and systems across the Union's public sectors (operational objective 7).

Although the CADA refers to the implementation of the Cloud and AI Leadership Initiatives being entrusted to the **Commission and Member States**, as well as joint undertaking or other structures 'capable of achieving the objectives', **the actual implementation**, at this stage, **remains unclear**.

Furthermore, the objectives of the Initiatives are implemented through large-scale, cross-sectoral initiatives that **address major technological and industrial challenges** of strategic relevance to the Union ('grand challenges'), as outlined in Annex I. It is yet to be determined which cross-sector initiatives will be responsible for this task.

[7] See https://assets.vlaanderen.be/image/upload/v1785424506/Service_Portfolio_-_Cloud-_en_Datacenterdiensten_-_ICT-contracten_-_Finaal_bestek_w8gtse.pdf.

In addition, **similar issues of operationalisation** arise in other sections of the Chapter, such as Article 8 'Criteria for frontier AI priority projects' and Article 9 'Computing support for AI projects'. In particular, Article 9(3) refers to 'The Union and the Member States shall endeavour to provide sufficient computing resource for AI industrial innovation, physical AI and public sector AI projects'. This **best-efforts obligation** lacks a **specification** on the implementation of the commitment and the manner in which it will or should be prioritised or monitored.

The objectives are broadly formulated and lack the specificity needed to impose **clear, actionable obligations** on stakeholders. In their current form, the objectives resemble policy objectives rather than binding legislative requirements.

Recommendation:

The Commission should revise the objectives to **specify**, for each objective, **the required actions** in order to implement Chapter I 'Cloud and AI Leadership Initiatives'. Moreover, we recommend the **compulsory establishment of guidelines or other tools** by the respective EU institutions within a defined perioded following the entry into force of the CADA. This would promote **harmonised implementation** across all Member States and ease the burden on national authorities, which are currently required to develop their own implementation methods.

5. Specify the annual review of audit reports provision

Article 20(8) requires audited providers to annually submit their audit report and positive audit opinion for review for 'continued compliance' with Annex II.

The proposal, however, does not specify what this review entails. This leaves the difference between a review and a full audit unclear. There is no guidance on how in-depth the review must be, nor which evidence the providers must submit. Further, Article 20(9) allows the Commission to lay down rules on the performance of audits, without expressly mentioning the review. This creates legal uncertainty for providers and auditing organisations, risking different review practices across the EU.

Recommendation:

We recommend **specifying the scope and depth** of the annual review, and the evidence required. Further, the empowerment in Article 20(9) could be expressly extended to the annual review.

6. Clarify the Commission's delegated powers

The proposal empowers the Commission to **adjust the assurance levels** through delegated acts (Article 16(2)). While delegated acts can provide flexibility and allow the framework to adapt to technological developments, they are subject to important legal limitations, notably that they may not amend the essential elements of the legislative act.[8]

Modifications to the criteria underlying the assurance levels could have significant effects on the legal position of economic operators and other stakeholders. Such changes may alter compliance obligations and could therefore be considered **to go beyond purely technical adjustments**. Although the European Parliament and the Council retain the right to revoke the delegation or object to a delegated act, reliance on this mechanism may nevertheless create legal uncertainty for companies operating within the EU.

[8] See Implementing and delegated acts - European Commission.

Recommendation:

We therefore recommend that any changes to the core criteria for the levels of assurance **be accompanied by clearer safeguards** and that restrictions be laid down regarding **the scope of the Commission's delegated powers**. This would enhance legal certainty, predictability and confidence in the regulatory framework.

Drawn up on 4 November 2026 by the CiTiP-KDM team