

AI, Data & Robotics Forum 2023

9 November 2023, Inria Headquarters, Versailles

Procurement Clauses of AI

How to procure responsible and trustworthy AI

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Agenda

- 13:30 - 13:40 Introduction to the workshop
- 13:40 - 13:50 Testing and Piloting EU model Contract Clauses in Public Procurement of AI (Anita Poort, DG GROW, European Commission- TBC)
- 13:55 - 14:10 Procurement clauses of AI: legal perspective (Jeroen Naves, Pels Riicken)
- 14:10 - 14:35 Parallel Focus Groups
- 14:35 - 15:00 Conclusions





AI, Data and Robotics
ecosystem

The Adra-e project supports the AI, Data and Robotics Association and Partnership to create the conditions for a sustainable European ecosystem.

We aim to support the innovation-friendly procurement outlined by the EC's SME Strategy. To do so we aim to:

- Identify organizations and key people involved in innovation in public and private sectors through procurement and key topics (regulation, security) where ADR has potential for large impact.
- Organize events for procurement officers of national innovation programs on updating procurement processes for ADR technologies with focus on building equity between SMEs and procurers.

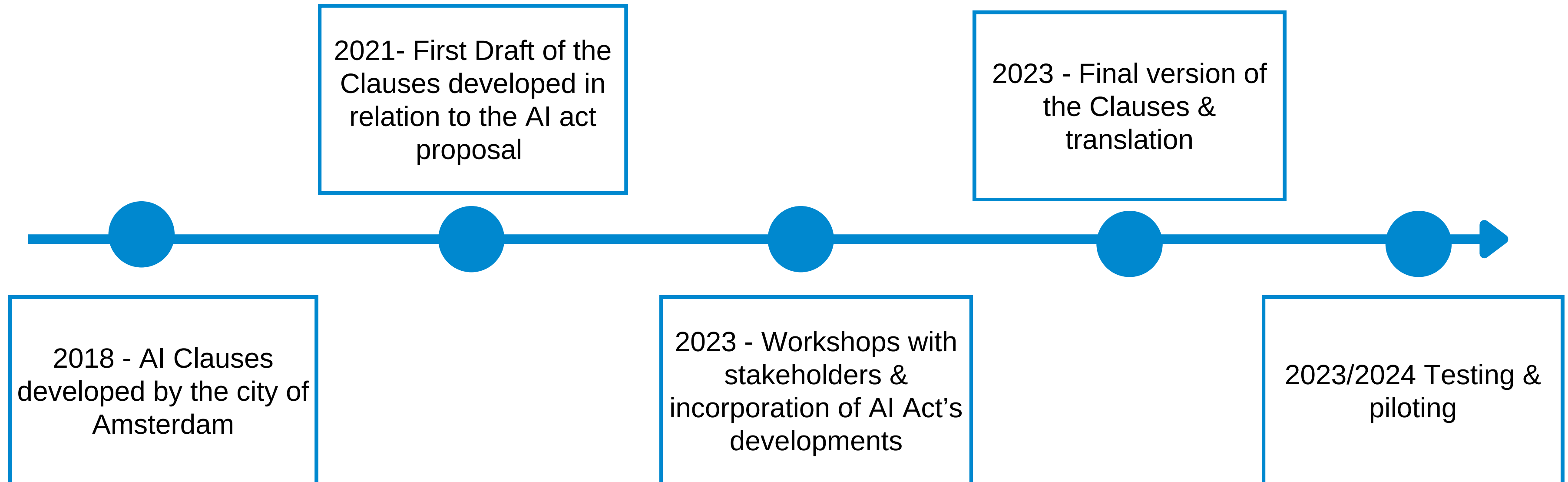


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- The European movement of digital transformation for cities, regions and communities in the EU.
- Representing over 160 signatories (cities, regions & member states) & 150 supporters.
- Five working groups to support PA in their digital transformation (legal, financial, technical, M&M and E&Capacity Building)
- Procurement Clauses developed in the context of the Legal working group



Procurement Clauses of AI - Timeline



Discussion



[https://linktr.ee/ProcurementClauses
ofAI](https://linktr.ee/ProcurementClausesofAI)

General Discussion

- When purchasing/providing an AI system, what are the main aspects that a public authority/provider should consider? Alternatively, what aspects do you think the Clauses should take into account?
- Would public authorities/suppliers require a guidance document to implement the Clauses effectively?

Art.2: Risk Management System

- A risk management system shall be established and implemented in relation to the AI System..
- **...identification, estimation and evaluation of the risks** to health, safety, fundamental rights of the EU..
- ...adoption of suitable **risk management measures...**
- ...the risk management measures should reflect **harmonised standards & and certifications...**
- ...before the delivery, the AI system **should be tested**, also in the environment of the PA, if requested...

Art.2: Risk Management System (Questions)

- Whether you are a Public authority or supplier, do you have already experience with risk management systems? Have you requested/ or provided a risk management system before the delivery of an AI system?
- In which way could the supplier/public authority make sure to assess the risks regularly?

Art.6: Transparency

The Supplier ensures that the AI System shall be designed and developed in such a way to ensure that the operation of the AI System is sufficiently transparent to enable Public Organisation to interpret the system's output and use it appropriately. **[Initial version]**

[Addition to initial version]:

- Annex E: provide a description of technical & organisational measures
- The measures should result in the Public Organisation being able to **understand and use the AI system...understanding how the AI system work and what data is processed**, allowing the **Public authority to explain the decisions taken by the AI system** to persons on which the AI system is intended to be used

Art.6: Transparency (Questions)

- Is it practical to implement these transparency measures, or do they impose an excessive burden on suppliers?
- Would it be reasonable to apply the same measures to "off-the-shelf" solutions? How can transparency measures be implemented for AI systems that have already been developed?

Art.13: Obligation to explain the functioning of the AI System on an individual level

- The supplier is obliged to assist the PA at first request to explain **how to the AI system arrived at a particular decision or outcome** to the persons or group of persons on which the AI system is intended to be used.
- Including indication of **key factors that led the AI system to arrive at a particular result** and the changes..that must be made.. to arrive at a different outcome

Art.13: Obligation to explain the functioning of the AI System on an individual level (Questions)

- Whether you are a public authority/supplier, have you requested/been requested to explain how the AI systems arrived at a particular decision?
- What is the main challenge that public authorities/suppliers encounter when requested to explain how the AI system arrived at a particular decision?
- Do PAs have the capacity to check the information provided by the supplier/ the supplier can provide such information to the public authority?

Art.14: Rights to the Public Organisation Data Sets

- **All rights**, including any intellectual property rights relating to the PO datasets **will accrue to the PO or third party** assigned as such
- The supplier is **not entitled to use publication organisation data sets for any purpose other than the performance of the Agreement**
- On first request... the supplier must destroy publication organisation data sets...

Art.14: Rights to the Public Organisation Data Sets (Questions)

- In case of AI systems trained with not open data, how to define the rights to the Public Organisation Data Sets if the supplier has enriched the data sets?
- Should the PA provide a detailed specification for the deletion's request of the public organisation datasets?

Art.15: Rights to Supplier Data Sets and Third Party Data Sets

- All rights, including any intellectual property rights relating to the Supplier Data Sets and Third Party Data Sets will accrue to the Supplier or Third Party
- The supplier grants the PO a non-exclusive right to use the supplier Data Sets and Third Party Data Sets...except otherwise provided in Annex B.
- The right of use... includes the right to use the supplier Data Sets and Third Party Datasets for the further development of the AI system, including a new version thereof..

Art.15: Rights to Supplier Data Sets and Third Party Data Sets (Questions)

- Is it necessary to specify the terms and criteria under which the Public Organization would retain access to the Supplier and Third Party Data Sets?
- Can the supplier be obligated to provide a detailed explanation regarding their refusal to grant the Public Organization access to the Data Sets, and whether the supplier is mandated to provide this information?

Art.16: Hand over of the Data Sets

- On first request of the PO, the Supplier will hand over the most recent version of the PO Data Sets and Third Party Data Sets to the Public Organisation... except otherwise provided in Annex B.
- The Data Sets must be handed over to the PO by the supplier in a common file format to be designated by the PO.

Art.16: Hand over of the Data Sets (Questions)

- How to define the ownership of the data sets? And how to define cases in which data sets are protected by intellectual property rights?
- According to Annex B, a limitation of the obligation to hand over Data Sets and Third Party Data Sets does not limit Supplier's obligations described in art.6 and art.13 (Transparency, and obligations to explain the functioning of the AI system). Should other conditions be taken into account?

