Too many rules or zero rules for the ChatGPT?

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ABSTRACT: The paper puts forward a fundamental question: which rules for ChatGPT? It starts with an examination of the state of the art, which oscillates between the zero rules of the Digital Services Act and the over-regulation of the Proposal for a Regulation on Artificial Intelligence. The Parliament's amendments to the proposal (May 11th 2023) intervene on some issues: they transform the solitary and quasi-objective accountability of the provider into the chain of accountability between the former and the developer. But grey areas remain in the absence of prior control over the fake information generated by our Chat. The Author concludes by steering the regulatory regime to the goal of combining fundamental freedoms with technical innovation.

KEYWORDS: Artificial Intelligence; ChatGpt; regulation; Digital Services Act; A.I. ACT

SUMMARY: 1. The antagonistic approaches – 2. The state of the art – 3. Composition, powers and relations between the new Artificial Intelligence Authority and the old European Authorities – 4. A hypothetical regulatory regime as a response to the two vices – 5. An open scenario.

1. The antagonistic approaches

In these pages we will demonstrate a regulatory contradiction: ChatGPT is subject to many rules and zero rules at the same time.

First, to explain our thesis, let us say what the Chat is and which is its uniqueness with respect to the 'traditional' artificial intelligence (A.I.) model. We believe that its identity is its uniqueness, at the same time. This peculiarity consists in two basic points: dynamic context and scale of use. In fact, the Chat is not built for a specific context and its openness and ease of control allow for unprecedented scale of use. Using Internet data to generate any type of text makes the Chat able to perform a wide range of natural language processing tasks, such as language translation, summarisation and question answering.[1]

The two above factors – no pre-defined purpose and large scale of adoption – explain why Chat deserves specific attention compared to the general category of large language models. Indeed, three new issues arise: the feasibility of sorting generative AI systems into high-risk/no high-risk categories, the unpredictability of future risks, and concerns around private risk ordering. These questions will be analysed in the following pages.

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[1] N. HELBERGER, N. DIAKOPOULOS, *ChatGPT and the AI Act. Internet Policy Review*, 2023, 12(1). https://doi.org/10.14763/2023.1.1682.

These two attributes can be inferred from the legal definition, introduced by the Council, in Recital 1b,[2] to the Commission proposal of regulation regarding A.I..[3]

These features are not sufficient to subtract ChatGPT from the basic question. Should it be regulated or not? In the affirmative, what kind of rules are the best suited to our Chat?

Whatever the answer, it needs to be framed in a broader systematic construction. As the entire Internet universe is object of two antagonistic regulatory approaches in Europe and the US,[4] this should also be tested with respect to the ChatGPT. In particular, the European Union[5] has now exhausted the not so firm commitment to ethical soft law, meant as an escape from binding rules. Then, it has taken the path of hard regulation on A.I. and, among the various regulatory models, has chosen prudential rules.[6] These are rules that reasonably anticipate the probable occurrence of dangerous events. To prevent risks (or mitigate their detrimental effects), the EU legislator has designed complex behavioral rules that should function as a parachute. Therefore, the behavioral measures must be observed by providers since their first steps, i.e. when they start the creative process of an A.I. In this way, the developers' concrete model will comply with the abstract one, obedient to the principles of common constitutionalism – non-discrimination, legality, and transparency – that compose the paradigm of an algorithm constitutionally compliant by design.

The rewarding, non-punitive, nature of the legislation exempts providers from liability when their activity has observed the precautionary discipline, but has caused damages, that cannot be attributed to them.

The US strategy[7] is lighter and suspicious of the European precautionary model. Indeed, it is concerned that excessive *ex ante* regulation would inhibit the development of A.I., harming the US in its competitive race with China. Lastly, the US – with the White House Executive order, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government*[8] – is also questioning whether the government should continue along the path of deregulation. The alternative path would be to strengthen

[2] Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts – General approach (6 December 2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=consil%3AST_15698_2022_INIT.

[3] Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, 21.4.2021, at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206.

[4] C. CATH, S. WATCHER, B. MITTELSTADT, M. TADDEO, L. FLORIDI, *Artificial Intelligence and the "Good Society": the US, EU and UK approach*, in *Science and Engineering Ethics*, 2018, 2, 505.

[5] A clear example of mixed sources, between binding and soft ones, can be found in Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), in https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065&from=IT.

[6] Allow us to quote one of our books, G. DE MINICO, *Costituzione, Emergenza e Terrorismo*, 2016, III cap. and Conclusions.

[7] Executive Office of the President, *Preparing for the future of Artificial Intelligence*, October 2016, in https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf.

[8] *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government*, 3/12/2020, in https://www.federalregister.gov/documents/2020/12/08/2020-27065/promoting-the-use-of-trustworthy-artificial-intelligence-in-the-federal-government.

the current liability legislation, which is by now the only form of regulation and entails an *ex-post* targeted control, different from the European one which is anticipated and generalized. Some scholars[9] consider that the A.I. can be construed as a legal person so it can have rights and it can also incur obligations under the law. Obviously, it would be a legal person with a separate property with respect to its developers and users. We are aware of the criticisms against ascribing legal personality to A.I., but it goes without saying that it is possible to think the A.I. as a new form of legal person without contradicting the anthropocentric vision of the Union. In fact, considering the Chat as a legal person is only finalized to protect the injured third parties, it is not the first step of a path aiming to affirm its identification with the human reasoning: currently, Chat is unable to replace the latter.

2. The state of the art

We prefer to keep the two vices – excess and absence of rules – distinct in the analysis, for two reasons. Firstly, the flaws concern two different regulatory acts: the excess pertains to the Proposal for a Regulation of the European Parliament and of the Council[10], concerning artificial intelligence, while the zero rules pertain the DSA[11]. Secondly, this method facilitates the reader's understanding.

A) As said, the over-regulation is the vice of the initial formulation of the European Commission,[12] that did not cover the ChatGPT at all, and only subsequently the situation was reversed with the amendments of the Council (December 2022).[13]
Its art. 4(*b)* acquired the Chat to the category of high-risk AI with absolute presumption. Thus, it ignored that the Chat, not having a predetermined[14] use, could not be qualified 'high risk'.
Hence the subjection of its provider to the entire bundle of burdensome rules designed on the model of artificial intelligence. Moreover, this turned out to be like a plaster garment which, due to its excessive stiffness, poorly dressed the body of the new phenomenon.[15] One can think of the whole precautionary discipline that requires the A.I. author to make an advance risk assessment and then to identify and adopt suitable minimization measures in line with the European approach, based on an *ex ante* control.[16] How could a ChatGPT provider foresee at the time of its design all its possible applications,

[9] J. TURNER, *Legal Personality for AI*, in J. TURNER (ed.), *Robot rules*, Palgrave Macmillan, 2019, cap. III, where the A. explains that giving A.I. legal personality does not mean treating it as a human, but it could be justified as an elegant solution to pragmatic concerns arising from the difficulties of assigning responsibility for AI.
[10] Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, 21.4.2021, quoted above.
[11] As explained below, we analyse DSA because we believe that it could have been extended to ChatGPT as well.
[12] For the initial proposal see the Act quoted in *supra* note.
[13] Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts - General approach (6 December 2022), in https://data.consilium.europa.eu/doc/document/ST-15698-2022-INIT/en/pdf-.
[14] M. VEALE, F. ZUIDERVEEN BORGESIUS, *Demystifying the Draft EU Artificial Intelligence Act*, 2021, in https://arxiv.org/abs/2107.03721.
[15] Future of Life Institute, *General Purpose AI and the AI Act*, May 2022, at https://futureoflife.org/wp-content/uploads/2022/08/General-Purpose-AI-and-the-AI-Act-v5.pdf .
[16] G. DE MINICO, *Towards an "Algorithm Constitutional by Design"*, in *BioLaw*, 1/2021.

that are nevertheless necessary to make that posthumous prognosis? If the Chat has a generic purpose, i.e. if it can perform several tasks, it will not be possible to make these advance predictions.
Thus, to assume that every abstract model of Chat is fully covered by Annex III of the draft regulation, regardless of a case-by-case verification of its concrete purpose, would mean to impose disproportioned and unjustified rules on its provider also in case there is no risk to individuals. In a nutshell, this violates the principles of both proportionality because here the sacrifices outweigh the advantages, and precautionality because it would act as a defense from an abstract hypothetical hazard, not a concrete one.
Alongside harmless uses of the Chat, there can be offensive ones. This case would occur if the Chat was used to select among many job applicants[17] the one who seems to have the requirements suited to the job offered. Here the Chat, with its possible errors or biases,[18] would harm an indeterminate number of workers: it would end up producing a discriminatory effect, multiplied by 'n' number of cases in the future.
Let us move now to the third step of this ongoing regulatory process: the recent amendments of the European Parliament (11th May 2023).[19] These ones have reproposed the qualification of the Chat as a high-risk A.I., on the basis of an absolute presumption. This choice does not mean that the Parliament fully adhered to the amendments of the Council rather it has introduced a new accountability regime. Although the typical legal assessment has been restated, the liability regime has become more complex: the liability of providers is no longer objective and obscure, i.e. regardless of the provider's fault, but personal and transparent. This shift follows from of fact that not the whole list of obligations of A.I. providers will be transferred *sic et sempliciter* to Chat providers, but only the most tailored to the technical features of the Chat. Therefore, according to the new pragmatic approach (ex Art. 28b, para. 2, lett. *a)*, Parliament's amendments), providers have been obliged to design a chat model in accordance with the precautionary rules. Moreover, after the creation of the model, they have been obliged to test it before putting the Chat on the market, as a risk-mitigation measure.
Thus, providers – having fulfilled their obligations – could not be blamed for any risk, even if the damage has actually occurred. In fact, their compliance with prudential rules entails their exemption from accountability even in the presence of a concrete harm by virtue of the principle "*non imputet sibi*" (where '*sibi*' refers to the provider). But the previous objection already raised to the Council amendments, remains in place: even the new, more punctual, and specific duties are still based on the predictability of the Chat's use. This *ex ante* prognosis is unimaginable and therefore impracticable with respect to a general purpose A.I., whose use cannot be foreseen in advance.[20]

[17] C.I. GUTIERREZ, A. AGUIRRE, R. UUK, C.C. BOINE, M. FRANKLIN, *A Proposal for a Definition of General Purpose Artificial Intelligence Systems,* Future of Life Institute – Working Paper, October 5, 2022, at https://futureoflife.org/wp-content/uploads/2022/11/SSRN-id4238951-1.pdf.
[18] BigScience Workshop, *BLOOM: A 176B-Parameter Open-Access Multilingual Language Model*, 13 March 2023, 9, at https://arxiv.org/pdf/2211.05100.pdf.
[19] European Parliament, *DRAFT Compromise Amendments on the Draft Report Proposal for a regulation of the European Parliament and of the Council on harmonised rules on Artificial Intelligence (Artificial Intelligence Act)* and amending certain Union Legislative Acts (COM(2021)0206 – C9 0146/2021 – 2021/0106(COD), 16/5/2023 at https://www.europarl.europa.eu/resources/library/media/20230516RES90302/20230516RES90302.pdf.
[20] P. HACKER, A. ENGEL, M. MAUER, *Regulating ChatGPT and other Large Generative AI Models*, Working Paper, this version February 10, 2023, at *arXiv preprint arXiv:2302.02337 (2023)*.

We can only refer to our conclusions to delve into possible remedies to the above flaws. Now, we can state that some of our critical remarks have been accepted and acquired in the recent amendments approved by the European Parliament (11th May 2023), but others have not.
Finally, on the responsibility of the various operators it must be said that the regime has become more complex. One of the reasons is that the solitary accountability of providers has been distributed along the value chain of the provider and deployer. Therefore, in addition to providers' responsibilities, inherent to the special obligations mentioned above, there are the developers' ones. The latter is committed to complete the risk impact assessment on fundamental rights and on the weak categories, posed by the Art. 29 *a),* para 1, lett. *e*) in terms of "the reasonably foreseeable impact on fundamental rights of putting the high-risk AI system into use". Moreover, when the same Art. 29a), para 1, lett. *h*) imposes the deployer "a detailed plan as to how the harms and the negative impact on fundamental rights identified will be mitigated". These new obligations are justified as only the deployer will be able to translate the general purpose into a specific one in reason of the concrete application of the Chat.

B) As anticipated above, the opposite vice, zero rules, affects the recent Digital Services Act,[21] that could also have addressed our Chat but did not.
The act imposes an obligation on Internet service providers, i.e., large platforms, to check the lawfulness of hosted contents following a timely and circumstantiated complaint by a user requesting the removal of unlawful content. Let us say that the act promotes providers to private web-sweepers with the task of preventing too much rubbish from circulating and feeding disinformation. This creates complex constitutional issues, one for all: empowering private bodies to control the freedom of speech[22] alters the division of roles between public and private sectors. Not every public task can be delegated to a private entity, as a social network; indeed, there are functions necessarily reserved to public institutions, among these, in particular, control over unlawful speech.
Otherwise, private controllers could annul the thought of others just because they are different from their own, with the excuse of acting in the name of legality. At the same time the web sweepers would also invade the reserve of judicial oversight, while judges, due to their independence, ensure the equality of citizens before the law.
In other words, private digital authorities invalidate in one stroke the fundamental guarantees of modern democracy.

3. Composition, powers and relations between the new Artificial Intelligence Authority and the old European Authorities

The framework would not be complete without a reflection on its implementation. We will then examine this topic diachronically to grasp the innovations in the transition from the Commission's proposal for a regulation to the Parliament's amendments, May 2023, mentioned above.
Well, this phase is under the responsibility of the Board, the newly established European institution, which will have to guarantee the effectiveness of the precautionary regulation. In the initial Regulation

[21] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022, cit. supra.
[22] G. De Minico, *Le fonti al tempo di internet: un personaggio in cerca d'autore*, in *Osservatorio sulle fonti*, 1/2022.

proposal, this body was designed after the model of a privacy authority, as shown by its privacy-based composition.[23] To clarify the criticism of this subjective profile, it is worth remembering that the action of the A.I. tendentially affects not a single fundamental right, but several rights, if not the entire bundle of them. Given the scope of its material competence, the outcome is ambivalent: on the one hand, the Board's sanctioning powers were appreciable, but, on the other hand, the same powers risked being sterilised due to the monochromatic composition of the Board, functionally concerned only with privacy issues. This flaw, if left unamended, would have rendered the Authority incapable of assessing the infringements of rights other than the protection of personal data.

This short-sightedness has deep roots which stem from a typically European ideology, tyrannized by the myth of privacy, the only fundamental good worthy of general and prevailing protection. But the growing reliance on A.I. in every field of public policy was demonstrating that the violation of one right entailed the aggression of other values, distinct from the first but connected with it.

An example will benefit the reader: the abuse of dominance that was committed with the merger of Facebook and WhatApp. This behaviour infringed the rules of competition,[24] i.e. the right to economic initiative, but also lowered the privacy standard, violating the right to confidentiality. One tort, two injuries.

Therefore, with a multi-offensive violation, the competence of decision-makers should also had to be porous to detect this multi-offensiveness. Otherwise, the Authority, while deciding on sanctioning measures, would have lacked the tools, expertise, and skills to design restorative remedies so as to compensate the injury to all the compromised values.

The point is central and deserves further reflection: now let us move from competences to the substance of regulation, even if the two profiles are interconnected. Indeed, we will observe that substantial questions are also reflected in the distribution of competences between the authorities.

Let us assume that an A.I. has been designed in compliance with the GDPA's sectoral regulations, but is non-compliant with the A.I. Regulation examined here. *Quid iuris?* Here, the *querelle* remains open, since our Regulation did resolve this conflict of norms *ex ante*. This Act, indeed, does not establish its all-encompassing specialty and its prevalence over the special regulations of the past.

Rather, it stated its simultaneity, with the explicit preservation of sectoral disciplines, Art. 5(1)(a).[25] This means that several discipline are applicable on the same object and they can create antinomies. This plurality of disciplines will inevitably lead to conflicting decisions, because an A.I. might be judged unlawful by the AI Board which will order its withdrawal; whereas, for the Privacy Board, the same A.I.

[23] See Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, 21.4.2021, already quoted.

[24] See for the complex legal issues: G. De Minico, *The challenge of virtual word for the Independent Authorities*, forthcoming in *E.P.L.*, 2023, and already published https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4274809.

[25] European Parliament, DRAFT Compromise Amendments on the Draft Report Proposal for a regulation of the European Parliament and of the Council on harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts (COM(2021)0206 – C9 0146/2021 – 2021/0106(COD), 9/5/2023, quoted above, in part. see: Art. 5, par 1a) stating that: "this Article shall not affect the prohibitions that apply where an artificial intelligence practice infringes another EU law, including EU acquis on data protection, non discrimination, consumer protection or competition".

might be lawful according to the different parameter of personal data protection, and thus be kept on the market. But at the end of this dance, will A.I. survive or not?

The regulation could have made a qualitative leap: it could have incorporated the now obsolete GDPR, updating it and coordinating it with the AI discipline. In this way, a multi-comprehensive regulatory fabric would have avoided conflicts between authorities over the uniqueness of the Board, as well as antinomies of decisions over the uniqueness of the evaluation parameter. But the Regulation has not done so, which opens the door to inevitable disputes between the big ones in Europe to the detriment of the citizens.

An issue, which is close to the previous one, concerns the relations between the new A.I. Authority and the other European and national authorities respectively. Here, the critical point is the lack of clarity in the horizontal and vertical relationships. The initial wording of the regulation was not favoring a transparent dialogue between the authorities. First and foremost, it did not impose an uninterrupted flow of information between the new authority and the pre-existing ones, both at European and internal level. We will see whether this point has been improved in the amendments.

Let us now shift our gaze from the composition of the Board to the powers entrusted to it. There is nothing to object to with regard to the functions that we could define as 'of order', which in their extreme expression impose the withdrawal of an A.I. from the market for serious and unamendable irregularities and/or unlawfulness in its functioning.

Where is weak point? In the precautionary powers, that is, in those decisions that are born precarious to be absorbed in the final assessments. The content of these acts must be atypical, as it is not possible for the legislator to define it *ex ante*, since it must be equal to and contrary to the harm to be avoided. Otherwise – i.e., if the precautionary function were to let things go their own way – the risk is that, once the final measure is approaching, it might be useless due to lack of object. In this case, the situation would be so compromised that no return to legality would be possible, no measure of *reductio in pristinum* would be practicable. Well, the proposal in its current version – that of the Commission in 2021, but also the last one of the Parliament in May 2023 – is deficient on this point. Indeed, it only provides for the suspension of the A.I. Hence, the European legislator seemed to ignore the possibility to apply to the A.I. the vast existing range of precautionary and anticipatory measures, with respect to the decisions on the merits.

Scarcity in precautionary powers could jeopardise the entire legal construction of the A.I. The damages of this technology – when they occur – are not circumscribed to a narrow subjective sphere, but are extended to indefinite categories of persons. Above all, harms are irreversible, since they make it extremely difficult to return to the pre-offence situation. Therefore, the regulation should have paid more refined attention to the functions aimed at preventing harm in line with the precautionary nature of the regulatory system. But this has not been the case.

So, we are still facing a giant with 'clay feet'. We will see in the conclusions whether this flaw has been addressed by the Parliament's amendments or not.

4. A hypothetical regulatory regime as a response to the two vices

Considering the above, we can move on to the model of regulation best suited to our Chat.

In our opinion it should be clear, minimal, and oriented to equality as its main goal.

a) As to clarity, the regulation should try to solve the conflict between the abuse of regulation and the absence of rules. To avoid over-regulation, the technique of typical legal assessments should be abandoned in favor of a regulation that breaks the Chat value chain in such a way as to assign liability to each specific provider based on the actual danger and the concrete probability of its occurrence. An example would be the liability of the provider of an abstract model, which on the basis of an e*x ante* prognosis does not reveal any actual risks associated with the categories listed in Appendix III. Consequently, this provider should be immune from liability. A different instance would be the position of a developer who has trained a model for a specific purpose which could harm entire categories of subjects. Let us consider a case where Chat is used to assess the reliability of workers to be hired or to the solvency of those applying for a bank loan. In these cases, developers will have to comply with prudential rules and ensure that they have taken all appropriate measures to mitigate the alleged risks.

Here a further reflection is in order: the two categories of operators, providers and developers, should be able to freely communicate data and information about operating logic of the chat. No one should be able to oppose the trade secret to the other in order to paralyze his request for confidential information, because this split responsibility is based on the working of a smooth and loyal cooperation.

While the issue illustrated in the previous paragraph – the legal evaluation of the Chat – has been exhaustively addressed in the recent Parliament's amendments, this is not the case for the lack of dialogue between providers and developers, with its related profiles.

Certainly, the new amendment (Art. 28) orders an unprecedented flow of information between the two categories of operators, that could evoke a *in fieri* dialogue whose outcome remains uncertain. But the same provision is unclear in this regard, leaving the issue of trade secret exception unresolved. In fact, Art. 28, para. 2, lett. *b*) states that: "For the purposes of this Article, trade secrets shall be preserved and shall only be disclosed provided that all specific necessary measures pursuant to Directive (EU) 2016/943 are taken in advance to preserve their confidentiality, in particular with respect to third parties. Where necessary, appropriate technical and organizational arrangements can be agreed to protect intellectual property rights or trade secrets".

Since trade secret is constructed as a hybrid exception, between opposable and not opposable, it is not clear in what cases the information flow may be interrupted to protect confidentiality. To conclude, our remarks are still on the table awaiting appropriate answers.[26]

b) As to the opposite perspective of zero regulation, the fact that the Chat escapes the scope of the recent DSA would leave us unprotected from fake news for two reasons.

Firstly, the DSA in Recital 14 excludes its application to private messaging services. The Chat falls within this exclusion, since – at least by now – it is a communication with a specific subject, and not with everyone. In the categories of Italian Constitution, the Chat is Art. 15, not 21; in the Charter of Fundamental Rights of the European Union (2000/C 364/01),[27] it falls under Art. 7, not Art. 11.

[26] Exactly as other our issues concerning the A.I. and the bundle of fundamental rights are awaiting answer: G. DE MINICO, *The challenge of virtual word for the Independent Authorities*, quoted above.

[27] *Charter of Fundamental rights of the European Union* (2000/C 364/01), in https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016P/TXT.

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The second reason is no less well-founded than the first. The DSA imposes its *ex post* control obligation to providers, and among them especially to hosting providers, i.e. the ones that host a manifestation of someone else's thought. ChatGPT, on the other hand, has an active role in the communication chain because it produces the message, it does not host someone else's contents. In line with the CJEC, this is true even if its words and thoughts are not authentic, because the Chat merely synthesizes and re-elaborates data already existing on the Internet. In fact, the Judge[28] has been in favor of denying the liability privilege to the platform which has helped with promoting user-generated content.

Also in this case, an *ad hoc* discipline would be needed to apply some of the rules of the DSA to chat. Two distinct considerations lead us to this belief.

The first one: Chat undoubtedly answers to a question posed by a specific person, but if it answers simultaneously to the same question posed by an infinite number of people it is essentially spreading thought, *de facto* turning into a tool for diffusion *erga omnes*.

The second one: its posts, once generated, can be uploaded on a platform. In fact, the DSA would apply to the platform hosting the post, not unlike the one hosting human generated contents. Moreover, rules will be necessary because of the ability of the Chat to independently crawl data on the net. Indeed, this will increase the risk of unlawful information in the future.

c) To satisfy the minimization requirement, only the rules strictly necessary for the purpose of the Chat should be kept. By contrast, the superfluous norms should be removed, because they cause a useless and heavy burden on the economic operators. An image may be that of an open tap that lets out only a trickle of water.

d) To fit the equality principle, the rules should be compared to a megaphone that increases the voice of all, not only of those who already speak loudly. In other words, the Chat, like any evolution of technology, should be the lever to bring those who have fallen behind to an equal level field with those who are ahead in the social and political competition.

For this latter reason, the Chat should obey to a fair distribution of responsibility between the provider and the developer for the damages caused to third parties, otherwise the operators will be exempted from responsibility. Moreover, the operators would enjoy all the economic advantages to the detriment of the consumer, deprived of the possibility to complain about the prejudice suffered. Likewise, the absence of a moderation system on the contents – as indicated above for the DSA – would leave the consumer fully exposed to fake and misleading news; on the contrary, the Chat provider would dodge the obligations of punctual and specific control over the Large Language Model, produced by the Chat.

To sum up, our opinion provides just two innovations to the regulatory framework. Firstly, ChatGPT should implement a notice and action system where users can report potentially illegal contents that would then be reviewed and removed if found illegal (Article 16 DSA). Secondly, the Chat, not differently from the largest platforms, should have an internal complaint and redress system (Article 20 DSA) and provide out-of-court dispute resolution (Article 21 DSA). Hence, users should be relieved from the lengthy process of going to court to challenge problematic content.

[28] Court of Justice (Grand Chamber), *L'Oréal and Others v. eBay International AG*, Case C-324/09, 12 July 2011, in https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62009CJ0324.

These provisions would make the ChatGPT compatible with the European rule of law concerning the Artificial intelligence system, of which the our Chat is part.

5. An open scenario

What are the outcomes of our reflections? What future for Chat GPT, and more in general for A.I.?
A)As for the composition of the newly estabilished Authority, we note that its monochromatism , i.e. being privacy based Authority, has been partially corrected, by its new composition by virtue of which it has also gained a new *nomen iuris*[29]: the European Artificial Intelligence Office (Art.56).[30]
We hope that this completeness of expertise will allow the A.I. Office to turn into gaze to the entire bundle of the rights involved so as to design restorative remedies to compensate to any damage caused by too many goods attacked, without leaving anyone unprotected.
B) The issue, on the other hand, of possible conflicts between the Authority and the European sectoral or National Regulatory Authorities has been underestimated by Parliament, which has not been able to resolve the conflict of competence between the old and the new Authorities *ex ante* in its amendments. It has to be said, however, that the issue is not be entirely unknown in Brussels, as evidenced by the provision of yet another new entity: an Office A.I. for Coordinator (Art. 56ter). However, this office suffers from a certain timidity given its blunt weapons. If its task was to anticipate possible conflicting decisions between the new Board and the European sectoral authorities, its powers should have been different.
C) In the same way, we cannot speak of improvements in circular communication, the one that according to a relentless motion, from the top to bottom, and in an inverted cycle should have invested the new A.I. Office and the NRAs. This veil of opacity is still waiting to be lift.
Now it is time to look ahead.
If it is true that Large language model is the progenitor of ChatGPT, it is undeniable that the latter has worked on its two initial features. Moreover, the latter has an *erga omnes* use. These factors have enhanced dangers of illegal and irresponsible language that appeared only as glimpses in the previous models. Namely, we refer to language potentially illegal and irresponsible towards the community.

[29] Let us quote our essay, *The challenge of virtual word for the Independent Authorities*, indicated *supra*.
[30] See European Parliament, *DRAFT Compromise Amendments on the Draft Report Proposal for a regulation of the European Parliament and of the Council on harmonised rules on Artificial Intelligence (Artificial Intelligence Act)* and amending certain Union Legislative Acts (COM(2021)0206 – C9 0146/2021 – 2021/0106(COD), 9/5/2023 European Parliament, DRAFT Compromise Amendments on the Draft Report Proposal for a regulation of the European Parliament and of the Council on harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts (COM(2021)0206 – C9 0146/2021 – 2021/0106(COD), 9/5/2023, already quoted, see in part. the Art. 57b). It states that: "1. The management board shall be composed of the following members:
(a) one representative of each Member State's national supervisory authority;
(b) one representative from the Commission
(c) one representative from the European Data Protection Supervisor (EDPS);
(d) one representative from the European Union Agency for Cybersecurity (ENISA);
(e) one representative from the Fundamental Rights Agency (FRA)".

A correct regulatory behavior towards the Chat should not hinder innovation but promote it to pursue a human-friendly technology. To achieve the ambitious goal of a human-friendly technology we propose a clear, minimal regulation, tailored to technical facts, and oriented towards the equality principle as said above.

Therefore, the correct attitude towards technology should not be the fear of the Legislator, but its patience to break it up into many fragments and then to devise rules capable of composing and appropriately balancing innovation and fundamental rights.