Yves Poullet, *Le RGPD face aux défis de l'intelligence artificielle*. Brussels: Larcier, 2020. 166 pages. ISBN: 9782807924147. EUR 45.

Poullet's book comes as a valuable and timely contribution to the French-speaking literature on Artificial Intelligence (AI). In his ambitious, well-documented, and elegantly written opus, he manages to walk the reader through salient issues pertaining to the application of the General Data Protection Regulation (GDPR) to data processing performed by artificial systems. That the topic is current is an understatement, considering the recent AI Act proposal (COM(2021)206 final). The volume is structured around two ideas, developed in corresponding titles: first, the *specificity* of – as Poullet calls it – the AI phenomenon; second, the *applicability* of the GDPR to the latter, with a focus on machine learning (ML) systems.

AI's specificity is showcased through three of its features: the increased security and robustness of digital infrastructures, the efficiency in processing various types of data in private and public sectors, and the accuracy of algorithmic decisions and predictions (pp. 26–29). Though these are, indeed, three of AI's key attributes, greater attention on the challenges in defining AI would have, perhaps, made Title 1 a more dynamic read. Indeed, distinguishing *automated* devices from *intelligent* ones can be difficult, as shown by the relative lack of academic and regulatory consensus on which technologies can qualify as AI. Commenting on this point would have allowed to better explain why automated profiling and ML systems are the most legally problematic. A brief overview of the main programming stages of a standard ML system (labelling, testing and validation) would also have been useful. It would have allowed to state more clearly the reasons why data processing by self-learning systems can be opaque, potentially harmful, thus justifying the urgency in raising the issue of the GDPR's applicability to such processing.

The succinct analysis in Title 1 is followed by a more extensive study in Title 2. Here, the author focuses on three points: automated data processing in relation to the GDPR's scope of application, the principles of legality and lawfulness of such processing and the rights of the

data subjects. Regarding the GDPR's applicability to automated data processing, Poullet's general view is that the Regulation's scope of application is too narrow (pp. 48 et seq.). *Ratione materiae*, he seems critical that the GDPR governs personal data of natural persons only, to the exclusion of other types of "personal" – in the sense of "individuating" – information (e.g. anonymous data, p. 51; data on groups or organizations, p. 52). The same criticism extends to the GDPR's *ratione personae* scope of application. Espousing the views of the Council of Europe and the OECD, Poullet argues that the controller-processor-subject triad should be broadened and include intermediaries (e.g. data providers) (p. 60).

In his analysis of the principles of lawfulness and legitimacy of personal data processing under Articles 5 to 9 GDPR, the author appears critical of the GDPR's consent requirement (p. 75). When the average user visits a website and accepts cookies, their consent is seldom, if ever fully informed. In light of this, Poullet's proposition is that consent would cease to be required in cases of automated data processing. He seems more favourable to risk-mitigation achieved through, say, collective negotiations between consumer protection associations and data controllers, as well as through a more effective application of such principles as data minimization and proportionality (pp. 80–83). In the spirit of *a priori* risk minimization, Poullet also stresses the importance of AI security and robustness. Procedurally, these would be achieved through data protection impact assessment (as per Art. 35 GDPR). Institutionally, there would be a multidisciplinary EU governance structure on AI: in essence, a risk regulation agency, performing regular exchange of information and best practices, identifying emerging trends and acting as an advisory body on issues of AI standardization and certification (pp. 102–103).

Against the backdrop of these observations and suggestions, Poullet goes on to address the rights of the data subjects (p. 109 et seq.). Naturally, the emphasis is placed on transparency and the right to refuse to be subject to automated data processing. As per Article 22(3) GDPR, the data controller has the obligation to implement "suitable measures" to safeguard the data subject's rights, freedoms and legitimate interests. These safeguards include human intervention, the right of the data subjects to express their point of view and to contest the automated decision. Poullet raises some of the standard open questions pertaining to the Article 22 duties and safeguards. It is, indeed, not yet clear what automated data processing is; when such processing *significantly* affects a data subject; what is the extent of the derogations – listed in Article 22(2) GDPR – to the data subject's right to object and, most importantly, what is, or should be, the scope of the right to human explanation. The author concludes that in view of increasing transparency, better traceability of a system's decisions is needed, as well as the establishment of common practices (p. 122). Generally favourable to *a priori* risk assessment and prevention, in his conclusion, (at 126 et seq.) he reemphasizes his key regulatory suggestions and provides a brief comment of the European Parliament's Framework of ethical aspects of AI, robotics and related technologies (2020/2012(INL), pp. 137 seq.).

Considering the time of its publication (2020), Poullet's book was, in some ways, foresighted. Some of his views on the regulatory improvements needed to effectively apply the GDPR to AI are – *mutatis mutandis* – expressed in the 2021 AI Act Proposal. The compliance standards for high-risk AI on risk-management (Art. 9), data and data governance (Art. 10) technical documentation (Art. 11), record-keeping (Art. 12), automated logging and traceability, transparency and provision of information to users (Art. 13) and human oversight (Art. 14) echo some of Poullet's views on the principles of lawfulness in the GDPR (Arts. 5 and 9) as well as the "right to a human explanation", as per Article 22(3) GDPR.

Moreover, as Poullet suggested, the *ratione personae* scope of the actors involved in various stages of AI development and use has also been extended in the AI Act. To the early-day binary distinction between programmers and users, the European Parliament added the category of "deployers" as persons charged with the operation, management and market placement of AI (2020/2012(INL), Art. 4). The AI Act further distinguishes between providers, users, importers and distributors (Art. 3). Poullet's suggestion to consider the "intermediaries" in automated data processing is echoed here.

Finally, the author recommended an interdisciplinary AI entity modelled after standard risk-regulation agencies. The AI Act establishes the AI Board (Art. 56) which is essentially a risk-regulation agency, charged with administrative tasks of coordination and market surveillance, with – alas – not much interdisciplinarity.

The merit of Poullet's insight notwithstanding, it would have been interesting to have his critical views on two key aspects. First, is technical standardization of the principles of trustworthy AI (human agency and oversight, technical robustness etc.; cf. HLEG, 2019, ALTAI, 2020) conducive to upholding the standard of protection intended by GDPR? In theory, said principles espouse the GDPR's lawfulness requirements. In practice, there is room for doubt. For example, it would have been interesting to have the author's opinion on how the duty of human oversight as per Article 14(4) of the AI Act can support the exercise of the right to a human intervention/explanation, as per Article 22(3) GDPR.

Second, it would have been interesting to explore fairness in relation to effective judicial protection. One of the key issues in this regard is how the GDPR and the AI Act should interact with the right to a fair trial (Art. 47 CFR) and the procedural safeguards set out in sectoral EU legislation. For example, a biased automated decision is not only a lawfulness issue under the GDPR and a fairness issue under the AI Act. It is, above all, a discrimination issue under Article 18 TFEU and the Equality Directives. Having suffered from algorithmic discrimination, what should a litigant do? Should they bring their discrimination claim on the grounds of the GDPR, the (future) AI Act, the Equality Directives… or all of the above? Procedural fairness in the field of AI is often overlooked in general AI scholarship and Poullet's book is no exception. Still, raising the issue of judicial protection would have "completed the picture" on some of the author's thoughts relative to accountability, liability and transparency (cf. Title 2 Ch.4).

These observations notwithstanding, there is little doubt that scholars, practitioners and regulators will find Poullet's book interesting, informative and an important building block in the existing doctrinal edifice on AI and the emerging currents on the AI Act. A highly recommended read!

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