

Nordic AI Meet 2026

P1: AI, Society, Governance, Education & Working Life

2. Legitimacy in Tension: Who Governs Fundamental Rights under the AI Act?

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Abstract: This article examines the legitimacy tradeoffs in the EU AI Act's standardisation-based regulatory model. The Act follows the New Legislative Framework (NLF), where legislation sets essential requirements and private bodies—chiefly CEN and CENELEC—develop the specifications that operationalise them. While the NLF has worked for traditional product safety, the AI Act extends this delegation into constitutionally sensitive terrain by entrusting fundamental rights safeguards to standards drafted in industry-dominated committees. Can private standard-setting legitimately shape fundamental rights protection?

The article applies a tripartite lens—input (democratic representativeness), throughput (procedural quality and accountability), and output (effectiveness in protecting rights)—showing these concerns are interactive, not additive: gains on one axis often generate losses on another. The stakes are sharpened by Europe's legality requirement: under the ECHR and Article 52(1) of the Charter, rights restrictions must be "prescribed by law." Where constraints on high-risk AI are shaped in private committees rather than public law-making, satisfying that threshold is doubtful.

A "legitimacy cube" heuristic positions any arrangement by its strength along the three axes, with reforms theorised as movements within it. Seven proposals are assessed: more legislative detail; narrower standardisation requests; enhanced civil society participation; greater transparency; expanded oversight; public availability of standards; and effective judicial review.

A pattern emerges: measures strengthening input and throughput legitimacy carry output costs—rigidity, slower standard-setting, diluted expertise, reduced industry engagement. Public availability and judicial review are partial exceptions, offering gains across all three. No single reform reaches the cube's optimal corner; only a carefully assembled package can move the system toward a more legitimate equilibrium.