

THE EU ARTIFICIAL INTELLIGENCE ACT: MAIN FEATURES AND NEXT STEPS



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On 2 February 2024, the European Council, which is the body representing the EU Member States, agreed on a final version of the Artificial Intelligence Act (EU AI Act). This follows a provisional agreement reached on 9 December 2023 with the European Parliament on the EU AI Act. The text will now have to be formally adopted by the European Parliament, which is expected by the end of April 2024, before entering into force before becoming applicable in the course of 2026.

This is the outcome of a legislative process which started with the publication of the European Strategy on AI in 2018, the European Commission's White Paper on AI published in 2020 and a public consultation which elicited widespread participation from across the world.

Following this, the European Commission published on 21 April 2021 a proposal for an EU Regulation establishing harmonised rules on artificial intelligence.

The main objective of this EU AI Act is to position the European Union to become the first world leader in the development of a safe, reliable and ethical artificial intelligence (AI), by setting up horizontal rules for the development, commercialisation and use of AI systems.

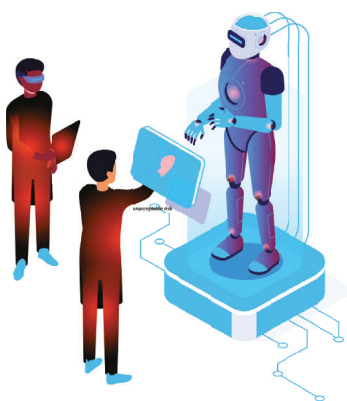
Main Provisions of the Draft EU AI Act

The draft EU AI Act defines an AI System as a "machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments" (Art. 3.1 EU AI Act).



Such a broad definition notably includes systems such as machine learning, logic and knowledge-based systems and statistical approaches, whether used on their own or as a component of a product.

In light of the potential risks associated with the use of a specific AI System in terms of infringement of fundamental rights and user's safety, the draft EU AI Act follows a risk-based approach, whereby legal intervention is adapted to the level of concrete risk classified as follows: (i) unacceptable risk, (ii) high risk, (iii) limited risk, and (iv) low or minimal risk:



The 'Prohibited Artificial Intelligence Practices' category (Title II EU Act) prohibits from the EU marketplace any harmful AI practices that are deemed to be a clear threat to people's safety and rights, and to present an unacceptable risk, such as:

- Biometric categorisation systems using sensitive characteristics (e.g. political, religious or philosophical opinions, sexual orientation, race) and real-time biometric identification systems by law enforcement authorities in locations accessible to the public (subject to certain limited exceptions);
- Untargeted extraction of facial images from Internet or video surveillance to create facial recognition databases;
- Recognition of emotions in the workplace and educational establishments;
- Social rating based on social behaviour or personal characteristics;
- AI used to exploit people's vulnerabilities (due to age, disability, social or economic situation); and

- AI systems that manipulate human behaviour to circumvent people's free will, such as toys using voice assistance encouraging dangerous behaviour of minors.

- Risk Systems' (Title III EU AI Act), while authorised, will be subject to a stringent set of rules and requirements, such as risk mitigation systems, high quality of data sets, logging of activity, detailed documentation, clear user information, human oversight, and a high level of robustness, accuracy and cybersecurity. Furthermore, an ex-ante conformity assessment, under which providers of high risk AI systems will be required to register their systems in an EU-wide database managed by the European Commission before using them. Both individuals and legal entities will have the right to lodge complaints about AI Systems to the relevant market surveillance authority (Art. 68b EU AI Act) and to receive explanations about decisions based on High-Risk AI Systems affecting their rights. The latter will need to be combined with the relevant information to be provided in case of automated decision-making personal data processing under Art. 22 GDPR.
- Examples of such High-Risk AI Systems include biometric identification, categorisation and emotion recognition systems, as well as certain critical infrastructures for instance in the fields of water, gas and electricity, medical devices, systems to determine access to educational institutions or for recruiting people, or certain systems used in the fields of law enforcement, border control, administration of justice and democratic processes.
- AI systems categorised as presenting a 'Limited Risk', i.e. that are designed to interact with physical persons, emotion recognition systems and biometric categorisation systems as well as AI systems used to generate or manipulate image, audio, or video content (i.e. deepfakes), shall comply with minimal transparency requirements to enable users to make informed decisions.
- Finally, the 'Low or Minimal Risk' category is expected to include the vast majority of AI systems such as AI-enabled recommender systems or spam filters. These AI systems may be used without requiring any 'specific compliance requirements under the EU AI Act. As the case

may be, however, stakeholders may voluntarily, subject to the their Minimal Risk AI Systems to codes of conduct in order to apply the mandatory requirements applicable to High-Risk AI Systems.



The draft EU AI Act also introduces dedicated rules for General Purpose GPAI models which aim to ensure transparency along the value chain.

As such, for very powerful models that could pose systemic risks, there will be additional binding obligations related to managing risks and monitoring serious incidents, performing model evaluation and adversarial testing.

These new obligations will be implemented through codes of practices developed by industry, the scientific community, civil society and other stakeholders together with the European Commission.

In terms of governance, national authorities of EU Member States will be tasked to supervise the implementation of the new rules at national level, while the creation of a new European AI Office within the European Commission will ensure coordination at European level. This office will also supervise the implementation and enforcement of the new rules on general purpose AI models. In addition, for general purpose AI models, a scientific panel of independent experts will be in charge of issuing alerts on systemic risks and contributing to the classification and testing these models.

Scope of Application of the Draft EU AI Act

The draft EU AI Act shall apply to (i) providers of AI systems based in the EU or in a third country who place or put into service AI systems on the EU market, (ii) deployers of AI systems located in the EU and (iii) providers and deployers of AI systems based outside of the EU where the output produced by the AI system is used in the EU.

In addition, the draft EU AI Act specifies that it shall not apply to areas outside the scope of EU law and should under no circumstances affect Member States' competences in national security or any entity responsible for duties in this area. This provisional EU AI Act will not apply to people using AI for non-professional purposes and AI systems used exclusively for research and innovation purposes or exclusively for military or defence purposes.

Sanctions for Non-Compliance

The following fines will be imposed on companies found in violation of the EU AI ACT, notably by placing on the market or use of AI systems which do not comply with the requirements of the EU AI ACT:

- EUR 35 Million or 7% of global annual turnover for violations of banned AI applications;
- EUR 15 Million or 3% of their global annual turnover for violations of other obligations; and



- EUR 7.5 Million or 1% of their global annual turnover for supplying incorrect, incomplete or misleading information to the regulators

For administrative fines for SMEs and start-ups, the draft EU AI ACT provides that fines shall be calculated on the same basis as set forth above, whichever is lower.

Next Steps

The political agreement on the draft EU AI Act now requires a formal approval by the European Parliament and the European Council and will enter into force twenty days after its publication in the Official Journal of the European Union.

Once entered into force, it will progressively become enforceable, over a 36-month period as follows:

- Within six months, for any provision relating to Prohibited AI Practices;

- Within nine months for codes of practice for GPAI;
- Within twelve months for GPAI not already placed on the market prior to the entry into force of the EU AI Act, for transparency obligation, notification to authorities and penalties;
- Within twenty-four months for GPAI which have already been placed on the market prior to the entry into force of the EU AI Act and all other provisions of the EU AI Act; and
- Within thirty-six months for the obligation pertaining to High Risks AI Systems.

