

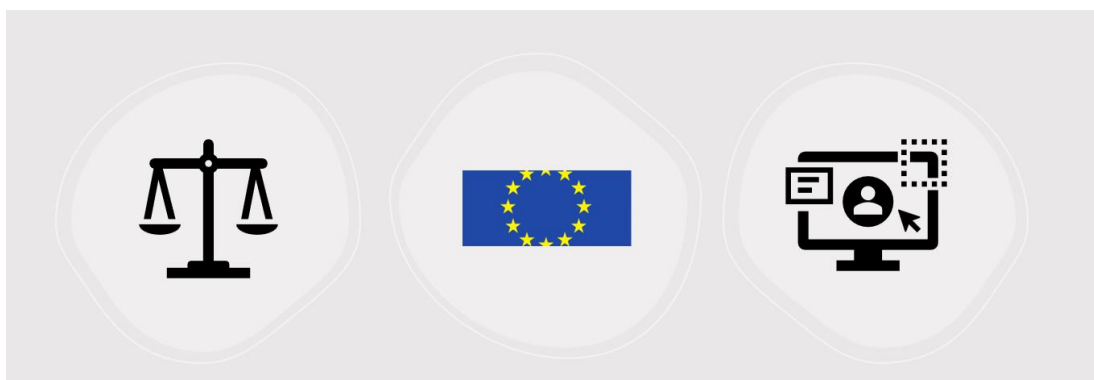
EU AI Act – Questions and Answers



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In this article, the writers answer key questions on the forthcoming European Union artificial intelligence (AI) Act (the “EU AI Act”).



Authors: Sean Musch, AI & Partners and Michael Borrelli, AI & Partners

New Regulatory Framework on AI

Why do we need to regulate the use of Artificial Intelligence technology?

The potential advantages of AI for our societies are various from improved medical care to better education. Faced with the rapid technological development of AI, the European Union has taken action to harness these opportunities. While many AI systems will pose low to no risk, certain AI systems create risks that need to be addressed to avoid undesirable outcomes. As an example, the non-transparency of many algorithms may create uncertainty and constrain the effective enforcement of the existing legislation on safety and fundamental rights.

In response to these challenges, a regulatory framework is needed to ensure a well-functioning internal market for AI systems where both benefits and risks are adequately addressed. This includes applications such as biometric identification systems. The proposed the EU AI Act aims to ensure the protection of fundamental rights and user safety, together with the development and uptake of AI.



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The proposed EU AI Act will:

- ✓ address risks specifically created by AI applications;
- ✓ propose a list of high-risk applications;
- ✓ set clear requirements for AI systems for high risk applications;
- ✓ define specific obligations for AI users and providers of high risk applications;
- ✓ propose a conformity assessment before the AI system is put into service or placed on the market;
- ✓ propose enforcement after such an AI system is placed in the market; and
- ✓ propose a governance structure at European and national level.

What risks will the new AI rules solve?

The adoption of AI systems has a strong potential to bring societal benefits, economic growth and enhance EU innovation and global competitiveness. Nonetheless, in some cases, the specific characteristics of certain AI systems may create new risks related to user safety and fundamental rights.

This results in legal uncertainty for companies and potentially slower uptake of AI technologies by businesses and citizens, due to the lack of trust. Diverging regulatory responses by national authorities would risk fragmenting the internal market.

To whom does the EU AI Act apply?

The proposed legal framework also applies to both public and private actors inside and outside the EU provided that the AI system is placed on the Union market or its use affects people located in the EU.

It can relate to both providers (e.g. a developer of a CV-screening tool) and users of high-risk AI systems (e.g. a bank buying this resume screening tool). As it stands, it does not apply to private, non-professional uses.



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What are the risk categories?

The EU AI Act proposes a risk-based approach, with four levels of risk:

Unacceptable risk: A very limited set of particularly harmful uses of AI that infringe EU values because they violate fundamental rights (e.g. social scoring by governments) will be prohibited.

High-risk: A limited number of AI systems defined in the EU AI Act, creating an adverse impact on people's safety or their fundamental rights (as protected by the EU Charter of Fundamental Rights) are considered to be high-risk. Annexed to the EU AI Act is the list of high-risk AI systems, which can be reviewed to align with the evolution of AI use cases (future-proofing). This includes safety components of products covered by sectorial Union legislation. They will always be high-risk when subject to third-party conformity assessment under that sectorial legislation.

For the purposes of ensuring trust and a consistent and high level of protection of safety and fundamental rights, mandatory requirements for all high-risk AI systems are proposed. Those requirements relate to the:

- quality of data sets used;
- technical documentation and record keeping;
- transparency and the provision of information to users;
- human oversight; and
- robustness, accuracy and cybersecurity.

In case of a contravention, the requirements will allow national authorities to have access to the information needed to investigate whether the use of the AI system complied with the law. The EU AI Act is consistent with the Charter of Fundamental Rights of the European Union and in line with the EU's international trade commitments.

Limited risk: For certain AI systems, particularly transparency requirements are imposed, for example where there is a clear risk of manipulation (e.g. via the use of chatbots). Users should be mindful that they are interacting with a machine.

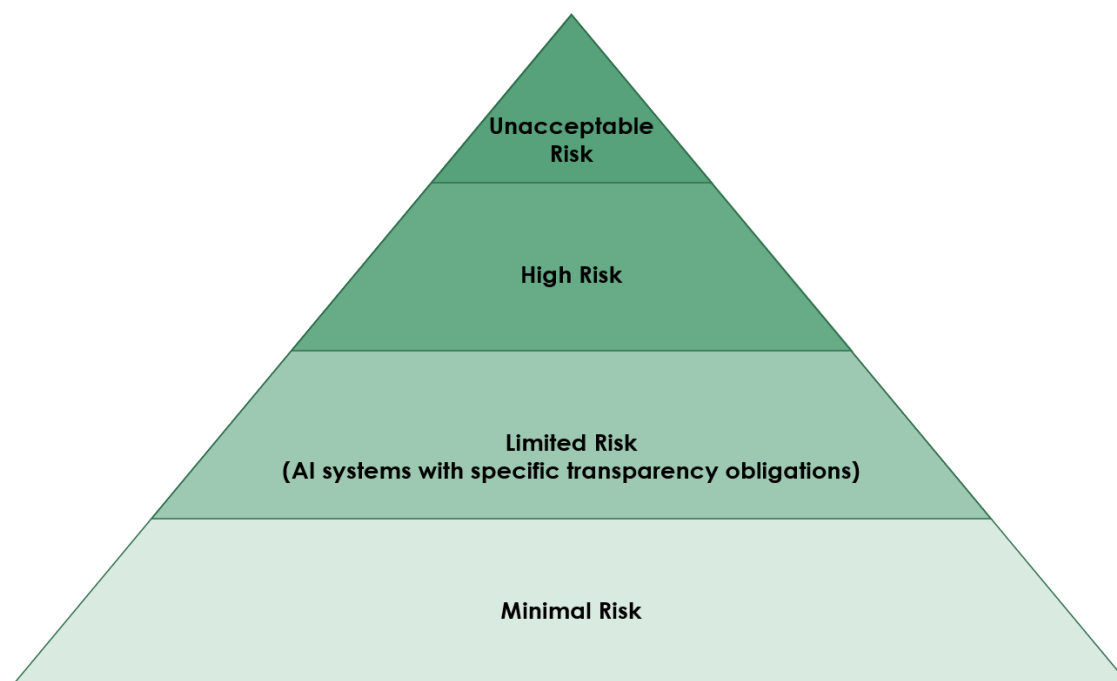
Minimal risk: All other AI systems can be developed and used subject to the existing legislation without added legal obligations. The vast majority of AI systems currently used in the EU fall into this category. Voluntarily, providers of those systems may opt to apply the requirements for trustworthy AI and comply with voluntary codes of conduct.



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What obligations apply to high-risk systems?

High-risk AI systems will be subject to onerous obligations before they can be put on the market:

- adequate risk assessment and mitigation systems;
- high quality of the datasets feeding the system to minimise risks and discriminatory outcomes;
- logging of activity to ensure traceability of results;
- detailed documentation providing all information necessary on the system and its purpose for authorities to assess its compliance;
- clear and adequate information to the user;
- appropriate human oversight measures to minimise risk; and
- high level of robustness, security and accuracy.

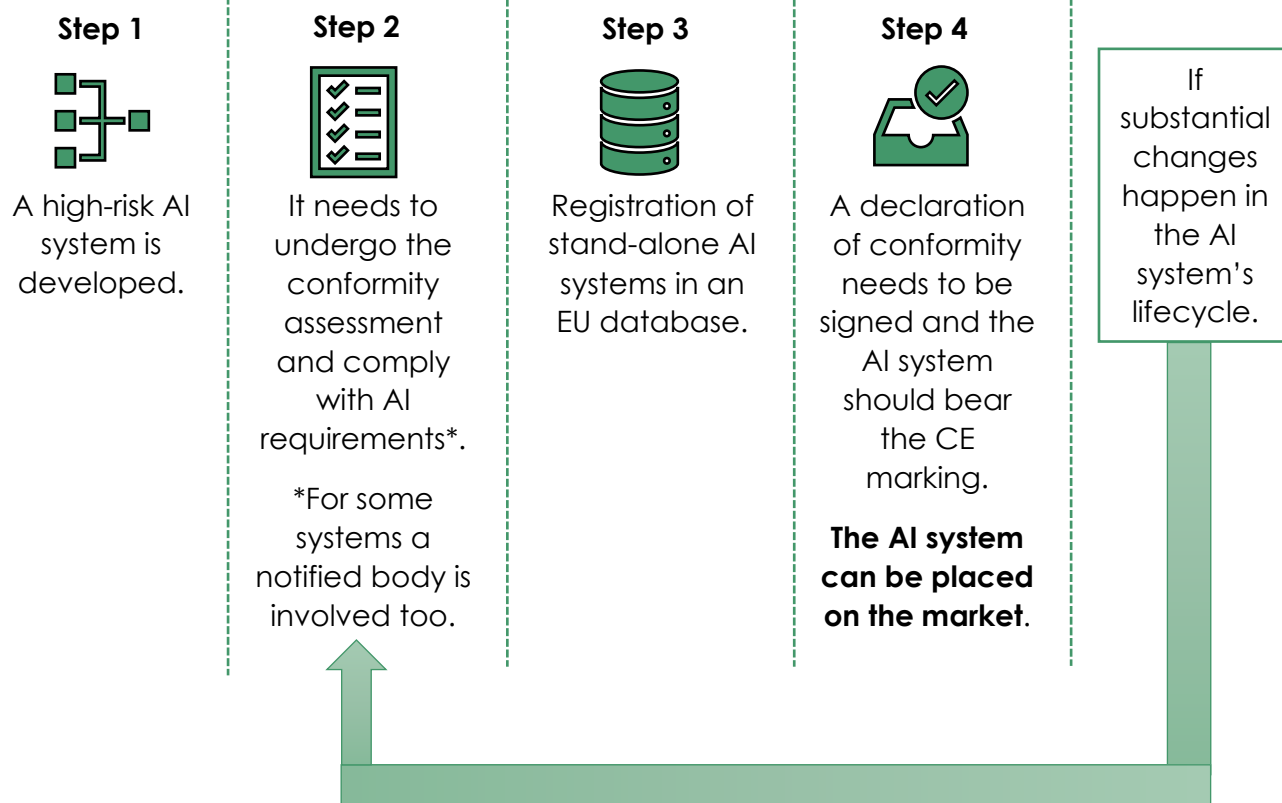


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How does it work in practice for providers of high-risk AI systems?

A traditional four step process is followed:



How did the EU select the list of stand-alone high-risk AI systems (more embedded in products)? How will they update it?

As well as a clear definition of 'high-risk', they put forward a solid methodology that helps identifying high-risk AI systems within the legal framework. This aims to provide legal certainty for businesses and other operators.



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The risk classification is framed on the intended purpose of the AI system, in alignment with the existing EU product safety legislation. It means that the classification of the risk depends on the **function performed by the AI system** together with the specific **purpose and modalities** for which the system is used.

The criteria for this classification include the:

- extent of the use of the AI application and its intended purpose;
- number of potentially affected persons;
- dependency on the outcome and the irreversibility of harms; and
- extent to which existing Union legislation provides for effective measures to prevent or substantially minimise those risks.

A list of particular critical fields assists to make the classification clearer by identifying these applications in the areas of biometric identification and categorisation, critical infrastructure, education, recruitment and employment, provision of important public and private services as well as law enforcement, asylum and migration and justice.

Annexed to the proposal is a list of use cases which they currently consider to be high-risk. They will ensure that this list is kept up to date and relevant, based on the above mentioned criteria, evidence, and expert opinions in broad consultation with stakeholders.

How does the EU AI Act address remote biometric identification?

Under the proposed rules, all AI systems intended to be used for remote biometric identification of persons will be, de-facto, considered high-risk and subject to an-ex ante **third party conformity assessment**, including documentation and human oversight requirements by design. High quality data sets and testing will assist in ensuring that sure such systems are accurate and there are no discriminatory impacts on affected stakeholders.

The use of real-time remote biometric identification in publicly accessible spaces for law enforcement purposes gives rise to particular risks for fundamental rights, notably human dignity, respect for private and family life, protection of personal data and non-discrimination. Accordingly, it is prohibited in principle with limited, narrow exceptions that are strictly defined, limited and regulated.



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They include the use for law enforcement purposes for the targeted search for specific potential victims of crime, including missing children.

Lastly, all emotion recognition and biometric categorisation systems will always be within scope of specific transparency requirements. They will also be deemed high-risk applications if they fall under the use cases identified as such, for example in the areas of employment, education, law enforcement, migration and border control.

Why are specific rules needed for remote biometric identification?

Biometric identification can manifest in different forms. It can be used for user authentication i.e. to unlock a smartphone or for verification/authentication at border crossings to check a person's identity against their travel documents (one-to-one matching). It could also be used remotely, for identifying people in a crowd, where, as an example, an image of a person is checked against a database (one-to-many matching).

Accuracy of systems for facial recognition can differ significantly based on a wide range of factors, such as camera quality, database, algorithm, and the subject's ethnicity, age or gender. This also applies for gait and voice recognition and other biometric systems. Highly sophisticated systems are continuously reducing their false acceptance rates. Even though a 99% accuracy rate may sound positive in general, it is extremely risky when the result results in the suspicion of an innocent person. In this context, even a 0.1% error rate is high if it concerns tens of thousands of people.

What are the penalties for contravention?

- When AI systems are put on the market or in use that do not comply with the requirements of the EU AI Act, Member States will have to deploy effective, proportionate and dissuasive penalties, including administrative fines, in relation to infringements and communicate them, accordingly.



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- The EU AI Act sets out thresholds that need to be taken into account:
 - Up to **€30m** or **6%** of the total worldwide annual turnover of the preceding financial year (whichever is higher) for infringements on prohibited practices or non-compliance related to requirements on data;
 - Up to **€20m** or **4%** of the total worldwide annual turnover of the preceding financial year for non-compliance with any of the other requirements or obligations of the Regulation;
 - Up to **€10m** or **2%** of the total worldwide annual turnover of the preceding financial year for the supply of incorrect, incomplete or misleading information to notified bodies and national competent authorities in reply to a request.
- For the purposes of harmonising national rules and practices in setting administrative fines, the EU has pledged to draw up guidelines.
- Given that EU Institutions, agencies or bodies should lead by example, they will also be subject to the rules and to potential penalties.

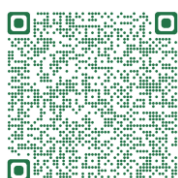
How do the rules protect against fundamental rights?

There is already a robust protection for fundamental rights and for non-discrimination in place at EU and Member State level. However, complexity and opacity of certain AI applications (such as 'black boxes') pose a problem.

A human-centric approach to AI focuses on ensuring that AI applications comply with fundamental rights legislation.

Accountability and transparency requirements for the use of high-risk AI systems, alongside improved enforcement capacities, will provide that legal compliance is factored in at the development stage.

Where contraventions occur, such requirements will allow national authorities to have access to the information needed to investigate whether the use of AI complied with EU law.



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How does the EU AI Act address racial and gender bias in AI?

It is crucial that AI systems do not create or regenerate bias. In comparison, when properly designed and used, AI systems can contribute to reduce bias and existing structural discrimination, and thus result in more equitable and non-discriminatory decisions (e.g. in recruitment).

The new mandatory requirements for all high-risk AI systems aim to serve this purpose. AI systems must be technically robust to guarantee that the technology is fit for purpose and false positive/negative results are not disproportionately impacting protected groups (e.g. racial or ethnic origin etc.).

High-risk systems should also be trained and tested with sufficiently representative dataset to minimise the risk of unfair biases embedded in the model alongside ensuring that these can be addressed through appropriate bias detection, correction and other mitigating measures.

Additionally, they must be traceable and auditable, ensuring that appropriate documentation is kept, including of the data used to train the algorithm that would be key in ex post investigations.

***Key* Compliance checks of the system, before and after they are placed on the market**, must be able to guarantee that these systems are regularly monitored and potential risks are promptly addressed.

What are voluntary codes of conduct?

Providers of non-high-risk applications can take measures so that their AI system is trustworthy by either developing their own voluntary codes of conduct or adhering to codes of conduct adopted by other representative associations.

These will apply concurrently with the transparency obligations for certain AI systems. The EU encourages industry associations and other representative organisations to adopt voluntary codes of conduct.



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Will imports of AI systems and applications need to comply with the EU AI Act?

Yes. Importers of AI systems must make sure that the foreign provider has already carried out the appropriate conformity assessment procedure and has the required technical documentation. Moreover, importers should ensure that their system bears a European Conformity (CE) marking and is accompanied by the required documentation and instructions of use.



How can the EU AI Act support innovation?

The EU AI Act can accelerate the adoption of AI in two ways:

1. increasing users' trust will increase the demand for AI used by companies and public authorities; and
2. increasing legal certainty and harmonising rules, AI providers will access bigger markets, with products that users and consumers appreciate and purchase.

Rules will apply only where required and in a way that minimises the burden for economic operators, with a light governance structure.

In addition, an ecosystem of excellence, including regulatory sandboxes establishing a controlled environment to test innovative technologies for a limited time, access to Digital Innovation Hubs and access to Testing and Experimentation Facilities will assist innovative companies, SMEs and start-ups to continue innovating in compliance with the EU AI Act.



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What is the international dimension of the EU's approach?

The proposed EU AI Act is part of the efforts of the EU to be a global leader in the promotion of trustworthy AI at international level. AI has become an area of strategic importance at the crossroads of geopolitics, commercial stakes and security concerns.

Countries around the world are opting to use AI as a way to signal their desires for technical advancement due to its utility and potential. AI regulation is still nascent and the EU is taking actions to foster the setting of global AI standards in close collaboration with international partners in line with the rules-based multilateral system and the values it upholds. The EU intends to deepen partnerships, coalitions and alliances with EU partners (e.g. Japan, the US or India) as well as multilateral (e.g. OECD and G20) and regional organisations (e.g. Council of Europe).

How AI & Partners can help

Once published, the EU AI Act would lay down the first landmark regime governing the artificial intelligence space in a comprehensive and harmonised manner; thus, its breadth would affect the artificial intelligence industry and could represent a blueprint for other jurisdictions to follow. Therefore, now is a good time to prepare for the main disruptive changes the EU AI Act is on the point of introducing and AI & Partners would be happy to assist you in this process.

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