

Fundamental Rights Impact Assessment

Best practices and insights for practical implementation

April 2024



- Fundamental Rights Impact Assessments (“FRIAs”) are one of the proposed *accountability* tools in the upcoming European Union Artificial Intelligence (“AI”) Act (the “EU AI Act”).
- They are poised to be a *valuable* source to understand how the AI system activity landscape on the ground is changing.
- Ahead of the EU AI Act’s scheduled entry into force in 2024, this document looks at best practices and insights for deployers of high-risk AI systems to adopt for FRIAs based on data from the European Data Protection Supervisor’s (“EDPS”) survey in February 2020, as FRIAs could be the DPIA *equivalent* under the EU AI Act.
- **Article 27** of the EU AI Act (Corrigendum Version (April 2024)) requires that, in order to efficiently ensure that fundamental rights are *protected*, the deployer of high-risk AI systems should therefore carry out a fundamental rights impact assessment prior to putting it into use.



General

Early Engagement and Adaptation for FRIAs

- Organizations, particularly larger ones, actively working on their first FRIA must recognize the importance of adapting to new regulations and engaging in the assessment process.
- The limited number of finalized DPIAs suggests that organizations, regardless of size, will be at the early stages of adapting to the regulatory landscape, emphasizing the need for ongoing efforts in understanding and implementing FRIAs effectively in the context of AI governance.

Dynamic Criteria for AI Regulatory Assessments

- The varied criteria triggering the need for DPIAs highlight the importance of a dynamic approach in FRIAs under the EU AI Act.
- Lessons suggest that FRIAs should adapt to the complexity of AI applications, emphasizing sensitivity, scale, and innovation as key criteria.

Varied Nature Requires Tailored Assessment Approach

- The limited number and diverse nature of the finalized DPIAs submitted indicate that FRIAs under the EU AI Act must be tailored to the specific and varied contexts of AI system activities.
- A key lesson is the necessity for flexibility in FRIA methodologies to accommodate the unique characteristics of different AI applications.

Comprehensive Assessments Require Adequate Length

- The notable variation in the length of provided DPIAs, ranging from five to 55 pages, indicates that FRIAs under the EU AI Act should prioritize comprehensive analysis over brevity.
- The key lesson suggests that organizations conducting FRIAs for AI applications need to allocate sufficient space to address the diverse and complex aspects of the assessments.

Human-Centric Perspective in Assessments

- The emphasis on assessing risks "to the rights and freedoms of natural persons" in DPIAs serves as a crucial lesson for FRIAs under the EU AI Act.
- FRIAs should adopt a human-centric perspective, considering the impact of AI system activities on individuals, not solely focusing on organizational interests.



Decision-Making

Threshold Assessments as Precursors

- FRIAs could benefit from a similar precursor mechanism, ensuring that regulatory impact assessments are triggered when specific thresholds or criteria are met.
- The lesson emphasizes the importance of establishing clear criteria or thresholds for initiating FRIAs, streamlining the process and ensuring that resources are directed toward impactful assessments, aligning with the risk-based approach inherent in DPIAs.

Holistic Consideration for FRIAs

- FRIAs should not solely be triggered by regulatory requirements but should encompass a broader range of reasons, including management decisions, emerging technologies, and external collaborations.
- The lesson underscores the importance of a holistic approach to FRIAs, ensuring that various factors, both regulatory and strategic, are considered in the assessment process for AI applications.

Documentation of Threshold Assessments in FRIAs

- FRIAs should incorporate a systematic and well-documented threshold assessment process, ensuring that considerations leading to the decision not to conduct a FRIA are explicitly recorded.
- Comprehensive documentation of threshold assessments in FRIAs promotes transparency, accountability, and a clear understanding of the reasoning behind the decision-making process related to AI applications.

Enhanced Documentation in Threshold Assessments for FRIAs

- FRIAs should incorporate a comprehensive and structured approach to threshold assessments, ensuring that controllers explicitly reason their responses, especially when deciding not to proceed with a FRIA.
- Clear documentation in threshold assessments for FRIAs promotes accountability, transparency, and a thorough understanding of the considerations that lead to the decision-making process regarding AI applications.



FRIA Process

Adaptability and Customisation of Methodologies for FRIAs

- The variety of methodologies used by EUIs for DPIAs underscores the importance of adaptability in approaching FRIAs for AI applications under the EU AI Act.
- FRIAs should not be confined to a one-size-fits-all approach but should allow flexibility for organizations to choose or combine methodologies based on their unique circumstances and requirements.
- Encouraging a range of acceptable methodologies promotes a more tailored and effective approach to assessing the regulatory impact of diverse AI applications, accommodating the intricacies of different sectors and technologies.

Tailored Internal Methodologies for FRIAs

- The development of internal DPIA templates, tools, and methodologies by various EUIs highlights the importance of allowing organizations to create and implement their own tailored frameworks for FRIAs under the EU AI Act.
- Fostering the autonomy to design internal tools and methodologies enables organizations to align FRIAs more closely with their specific operational contexts, enhancing the practicality and relevance of the assessments.
- Organizations undertaking FRIAs should have the flexibility to adapt and refine internal methodologies to suit their unique requirements, fostering a more effective and organization-specific approach to regulatory compliance in the AI domain.

Prudent Use of External Consultants for FRIAs

- Limited reliance on external consultants for DPIAs among EUIs suggests caution in outsourcing FRIA-related tasks under the EU AI Act.
- Organizations should carefully assess the expertise of external consultants, particularly in AI governance and other salient areas, to ensure successful completion of FRIAs. The lesson learned emphasizes the need for certified data protection professionals in external teams, preventing potential gaps in understanding and execution.
- Clear guidelines from regulatory bodies, such as the [forthcoming] AI Office, regarding the suitability of external contractors for FRIAs and necessary qualifications can provide valuable direction for organizations navigating the complexities of FRIAs.

Balancing Transparency and Confidentiality

- The diversity in EUIs' approaches to publishing DPIAs highlights the delicate balance between transparency and confidentiality.
- Organizations need to carefully consider the potential risks associated with disclosing certain information in FRIAs under the EU AI Act. Arguments against publication, such as revealing weaknesses or posing AI risks, emphasize the importance of safeguarding sensitive details.
- Establishing clear policies that strike a balance between transparency requirements and AI concerns will be crucial for organizations conducting FRIAs, ensuring responsible disclosure of information without compromising security or confidentiality.

AIO Involvement and Independence

- DPOs play a crucial role in the DPIA process, offering advice, guidance, and actively participating in drafting and reviewing.
- The challenge observed is the extent of reliance on DPOs, raising concerns about the independence of decision-making within organizations.
- Organizations planning FRIAs under the EU AI Act should ensure a balance in roles, emphasizing the deployer's leadership in decision-making. Clear guidelines and expectations should be established to avoid undue reliance on AI officers ("AIOs") (i.e. DPO equivalent under the EU AI Act) and maintain a transparent, accountable, and independent FRIA process.

Tailored Internal Methodologies for FRIAs

- The high satisfaction levels among DPOs in the DPIA process highlight their crucial role.
- Organizations planning FRIAs under the EU AI Act should ensure balanced AIO involvement, avoiding over-reliance. Establish clear guidelines, training, and awareness programs to empower controllers, fostering a collaborative and accountable FRIA process.

Enhanced Awareness and Training

- DPO suggestions emphasize the need for increased awareness and training.
- Organizations should prioritize FRIA training for deployers, fostering a culture of trustworthy AI. This ensures deployers are equipped to actively contribute to the FRIA process, reducing the burden on AIOs and enhancing overall effectiveness.

Balancing Transparency and Confidentiality

- Calls for simplification and centralized guidelines highlight the perceived complexity and variability in DPIA methodologies.
- Organizations should work towards streamlining FRIA methodologies, providing centralized guidelines to ensure consistency and clarity. Simplifying the process contributes to better understanding and implementation across diverse areas of application.

Process

01	Early Emphasis on Ethical AI Concerns
<i>Flagging ethical considerations and potential biases in AI algorithms should occur at an early stage of development, allowing sufficient time for a Future Regulatory Impact Assessment (FRIA) in the context of the EU AI Act.</i>	
02	Collaboration Among Regulatory and Industry Stakeholders
<i>A collaborative approach involving different stakeholders, including regulators, industry experts, and legal representatives, is essential for a comprehensive FRIA, similar to the horizontal collaboration required for DPIAs.</i>	
03	Caution in Involving AI Value Chain Actors
<i>Identification of third parties involved in AI system activities and their specific roles, such as AI service providers or consultants, is necessary for a thorough FRIA.</i>	
04	Detailed Consideration for AI Platforms and Software
<i>In the case of AI platforms, a detailed breakdown of integrated tools and algorithms should be requested for a comprehensive FRIA.</i>	
05	Empowering AI Officers and Continued Monitoring
<i>Initiating the FRIA process involves organizing meetings to review the FRIA template and ensuring that topics, especially those related to ethical AI, are clear to all stakeholders.</i>	

Substance

01	Demonstrating the value of FRIAs to Deployers
<i>Emphasize the FRIA's role as a fundamental document for AI deployers, serving as a reference point for newcomers, aiding internal control and audit processes, and enhancing the deployer's understanding of how well the AI system activities align with trustworthy AI practices.</i>	
02	Increasing Awareness and Collaboration
<i>Stress the importance of FRIAs as a crucial exercise for raising awareness of the risks to individuals' rights and freedoms arising from AI system activities.</i>	
03	Addressing Deployer Reluctance and Perceived Bureaucracy
<i>Acknowledge potential challenges in convincing AI deployers of the benefits of FRIAs and address concerns related to lengthiness and perceived impracticality.</i>	
04	Expanding the Scope of FRIAs
<i>Consider expanding the scope of FRIAs to include not only AI risks but also encompass ethics-based risk assessments, particularly for AI products with personal data-related aspects.</i>	
05	Manage the Timing and Information Gathering for FRIAs
<i>Recognize the potential challenges in obtaining necessary information, especially when external AI system actors are involved, and emphasize the importance of managing the timing of FRIAs accordingly.</i>	

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