Navigating the EU AI Act

Key: Question; Decision; Sub-question; Outcome; Notes; *Defined terms*

Does the EU AI Act apply to you?

Is your organisation one or more of the following entity types?

Legal entity may be one or more of these. Different obligations for each.

Provider | *User* | *Distributor* | *Product manufacturer* | *Authorised representative* — Art 2(1)

- '*provider*': natural or legal person, public authority, agency or other body that develops an AI system or that has an AI system developed and places that system on the market or puts it into service under its own name or trademark, whether for payment or free of charge;
- '*user*': means any natural or legal person, including a public authority, agency or other body, under whose authority the system is used;
- '*authorised representative*': any natural or legal person physically present or established in the Union who has received and accepted a written mandate from a provider of an AI system to, respectively, perform and carry out on its behalf the obligations and procedures established by this Regulation;
- '*product manufacturer*': a manufacturer within the meaning of any of the Union harmonisation legislation listed in Annex II 'importer' means any natural or legal person physically present or established in the Union that places on the market an AI system that bears the name or trademark of a natural or legal person established outside the Union;
- '*distributor*': any natural or legal person in the supply chain, other than the provider or the importer, that makes an AI system available on the Union market;
- '*operator*': the provider, the product manufacturer, the user, the authorised representative, the importer or the distributor. Art 3 (definitions)

Yes

No

Is what you are doing covered by the EU AI Act?

No

Are you doing one of the covered activities?

Yes

Which systems does the EU AI Act apply to?

(a) providers placing on the market or putting into service AI systems in the Union, irrespective of whether those providers are physically present or established within the Union or in a third country;
(b) users of AI systems who are physically present or established within the Union;
(c) providers and users of AI systems who are physically present or established in a third country, where the output produced by the system is used in the Union;
(d) importers and distributors of AI systems;
(e) product manufacturers placing on the market or putting into service an AI system together with their product and under their own name or trademark;
(f) authorised representatives of providers, which are established in the Union. Art 3

Is your system one of the following?

Without prejudice to Articles 5, 52, 53 and 69, EU will enact further regulations — Articles 4a/4b/4c

Yes

General purpose AI System — Art 4a

'*general purpose AI system*' means an AI system that - irrespective of how it is placed on the market or put into service, including as open source software - is intended by the provider to perform generally applicable functions such as image and speech recognition, audio and video generation, pattern detection, question answering, translation and others; a general purpose AI system may be used in a plurality of contexts and be integrated in a plurality of other AI systems;

'*artificial intelligence system*' (AI system) means a system that is designed to operate with elements of autonomy and that, based on machine and/or human-provided data and inputs, infers how to achieve a given set of objectives using machine learning and/or logic- and knowledge based approaches, and produces system-generated outputs such as content (generative AI systems), predictions, recommendations or decisions, influencing the environments with which the AI system interacts. Art 3

No

AI System — Art 2

No

EU AI Act does not apply but consider code of conduct (Art 69)

Also consider

Yes

Is there an exception?

Is the AI system used for one of the following purposes / does it match one of the following descriptions?

Use by natural persons only in purely personal or non-professional activities — Art 2

No

Public bodies in third countries using AI system within international framework for law enforcement and judicial co-operation | Solely for scientific research | AI R&D | Military, defence, national security — Art 2

No

Specific AI Systems already on or in service in the EU market — Art 83

Yes

EU AI Act does not apply except Art 52 (Transparency)

Yes

EU AI Act does not apply but consider code of conduct (Art 69)

No

Subject to significant changes in design or intended purpose after 12 months after the EU AI Act applies? Art 83

Yes

EU AI Act does apply

No

How does the EU AI Act apply?

Prohibited AI systems
Is the AI system used for one of the following purposes / match the following descriptions?

Subliminal techniques to materially distort a person's behaviour causing them or another harm | Exploits vulnerabilities of a person or group to distort their behaviour that is reasonably likely to cause them or another person harm | Social scoring with leading to detrimental or unfavourable treatment — Art 5

Yes

AI System is prohibited under the EU AI Act

No

Real-time remote biometric identification in public spaces

Yes

Does it meet each of the following:
1) It is strictly necessary for a permitted purpose; 2) it complies with necessary and proportionate safeguards; 3) it has had prior authorisation. — Art 5

Yes

No

High-Risk AI Systems
Is it one of the following?

Product covered by EU law listed in Annex II Section B? (Art 2(2))

Yes

A product covered by legislation in Annex II and required to undergo a third party conformity assessment — Art 6

e.g. Machinery Directive 2006/42/EC; Safety of Toys Directive 2009/48/EC; Medical devices Regulation (EU) 2017/745

No

e.g. EU harmonised legislation on Civil Aviation Security, vehicles (e.g. agricultural and forestry, motor vehicles), marine equipment.

Yes

Only Art 84 (Commission assesses amending Annex III), and potentially Art 53 (AI Sandboxes), applies.

No

No

Listed in Annex III — Art 6(1)(2)

e.g. AI Systems used for: biometrics, critical digital infrastructure, employment and recruitment tools, access to essential services, law enforcement, migration and border control and judicial and democratic processes.

Yes

AI System is not High-Risk

Yes

Is the output purely accessory to the relevant action or decision and is not likely to lead to a significant risk to health, safety or fundamental rights? Art 6(3)

Different obligations depending upon the type of legal entity (Title III Chapter 3). In summary, may include obligations regarding: risk management; quality management; data; logs; documentation; governance; human oversight; corrective actions; co-operation with authorities.

Note presumptions of conformity with: 1) Title III Chapter 2 when meeting common specifications made pursuant to Art 41(1) (Art 41(3)); 2) Art 10(4) (data and training obligations) (Art 42(1)); 3) Art 15 (cybersecurity obligations (Art 42(2)).

No

AI System is High-Risk

The legal entity will be subject to obligations under the AI Act — Title III Chapter 3

Conformity Assessment | Register | Post-market Monitoring | Notifications | Market Surveillance Authority

Conformity assessment: Using method a) based on internal control in Annex VI or b) on assessment of the quality management system and technical documentation with involved of a notified body, referred to in Annex VII Art 43

Register: On EU register (Art 60) Art 51

Requirement to monitor AI system after it has been placed on the market Art 61

Obligation to notify serious incidents and risks at national level Arts 62 and 65

For compliant High-risk systems which continue to pose risk at national level, or for non-compliant systems, you need to be prepared to take correct measures or withdraw the AI System Arts 67 and 68.

And

Also consider both of the following

Transparency — Art 52

Differing transparency obligations to inform natural persons exposed to the AI system output depending upon type of AI system.

Code of conduct — Art 69

Whether High-Risk or not High-Risk, you should consider using a code of conduct voluntarily.

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