

EU AI ACT - POLITICAL AGREEMENT REACHED

DECEMBER 2023



After months of fierce debate, political agreement was finally reached on the EU's landmark AI Act on 8th December 2023. Ursula von der Leyen described it as “the first-ever comprehensive legal framework on Artificial Intelligence worldwide” and it is true to say that it has caught the attention of organisations across the globe, with its wide extra-territorial reach, high fines and prohibition on certain types of AI which pose an unacceptable risk.

In this briefing, we highlight some of the key aspects of the AI Act ('the Act'), focussing on the following questions:

1. What is the aim of the Act?
2. What does it cover?
3. Who is caught by its obligations?
4. How does its risk-based approach work?
5. Fines: what happens if you don't comply?
6. Timings: when will it apply?

Note: while political agreement was reached, work is continuing at a technical level to finalise the details. There is therefore currently no finalised text of the Act available (meaning the information below may be subject to change).

1. What is the aim of the EU AI Act?

The Act will be a Regulation with direct effect in member states. It will lay down a uniform legal framework for the development, marketing and use of artificial intelligence in line with EU values. The Commission confirms that its aim is to foster responsible innovation in Europe - “[by] guaranteeing the safety and fundamental rights of people and businesses it will support the development, deployment and take-up of trustworthy AI in Europe.”

As well as laying down rules around the development and use of AI, the Act also contains provisions designed to promote innovation, including sandboxes and rules to ease the regulatory burden for SMEs.

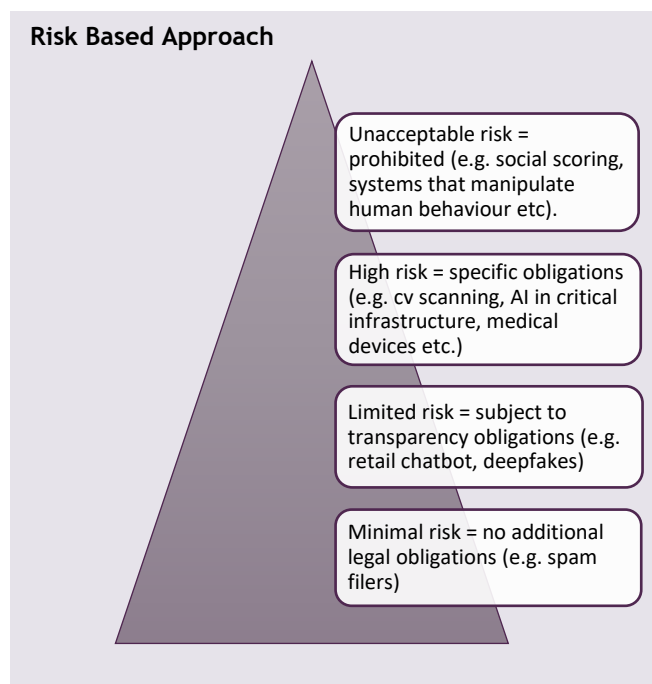
2. What does it cover?

While EU legislation in the technology space has tended to be technology neutral, the Act is specifically designed to regulate AI Systems. Defining AI Systems has, however, proved to be challenging, with the original Commission proposal being widely criticised for being too wide. While we have yet to see the agreed definition, we understand that it aligns more closely with the approach proposed by the OECD.

There are also specific rules for general purpose AI/foundation models (“GPAI”).

The provisional agreement confirms that the Act does not apply to areas outside the scope of EU law (e.g. it should not affect member states' competences in national security) and that it will not apply to systems used exclusively for military or defence purposes, or for the sole purpose of research and innovation.

Risk Based Approach



3. Who is caught by its obligations?

The Act covers a wide range of players in the AI supply chain, including providers, manufacturers, importers, distributors and users/deployers (although the obligations they face differ). It does not, however, cover people using AI for non-professional reasons.

It has wide extra-territorial reach, covering AI systems in the EU and outputs produced by systems used in the EU.

4. How does its risk-based approach work?

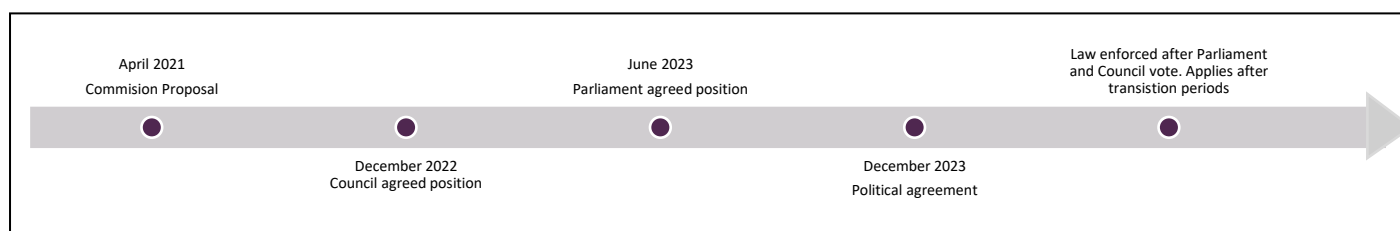
The Act takes a risk based approach to regulation. It has four categories of risk:

- Unacceptable risk - these AI systems include things like social scoring, and are prohibited.
- High risk - these AI systems have the most rules attached to them (e.g. requirements around risk mitigation, documentation, human oversight, fundamental rights impact assessments and conformity testing). They include AI Systems:

- used in products falling under the EU’s product safety legislation (e.g. toys, aviation, cars, medical devices, lifts etc.); and
- which falls within a designated list - the list includes assessment mechanisms in education, employment, welfare and migration, the dispatch of emergency vehicles, and the research and application of the law by the judiciary.
- Limited risk - these cover things like retail chatbots and their main obligations relate to transparency.
- Minimal risk - no new rules apply if you are using very low risk AI systems (e.g. spam filters).

The rules around GPAIs are also subject to a risk categorisation. GPAI systems and the models they are based on are subject to transparency requirements, while high impact GPAI models with systemic risks face more stringent obligations. These include assessing and mitigating systemic risks, reporting serious incidents to the Commission, ensuring cyber security and reporting on energy efficiency. Standards will be developed to aid compliance with these rules.

AI Act Timeline



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5. Fines

The “GDPR-busting” scale of the Act’s fines have caught the headlines. In-scope organisations face fines of (the higher of) €35 million or 7% of global annual turnover in the previous financial year for violations of the banned AI applications, €15 million or 3% for violations of the AI act’s obligations and €7.5 million or 1.5% for the supply of incorrect information.

However, the provisional agreement provides for more proportionate caps on fines for SMEs and start-ups.

6. Timings

The European Parliament and Council both now need to vote on the text once it has been finalised. The law will then come into force, and will apply after a transition period.

The majority of the rules will apply after a two year transition period, although we understand that the prohibitions will apply after six months, and the rules on general purpose AI will apply after twelve months.

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