

Fact Sheet on Draft EU Artificial Intelligence Act*

The EU intends to regulate AI systems with a new Artificial Intelligence Act (AIA). A draft AIA is currently going through the EU's legislative process. Once the AIA is in force, it will impose very strict obligations on providers and users of AI systems.

Ban on Certain AI Systems

The draft AIA bans i) AI systems that deploy harmful manipulative 'subliminal techniques'; ii) AI systems that exploit specific vulnerable groups; iii) AI systems used by public authorities, or on their behalf, for social scoring purposes; iv) 'real-time' remote biometric identification systems in publicly accessible spaces for law enforcement purposes, except in a limited number of cases. Some call for this list to be expanded to include, for example, predictive policing, or social scoring by private organizations.



Extraterritorial Reach

The draft AIA would apply to:

- **Providers** placing AI systems on the EU market, or putting AI systems into service in the EU, irrespective of whether the provider is EU-based or not. The draft AIA would also apply where the provider is not an EU-based company, but the output produced by the AI system is used in the EU; and
- **Users** of AI systems where i) the user is an EU-based company, or ii) the user is not an EU-based company, but the output produced by the AI system is used in the EU.



An '**AI system**' is defined in a broad and technology-neutral way, and encompasses 'machine learning,' 'logic and knowledge-based' systems, and 'statistical' approaches. It covers both stand-alone AI systems and AI systems used as a component of a product. This definition is still being debated and could be narrowed down in the final text of the AIA.

New Notices to Individuals

AI system providers and users will have new transparency obligations vis-à-vis individuals. For example, providers must ensure individuals are informed that they are interacting with an AI system. If an AI system generates 'deep fakes', the user of the AI system must disclose this. Users of an emotion recognition system or a biometric categorization system must inform the individuals exposed thereto. There are exceptions to these notice obligations.



New Documentation and Processes for High-Risk AI Systems

The draft AIA requires preparing a wide range of new documentation and internal processes in relation to high-risk AI systems. For providers this will include, for example, preparing:

- systems for risk management, quality management, and post-market monitoring;
- processes to ensure data quality and logging;
- tools for human oversight;
- measures to ensure accuracy, robustness, and cybersecurity; and
- technical documentation and instructions for use.

Providers must also carry out a conformity (self-)assessment, affix the CE marking, and report incidents to the relevant regulator.



High Fines

The AIA will be enforced by specialized supervisory authorities at the national level and by a new European AI Board (EAIB) at the EU level. Maximum fines for non-compliance can go as high as EUR 30 million or up to 6 percent of the total worldwide annual turnover, whichever is higher.



High-Risk AI Includes:

- Products covered by EU health and safety laws that require third-party conformity assessment (e.g., medical devices, radio equipment, cars, toys, aviation); and
- AI systems used for one of the following purposes:
 - Remote biometric identification;
 - Regulation of road traffic, water, gas, heating, and electricity systems;
 - Determining access to education or assessing students;
 - Recruitment, termination, and other job-related decisions;
 - Determining eligibility for benefits;
 - Evaluating creditworthiness;
 - Dispatching emergency first response services; or
 - Specific purposes in the area of law enforcement, justice, and immigration.



Registration and Representative in EU

Providers must register high-risk AI systems in a new EU-wide database managed by the European Commission. Providers of high-risk AI systems must also appoint an EU representative, unless the company is established in the EU or there is an importer in the EU.



If you have any questions regarding the AIA, please contact [Laura De Boel](#) or [Cédric Burton](#) from Wilson Sonsini's [privacy and cybersecurity practice](#).

Wilson Sonsini's AI Working Group assists clients with all AI-related matters. Please contact [Laura De Boel](#), [Maneesha Mithal](#), [Manja Sachet](#), or [Scott McKinney](#) for more information. [Rossana Fol](#) and [Mia Gal](#) contributed to the preparation of this fact sheet.

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