

The European Commission (EC) has been envisaging becoming a global leader in artificial intelligence (AI) by setting out an AI regulatory model that can be replicated in other countries and regions when driving forward its vision for regulating AI systems.

The foundation for the AI policies developed by the EC were informed by the [Ethics Guidelines for Trustworthy AI](#), endorsed by the AI High Level Expert Group (HLEG), define the main requirements for a human-centric approach on AI being:

1. Lawful – respecting all applicable laws and regulations
2. Ethical – respecting ethical principles and values
3. Robust – both from a technical perspective and taking into account its social environment

The proposed regulation, the Artificial Intelligence Act (AIA), published in April 2021, is the first-ever comprehensive legal framework on AI, bringing a broad range of obligations for corporates providing and using AI systems. As such, the implications for the legislative proposal go beyond the AI technology providers, entailing a compliance exercise for corporate users on a cross-sectoral level. This is covered in our earlier [client alert](#).

Obligations For Providers of AI Systems

The extraterritorial application of the AIA would have an effect that goes beyond the EU borders, consequently affecting all providers of AI systems placed on the EU market, irrespective of whether they are established in the EU. The novelty of the AIA is the introduction of a high-risk classification for AI systems, which would subsequently define the scope of obligations for companies.

Most importantly, the proposal is introducing mandatory risk management processes, namely a third party conformity assessment, to enable AI systems to be placed on the EU market.

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Obligations for Corporates

The EC has been looking at the legislative proposal from an *ex ante* perspective, laying out a safety regime targeting the risks that AI systems can entail. Nevertheless, businesses should also be mindful of the liability regime and compensation systems to be addressed in a future legislative proposal foreseen for 28 September 2022.

The compliance obligations in the future AI liability proposal are likely to be closely linked to the AIA. Businesses have been raising concerns about the future proposal, calling the EC to adopt a cautious approach, especially since the AIA obligations have not been clearly defined yet to ensure a fully harmonised framework can be envisaged across the EU.

Considerations for Businesses

As negotiations evolve, we have seen the Council working towards a narrower scope, while the Parliament increases the high-risk obligations. Some useful considerations for businesses, to guide and prepare for the AIA compliance (based on the original EC proposal) are:

- Prepare for crucial changes from what was originally proposed by the EC
- Establish measures and mechanisms to prepare for the broad AIA obligations stemming from the law
- Assess whether a corporation is defined as a provider or a user, primarily – but not exclusively – when core business is outside of the technology sector. This exercise will determine compliance obligations, estimate of compliance costs for the business, and can help business anticipate the compliance steps needed
- Prepare for contractual oversight of AI customer contracts
- Prepare for the creation of an early and adaptable AI compliance programme

Companies using AI systems should reallocate internal resources, to define whether their uses of AI can fall into the high-risk category – this will be an essential component to enable the ability of the AI system to enter into service in the market.

The AI Liability Proposal

The AI liability proposal is likely to bring a new range of obligations for corporates, and is expected to further incentivise corporates to comply with the safety rules under the AIA. We will [report](#) on this once it is published.

Additional Complexities

Corporates also need to consider the adjacent EU digital policies, which can also bring further compliance obligations for companies, such as the Digital Service Act, the Digital Market Act and the revised Network and Information Security Directive, to name a few.

The proposed [EU Data Act](#), still running through the legislative process, could entail further business considerations for companies generating industrial data, in addition to the compliance obligations under the AIA. It would specifically complement a legal framework conducive to a fair allocation of data value among actors in the data economy, especially in B2B (e.g. data sharing, portability and safeguards of non-personal data in international contexts).

The proposed AIA is the first major regulation of AI systems globally, and could arguably become a global standard setter for future laws in this space.



How We Can Help

The implications of the proposed AIA go beyond the technology sector, and the impact of the future EU law could be significant for businesses. Even though the legislative framework is already being negotiated, there are still opportunities to shape the final outcome of the law.

We can help businesses identify these opportunities, while at the same time helping them understand the preparatory steps to consider to prepare for compliance with the future rules. With us as your trusted advisors on your side, you will be able to spot, assess and understand the risk and opportunities for your organisation from the AIA proposal and the broader policy and political context that keeps developing alongside the legislative debate.

Additionally, we can help you think through what the new AI regulatory regime may mean for your organisation, and which steps can already now be taken in order to anticipate and manage the new regime. Such steps may include, inter alia, the following:

- An inventory of all AI systems used by the organisation
- A risk-classification system
- Risk-mitigation measures
- Independent audits
- Data risk-management processes
- An AI governance structure

In addition, we can track all of the above against the evolving policy context as the legislative debates continue.

AIA – Status Quo of The Political Debate

With respect to the current negotiations on the AIA, both co-legislators (the Council of the EU and the European Parliament) have taken a clear interest in advancing the negotiations on the AIA. The complexity of the legislative file has caused delays, despite an ambitious timeline set at the early part of the negotiations. We outline below an overview of the legislative status quo. A more detailed overview of the AIA provisions can be accessed in our client alert [here](#).

Council of the EU

Since the publication of the proposal, the Slovenian presidency, followed by the French presidency, have been advancing the negotiations with multiple compromise proposals targeting specific articles. The French presidency attempted to reach a general approach before the summer, but was unsuccessful due to key differences, predominantly centred around the extent to which the AI rules would apply for law enforcement purposes and the extent of the regulatory framework for general-purpose AI systems.

The Czech presidency, continuing the work carried out by the French, proposed a [compromise text](#) before the summer break, proposing a series of amendments that have been narrowing down the proposal:

- Proposing a new definition of AI systems, to only include systems developed through machine learning techniques and knowledge-based approaches
- Clearly exempting from the scope any AI application related to national and military/security uses, easing numerous concerns raised by Member States
- Introducing a horizontal layer on top of the high-risk classification, through high-level criteria that would evaluate the risks
- Removing certain high-risk use cases, namely insurance setting, biometric categorisation, environmental protection, pollution control and deep fake detections
- Enhancing the role of the European AI Board to assist Member States with the implementation of the AIA
- Limiting the composition of the Board to Member States' representatives only

The Czech presidency will be continuing the negotiations in the coming months. With the progress and the current pace of negotiations, it is highly probable that a general approach will be adopted by the end of 2022, or beginning of 2023 under the leadership of the Swedish presidency.

European Parliament

From the European Parliament's perspective, the beginning of the negotiations were set back due to an internal fight regarding the exclusivity rights of parliamentary committees and their powers in negotiations. Ultimately, the Committee on the Internal Market and Consumer Protection (IMCO) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) have joint responsibility over the proposed AIA. Exclusive competence on certain aspects of the proposal have been secured by:

- The Committee on Industry, Energy and Research (ITRE) (e.g. on cybersecurity issues)
- The Committee on Culture and Education (CULT) (e.g. on educational system issues)
- The Committee on Legal Affairs (JURI) (e.g. on transparency obligations, human oversight and codes of conduct)

The two IMCO and LIBE committees' co-rapporteurs, Brando Benifei (Progressive Alliance of Socialists and Democrats, Italy) and Dragoş Tudorache (Renew Europe, Romania) presented their [draft report](#) on 20 April 2022. The draft report covers a broad range of issues:

- Ensuring coverage of fundamental rights and environmental impact assessment for all users of high-risk AI systems
- Prohibiting the use of AI systems for biometric recognition for law enforcement purposes
- Strengthening the consent of workers when AI is used in the workplace
- Strengthening the conformity assessments framework
- Establishing mandatory regulatory sandboxes in each Member State at various levels (local, regional, etc.)
- Introducing the application of the AIA in the metaverse environment

The interest from the IMCO and LIBE committees has been important, with over 3,000 amendments tabled to the draft report ([Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#), [Part 5](#), [Part 6](#), [Part 7](#), [Part 8](#)). The IMCO and LIBE committees are expected to discuss compromise amendments; this is provisionally set for the end of September, but at this point no specific date has been set. In any case, there are still months of negotiations ahead until the Joint Committee vote, which is most likely to be delayed until December, with possible plenary endorsement by January 2023.

In the meantime, the associated committees have all endorsed their opinions:

- ITRE committee opinion on 14 June, calling for the creation of an “EU AI Regulatory Sandboxing Work Programme” to facilitate compliance with the AIA during the design stage of the AI system
- CULT committee opinion on 16 June, updating the AI systems high-risk applications in the educational sector
- JURI committee opinion (not available yet) on 5 September, introducing some transparency exemptions and adjusted responsibilities for providers and users, while reinforcing the role of the European AI Board

Timeline

At the current pace of negotiations, co-legislators are most likely to be endorsing their negotiating stance in early 2023. Once this procedural step is concluded, the interinstitutional negotiations (known as “trilogues”) will commence, going well into 2023, with a possible agreement by Q3/Q4 2023. The timing and conclusion of the trilogue negotiations can be unpredictable, however, considering many factors are contributing as negotiations progress, which can cause further delays.

The deadline for the application of the AIA is still being negotiated among co-legislators. The Council proposed a three-year transition period in its last compromise text, while the Parliament currently has a much more varied timeframe, as multiple amendments have been proposing different timelines. We anticipate a compromise, which could ultimately lead to an effective application date of 2025-2026 (or later, depending on the outcome of the negotiations).

About Us

As a full-service global law firm, we provide insight at the point where law, business and government meet, giving our clients a voice, supporting their ambitions and achieving successful outcomes. Our multidisciplinary team of over 1,500 lawyers and public policy experts in over 40 offices across four continents provides unrivalled access to expertise and invaluable connections on the ground. It is a seamless service that operates on any scale – locally or globally. It encompasses virtually every matter, jurisdiction and market – and we place our clients at the centre.

We combine sound legal counsel with a deep knowledge of our clients’ businesses to resolve their legal, public policy and political challenges. We care about the quality of our services, the success of our clients and the relationships that are forged through those successes. Our client base spans every type of business, both private and public, worldwide. We advise a diverse mix of clients, from Fortune 100 and FTSE 100 corporations to emerging companies, and from individuals to local and national governments. Leveraging local connections, while exerting global influence, we are commercial, connected and committed.

Our Public Policy Practice Group works with clients to make sure they are heard, at the right time, by the right people, with the right message in Washington DC, Brussels, London, Canberra and other major capitals around the world.

Visit our [European Public Policy](#) and [International Policy](#) webpages for more information on our team and capabilities.

Contacts

Do not hesitate to reach out to us for any assistance in understanding the impact that the AIA and future AI regulatory regime can have for your business.



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