



# EU Artificial Intelligence Act

Challenges and  
Opportunities for  
Companies

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**JF&C**

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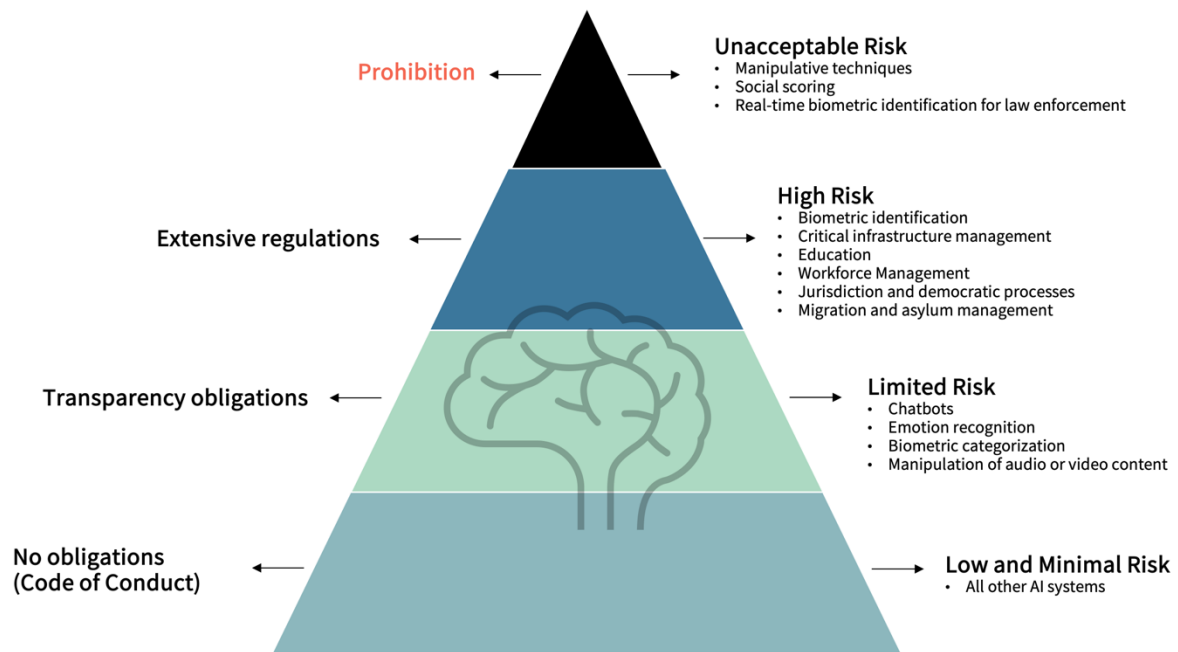
### **The first legal framework for artificial intelligence**

The use of artificial intelligence (AI) in the EU is to be regulated in the future by the Artificial Intelligence Act (AIA), the world's first comprehensive AI law. The international community is thus attempting to manage the risks posed by the new technology for EU citizens and to provide companies with a clear legal framework and planning security. The AIA should be seen in the context of societal discussions and concerns about AI, such as job loss, cybersecurity, deskilling, misinformation, or ethical issues. In this respect, the AIA also aims to create consumer confidence, which should give the European AI industry an advantage in the fierce competition, especially with China and the US.

While the legislative text is currently being finalized, German and European companies should understand the implications of the regulation at an early stage, examine the impact of the new regulatory framework on their own business, and derive possible strategic steps from it. Joschka Fischer & Company supports you in drawing the right conclusions, formulating your own interests, and becoming active in the political discourse in good time.

### **The risk classification determines the scope of regulation**

As part of its digital strategy, the EU wants to regulate AI to create safer conditions for its development and use. To this end, the AIA follows a "risk-based approach" and classifies AI applications into certain risk classes, which are used to determine the scope of the legal requirements. A risk assessment in four stages is designed to be the decisive factor in determining whether an AI application may be approved on the European market and which requirements a respective application must fulfill. The risk assessment is to be carried out by the companies themselves and reviewed by independent third parties.



According to the latest version of the regulation, systems with **"low or minimal risk"** would not have to comply with any additional legal obligations.

AI systems that pose a **"limited risk"**, such as systems that interact with humans (e.g., chatbots), emotion recognition systems, biometric categorization systems, and AI systems that generate or manipulate image, audio, or video content (e.g., deepfakes), would only be subject to a limited set of transparency obligations. These include disclosure of the use of the data or publication of the data used.

In the legislative process, the **"high-risk"** category has received the most attention and has recently been the subject of controversial discussions in the EU Parliament. In the trilogue that has just begun, adjustments are emerging (see below). In the Commission proposal, "high-risk" AI systems include systems for biometric identification or critical infrastructure management. Systems that are classified as "high risk" would therefore have to fulfill a series of requirements and obligations in the future in order to be approved on the European market:

- Risk management (Art. 9 AIA<sup>1</sup>)
- Data management (Art. 10 AIA)
- Technical documentation requirements (Art. 11 AIA)
- Retention obligations (Art. 12 AIA)
- Transparency obligations (Art. 13 AIA)
- Human oversight obligations (Art. 14 AIA)

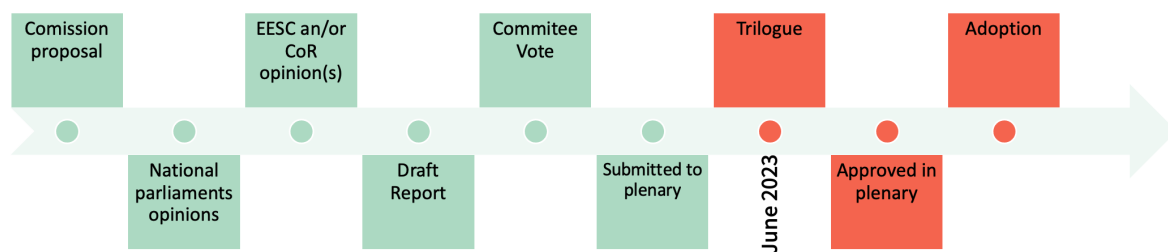
<sup>1</sup> Cf. [EU AIA as of June 2023](#) following the position of the EU Parliament.

- Robustness, accuracy, and security requirements (Art. 15 AIA)

On the other side are AI systems that would be banned as "**unacceptable risk**." These include, for example, systems that track manipulative practices, that would be used for *social scoring*<sup>2</sup>, or evaluate biometric data in real time for law enforcement.

### Status of legislation

The new legal framework was first proposed by the European Commission in April 2021 and is now in trilogue following the Council's first opinion in December 2021 and the Parliament's adoption of the proposal in June 2023. The EU institutions are now starting negotiations to finalize the new legislation through a regulation. On October 24, the fifth round of negotiations between representatives of the Council and Parliament will begin. An agreement should be reached by the end of 2023. However, so many points are still unresolved that adoption this year is now on the line.



It is becoming increasingly clear in the trilogue that significant changes are likely to be made to the Commission's proposal. For example, an expansion of the list of AI systems to be banned and exceptions for national security are being discussed. In addition, there is still disagreement about the extent to which companies could be given the freedom to assess the danger of their products themselves. The biggest debate, however, is about generative AI models such as ChatGPT. Such models have become much more relevant since the Commission's 2021 proposal and are also becoming increasingly prevalent in everyday life. The trilogue is now negotiating how generative AI should be included in the AIA, how it should be classified, and to what extent it should be regulated. The Spanish presidency recently proposed a graduated classification as a compromise. However, it is still unclear according to which attributes generative AI models should be classified. It is precisely here that the dichotomy between consumer protection on the one hand and fears of overregulation or inhibition of innovation on the other is revealed. Industry representatives and member states warn against defining the classification of "high-risk" applications too broadly, as

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<sup>2</sup> Such as the Social Credit System of the People's Republic of China. Points are awarded for positive behavior and deducted for negative behavior. The points account then determines, for example, whether a person can take out loans or book a train ticket.



the associated requirements would be a hindrance to Europe as a location for innovation. This is contradicted, for example, by [a statement](#)<sup>3</sup> from an association of 118 civil society organizations from all over Europe, which warns of a loophole for the industry. In the final rounds of negotiations for the AIA, it is likely to be important for many actors to be able to express their own concerns to political stakeholders.

Once the law is passed, companies will have two years to adapt to the changed framework. [A study](#)<sup>4</sup> by the Stanford Center for Research on Foundation Models shows that, as of now, many AI models may not comply with transparency regulations. Professional advice can help companies understand the requirements in detail and check their own systems for compliance.

### **Standard setting: concrete requirements are in preparation**

Details of specific technical requirements and standards are being developed as European standards in parallel with the European legislative process. However, final, harmonized standards, with which AI applications will then be assessed, can only be expected after the finalization of the AIA. As currently drafted, the AIA requires, for example, the introduction of "appropriate risk management measures." What is meant by "appropriate" remains unclear. Harmonized standards would bring clarity to this type of requirement.

In addition to European standards organizations<sup>5</sup>, national standards organizations will also play an important role in this process. They are responsible for collecting feedback from national stakeholders and, where appropriate, incorporating it into the draft standard-setting process. In Germany, the German Institute for Standardization (DIN) will be responsible for this. It will be relevant for companies in the AI industry to get involved in this process. Standard setting processes show that it is important to approach the right people at the right time with the right message.

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<sup>3</sup> EDRI, 7<sup>th</sup> of September 2023: <https://edri.org/our-work/civil-society-statement-eu-close-loophole-article-6-ai-act-tech-lobby/>

<sup>4</sup> Stanford Center for Research on Foundation Models, 2023: <https://crfm.stanford.edu/2023/06/15/eu-ai-act.html>

<sup>5</sup> Three organizations are responsible for all EU standardization: CEN, CENELEC, and ETSI. CEN and CENELEC will take the lead in developing standards in support of the AIA, although ETSI is likely to develop some relevant standards as well.

### The AIA compared to AI regulatory discussions around the world.

While the United States initially took a liberal stance toward AI, there have been increasing calls for regulation recently. The Chinese Cyberspace Administration is also consulting on a proposal to regulate AI, while the United Kingdom is working on a set of innovation-friendly regulatory principles. At the international level, the Organization for Economic Cooperation and Development (OECD) adopted a (non-binding) recommendation on AI in 2019, UNESCO adopted recommendations on AI ethics in 2021, and the Council of Europe is currently working on an international convention on AI. In addition, the EU and the US are working to develop a mutual understanding of the principles of trustworthy and responsible AI through the newly established EU-US Technology Partnership (TTC). The EU Parliament and Council issued a joint statement in May 2023 calling on President Biden and European Commission President Ursula von der Leyen to convene a summit to find ways to control the development of advanced AI systems like ChatGPT. Regulations are also being called for from the private sector. An open letter from tech greats such as Elon Musk and Steve Wozniak in March 2023 caused a stir, calling for a halt to AI development so that safety standards could be developed. OpenAI chief Sam Altman had proposed a regulatory body along the lines of the International Atomic Energy Agency for the new technology. UN Secretary-General António Guterres also recently spoke out in favor of setting up a regulatory authority.

At their recent summit in Japan, the G7 agreed to tackle a joint strategy for regulating AI.

### Governance, enforcement, and sanctions of the AIA

Under the Commission proposal, Member States would designate one or more competent authorities, including a national supervisory authority, to oversee the application and implementation of the Regulation. The national market surveillance authorities would be responsible for assessing operators' compliance with the obligations and requirements for "high-risk" AI systems. It is not yet clear which authority in Germany would take on such a mandate. However, the Federal Commissioner for Data Protection and Freedom of Information (BfDI) could take on this role. It is likely to be important for stakeholders in the AI industry to establish relevant contacts with such an authority at an early stage in order to be able to voice their concerns.

### German companies should already be prepared for the possible implications of the AIA

AI-developing companies should take several steps to best prepare for future regulation:

- Companies must **determine** early on which **risk category** their applications fall into. The current version of the regulation must be kept in mind and interpreted accordingly.
- In particular, AI developers whose applications are classified as "**high-risk**" should address the **requirements and obligations** of the new legal framework. They should take **operational measures** that enable adequate **risk management** and secure **data governance**. The robustness and **security architecture** of their own systems must be set up to meet the requirements of the AIA. In addition, **data documentation** and retention

must also be reviewed for compliance. In addition, **personnel measures** may need to be taken to meet **human oversight** obligations and **transparency requirements**.

- Companies can try to **get involved** in the further **legislative process** at the EU level and raise important concerns. To do this, it is essential to **package one's own position** in suitable messages and to reach **suitable addressees**, for example, in the EU Parliament. **Professional political consulting** can help.
- The ongoing **standard-setting process** also offers starting points for **active co-design** through **political participation**. Companies in Germany could try to make their suggestions to DIN.
- Moreover, companies in Germany should consider **establishing contacts** with the AIA governance body, **BfDI**, even before the law is finalized.
- Regardless of the introduction of AIA, AI-developing and AI-using companies can try to **proactively counter societal discussions and criticism** around AI. Political communications consulting can help develop narratives to highlight the socio-economic benefits of their own application, for example.

### JF&C supports your company

As a specialized consulting firm for public affairs and political communications, we can help you prepare for the new requirements of the AIA. We help you develop your messages and successfully place them with key stakeholders in order to engage with them constructively. In this way, you will be able to formulate your arguments in the opinion-forming and decision-making processes. We pursue a holistic communication approach for you, which targets political actors as well as customers, partners, or employees and includes various communication channels. Our services include strategy consulting, strategic communication, advocacy, political speeches, political monitoring, workshops, and round tables. Our consulting services aim to proactively shape your public affairs strategy.



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Then believe us: We are the right companions and preparers for you!

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