

ARTIFICIAL INTELLIGENCE DRAFT ACT: WHAT CAN WE EXPECT?

The AI Draft Act prohibits a series of practices that mean a certain degree of risk to groups of vulnerable people, that violate fundamental rights and identification systems in public places.

Considering that Artificial Intelligence (AI) can bring a range of economic and social benefits, but also create new risks, the European Commission recently published a Regulation Proposal on a European Approach for Artificial Intelligence (the '[AI Draft Act](#)' or 'Draft Act').

Following a public consultation on the [Commission's White Paper on AI](#) of February 2020, the AI Draft Act aims to harmonize existing laws on AI, ensure the protection of fundamental European Union (EU) rights and safety of AI system users, as well as trust in the development and uptake of AI.

The Draft Act applies to public and private players (i.e., providers, importers, distributors, and users of AI systems) established within the EU or in a third country that places AI systems on the market or puts them into service within the EU, or where their use affects people located in the EU. The Draft Act is divided into twelve titles of which we highlight the following:

- Scope and definitions (Title I): including, among other definitions, 'AI' and 'AI system'. 'AI system' is broadly defined as a software product developed using certain listed techniques and approaches that can generate outputs influencing the environments they interact with;
- Prohibited AI practices (Title II): the Draft Act uses a risk-based approach distinguishing between (i) unacceptable risk (e.g. AI systems that can exploit vulnerabilities of a specific group of persons or use real-time remote biometric identification in publicly accessible spaces, subject to some exceptions); (ii) high-risk to the health and safety or fundamental rights of natural persons (e.g. AI systems that perform a safety function in certain products, such as mobile devices, robotics, medical devices and other machinery); and (iii) low or minimal risk (e.g. AI-enabled video games or chatbots);
- High-risk AI systems (Title III): once a high-risk AI system is identified, compliance obligations should be reinforced (Title IV), including obligations covering risk management, data governance, technical documentation, record-keeping requirements, transparency and provision of information to users, human oversight, robustness, accuracy, cybersecurity, post-market monitoring and incident reporting;
- Governance, enforcement and sanctions (Titles VI to XII): the Draft Act provides for the establishment of a European Artificial Intelligence Board (EAIB) composed by the national supervisory authorities and the European Data Protection Supervisor. The AI Draft Act provides for substantial penalties of up to EUR 30 million or up to 6% of annual worldwide turnover, whichever is higher to be levied against companies for non-compliance.

Once discussed (and probably subject to changes) and approved by the European Parliament and the Council, the AI Regulation will apply directly across the EU and with a wide-reaching impact.

CONTACTS

CLÁUDIA FERNANDES MARTINS
CMARTINS@MACEDOVITORINO.COM

DÉBORA DUTRA
DDUTRA@MACEDOVITORINO.COM

This information is provided for general purposes only and does not constitute professional advice.