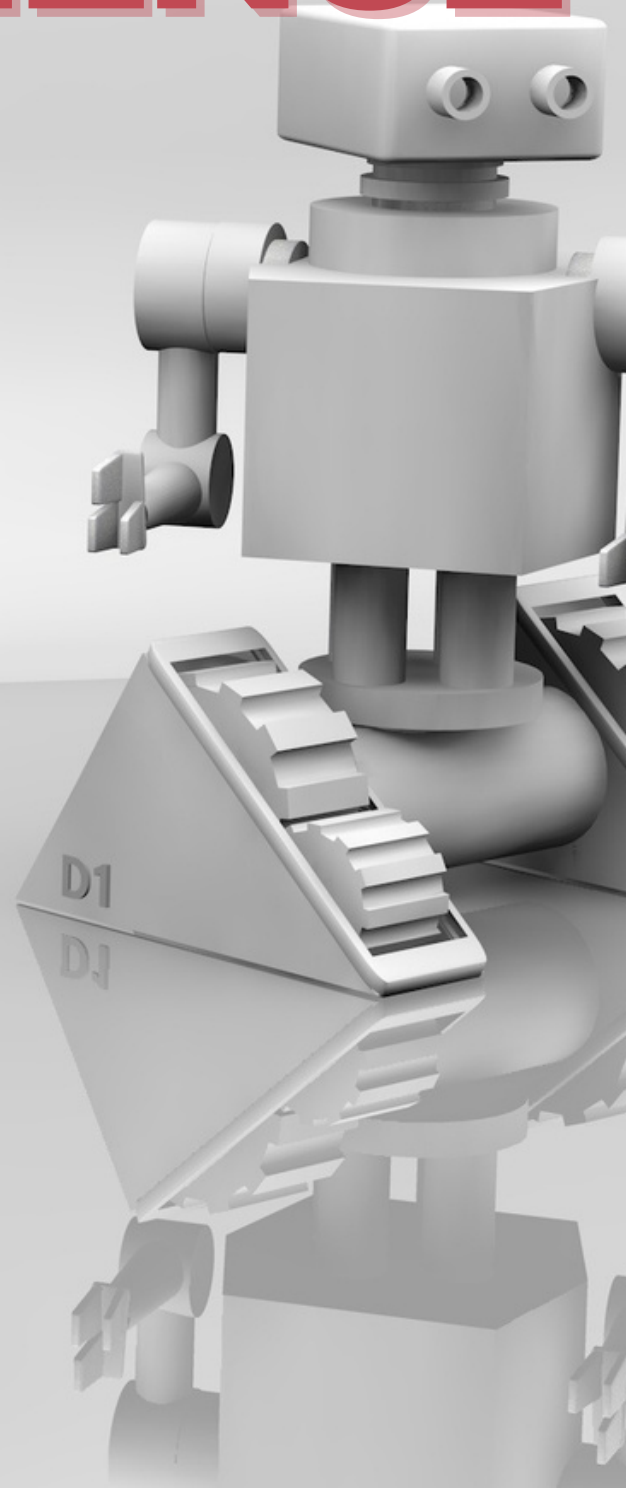


# THE ARTIFICIAL INTELLIGENCE ACT



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# I. COMMISSION PROPOSAL

Presented in April 2021, the Artificial Intelligence Act (AI Act) aims to ensure the development and uptake of lawful and trustworthy AI across the Single Market.

With this proposal, the Commission plans to develop a European regulatory framework on AI by proposing a technology-neutral definition of AI systems and different sets of rules relying on a risk-based approach to AI.

This explainer aims to present an overview of the proposal as well as the latest legislative developments in the Council and the European Parliament.



# A Risk-Based Approach

## UNACCEPTABLE RISK

### Article 5 - Prohibition

Certain AI practices that can be particularly harmful (AI systems that pose a threat to the safety, livelihoods and rights of people) are **prohibited** in the European market.

#### These include:

- harmful manipulative **subliminal techniques**;
- exploitation of specific **vulnerable groups**;
- **AI-based social scoring** for general purposes by public authorities.
- the use of **real time remote biometric identification** in public accessible places for law enforcement (with exceptions)

## HIGH RISK

### Article 6 - Regulation

AI systems that create a **high risk to the health and safety or fundamental rights of people**. They include AI systems that fulfill **Article 6(1)** and those falling under one of the **8 areas listed in Annex III**:

- **biometric identification and categorisation** of natural persons;
- management and operation of **critical infrastructure**;
- **education** and vocational **training**;
- **employment**, management of workers and access to self-employment;
- access to **essential private and public services**;
- **law enforcement**;
- **migration**, asylum and border control management;
- administration of **justice and democratic processes**.

## LIMITED RISK

### Article 52 - Transparency requirements

For systems that interact with humans, **users need to be informed** that they are talking to or being serviced by a machine. They include:

- emotion recognition;
- biometric categorisation;
- manipulation of images, and audio or video content (e.g. deep fakes).

## LOW RISK

**Low-risk AI systems are not subject to legal obligations under the AI Act voluntary codes of conduct can be developed (Article 69)**

For instance:

- AI-enabled video games
- spam filters

**The vast majority of AI systems used in the EU will fall into this category**



These AI systems are permitted but they are subject to an **ex-ante conformity assessment** and compliance with the following **mandatory requirements**:

- adequate risk assessment and mitigation systems running throughout the lifecycle of the system;
- use of high-quality datasets to minimise risks and discriminatory outcomes;
- logging of activity to ensure traceability of results;
- the provision of detailed documentation for authorities to assess the compliance of the system with the requirements;
- making available clear and adequate information to the user;
- appropriate human oversight measures to minimise risks to health, safety or fundamental rights;
- appropriate level of accuracy, robustness and cybersecurity and consistent performance throughout their lifecycle.

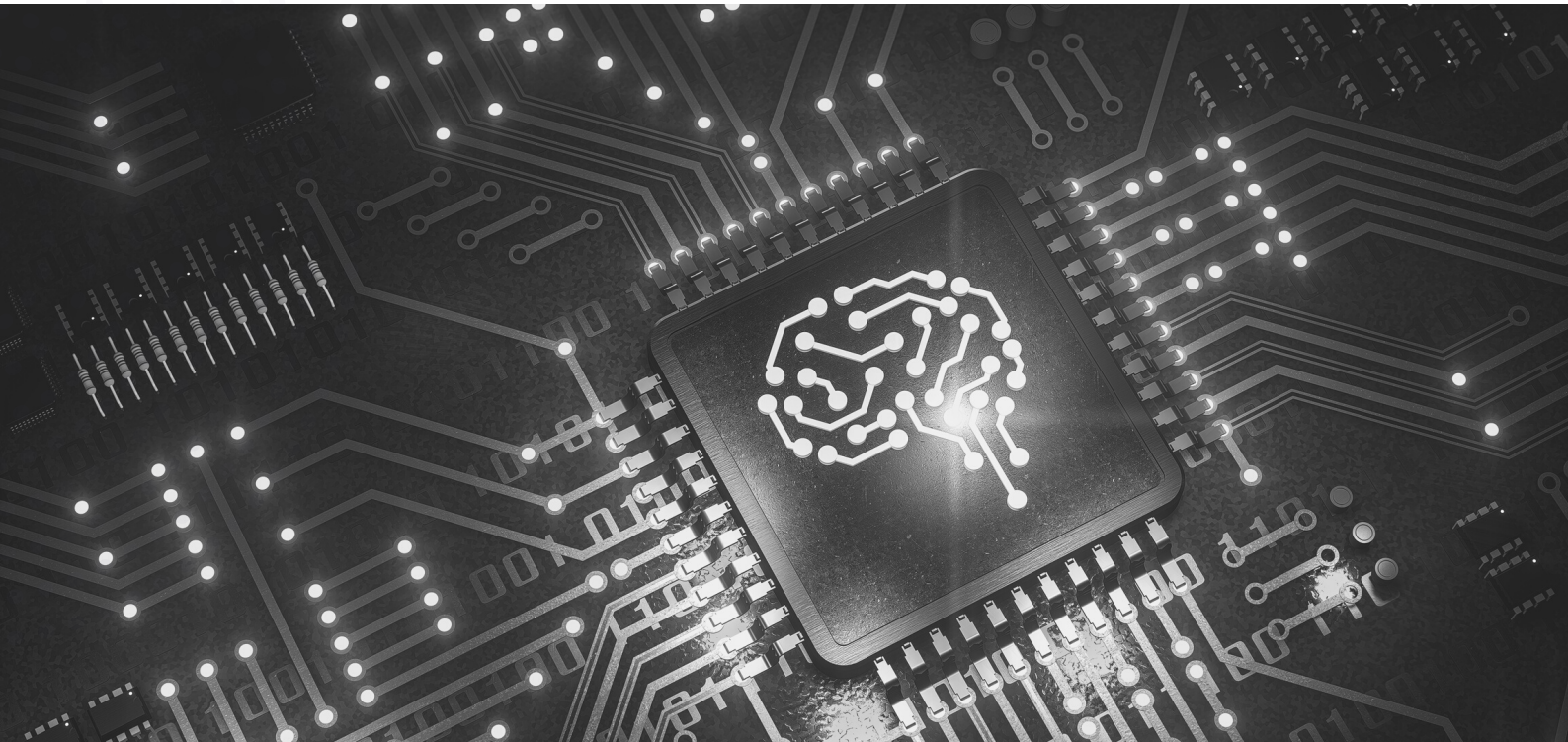


# Definition of the "AI System"

The Commission proposes establishing a legal definition of 'AI system' in Article 3(1), which is fundamental to ensure legal certainty and a uniform framework for the development, marketing and use of AI systems. Mainly based on the OECD definition, the AI Act proposal defines an AI system as *a software that*:

- 1** is developed with **one or more of the techniques and approaches listed in Annex I**;
- 2** can, for a given set of human-defined objectives, **generate outputs such as content, predictions, recommendations, or decisions** influencing the environments they interact with.

Annex I lays out a list of techniques and approaches used to develop AI. The Commission will adapt the Annex in light of any new developments via a delegated act (Art. 4).

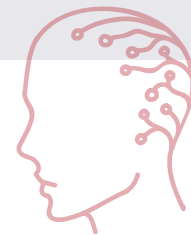
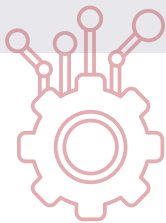




## Measures to Support Innovation

The AI Act proposal includes the establishment of "**regulatory sandboxes**" (Art. 53-54) to foster AI innovation by establishing a controlled experimentation and testing environment for new AI technologies, products and services before their placement on the market, under the supervision of public authorities.

SMEs and start-ups will be prioritised and the proposal envisages setting up coordinated AI sandboxes at the national level to ensure coordination among the Member States, who will cooperate within the framework of the Artificial Intelligence Board. The Commission will establish the modalities and conditions of the sandboxes via implementing acts. The proposal explicitly states that participation in a sandbox experiment does not exempt participants from liability.



## Governance, Enforcement & Sanctions

To enhance governance and the effective enforcement of EU law on fundamental rights and safety requirements, the Commission proposes:

- the creation of a **European Artificial Intelligence Board** (Art. 56) consisting of Member States and Commission representatives;
- the appointment of a **national supervisory authority** (Art. 59) to supervise the application and implementation of the regulation;
- **National market surveillance authorities** (Art. 63) to assess operators' compliance with the obligations and requirements for high-risk AI systems;
- **Administrative fines** (Art. 71 - 72) up to €30 million or 6 % of the total worldwide annual turnover

# II. THE KEY PLAYERS

## The European Parliament



### RESPONSIBLE COMMITTEES



#### IMCO

Brando Benifei (S&D, IT)

#### LIBE

Dragoş Tudorache (RE, RO)



### COMMITTEES FOR OPINION

Rule 57

#### ENVI

Susana Solís (RE, ES)

#### TRAN

Josianne Cutajar (RE, RO)

### ASSOCIATED COMMITTEES

Rule 57+

#### JURI

Axel Voss (EPP, DE)

##### Exclusive competences

Article 13: Transparency and provision of information to users

Article 14: Human oversight

Article 52: Transparency obligations for certain AI systems

Article 69: Codes of Conduct

##### Shared competences

On the entire text, participation of the rapporteur in all shadows meetings and a leading role in its exclusive competences in trilogues and trilogue preparatory meetings.

#### ITRE

Eva Maydell (EPP, BG)

##### Exclusive competences

Article 15: Accuracy, robustness and cybersecurity

Article 55: Measures for small-scale providers and users

##### Shared competences

Article 3(1), Article 4 and Annex I I: Definition of "artificial intelligence system"

Article 10 (1) - (4) (Data and data governance)

Article 42: Presumption of conformity with certain requirements)

#### CULT

Marcel Kolaja (Greens/EFA, CZ)

##### Exclusive competences

Article 13 (transparency and provision of information to users)

Article 14 (human oversight)

Article 52 (transparency obligations for certain AI systems)

Article 69 (Codes of Conduct);

##### Shared competences

On the entire text, participation of the rapporteur in all shadows meetings and a leading role in its exclusive competences in trilogues and trilogue preparatory meetings.



## Council of the EU

- Working party on Telecommunications and Information Society
- Telecommunications Council



## European Commission



“We aim to make Europe world-class in the development of a **secure, trustworthy** and **human-centred** Artificial Intelligence, and the use of it

*-EVP Margrethe Vestager*”

**WITH**

- Kilian Gross, Head of Unit A.2, AI Policy Development and coordination, DG CNECT
- Irina Orssich, Team Leader for Artificial Intelligence Policy Development and Coordination, DG CNECT





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# III. STATE OF PLAY

## Council of the EU

### Portuguese Presidency (January - June 2021)

In the Council, the AI Act was presented under the Portuguese Presidency and the examination of the proposal was launched in the Working Party on Telecommunications and Information Society. At this early stage, the Presidency focused on the definition of an AI system, the scope and the requirements for high-risk AI systems.

### Slovenian Presidency (July - December 2021)

The Slovenian Presidency drafted a first partial compromise proposal covering Articles 1 to 7 and Annexes I to III, addressing the scope, the definitions of AI systems and various regulated actors, the prohibited AI practices, the classification of high-risk AI systems and the Commission delegated powers.

### French Presidency (January - June 2022)

Under their mandate, the French Presidency completed the process of preparing the first Council compromise proposal on the AI Act, by completing the work on Articles 8 to 85 and Annexes IV to IX, which included the requirements for high-risk AI systems, the responsibilities of various actors in the AI value chain, compliance assessments, enforcement and governance and the provisions relating to law enforcement authorities. They also proposed the inclusion of general-purpose AI within the scope and measures supporting innovation, especially to clarify the regulatory AI sandboxes.

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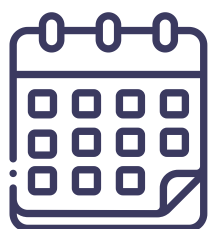


## Czech Presidency (July - ongoing until December 2022)

The priorities of the Czech Presidency concerned the definition of AI, the scope, the delegation of powers to the Commission, the classification of high-risk AI systems and the governance and enforcement model, especially as regards flexibility and interplay with national laws. The Presidency presented a second compromise text in July 2022, followed by a third compromise text in September, covering separately Articles 1-29, Annexes I-IV and Title IA, and Articles 30-85, the relevant recitals and Annexes V-IX.

### Some key proposals to highlight are:

- the extension of provisions to account for when classifying AI systems as high risk;
- the exclusion of research and development activities related to AI from the scope, including also in relation to the exception for national security, defence and military purposes;
- provisions related to law enforcement, stronger wording on the national security exemption as well as the exception to the four eyes principle (two persons to oversee high-risk systems) in border control;
- a broadened list of actors involved in the regulatory sandboxes, now including relevant stakeholder and civil society organisations;
- the possibility for the Commission to adopt implementing acts regarding general-purpose AI.
- the changes to the definition of AI were maintained, however, the definition of machine learning and the concept of autonomy was clarified.



A **General Approach** is aimed at the Telecommunications Council on **6 December 2022**. Sweden will take over the Council Presidency in January 2023.

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# The European Parliament

## Associated Committees and Committees for Opinion

A conflict on the division of competences between the EP Committees delayed the start of the consideration of the proposal in the Parliament. A decision was reached on 1 December 2021.

In April 2022, the **EP ENVI** Committee adopted its opinion, which focused on the importance of sandboxes in sectors such as health, extended the scope from users to end recipients of AI, and proposed classifying as high-risk AI those systems which could have a major negative impact on the environment, with a reinforced redress mechanism in case of negative environmental impact. The **EP CULT** opinion, adopted in June, proposed to extend the list of high-risk AI applications to the areas of education, media and culture, modified certain provisions related to banned practices, and promoted requirements for national AI literacy programs.

In July, the **EP ITRE** opinion included a harmonised approach to sandboxes in a new annex and focused on including SMEs in the standardisation process, as well as ensuring lower compliance fees. The opinion also called for high and feasible standards for the accuracy, robustness, cybersecurity and data

requirements and an exemption for systems developed for scientific research from the scope. The **EP TRAN** opinion adopted the same month focused on avoiding overlaps with other sectoral legislation, promoted the development and upholding of international standards and suggested fostering research and innovation in the transport sector as regards the implementation of AI.

The **EP JURI** Committee issued its opinion in September, where it proposed exemptions from the scope for research and development, B2B low-risk industrial applications and open-source systems. It also specified the circumstances under which the responsibilities in the value chain can shift to another actor and included provisions related to general-purpose AI. They also made the AI Board a body with legal personality and included the involvement of stakeholders.



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## Lead Joint Committee

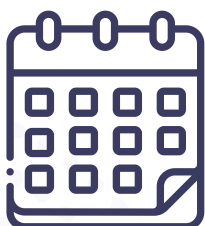
The joint **EP IMCO/LIBE** Committee presented their draft report in April 2022 and proposed over 3,000 amendments to the original text. The co-rapporteurs agreed on a broad definition of AI that would encompass general-purpose AI, add predictive policing to the list of banned practices, include more substantial obligations and transparency requirements for public authorities when using high-risk applications, and add several high-risk use cases such as medical triage, insurances, deep fakes and algorithms designed to interact with children or that might impact democracy.

The first technical and shadow discussions to find compromise amendments began in June and resulted in several agreements regarding the first batches, such as on administrative procedures, regulatory sandboxes, conformity assessments, technical standards and certificates, as well as some aspects regarding the obligations for high-risk AI systems.

New compromises still remain under discussion and concern:

- the extension of the scope to certain metaverse environments and to economic operators placing AI on the market or putting it into service;
- the exclusion from the scope of AI systems developed and put into service for the sole purpose of scientific research;
- the extension of the list of elements to be considered in the risk management system;
- the introduction of criteria for the training datasets used for the development of some techniques to prevent bias for high-risk AI;
- the extension of the obligation to register AI systems likely to cause harm in an EU database to public authorities and to those who substantially modify the systems.

The negotiations are also still ongoing regarding the definition of AI, general-purpose AI, the list of high-risk uses in Annex III and biometric recognition. Moreover, issues related to the inclusion of principles applicable to all AI systems, the structure and powers of the AI Board, the consideration of foreseeable uses and misuse of AI and the general use of AI remain to be discussed.



The consideration of compromise amendments in the IMCO/LIBE Committee is scheduled for **26 October 2022**.

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