THE EU'S UPCOMING AI ACT

AAAI Bridge Program: AI and Law
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I. OVERVIEW

- The AI Act is not yet enacted:
    - Proposed on **21 April 2021** by the European Commission
    - European Council adopted its general approach on **6 December 2022**
    - Next steps: Negotiations with the European Parliament (so-called "trilogies"), finalization expected **late 2023** or **early 2024**.

- In contrast to technology neutral instruments like the GDPR or EU Anti-Discrimination Law, the AI Act explicitly targets AI systems
    - Is accompanied in this new approach by the AI Liability Directive (AILD) and the (revised) Product Liability Directive (PLD), among others

II. SCOPE OF APPLICATION

– Targets AI systems, with AI defined in fairly broad terms:

Annex I

> **(a) Machine learning** approaches, including supervised, unsupervised and reinforcement learning, using a wide variety of methods including deep learning;
>
> **(b) Logic-** and **knowledge-based** approaches, including knowledge representation, inductive (logic) programming, knowledge bases, inference and deductive engines, (symbolic) reasoning and expert systems;
>
> **(c) Statistical** approaches, Bayesian estimation, search and optimization methods

II. SCOPE OF APPLICATION

– Addresses providers and users of AI systems in- and outside of the EU…

Art. 2(1)

(a) providers placing **on the market** or putting **into service** AI systems in the Union, irrespective of whether those providers are established within the Union or in a third country;

(b) users of AI systems located within the Union;

(c) providers and users of AI systems that are located in a third country, where the **output** produced by the system is used in the Union;

II. SCOPE OF APPLICATION

– Addresses providers and users of AI systems in- and outside of the EU…

– …. and imposes severe penalties:

Art. 71(3)

Non-compliance with any of the prohibitions of the artificial intelligence practices referred to in Article 5 shall be subject to administrative fines of up to **30 000 000 EUR** or, if the offender is company, up to **6 % of its total worldwide annual turnover** for the preceding financial year, whichever is higher. I

II. SCOPE OF APPLICATION

− Addresses providers and users of AI systems in- and outside of the EU…

− …. and imposes severe penalties….

− .... which, in combination with one another, could result in a GDPR-like "**Brussels Effect**", i.e. an impact far beyond the EU

III. CONTENT

‒ The AI Act defines different categories of AI systems, based on perceived risks
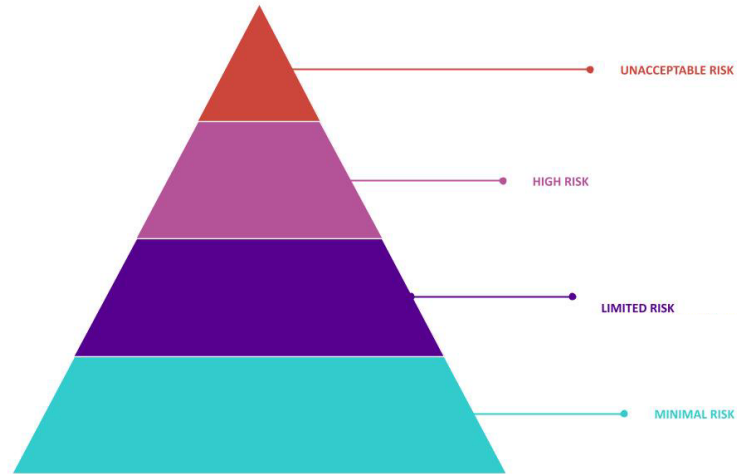
III. CONTENT

– AI Systems with unacceptable risk: **Prohibited** (Art. 5)   Art. 5(1)

(a) […] AI system[s] that deploy[s] **subliminal techniques** beyond a person's consciousness in order to materially distort a person's behaviour in a manner that causes or is likely to cause that person or another person physical or psychological harm;

(b) […] AI system[s] that exploit[s] any of the **vulnerabilities** of a specific group of persons due to their age, physical or mental disability, in order to […]

(c) […] **Social scoring** […]

(d) […] **'real-time' remote biometric identification** systems in publicly accessible spaces for the purpose of law enforcement, unless and in as far as such use is strictly necessary for one of the following objectives [...]

III. CONTENT

– AI Systems with high risk: Duty to **asses** (ex ante) and **monitor** (ex post) (Art. 8 ff.)

Art. 6(1): used in a safety component of any product that is already required to undergo third party conformity assessments (e.g. medical devices, toys).

Art. 6(2): listed in Annex III:
Real-time biometric identification [not already prohibited by Art. 5], security components in **critical infrastructure**, access to and assessments in **educational institutions**, **employment**, workers management and access to self-employment, **Credit scores**, public services and benefits, aspects of law enforcement, **migration**, asylum, and border control, **judicial processes**.

III. CONTENT

– AI Systems with limited risk: Transparency obligations (Art. 52)

Art. 52

(1) […] AI systems intended to **interact** with natural persons […]

(2) […] **emotion** recognition system[s] or a biometric categorisation system[s] […]

(3) […] AI system[s] that generate[s] or manipulate[s] image, audio or video content that appreciably resembles existing persons, objects, places or other entities or events and would falsely appear to a person to be authentic or truthful ('**deep fake**') […]

III. CONTENT

– AI Systems with low risk: Voluntary codes of conduct (Art. 64)

You can find more information on our poster.
Thank you for the attention!