

# The European Parliament approves world's first regulation on Artificial Intelligence

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On March 13rd 2024, the European Parliament approved by 523 votes in favour, 46 against and 49 abstentions the Artificial Intelligence Regulation (hereinafter AIR). It is the first legal text worldwide to regulate Artificial Intelligence (hereinafter AI).

The purpose of AIR is to improve the functioning of the internal market and promote the uptake of human-centric and trustworthy artificial intelligence, while ensuring a high level of protection of health, safety and fundamental rights enshrined in the Charter of Fundamental Rights, in particular democracy, the rule of law and environmental protection, against the harmful effects of AI systems, and to support innovation.

The AIR will apply to suppliers placing AI systems in the Union, to deployers of AI systems, (regardless of whether they are established in the EU or in a third country, where the output information generated by the AI system is used in the Union), to importers and distributors of AI systems and to manufacturers placing in the market or putting into service an AI system together with their product.

AI systems which are placed on the market, put into service or used exclusively for military, defence, national security or scientific research and development purposes shall not be affected by the provisions of the AIR. Nor does the AIR apply to public authorities of third countries or to international organisations provided that they offer sufficient guarantees with regard to the protection of the fundamental rights and freedoms of individuals.

Article 3 of the AIR contains an extensive list of definitions to be taken into account for the application of the AIR, including that of "AI system": a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

To achieve its objectives, the AIR establishes different measures depending on the level of risk that AI systems may pose to the rights they are intended to protect.

Thus, the AIR prohibits certain AI applications that it considers to directly infringe the fundamental rights of individuals (Article 5); in particular, AI practices involving subliminal or deliberately manipulative or deceptive techniques that may exploit an individual's vulnerability with the objective or effect of materially distorting his or her behavior, AI systems intended to evaluate or classify individuals, and biometric categorization AI systems.

However, an exception is made for biometric identification AI systems: prior authorization may be used to search for and identify kidnapped or missing persons, in cases of terrorist threat and to locate suspects of crimes punishable by more than 4 years imprisonment.

The AI system shall be considered High Risk when it poses a significant risk of causing harm to the health, safety or fundamental rights of individuals.

The AIR defines High Risk AI systems as those (art. 6):

- intended to be used as safety components of products regulated by EU legislation (e.g. machines, toys, recreational craft, lifts, etc.),
- where the product incorporating the AI system must undergo conformity assessment by a competent body in order to be placed on the market.
- listed in Annex III (biometric identification systems - where authorized - security systems for critical infrastructures such as traffic, water, gas, etc., assessment systems for access to education or employment, systems used in justice or democratic processes).

In order to monitor high-risk AI systems, the AIR establishes a risk management system which sets out obligations for monitoring and risk assessment. In particular, the technical documentation of the AI system must be made available to national authorities, AI systems shall technically allow for the automatic recording of the events they carry out and must include the possibility to be effectively overseen by natural persons.

On the other hand, transparency obligations are laid down for certain AI systems:

- AI systems intended to interact directly with natural persons shall report that they are AI systems, unless it is obvious from the context.
- content (text, audio, images, video, etc.) generated by AI systems shall legibly indicate that it has been generated by an AI system.

The AIR imposes an obligation of confidentiality on any entity or natural person involved in the application of the regulation in order to ensure that industrial and intellectual property rights, confidential business information and trade secrets are respected in the application of the regulation.

As measures to support innovation, the AIR establishes so-called "sandboxes" whereby each state must provide a controlled space for testing AI systems.

For their part, Member States will have to create an authority for the management and supervision of AI systems. On this point, we highlight, as we reported in our Newsletter n° 78 of October 2023, that Spain, ahead of the entry into force of the AIR, has already established the Spanish Agency for the Supervision of Artificial Intelligence.

The AIR is pending final legal-linguistic verification and will have to be formally adopted by the Council. It will then enter into force 20 days after its publication in the Official Journal of the European Union and will be fully applicable, with some exceptions, 24 months after its entry into force.

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