

# EU AI Act – An important first step in legislating safe and responsible AI

In recent years, the capabilities of Artificial Intelligence (AI) solutions have taken incredible leaps forward. This has led to an unprecedented period of innovation and growth in the adoption of these technologies. These new capabilities are reshaping industries, revolutionising services, and opening new frontiers in research and development. However, alongside these groundbreaking developments, there has been a corresponding escalation in concerns over the dangers of AI. These concerns range from ethical considerations, such as bias and privacy, to existential risks, including the potential for misuse and the unforeseen consequences of autonomous decision-making systems. Governments around the world are trying to navigate how they can effectively regulate AI solutions without holding back innovation in this very fast-moving industry. The European Union (EU), having begun considering AI regulation in 2021, is at the forefront of this effort. On the 14<sup>th</sup> March 2024, EU lawmakers gave final approval to the EU AI Act which will define how European organisations will be able to develop and use AI solutions.

## What does the EU AI Act cover?

The AI Act takes a risk-based approach to the regulation of AI solutions ranging from banning of the most dangerous AI solutions to minimal regulation of very low risk solutions.

AI solutions that are considered potentially dangerous to individuals or society will be prohibited by the Act. These include solutions that aim to manipulate behaviour or take advantage of vulnerable people or attempt to use social scoring of populations (such as been used in China). The misuse of biometric information is also banned. For example, it will be illegal to use video analysis for mass surveillance of populations. Some exceptions to these rules are allowed – for example video surveillance may be used by police forces when searching for a missing person or for health and safety reasons in a workplace.

AI solutions categorised as high-risk will be allowed however they will be subject to stringent reviews to ensure that they are transparent, are based on quality and unbiased data, have human oversight, they produce accurate results, they are secure and are thoroughly documented. This category includes all uses of AI in controlling critical infrastructure as well as any systems which make decisions that will impact people – for example credit scoring, healthcare, education, law enforcement and recruitment. These solutions will be assessed prior to deployment as well as throughout their lifecycle.

Specific provisions have been included for the regulation of deep-learning foundation models – such as ChatGPT – which have exploded in popularity over the past 18 months. These models provide generic AI capabilities which can be used in a wide range of end use cases. Developers of these solutions will need to provide additional technical documentation on the model design and implementation as well as documentation summarising the data that the model was trained on. Training of these models will also need to respect copyright legislation. There are further requirements on providers of the most powerful foundation models to convince EU regulators that their models do not pose a major risk to society.

Generative AI solutions that can create new content such as images, video, audio or documentation will be required to flag that the content was generated by AI and to prevent its use in generating illegal content. This is intended to combat the rise in fake news and information which is considered a major threat to society – particularly in influencing elections.

Implementation of the Act and monitoring compliance will be overseen by a new EU AI Office. This is intended to be the centre for AI expertise across the EU. The office will collaborate with individual states as well as with the wider expert community. It will also be charged with promoting an innovative ecosystem of trustworthy AI solutions, enabling EU members to reap the societal and economic benefits.

Each country within the EU will set up their own AI watchdog which will enable citizens to file complaints about AI systems that they believe are not following the law. Citizens will also be able to ask for explanations relating to decisions affecting them that were made by AI systems.

### **What are the challenges with the Act?**

The Act has been generally well received as an important first step in legislating AI solutions. However, several concerns have been raised and there will be many challenges with its implementation.

The primary concern is that the current speed of innovation in AI will render parts of the Act redundant very quickly. When the Act was first conceived, it only considered narrow AI solutions which were designed to solve specific problems. The advances in foundation models meant that the Act had to undergo major changes during its development. Future technological advances are likely to require further changes for it to stay up to date.

Concerns have additionally been raised that the Act does not apply to the use of AI for military and defence purposes. The lack of regulation in this area will leave it to individual states to determine what constraints they might – or might not – put on the use of AI.

The Act will present challenges for providers of large language foundation models. Providers of closed source solutions will be reluctant to provide documentation about the design of their models and the data that it has been trained on. Providers of large foundation models are also likely to have challenges in complying with the requirements to respect copyright legislation when training their models. This is a complex area with a number of legal cases already in progress. Model developers insist that their use of copyrighted content is covered by fair use policies, however this is disputed by content creators. The AI Act seems to favour the content providers which will be challenging for model developers. However, a lot more clarity is required in this area.

The current wording of the Act has also raised some questions. For example, does the legislation on foundation models apply to those that already exist – such as ChatGPT4. The requirement for providers of these foundation models to self-report on the power of their own solutions has also been raised as a potential loophole in the legislation.

There is also the potential for this regulation to stifle innovation and leave the EU companies behind their overseas competitors. However, with most governments looking at their own AI legislation, this is not likely to be the case for long.

### **What does this mean for organisations?**

Organisations will need to ensure that their AI solutions will comply with the Act. Significant penalties will be faced by those found to be in breach of the legislation – up to 35m EUR or 7% of global turnover.

### **When will it come into force?**

The Act was endorsed by the EU parliament on the 14<sup>th</sup> March 2024. It now requires formal approval from each member state. Obligations will then come into force from 6 to 12 months later. Developers of high-risk solutions will have up to three years to comply.

### **So, what does this mean for businesses and organisations in Oceania?**

As with the GDPR regulations which the EU passed to protect the privacy of personal information of its citizens, the AI Act will cover any organisations that do business in the EU. So Australian and New Zealand companies that want to develop or use AI solutions that may interact with the EU will need to understand and ensure they comply with the Act to prevent being landed with significant fines.

The EU AI Act is also likely to be closely studied by the Australian and New Zealand governments when defining their own legislation governing AI. The Australian government requested industry feedback on AI regulation in 2023 and is likely to pass its own legislation over the next 12 months. The New Zealand government is also likely to consider its own AI legislation in the future. It will be worthwhile for organisations that develop AI solutions to take time to understand the EU legislation as preparation for legislation down under.

### **How can organisations start to ensure that they will be ready for legislation in Oceania?**

The capabilities of AI solutions have increased so significantly in recent years that all organisations should be considering the impact AI will have on their business and the markets that they operate in. As part of this, they need to consider how AI solutions can be implemented safely, ethically and in compliance with legislation. Organisations should review relevant government policies and legislation in addition to their own policies and processes to determine what governance they will need to put in place for their AI solutions.

## In conclusion

AI technologies have now reached the point where they have the power to cause a significant impact on both individuals and society. Regulation of the technology is essential to ensure that it is beneficial and does not cause harm. The EU AI Act is an important first milestone in regulating the power of AI and ensuring that it is used for good. Whilst there are some concerns, it generally strikes a reasonable balance between ensuring AI solutions are responsible and safe whilst not inhibiting innovation or preventing the significant benefits to society that can be gained from the use of AI.

If you would like to know more about how to ensure that your organisation implements AI solutions that are responsible, safe, ethical and compliant with legislation, please contact Fujitsu at [dataandai@fujitsu.com](mailto:dataandai@fujitsu.com).

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