

# European Regulation on AI: what is at stake?

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ADVANCING INTERESTS

## Introduction

The much-anticipated proposal for an EU regulation on Artificial Intelligence was published on 21st April. Presented as the first regulation on AI globally, it is a clear sign that the EU is seeking to obtain first mover advantage by doing what it does best: using its clout as a large market and its considerable technical expertise to set standards that will hopefully be emulated by others. The parallels with the GDPR are evident and, much like that landmark regulation, we can expect heavy scrutiny of this proposal as it advances through the legislative process.

In the following pages our tech policy experts in Brussels dissect the proposal and its main inflection points and discuss the implications for businesses.

## The list of high-risk AI applications

The Commission has defined those as systems that create a high risk to the health and safety or fundamental rights of natural persons. Such systems will be allowed on the European market subject to compliance with certain mandatory requirements and an ex-ante conformity assessment. The risk designation will be based on the intended use of the system.

The proposal foresees two categories of high-risk AI systems: those intended to be used as a safety component component of products that will be subject to third party ex-ante conformity assessment; and other stand-alone AI systems with mainly fundamental rights implications, for example those used in critical infrastructure, employment and worker management, education and training, law enforcement, migration and border management, justice, and access to certain private and public services.

The proposed Regulation mandates that, for a company to put on the EU market a high-risk AI system, it would have to meet certain requirements in relation to data and data governance, documentation and record keeping, transparency and provision of information to users, human oversight, robustness, accuracy and security. There are also obligations placed on actors across the AI value chain (e.g., importers, distributors, authorized representatives).

### What is at stake?

Which AI uses fall under the high risk category affects how quickly and cheaply an operator can place an AI system on the EU market.

The list of requirements to place an AI system on the market directly affects the cost of doing so.

## Conformity assessments

Conformity with the requirements set above will be undertaken by conformity assessment bodies. The regulation foresees the possibility of using either a third party assessment body or undertaking a self-assessment (via internal checks and strong ex-post enforcement, as well as registration of the system into an EU database), depending on the type of AI system. If the AI system is modified or develops beyond a pre-determined scope, the process must be repeated again.

Products that include AI as a safety component, but fall under sectoral legislation that creates their own conformity assessment bodies, can be assessed by these sectoral bodies, which must also check conformity with the requirements of the AI regulation.

### What is at stake?

The possibility for a self-assessment will be welcome for industry. The final scope of AI systems that can benefit from this procedure will likely be a key bone of contention during the legislative process.

The interplay between sectoral conformity assessment bodies and the AI elements of the products they are examining is also expected to raise concerns for various industries.

## Transparency obligations

The proposal mandates transparency obligations for AI applications that interact with humans; are used to detect emotions or determine association with (social) categories based on biometric data; or generate or manipulate content ('deep fakes'). People will have to be informed when they are interacting with such a system.

### What is at stake?

Although the obligations placed on these types of AI systems are rather light, more compliance requirements could be added during the legislative process.

## Codes of conduct

For low-risk AI systems, the regulation foresees the development of codes of conduct, which aim to encourage providers of non-high-risk AI systems to apply voluntarily the proposed mandatory requirements for high-risk AI. These codes of conduct may be developed by the industry and could include voluntary commitments on other issues, such as environmental sustainability.

### What is at stake?

Voluntary codes of conduct often end up forming the basis for binding rules in the future. It is telling that the Commission would like to see the same strict requirements apply to all AI applications, albeit on a voluntary basis for now.

For these reasons, we can expect significant activity and involvement of industry players and other stakeholders in the development of these codes of conduct.

## About the Interel Group

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