

Cyber-Security, Data Protection and Privacy

EU proposed regulation for Artificial Intelligence

On April 21, 2021, the European Commission [published](#) its proposal for a regulatory framework for artificial intelligence (AI) (the “Proposed Regulation”).

Similarly to the EU’s General Data Protection Regulation (GDPR), the Proposed Regulation is meant to have an extra-territorial application, with obligations extending to providers and users of AI systems based both within, and outside of, the EU.

The primary obligations under the Proposed Regulation are imposed on entities that place an AI system on the market (“providers”), however, the Proposed Regulation also imposes obligations on certain importers, distributors and users of AI systems. An “AI system” is broadly defined to include software that is developed with machine learning approaches, logic and knowledge based approaches and/or statistical approaches, and “can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with”.

The Proposed Regulation prohibits certain AI systems, such as systems that deploy subliminal techniques beyond a person’s consciousness to materially distort a person’s behavior in a manner that is likely to cause harm to such person. Other examples of prohibited AI systems include systems for “social scoring” by public authorities that could lead to detrimental or unfavorable treatment or systems that use “real-time” remote biometric identification in public spaces for law enforcement purposes, subject to certain exemptions.

The Proposed Regulation also introduces a number of heightened requirements for certain “high-risk” AI systems. High-risk AI systems include, among others, AI systems performing a safety function in certain products, including, for example, robotics, toys and medical devices. High-risk AI systems also include other systems in areas such as biometric identification, management and operation of critical infrastructure, employment, law enforcement and more.

Such high-risk AI systems will have to meet high regulatory standards, including implementation of safeguards against various types of biases in data sets, as well as establishment of acceptable data governance and management practices. Additionally, high-risk systems should be designed and developed in such a way that ensures the ability to verify the system's outputs throughout its lifecycle. The Proposed Regulation also includes provisions on transparency to users with respect to AI systems, documentation and record-keeping, human oversight and cybersecurity. Certain high-risk AI systems will also need to be registered with the European Commission, with information about the system stored on a publicly available database.

The Proposed Regulation facilitates the imposition of fines of up to the higher of €30 million, or 6% of a company's global annual turnover for certain infringements.

The Proposed Regulation is another step in what appears to be an evolving trend of regulating AI systems. This trend will affect a wide variety of companies that develop or use AI systems.

The Proposed Regulation will now undergo discussions in the European Parliament and the European Council, which may result in substantial changes to the currently proposed text.

Please feel free to contact us with any questions that you have on this matter.

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