

HOW THE EU AI ACT WILL CONCRETELY IMPACT YOUR COMPANIES AND HOW TO GET READY...

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After some years of seeming AI ‘prosperity’, the accumulation of scandals has shed light on the limitations to AI and have caught the eye of several regulators worldwide (UK, China, USA,...). Among them: the European Union, which is on its way to vote on the AI Act this year, with possible enforcement by 2025 or 2026 and notably high fines for non-compliance. If this initiative by the EU Commission looks praiseworthy at first sight, digging into the details reveals several challenges and ambiguities which need to be clarified to assess the impact the text will have on companies, the main one being the distinction between what is considered a provider or a user. Notwithstanding, the major impacts on companies can already be assessed. What are they and how to cope with them?

PROVIDER VS USER

The AI Act distinguishes legal obligations and requirements depending on companies’ status towards AI systems. Logically, the burden is more on providers, which are the ones who develop such systems and are supposed to know ‘what they are doing’. To simplify, users mostly need to collect information and documentation, register logs, perform data protection impact assessment

as well as to report if they notice or suspect any infringements on compliance with high-risk requirements by providers.

As insurers mainly design their pricing and underwriting models (use cases that may be classified as ‘high-risk’ by the EU), they will probably undergo the many requirements and obligations listed in the draft. But insurance >



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companies should not forget that they could also be targeted by the high-risk classification in other activities: AI used in recruitment (e.g. AI tool screening resumes), but also credit scoring, as it is allowed in some European countries to use it to help determine customer risk profile. Some of these use cases often require buying solutions from external providers.

The boundary becomes blurry when a ‘substantial modification’ is made to an AI system. According to the text, in this case, a user could be considered as a provider. But what does the Commission mean by ‘substantial modification’? The answer is vague: ‘change to the AI system following its placing on the market or putting into service which affects the compliance of the AI system with the requirements [...] or results in a modification to the intended purpose for which the AI system

has been assessed’. Let’s assume an insurance company buys a General-Purpose AI solution based on NLP to read customer documentation and automatically uses these inputs to assess their eligibility to an insurance product. Company A selling the product could be considered as the provider. But is it fair to consider it is a provider of ‘high-risk AI’ when it is Company B that will use it for a high-risk application? Also, if Company B is in turn considered a provider of high-risk AI because it ‘modifies the intended purpose’ of the AI system, can it really access the details of how Company A designed and trained its AI without infringing on intellectual property?

This example is not the only ambiguity. Therefore, companies should be able to anticipate various scenarios. But let’s assume any definition and situation are crystal clear to companies, what about the concrete impacts they may face?

TYPОLOGY OF IMPACTS

The implementation of the AI Act will drive significant impacts on companies, both at financial, organizational and operational levels, on top of competitiveness. First, the compliance of current AI systems will be quite costly for European organizations. According to a study from the Center for Data Innovation, compliance costs would be around 11 billion euros per year by 2025¹ - and this does not include the opportunity costs lost in the investment in AI. Also, like most regulations, the AI Act provides for financial penalties in case of non-compliance, ranging from 2% to 6% of the company's worldwide turnover, depending on the severity of the offense committed.

The organizational and operational consequences of the AI Act on companies also need to be considered. Indeed, companies should aim to implement a ‘Responsible AI by design’ approach. >

¹ How Much Will the Artificial Intelligence Act Cost Europe?
From the Center for Data Innovation, July 2021.



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However, while this would make sense for efficiency reasons, it could also paradoxically lead to more constraints on the organization by requiring more checks and documentation at the start of projects and thus becoming a procedural burden. Therefore, the question of whether to establish a new governance from scratch or embedding it in existing processes is pivotal. Also, as many departments and functions will be affected to a greater or lesser extent by the AI Act, companies need to anticipate the impacts of each of them.

For example, Compliance and Data Management departments will be particularly impacted, while the consequences on the Purchasing department will depend on outsourcing strategies. Additionally, there will likely be impacts on

human resources, not only on training and acculturation of stakeholders but also on recruitment and talent retention, which will be made more complex due to the increase in controls and the possible demotivation of technical profiles.

Finally, the impact on European companies' competitiveness raises some concern, especially as the EU is already behind the world AI race. According to a recent study from the Initiative for Applied Artificial Intelligence, 73% of polled VCs expect that the AI Act will reduce or significantly

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reduce the competitiveness of European startups in AI, and 16% of AI startup founders will consider halting AI development or relocating outside the EU². To go even further, competition within the EU might even occur: on top of the AI Act, sectoral regulators that operate nationally, like the ACPR in France, might implement stricter guidelines, which could create further discrepancy if one country over-regulates compared to others.

HOW TO GET READY?

While waiting for further notice, our main advice is to take action and fine-tune later. Indeed, even if the proposal is not finalized and has not been voted upon yet, we already have a clear picture of the philosophy of the text and the first concrete impacts. Companies can thus already gear up for its implementation.

For instance, among the various actions, they can already map their AI systems and estimate >

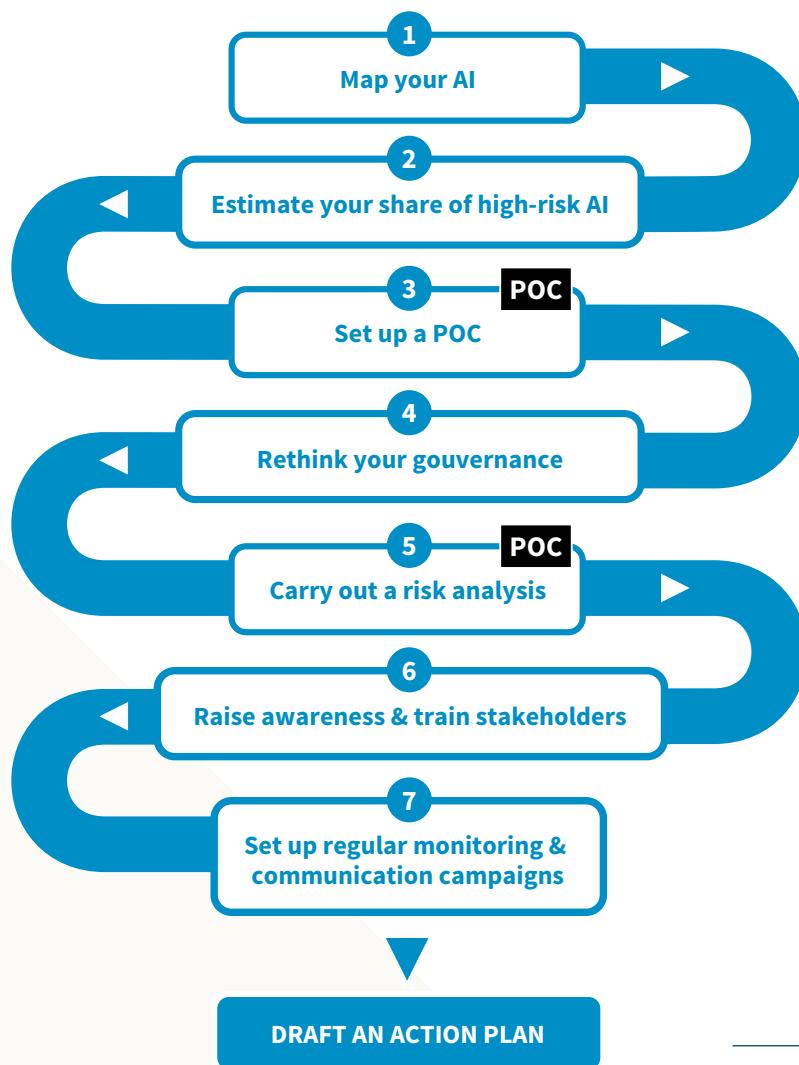
² AI Act Impact Survey - Exploring the impact of the AI Act on Startups in Europe from The Initiative for Applied Artificial Intelligence, December 2022.

their share of high-risk AI. Also, they can perform a risk analysis on a small sample of use cases via a Proof-of-concept, and review their current governance frameworks. In parallel, companies should conduct a regulatory watch on the evolutions of the text (definition of AI, classification of high-risk use cases, obligations and requirements,...).

They should also communicate and raise awareness of AI governance and regulation topics internally.

By taking these steps, companies will be able to define action plans and roadmaps before the AI Act is enacted. Anticipating will save a lot of time and money when the time comes! <

OUR RECOMMENDATIONS TO PREPARE FOR THE EU AI ACT



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