

EU Takes Important Step Towards Regulating AI, With Consequences for ChatGPT Client Update – June 2023

Dear Clients,

On June 14, 2023, the European Parliament published its final position on the EU AI Act, ahead of talks with EU member states on the final version of the law which is expected to be one of the major laws to regulate artificial intelligence. The EU AI bill seeks to impose new restrictions on what are considered to be the AI technology's riskiest uses and even ban certain practices such as social scoring and emotion recognition.

Like the EU's General Data Protection Regulation (GDPR), the EU AI Act is expected to become a global standard. Set forth below are some highlights.

The EU AI bill purports to take a "risk-based" approach to regulating AI (low/minimal risk applications, limited risk, high risk and unacceptable risk and therefore prohibited applications), focusing on applications that pose a significant risk to the health, safety or fundamental rights of natural persons, where AI systems are used to operate critical infrastructure (such as transport, water or energy), in the legal system, and when determining access to public services and government benefits. Makers of the AI technology/system will, inter alia, be required to conduct risk assessments before putting the technology into everyday use.

The EU AI Act, if implemented as currently proposed, would severely curtail uses of facial recognition software. It would also impose new transparency requirements on makers of generative AI systems (like the ChatGPT chatbot) – including requiring such makers to publish information about the data sets and summaries of the copyrighted material used for training their programs - and require that they ensure appropriate safeguards against the generation of unlawful content and content that infringes freedom of expression. Another provision would ban companies from scraping biometric data from social media to build databases.

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In addition to the transparency obligations noted above, the bill seeks to impose the following specific obligations on makers of generative AI systems: (i) setting up a risk management system, (ii) using appropriate data sets, (iii) ensuring appropriate quality (performance, predictability, safety, etc.) through appropriate measures, (iv) the creation of appropriate technical documentation and instructions for use, (v) the establishment of a quality management system and (vi) registration of the foundation model. Most of these assessments and transparency requirements are also required pursuant to GDPR, which will continue to apply, when relevant, to such AI systems.

The EU AI bill refers to the obligations of "deployers" of such AI systems in addition to the obligations of the makers/developers of the AI systems. In relation to high-risk AI systems, such deployers' obligations include the obligations to monitor the high-risk AI system's compliance with its own terms, comply with applicable sectoral and local legislation, keep logs of AI systems, implement human oversight, conduct a data protection impact assessment when personal data is processed throughout the life-cycle of the AI system, and conduct a fundamental rights impact assessment to consider the potential impact on the fundamental rights of the affected people. The Parliament's version of the bill broadened the scope of obligations on deployers as compared with the Commission's draft and it will be interesting to see whether such extended scope will be implemented in the final EU AI Act.

The bill also adjusts the fines to be imposed for violations of the EU AI Act regulations. The maximum fine for placing prohibited AI systems on the market was increased to up to €40 million or 7% of global annual sales, and a fine up to €20 million or 4% of global annual sales may be imposed for violations of regulations on data governance, transparency and provision of information.

Following Wednesday's vote, a final version of the law is expected by the end of the year.

We suggest that our clients start planning now to address the potential impact of the EU AI Act on their business. We will be happy to assist in such process and provide more information.

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*This client update does not constitute legal advice and is provided as a service to our customer base.

We would be happy to assist and advise on any question that arises



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